5-16-83
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federal register

Monday
May 16, 1983

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Environmental Protection Agency

Aviation Safety
Federal Aviation Administration

Banks, Banking
Federal Reserve System

Coal Mining
Surface Mining Reclamation and Enforcement Office

Commodity Futures
Commodity Futures Trading Commission

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

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Presidential Documents

Title 3—

The President

Proclamation 5061 of May 12, 1983

National Parkinson's Disease Week, 1983

By the President of the United States of America

A Proclamation

Nearly half a million Americans suffer from Parkinson's disease, a progressive disorder of the nervous system. We know now that their symptoms of tremor and muscle stiffness are related to a chemical deficiency in the part of the brain that controls movement, but there is far more to learn about this disease.

Several drugs developed since World War II have enabled thousands of Parkinson's patients to function more fully. Rigorous research is still needed, however, to provide more information about this disease and to develop new and improved therapies. Scientists must continue to explore possible causes of Parkinson's disease and search for ways to prevent the disorder or lessen its effect.

Many of the scientists studying Parkinson's disease receive support from the Federal government through the National Institute of Neurological and Communicative Disorders and Stroke and privately through four voluntary organizations: the American Parkinson Disease Association, the National Parkinson Foundation, Inc., the Parkinson's Disease Foundation, and the United Parkinson Foundation. I commend these voluntary groups and the scientists who devote their efforts toward conquering this disease. I also note the courage and resourcefulness of Parkinson's disease patients in overcoming their disorder and in helping other patients and families deal with the effects of this disease.

In order to emphasize the role of research in conquering Parkinson's disease and encourage continued private and Federal support of this research, the Congress, by Senate Joint Resolution 62, has designated the week beginning May 15, 1983 as "National Parkinson's Disease Week" and has authorized and requested the President to issue a proclamation in observance of that week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning May 15, 1983 as National Parkinson's Disease Week. I urge physicians, scientists, and government and private agencies concerned with Parkinson's disease to sponsor activities which will inform Americans about this illness and the need for continued research.

IN WITNESS WHEREOF, I have hereunto set my hand this 12th. day of May, 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. 83-12364
Filed 5-13-83; 10:21 am]
Billing code 3195-01-M

Presidential Documents

Executive Order 12421 of May 12, 1983

Presidential Commission on the Conduct of United States-Japan Relations

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Federal Advisory Committee Act, as amended (5 U.S.C. App. I), and in order to create a Commission to develop recommendations with respect to the conduct of relations between the United States and Japan, it is hereby ordered as follows:

Section 1. *Establishment.* (a) There is established the Presidential Commission on the Conduct of United States-Japan Relations. The Commission shall be composed of no more than eight members appointed or designated by the President from among citizens of the United States. The President shall designate a Chairman from among the members of the Commission.

(b) The members of this Commission will constitute the United States membership of the bi-national Advisory Group on United States-Japan Relations to be established by the two Governments.

Sec. 2. *Functions.* (a) The Commission shall develop recommendations with respect to the conduct of the United States-Japan relations. The Commission shall examine both the bilateral and multilateral dimensions of the relationship of the two countries with a view to identifying issues requiring resolution and opportunities for expanded cooperation, and make recommendations on ways by which the United States and Japan can better carry out their common responsibilities aimed at promoting world peace and prosperity.

(b) The Commission shall develop its recommendations within the framework of the Advisory Group on United States-Japan Relations. This Group will address the question of how the United States and Japan can better fulfill their long-term responsibilities for world peace and a healthy international economy, and how current issues of mutual concern affect those long-term prospects.

(c) To pursue its goals in connection with participation in the Advisory Group on United States-Japan Relations, the Commission may conduct studies, hearings, and meetings as it deems necessary; assemble and disseminate information, and issue reports and other publications; and coordinate, sponsor, or oversee projects, studies, events, and other activities it deems necessary or desirable.

(d) The Commission shall submit its recommendations to the President and the Secretary of State from time to time as it deems appropriate, but in any case shall submit its initial recommendations within 12 months after the Advisory Group on United States-Japan Relations formally has begun its deliberations, or before the date of termination of the Commission, whichever occurs earlier.

Sec. 3. *Administration.* (a) Members of the Commission shall serve without compensation for their work on the Commission. However, members appointed from among private citizens of the United States may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the government service (5 U.S.C. 5701–5707).

(b) The heads of Executive agencies shall, to the extent permitted by law, provide the Commission such information and advice on the conduct of United States-Japan relations as it may require for the purpose of carrying out its functions.

(c) The Department of State shall, to the extent permitted by law, provide the Commission with such administrative services, funds, facilities, staff and other support services, and pay such expenses as may be necessary for the effective performance of its functions.

Sec. 4. *General.* (a) Notwithstanding any other Executive Order, the functions of the President under the Federal Advisory Committee Act, as amended (5 U.S.C. App. I), which are applicable to the Commission, except that of reporting annually to the Congress, shall be performed by the Secretary of State in accordance with guidelines and procedures established by the Administrator of General Services.

(b) The Commission shall terminate one year from this date.

Ronald Reagan

THE WHITE HOUSE,
May 12, 1983.

[FR Doc. 83-13265
Filed 5-13-83; 10:22 am]
Billing code 3195-01-M

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 979

Melons Grown in South Texas; Approval of Amendment No. 2 to Handling Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule further amends the handling regulation, § 979.304 to permit shipments of all melons in experimental bulk boxes and in pony cartons of specified sizes. It will provide information for the industry concerning the economic feasibility of making shipments in this manner while continuing to provide the consumer with melons of acceptable quality at reasonable prices.

EFFECTIVE DATE: May 10, 1982.

FOR FURTHER INFORMATION CONTACT: Charles W. Porter, Chief, Vegetable Branch, F&V, AMS, USDA, Washington, D.C. 20250 (202) 447-2615.

SUPPLEMENTARY INFORMATION: Information collection requirements contained in this regulation (7 CFR Part 979) have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB #0581-0076.

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

During the previous season the committee recommended and the Secretary approved the shipment of honeydew melons in bulk containers having dimensions of four feet long by four feet wide by two feet deep and smaller cartons of specified sizes. At this season's organizational meeting, the committee recommended including cantaloups under this authority for experimental shipments. The bulk container is intended to serve as a display for the retailer so that the melons need not be unpacked. The committee believes that since this type of bulk bin is of a relatively modest size, it may improve efficiency and reduce costs while still providing substantially greater protection than if melons were piled directly in the bed of a truck or trailer.

Handlers may also ship melons in pony cartons of specified demensions. Pony cartons are smaller than cartons presently authorized but serve the same purpose.

Inasmuch as the inspection and grade requirements of the melons so packed remain unchanged, this amendment will not permit the bulk shipments of questionable quality melons that were prevalent in the area prior to inception of the order. Handlers using these bulk containers shall provide the committee with such information as it deems necessary to properly evaluate the merits of these experimental containers.

Findings. After consideration of all relevant matters, it is found that the following amendment will tend to effectuate the declared policy of the act.

It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice or to engage in public rulemaking procedure, and that good cause exists for not postponing the effective date of this section until 30 days after publication in the **Federal Register** (5 U.S.C. 553) in that (1) to maximize benefits to producers, this amendment should apply to as many shipments as possible during the shipping season, (2) compliance with this amendment will not require any special preparation on the part of handlers, (3) information regarding the committee's recommendation has been made available to producers and handlers in the production area, and (4) this amendment relieves restrictions on the handling of production area melons.

List of Subjects in 7 CFR Part 979

Marketing agreements and orders, Melons, Texas.

PART 979—MELONS GROWN IN SOUTH TEXAS

Section 979.304 *Handling regulation* (47 FR 13118; March 29, 1982) is hereby amended by removing the words "of honeydew melons" from subparagraphs (e)(3) and (f)(5).

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

Dated: May 10, 1983, to become effective May 10, 1983.

D. S. Kuruloski,
Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 83-13050 Filed 5-13-83; 8:45 am]
BILLING CODE 3410-02-M

FEDERAL RESERVE SYSTEM

12 CFR Part 217

[Docket No. R-0467]

Interest on Deposits; Regulation Q; Temporary Suspension of Early Withdrawal Penalty

AGENCY: Federal Reserve System.

ACTION: Temporary suspension of the Regulation Q early withdrawal penalty.

SUMMARY: The Board of Governors, acting through its Secretary, pursuant to delegated authority, has suspended temporarily the Regulation Q penalty for the withdrawal of time deposits prior to maturity from member banks for depositors affected by severe storms and flooding in the designated parishes of Louisiana.

EFFECTIVE DATE: April 20, 1983.

FOR FURTHER INFORMATION CONTACT: Daniel L. Rhoads, Attorney (202/452-3711), Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: On April 20, 1983, pursuant to section 301 of the Disaster Relief Act of 1974 (42 U.S.C. 5141) and Executive Order 12148 of July 15, 1979, the President, acting through the Director of the Federal Emergency Management Agency, designated the Louisiana parishes of Ascension, East Baton Rouge, East Feliciana, Jefferson, Livingston, Orleans, Pointe Coupee, St.

Bernard, St. Tammany, Tangipahoa, and Washington major disaster areas. The Board regards the President's action as recognition by the Federal government that a disaster of major proportions had occurred. The President's designation enables victims of the disaster to qualify for special emergency financial assistance. The Board believes it appropriate to provide an additional measure of assistance to victims by temporarily suspending the Regulation Q early withdrawal penalty (12 CFR 217.4(d)). The Board's action permits a member bank, wherever located, to pay a time deposit before maturity without imposing this penalty upon a showing that the depositor has suffered property or other financial loss in the disaster areas as a result of the severe storms and flooding beginning on or about April 1, 1983. A member bank should obtain from a depositor seeking to withdraw a time deposit pursuant to this action a signed statement describing fully the disaster-related loss. This statement should be approved and certified by an officer of the bank. This action will be retroactive to April 20, 1983, and will remain in effect until 12 midnight, October 21, 1983.

List of Subjects in 12 CFR Part 217

Advertising, Banks, Banking, Foreign Banking.

In view of the urgent need to provide immediate assistance to relieve the financial hardship being suffered by persons in the Louisiana parishes directly affected by the severe storms and flooding, good cause exists for dispensing with the notice and public participation provisions in section 553(b) of Title 5 of the United States Code with respect to this action. Because of the need to provide assistance as soon as possible and because the Board's action relieves a restriction, there is good cause to make this action effective immediately.

By order of the Board of Governors, acting through its Secretary, pursuant to delegated authority, May 10, 1983.

William W. Wiles,

Secretary of the Board.

[FR Doc. 83-13023 Filed 5-13-83; 8:45 am]

BILLING CODE 6210-01-M

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12 CFR Part 217

[Docket No. R-0468]

Regulation Q; Interest on Deposits; Temporary Suspension of Early Withdrawal Penalty

AGENCY: Federal Reserve System.

ACTION: Temporary suspension of the Regulation Q early withdrawal penalty.

SUMMARY: The Board of Governors, acting through its Secretary, pursuant to delegated authority, has suspended temporarily the Regulation Q penalty for the withdrawal of time deposits prior to maturity from member banks for depositors affected by earthquakes in the California city of Coalinga.

EFFECTIVE DATE: May 5, 1983.

FOR FURTHER INFORMATION CONTACT: Daniel L. Rhoads, Attorney, (202/452-3711), Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: On May 5, 1983, pursuant to section 301 of the Disaster Relief Act of 1974 (42 U.S.C. 5141) and Executive Order 12148 of July 15, 1979, the President, acting through the Director of the Federal Emergency Management Agency, designated the California city of Coalinga a major disaster area. The Board regards the President's action as recognition by the Federal government that a disaster of major proportions had occurred. The President's designation enables victims of the disaster to qualify for special emergency financial assistance. The Board believes it appropriate to provide an additional measure of assistance to victims by temporarily suspending the Regulation Q early withdrawal penalty (12 CFR 217.4(d)). The Board's action permits a member bank, wherever located, to pay a time deposit before maturity without imposing this penalty upon a showing that the depositor has suffered property or other financial loss in the disaster areas as a result of the earthquakes beginning on or about May 2, 1983. A member bank should obtain from a depositor seeking to withdraw a time deposit pursuant to this action a signed statement describing fully the disaster-related loss. This statement should be approved and certified by an officer of the bank. This action will be retroactive to May 5, 1983, and will remain in effect until 12 midnight, November 5, 1983.

List of Subjects in 12 CFR Part 217

Advertising, Banks, Banking, Federal Reserve System, Foreign banking.

In view of the urgent need to provide immediate assistance to relieve the financial hardship being suffered by persons in the California city of Coalinga directly affected by the earthquakes, good cause exists for dispensing with the notice and public participation provisions in section 553(b) of Title 5 of the United States Code with respect to this action. Because of the need to provide assistance as soon as possible and because the Board's action relieves a restriction, there is good cause to make this action effective immediately.

By order of the Board of Governors, acting through its Secretary, pursuant to delegated authority, May 10, 1983.

William W. Wiles,

Secretary of the Board.

[FR Doc. 83-13022 Filed 5-13-83; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 23

[Docket No. 23259; Special Conditions No. 23-ACE-1]

Special Conditions; Lear Fan Model 2100 Airplane

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Special Conditions.

SUMMARY: These special conditions are issued under §§ 21.16 and 21.101(b) of the Federal Aviation Regulations (FAR) to the Lear Fan Research Limited Partnership (Lear Fan) for the Lear Fan Model 2100 airplane. The Lear fan Model 2100 airplane will have novel or unusual design features associated with the use of advanced composite materials for primary flight structure, location of the propeller, location of the engines, unique propulsion drive system, and high altitude flight operation for which the regulations do not contain adequate or appropriate safety standards. These special conditions contain safety standards which the Administrator finds necessary to establish a level of safety equivalent to that established in the regulations applicable to the Lear Fan Model 2100 airplanes because of novel or unusual features.

EFFECTIVE DATE: June 15, 1983.

FOR FURTHER INFORMATION CONTACT: William L. Olson, Aerospace Engineer, Aircraft Certification Division, 601 E. 12th Street, Room 1656, Federal Office Building, Kansas City, MO 64106, Telephone: (816) 374-5688.

SUPPLEMENTARY INFORMATION:

Type Certification Basis

The certification basis for the Lear Fan Model 2100 airplane is as follows: Part 23 of the Federal Aviation Regulations (FAR), effective February 1, 1965, through Amendment 23-27, effective November 19, 1980; Part 36 of

the FAR, effective December 1, 1969, through Amendment 36–12; Special Federal Aviation Regulation 27, effective February 1, 1974, through Amendment 27–4; and Special Conditions No. 23–ACE–1.

Background

On December 15, 1977, Lear Fan Research, Limited Partnership, Box 60000, 14505 Mt. Anderson, Reno, NV 89506 (formerly, Lear Avia Corporation), filed an application for a type certificate for the Lear Fan Model 2100 airplane under Part 23 of the FAR. In accordance with § 21.17(b) of the FAR, an application for a type certificate is effective for three years for a Part 23 airplane. The Lear Fan type certificate application expired on December 15, 1980. Two subsequent extensions of the type certificate (TC) applications were granted in accordnce with § 21.17(c)(2) of the FAR, and Lear Fan has elected to comply with Part 23 of the FAR as amended through Amendment 23–27, effective November 19, 1980. The Model 2100, a small, low-wing, Y-tail, pressurized airplane with a graphite/epoxy composite airframe, is powered by two turboshaft engines whose output shafts are coupled to a transmission which, in turn, drives a single four-bladed pusher propeller. The engines are Pratt & Whitney Model PT6B–35F, and each is rated at 650 shaft horsepower. The basis airframe structure is made of a graphite/epoxy composite material with adhesive bonding utilized as the primary means of assembly. The empennage is a Y-tailed configuration with a tail bumper incorporated in the lower fin. The aircraft seating configuration provides for eight passengers, and two pilot seats. The maximum takeoff weight is 7350 pounds and the proposed maximum certificated operating altitude is 41,000 feet. The stall speed in the landing configuration is approximately 84 knots, indicated at maximum takeoff weight.

Discussion of Comments

The applicant and other interested persons have been given an opportunity to participate in the making of these Special Conditions, and all comments received have been fully considered. Four letters, with substantive comments, were received in response to Notice No. SC–82–CE.

One commenter interpreted the words in the background section of the notice, "* * * and to support a finding by the Administrator that no feature or characteristic of the airplane makes it unsafe for the category in which certification is requested," to be beyond the scope of § 21.16 of the FAR. It was not the intent of the FAA to use this as a reason for issuing special conditions and these words are not included in these final special conditions.

One commenter, citing that pusher propellers, two engines driving one propeller, and the use of composite materials for primary airframe structure are not totally new to general aviation, questioned the necessity for Special Conditions in the case of the Lear Fan Model 2100 airplane. The FAA does not concur. The materials, construction processes, and propulsion arrangement used in the Lear Fan airplane were not envisioned when the current regulations for small airplanes were promulgated and, in the case of materials and construction processes, adequate information was not available to formulate such standards. While airworthiness standards for propulsion systems with two engines driving a single rotor are included in rotorcraft regulations, they are not present in the rules governing small airplanes. Furthermore, the materials, construction processes, and propulsion arrangement used in the Lear Fan Model 2100 airplane have not been previously approved by FAA for small airplanes. Because these design features of the Lear Fan Model 2100 airplane are novel and unusual with respect to the applicable airworthiness rules, the FAA determined that Special Conditions are necessary.

One commenter, contending that the combined set of requirements in proposed Special Conditions A., D., J., K., and T. place an unrealistic burden on the certification effort, because they collectively are outside the level of safety intended by Part 23 of the FAR, recommended deletion of proposed Special Condition A. because its intent is coverd in proposed Special Conditions D., J., K., and T. The FAA does not concur with this recommendation. While proposed Special Condition paragraph A.1. refers to endurance tests specified in proposed Special Condition J., proposed Special Condition paragraph A.2. includes tests which are not part of proposed Special Conditions D., K., or T. and are not otherwise called out in the Lear Fan Special Conditions. These are necessary due to the unique arrangement of the propulsion drive system where the tail cone is subjected to engine thrust, gyroscopic, and vibratory loads as well as reactive loads between the engines and the transmission. Another commenter recommended relocating proposed Special Condition paragraph I.1., which defines the "propulsion drive system," to Special Condition A. The FAA also noted that the words "propeller drive system" were used in the titles for proposed Special Conditions A., I., and J. and in other parts of these Special Conditions. Accordingly, proposed Special Condition paragraph I.1. is moved to the beginning of Special Condition A, Special Condition paragraphs I.2.(a), –(b), and –(c) are redesignated I.1., –2., and –3., respectively; appropriate revisions are made to assure "propulsion drive system" is used consistently throughout these Special Conditions, and Special Condition paragraphs A.1. and A.2. are adopted substantively as proposed.

One commenter recommended replacing the word "critical" with the word "normal" in proposed Special Condition paragraph C.1. because any condition which would collapse the tail skid would be critical and compliance with proposed Special Condition paragraph C.2. would not be possible. The FAA agrees that the word "critical" is inappropriate for describing takeoff and landing configurations. Accordingly, Special Condition paragraph C.1. is revised to reflect the airplane's maximum pitch attitude attainable in takeoff or landing configuration.

One commenter recommended redefining the propulsion drive system to delete those components between the engines and the transmission. It was contended that, in their current form, proposed Special Conditions D., E., F., G., and H. cover elements of the propulsion drive system that are redundant and thus the philosophy appears to go beyond the level of safety envisioned in Part 23 of the FAR. The FAA does not concur. The Lear Fan propulsion drive system is similar to those used in rotorcraft multiengine rotor drive systems for which the airworthiness standards include all parts necessary to transmit power from the engines to the rotor. Accordingly, Special Conditions D., E., F., G., and H. are adopted as proposed.

One commenter, citing that the FAA had no definition for the phrase "extremely remote," recommended using a numerical value for probability of catastrophic failure in proposed Special Conditions E., F., G., and H. The numerical value recommend was whatever is equivalent to current Part 23 multiengine airplane catastrophic failure rates. The FAA does not concur. The term "extremely remote" is used in §§ 23.613, 23..933, and 23.937 of the FAR and the term retains the same meaning as in these sections. Accordingly, Special Conditions E., F., G., amd H. are adopted as proposed.

One commenter recommended removing the words "multiengine aircraft" and substituting the words "multiengine propulsion drive system" in proposed Special Condition paragraphs I.2.(a) and K.2. The FAA concurs and, accordingly, the special conditions are revised as recommended. Also, Special Condition subparagraphs I.2.(a), –(b), and –(c) are redesignated as explained in the revision to Special Condition A.

One commenter, citing that Part 23 of the FAR allows manual shutdown of an engine if performance requirements can be met, recommended removing the word "automatically" from proposed Special Condition subparagraph I.2.(b). The FAA does not concur. Recognition of an engine failure in an airplane with the Lear Fan's propulsion arrangement would be extremely difficult when compared with independent engine drive systems as is common on airplanes with wing-mounted engines. Accordingly, the special condition is adopted as proposed. The same commenter pointed out that proposed Special Condition subparagraphs I.2.(a) and I.2. (b) require that a clutch be used to disengage a failed engine while the remaining engine continues to drive the propeller. It was stated that this feature is important to the Lear Fan Model 2100, but is not necessary for coaxial designs. The FAA is unaware of the basis for this comment on coaxial designs. Because the comment is not applicable to this rulemaking issue, the FAA will not respond to it. Any question relating to such coaxial designs will be handled when, and if, such a design is presented for approval.

One commenter stated that the maximum rate of decelerations and accelerations of the engines in proposed Special Condition subparagraph J.2.(b) needs clarification because, as presently stated, it could include throttle slams or rotating machinery inertial limits or both. The FAA concurs and, accordingly, Special Condition subparagraph J.2.(b) is revised to appropriately describe maximum rate.

One commenter, contending that the propeller pitch limits are normally never reached except at the edges of the flight envelope, recommended changing the word "pitch" to "RPM" in proposed Special Condition subparagraph J.3.(a). The purpose of these tests, which the applicant intends to conduct on the ground, is to reach the propeller blade angles that exist at the edges of the flight envelope. Propeller RPM is controlled by a governor which is set at a constant speed and due to this configuration there will not be a minimum RPM during the test. Because the Lear Fan does not have a conventional cockpit propeller control lever, as was inferred in the proposed Special Conditions, it will be necessary to modify the system to obtain such maximum and minimum propeller pitch positions for these tests. Therefore, the FAA does not occur with the recommendation, however, Special Condition subparagraphs J.3.(a) and J.3.(b) are revised to resolve the ambiguity.

One commenter contested the requirement in proposed Special Condition paragraph K.3. for a 120% overspeed test and recommended overspeed requirements consistent with Parts 23 and 33 of the FAR. The FAA does not occur. These overspeed tests are reasonable and consistent with what the FAA has found necessary in approving the qualification of gear boxes of similar design and operating environment. Accordingly, the special condition is adopted as proposed.

One commenter, contending that proposed Special Condition paragraph L.2. is not necessary in view of the requirements in Special Conditions A., D., J., K., and T., recommended deletion of proposed Special Condition paragraph L.2. The FAA does not concur. Special Conditions A., D., J., K., and T. do not specify determination of critical shafting speed. Accordingly, Special Condition L. is adopted as proposed.

One commenter recommended deletion of proposesd Special Condition M. because the design features of the airplane already included an independent lubrication system for the transmission (propeller gear reduction box). The FAA does not concur. These Special Conditions must supplement the existing rules for all novel and unusual futures affecting safety. The fact that the designer recognized this safety issue and planned for this necessary feature before the Special Conditions were developed, does not eliminate the need to formalize the requirement. Without this Special Condition, a future modification of the airplane could involve a gear box lubrication system that is dependent upon the engine lubrication system. Accordingly, the special condition is adopted as proposed.

One commenter questioned if proposed Special Condition N. applied to the engine power transmission as well as the propeller transmission. Special Condition N. was intended to apply only to the propeller transmission because the engine transmission is already covered by § 23.1041 of the FAR. Accordingly, in consideration of this comment, the special condition is revised to specify the propulsion drive system.

One commenter interpreted proposed Special Condition O. to apply to engine accessories and suggested, that unless a hazardous condition could be shown, the proposed Special Condition should be withdrawn. The FAA did not intend this Special Condition to apply to engine accessories because they are already included under § 23.1163 of the FAR. This Special Condition requirement is, however, consistent with airworthiness standards for similar applications in rotorcraft transmissions. Accordingly, to clarify the issue, Special Condition O. is revised to specify the propulsion drive system transmission.

One commenter, contending that loss of oil pressure is tantamount to a low oil quantity warning, suggested that the low oil quantity warning requirement of proposed Special Condition paragraph P.2. may be redundant in view of the oil pressure warning required by Special Condition parapraph P.1. The FAA does not concur. These two warning devices are intended to detect probable malfunctions which can be independent of each other and which require different degrees of corrective action. For example, a low oil pressure warning could indicate impending pump failure and require an immediate landing while a low oil quantity warning due to excessive loss of oil may allow the pilot a wider choice of options, including continued flight to the intended destination. The same commenter pointed out that if such a warning is necessary for minimum operational oil quantity, the Airplane Flight Manual (AFM) should define the quantity in its Limitations Section. The FAA concurs and the Limitations Section will also include emergency procedures to be taken in the event of a low oil quantity warning. The same commenter raised the question as to whether the oil temperature gauge required in Special Condition paragraph P.4. could serve as an oil temperature warning device. The FAA has determined that, in the case of the Lear Fan where high oil temperature could be an indication of impending loss of function of the transmission, total power failure, and structural damage to the airplane, an early detection of this condition is essential. Accordingly, the special condition is adopted as proposed.

One commenter, contending that proposed Special Condition paragraph R. appeared to go beyond the intent of Amendment 23-26 in affecting instructions for continued airworthiness.

recommended deleting proposed Special Condition R. This was not the intent of the FAA; however, the issue was resolved when Lear Fan applied for an extension on the type certificate application and subsequently agreed to comply with Part 23 of the FAR through Amendment 23–27, effective November 19, 1980. Accordingly, proposed Special Condition R. is deleted and Special Conditions S., T., U., V., W., X., Y., and Z. are redesignated R., S., T., U., V., W., X., and Y., respectively.

One commenter, in response to the propeller disc conspicuity requirements of proposed Special Condition S., questioned why visibility in normal daylight ground conditions is any more critical than in twilight or nighttime conditions and asked for a complete FAA rationale supporting the requirement. The FAA agrees that a hazard exists whenever the propeller is turning and, ideally, it would be desirable to have the propeller disc visible under all lighting conditions. However, a propeller disc that is visible in daylight conditions is also more likely to be visible in other lighting conditions existing at an airport where line personnel are present. It would impose a severe burden on an applicant to provide aircraft lighting for the propeller and it would also be difficult to duplicate lighting conditions other than daylight for making a determination of compliance. A similar situation existed during development of the present regulation for rotorcraft tail rotor conspicuity. The rule which originally required the tail rotor disc to be visble in "normal ground conditions" was subsequently amended (effective February 25, 1968) to clarify its intent by changing the wording to "normal daylight ground conditions." The public participated in a subsequent 1979 rotorcraft airworthiness review and did not present any rotor disc conspicuity proposals during those meetings. Accordingly, the special condition is adopted as proposed.

One commenter recommended rewording proposed Special Condition T. to define what is meant by "continuation of torque" and to relate the probability of failure to all causes, rather than to failures of single elements. The same commenter recommended substitution of the numerical value of 10^{-6} for failures from all causes and in lieu of the expression "not likely to occur in the system component's service life." The FAA does not concur with these recommendations. Horsepower, torque, thrust, RPM, and gas temperature all are terms used in referring to power output of turbine engines. In the case of the Lear Fan airplane, where propeller RPM is set at a fixed speed and only controllable over a narrow range from the cockpit, torque is the primary power indication to the pilot and was chosen to describe power transmitted to the propeller. With regard to probability analysis, the FAA regulations are intended to be objective as far as possible, and assigning quantitative values for reliability would defeat that purpose. Accordingly, except for minor editorial changes, the special condition is adopted as proposed.

One commenter recommended that proposed Special Condition V. be revised to require the applicant to show that ice shed from the fuselage, wing, and empennage forward of the propeller would have no adverse effect on the propeller. The FAA does not concur. If it can be shown that the ice protection system will not allow ice to accumulate on these surfaces, it should not be necessary to subject the propeller to shed ice. Accordingly, the special condition is adopted as proposed.

Two commenters, contending that proposed Special Condition Y., which requires two discharges of fire extinguishing agent for each engine, is beyond the safety standards envisaged in Part 23 of the FAR, voiced their objections to the requirement. One commenter agreed that the engine installation arrangement warranted a fire protection system but believed a one-shot discharge would provide the necessary safety standard. The other commenter pointed out many military airplanes, including the Cessna Model T–37, have engines buried in the fuselage and the Cessna T–37 is without an unusual fire history. Also, neither the Cessna T–37 nor the Cessna C–337, which both have engines buried in the fuselage, have fire extinguishing systems. In addition Part 23 regulations do require a fire shield and a fire detection system. This commenter argued that a fire in the aft fuselage is not less safe than a fire in a wing necalle which is typically close to fuel tanks. The FAA does not agree that these special conditions are beyond the safety standards envisaged in Part 23 of the FAR. The design safety considerations for military airplanes differ so greatly from those for civil aircraft that the comparison comment is not considered relevant. As an example, some of the military airplanes with engines buried in the fuselage rely on parachutes or even ejections seats for crew evacuation in an emergency. There are no U.S. civil certificated airplanes with engines buried in the fuselage. Even in the Cessna Model 337, the aft engine is not buried but appended on the fuselage and is separated from the cabin with a conventional firewall much in the same manner as the forward engine. Furthermore, the Cessna 337 fuselage structure is in parallel with the tail rather than in series as it is in the Lear Fan Model 2100 airplane. The FAA's rationale behind the dual discharge system is that metallic components in the engine compartment can heat up and subsequently reignite fuel fumes after the first fire has been extinguished. While the fire shield is required to resist the fire for 15 minutes, the airplane might not be that close to a suitable airport in the event of such a fire. Also, § 23.1182 of the FAR only applies to protection of components in nacelle areas behind the engine compartment firewall. In the case of the Lear Fan, fuselage structure could be immediately adjacent to the fire shield. Furthermore, a sustained fire could cause structural damage to the fuselage and subsequent loss of the airplane. Accordingly, the special condition is adopted as proposed.

Two commenters stated that the FAA lacked justification for proposed Special Condition Z. which requires design precautions be taken to minimize hazards to the airplane in the event of an engine rotor burst. One commenter recommended that this requirement be deleted because engine manufacturers are required to show the improbability of rotor failure and current PT–6 engine service safety records are satisfactory. This commenter assumed that proposed Special Condition T. applied to the engines and argues that proposed Special Condition Z., in its current form, makes compliance with proposed Special Condition T. impossible. This is not the case because proposed Special Conditon T. only applies to the propulsion drive system. The other commenter stated that the FAA did not offer an explanation of why this engine configuration warrants any more consideration than airplanes with wing-mounted engines. All engines certificated under Part 33 of the FAR must be designed to provide for containment of damage from rotor *blade* failure. For those engines having a certification basis which includes Amendment 33–6 to Part 33 of the FAR, it must be shown by *analysis* that any probable malfunction, or any probable single or multiple failure, or any probable improper operation of the engine, will not cause the engine to catch fire, burst (penetrate the case), or lose its shutdown capability. The regulations only require design and

analysis to provide for containment of turbine and compressor blades, but do not address containment of turbine and compressor rotors. In the case of the PT-6 engine, whose certification basis does not include Amendment 33-6, analysis of probable malfunctions, failures or improper operation of the engine was not required. The FAA's chief concern in proposing this special condition is the fact that, unlike engine installations in wing nacelles, debris from rotor burst in a fuselage buried engine could damage the rudder, elevator, their associated control mechanisms, electrical wires or components, hydraulic components or lines, or inflict severe structural damage to the fuselage. Accordingly, the special condition is adopted as proposed.

In the proposal, Airframe and Flight Special Conditions were grouped together with Propulsion Special Conditions and were identified by the letters AA., AB., etc. In these final special conditions, the identification is changed as follows: AA. and AC. are not Airframe Special Conditions A. and B. AB. is deleted and AD. is now the only Flight Special Condition.

One commenter stated that proposed Special Condition AA appeared to restrict the applicant from using the fatigue strength criteria presently in Part 23 of the FAR, and because of the broad scope of technical requirements in the proposal, the applicant is faced with an enormous burden in certificating the Model 2100 airplane. The commenter believes that the FAA should justify the technical and economic basis for what is construed as a significant departure from the level of safety envisaged in Part 23 of the FAR. It was not the intent of the FAA to go beyond the level of safety, but rather to provide an equivalent level of safety for the Model 2100 to that envisaged for Part 23 airplanes in § 23.571 *Pressurized cabin* and § 23.572 *Wing and associated structure*. Current criteria was developed for metals which have similar strength properties for in-plane and out-of-plane loads, known toughness properties, and known durability which has been established by many years of testing and experience. In contrast, graphite composite materials being used on the Lear Fan airplane exhibit widely varying strength properties for in-plane and out-of-plane loads as well as toughness properties and durability that differ significantly from commonly used metals. Furthermore, composite materials are known to be susceptible to damage during manufacture and in service while metals, when built into airplane structure as envisaged in §§ 23.571 and 23.572 of the FAR, are not likely to be so adversely affected. Because of these major differences in material physical properties, a thorough investigation is necessary to determine the ability of the Lear Fan's airframe to withstand repetitive loads as well as damage likely to occur. The FAA has determined that, at this time, damage tolerance criteria is the only method that can readily be used to accomplish the necessary investigation for repetitive loads and damage. If subsequent information, not now available to the FAA, justifies use of different criteria, the applicant may elect, or if necessary, be required to comply with that criteria. Such action would be by amendment to these special conditions. Accordingly, the special condition is adopted as proposed.

Two commenters addressed proposed Special Condition AC. One stated that although the requirements were extracted from Part 25 of the FAR, they were lower than those of the British Civil Aviation Authority in the context of "outward opening doors." Inasmuch as a recommendation for change to the requirement was not made, the FAA cannot provide a definitive response. However, the FAA has determined that the proposed special condition provides a level of safety equivalent to that established for Part 23 airplanes. Another commenter stated that providing ships' lighting for checking security of access panels at night would unnecessarily add to product cost when a flashlight is required equipment for night flight. The FAA concurs and, accordingly, the wording of proposed Special Condition AC. (now designated Airframe Secial Condition B.2.) is revised to allow use of a flashlight or equivalent lighting source.

One commenter stated that proposed Special Condition AD. does not indicate the way in which the operator should use the buffet onset information provided in the flight manual. This information is intended to show the operator those altitudes, airspeeds, weights, and center of gravity locations which the airplane may be capable of attaining by virtue of its performance but which should be avoided due to buffet onset. Accordingly, the special condition is adopted with the additional requirement that the information be provided in the flight manual.

One commenter stated that the transmission should have the capability of operation following total loss of oil, sufficient to safely complete the flight and that this should be confirmed by representative tests. The FAA does not concur. The rationale supporting FAA's position is that the transmission instrumentation will inform the pilot that a lubrication discrepancy exists so that appropriate action can be taken. Accordingly, the special conditions are adopted without the implied requirement.

One commenter suggested that, in cases where the safety assessment is satisfied by claiming integrity for the parts, it is expected sufficient manufacturing controls will insure that production parts are represented by the parts used for substantiation testing. Special conditions are developed for and limited to airworthiness standards when the applicable regulations do not contain adequate or appropriate standards because of novel or unusual design features of an airplane. Thus, manufacturing controls are not within the scope of special conditions. Accordingly, the special conditions are adopted without the implied requirement.

Lists of Subjects

14 CFR Part 21

Air transportation, Aircraft, Aviation safety, Safety.

14 CFR Part 23

Air transportation, Aircraft, Aviation safety, Safety, Tires.

Adoption of the Special Conditions

In consideration of the foregoing, the following special conditions are issued to the Lear Fan Research, Limited Partnership, for type certification of the Lear Fan Model 2100 airplane.

Special Propulsion Conditions

A. *Propulsion Drive System.* The propulsion drive system includes all parts necessary to transmit power from the engines to the propeller. This includes couplings, universal joints, drive shafts, supporting bearings for shafts, brake assemblies, clutches, the transmission, any attached accessory pads or drives and any cooling fans that are attached to, or mounted on, the propulsion drive system. In addition to the airframe proof of structure requirements of § 23.307(a) of the FAR, the proof of compliance with strength requirements for critical load conditions must include the following:

1. Dynamic and endurance tests of the propulsion drive system as specified in Paragraph J. of these special conditions.

2. Flight stress measurement tests, or analysis supported by flight stress measurement tests, including ground run-up and taxi tests, to determine dynamic loads that affect the propeller and propulsion drive system.

B. *Design Limitations.* In the absence of specific regulations concerning Design Limitation of Stength Requirements and Loads, the following values must be established to show compliance with structural requirements:

1. The drive system and propeller RPM ranges with power on and power off.

2. The rotational speed ratios between each powerplant and each connected rotating component.

C. *Ground Clearance.* In addition to the propeller clearance requirements of § 23.925 of the FAR, the following apply, as appropriate:

1. The airplane must be designed such that the propeller will not contact the runway surface when the airplane is in the maximum pitch attitude attainable during takeoffs and landings.

2. If a tail skid is provided to show compliance with Paragraph 1. of Special Condition C:

(a) Sutiable design loads must be established for the tail skid, and

(b) The tail skid and its suporting structure must be designed to withstand those loads.

D. *Fatigue Evaluation.* In the absence of specific regulations, the fatigue evaluation of each portion of the propulsion drive system structure, (this includes propeller, propeller drive systems between the engines and propeller hubs and their related primary attachments) the failure of which could be catastrophic, must be identified and must be evaluated under Special Condition E., F., G., or H. The following apply to each fatigue evaluation:

1. The procedure for the evaluation must be approved.

2. The locations of probable failure must be determined.

3. Inflight measurement, or analysis supported by inflight measurement tests, must be included in determining the following:

(a) Loads or stresses in all critical conditions throughout the operating envelope for which approval is requested.

(b) The effect of altitude upon these loads or stresses.

4. The loading spectra must be as severe as those expected in operation and must be based on loads or stresses determined under paragraph 3. of Special Condition D.

E. *Fatigue Tolerance Evaluation.* It must be shown that the fatigue tolerance of the propulsion drive system structure ensures that the probability of catastrophic fatigue failure is extremely remote without establishing replacement times, inspection intervals, or other procedures.

F. *Replacement time Evaluation.* It must be shown that the probability of catastrophic fatigue failure of the propulsion drive system is extremely remote within established replacement times.

G. *Failsafe Evaluation.* The following apply to failsafe evaluations of the propulsion drive system:

1. It must be shown that all partial failures will become readily detectable under inspection procedures established for this purpose.

2. The interval between the time when any partial failure becomes readily detectable under paragraph 1. of Special Condition G. and the time when any such failure is expected to reduce the remaining strength of the structure to limit or maximum attainable loads (whichever is less), must be determined.

3. It must be shown that the interval determined under paragraph 2. of Special Condition G. is long enough, in relation to the established inspection intervals and related procedures, to provide a probability of detection great enough to ensure that the probability of catastrophic failure is extremely remote.

H. *Combination of Replacement Time and Failsafe Evaluations.* A propulsion drive component may be evaluated under a combination of Special Conditions F. and G. For such components, it must be shown that the probability of catastrophic failure is extremely remote with an approved combination of replacement time, inspection intervals, and related procedures established under Special Conditions F. and G.

I. *Propulsion Drive System Design and Control.* In the absence of specific regulations, the following shall apply as appropriate:

1. Each propulsion drive system must be arranged so that the propeller and its control will continue to be operated by the remaining engine if any engine fails.

2. Each multiengine propulsion drive system must incorporate a unit for each engine to automatically disengage that engine from the propeller if that engine fails.

3. If the transmission is torque limited, a means to prevent exceeding the torque limit must be provided unless shown by design and tests that the torque limit cannot be exceeded.

J. *Propulsion Drive System and Control Mechanism Tests.* In the absence of a specific regulation, the following applies:

1. *Endurance Tests, General.* The propulsion drive system (as defined in Special Condition A.) and propeller control mechanism must be tested, as prescribed in paragraphs 2. through 8. of Special Condition J., for at least 200 hours plus the time required to meet paragraphs 9. and 10. of Special Condition J. For the 200-hour portion, these tests must be conducted as follows:

(a) Twenty each, ten-hour test cycles consisting of the test times and procedures in paragraphs 2. through 8. of Special Condition J.

(b) The tests must be conducted on the aircraft except, in lieu thereof, a representative portion of the aft fuselage may be used to conduct all or a portion of these tests if determined appropriate.

(c) The test torque must be determined by actual powerplant limitations.

(d) The test torque must be absorbed by the actual propeller to be installed or an FAA approved alternate.

2. *Endurance Tests, Takeoff Torque Run.* The takeoff torque run endurance test must be conducted as follows:

(a) The takeoff torque run must consist of a one-hour run on both engines at the torque corresponding to takeoff power, but with engine power setting alternately cycled every five minutes to as low an engine idle speed as practicable. Differential power is to be applied such that one engine is at takeoff setting and the other engine is at idle setting.

(b) Deceleration and acceleration of the engines and/or of individual engines and drive systems must be done at the maximum rate. (This corresponds to a one-second movement of the power lever from idle to takeoff setting and one second from takeoff setting to idle in accordance with § 33.73 of the FAR).

(c) The time duration of both engines at takeoff power setting must total one hour and does not include the time required to go from takeoff to idle and back to takeoff speed.

3. *Endurance Tests, Maximum Continuous Run.* Three hours of continuous operation at the torque corresponding to maximum continuous power and speed must be conducted as follows:

(a) The propeller must be operated at a minimum of 15 times each hour between test configuration maximum and minimum pitch positions of the propeller, except that the change in pitch position movements need not produce loads exceeding the maximum loads encountered in flight.

(b) The minimum and maximum pitch position must be held for at least 10 seconds and the rate of change of pitch position must be at least as rapid as that for normal operation.

4. *Endurance Tests; 90 Percent of Maximum Continuous Run.* One hour of continuous operation at the torque

corresponding to 90 percent of maximum continuous power must be conducted at maximum continuous rotational propeller speed.

5. *Endurance Tests; 80 Percent of Maximum Continuous Run.* One hour of continuous operation at the torque corresponding to 80 percent of maximum continuous power must be conducted at the minimum rotational propeller speed intended for this power.

6. *Endurance Tests; 60 Percent of Maximum Continuous Run.* Two hours of continuous operation at the torque corresponding to 60 percent of maximum continuous power must be conducted at the minimum rotational propeller speed intended for this power.

7. *Endurance Tests; Engine Malfunctioning Run.* It must be determined whether malfunctioning of components such as the engine fuel or ignition systems, or whether unequal engine power can cause dynamic conditions detrimental to the drive system. If so, a suitable number of hours of operation must be accomplished under those conditions, 1 hour of which must be included in each cycle and the remaining hours of which must be accomplished at the end of the 20 cycles. If no detrimental condition results, an additional hour of operation in compliance with paragraph 2. of Special Condition J. must be conducted.

8. *Endurance Tests; Overspeed Run.* One hour of continuous operation must be conducted at the torque corresponding to maximum continuous power and at the maximum rotational propeller speed expected in service, assuming that speed and torque limiting devices, if any, function properly.

9. *Endurance Tests; One Engine-Out Application.* A total of at least 400 full differential power applications, including those specified in paragraphs 2. and 7. of Special Condition J, (120 engine power setting cycles in each of paragraphs 2. and 7. totaling 240 cycles) must be made at takeoff torque and RPM. If during these tests, it is found that a critical dynamic condition exists, an investigative assessment to determine the cause shall be performed throughout the torque speed range. In each of the remaining 160-engine power setting cycles (160 per engine drive branch) a full differential power application must be performed and the drive shaft of the engine-out must be at rest.

10. Any components affected directly and/or indirectly by any existing flight loads must be investigated for the same flight conditions as is the propeller and their service lives must be determined by fatigue tests or by other acceptable methods. In addition, an acceptable level of safety must be provided for:

(a) Each component in the propeller drive system whose failure would cause an uncontrolled landing; and

(b) Each component common to both engines of the aircraft.

11. Each part tested, as prescribed in Special Condition J., must be in a serviceable condition at the end of the tests. No intervening disassembly which might affect test results may be conducted.

K. *Additional Drive System Tests.* Additional dynamic, endurance, and operational tests and vibratory investigations necessary must be performed to determine that the drive mechanism is safe. The following tests and conditions apply:

1. If the torque output of both engines to the transmission can exceed the highest engine or transmission torque limit, and that output is not directly controlled by the pilot under normal operating conditions (such as where the primary engine power control is accomplished through the propeller control), the following test must be conducted. Under conditions associated with all engines operating, make 200 applications, for 10 seconds each, of a torque that is at least equal to the lesser of:

(a) The maximum torque used in meeting paragraph 2. of Special Condition J. plus 10 percent; or

(b) The maximum torque attainable under probable operating conditions, assuming that torque limiting devices, if any, function properly.

2. For a multiengine propulsion drive system under conditions associated with each engine, in turn, become inoperative, apply to the remaining transmissin inputs the maximum torque attainable under probable operating conditions, assuming that torque limiting devices, if any, function properly. Each transmission input must be tested at this maximum torque for at least 15 minutes.

3. Overspeed test. The drive system must be subjected to 50 overspeed runs, each 30 ± 3 seconds in duration at a speed of at least 120 percent of maximum continuous speed or other maximum overspeed that is likely to occur in service, plus a suitable margin approved by the Administrator for that overspeed condition. These runs must be conducted as follows:

(a) Overspeed runs must be alternated with stabilizing runs of from 1 to 5 minutes duration each 60 to 80 percent of maximum continuous speed.

(b) Acceleration and deceleration must be accomplished in a period no longer than 10 seconds and the time for changing speeds may not be deducted from the specified time for the overspeed runs.

(c) Overspeed runs must be made with the propellers in the flattest pitch for smooth operation.

4. The test prescribed in Special Condition paragraphs K.1. and K.3. must be conducted on the aircraft and the torque must be absorbed by the propeller to be installed, except other ground or flight test facilities with other appropriate methods of torque absorption may be used if the conditions of support and vibration are no less severe than the conditions that would exist during a test on the aircraft.

5. Each part tested, as prescribed in this section, must be in a serviceable condition at the end of the tests. No intervening disassembly which might affect test results may be conducted.

L. *Shafting Critical Speed.* In the absence of a specific regulation, the following applies:

1. The critical speeds of any shafting must be determined by demonstration except that analytical methods may be used if reliable methods of analysis are available for the particular design.

2. If any critical speed lies within, or close to, the operating ranges for idling and power-on conditions, the stresses occurring at that speed must be within safe limits. This must be shown by tests.

3. If analytical methods are used and show that no critical speed lies within the permissible operating ranges, the margins between the calculated critical speeds and the limits of the allowable operating ranges must be adequate to allow for possible variations between the computed and actual values.

M. *Oil System.* In addition to the requirements in § 23.1011 of the FAR, the oil for components of the propeller drive system that require continuous lubrication must be sufficiently independent of the lubrication systems of the engines to ensure operation with any engine inoperative.

N. *Cooling System.* In addition to the requirements of § 23.1041 of the FAR, there must be cooling provisions to maintain the fluid temperatures in the propulsion drive transmission within safe values under any critical ground and flight operating conditions. Compliance must be shown by ground and flight tests.

O. *Transmission.* In addition to the requirements of § 23.1163 of the FAR, torque limiting means must be provided on all accessory drives that are located on the propulsion drive system in order to prevent the torque limits established for those drives from being exceeded.

P. *Transmission Instruments.* In addition to the requirements of § 23.1305

of the FAR, the following instruments must be provided for the powerplant transmission:

1. An oil pressure warning device for each pressure-lubricated gear box to indicate when the oil pressure falls below a safe value.

2. A low oil quantity warning indicator for the propeller drive gear box, if lubricant is self-contained.

3. A chip detector warning light system for the propeller gear box.

4. An oil temperature warning device to indicate unsafe oil temperatures in the propeller drive gear box.

5. A tachometer for the propeller.

Q. *Propulsion Drive System Limitation.* In lieu of the requirements of § 23.1521 of the FAR, the following apply to the propulsion drive system:

1. General—The propulsion drive system limitations must be established so that they do not exceed the corresponding limits approved for the engine, propeller, and drive system components.

2. Takeoff operation must be limited by the following:

(a) The powerplant maximum rotational speed (RPM). The maximum rotational propeller speed may not be greater than the values determined by the drive system type design or the maximum value shown during type tests;

(b) The powerplant maximum allowable gas temperature at maximum allowable power or torque for each engine considering the power input limitations of the transmission with all engines operating;

(c) The powerplant maximum allowable gas temperature at maximum allowable power or torque for each engine considering the power input limitation of the transmission with one engine inoperative; and

(d) The time limit for the use of the power, gas temperature, and speed corresponding to the limitations established in above subparagraphs 2 (a), (b), and (c).

3. Continuous operation must be limited by the following:

(a) The powerplant maximum rotational speed (RPM). The maximum rotational propeller speed may not be greater than the values determined by the drive system type design maximum value and shown during type tests;

(b) The powerplant maximum allowable gas temperature. The maximum allowable power or torque for each engine considering the power input limitations of the transmission with all engines operating;

(c) The powerplant maximum allowable gas temperature at maximum allowable power or torque for each engine considering the power input limitations of the transmission with one engine inoperative;

(d) The maximum allowable temperatures for the transmission oil; and

(e) A low oil quantity warning.

4. Fuel designation must be established so that it is not less than that required for the operation of the engines within the limitations in paragraphs 2. and 3. of Special Condition Q.

5. Ambient temperature limitations (including limitations for winterization installations if applicable) must be established as the maximum ambient atmosphere temperature at which compliance with the cooling provisions of §§ 23.1041 through 23.1045 of the FAR is shown.

R. *Propeller Marking.* In the absence of a specific regulation, the propeller must be marked so that its disc is conspicuous under normal daylight ground conditions.

S. *Propulsion Drive System Reliability.* In lieu of the propulsion drive system complying with the requirements in § 23.903(c), and in the absence of a specific regulation for twin-engine, single propeller airplanes, the installed propulsion drive system must be:

1. Designed so that continuation of torque to the propeller is assured after any probable failure of any single engine or element in the propeller drive system; and

2. Examined in detail to determine all components and their failure modes which would be critical to the continued safe flight and landing of the airplane. For each component and its failure modes identified by this examination it must be shown:

(a) By appropriate test that such a failure is not likely to occur in the system component's service life established by these tests; or,

(b) That the system is designed so continued safe flight and landing can be accomplished after occurrence of the failure.

T. *Propeller Pitch Control.* In the absence of a specific regulation, the following applies to the propeller pitch control:

1. No loss of normal propeller pitch control may cause hazardous overspeed of the propeller under all intended operations.

2. Each propeller pitch control and pitch locking (safety) device must be subjected in tests to cyclic loading that simulates the frequency and any amplitude to which the components would be subjected during 1000 hours of propeller operations.

3. Compliance with paragraph 2. of Special Condition T. may be shown by a rational analysis based on the results of tests on similar components.

U. *Propeller Protection.* In the absence of a specific regulation, all areas of the fuselage, wings, and empennage forward of the aft mounted propeller that are likely to accumulate ice during all operating conditions must be suitably protected to prevent ice formation or it must be shown that ice shed will have no adverse effect on the propeller.

V. *Engine to Transmission Drive Shaft Protection.* In the absence of a specific regulation, there must be provisions to minimize the hazards resulting from failure of an engine to transmission drive shaft such that the flight can be continued to a safe landing.

W. *Engine Inoperative Indication.* In the absence of a specific regulation, a positive means must be provided to indicate an engine is inoperative, or it must be determined that required instruments will readily alert the pilot when an engine is inoperative.

X. *Fire Extinguisher System.* Due to novel installation of the engines in the aft fuselage, and in the absence of a specific regulation, it must be demonstrated by actual or simulated flight tests that an engine fire will be contained within the engine compartment after recognition of a fire occurrence and flammable fluids are turned off; or a fire extinguisher system must be installed. If a fire extinguishing system is installed, the following applies.

1. Except for combustion, turbine, and tail pipe sections of turbine engine installations that contain lines or components carrying flammable fluids or gasses for which it is shown that a fire originating in these sections can be controlled, there must be a fire extinguisher system serving each fire zone.

2. The fire extinguisher system, the quantity of the extinguisher agent, the rate of discharge, and the discharge distribution must be adequate to extinguish fires. It must be shown by either actual or simulated flight tests that under critical airflow conditions in flight, the discharge of the extinguishing agent in each designated fire zone specified in paragraph 3. of Special Condition X. will provide an agent concentration capable of extinguishing fires in that zone and of minimizing the probability of reignition. Two discharges must be provided, each of which provides adequate agent concentration.

3. The designated fire zones are as follows:

(a) The complete powerplant compartment in which no isolation is provided between the engine power section and the engine's accessory section;

(b) The compressor and accessory sections; and

(c) Combustor, turbine, and tailpipe sections that contain lines or components carrying flammable fluids or gasses.

4. Fire extinguisher agents must meet the following requirements:

(a) Be capable of extinguishing flames emanating from any burning of fluids or other combustible materials in the area protected by the fire extinguishing system;

(b) Have thermal stability over the temperature range likely to be experienced in the compartment in which they are stored; and

(c) If any toxic extinguishing agent is used, provisions must be made to prevent harmful concentrations of fluid or fluid vapors (from leakage during normal operation of the airplane or as a result of discharging the fire extinguisher on the ground or inflight) from entering any personnel compartment even though a defect may exist in the extinguisher system. This must be shown by tests.

5. Fire extinguishing agent container must meet the following requirements:

(a) Have a pressure relief to prevent bursting of the container by excessive internal pressure;

(b) The discharge end of each discharge line from a pressure relief connection must be located so the discharge of the fire extinguishing agent would not damge the airplane. The line must also be located or protected to prevent clogging caused by ice or other foreign matter;

(c) Have a means for each fire extinguishing agent container to indicate that the container has discharged or that the charging pressure is below the established minimum necessary for proper functioning;

(d) The temperature of each container must be maintained, under intended operating conditions, to prevent the pressure in the container from falling below that necessary to provide an adequate rate of discharge, or rising high enough to cause premature discharge; and

(e) If a pyrotechnic capsule is used to discharge the fire extinguishing agent, each container must be installed so that temperature conditions will not cause hazardous deterioration of the pyrotechnic capsule.

6. Fire extinguishing system material must meet the following requirements:

(a) No material in any fire extinguishing system may react chemically with any extinguising agent so as to create a hazard; and

(b) Each system component in an engine compartment must be fireproof.

Y. *Rotor Burst Damage to Adjacent Components.* In addition to the requirements of FAR § 23.903, design precautions must be taken to minimize the hazards to the airplane in the event of an engine rotor burst.

Special Airframe Conditions

A. Damage-Tolerance and Fatigue Evaluation of Composite Structures. In lieu of complying with §§ 23.571 and 23.572 of the FAR, primary structure (the failure of which could result in catastrophic loss of the airplane) in the wing, wing carrythrough, wing attaching structure, pressurized cabin, aft fuselage, and the empennage must be evaluated to damage tolerance criteria prescribed in paragraphs 1. through 7. of Airframe Special Condition A., unless shown to be impractical; in which case the aforementioned structure must be evaluated in accordance with the criteria in paragraph 8. of Airframe Special Condition A.

1. The growth rate of damage that may occur from fatigue, corrosion, intrinsic defects, large area manufacturing defects (e.g. bond defects), or damage from discrete sources under repeated loads expected in service (between the time at which the damage becomes initially detectable and the time at which the extent of damage reaches the value selected by the applicant for residual strength demonstration) must be established by analysis supported by tests or by tests.

2. The damage growth, between initial detectability and the value selected for residual strength demonstrations, factored to obtain inspection intervals, must permit development of an inspection program suitable for application by operations and maintenance personnel.

3. Instructions for Continued Airworthiness for the airframe must be established consistent with the results of the damage tolerance evaluations. Inspection intervals must be set so that after the damage initially becomes detectable, by the inspection method specified, the damage will be detected before it exceeds the extent of damage for which residual strength is demonstrated.

4. Loads spectra, load truncation, test proposals, and the locations and types of damage considered in the damage tolerance evaluations must be established and be approved by the Administrator or his authorized representative.

5. The structure of the pressurized cabin must be shown by analysis supported by residual strength tests or residual strength tests to, (a) be able to withstand critical limit flight loads (considered as ultimate loads) with the combined effects of normal operating pressures and expected external aerodynamic pressures with the extent of damage consistent with the results of the damage tolerance evaluations and, (b) the expected external aerodynamic pressures in 1 g flight combined with a cabin differential pressure equal to 1.1 times the normal operating differential pressure without any other load.

6. The wing, wing carry-through, wing attaching structure, aft fuselage, and empennage primary structure must be shown by (a) residual strength tests, or (b) analysis supported by residual strength tests to be able to withstand critical limit flight loads (considered as ultimate loads) with the extent of damage consistent with the results of the damage tolerance evaluations

7. The effects of material variability and environmental conditions (e.g., time, temperature, humidity, erosion, ultra-violet radiation, chemicals) on the strength and durability properties of the composite materials must be accounted for in the damage tolerance evaluations and in the residual strength tests.

8. For those structures where the damage tolerance method is shown to be impractical, the strength of such structures must be demonstrated by tests or analysis supported by tests to be able to withstand the repeated loads of variable magnitude expected in service.

B. *Doors and Access Panels.* In addition to the requirement of §§ 23.783 and 23.807 of the FAR, each outward opening external door and access panel must comply with the following:

1. There must be a means to lock and safeguard each external door and access panel against opening in flight (either inadvertently by persons or as result of mechanical failure or failure of a single structural element either during or after closure). Each normally used external door in the pressure cabin must be openable from both inside and outside the airplane.

2. There must be a provision for direct visual inspection of the locking mechanism by crewmembers to determine, under operational lighting conditions using a flashlight or equivalent lighting source, whether all external passenger, baggage, and cargo doors for which the initial opening movement is outward, are fully closed

and locked. In addition, there must be a visual warning means to signal the appropriate flight crewmembers if any external passenger, baggage, and cargo door is not fully closed and locked. The means must be designed such that any failure or combination of failures that would result in an erroneous closed and locked indication is improbable.

3. There must be a means for direct visual inspection by crewmembers of the attachment/latching devices for access panels to determine, under operational lighting conditions using a flashlight or equivalent lighting source, whether access panels are properly closed and/or attached.

Special Flight Conditions

Buffet Onset Envelope

In addition to the requirements of §§ 23.251 and 23.1585 of the FAR, with the airplane in the cruise configuration, the positive maneuvering load factors at which the onset of perceptible buffeting occurs must be determined for the ranges of airspeed or mach number, weight, and altitude for which the airplane is to be certificated. The buffet onset envelopes determined must be furnished as information in the POH/AFM for this airplane. This information will include envelopes of load factor, speed, altitude, and weight which provides a sufficient range for normal operations. The buffet onset envelopes presented may reflect the center of gravity at which the airplane is normally loaded during cruise if corrections for the effect of different center of gravity locations are furnished.

[Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended, (49 U.S.C. 1354(a), 1421 and 1423); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.49(b)]

Issued in Kansas City, MO on May 2, 1983.

Murray E. Smith,

Director, Central Region.

[FR Doc. 83-13090 Filed 5-13-83; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 82-CE-34-AD; Amdt. 39-4649]

Airworthiness Directives; Piper Models PA-24-400, PA-30 and PA-39 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to Piper Models PA-24-400, PA-30 and PA-39 airplanes which requires installation of an improved fuel selector valve strainer housing, placards prescribing, in detail, preflight fuel system drainage procedures and makes mandatory existing manufacturer's recommendations on fuel system maintenance. Service reports and incidents/accidents involving water contamination of the fuel systems indicate some owners/operators are not following recommended maintenance/operating practices in this area. The AD will reduce water contamination and the fuel system's sensitivity to this contamination.

DATES: Effective date: June 15, 1983.

Compliance: As prescribed in the body of the AD.

ADDRESSES: Piper Aircraft Corporation Service Letter No. 589, dated August 18, 1971, and Service Spares Letter SP-282, dated November 15, 1968, applicable to this AD may be obtained from Piper Aircraft Corporation, 820 East Bald Eagle Street, Lock Haven, Pennsylvania 17745. A copy of this information is also contained in the Rules Docket, FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Raymond J. O'Neill/P. Perrotta, Propulsion Section, ANE-174, FAA, New York Aircraft Certification Office, Federal Building, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; Telephone (516) 791-7421.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring installation of an improved fuel selector valve strainer housing, placards prescribing, in detail, preflight fuel system drainage procedures and making mandatory existing manufacturer's recommendations on fuel system maintenance on certain Piper Models PA-24-400, PA-30 and PA-39 airplanes was published in the **Federal Register** on December 23, 1982, 47 FR 57295, 57296. The proposal resulted from service and accident reports which indicated that the present level of maintenance given the fuel systems and the preflight procedures followed by some owners/operators were not assuring the continued airworthiness of these airplanes. The manufacturer made available a conical-shaped stainless steel fuel selector valve strainer housing having improved moisture and sediment drainage characteristics and recommended installation of this part on affected airplanes in Piper Service Letter No. 589 dated August 18, 1971. However, a relatively small percentage of the owners/operators of these airplanes have installed this improved part. The manufacturer also made available in Service Letters, Service Manuals, Owners Handbook and/or Pilots Operating Manuals, as applicable, maintenance and operating procedures which, if observed, will control water/contamination in the fuel systems. The manufacturer believes, and the FAA concurs, that adherence to existing manufacturer's recommendation is necessary to assure their continued airworthiness. The failure to do so has adversely affected the level of safety in the operation of these airplanes.

Interested persons have been afforded an opportunity to comment on the proposal.

The only comment received was from the airplane manufacturer who did not disagree in principle with the issuance of the AD but had certain objections to or suggestions regarding the context of the adopted rule. It noted the following:

(1) Paragraph (A) of the AD is essentially the same information as appears in Piper service manuals and Service Letter 851.

(2) Paragraph (B) is erroneously applicable to all PA-30 and PA-39 airplanes since some of these airplanes were equipped with the conical-shaped stainless steel fuel selector valve strainer housing when produced or may have been field retrofitted with this component.

(3) Installation of the aforementioned housing should not be made mandatory unless poor maintenance (of the fuel system) is obvious by conditions found during compliance with AD 79-12-08.

(4) Space may not be available to locate the placards containing the information required by the AD and offered alternate wording which would take up less space.

As to Comment (1), the FAA concurs but, in the total context of Piper Service Letter 851, which also speaks to interport leakage tests and frequently refers to freezing temperatures or conditions, the importance of periodic drainage of the housing is obscured. Therefore, paragraph (A) of the AD is necessary to clearly establish mandatory periodic cleaning and inspection procedures of the fuel selector valve and will be included in the adopted rule.

Regarding comment (2), the FAA concurs and paragraph (B) is being revised accordingly.

The FAA does not concur with comment (3) because the configuration of the conical housing is such that drainage of the sump is improved and makes the fuel system more tolerant to water contamination.

The FAA recognizes the validity of comment (4) but believes that the placards can either be located in the specified area prescribed by the AD or sufficient latitude is permitted by the AD wording to install the placards in a location that meets the intent of the AD. However, the AD will authorize use of an alternate placard which refers to the drainage instructions contained in Piper Service Letter 851, Part B, Items 2a and 2b.

Accordingly, the final rule will reflect the changes discussed above.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new AD.

Piper: Applies to Models PA-24-400 (S/Ns 28-2 through 28-146); PA-30 (S/Ns 30-2 through 30-2000); and PA-39 (S/Ns 39-1 through 39-155) airplanes certificated in any category.

Compliance: Required as indicated, unless already accomplished.

To prevent retention of water contamination and deterioration of the fuel system, accomplish the following:

(A) Within the next 50 hours time-in-service after the effective date of this AD and at intervals not exceeding 50 hours time-in-service thereafter, clean and inspect the fuel selector valve strainer filter on all airplanes listed in the applicability statement for water accumulation, contamination and corrosion of the fuel strainer filter components in accordance with the following procedures:

(1) Gain access to the fuel strainer installation by removing the floor panel in the center section of the fuselage (PA-30, PA-39) or between the two front seats (PA-24-400).

(2) Remove, drain and clean fuel strainer housing and filter discs in accordance with the following procedures:

a. Separate filter housing from selector valve assembly by removing attaching screws.

b. Remove the filter disc assembly from stem by compressing filter retainer spring and removing retainer washer.

c. In the event that contamination is found, flush fuel tanks and selector valves and clean filter assemblies using the following procedures:

(i) Plug open ends of filter disc to prevent disc dirt from entering.

(ii) Wash the disc with suitable cleaner or solvent. Heavy dirt, lint or dust deposits may be removed from disc with a soft bristle paint brush.

(iii) Drain or blow off cleaning fluid and remove plugs.

(iv) Inspect bowl gasket and disc filter for damage and replace if necessary.

(B) Within the next 100 hours time-in-service after the effective date of this AD, replace the existing fuel selector strainer filter housing on the Model PA-30 (S/Ns 30-2 through 30-17744), airplanes with Piper P/N 757187 conical-shaped stainless steel strainer housing in accordance with Piper Service Letter No. 589, dated August 18, 1971.

Note.—This may have been previously accomplished per Piper Service Spares Letter No. SP-269 or Service Letter No. 589.

(C) Within the next 50 hours time-in-service after the effective date of this AD, fabricate and install a permanent placard as described below having letters with ⅛ inch minimum height on the inside of the hinged access door or adjacent location clearly visible to the pilot during his preflight check.

(1) On Model PA-24-400 airplanes the placard must read as follows:

"THE FUEL SYSTEM SHALL BE DRAINED DAILY PRIOR TO FIRST FLIGHT AND AFTER REFUELING TO AVOID THE ACCUMULATION OF WATER OR SEDIMENT USING THE FOLLOWING PROCEDURES:

a. Move the quick drain valve handle to full aft position to open the strainer quick drain for a few seconds with the fuel cell selector on each cell, including the auxiliary tanks. Allow enough fuel to flow to clear lines as well as the strainer. Positive fuel flow shut-off can be observed through the clear plastic tube.

b. Ensure that the drain valve positively closes.

c. If it is not possible to observe fuel draining through the clear plastic tube because of a loss in its transparency, replace with a new tube.

CAUTION: When draining any amount of fuel, care should be taken to ensure that no fire hazard exists before starting engine".

(2) On Model PA-30 and PA-39 airplanes, the placard must read as follows:

"THE FUEL SYSTEM SHALL BE DRAINED DAILY PRIOR TO FIRST FLIGHT AND AFTER REFUELING TO AVOID THE ACCUMULATION OF WATER OR SEDIMENT USING THE FOLLOWING PROCEDURE:

a. Pull up on the knob located in the center of the selector valves to open the strainer quick drain for a few seconds with the fuel tank selector on the main tank, then change the tank selector to each auxiliary tank and repeat the process. Allow enough fuel to flow to clear the lines as well as the strainer. Positive fuel flow shut-off can be observed through the clear plastic tube which carries the fuel overboard.

b. Ensure that the drain valve positively closes.

c. If it is not possible to observe fuel draining through the clear plastic tube because of a loss in its transparency, replace with a new tube.

CAUTION: When draining any amount of fuel, care should be taken to ensure that no fire hazard exists before starting engine".

(D) If insufficient space is available to contain placards with the above information, the following placard may be substituted.

"BEFORE THE FIRST FLIGHT OF EACH DAY AND AFTER REFUELING DRAIN THE FUEL SYSTEM IN ACCORDANCE WITH PIPER SERVICE LETTER 851 PART B, ITEM 2.a. AND 2.b.

(E) The fabrication and installation of the placards required by paragraph (C) or (D) of this AD may be accomplished by the owner/operator of the airplane who must make an entry in the Airplane Maintenance Record indicating compliance with paragraph (C) or (D) of the AD.

(F) The intervals between repetitive inspections required by this AD may be adjusted up to 10 hours time-in-service to allow them to be accomplished concurrent with other scheduled maintenance on the airplane.

(G) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(H) An equivalent method of compliance with this AD may be used when approved by the Manager, New York Aircraft Certification Office, Federal Aviation Administration, ANE-170, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581.

This amendment becomes effective on June 15, 1983.

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

Note.—The FAA has determined that this regulation only involves 2,045 airplanes at an approximate cost of $130 for only 1744 of these airplane or a total one-time fleet cost of $226,720. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket.

Issued in Kansas City, Missouri, on May 5, 1983.

John E. Shaw,

Acting Director, Central Region.

[FR Doc. 83-12870 Filed 5-13-83; 8:45 am]

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14 CFR Part 39

[Docket No. 83-ASW-2 Amdt. 39-4646]

Airworthiness Directives; Bell Model 222 Helicopters, S/N 47006 Through 47089

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD) which requires a mandatory retirement life on the main rotor trunnion and a mandatory retirement life reduction on the main rotor mast on Bell Model 222 helicopters, S/N 47006 through 47089.

The AD is needed to prevent main rotor mast or trunnion failure which could result in loss of the helicopter.

DATES: Effective May 23, 1983.

Compliance Schedule—As prescribed in body of AD.

ADDRESSES: The applicable Alert Service Bulletin may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101. A copy of the Alert Service Bulletin is contained in the Rules Docket, Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Texas 76106.

FOR FURTHER INFORMATION CONTACT: Tyrone D. Millard, Helicopter Certification Branch, ASW-170, Aircraft Certification Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101, telephone number (817) 877-2080.

SUPPLEMENTARY INFORMATION: The FAA has determined, based on fatigue tests, that a mandatory retirement life must be established for the main rotor mast trunnion, and that under certain conditions, the present retirement life of the main rotor mast is too high. This could result in fatigue failure of the components which could cause loss of the helicopter. Since this condition is likely to exist or develop on helicopters of this type design, an Airworthiness Directive is being issued which establishes a mandatory retirement life on the main rotor trunnion, P/N 222-010-154-101, and under certain conditions, a reduction of the mandatory retirement life of the mast assembly, torquemeter, P/N 222-040-002-103 (Note: the main rotor mast is part of the mast assembly, torquemeter, on Bell Model 222 helicopters, S/N 47006 through 47089.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

Bell Helicopter Textron, Inc.: Amendment 39-4646 applies to Bell Model 222 helicopters, S/N 47006 through 47089, certificated in all categories (Airworthiness Docket No. 83-ASW-2).

Compliance is required as indicated.

To prevent fatigue failure of the main rotor trunnion, P/N 222-010-154-101, and mast assembly, torquemeter, P/N 222-040-002-103, which could result in loss of a helicopter, accomplish the following:

(a) For main rotor trunnions, P/N 222-010-154-101, with 2400 or more hours' time in service on the effective date of this AD, retire the main rotor trunnion within the next 100 hours' time in service.

(b) For mast assemblies, torquemeter, P/N 222-040-002-103, with 3500 or more hours' time in service on the effective date of this AD, retire the mast assembly, torquemeter within the next 100 hours' time in service if it is utilized exclusively with trunnion, P/N 222-010-154-101.

(c) For main rotor trunnions, P/N 222-010-154-101, with less than 2400 hours' time in service on the effective date of this AD, retire the main rotor trunnion at 2500 hours.

(d) For mast assemblies, torquemeter, P/N 222-040-002-103, with less than 3500 hours' time in service on the effective date of this AD, retire the mast assembly, torquemeter at 3600 hours if it is utilized exclusively with trunnion, P/N 222-010-154-101.

(e) For mast assemblies, torquemeter, P/N 222-040-002-103, which are used with both trunnions, P/N 222-010-154-101 and P/N 222-010-154-111, determine the retirement life by dividing the time the main rotor mast has been in service with trunnion, P/N 222-010-154-101, by 0.72 and adding the result to the time in service with trunnion, P/N 222-010-154-111. When this total time exceeds 5000 hours, retire the mast assembly, torquemeter.

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

(g) In accordance with FAR 21.197, flight is permitted to a base where the requirements of this AD may be accomplished.

(Bell Helicopter Alert Service Bulletin No. 222-82-17 pertains to this subject)

This amendment becomes effective May 23, 1983.

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

Note.—The FAA has determined that this regulation only involves 84 aircraft at a cost of $4710 to each aircraft. Therefore, I certify that this action, Airworthiness Docket No. 83-ASW-2, is not a "major rule" under Executive Order 12291, and Amendment 39-4646 is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Fort Worth, Texas, on April 29, 1983.

Richard L. Failor,

Acting Director, Southwest Region.

[FR Doc. 83-12809 Filed 5-13-83; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 83-NM-40-AD; Amdt. 39-4650]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) applicable to certain Boeing Model 767 airplanes which requires inspection of the Type A entry and service door latching mechanism and, if necessary, rigging of the latching mechanism. The AD is needed to assure that the doors do not open inadvertently when the airplane is not pressurized.

DATE: Effective May 25, 1983, compliance as prescribed in the body of the AD, unless already accomplished.

ADDRESSES: The applicable Service Bulletin may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may also be examined at the address shown below.

FOR FURTHER INFORMATION CONTACT: Mr. Roger Young, Airframe Branch, ANM-120S, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region; telephone (206) 767-2516. Mailing address: Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: There has been one incident where the entry door came open on landing rollout and another report of the interior handle moving from the closed position during flight. In the first incident, the cockpit warning light did not illuminate and the interior handle closed properly when the interior and exterior door handles were out of sequence. Failure to detect the out of sequence condition was due to an improperly rigged latching mechanism. This action is needed to prevent inadvertent opening of doors. Since this condition could exist on other airplanes of the same type design, an Airworthiness Directive is being issued which requires inspection and, if necessary, rigging the Type A entry and service doors.

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

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Safety.

Adoption of Amendment

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

Boeing: Applies to Boeing Model 767 airplanes listed in Boeing Alert Service Bulletin 767-52A7 Revision 1, dated April 7, 1983, or later FAA approved revisions. To prevent the inadvertent opening of the airplane passenger or service door, accomplish the following:

A. Within the next 10 days after the effective date of this AD, unless already accomplished, perform the maintenance check of paragraph A of Section III of Boeing Alert Service Bulletin 767-52A7 Revision 1 dated April 7, 1983, or later FAA approved revisions. Doors which fail to meet this check must accomplish the check of paragraph A.2. of Section III of the Boeing Alert Service Bulletin, prior to each flight until rigged in accordance with paragraph B of this AD.

B. Within 30 days after the effective date of this AD, unless already accomplished, passenger or service doors that do not meet the maintenance check of paragraph A of this AD must be rigged in accordance with paragraph B of the Boeing Alert Service Bulletin.

C. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Company, P.O Box 3707, Seattle, Washington 98124. These documents may also be examined at the FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective May 25, 1983.

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

Note.— The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in the aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the person identified above under the caption **"FOR FURTHER INFORMATION CONTACT."**

Issued in Seattle, Washington on May 5, 1983.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 83-12867 Filed 5-13-83; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 83-ASW-18; Amdt. No. 39-4645]

Airworthiness Directives; Robinson Helicopter Company Model R-22 Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the Federal Register and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of Robinson Helicopter Company Model R-22 series helicopters by individual telegrams. The AD requires the actuation RPM setting for the low RPM warning horn and light to be raised and a low-rotor RPM warning light to be installed on all R-22 helicopters. The AD is needed to prevent abnormally low-rotor RPM which could result in tail boom strikes by the main rotor.

DATES: Effective May 23, 1983, as to all persons except those persons to whom it was made immediately effective by telegraphic AD T822351 issued October 29, 1982, which contained this amendment. Compliance required before further flight after the effective date of this AD, unless already accomplished.

ADDRESSES: The applicable service information may be obtained from Robinson Helicopter Company, 24747 Crenshaw Boulevard, Torrance, California 90505. Copies of the service bulletins are contained in the Rules Docket at the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Texas 76106.

FOR FURTHER INFORMATION CONTACT: Don Watt, Aerospace Engineer, Propulsion Section, ANM-174W, Western Aircraft Certification Field Office, Northwest Mountain Region, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009, telephone: (213) 536-6381.

SUPPLEMENTARY INFORMATION: On October 29, 1982, telegraphic AD T822351 was issued and made effective immediately as to all known U.S. owners and operators of certain Robinson Helicopter Company Model R-22 helicopters. The AD required the actuation RPM setting for the low RPM warning horn and light be raised and a low-rotor RPM warning light be installed on all R-22 helicopters. Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to public interest, and good cause existed to make the AD effective immediately by individual telegrams issued October 29, 1982, to all known U.S. owners and operators of Robinson Helicopter Company Model R-22 helicopters. These conditions still exist and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations to make it effective as to all persons.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

Robinson Helicopter Company: Applies to Model R-22 series helicopters certificated in all categories.

Compliance is required as indicated, unless already accomplished.

To detect an early low rotor RPM condition in either power on or power off flight and to miminize the possibility of severe main rotor flapping due to abnormally low rotor RPM, accomplish the following, prior to further flight unless already accomplished:

a. Reset main rotor RPM sensor to activiate low rotor RPM warning horn and caution light at 94 to 96 percent according to the instructions in Robinson Helicopter Company Mandatory Service Bulletin No. 25, dated October 26, 1982, or FAA approved equivalent.

b. Install a caution light in conjunction with the existing warning horn to provide additional low rotor RPM indication. The installation must be made in accordance with Robinson Helicopter Company Mandatory Service Bulletin No. 24, dated October 23, 1982, or FAA approved equivalent. Low rotor

RPM caution light, either factory installed or Robinson retrofit kit, previously installed is acceptable.

Note.—A low rotor RPM caution light which meets the requirements of paragraph b. was incorporated on all production rotorcraft affecting helicopter S/N 251 and subsequent.

c. Alternative inspections, modifications or other actions which provide an equivalent level of safety may be used when approved by the Manager, Western Aircraft Certification Office, Hawthorne, California.

d. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate helicopters to a base for the accomplishment of modifications required by this AD.

This amendment becomes effective May 23, 1983, as to all persons except those persons to whom it was made immediately effective by telegraphic AD T822351, issued October 29, 1982, which contained this amendment.

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

Note.—The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

Issued in Fort Worth, Texas, on April 28, 1983.

Richard L. Failor,

Acting Director, Southwest Region.

[FR Doc. 83-12868 Filed 5-13-83; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 83-ASO-14]

Alteration of Control Zone and Transition Area, Kinston, North Carolina; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction of final rule.

SUMMARY: This action corrects the descriptions of the amended Kinston, North Carolina, control zone and transition area. The final rule published in the **Federal Register** (48 FR 16039) on Thursday, April 14, 1983, altered the Kinston control zone and transition area by revising the coordinates of the airport and the airport name. When the transition area was redefined, the incorrect geographical coordinates of the airport were erroneously listed. The purpose of this amendment is to correct the defectively written final rule. Since this action is editorial in nature, further notice and public procedure are not necessary. The effective date of this correction coincides with the effectivity of the original amendment. To avoid confusion, the complete description, as corrected, is presented in the text of this corrective amendment.

EFFECTIVE DATE: 0901 G.m.t., June 9, 1983.

FOR FURTHER INFORMATION CONTACT: Donald Ross, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

List of Subjects in 14 CFR Part 71

Aviation safety, Airspace, Control zone, Transition area.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 71.171 and § 71-181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) (as amended) are further amended, effective 0901 G.m.t., June 9, 1983, as follows:

Kinston, NC—Revised

By amending 71.171 in the description of the Kinston, NC, control zone by deleting the words, "Stallings Field (Lat. 35°19'36"N., long. 77°37'02"W.)", and substituting for them the words, "Eastern Regional Jetport at Stallings Field (Lat. 35°19'38"N., Long 77°37'01"W.)."

By amending 71.181 in the description of the Kinston, NC, transition area by deleting the words, "Stallings Field (Lat. 35°19'40"N., long. 77°36'55"W.)", and substituting for them the words, "Eastern Regional Jetport at Stallings Field (Lat. 35°19'38"N., Long 77°37'01"W.)."

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

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

Issued in East Point, Georgia, on May 5, 1983.

George R. LaCaille,

Acting Director, Southern Region

[FR Doc. 83-12874 Filed 5-13-83; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 83-AEA-4]

Alteration of Control Zone; Harrisburg, Pennsylvania

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will correct a typographical error in the description of the Harrisburg, Pennsylvania Control Zone. The western extension to the control zone was described as extending 6.5 miles from runway 26 when, in fact, the proper dimension should be 8.2 miles. This correction is essential to assure that aircraft utilizing the approach and departing the airport are given proper airspace protection.

EFFECTIVE DATE: May 16, 1983.

ADDRESSES: Send comments on the rule in triplicate to: Glenn A. Bales, Manager, Airspace and Procedures Branch, AEA-530, Federal Aviation Administration, Fitzgerald Federal Building (Formerly Federal Building), John F. Kennedy International Airport, Jamaica, New York 11430.

The official docket may be examined in the Office of Regional Counsel, Federal Aviation Administration, Fitzgerald Federal Building (Formerly Federal Building), John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours at the Airspace and Procedures Branch, AEA-530, Federal Aviation Administration, Fitzgerald Federal Building (Formerly Federal Building), John F. Kennedy International Airport, Jamaica, New York 11430.

FOR FURTHER INFORMATION CONTACT: Glenn A. Bales, Manager, Airspace and Procedures Branch, AEA-530, Federal Aviation Administration, Fitzgerald Federal Building (Formerly Federal Building), John F. Kennedy International Airport, Jamaica, New York 11430, Telephone: (212) 995-3390.

SUPPLEMENTARY INFORMATION:

The Rule

The purpose of this amendment to § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to correct the dimension of the western extension of the control zone so as to increase the area from 6.5 miles to 8.2 miles.

Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Advisory Circular AC 70-3 dated January 29, 1982. Under the circumstances presented, the FAA concludes that there is an immediate need for a regulation to amend the description since the present extension does not provide the necessary airspace protection.

Therefore, I find that notice of public procedure under 5 U.S.C. 553(b) is contrary to the public interest and that good cause exists for making this amendment effective in less than thirty (30) days after its publication in the **Federal Register.**

List of Subjects in 14 CFR Part 71

Control zones, Transition areas, Aviation safety.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, effective 0901 G.m.t., as follows:

Harrisburg, Pennsylvania, Amended:

So as to delete the phrase "west end of Runway 26 to 6.5 miles" and insert in lieu thereof "west end of Runway 26 to 8.2 miles".

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

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

Issued in Jamaica, New York on April 25, 1983.

Brian J. Vincent,

Acting Director, Eastern Region.

[FR Doc. 83-13092 Filed 5-13-83; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 97

[Docket No. 23630; Amdt. No. 1242]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Information Center (APA-430), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures and Airspace Branch (AFO-730), Aircraft Programs Division, Office of Flight Operations, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-8277.

SUPPLEMENTARY INFORMATION:

This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4 and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a national Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an

effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPs criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, or contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

List of Subjects in 14 CFR Part 97

Approaches, Standard instrument, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.m.t. on the dates specified, as follows:

1. By amending § 97.23 VOR-VOR/DME SIAPs identified as follows:

** * * Effective August 4, 1983*

Santa Monica, CA—Santa Monica Muni, VOR Rwy 3, Amdt. 7, cancelled

** * * Effective June 23, 1983*

Mountain Home, AR—Baxter County Regional, VOR-A, Amdt. 6
Lexington, KY—Blue Grass, VOR-A, Amdt. 4
Madisonville, KY—Madisonville Muni, VOR Rwy 23, Amdt. 7
Kalamazoo, MI—Kalamazoo Muni, VOR Rwy 17, Amdt. 14
Kalamazoo, MI—Kalamazoo Muni, VOR Rwy 23, Amdt. 15
Kalamazoo, MI—Kalamazoo Muni, VOR Rwy 35, Amdt. 14
Duluth, MN—Sky Harbor, VOR-A, Original
Columbia, MO—Columbia Regional, VOR Rwy 20, Amdt. 8
Albany, NY—Albany County, VOR/DME Rwy 1, Amdt. 8
Albany, NY—Albany County, VOR Rwy 1, Amdt. 16
Albany, NY—Albany County, VOR/DME Rwy 28, Amdt. 4
New York, NY—LaGuardia, VOR-A, Amdt. 12
New York, NY—LaGuardia, VOR-C, Amdt. 5
Duncan, OK—Halliburton Field, VOR Rwy 35, Amdt. 7
Port Isabel, TX—Port Isabel—Cameron County, VOR-A, Amdt. 3
Port Isabel, TX—Port Isabel—Cameron County, VOR/DME Rwy 17, Original cancelled
Port Isabel, TX—Port Isabel—Cameron County, VOR/DME-B, Original,
Morgantown, WV—Morgantown Muni-Walter L. Bill Hart Fld, VOR-A, Amdt. 10
Morgantown, WV—Morgantown Muni-Walter L. Bill Hart Fld, VOR/DME Rwy 18, Amdt. 4
Lone Rock, WI—Tri-County, VOR-A, Amdt. 4

** * * Effective May 4, 1983*

Norfolk, VA—Norfolk Intl, VOR/DME Rwy 5, Amdt. 3
Jaffrey, NH—Jaffrey Muni—Silver Ranch, VOR-A, Amdt. 4

** * * Effective April 22, 1983*

Marshfield, MA—Marshfield, VOR-A, Amdt. 4
Wentzville, MO—Wentzville, VOR/DME-A, Amdt. 1

** * * Effective April 12, 1983*

Wilmington, DE—Greater Wilmington-New Castle County, VOR Rwy 1, Amdt. 2
Wilmington, DE—Greater Wilmington-New Castle County, VOR Rwy 9, Amdt. 2
Wilmington, DE—Greater Wilmington-New Castle County, VOR Rwy 19, Amdt. 2
Wilmington, DE—Greater Wilmington-New Castle County, VOR Rwy 27, Amdt. 2

Note.—The FAA published an amendment in Docket No. 23018, Amdt. No. 1241 to Part 97 of the Federal Aviation Regulations (Vol. 48 FR No. 88 Page 20223; Dated May 5, 1983) under § 97.23 effective June 9, 1983, which is hereby amended as follows:

Wilmington, DE—Greater Wilmington-New Castle County, VOR Rwy 19, Admt. 2; change to Wilmington, DE—Greater Wilmington-New Castle County, VOR Rwy 19, Amdt. 3, effec. 9 JUN 83.
Newark, NJ—Newark INTL, VOR/DME-B, Original is rescinded.

2. By amending § 95.25 SDF-LOC-LDA SIAPs identified as follows:

** * * Effective June 23, 1983*

Kalamazoo, MI—Kalamazoo Muni, LOC BC Rwy 17, Amdt. 15
Duncan, OK—Halliburton Field, LOC Rwy 35, Amdt. 1
Duncan, OK—Halliburton Field, LOC BC Rwy 17, Amdt. 1

** * * Effective June 9, 1983*

Columbia, MO—Columbia Regional, LOC BC Rwy 20, Amdt. 7

3. By amending § 97.27 NDB/ADF SIAPs identified as follows:

** * * Effective June 23, 1983*

Lexington, KY—Blue Grass, NDB Rwy 4, Amdt. 15
Kalamazoo, MI—Kalamazoo Muni, NDB Rwy 35, Amdt. 16
New York, NY—LaGuardia, NDB Rwy 4, Amdt. 35
Wilkesboro, NC—Wilkes County, NDB Rwy 24, Amdt. 4
Houston, TX—Lakeside, NDB Rwy 33, Amdt. 1
Blanding, UT—Blanding Muni, NDB Rwy 35, Amdt. 4

** * * Effective June 9, 1983*

Chicago, IL—Chicago-O'Hare Intl, NDB Rwy 14R, Amdt. 20
Columbia, MO—Columbia Regional, NDB Rwy 2, Amdt. 6

** * * Effective April 12, 1983*

Wilmington, DE—Greater Wilmington-New Castle County, NDB Rwy 1, Amdt. 15

4. By amending § 97.29 ILS/MLS SIAPs identified as follows:

** * * Effective June 23, 1983*

Lexington, KY—Blue Grass, ILS Rwy 4, Amdt. 9
Lexington, KY—Blue Grass, ILS Rwy 22, Amdt. 5
Kalamazoo, MI—Kalamazoo Muni, ILS Rwy 35, Amdt. 18
Albany, NY—Albany County, ILS Rwy 19, Amdt. 18
Springfield, OH—Springfield Muni, ILS Rwy 24, Original

** * * Effective June 9, 1983*

Chicago, IL—Chicago-O'Hare Intl, ILS Rwy 14R, Amdt. 27
Columbia, MO—Columbia Regional, ILS Rwy 2, Amdt. 9

** * * Effective May 4, 1983*

Norfolk, VA—Norfolk Intl, ILS Rwy 5, Amdt. 19

** * * Effective April 12, 1983*

Wilmington, DE—Greater Wilmington-New Castle County, ILS Rwy 1, Amdt. 17

5. By amending § 97.31 RADAR SIAPs identified as follows:

** * * Effective June 23, 1983*

Atlanta, GA—Fulton County Airport-Brown Field, RADAR-1, Amdt. 15
Kalamazoo, MI—Kalamazoo Muni, RADAR-1, Amdt. 7
Albany, NY—Albany County, RADAR-1, Amdt. 14

6. By amending § 97.33 RNAV SIAPs identified as follows:

** * * Effective June 23, 1983*

Lone Rock, WI—Tri-County, RNAV Rwy 27, Amdt. 4

** * * Effective June 9, 1983*

Columbia, MO—Columbia Regional, RNAV Rwy 20, Amdt. 3

** * * Effective April 12, 1983*

Wilmington, DE—Greater Wilmington-New Castle County, RNAV Rwy 9, Amdt. 2

(Secs. 307, 313(a), 601, and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348, 1354(a), 1421, and 1510); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.49(b)(3))

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to

keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. The FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Note.—The incorporation by reference in the preceding document was approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

Issued in Washington, D.C. on May 13, 1983.

John M. Howard,

Manager, Aircraft Programs Division.

[FR Doc. 83-12873 Filed 5-13-83; 8:45 am]

BILLING CODE 4910-13-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1406

Provision of Performance and Technical Data for Coal and Wood Burning Appliances

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Commission issues a rule requiring that certain performance and technical data be supplied with coal and wood burning stoves, freestanding fireplaces, and similar appliances in order that consumers will be aware of important safety information concerning the installation, operation, and maintenance of these appliances. Part of the required data is in the form of labeling on the device, and the rule also requires that complete installation, operation, and maintenance directions be provided with the appliance. Sales catalogs and other point of sale literature shall contain information as to minimum safe distances that should be maintained between the appliance and combustibles. To help the Commission confirm that manufacturers are complying with the rule, the Commission at a later time will issue a requirement that manufacturers must provide to the Commission copies of the notice on the appliance and of the directions, as well as an explanation of how the appropriate clearance distances were determined. These reporting requirements have been submitted to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act.

DATES: The Commission has established that the rule shall become effective October 17, 1983. The required safety and performance data (§ 1406.4 (a) and (b)) shall be furnished with all subject appliances that are manufactured on or after October 17, 1983, or that are first introduced into commerce in the United States after May 16, 1984, regardless of the date of manufacture. Copies of the required data shall be provided to the Commission by November 16, 1983, or within 30 days after any change in the data or introduction of a new model. (This requirement will be issued after it is approved by OMB.) The requirement applicable to sales catalogs and point of sale literature (§ 1406.4(c)) shall be effective May 16, 1984.

ADDRESSES: All materials the Commission has that are relevant to this proceeding, including the documents listed in Appendix III of this notice, may be seen in, or copies obtained from, the Office of the Secretary, 8th Floor, 1111 18th Street, NW., Washington, D.C. 20207.

FOR FURTHER INFORMATION CONTACT: Wade Anderson, Directorate for Compliance and Administrative Litigation, Consumer Product Safety Commission, Washington, D.C. 20207, phone (301) 492–6400.

SUPPLEMENTARY INFORMATION:

A. Background

The energy shortage and attendant high heating costs have motivated consumers to search for cheaper kinds of fuel. Wood, both as a primary and a supplemental fuel, has enjoyed a particular revival. Sales of wood burning stoves have tripled since 1974. Accompanying this revival, however, has been a concern about the safe use of these devices.

On January 24, 1977, the Commission received a petition from Adam Paul Banner of Midland, Michigan (Petition No. AP 77–2), stating that many fires and resultant injuries occur due to improper installation of certain coal and wood burning appliances, stoves, and freestanding fireplaces. He requested that the Commission issue a rule requiring that labeling as to the minimum safe clearance to combustibles (such as walls and furnishings) and the type of chimney required for any wood burning stove or similar appliance, or freestanding fireplace be (a) permanently attached on an embossed metal plate to each unit, (b) be printed in all sales literature, and (c) be printed on all display or shipping cartons.

At that time, the readily available data were inconclusive as to whether the statements requested by Mr. Banner addressed an unreasonable risk of injury associated with these appliances. On February 2, 1978, the Commission deferred action on the petition and directed the staff to provide additional information.

The petition was again considered by the Commission on March 14, 1979, and May 30, 1979, and on June 7, 1979, the Commission granted the petition. The Commission directed the staff to develop a rule under section 27(e) of the Consumer Product Safety Act, 15 U.S.C. 2076(e), that would require installation and maintenance labeling for coal and wood burning stoves and similar appliances, and freestanding fireplaces and would require each manufacturer to specify minimum clearances to combustibles and the type of chimney required. Also, the staff was directed to develop options for other types of installation and maintenance information materials (such as cartons or instruction manuals). The proposed rule was published on November 17, 1980 (45 FR 76018).

B. Development of the Rule

In order to determine the type of performance and technical data that would enable consumers to learn how their appliances should be selected, installed, operated, and maintained, the Commission's staff examined the available data on fires associated with coal and wood burning appliances.

In recent years, steeply rising fuel costs have led to a revival of wood heating in residences throughout the United States. This rise in popularity, however, has been accompanied by a dramatic increase in house fires caused by wood burning appliances and their venting systems. The most recent estimates put the 1981 toll for solid fuel heating equipment at about 130,100 fires, 290 deaths, and $265 million in property loss, based on data from the National Fire Protection Association (NFPA) and the U.S. Fire Administration. [Kale, D., *Fires in Woodburning Appliances*, U.S. CPSC, December 1982.] This estimate of fires in 1981 represents a 95 percent increase over 1978. *Ibid.* Such fires constitute about 18 percent of all residential structural fires in the United States. *Ibid.*

Data from the U.S. Fire Administration also provide information on the types of solid-fuel appliances involved in these fires. While chimney fires and fires attributed to various appliances are reported in separate categories, Commission research indicates that these categories are not mutually exclusive, in that the appliance and its venting components are all part

of the same system. If it is assumed that the number of chimney fires and associated casualties indicated by the national estimates can be attributed to specific types of solid fuel appliances in the same proportion as the number of fires associated with each type of appliance, it can be estimated that in 1981 there were approximately 71,000 fires in wood stoves and their venting systems. This number of fires would result in about 160 deaths, 1200 injuries, and $112.8 million in property loss. [Memo from B. Harwood, WPHA, to N. Marchica, Ex-P, "Chimney Fires in Wood Stoves", U.S. CPSC, November 30, 1982.]

CPSC's in-depth investigations provide additional information about the specific causes of fires in wood burning appliances. Data from a September 1981 study conducted by CPSC indicate that in wood stoves, fires were more often related to the installation and use of the chimney or chimney connector than to the stove itself. [*See*, Harwood B. and Kale, D., *Fires Involving Fireplaces, Chimneys and Related Appliances*, U.S. CPSC, Sept. 1981.]

A major cause of fires in wood or coal stoves and in chimneys and chimney connectors for solid-fueled equipment was improper installation, primarily installing the devices too close to combustibles, which are then ignited by the heat from the stove, chimney, or connector. *Id.* Combustibles can include permanent items such as walls and ceilings and semi-permanent items such as carpets and draperies. In addition, combustibles can include movable items such as furnishings that may be placed too close to the appliance, resulting in ignition of the furnishings. *Id.*

Other major causes of fires associated with coal and wood burning appliances included the use of an unsuitable chimney, particularly single-wall chimney connector pipe, or the improper installation of the chimney or connector. *Id.* Proper installation requires the use of a "thimble" or other special methods where the chimney or connector passes through a combustible wall or ceiling, in order to provide needed insulation and separation from the adjacent combustible material. *Id.* Specific floor protection upon which the appliance is installed may be required in order to protect combustible flooring against heat from the appliance or embers falling out of the appliance onto combustibles. *Id.*

Other hazard patterns involve the lack of proper maintenance of the appliance. Wood tars (creosote) can condense in chimneys and chimney connectors when wood is burned. If the accumulation of creosote is not removed periodically, or if the appliance is overfired, the creosote can ignite and cause a very hot fire in the chimney or connector. *Id.* Regular inspection is required to ensure that excessive creosote has not accumulated. Also, the chimney and connector should be periodically inspected to ensure the chimney's inner liner has not buckled, that holes or cracks have not developed in the chimney or connector, and that these pieces are properly fastened together.

Other hazards are related to improper operation of the appliance. If too much fuel, or the wrong type of fuel, is added, the appliance can be overfired, resulting in ignition of creosote in the chimney or connector or excessive temperatures in the appliance, chimney, or connector. Also, the use of flammable liquids to start the fire in these appliances causes a number of injuries. *Id.*

Thus, fires associated with wood burning appliances account for a significant portion of the residential fires in the United States today. Available data indicate that over three-fourths of the factors contributing to uncontrolled fires in wood stoves involved improper installation, use, or maintenance of the appliance or its venting system. Such factors could be addressed if the user and installer were provided with adequate information about these areas of concern.

C. Description of the Rule

For the purposes of this rule, the term "coal and wood burning appliances" includes coal and wood burning fireplace stoves, room heater/fireplace stove combinations, cookstoves and ranges, and radiant and circulating heaters. It does not include central heating units, masonry fireplaces and chimneys, fireplace inserts, or factory built fireplaces (zero clearance fireplaces), since these do not appear to present the same hazards of installation and operation as do the generally smaller or freestanding appliances covered by the rule. The definitions for these types of appliances are found at § 1406.3 of the rule.

In order to reduce the risk of injury currently associated with coal and wood burning appliances, and to enable consumers to better judge the comparative safety of different appliances for their intended installation, § 1406.4(a)(1) of the rule requires that such appliances bear a legible notice containing the following performance and technical data:

1. Appropriate minimum clearances from combustibles to avoid the occurrence of fire. The clearances shall include:

(a) Distance(s) from the back and sides of the appliance, and the chimney connector, to walls, stated in diagrammatic form.

(b) Distance(s) to be maintained between the chimney connector and ceilings, in either diagrammatic or written form.

2. Type and dimensions of floor protection, if necessary to protect combustible floors.

3. Type of chimney and chimney connector to be used with the appliance.

4. Identification of parts or precautions required for passing a chimney through combustible walls or ceilings or for passing a chimney connector through combustible walls.

5. A statement that the appliance should not be overfired and a description of at least one condition which signals overfiring.

6. A statement of how often the chimney and chimney connector should be inspected and that it should be cleaned when necessary.

7. Information explaining that the appliance should be installed and used only in accordance with the manufacturer's directions.

8. A statement that the owner should contact local building or fire officials about restrictions and installation inspection requirements.

9. A statement that furnishings and other combustible materials should be kept "a considerable distance" from the appliance.

10. A description of the types of fuel suitable for use in the appliance.

11. A name and address of the manufacturer, importer, or private labeler to which the owner can write for a copy of the manufacturer's directions or for additional information, and a sufficient identification of the appliance model so that the appropriate information can be supplied.

The part of the written notice involving installation shall be located so that it is conspicuous before the appliance is installed. The remainder of the written notice contains operation and maintenance information and must be readily visible during normal use of the appliance (§ 1406.4(a)(3)). A label on the back of the stove would not be considered "readily visible" during normal use if the stove is suitable for installation with its back within a few feet of the wall. A label is considered to be readily visible during normal use even though it is not in a readily visible location on the outside of the stove if it is readily visible within compartments or behind doors that are used during the normal operation of the appliance. Thus, if a compartment door must be opened

in order to fuel the appliance or remove ashes from the appliance, a notice that is readily visible when the door is opened is considered "readily visible during normal use." Therefore, the portion of the notice required to be readily visible during normal use could be on the inner surface of the door, on a readily visible inner surface of the compartment, or on an outer surface of the appliance that is covered by an overlapping door when the door is closed.

As explained above, the remainder of the written notice required to be on the appliance need only be conspicuous before installation. Thus, this portion of the notice could be on the back of an appliance that can be installed so close to a wall that the back would not be readily seen during normal use of the appliance.

These general principles concerning the conspicuousness and visibility of the data being provided can be satisfied by either (1) a single label that is both conspicuous before installation and readily visible during normal use or (2) two (or more) label, at least one label that concerns installation and that is conspicuous before installation and at least one other label that concerns operation and maintenance and that is readily visible during normal use. The "one label" format has the advantages of being potentially cheaper and of providing all information in one place. The "two label" format has the advantage of potentially providing more consumer awareness of the operation and maintenance information after the appliance is installed, since this information would all be on one simpler label that would not have installation information competing for the consumer's attention. Also, if a manufacturer wished, the two label format can be used to reduce the degree to which a large, readily visible label might interfere with the esthetic design of the stove.

After considering the comments on the proposal, discussed below, the Commission recommends the "two label" format since the needed operation and maintenance information would not be diluted by the presence of installation data that are not needed after the appliance is installed. However, either the "one label" or the "two label" format will comply with the rule.

The notice must be permanent so that it will remain legible for the maximum expected useful life of the appliance in normal operation (§ 1406.4(a)(4)). The following are examples of labeling methods that may meet these requirements:

1. Molding the notice into the casting of the appliance body.

2. Etching, stamping, or engraving a metal plate that is riveted or screwed to the appliance.

3. Stamping or engraving the notice into the metal body of the appliance.

Other types of labels could be used provided they are likely to remain attached and legible for the useful life of the appliance.

The rule also requires manufacturers to provide complete installation, operation, and maintenance directions which include descriptions of the consequences that can occur from failure to install, use, and maintain the appliance properly (§ 1406.4(b)).

The directions are required to have a specified notice at the beginning that is intended to emphasize the importance of following the directions and of contacting local building or fire officials about restrictions and installation inspection requirements (§ 1406.4(b)(1)). The directions are required to include all the information required to be in the notice on the appliance (§ 1406.4(b)(4)) and also to include step by step installation directions, including all necessary information regarding parts and materials (§ 1406.4(b)(2)). The installation directions shall also include a direction to refer to the chimney and chimney connector manufacturers' instructions and to local building codes for installation through combustible walls or ceilings.

The directions are also required to include a clearly identified section containing complete use directions (§ 1406.4(b)(3)), including what types of fuel(s) can be used and how to fire the unit to avoid fire hazards. The instructions must also include a clearly identified section containing complete maintenance directions (*Id.*), including how and when to clean the chimney and chimney connector. Information about the use of flammable liquids should also be included (*Id.*) The directions are required to be in legible English and in readily understandable language (§ 1406.4(b)(4)). A recommended outline for the directions is given in Appendix II to the rule.

The labeling and directions requirements apply to all of the subject appliances that are manufactured after October 17, 1983, and to all of the subject appliances that are first distributed in United States commerce after May 16, 1984 regardless of the date of manufacture (§ 1406.1(c)(1)). The reasons these dates were chosen are explained below in section F of this notice, which discusses the effective date of the rule.

In order that consumers may select an appliance that is suitable for their intended use and compare the safety of different appliances for their specific installations, all sales catalogs and other point of sale literature are required to include the appliance clearance information and the statement that local building or fire officials should be consulted concerning restrictions and installation inspection requirements (§ 1406.4(c)). Since some sales literature may be printed far in advance of its expected use, this requirement will go into effect May 16, 1984, which is one year after the requirements for labeling and instructions (§ 1406.1(c)(2)).

The proposed rule would require manufacturers to provide to the Commission copies of the written notice and directions required by the rule. Under the proposal, manufacturers would also provide to the Commission a statement of how the clearance distances that are required by the rule to be stated on the appliance were determined. Submission of these data is required so the staff can determine (1) that the specific statements required by the rule are present, (2) that other types of information required by the rule but not required to be in specific language, are present, and (3) whether the clearance distances stated appear appropriate or whether further investigation is necessary.

The proposed requirement that this information be submitted to the Commission constitutes a "collection of information" as that term is defined in the Paperwork Reduction Act, 44 U.S.C. 3502(4). Since these requirements were proposed before the effective date of the Paperwork Reduction Act, the specific provisions of that Act concerning rules that contain a collection of information requirement, 44 U.S.C. 3504(h), are not applicable. However, under § 3507, the Commission may not conduct or sponsor a collection of information subject to the Act unless the agency has submitted the proposed information collection request to the Director of the Office of Management and Budget (OMB) for approval. The Commission has submitted the proposed requirements to OMB for approval and will issue the requirements as a final rule after they are approved by OMB. The Commission expects to issue the reporting requirements with an effective date of November 16, 1983, which is one month after the requirements for labeling and directions become effective for newly manufactured appliances.

The text of the reporting requirement that will be issued after approval by OMB is set forth below:

§ 1406.5 Performance and technical data to be furnished to the Commission.

Manufacturers, including importers, of coal and wood burning appliances as defined in § 1406.3(a) shall provide to the Commission the following performance and technical data related to performance and safety:

(a) *Written notice.* Manufacturers shall provide to the Commission copies of the written notice required by § 1406.4(a). If the written notice is provided to purchasers in a way, such as by casting or stamping the notice into the stove, that makes it impractical to furnish a sample of the actual notice to the Commission, the manufacturer will provide an actual size copy of the notice and a description of the forming process.

(b) *Directions.* Manufacturers shall provide to the Commission a copy of the directions required by § 1406.4(b).

(c) *Rationale.* Manufacturers shall provide to the Commission a statement of how the distances to combustibles required to be stated by § 1406.4(a)(1) were determined. In addition, the manufacturer will state the type of appliance, its fuel, size, and weight, and the material of which it is constructed, unless this information is included in the directions submitted under paragraph (b) of this section.

(d) *General.* (1) The information required to be under paragraph (a) through (c) of this section shall be submitted for each distinct design or model of appliance manufactured. An appliance will be considered to be a distinct design or model if it differs from other appliances of the same manufacturer by functional differences such as performance, weight, size, or capacity. Differences in cosmetic or other nonfunctional features do not require the submission of additional information.

(2) The written notice, directions, and rationale shall be provided to the Associate Executive Director for Compliance and Administrative Litigation, Consumer Product Safety Commission, 5401 Westbard Avenue, Bethesda, Maryland 20207, by———, 1983, or, in the event of a subsequent change in the component materials or design features that could cause the model to require different clearances from combustibles or a different type of chimney, or if a new product is introduced into United States commerce, within 30 days after the change or introduction.

D. Comments on the Proposal

In response to the proposal of November 17, 1980, the Commission received 76 written comments and also received oral comment from 9 persons at a public meeting on December 2, 1980. About half of the comments that were received were in favor of the Commission issuing a mandatory rule requiring labeling and/or instructions for these appliances, but some of the commenters suggested changes in the proposed requirements or suggested additional appliances or information that should be covered by the rule. Most of these favorable comments were from fire safety officials or persons with no stated affiliation with the stove and heater industry.

Slightly over ⅓ of the comments opposed the rule, usually because the commenter believed that adequate information was already being supplied, that labeling or instructions would not be effective, or that a mandatory rule would undercut voluntary certification efforts that address more factors relating to the safety of these appliances than were addressed by the proposed rule. Most of the comments opposing the rule were from persons associated with the affected industry, such as manufacturers or dealers, or with testing or certifying organizations.

The remainder of the comments did not express an opinion on whether the Commission should issue a mandatory rule, but suggested certain changes or additions to the proposed requirements.

The substance of the comments and the Commission's response to them are set forth below.

1. *Scope of the rule.* A number of comments indicated that the rule should apply to other appliances in addition to the coal and wood buring appliances listed in the proposal. One commenter suggested a uniform label on all heating appliances, including those fueled by gas, oil, electricity, kerosene, coal, and wood. Other commenters indicated that the rule should apply to other coal and wood burning appliances such as fireplace inserts, prefabricated fireplaces, and central heating appliances.

One commenter noted that although there was less of a chance of installation clearance errors with fireplace inserts, other requirements of the proposed rule would apply equally to such inserts. A commenter noted that the definition of "fireplace inserts" in the proposal could include appliances whose functional operation is not different from totally freestanding units. Furthermore, this commenter noted that since the installation of fireplace inserts makes inspection of the flue system especially difficult, label warnings pertaining to periodic inspection of the flue gas system were even more important, especially for units designed for air-starved operation which may generate considerable quantities of creosote deposit. Another commenter noted that installation of some fireplace inserts can cover intake openings for chimney cooling air and suggested a ban of such units.

Another commenter suggested that the hazard of carbon monoxide should be addressed by labeling on stovepipe showing when the damper is open or shut.

The primary goal at the beginning of development of the proposed rule was to ensure that information relating to installation clearance distances and type of chimney required was made available for freestanding solid fuel heating appliances. Information relating to other hazards associated with freestanding appliances was included in the proposed requirements where it seemed likely that provision of the information would be effective in reducing a particular hazard. The Commission recognizes that some of the information required by the rule would also be useful in relation to types of appliances not now subject to the rule. However, the fire incident data presently available to the Commission do not clearly indicate that the potential benefits of expanding the scope of the rule would bear a reasonable relationship to the costs and other possible adverse effects of a mandatory rule. Furthermore, the degree to which such information is already provided on other types of appliances is not known. In addition, any expansion of the scope of the rule to a significant number of other appliances would have to be proposed for public comment, which would then have to be analyzed. This would delay substantially the issuance of the proposed requirements that the Commission has determined are needed at this time.

The Commission is currently conducting a project to more fully evaluate the safety aspects of other types of solid fuel heating appliances, including the types mentioned by the commenters on the proposed rule. If this investigation shows that the other types of appliances would benefit from some of the labeling and instructions provided in the rule issued below, such additional requirements could be proposed after all issues relating to such requirements are fully considered. In the meantime, the Commission does not believe that the requirements applicable to the stoves and heaters covered by the proposal should be delayed while additional work to determine the appropriateness of extending the scope of the rule is conducted. Therefore, the Commission declines to expand the scope of the rule at this time, but these issues will be considered further during the ongoing project discussed above.

2. *Voluntary actions are preferable.* A number of comments stated that existing voluntary standards and labeling programs already adequately address the hazards and that issuance of the rule would either be unnecessary or would discourage manufacturers from participating in existing testing

programs. In order to examine these comments, a brief explanation of the way in which voluntary standards and labeling programs are used is in order [See 11/26/82 briefing package, Tab E.]

There are two Underwriters Laboratories standards applicable to the appliances to be covered by the rule: UL 737 concerns fireplace stoves, and UL 1482 concerns solid fuel type room heaters. These standards contain performance requirements for determining the appropriateness of recommended clearance distances and also contain labeling and instructions requirements. UL provides a testing and certification service for manufacturers, and a label indicating that the model involved has been tested and approved by UL is placed on each appliance.

There are also other laboratories that will test appliances to the applicable UL standard and certify that the appliance meets the performance requirements of the UL test.

Still other testing laboratories will test for other certifying organizations but do not give certification themselves.

There are also certifying organizations that do not test but that evaluate the test reports from other laboratories as the basis for their certification.

Other than UL, the certifying groups may have different labeling requirements from those specified by UL.

These test programs may be used to satisfy the requirements of state and local jurisdictions that have building codes that require that only appliances that have received certification, or listing, from a suitable testing organization may be installed in that jurisdiction.

a. *Effect on use of testing and certifying organizations.* Some of the commenters expressed the belief that a mandatory rule would tend to discourage the use of the testing and certifying organizations described above. They argued that some manufacturers of the stoves and heaters subject to the rule would forego having their products tested in the hope that a label meeting all CPSC requirements, possibly in conjunction with claims that the appliance "meets all federal safety requirements" or the like, would be accepted by state and local building inspectors as complying with local codes.

However, the Commission does not believe that the rule will have the effect postulated by these commenters. Industry groups and certifying organizations have been very successful in the past in increasing the percentage of the market that is tested and in having local jurisdictions require listing as a condition for meeting the local code. If these efforts are continued, there is no reason to think that state and local officials will be misled into thinking that the CPSC labeling requirement is intended to be a substitute for existing code requirements and certification programs. However, to reduce any possibility that this might occur, the Commission has added a statement of the purpose of the rule in § 1406.1(b) which makes it clear that the rule is not intended to replace any voluntary standards applicable to these appliances or to replace any state or local requirements applicable to the installation, use, or maintenance of such appliances, provided, of course, that such requirements are not inconsistent with the rule.

b. *Preemption of state and local requirements.* Other comments argued that the rule would preempt state and local requirements applicable to these solid fuel appliances. However, as pointed out in the proposal, the provision of section 26(a) of the CPSA, 15 U.S.C. 2075(a), relating to invalidation of state and local laws that address a risk of injury that has been addressed by a consumer product safety standard does not apply to this rule. This is because this rule is being issued under section 27(e) of the act, 15 U.S.C. 2076(e), and is thus not a consumer product safety standard, which, as that term is defined in section 3(a)(2) of the act, must be issued under sections 7 and 9. Also, as explained above, the Commission has concluded that the rule will not have the practical effect of eliminating state or local codes.

c. *Adequacy of present practices.* A number of commenters contended that a mandatory rule was not needed because a large portion of stoves currently sold are labeled in accordance with voluntary testing and certification programs. The Commission's staff has estimated that in 1978 about 29 percent of the estimated 1500 models on the market were tested according to the procedure contained in the applicable UL standard. [Tab H-1, briefing package of 6/9/81.] The Commission was unable to estimate the number of stoves these models represented.

As noted above, the UL standard contains performance requirements and also has labeling and instructions requirements that include a statement of the distance the appliance should be installed from combustible walls. However, the information required by the versions of the UL standards that were in effect at the time of the proposal did not include all the information that is required by the proposed rule. Furthermore, when appliances are tested by independent laboratories other than UL, those laboratories or other certification groups may not require all the information stated in the UL labeling and instructions requirements and may impose their own labeling requirements. [CPSC staff briefing package dated 11/26/82, Tabs C and D.]

Since a substantial portion of the market for these appliances was not subject to labeling requirements, and since the labeling requirements that did exist did not require all the information that the Commission deemed necessary, the Commission proposed its mandatory labeling and instructions rule.

In 1981, the Commission reviewed the comments received on the proposal, and other available information, and concluded that there appeared to have been a large increase in the number of stoves that are tested by UL.

In the case of UL-tested stoves, the individual manufacturer pays a user's fee for each UL label used. For this reason, a count of the user's fees paid reflects the number of labels affixed during a given period. In 1978, UL sold about 76,000 such labels. [Tab H-1, briefing package of 6/9/81.] Thus, less than 7 percent of total estimated stove sales were UL listed in 1978. In 1980, about 100 firms, listing 190 separate models, purchased and used 723,000 UL labels. This represents about 72 percent of the estimated total U.S. sales of 1 million stoves in 1980. While some of these labeled stoves were not sold in 1980 and remain in inventory, it appeared that the bulk of 1980 production was UL tested and labeled.

Some other independent testing facilities also sell their labels directly to manufacturers. However, these labels may be purchased in bulk for later application. The total number of these labels sold, therefore, may not be the same as the number which would be affixed during a specific period. A number of testing firms contacted in 1980 were unable to differentiate label sales by the intended appliance. Also, some firms include stoves with other appliances, such as boilers, furnaces, and fireplace inserts, and were unable to estimate the number of labels affixed to the coal and wood burning appliances covered by this rule. However, three laboratories were able to estimate the number of labels which would have been affixed to coal and wood stoves in 1980. These three firms sold about 82,000 labels which were believed to be affixed to the subject stoves during 1980. Other testing firms were unable, or unwilling, to provide quantity information.

After considering the available information, the Commission staff

estimated that 70 to 85 percent of the total number of these stoves produced in 1980 were labeled.

In addition, Underwriters Laboratories proposed to amend their standards applicable to these appliances, UL 737 and UL 1482, to respond to the areas addressed by the proposed rule that were not addressed by their present standards.

In view of the apparent increase in the extent to which voluntary labeling efforts were being utilized and the expected upgrading of the voluntary labeling content to address the hazards addressed by the proposal, the Commission accepted a staff recommendation to delay consideration of a final rule while the staff evaluated the scope of the voluntary efforts to provide adequate labels and instructions.

As part of its investigation of the extent of voluntary efforts to address the need for safety information with these appliances, the staff conducted a limited survey in retail stores. See briefing package dated 11/26/82, Tabs D and E. This survey indicated that an estimated 77 percent of stoves on the market in February of 1982 were certified by a testing laboratory or other certifying organization and that 75 percent of these stoves were labeled with clearance information. While only a few 1982 model stoves were found in this survey, the survey indicated that 95 percent of the 1982 stoves were certified and labeled with clearance information.

The survey also showed, however, that a much smaller percentage of the stoves surveyed were actually certified by UL than had been predicted previously. This difference is thought to be due to the fact that the earlier estimate of the number of stoves produced in 1980 may be as much as 60 percent lower than the number actually produced. [Tab H, briefing package of 11/26/82.]

The 1982 survey conducted by the staff showed that 17 certifying organizations other than UL had certified stoves in the survey. Six laboratories identified in the survey were later asked about their requirements for solid fuel stove labels and instruction manuals. [Tab E, briefing package of 11/26/83.] These laboratories were chosen either because of the percentage of certified stove models or the number of stove sales attributed to models certified by them as the result of the survey. Additionally, updated information was requested from one building code group identified in 1981 as having labeling requirements that differed from the CPSC requirements. *Ibid.*

Requirements for the test standard were found to be uniform. All of the organizations contacted indicated that the use UL 737, Standard for Fireplace stoves, and UL 1482, Standard for Solid Fuel Type Room Heaters, as test standards and as guides for instruction manual content. The staff's survey also found that wood stove manufacturers usually included an owner's manual with each appliance.

The CPSC rule requires that all appliances should be accompanied by directions that include:

a. A specified safety notice on the first page of the booklet.

b. Step-by-step installation directions, including an explanation of consequences which could result from failure to install the appliance properly, and a statement that the installer should refer to the instructions provided by the chimney and chimney connector manufacturer.

c. Use directions, including how to fire the appliance; information about the use of flammable liquids; maintenance directions including how and when to clean the chimney and chimney connector; and a description of the consequences that could result from failure to use or maintain the appliance properly.

The UL requirements are different because:

a. There is no general safety notice,

b. There is no specific reference to a requirement for directions for joining the chimney and chimney connector through a combustible wall,

c. The distance to be kept between the heaters and furnishings is not a specified requirement, but is included in the requirement for "clearance to combustible materials," and

d. There is no explanation of the consequences of not following the installation and use instructions.

However, the Commission has a concern over two aspects of the UL instructions requirements. The first is related to the CPSC requirement that information be provided on the installation of chimney connectors and chimneys. The Commission requires that the directions include an explanation of methods to join safely the chimney connector to the chimney and to pass these parts through a combustible wall or ceiling, as appropriate. The UL requirement, on the other hand, simply states that the directions must include the parts and materials required and the step-by-step process for installing a room heater, accessories, and its chimney connector. The Commission believes that this should be more specific, since the UL requirement could be interpreted as requiring instructions only for the connection to the appliance. Secondly, the Commission believes that the section of the UL requirement relating to inspection for creosote build-up does not adequately explain how to inspect the system, and the frequency of inspection recommended (every two months) may be to long in some cases.

Instruction booklets prepared by 19 manufacturers or importers were obtained during the retail survey. The majority (12) of the booklets covered 1981 stove models, and most of the booklets provided some installation, use, and maintenance information. However, none of the booklets provided all of the information that would be required by the CPSC proposal. Two of the 19 booklets contained a safety notice at the beginning of the booklet. Seventeen of the booklets contained some installation information; however, only nine of the booklets contained step by step installation directions as specified in the proposed rule, and only four of the booklets mentioned the potential fire hazard resulting from improper installation. Many of the booklets stated that a UL-listed chimney should be used, but only two firms directed the reader to the installation instructions provided by the chimney and chimney connector manufacturer. One firm that manufactures the chimney and chimney connector that must be used with its appliance provided complete chimney installation directions. Eight other booklets discussed the use of a thimble or connector through a combustible wall or ceiling. However, these eight provided insufficient information for the installer to make the connection properly. This is consistent with the Commission's concern, expressed above, about the UL 1482 voluntary standard.

Sixteen of the 19 booklets reviewed provided directions for firing the appliance, and 10 booklets cautioned against the use of flammable liquids to start or freshen-up the fire. Seventeen of the booklets provided some maintenance information, although only 9 of the booklets provided directions for cleaning the chimney and chimney connector, and only 7 of the booklets mentioned the consequences of improper use and installation.

Based on this information, the Commission concludes that not only do the UL instructions requirements lack information in several areas required by the CPSC proposed rule, but that many stove manufacturers do not conform to even these instruction requirements.

Changes to the Underwriters Laboratories' requirements for labels specified in UL 737 and UL 1482 have

made the UL and CPSC requirements similar. However, the CPSC rule requires that a label statement to keep furnishings and other combustible materials a considerable distance from the appliance be readily visible during heater use. The UL standards require that a statement of the clearances to combustible materials from the back and sides of the appliance and the chimney connector be visible after installation, but this would not be given the prominence of other use information which UL 1482 requires to be "visible while feeding fuel." UL 1482 does require a "hot surfaces" label which includes the statement "keep children, clothing and furniture away"; however, this statement appears to be intended to warn against the danger of contact with the heater's surface and not against the danger of ignition due to heat radiated from the heater. Accordingly, it does not state that furnishing and other combustibles should be kept a considerable distance from the appliance. The UL "hot surfaces" label is required to be on the front of the heater unless the heater incorporates a means for observing the fuel burning process within the heater (such as by a closed-window type of port), in which case the label can be on the back of the stove. Thus, the UL requirements for fireplace stove labels do not specifically mention furnishings and do not require that the label be readily visible during normal use. The UL requirements for solid-fuel type room heaters, while mentioning furniture, do not address the same hazard as the CPSC label and need not be readily visible if a window or similar feature is provided.

In addition, variations were found in the labeling requirements of the laboratories other than UL. Two laboratories indicated that they test for other certifying organizations and use the label required by these organizations. Three laboratories indicated that they require a UL content label with some differences in the use of words or diagrams, or both, for giving clearance information. The laboratory identified in the survey as having certified the largest percentage (31.3%) of stoves sold indicated that their labeling requirements varied. A check of the label on the largest selling model certified by this laboratory revealed that this label had very little of the information required for the CPSC label. Information missing from this label included:

a. Statement to keep furnishings a considerable distance from the appliance;

b. Clearance of chimney connector from walls;

c. Floor protection materials and dimensions;

d. Type of chimney and chimney connector needed;

e. Precautions needed when joining a chimney and chimney connector through combustible walls; and

f. Statements on overfiring, frequency of inspection and cleaning of chimney connectors and chimneys, contacting building officials, and installation according to manufacturer's directions.

The building code group's label had not changed since 1981. They still did not require: (a) statements to keep furnishings a considerable distance from the appliance; (b) the type of chimney; (c) precautions needed to join a chimney and chimney connector through a combustible wall; and (d) statements about contacting the local building official and installing the appliance according to manufacturer's directions.

After considering the results of the staff investigation into the extent of voluntary provision of safety information in labels and instructions, the Commission concludes that there are significant differences between the requirements of the Commission's rule and the labels and instructions that are now being utilized by the manufacturers of the subject appliances. Furthermore, the large number of certifying organizations and differing state and local requirements appear to make it impractical to obtain adequate and uniform labels and instructions by any means other than a mandatory rule. Therefore, the Commission concludes that the rule issued below is necessary to provide the data to the purchasers of these appliances that they need in order to safely install, operate and maintain these appliances.

d. *Local codes as an alternative.* Other comments implied that a more effective way to obtain safety for these appliances would be to encourage adherence to local codes. The Commission agrees that safety would be improved if all stove installations were inspected and approved by a qualified building inspector. However, there is little information to indicate that efforts in this direction would be an adequate substitute for a mandatory rule.

During fiscal years 1979 and 1980, the Commission conducted 46 investigations of fires in wood and coal stoves. The subject of local permits or codes was mentioned in 14 of these investigation reports. Seven of these reports indicated that no local permit was required or issued; 4 said that permits were required by local codes but none was issued for the stoves in question; 2 indicated that it was not known whether a permit was required, but none was issued; and only 1 report concerned a stove that had been inspected and approved by a local building inspector.

While these reports do not provide a statistically valid sample, it appears that fires occur less often where an inspection program is carried out. However, the reports also indicate that in a substantial number of cases, local inspection programs do not prevent fires in such appliances. Furthermore, inspections of stove installations do not ensure that adequate information on operation and maintenance is available to the users of the stove. Therefore, the Commission concludes that reliance on local code provisions alone is not sufficient and that the mandatory labeling rule is still needed to address these risks of injury.

e. *Effective use of Commission resources.* Other comments suggest that the rule should not be issued in its present form because administration of the rule would require an inordinate amount of Commission resources and a high level of expertise. However, the Commission does not believe this will be the case. The duty of providing correct information on the label falls primarily on the manufacturer of the appliance. CPSC compliance staff then will make a preliminary determination of the adequacy of the data provided. Situations involving either an absence of supporting data or information that deviates significantly from usual industry guidance for the appliance involved can be referred to the Commission's engineering staff for further investigation. The Commission's staff estimates that the preliminary screening should not take more than 1 or 2 hours per model and that it should not be necessary to test more than 5 to 10 models per year. This amount of effort seems reasonable in view of the risks involved in the installation, operation, and use of this product.

f. *Use of private laboratories.* One comment suggested that private laboratories could perform the label inspection and verification outlined in the proposed rule. As noted above, the Commission encourages the voluntary use of existing testing and certification organizations and expects that many manufacturers and importers will obtain independent testing and certification services. However, the Commission does not intend for the rule to have the adverse economic impact on manufacturers that might be caused by requiring third party laboratories to test all manufacturers' models. Furthermore,

the Consumer Product Safety Act contains no express authority for such a requirement.

g. *Effect on dealers' safety efforts.* One comment suggested that the rule would result in a decrease in dealers' taking the responsibility for providing adequate information to their customers. Although the information provided as a result of the rule should make it easier for dealers to be certain that purchasers are provided with adequate information, there is no reason to believe that the existence of the rule would make dealers less concerned for the safety of their customers. Furthermore, for those dealers or other sales outlets that do not now provide sufficient information or expertise, the rule should increase the information available to consumers.

h. *HUD minimum property standards.* The Commission is also aware of a rule promulgated by the Department of Housing and Urban Development on January 17, 1983 (48 FR 1954). This rule, which became effective on March 9, 1983, requires that solid fuel room heaters and fireplace stoves used in the newly-constructed dwellings to which HUD Minimum Property Standards apply be tested and labeled according to Underwriters Laboratories voluntary standards UL 1482 and UL 737, and bear other specific information in addition to that required by the CPSC rule. Products so tested and labeled would meet most provisions of the Commission's rule, and the two rules are not inconsistent.

The Commission believes, however, that a relatively small number of installations of such products would be affected by HUD's rule, and that there would not be a significant increase in the general level of label use among manufacturers and importers of these appliances because of the HUD rule. Therefore, the Commission believes that its rule is necessary to provide information to all purchasers of these products. [Tab B, briefing package of 3/25/83.]

3. *Alternative activities.* A number of comments suggested activities other than providing labels and instructions that the Commission might engage in to address the risks of injury addressed by the proposal. In some cases, the commenters intended that the suggested activities would be a substitute for issuing a final rule based on the proposal, and in other cases the activities could be in addition to the requirements of the proposed rule.

a. *Research.* Some comments suggested that the Commission should conduct additional research into fire hazards and/or collect and publish statistics about fires. The Commission agrees that such activities are desirable, and, to the extent resources are available, the Commission regularly sponsors research, conducts hazard analyses, and makes reports and safety educational materials available to the public. The rule issued below is one way in which information can be provided to the particular members of the public that need the information. While useful, the suggested additional general educational activities would not be an adequate substitute for the notification required by the rule, which would be furnished to every purchaser of appliances subject to the rule.

b. *Information to previous purchasers.* Some commenters suggested that information such as that required by the rule should be furnished to persons who bought stoves before the rule was issued. The Commission agrees that some appliances are incorrectly installed or are being inadequately maintained or improperly operated because the owners were not furnished information that is required by the rule. Hopefully, some of the owners of these stoves can be reached by information and education campaigns conducted by the Commission, other federal and state agencies, industry groups, and appliance manufacturers. However, the Commission has insufficient data to conclude that the benefits of requiring the notification of each known prior purchaser of these types of appliances would justify the costs of such action. In addition, the inclusion of such a requirement, if authorized, would require a reproposal of the rule, thereby delaying the providing of other needed information. Therefore, the Commission has not adopted this commenter's suggestion.

c. *Requirement for listing.* One commenter suggested that the best way to ensure adequate information to the consumer would be to require that all appliances subject to the rule must be listed with Underwriters Laboratories and that this requirement should be enforced by local jurisdictions. However, the Commission has no authority to issue such a requirement. As far as attempting to achieve this by state and local action is concerned, it would be a massive undertaking to work with each local jurisdiction that could be affected by such a program to attempt to persuade them to undertake this activity. Furthermore, Commission in-depth investigations indicate that a substantial number of stoves are installed without complying with existing local requirements. Thus, this alternative would not be an adequate substitute for the rule that is issued below.

d. *Mandatory acknowledgment by consumers.* Another commenter thought that dealers should be required to give information to purchasers, who would then be required to sign an acknowledgment that they had received the information. However, the Commission has no authority to issue such a requirement. Even if it did, or if such a program could be instituted voluntarily or by local jurisdictions, the establishment and administration of such a program would entail tremendous resources. Thus, this does not seem to be a practical way for the Commission to address the problem.

4. *Comment on the substance of the rule.* A number of comments were received on the substance of the proposed rule. Some of these comments concerned the specific requirements that were contained in the proposal. Others suggested additional information they thought should be in the rule.

a. *Comments on the proposed requirements.* (i) *Chimney and chimney connector.* A few comments concerned the proposed requirement that the label include a statement of the proper type(s) of chimney and chimney connector to be used with the appliance. These comments stated that it was difficult to identify the proper chimney or chimney connector and that enough information to be of value could not be put on a label.

The Commission does not agree with these comments. The required information should ensure that the chimney and chimney connector are of suitable design and construction to withstand the temperature of the flue gases and other probable environmental stresses and that the inside dimensions are suitable to adequately vent the products of combustion. Generally, these data can be conveyed with 2 or 3 pieces of information. For both components, a minimum inside diameter should be specified. For chimneys, there are recognized performance ratings that can be used to specify the design and construction that the manufacturer intends to recommend. For example, terms such as "residential" indicate that the chimney should be suitable for residential use with flue gas temperatures that do not exceed 1000° F. [However, the Commission understands that the National Fire Protection Administration will soon propose to raise the temperature requirements for "residential" chimneys.] Chimney connectors can be specified by the material and thickness.

Although the Commission concludes that this information can be readily supplied on a label, in order to avoid the

type of misunderstanding evidenced by these comments, a fuller explanation of what is required than was stated in the proposal has been provided in § 1406.4(a)(1)(iii) of the rule, and a specific example of acceptable designations has been provided in Figs. 1 and 2.

The proposed wording for § 1406.4(a)(1)(iv) required that the label bear an "identification of parts or precautions required for passing a chimney or chimney connector through combustible walls or ceilings." In the final rule, this language has been changed to read "identification of parts or precautions required for passing a chimney through combustible walls or ceilings or for passing a chimney connector through combustible walls." This change more precisely reflects the contents of NFPA 211-5-7.2, which states that chimney connectors should not be passed through ceilings. There has been no change in the example of a statement that would comply with the requirement of § 1406.4(a)(1)(iv).

(ii) *Chimney cleaning information.* Several comments concerned the proposed requirement for label information stating "how often the chimney and chimney connector should be inspected and cleaned." The comments pointed out that it is not practical to state a single period at which creosote should be cleaned since the amount of creosote deposited can depend on type of fuel and the method of operation of the stove.

The example given in the proposal of a statement that would comply with this requirement (Figs. 1 and 2) does not conflict with the thrust of these comments. The acceptable example stated: "PREVENT CREOSOTE FIRE: Inspect Chimney Connector and Chimney Twice Monthly and Clean if Necessary." Thus, a statement of a particular time period for creosote cleaning is not required. The requirement has been reworded to make this point clearer.

Comments also stated that the proposal provided no guidance on when creosote buildup would have reached the point that cleaning was indicated. However, from the information available to the Commission, there does not appear to be any level of creosote buildup that can be deemed absolutely safe, and the rule should serve to make users aware of the need to inspect regularly so they will become aware of any buildup that occurs.

(iii) *Overfiring.* One comment stated that it was not possible to overfire a listed stove and that the proposed requirement for a label statement concerning overfiring was not necessary. This comment would prefer requiring that stoves be listed.

The Commission does not agree that a listed stove cannot be overfired and therefore believes that the warning concerning overfiring is needed even for listed stoves. In addition, as discussed above, the Commission does not have authority to require a manufacturer to list all of its stoves with a third party testing or certifying organization. Therefore, the Commission disagrees with this comment.

Another comment stated that it was not possible to put enough information about overfiring on a label and that a simple warning would be misleading.

Although the Commission agrees that it is impractical to put all available information about overfiring on a label, it is important that consumers be reminded of the hazard of overfiring. This goal will be accomplished by the requirement of the final rule that the label contain a statement that the appliance not be overfired and a description of *at least 1* condition that signals overfiring. The proposed wording has been modified in the final rule to make it clear that the label need not include a description of *every* condition that could signal overfiring.

(iv) *Instructions to install only according to manufacturers' directions.* One comment implied that the proposed requirement that the label state that the appliance should be installed only according to the manufacturer's instructions was inadequate because instructions accompanying stoves that are not tested and listed by a recognized testing laboratory may have inappropriate directions. The commenter states that unlisted appliances should be installed according to code.

The Commission agrees with the intent of this comment, but does not believe that it is possible, in the space available on a label, to adequately describe which stoves should be considered "listed by a recognized testing lab." However, in order to respond to this commenter's concern, the Commission has changed the wording of the proposal to indicate that the appliance should be installed and used only in accordance with the manufacturer's instructions *and local building codes.*

(v) *Information on shipping carton.* The proposal contained a requirement that the following notice shall appear legibly and conspicuously on the packaging or carton of the appliance or on the container for parts supplied by the manufacturers: REMINDER—READ THE ENCLOSED INSTALLATION DIRECTIONS.

One commenter stated that the location of such a reminder should be left up to the manufacturer and that a warning tag on one of the handles of the stove, which the homeowner would see before and during the installation, would be more effective.

Upon reconsideration, the Commission has decided to delete this requirement. The fact that the portion of the labeling concerning installation is required to be conspicuous before installation should bring that label to the attention of the installer. That label refers specifically to the instructions and also conveys enough information so that the installer would probably realize that installation is sufficiently complicated that it is desirable to refer to the instructions. Thus, the Commission cannot conclude that whatever slight additional benefit might result from the additional reminder is worth the added cost of providing it.

(vi) *Safety notice in instruction book.* One commenter stated that the "safety notice" required to be at the beginning of the instructions by § 1406.4(b)(1) did not contain enough information to meet the evolving requirements imposed by the courts in product liability litigation. This commenter overlooks the fact that the rule does not prevent the manufacturer from including any additional information that he or she may desire. In order to emphasize this point, the final rule has included a statement that the manufacturer may choose to add other information to this notice.

This commenter also stated that provisions of the statement could consititute "overlabeling" that could result in a " 'defect' under strict liability law." The Commission disagrees. Since the mandatory federal rule issued below would invalidate inconsistent state laws, the provision of the required statement by a manufacturer could not, in itself, be the basis for a valid product liability claim.

(vii) *Sales literature, catalogs, etc.* A number of comments addressed the proposed requirement that all "sales literature, catalogs, and point of sale advertisements" for the appliance that are provided by the manufacturer shall legibly and conspicuously include (1) a statement of the appropriate minimum clearances from the back and sides of the appliance to walls and (2) a statement that the owner should contact local building or fire officials about restrictions and installation inspection requirements in the owner's area.

One comment suggested that this information should be included in point of sale information but should not be

required in advertising that appears in printed or other media.

The intent of requiring the provision of this information is to help ensure that purchasers will not inadvertently order an appliance that is not suitable for the available space or for the user's intended application. Thus, the requirement need only apply to literature, etc., that can be reasonably expected to form the basis for a final consumer decision to purchase a particular model without the need to obtain additional information. Possibly the best examples of the type of situation intended to be covered are catalogs containing order forms to be mailed and point of sale literature. Normal promotional advertising in newspapers or other media would not be subject to this requirement. Thus, it appears that the proposed rule conforms to the intent of this comment. However, the wording of the final rule has been changed to delete the word "advertisements" and to more clearly point out the intent of the rule.

Another comment stated that it was not clear whether the requirement applied to other than manufacturers' literature. This rule is being issued under section 27(e) of the CPSA, which states that the Commission may require certain information to be provided *by manufacturers* to prospective purchasers, to the first purchasers for purposes other than resale (consumers), and to the Commission. This section provides no express authority to issue requirements binding on parties other than manufacturers, and the rule issued below does not apply to such parties. Thus, the rule applies to literature printed or distributed by manufacturers. It does not apply to literature, advertisements, etc., provided in the first instance by independent distributors, dealers, and retail outlets. By specifying that the requirement is applicable to the materials provided by manufacturers, the Commission believes the intent of the rule is clear.

One comment stated that it would not be feasible to get all the information required by this provision on a catalog page. The Commission disagrees with this view. The following statement would comply with this requirement.

Minimum clearances to walls: ——— in. back, ——— in. sides.

Contact local building or fire officials about restrictions and installation inspection requirements.

The latter part of the statement need not be repeated for each model, where there is more than one model shown on each page. Thus, the additional information supplied under this requirement would be a minor addition to the information that would have to be provided anyway in order for the literature, etc., to be the type of literature that is covered by the requirement [i.e., suitable as the basis of the order of a specific stove].

Another comment suggested that the literature suggest that the reader write for information on clearances. However, this approach would be inconsistent with the purpose of the literature covered by the requirement, i.e., that of being the basis for an immediate order of a particular model. Accordingly, the Commission has not adopted this suggestion.

(viii) *Specification of clearances to walls.* One commenter argued that in the labels and instructions, the requirement for stating appropriate clearances from the "sides" of the appliance was indefinite. This was due to the fact that stoves vary widely in their configurations and because one side of the stove may require a different clearance than the other, as where there is a door on the side of the stove. The commenter suggested that instead the clearance should be stated from the edge of the chimney connector. Although it is difficult to see how this change would help clarify the situation where a stove requires different clearances on one side than the other, the change is not needed. If the position of the chimney connector is fixed with relation to the sides of the stove, specifying the clearance from the edge of the chimney connector to a wall on the side of the stove would in fact establish the clearance from the side of the stove and thus would comply with the rule. Furthermore, if the manufacturer could not specify the point on the side from which the clearance should be measured, the distance from another point would have to be specified. Also, both the proposed and final rules require that clearances be stated from the back and sides of the stove and from the chimney and chimney connector to walls. Although, in some cases, these distances could all be stated by reference to the same place on the stove, information that has the effect of establishing each distance must be provided.

(ix) *Furnishings.* Comments were received arguing that the separate requirement to state the clearance to furnishings should be deleted, either because it was identical to the clearance to other combustibles or because there is no test method established to determine the appropriate clearance.

Many consumers probably do not appreciate the fact that furnishings such as chairs, sofas, drapes, and rugs can present a fire hazard when exposed to radiated heat from a stove or heater, in the same manner as do combustible walls, floors, or ceilings. The proposed requirement for a separate statement of clearances to furnishings was intended to insure that consumers are aware of the need to keep these items away from the appliances subject to the rule. As these commenters point out, however, there is no widely accepted test for determining the appropriate clearance distances for furnishings. A representative of Underwriters Laboratories has indicated to the Commission's staff that before UL would incorporate a requirement for a clearance distance to combustibles to furnishings into the UL standard, they would have to develop an appropriate test procedure, at considerable expense. [Log of meeting on February 28, 1983.] Also, the inclusion of another test would increase the cost of testing to appliance manufacturers and ultimately to consumers. At this time, the Commission lacks data showing that the benefits of this particular requirement would be sufficient to warrant these additional expenditures.

Furthermore, if the Commission required the statement of a clearance distance that could not be confirmed by a test under the applicable UL standard, manufacturers might be inclined to forego having their products tested to the UL standard, whether at UL or at other laboratories that test to that standard. This result is also one that the Commission does not intend as a consequence of its rule.

For the reasons given above, the Commission has decided not to require a statement of a particular distance that furnishings should be kept from an appliance. However, the Commission believes that there is still a need for consumers to be advised of the hazard of placing furnishings too close to the appliance. Therefore, in the final rule the requirement has been changed to require a statement that furnishings and other combustible materials should be kept a considerable distance from the appliance. This should provide useful information to the consumer and at the same time should satisfy the concerns expressed by these commenters concerning the specification of a particular distance.

(x) *Test methods.* Several commenters indicated their belief that the rule should specify particular test methods for determining the appropriate clearance distances. Some of these commenters believed that the Commission should require the use of these test methods and others thought

that examples of suitable test methods should be given.

At the present time, the Commission has no information that would indicate that the testing standards presently used by the industry would not provide information that would comply with this rule. However, other standards, or the result of experience with the installation of particular stoves at particular distances, could also produce the required information. The Commission's staff has not thoroughly evaluated the adequacy of the existing performance standards for the stoves and heaters subject to this rule, and to do so would delay substantially the implementation of this rule and result in unnecessary fires that could be prevented if consumers are provided with the information required by the rule as soon as is reasonably possible. In addition, the Commission is reluctant to specifically recommend particular voluntary standards that have not been thoroughly evaluated by its staff.

Furthermore, it is possible that recommending a particular test method could have the effect of motivating manufacturers to test appliances by that method even though the manufacturer already states appropriate clearance that were obtained by other means or by using conservative estimates. This could have the unintended effect of increasing the cost of the rule without a corresponding increase in safety. (Although some commenters suggested that merely issuing the rule would have this effect, the Commission does not believe there would be any need for a manufacturer who already knew the appropriate distances to have his stoves specifically tested because the Commission issues a rule requiring a statement of distances.)

Furthermore, the Commission wishes to avoid the possibility that requiring or recommending particular standards could inhibit the development of improved standards as knowledge about the causes and prevention of fires increases.

Some commenters, however, expressed the belief that not specifying a test method would result in some manufacturers stating clearances that are subjective or inadequate. The Commission does not believe this is likely to occur. The rule's requirement that the manufacturers state their reasons for selecting the particular distances stated would discourage manufacturers from stating distances that are too "optimistic." In addition, the Commission's staff can independently evaluate clearances that seem unusually small for the type of appliance involved. These factors should prevent the occurrence of the situation feared by these commenters.

For these reasons, the Commission declines to require or recommend the use of particular test methods for determining the appropriate clearance distances that the rule requires.

(xi) *Labels.* A number of comments addressed the proposed requirements that labels stating necessary installation, operation, and maintenance information be on the stove.

(*A*) *One label vs. two label formats.* As explained above in section C of this notice, the label information reguired by this rule can be provided either on one label that is readily visible after installation or on two or more labels; one (or more) label(s) that contain the information relating to installation and that is conspicuous before installation (but that may be inconspicuous or not visible after installation) and (at least) another label that contains the information relating to operation and maintenance of the appliance and that is readily visible after installation. In the proposal, the Commission asked for comment on whether it should recommend one of these formats.

The comments generally supported the two label format. One comment contended that the two label format should be required. Other comments expressed a preference for the two label format but indicated that manufacturers should have the choice of using either label format. Comments opposing the two label format seem to be actually intended to oppose the requirement that some of the information be readily visible in normal use. In view of the comments, and because of the advantages of the two label format in allowing the operation and maintenance information to be more understandable (since the installation information would not be competing for the reader's attention) and in permitting a smaller readily visible label that would not detract unduly from the appearance of the exterior of the stove, the final rule recommends that manufacturers use the two label format in complying with this rule. However, as indicated in the proposal, the rule's requirements are satisfied by either the one label or two label format.

(*B*) *Amount of label information.* Some comments indicated that too much information was being required on the label and that therefore the safety information would not be readily communicated to the consumer. One comment suggested that for this reason no label should be required, but that instead the information should be required in an instruction booklet to be supplied with the appliance.

The Commission believes that the examples of complying labels given in Figures 1 and 2 below show clearly that the amount of information required on these labels is not so great as to significantly detract from the consumer's ability to notice and understand the information provided. This is especially true if the manufacturer uses the two label format described above. Therefore, the Commission has retained in the final rule basically all the information that was required by the proposal.

(*C*) *Legibility.* A number of comments were directed at the rule's requirement that the label be "legible." One comment suggested that the Commission should specify a minimum type size that should be used on the label in order to insure that the label is legible.

The Commission does not believe that such a requirement would achieve the commenter's intended result. The rule's requirement that the notice on the appliances be legible could be affected by a number of factors. Among these are type size, type style, the width or uniformity of the lines used to form the words and diagrams in the notice, the contrasts in color or texture between the words or diagrams in the notice and the background on which they are placed, and the arrangement of the information within the label or with respect to other features on the appliance. In requiring that the notice be legible, the Commission has not attempted to establish specifications for the various factors that could affect the legibility of the notice. However, the legibility requirement means that the content of the notice must be presented in such a manner that it can be readily determined by a person looking at the notice. Labels that cannot be quickly and easily read will not comply with this requirement.

Another comment stated that the indication in the proposal that molding the label into the body of a cast stove would satisfy the requirement that the label be permanent should be deleted because molded labels would be illegible. However, there is no need to delete this section, since if the quality or contrast of a molded label on a particular appliance is such that the label is not legible, as described above, the label would not comply with the rule even though it is permanent.

(*D*) *Location.* A number of comments were received opposing the proposal's requirement that the label information concerning operation and maintenance must be "readily visible during normal use." These comments indicated that the presence of a label on the front of the

appliance would detract from the appearance of the stove.

The Commission does not agree with these comments. The requirement that the operation and maintenance information be readily visible during normal use is needed to ensure that the persons actually operating the stove are reminded of the proper practices in order to avoid the fires that are now occurring due to improper practices. It is unreasonable to expect that a person will remember all the necessary operation and maintenance information for the entire useful life of these appliances, which can be for many years. In addition, the persons responsible for the operation and maintenance may never see labels that are not readily visible and may not have seen the instruction manual at the time of original installation. Therefore, the Commission concludes that the requirement that the operation and maintenance information be readily visible during normal use is essential in order to accomplish the safety purpose of the rule.

The concern raised by these commenters as to the potential adverse effect of this requirement on the appearance of the stove is also believed to be unwarranted. The size of the label needed to convey the information required to be readily visible during normal use can actually be quite small if the two label format is used, as shown in Fig. 1. Furthermore, the rule does not require that this label be in the most conspicuous location but merely that it be readily visible during normal use of the appliance. Thus, the label could be located to one side or toward the bottom of the appliance, as long as it remains readily visible. Finally, § 1406.4(a)(3) of the rule states that a label will be deemed to be readily visible during normal use if it is readily visible within stove compartments or under overlapping covers or doors in locations that will be seen at some time during normal use, such as when loading fuel or removing ashes. This provision allows yet another means for manufacturers of decorative stoves to avoid any excessive adverse effect of the label location requirement on the appearance of their product.

Another comment stated that allowing operation and maintenance information labels inside of compartments was not feasible since such labels would become unreadable. These comments apparently assume that the labels would be exposed to the direct heat or fire of the firebox in these locations. However, this is not necessarily the case.

The rule has a separate requirement that the required labels be provided so that they will "remain legible for the maximum expected useful life of the appliance in normal operation." If a label would be discolored, damaged, or otherwise rendered illegible by heat or fire, another location or type of label would have to be selected. Therefore, no change in the rule is needed in response to this comment.

(*E*) *Permanence.* Most of the comments that mentioned the requirement that labels be permanent agreed with the requirement.

One commenter asked that the rule be amended "to allow for flexibility in the use and attachment of different materials, such as metallic foil, for the labeling information."

The preamble of the proposal gave some examples of types of labels that could satisfy the requirement that the label be permanent. Section 1406.4(a)(4) of the rule, however, merely requires that the label "shall be provided so that it will remain legible for the maximum expected useful life of the appliance in normal operation." Other types of labels than those specifically mentioned in the preamble as examples of suitable types may be used if in fact they are capable of remaining legible for the maximum expected useful life in normal use. Therefore, the suggested amendment is unnecessary.

(*F*) *Written and/or diagrammatic information.* The proposal stated that the appropriate minimum clearances to combustibles that would be required to be on the label should be stated in both written and diagrammatic form. The Commission agrees with the two comments that disagreed with the redundancy of this requirement, and the redundancy has been eliminated from the final rule.

One of these comments indicated that because of the potential variations of clearances in different installation configurations, the clearance information should be listed in the label, and more complete diagrams could be supplied in the instructions. The other comment indicated that the more graphic the label, the more effective it would be in communicating the required information to the consumer.

The Commission agrees with this latter comment. This is especially the case when the appliance is being reinstalled in a different location and the original instruction manual may not be available. Accordingly, the final rule indicates that the distance from the back and sides of the appliance and the chimney connector, to *walls* must be stated in diagrammatic form.

However, the required statement of the clearance to be maintained between the chimney connector and *ceilings* is less subject to variations and is easier to understand in written form than are the side and back clearances to walls. Furthermore, any extra space required to indicate the connector-to-ceiling clearance in diagrammatic form may not be warranted by any extra communication value, compared to supplying this information in written form. Therefore, the final rule specified that the connector-to-ceiling clearances may be stated in either written or diagrammatic form.

If different back and side clearances are required in different installation configurations, the manufacturer could either provide the requisite number of diagrams or supply one or more diagrams with the greater clearances and also provide a label statement referring the reader to the instructions for special cases where smaller clearances could be used. Therefore, since the concern of the commenter who wished for this information to be listed in written form can be satisfied in another way, the Commission concludes that the extra ease of understanding of side and back clearances in diagram form warrants such a requirement in the final rule.

(*G*) *Meaning of "combustible."* A commenter argued that the requirement that the clearance to "combustible walls" be stated on the label was confusing since the reader would be unlikely to realize the meaning of "combustible" in this context. Walls that have a brick or tile facing over wood framing are "combustible" for the purposes of these clearances since the heat will be transmitted through the facing to the wood. Therefore, inclusion of the term "combustible walls" in specifying the clearance could encourage persons to install the appliance at lesser distances when the outer surface of the wall is not one that a layman would consider combustible.

The proposal did not expressly require that the label use the word "combustible" in stating this distance; it only required that the distance stated *be* that to combustible walls. However, the examples of acceptable labels did use this terminology. Since the Commission agrees with the substance of this comment, the final rule has been changed so that the examples of acceptable labels now state the clearances to walls and ceilings without using the qualifying word "combustible." In addition, the body of the rule has eliminated the term "combustible" in the specific requirements for clearances to walls and ceilings, but the introductory portion of the requirement still indicates that the

clearances to be provided are those to "unprotected combustibles." This should help reduce the possiblity of confusion pointed out by this comment.

(H) *Overfiring.* One commenter opposed the proposed requirement that the label contain a "statement that the appliance should not be overfired, and a description of the condition[s] which signal[s] overfiring" because a caution against overfiring could result in operation of the appliance in a damped-down manner that would increase the production of creosote due to operation at a low flue temperature.

The Commission does not believe there is any reason to conclude that a warning against overfiring, especially when accompanied by a statement of one or more specific symptons of overfiring, would result in insufficient burning, thereby creating a related creosote hazard. Consumers are unlikely to mistake normal burning for overfiring and therefore to restrict the fuel or air supply so that insufficient burning results. On the contrary, the warning is intended to prevent actual overfiring without a realization of the hazard involved. Therefore, the Commission concludes that this comment is speculative and that no change in the rule is needed to address this possibility.

b. *Suggested additional requirements* (1) *Type of fuel required.* Two comments stated that consumers should be notified of the types of fuel that are suitable for use in the appliance.

The proposal included a requirement that the instruction manual contain a statement of the types of fuel that may be used in the appliance. After considering the comments, the Commission has concluded that this information should also be included on the label that is required to be readily visible during normal use. While a requirement for this statement on the label was not included in the proposal, it was required in the instructions and is related to the hazard of overfiring and the appropriate clearance distances that were addressed in the proposed label requirements. Therefore, the Commission concludes that this additional requirement is within the scope of the proposal.

(2) *Disposal of ashes.* The proposal required complete use and maintenance directions to be provided in the directions. This general requirement would include a statement of how to safely dispose of ashes, and a statement addressing this hazard was included in the recommended format and wording for the directions stated in Appendix II to the proposal. A major insurance company suggested more complete language for this direction, and the Commission has included similar language in Appendix II to the final rule. However, this type of statement is not being required on the label since the Commission has no information indicating that the risk of fire from improper disposal of ashes is as high as the other risks addressed by the label.

(3) *Type of wood to burn.* One commenter stated that the label should indicate what type of wood to burn in the appliance.

The Commission, however, does not believe that there is suffcient information available on the safety ramifications of burning different types of wood in these appliances to warrant such a requirement. Therefore, the Commission has not adopted this suggestion.

(4) *Instructions on what to do when a chimney fire occurs.* A commenter suggested that information should be provided on what a consumer should do if a chimney fire occurs. While the Commission agrees that such information could be valuable, the precise content of the advice could be somewhat controversial. For example, should the directions tell the homeowner to shut off air to the stove first, or should the first action be a call to the fire department? Should the consumer remain in the house and try to smother the fire in the appliance, or would it be safer to leave the home and await the arrival of the fire department? Particularly in view of these types of uncertainties, the Commission probably could not adopt such a requirement without a reproposal of the rule. In addition, the Commission does not know the extent to which the lack of such information may be responsible for avoidable injuries or property damage. For these reasons, the Commission is not adopting this requirement at this time.

(5) *Information on the efficiency of stoves.* Several commenters stated that information on the efficiency of the appliances subject to the rule, or on the heat output that the appliance could achieve with a specific fuel, should be provided. The Commission declines to adopt this suggestion since it was not proposed and since the Commission's statutory authority under section 27(e) of the CPSA to require manufacturers to furnish information to consumers must be related to the safety of the product and not merely to providing useful information on the cost, performance, or efficiency of a product.

(6) *Other miscellaneous operating information.* One commenter indicated that he believed the following information should be on the feeder door of a wood or voal stove.

"1. Do not use explosive or highly flammable fuels to start fire. (Actually, corn cobs soaked in kerosene are the best.)

2. Before refueling stove, be sure to open chimney vent. (This avoids excessive smoking out of the door).

3 Do not burn trash/garbage in the stove. (Paper trash can be extremely dangerous in that it burns very quickly and escapes fragments into the chimney.)

4. Keep all clothing and furniture at least ———ft. away.

5. Check thermostat setting before retiring for night."

This commenter also urged that the following information should be provided on a second label located either on the inside of the protective shield door (outer stove cover) or "on the back side beside the thermostat."

"1. Use caution in reloading the stove. Reload only when the fire is burned down. Open chimney draft vent when doing so. Never use flammable fuels on ashes or smouldering logs.

2. Shake ashes daily and remove at regular intervals.

3. Check for creosote buildup in the stove pipes by tapping them lightly with the wood poker regularly. You can tell when there is a buildup and the pipes need cleaning them.

4. Avoid continual opening and shutting of the stove feeder door.

5. Learn how to start the initial fire in a cold stove by using small, dry materials and putting larger pieces stacked so to promote burning.

6. Keep a tea kettle filled with water on top of the stove to avoid dry air.

7. Follow all installation directions when setting up the stove:

a. Is the stove pipe unit firmly attached to the chimney entrance with a small wire?

b. Are the stove pipe sections firmly entered into each other?

c. Is there a protective flood shield underneath the stove?"

d. Is there protective asbestos or tin on the walls beside the stove?

Some of the suggested labeling does not relate to safety concerns and is thus beyond the Commission's authority to require. Much of the other information could be useful and would properly be included in the instructions. However, the Commission does not believe that the information suggested in this comment is as valuable as the information that is otherwise required by the rule to be on a label. To require the lengthy additional material suggested by this commenter would

result in a label that was so large and contained so much information as to be unreasonably unsightly and contain so much information that consumers would either not read the label or the impact of any particular piece of information on the consumer would be greatly diluted. Therefore, the Commission will not take the action requested in this comment.

(7) *Installation of stoves in zero-clearance fireplaces.* One comment indicated that fires could occur as a result of installing wood or coal burning stoves in zero-clearance fireplaces. The commenter suggested that stove labels should state that a fire code violation may occur if the unit is installed inside a zero-clearance fireplace.

This comment appears to refer to fireplace inserts, which are not covered by the proposed rule. If the comment is viewed as applying to the appliances covered by the proposed rule, the Commission has insufficient data about this hazard to warrant a conclusion that the requested warning statement is needed. Accordingly, the Commission has not adopted this suggestion.

(8) *Glass in stoves.* One commenter wrote to say that he had several glass inserts for his stove break in use and that he had heard of a number of other persons that had the same difficulty. He suggested that an asbestos cushioning strip could solve the problem. Also, a glass manufacturer wrote to provide additional information on the care of glass used in stoves.

Although the Commission appreciates being advised of the potential problem with glass breakage in stoves, the rule being issued below does not address particular problems that may be present in a particular brand of stoves. Furthermore, although the information provided by the glass manufacturer is interesting and should be provided by the stove manufacturer in a proper case, the rule issued below leaves to the stove manufacturer the responsibility for the exact wording and amount of necessary information for the use and maintenance of stoves with glass. Other brands of glass may need additional or different advice.

(9) *Confidentiality of test data.* The proposed rule (§ 1406.5) would require manufacturers to submit to the Commission a statement of how the clearance distances required by the rule were determined. One commenter stated that the proposed rule did not provide any protection against disclosure of test data submitted to the Commission to a party who requested it under the Freedom of Information Act. The commenter stated that the rule should provide such protection.

In general, the Commission does not have the authority to withhold information requested under the Freedom of Information Act (FOIA), 5 U.S.C. 552, unless the information fits into one of the exemptions provided in 5 U.S.C. 552(b). The exemption that could fit the situation described by this commenter is in paragraph (4) of that section, which concerns "trade secrets and commercial or financial information obtained from a person and privileged or confidential." If the information submitted fits into this category, under 15 U.S.C. 2055(a)(2), the Commission would be prohibited from disclosing it. Therefore, exemption (3) of the FOIA would also be applicable. Disclosure of trade secrets and certain other types of confidential information is also prohibited by 18 U.S.C. 1905. Furthermore, under 15 U.S.C. 2055 (with certain exceptions), the Commission may not release information that would enable the public to readily ascertain the identity of a manufacturer or private labeler of a consumer product unless (1) the Commission notifies the manufacturer or private labeler of the intended disclosure, (2) provides them an opportunity to comment, and (3) takes the reasonable steps provided in 15 U.S.C. 2055(b). This section provides such party with an opportunity to seek an injunction barring the disclosure if the party believes the information to be disclosed is inaccurate.

These statutory procedures should provide adequate protection against the disclosure of test data submitted to the Commission under the requirement of 16 CFR 1406.5. Therefore, no changes in the rule are needed in this regard. (As discussed above, § 1406.5 is not being issued at this time, but will be issued after the requirement has been approved by the Office of Management and Budget.)

5. *Effective date.* The Commission received a number of comments concerning the effective date of the rule. The rationale for the effective date of the rule is explained in section F of this notice.

The proposed rule would have applied to all subject appliances that would be *first introduced into commerce in the United States* after the effective date of the rule. The Commission received several comments asking that the rule should apply instead to all subject appliances *manufactured* after the effective date. These commenters feared that a rule applicable to first introduction into commerce could require the relabeling of appliances that were being kept in manufacturers' inventory and were not shipped until after the effective date.

As noted in the proposal, the Commission selected the effective date in the proposal on the basis of information indicating that manufacturers did not keep substantial amounts of inventory and that the rule would not require potentially costly retrofitting of the label to previously manufactured appliances. However, the information currently available to the Commission indicates that this may not always be the case.

The Commission believes that the rule should become effective as soon as is reasonably possible in order that consumers will begin receiving the needed information as soon as possible. However, as explained in the proposal, the keying of the effective date to the first introduction into commerce was primarily to simplify the task of determining which appliances were subject to the rule.

In order to avoid the problem noted by these commenters, the final rule has been changed so that the rule will apply initially only to appliances manufactured after the effective date, which is five months after the date of issuance of the rule. In order that the Commission's compliance tasks may eventually take advantage of an easier to determine effective date keyed to first introduction into commerce, the final rule also provides that the rule shall in addition apply to any subject appliance first introduced into commerce in the United States after May 16, 1984, which is twelve months after the rule is issued, regardless of the date of manufacture. This period should be sufficient so that no extensive retrofitting of previously-manufactured, non-complying products will be required.

Comments were also received concerning the amount of time after issuance of the rule that would be appropriate for the effective date. The proposal would have applied to stoves manufactured in the U.S. or imported after about four months from the date of issuance. Representatives of the Wood Heating Alliance have indicated to the Commission's staff that a period of four months would be required in order for manufacturers to design the necessary labels and instruction manuals, obtain the approval of their certifying organization to use the modified materials, order and receive the materials, and incorporate them into current production. The Commission agrees that this is a reasonable period. In addition, the Commission concluded that foreign manufacturers would require an additional month for shipment of their products to the U.S. Therefore, the Commission has

established that the rule shall become effective October 17, 1983, which is 5 months after the issuance of the rule.

The effective date of the final rule is one month longer after issuance than the date originally proposed. This is because the final rule is becoming effective during the peak period of production, whereas at the time of proposal it was estimated that the changes in labels and instructions could be incorporated well before the beginning of seasonal production. The need to change labels and instruction manuals during a production run requires the additional time. [The Commission staff's findings concerning the effective date are set forth in the briefing package dated 3/25/83, Tab B.]

6. *Authority to issue the rule.* The rule is issued under section 27(e) of the Consumer Product Safety Act, 15 U.S.C. 2076(e), which authorizes the Commission to "by rule require any manufacturer of consumer products to provide to the Commission such performance and technical data related to performance and safety as may be required to carry out the purposes of this Act, and to give such notification of such performance and technical data at the time of original purchase to prospective purchasers and to * * * [consumers]."

One commenter questioned the Commission's authority to issue the rule under section 27(e), implying that the information required by the rule does not fit within "the plain, obvious and rational meaning of performance and technical data," which is the test established in *Southland Mower Co. v. CPSC*, 619 F.2d 499 (5th Cir. 1980). The commenter noted that the Commission's authority to issue its chlorofluorocarbon propellant labeling requirement, 16 CFR Part 1401, under section 27(e) was being challenged in *United States v. Falcon Safety Products* (D. N.J., No. 80–1590). That case, however, ultimately upheld the Commission's action. The Commission concludes that labeling and directions for the installation, operation, and maintenance of the appliances subject to this rule come within the plain, obvious, and rational meaning of performance and technical data and that the rule is properly issued under section 27(e).

E. Economic Impact of the Rule [1]

The average finished cost for purchase and installation of appliances covered by the rule is between $600 and $1,000. The direct cost of providing the written notice on the appliance and the required directions would be approximately $1.85 per stove. Another element of cost for some manufacturers would be testing of the stove to determine or confirm the appropriate clearances. Not all manufacturers will have to perform such testing, however, since many manufacturers already know the appropriate clearances from previous tests or from past experience with the product. In one typical example examined by the Commission's staff, the cost attributable to this testing could be considered to be about $0.20 per unit. Therefore, the staff believes that the cost of the rule to producers of these coal and wood burning appliances should not exceed about $2.05 per stove. Depending on the markup on the additional costs, the increased cost to consumers could be as much as $2.80 per stove. Many manufacturers are now labeling stoves and have already incurred some of those costs; thus, the average per stove cost of the rule could be less than $2.80. The cost of providing copies of the written notice and directions to the Commission is expected to be negligible. The total annual cost of the rule to consumers may be up to about $4.5 million. The rule is not expected to lead to a significant reduction in the number of these appliances purchased each year.

The cost stated above could be somewhat higher if manufacturers give the written notice by two labels instead of one. On the other hand, many manufacturers already provide a label and/or will not need to test their product, and the costs to these manufacturers should be substantially lower than those stated above.

However, the rule is expected also to result in savings due to reductions in property damage, death, and injuries associated with the products subject to the rule.

It has been estimated that fires directly attributable to these stoves and their venting systems caused some $113 million in property damages in 1981. [Kale, D., *Fires in Woodburning Appliances*, U.S. CPSC, December 1982.] Although the Commission is unable to estimate the degree to which the rule may reduce fire incidents, a reduction of 5 percent (or possibly less) in these property damages alone would offset the total yearly cost of the rule.

In 1981, an estimated 160 deaths were attributed to fires associated with coal and wood burning stoves. *Ibid.* Based on available fire incident data, an estimated 1200 fire-related injuries were associated with these articles in 1981. *Id.* There are significant economic and social costs of the deaths and injuries associated with these products. Any reduction in these injuries and deaths would result in significant benefits to consumers.

The Commission further concludes that the rule is not a major action that would have any significant effect on the environment. Thus, no environmental impact assessment is required.

F. Effective Date [2]

1. *Labels and directions.* The Commission estimates that a period of up to 4 months after issuance of this rule will be needed in order for manufacturers to do any testing needed to determine or confirm the appropriateness of clearance distances, develop and acquire the required labels and directions or modify existing ones, print the appropriate directions booklets, and incorporate the means to provide the labels into their normal production procedures. Although the traditional seasonality of production has been replaced with production to meet orders for most firms, some companies continue to produce these appliances year round. In either case, a four-month period after publication of the final rule should be sufficient for all domestic manufacturers to comply with the rule as to newly manufactured appliances. Importers of appliances, however, must also allow for the time required for the appliances to be shipped from the country of manufacture to the United States. The Commission estimates that this shipping time would not exceed another 30 days. Therefore, a 5 month period for an effective date as to newly manufactured appliances should allow both domestic and foreign manufacurers to comply with the rule with a minimum disruption of production.

However, it is often easier to determine the date when an appliance was first introduced into commerce in the United States than it is to determine when the appliance was manufactured. Therefore, an effective date that is keyed to the date of initial introduction into commerce in the United States makes it easier for the Commission's compliance staff to determine which appliances are subject to the rule and to prove this fact if such is necessary in an action based on noncompliance with the rule. Therefore, the rule is also being made effective as to all of the subject appliances that are first introduced into

[1] The Commission staff's report concerning the economic impact of the rule is contained at Tab B of the briefing package dated 3/25/83.

[2] The Commission staff's findings concerning the effective date are contained in Tab B of the briefing package dated 3/25/83.

commerce in the United States after May 16, 1984. This date is 7 months after the effective date applicable to newly manufactured appliances in order to reduce the possibility that potentially costly retrofitting might be required for stoves that were manufactured before October 17, 1983, but not initially introduced into commerce in the United States until a later date. (This retrofitting could cost up to $25 per stove, according to industry estimates.)

For the purpose of this rule, a product manufactured outside the United States is first introduced in U.S. commerce when it is first brought within a U.S. port of entry. A product manufactured in the U.S. is first introduced in U.S. commerce when it is shipped by the manufacturer or delivered to the next purchaser, whichever comes first.

Although these effective dates will require prompt action on the part of a number of manufacturers, the Commission believes that it is important to have the rule go into effect as soon as is reasonably possible in view of the fact that the production season for the 1983–1984 winter season begins in about May of 1983. The Commission would like for as many as possible of the stoves produced for the coming season to comply with this rule in order to reduce the injuries, deaths, and property damages that occur as the result of not providing consumers with adequate information on the installation, operation, and maintenance of these appliances.

2. *Catalogs and point of sale literature.* The requirement that catalogs and point of sale literature for the appliance that are provided by the manufacturer shall legibly and conspicuously state the appropriate minimum clearances from the back and sides of the appliance to walls and contain a direction to contact local building or fire officials about restrictions and installation inspection requirements will become effective for all such publications that are provided by the manufacturer on or after May 16, 1984. This additional time is needed since these types of publications are often prepared far in advance of their intended use and the Commission wishes to avoid imposing the possible increase in cost of requiring the replacement of catalogs and point of sale literature that were prepared before the rule was issued.

3. *Submission of labels, directions, and rationale for clearances to the Commission.* As discussed above in section C of this notice, "Description of the Rule", the Commission intends to issue proposed § 1406.5 after the requirement is approved by the Office of Management and Budget. If this occurs, the Commission intends that this information would be submitted to the Commission by November 16, 1983 or within 30 days of the introduction of a new model of appliance that is subject to this rule.

G. Effect on State and Local Requirements

Many jurisdictions have requirements for installation of these appliances, inspections for the completed installation, testing and certifications programs, and labeling requirements. However, as discussed above in section D of this notice, "Comments on the Proposal," the information available to the Commission indicates that these local requirements are not sufficiently widespread or enforced that the existence of these requirements would remove the need for the regulation that is issued below.

The existence of state and local regulations in this area, however, raises the question of the degree to which the Commission's action my affect the application of state and local requirements. Section 26(a) of the act, 15 U.S.C. 207(a), provides that where a federal consumer product safety standard is in effect, state and local governments do not have the authority to establish or to continue in effect a different safety standard or regulation designed to deal with the same risk of injury as the federal standard. This statutory effect on state and local government regulations, known as preemption, applies only to a "consumer product safety standard", which is defined in section 7(a) of the act, 15 U.S.C. 2056(a). The statutory preemption provision is not applicable to a disclosure requirement issued under section 27(e), since the disclosure requirement is not a consumer product safety standard (which is issued under sections 7 and 9 of the act, 15 U.S.C. 2056, 2058). Interested persons should be aware, however, that even though the statutory preemption provision would not apply, there may be instances where certain state or local government actions could be preempted under other legal principles. However, the Commission does not intend that the rule would preempt any state or local requirements that are not inconsistent with the rule, even though the state or local requirements concern the same risk of injury addressed by the rule. Of course, any state or local requirements that were inconsistent with the rule would be invalid.

H. Penalties

Failure to comply with this regulation is a prohibited act, as specified in section 19(a)(9) of the CPSA, 15 U.S.C. 2068(a)(9), and could lead to civil and criminal penalties under sections 20 and 21 of the CPSA, 15 U.S.C. 2069, 2070. Section 21 provides criminal penalties for violations after notice, consisting of fines of not more than $50,000 and imprisonment for not more than one year. Section 20 provides for a civil penalty not to exceed $2,000 for each violation, with a maximum civil penalty of $500,000 for any related series of violations. In addition, section 22 of the act, 15 U.S.C. 2071, authorizes the Commission to obtain an injunction from a United States district court to restrain a violation of the notification requirement.

I. Statutory Findings

The rule is issued under section 27(e) of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2076(e). This section of the act authorizes the Commission to require manufacturers of consumer products to provide the Commission with such performance and technical data related to performance and safety as may be required to carry out the purposes of the act. Section 27(e) also authorizes the Commission to require manufacturers of consumer products to give notification of such performance and technical data to prospective purchasers at the time of original purchase and to the first purchaser for purposes other than resale, as it determines necessary to carry out the purposes of the act. As provided in section 2(b) of the CPSA, 15 U.S.C. 2051(b), two of the purposes of the act are (a) to protect the public against unreasonable risks of injury associated with consumer products and (b) to assist consumers in evaluating the comparative safety of consumer products.

1. *Protecting the public from unreasonable risks of injury.* The estimates of fire incidents that are associated with coal and wood burning appliances show that there is a substantial risk associated with their use. This risk can be addressed by the requirements of the rule proposed below at a minimal cost to the consumer. Providing this information to consumers should reduce the number of improperly installed appliances and increase the number of consumers who know how to properly operate and maintain these devices. The Commission therefore concludes that there is an unreasonable risk of injury associated with those coal

and wood burning appliances that do not provide the notices and directions provided for in Part 1406 below.

2. *Comparative safety.* The requirements of this rule will aid the public in determining which appliances can be safely installed in the space available. This knowledge facilitates the consumer's choice of an appliance to suit his or her installation situation.

Therefore, in order to carry out the purposes of the CPSA to protect the public against unreasonable risk of injury and to assist the public in evaluating the comparative safety of consumer products, the Commission concludes that it is necessary to require manufacturers of these products to provide the notifications described in Part 1406 as set forth below.

Accordingly, under provisions of the Consumer Product Safety Act (secs. 2, 27(e), Pub. L. 92-573, 86 Stat. 1207, 1228; 15 U.S.C. 2051, 2076(e)), the Commission amends Title 16, Chapter II, of the Code of Federal Regulations by adding to Subchapter B a new Part 1406.

List of Subjects in 16 CFR Part 1406

Advertising, Consumer protection, Fire prevention, Housing standards, Labeling.

PART 1406—COAL AND WOOD BURNING APPLIANCES—NOTIFICATION OF PERFORMANCE AND TECHNICAL DATA

Sec.

1406.1 Scope, purpose, and effective date.
1406.2 Background.
1406.3 Definitions.
1406.4 Requirements to provide performance and technical data by written notice to purchasers and prospective purchasers.
1406.5 [Reserved]

Authority: Secs. 2, 27, Pub. L. 92-573, 86 Stat. 1207, 1228 (15 U.S.C. 2051, 2076).

§ 1406.1 Scope, purpose, and effective date.

(a) *Scope.* This Part 1406 requires manufacturers, including importers, of coal and wood burning appliances, as defined in § 1406.3(a), to provide consumers with a specified notification concerning the installation, operation, and maintenance of the appliances. The notification is intended to provide consumers with technical and performance information related to the safety of the appliances.

(b) *Purpose.* This regulation is intended to reduce the unreasonable risk of injury from fire associated with inadequate information provided with coal and wood burning appliances. This rule does not replace any voluntary standards applicable to these appliances or any state or local requirements applicable to the installation, use, or maintenance of such appliances that are not inconsistent with this rule. Thus, for example, a local code could require the actual installation of appliances at different distances from combustibles than those specified on the label required by this rule, and voluntary standards or local codes could require labeling or instructions in addition to those required by this rule. The fact that a product complies with this regulation is not intended to be a substitute for the performance tests and other criteria established by listing organizations whose approval is required to meet some state or local requirements applicable to these appliances.

(c) *Effective date.* (1) Except as provided in paragraph (c)(2) of this section, manufacturers, including importers, of coal and wood burning appliances as defined in § 1406.3(a) must comply with this regulation with respect to stoves that are manufactured or imported after October 17, 1983, or that are first introduced into United States commerce after May 16, 1983, regardless of the date of manufacture. For the purposes of this rule, an appliance is manufactured when no further assembly of the appliance is required (i) before shipment by the manufacturer or (ii), if the product is not so shipped, before delivery to the first purchaser. A product manufactured in the United States (U.S.) is first introduced into U.S. commerce when it is shipped by the manufacturer or delivered to the next purchaser, whichever comes first. A product manufactured outside the U.S. is first introduced into U.S. commerce when it is first brought within a U.S. port of entry.

(2) The requirements of § 1406.4(d) apply to sales catalogs and point of sale literature provided by manufacturers after May 16, 1984.

§ 1406.2 Background.

(a) Fire data analyzed by the Consumer Product Safety Commission disclose a number of incidents involving coal and wood burning appliances. Many of these cases involve improper installation of the appliances, especially where they are installed with insufficient clearances to adjacent combustibles such as walls, ceilings, floors, draperies, carpets, or furnishings. Another common installation problem involves the use of improper types of chimneys or chimney connectors and insufficient clearances between these devices and combustibles. Other incidents involve improper operation of the appliance, such as by overfiring it or using flammable liquids to start the fire. Still other incidents occur when appliances are improperly maintained and develop mechanical defects or excessive deposits of flammable creosote.

(b) After considering the available data on the causes of fires in these appliances, the Commission concludes that there is an unreasonable risk of injury associated with appliances that are sold without notifying consumers of the information they need to prevent many of these occurrences. Accordingly, the Commission has determined that disclosure of the information required by § 1406.4 is necessary to help the Commission in carrying out the purposes of the Consumer Product Safety Act of (1) helping to protect the public against unreasonable risks of injury associated with consumer products and (2) assisting consumers in evaluating the comparative safety of consumer products.

§ 1406.3 Definitions.

For the purposes of this rule:

(a) "Coal and wood burning appliances" means fireplace stoves, room heater/fireplace stove combinations, cookstoves and ranges, and radiant and circulating heaters. It does not include central heating units, masonry fireplaces and chimneys, fireplace inserts, or factory built fireplaces (zero clearance fireplaces).

(b) "Central heating units" include boilers, furnaces, and furnace add-ons. These appliances are designed to be connected to hot water distribution or ductwork systems for heating several rooms. The furnace add-on converts an existing gas, oil, or electric heating system to one capable of using solid fuel as well as its original fuel.

(c) A "chimney" is a vertical or nearly vertical enclosure containing one or more passageways called flue passages for conveying combustion wastes to the outside atmosphere.

(d) A "chimney connector" is the stovepipe which connects the appliance flue with the chimney flue.

(e) "Cookstoves and ranges" are chimney connected solid fuel burning appliances that are used primarily for cooking. In addition to the firechamber, there may be one or more ovens or warmer compartments and several removable cooking space pothole lids. The intensity of the fire is controlled by damper and draft regulators.

(f) A "factory built fireplace" is a firechamber and chimney assembly consisting entirely of factory made parts. It is designed for component assembly without requiring field

construction. These "zero clearance" units are fabricated for safe installation against combustible surfaces and for burning fireplace fuel.

(g) "Fireplace inserts" are heating units that fit into a fireplace and connect to the fireplace flue. These units function like radiant and circulating heaters.

(h) A "fireplace stove" is a freestanding, chimney-connected firechamber which is constantly open to view. It is designed to burn regular fireplace fuel and function as a decorative fireplace.

(i) A "masonry chimney" is a chimney field-constucted of solid masonry units, brick, stones, or reinforced concrete.

(j) A "masonry fireplace" is an open firechamber built into a structure along with a chimney and hearth. It is constructed of solid masonry units such as bricks, stones, or reinforced concrete.

(k) "Radiant and circulating heaters" have firechambers which may be airtight [1] or non-airtight and are available in a number of sizes, shapes, and designs. The firechamber is closed in use, but there may be a window of specially formulated glass for viewing the fire. Drafts and dampers are used to control the burning process. There may be a secondary combustion chamber, baffles, a thermostat, a blower, or other components which function to improve combustion efficiency or to control heat output. The primary function of these appliances is as space heaters. However, some have lift-off cooking pothole lids, and the top surface of most can be used for cooking. The fuel may be wood, coal, or both. Radiant heaters transmit heat primarily by direct radiation. Circulating heaters have an outer jacket surrounding the fire chamber. Air enters from the bottom, is warmed by passing over the fire chamber, and exits at the top. Movement is by natural convection or forced air circulation.

(l) A "room heater/fireplace stove combination" is a freestanding, chimney-connected fire chamber with doors. It is designed to be used to burn fireplace fuels with the firechamber either open or closed to view. This appliance functions as a decorative fireplace when the doors are open and as a non-airtight heater when the doors are closed.

[1] An airtight stove is defined as "A stove in which a large fire can be suffocated by shutting the air inlets, resulting ultimately in a large mass of unburned fuel remaining in the stove." Jay W. Shelton, *Wood Heat Safety*, Garden Way Publishing, Charlotte, Vermont (1979), p. 160.

§ 1406.4 Requirements to provide performance and technical data by written notice to prospective purchasers and purchasers.

Manufacturers, including importers, of coal and wood burning appliances as defined in § 1406.3 shall give notification of performance and technical data related to performance and safety to prospective purchasers at the time of original purchase and to the first purchaser of such products for purposes other than resale, in the manner set forth below:

(a) *Written notice on appliance.* (1) The appliance shall bear a legible notice containing the following performance and technical data.

(i) Appropriate minimum clearances from unprotected combustibles to avoid the occurrence of fire.[2] The clearances shall include:

(A) Distance from the back and sides of the appliance, and the chimney connector, to walls, stated in diagrammatic form.

(B) Distance to be maintained between the chimney connector and ceilings, in either diagrammatic or written form.

(ii) Type and dimensions of floor protection, if necessary to protect combustible floors.

(iii) Proper type(s) of chimney and chimney connector to be used with the appliance. This information should include the proper designations so that the chimney and chimney connector are of suitable design and construction to withstand the temperature of the flue gases and other probable environmental stresses and so that the inside dimensions are suitable to adequately vent the products of combustion. See Figs. 1 and 2 for examples of an acceptable designation for a chimney and chimney connector.

(iv) Identification of parts or precautions required for passing a chimney through combustible walls or ceilings or for passing a chimney connector through combustible walls. The following statement is an example of one that complies with this requirement:

Special methods are required when passing through a wall or ceiling. See instructions or building codes.

(v) A statement not to overfire the appliance, and a description of at least 1 condition which signals overfiring.

(vi) A statement of how often the chimney and chimney connector should be inspected and that it should be cleaned when necessary.

(vii) Information explaining that the appliance should be installed and used only in accordance with the manufacturer's directions and local building codes.

(viii) A direction to contact local building or fire officials about restrictions and installation inspection requirements.

(ix) A statement that furnishings and other combustible materials should be kept a considerable distance from the appliance.

(x) The types of fuel suitable for use in the appliance.

(xi) The name and address of the manufacturer, importer or private labeler to which the owner can write for a copy of the manufacturer's directions or for additional information, and a sufficient identification of the appliance model so that the appropriate information can be supplied.

(2) No specific wording is required on the written notice, but the information shall be printed in legible English in clear and readily understandable language. Examples of acceptable labels are given in Figs. 1 and 2, Appendix I.

(3) The written notice shall be placed in a location that is conspicuous before the appliance is installed. In addition, the written information required by paragraphs (a)(1)(v), (a)(1)(vi), (a)(1)(ix), and (a)(1)(x) of this section shall be readily visible during normal use of the appliance. A label on the back of the stove would not be considered "readily visible" during normal use if the stove is suitable for installation with its back within a few feet of the wall. Locations within compartments or behind doors or panels may be readily visible during normal use if the location is readily visible when the door or panel is opened or removed and the door or panel must be opened or removed, or the compartments used, as part of the normal operating procedures for the appliance. An example of a notice format where the information required to be readily visible during normal use is separated from the remainder of the notice is given in Fig. 1, Appendix I. The Commission recommends the use of this 2 label format in order to provide more consumer awareness of the operation and maintenance information after the appliance is installed, since this information would be on a simpler label that would not have installation information competing for the consumer's attention.

(4) The written notice shall be provided so that it will remain legible

[2] Appropriate distances are to be determined by the manufacturer. The Commission expects that test procedures utilized by a nationally recognized testing organization would be suitable for determining appropriate distances.

for the maximum expected useful life of the appliance in normal operation.

(b) *Directions.* All appliances covered by this rule shall be accompanied by directions that include the following technical and performance information:

(1) The following notice shall be placed on the first page of the document(s) containing the directions and at the beginning of the directions:

SAFETY NOTICE: IF THIS ——— IS NOT PROPERLY INSTALLED, A HOUSE FIRE MAY RESULT. FOR YOUR SAFETY, FOLLOW THE INSTALLATION DIRECTIONS. CONTACT LOCAL BUILDING OR FIRE OFFICIALS ABOUT RESTRICTIONS AND INSTALLATION INSPECTION REQUIREMENTS IN YOUR AREA.

This statement shall be conspicuous and in type that is at least as large as the largest type used on the remainder of the page, with the exception of the logo and any identification of the manufacturer, brand, model, and similar designations. At the manufacturer's option, other information may be added to this notice.

(2) Step by step installation directions shall be provided, including all necessary information regarding parts and materials. This information shall include an explanation of the consequences which could result from failure to install the appliance properly. These directions shall include a direction to refer to the chimney and chimney connector manufacturers' instructions and local building codes for installation through combustible walls or ceilings.

(3) These directions shall also include a clearly identified section containing complete use directions, including what types of fuel(s) can be used and how to fire the unit to avoid fire hazards, and a clearly identified section containing complete maintenance directions, including how and when to clean the chimney and chimney connector. A statement that flammable liquids should not be used with the appliance shall also be included where applicable. These sections shall contain a description of the consequences that could result from failure to use or maintain the appliance properly.

(4) The directions required by paragraphs (b)(2) and (b)(3) of this section shall include all the information required by paragraph (a)(1) of this section and shall be in legible English in readily understandable language. A recommended outline for the directions is given in Appendix II.

(c) *Catalogs and point of sale literature.* Literature for the appliance that is intended to induce an immediate order or sale (such as catalogs and point of sale literature) and that is provided by the manufacturer, shall legibly and conspicuously include the information required by paragraph (a)(1)(viii) of this section and shall state the appropriate minimum clearances, to avoid the occurrence of fire, from the back and sides of the appliance to walls.

Note.—General advertising would not be subject to this requirement.

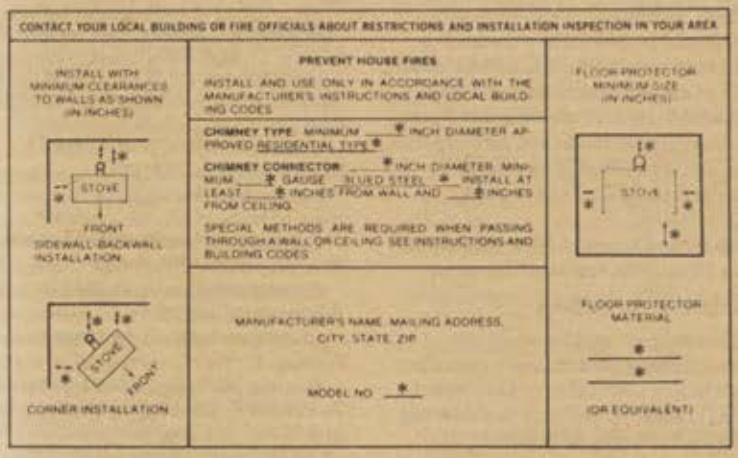
Appendix I.—Recommended Format and Wording for Written Notice

The following are examples of formats and suggested wording for the written notice required by § 1406.4(a). Information to be supplied by the manufacturer is indicated by underlined blank spaces or by asterisks. The Commission recommends the "two label" format shown in Fig. 1.

BILLING CODE 6355-01-M

Fig.1 - Example of how written notice requirements are satisfied with two labels. Label (A) is located so that it is conspicuous before installation. Label (B) is located so that it is readily visible during normal use. Insert appropriate information or numbers at "*". Words or diagrams should be changed to suit particular appliance.

(A)



(B)

Fig. 2 - Example of how written notice requirements are satisfied by a single label that is readily visible during normal use of the appliance and conspicuous before installation. Insert appropriate information or numbers at "*". Words or diagrams should be changed to suit particular appliance.

BILLING CODE 6355-01-C

Appendix II.—Recommended Outline for Directions

The following is a recommended outline for the directions required by § 1406.4(b). This outline is a guide and should not be considered as including all of the information that may be necessary for the proper installation, use, and maintenance of the appliance since the necessary information may vary from product to product.

"HOW TO INSTALL, USE, AND MAINTAIN YOUR ———"

I. Safety Precautions

A. The Safety Notice required by this rule.

• "SAFETY NOTICE: IF THIS ——— IS NOT PROPERLY INSTALLED, A HOUSE FIRE MAY RESULT. FOR YOUR SAFETY, FOLLOW THE INSTALLATION DIRECTIONS. CONTACT LOCAL BUILDING OFFICIALS ABOUT RESTRICTIONS AND INSTALLATION INSPECTION REQUIREMENTS IN YOUR AREA."

B. Statements of other important safety messages, including:

• "Creosote may build up in the chimney connector and chimney and cause a house fire. Inspect the chimney connector and chimney at least twice monthly and clean if necessary."

• "Overfiring the appliance may cause a house fire. If a unit or chimney connector glows, you are overfiring."

• "Never use gasoline or other flammable liquids to start or 'freshen up' a fire."

• "Dispose of ashes in a metal container."

II. Installation Instructions

A. The parts and materials required, including:

• The size and type of chimney to which the appliance is to be connected.

• The size and thickness or gage of metal of the chimney connector.

• The thimble or type of connection through a combustible wall or ceiling.

B. The step-by-step directions for installing the appliance and its accessories, chimney connector, and chimney. The directions would include:

• clearances from the appliance and chimney connector to combustibles,

• methods to safely join the chimney connector to the chimney and how to pass these parts through a combustible wall or to pass the chimney through a ceiling.

• the joining of two or more parts to constitute a safe assembly such as attaching and securing the chimney connector to the appliance and to each adjoining section, and,

• where required, the parts or materials to be used for the floor protector (hearth). The minimum areas to be covered and their relation to the appliance should be stated.

III. Use Instructions

A. Recommendations about building and maintaining a fire, warnings against overfiring, and condition(s) that signal(s) overfiring.

B. Caution against the use and storage of flammable liquids, as follows: "Do not use gasoline, gasoline-type lantern fuel, kerosene, charcoal lighter fluid, or similar liquids to start or 'freshen up' a fire in this appliance. Keep these flammable liquids well away from this appliance while it is in use."

C. Explanation about the use or nonuse of grates, irons and or other methods of supporting the fuel.

D. How to use manual or thermostatic controls.

E. Explanation about the use of any electrical assemblies including care and routing of power supply cord.

F. Caution about disposing of ashes, as follows:

"Disposal of Ashes

Ashes should be placed in a metal container with a tight fitting lid. The closed container of ashes should be placed on a noncombustible floor or on the ground, away from all combustible materials, pending final disposal. The ashes should be retained in the closed container until all cinders have thoroughly cooled."

G. Keep furnishings and other combustible materials away from appliance.

IV. Maintenance Instructions

A. How to inspect and maintain the appliance, chimney, and chimney connector.

B. Explanation about the formation and removal of creosote buildup in the chimney connector and chimney as follows:

"Creosote Formation and Need for Removal"

When wood is burned slowly, it produces tar and other vapors, which combine with moisture to form creosote. Creosote vapors condense in the relatively cool chimney flue, and creosote residue accumulates on the flue lining. When ignited, this creosote make an extremely hot fire.

The chimney connector and chimney should be inspected at least twice monthly during the heating season to determine if creosote buildup has occurred.

If creosote has accumulated, it should be removed to reduce the chance of a chimney fire."

C. Explain how to remove creosote.

V. References

A. The name and address of the manufacturer or private labeler from which the owner can obtain additional information if needed. Include other sources of information as appropriate.

B. The manufacturer's or private labeler's catalog designations, model numbers or the equivalent for the appliance and related parts.

§ 1406.5 [Reserved]

Dated: May 9, 1983.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

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Memo, Office of Program Management, public meeting, 12/1/80.

Transcript of Public Meeting on Coal and Wood Burning Stoves Proposal, 12/2/80.

Correspondence, R. A. Minards, Jr., Senate Office Building, with material from telephone survey of safety and building codes, 12/11/80.

Memo, Office of the General Counsel, request for extension of comment period, 12/22/80.

Memo, Office of the Secretary, additional request for extension of comment period, 12/23/80.

Memo of telephone call, W. J. Thompson, Montgomery Ward, relating to installation of stoves, 12/23/80.

SBCCI, Compliance Report Listing, Oct./Dec. 1980.

Memo of telephone call, G. Timdira, Jackes Evans Co., relating to concerns with label, 1/5/81.

Memo, S. M. Statler, with attached correspondence, D. M. Fergusson, Nationwide Insurance, related to language on hot ash disposal, 1/7/81.

Minutes of Commission meeting of 1/14/81, Ballot vote to extend comment period read into record.

Federal Register, 46 FR 6016, 1/21/81, Extension of Comment Period on Proposed Rule.

Memo of telephone call, B. Holmes, R. F. Geisser and Associates, relating to lab testing, 1/26/81.

BOCA, Research Report listing, Jan. 1981.

Building Standards, Vol. L, No. 1, Part II ICBO, Jan./Feb. 1981, Research Committee Reports.

Correspondence, P. R. Quinn-McNiel, PFS Corporation, re: inspection and certification process, 3/5/81.

Correspondence, G. L. Weinhagen, Building Officials & Code Administrators International, Inc., concerning evaluation service, 3/5/81.

Correspondence, C. Keithley, Wood Heating Alliance, sale estimates, 3/6/81.

Log of Meeting, UL comments on proposed rule, 3/6/81.

Memo, A. Pavlich and S. Meadows, Consumer Opinions on Coal and Wood Burning Stove Labeling, 3/20/81.

Memo of telephone call, D. Fergusson, Nationwide Insurance, communication of information, 3/24/81.

Memo of telephone call, S. Peterson, National Association of Independent Insurers, Position on labeling and testing, 3/24/81.

Correspondence, UL Extension of Effective Dates for Requirements of the Standard For Fireplace Stoves, UL 737, 4/1/81.

CPSC Fact Sheet No. 92, Wood and Coal Burning Heating Stoves, Revised 5/81.

Correspondence, L. Dosedlo, UL, Proposed Revisions to Marking Requirements in Standards for Solid Fuel Room Heaters, UL 1482, and Fireplace Stoves, UL 737, 5/20/81.

Memo of telephone call, N. Randall, Senator Tsongas' office, explaining activities, 6/2/81.

Comments received on proposed rule:

Comment	Date	Correspondent
CC9-80-1	10-31-80	Miami Township, Miamisburg, Ohio.
CC9-80-2	11-3-80	Dr. and Mrs. R. T. Reed, New Carlisle, Ohio.
CC9-80-3	11-25-80	Centre Region Code Enforcement, State College, Pa.
CC9-80-4	11-26-80	August West Chimney Sweep, Richison Ind., Inc., Kettering, Ohio.
CC9-80-5	11-26-80	Nancy Kirk, Upper Darby, Pa.
CC9-80-7	11-26-80	Mrs. Doris Genther, Pennsauken, N.J.
CC9-80-8	11-26-80	Mrs. A. L. Cramer, Kettering, Ohio.
CC9-80-9	11-26-80	Anne Burner, Dayton, Ohio.
CC9-80-10	11-26-80	Gregory S. Rhoads, Lewisburg, Ohio.
CC9-80-11	11-26-80	Mr. William M. Fischer, Beaverwalk, Ohio.
CC9-80-12	11-26-80	Mrs. Lloyd A. Ramsey, Perkasie, Pa.
CC9-80-13	11-25-80	City of Bedford, Bedford, Va.
CC9-80-14	12-2-80	Vermont Castings, Inc., Randolph, Vermont.
CC9-80-15	12-5-80	J. Sargeant Comm. College, Ashland, Va.
CC9-80-16	12-8-80	Virginia Cooperative Extension Service, Blacksburg, Va.
CC9-80-17	12-15-80	Main Line Stove, Bala Cynwyd, Pa.
CC9-80-18	12-18-80	State of New Mexico, Santa Fe, New Mexico, Energy and Minerals Dept.
CC9-80-19	12-17-80	Charles H. Kelley, Bernice, La.
CC9-80-20	12-17-80	Bear River Community Action Agency, Logan, Utah.
CC9-80-21	12-17-80	New River Community Action, Inc., Christiansburg, Va.
CC9-80-22	12-17-80	North American Industries, Inc., Walla Walla, Washington.
CC9-80-23	12-23-80	Aadselgrib Advertising Co., Portland, Oreg.
CC9-80-24	12-23-80	The Virginia Division of Forestry, Charlottesville, Va.
CC9-80-25	12-23-80	Monticello Area Community Action Agency Community Programs, Charlottesville, Va.

Comment	Date	Correspondent
CC9-80-26	12-23-80	Northeast Missouri Community Action Agency, Kirksville, Missouri.
CCo9-80-27	12-29-80	Consumers Union, Mount Vernon, N.Y.
CC9-80-28	12-29-80	Commonwealth of Pa., Dept. of Agriculture, Harrisburg, Pa.
CC9-80-29	12-30-80	Arrowhead Economic Opportunity Agency, Virginia, Minn.
CC9-80-30	12-30-80	Gerald L. Griswold, Scappoose, Oreg.
CC9-80-31	12-30-80	West Virginia University, Div. of Agriculture, Forestry and Community Development, Morgantown, West Virgina.
CC9-80-32	12-30-80	Old Country Stoves, Bend, Oreg.
CC9-80-33	1-8-81	Haynes Equipment Corp., Unionville, Conn.
CC9-80-34	12-30-80	David W. Day, Portland, Oreg.
CC9-80-35	12-30-80	David Bruce, Juneau, Alas.
CC9-80-36	12-30-80	West Central Minn., Communities Action, Inc., Elbow Lake, Minn.
CC9-80-37	12-30-80	Anchor Tools & Woodstoves, Inc., Portland, Oreg.
CC9-80-38	12-30-80	The Delmar Co., Charlotte, N.C.
CC9-80-39	12-31-80	Larry Miller, Macon, Miss.
CC9-80-40	12-31-80	Locke Stove Co., Kansas City, Missouri.
CC9-80-41	1-2-81	Underwriters Laboratories, Inc., Northbrook, Ill.
CC9-80-42	1-2-81	Wood Heating Alliance, Washington, D.C.
CC9-80-43	1-2-81	Community Action Program, Belknap-Merrimack Counties, Inc., Concord, N.H.
CC9-80-44	1-5-81	Washington Stove Works, Everett, Washington.
CC9-80-45	1-5-81	The City of Oregon, Fire Marshal Fire Prevention Div., Portland, Oreg.
CC9-80-46	1-6-81	Corning Glass Works, Corning, N.Y.
CC9-80-47	1-7-81	Commonwealth of Virginia, County of Prince William, Manassas, Va.
CC9-80-48	1-7-81	Gulf Coast Community Services Association, Houston, Tex.
CC9-80-49	1-7-81	Jody James Eckan, Ottawa, Kans.
CC9-80-50	1-7-81	Dept. of Energy, Salem, Oreg.
CC9-80-51	1-7-81	Atlanta Stove Works, Inc. and d/b/a Birmingham Stove & Range Co., Atlanta, Ga.
CC9-80-52	1-6-81	Gary Cassill & Assoc., Inc., Sumner, Wash.
CC9-80-53	1-8-81	International Conference of Building Officials, Whittier, Calif.
CC9-80-54	1-8-81	Irons in the Fire, Portland, Oreg.
CC9-80-55	1-8-81	Economic Opportunity Corp., Ithaca, N.Y.
CC9-80-56	1-8-81	North County Stove Works, Helena, Mont.
CC9-80-57	1-13-81	Nationwide Insurance, Columbus, Ohio.
CC9-80-58	1-21-81	The Woodburners, Applegate, Oreg.
CC9-80-59	1-21-81	Fireplace Distributors of Idaho, Oakley, Idaho
CC9-80-60	1-29-81	B & B Stoves, Inc., Elkton, Md.
CC9-80-61	2-2-81	Nelson & Small, Inc., Manchester, New Hampshire.
CC9-80-62	2-2-81	J. C. Penney Co., Inc., New York, N.Y.
CC9-80-63	2-2-81	National Retail Merchants Association, New York, N.Y.
CC9-80-64	2-2-81	Energy Alternatives, Inc., Wood Energy Association, Tualitin, Oreg.
CC9-80-65	2-4-81	American Retail Federation, Washington, D.C.
CC9-80-66	2-4-81	Martin Industries, Florence, Ala.
CC9-80-67	2-4-81	F. A. Gardner Electric, Albuquerque, N.M.
CC9-80-42A	2-10-81	Wood Heating Alliance, Washington, D.C.
CC9-80-44A	2-6-81	Washington Stove Works, Everett, Wash.
CC9-80-68	2-9-81	National Assoc. of Independent Insurers, Des Plaines, Ill.
CC9-80-69	2-9-81	W. J. Thompson, Deerfield, Ill.
CC9-80-70	2-11-81	Wood'n Heat, Clear Lake, Iowa.
CC9-80-71(1)	2-13-81	Mrs. L. F. McDonald, Suwannee, Fla.
CC9-80-72(L)	2-17-81	Apache Stove, G & G Stove Distributors, Inc., Marshville, N.C.
CC9-80-73(L)	2-13-81	Tennessee Valley Authority, Chattanooga, Tenn.
CC9-80-74(L)	2-19-81	Griffin Furniture & Appliance, Inc., Marshville, N.C.
CC9-80-75(1)	2-20-81	Rick Graham, Middle, Id.
CC9-80-76(L)	4-15-81	Arnold Greene Testing Laboratories, Inc., Natick, Mass.
CC9-80-42B(L)	3-4-81	Wood Heating Alliance, Washington, D.C.

Briefing package, Labeling Rule for Coal and Wood Burning Appliances—Final Rule, J. F. Hoebel and S. Morrow, 6/9/81

Tab A—Summary of Issues Raised by Commenters

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- B-1—Final Rule
- B-2—Notice of Extension

Tab C—Issue: Changes Suggested to Rule
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- C-2—Frequency of Inspection for Creosote
- C-3—Type of Chimney and Chimney Connector
- C-4—Overfiring Information
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- C-7—Required Safety Notice in Manual
- C-8—Type of Fuel and Kind of Wood
- C-9—Data About Fires Involving Type of Fuel and Disposal of Ashes
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Tab H—Issue: Necessity for Rule
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- I-2—Effect of Rule on Local Codes

Tab J—Issue: Inclusion of Test Method in Final Rule
- J-1—Technical Discussion for Inclusion of Test Method
- J-2—Compliance and Enforcement Discussion for Inclusion of Test Method

Memo, J. F. Hoebel and S. Morrow, Proposed Coal and Wood-Burning Stove Labeling Rule: Additional Information, transmitting proposed changes to UL Standards 1482 and 737, 6/23/81

Attachment—Report of Meeting of Underwriters Laboratories Inc. Industry Advisory Conference for Solid-Fuel Burning Appliances and Chimney Systems; Proposed Revision of The Standards Enumerated in Appendix I, and Proposed Effective Date, 6/18/81

Memo, S. Morrow, Coal and Wood-Burning Stove Labeling Rule: Additional Information About Fire Loss, transmitting property losses in 1978 and 1979, 7/6/81.

Minutes of Commission Meeting, 7/9/81, deferring action on final rule pending evaluation of voluntary efforts.

Contract Report, Use of Heating Systems and Appliances and Energy Conservation Devices in the Home, A. D. Little, Inc., 7/81

UL Request for Comments on the Proposed Fifth Edition of the Standard for Fireplace Stoves, UL 737, and Proposed Effective Date, 8/12/81

UL Adopted Requirements for the First Edition of the Standard for Room Heaters, Solid Fuel Type, UL 1482, 8/20/81

UL Adopted Requirements for the Fourth Edition of Standard for Fireplace Stoves, UL 737, 8/20/81

UL Revised Marking Requirement in the Standard for Fireplace Stoves, UL 737, and Standard for Room Heaters, Solid Fuel Type, UL 1482, 11/13/81

Memo, B. Harwood, National Projections of Losses from Residential Fires Involving Heating Equipment (1979), 11/30/81

International Conference of Building Officials Research Report No. 3699, Fireplaces, 12/81

Request for OMB Review, Survey of Voluntary Labeling, 12/4/81

Briefing package, Fire Hazards Associated with Fireplaces, Chimneys, and Accessories—Final Report, S. Morrow, 12/11/81

Tab A—Fires Involving Fireplaces, Chimneys, and Related Appliances, B. Harwood and D. Kale, 9/81

Tab B—Memo, J. Clones, The Use of Solid Fuel Burning Heating Systems and Appliances in the Home, 9/17/81

Tab C—E. Perry, Solid Fuel Burning Appliances, 9/81

Tab D—Rhode Island Consumer Information Project

Tab E—National Chimney Sweep Guild Promotion Kit

Tab F—Memo, P. Helms, Fire Incident Reports for State of Rhode Island (excluding Providence) from 1/1/81 to 5/31/81, 8/15/81

Memo, J. F. Hoebel, Solid Fuel Burning Heating Equipment, 12/17/81 with attachments

—Memo, B. Harwood, National Projections of 1980 Fire Losses Involving Heating Equipment, 12/10/81

—Memo, R. Kurtz, Use of Solid Fuel Burning Heating Systems and Appliances in the Home, 12/15/81

Speech, N. H. Steorts, Coal and Wood Burning Stoves, 1/13/82

Press Release, CPSC, CPSC Chairman Warns of Coal and Wood Burning Stove Hazards, 1/11/82

Memo, J. F. Hoebel, participation in voluntary standard activity, 2/3/82

Memo, R. Kurtz, Commissioner Statler's Request for Information on the Relative Risk of Heating Systems and Appliances, 2/11/82

Memo, J. F. Hoebel, Wood and Coal Burning Heating Equipment, team meeting, 2/16/82

Memo, Office of General Counsel, draft **Federal Register** notice of deferral of consideration of labeling rule, 2/17/82

UL 737—Fireplace Stoves Fifth Edition, Underwriters Laboratories, Inc. 3/29/82

Memo, J. F. Hoebel, Wood and Coal Burning Heating Equipment, team meeting, 3/29/82

State of Maine, Act, regulating materials, construction and installation of chimneys, fireplaces, vents and solid fuel burning appliances, 4/1/82

Federal Register, 4/6/82, deferral of consideration of final rule.

Correspondence, M. Jorgenson and L. Dosedlo, UL, CPSC Report Dated 9/1981, Covering Investigation of Fires Involving Fireplaces, Chimneys, and Related Appliances, 4/15/82

Memo, J. F. Hoebel, National Estimates of Heating Equipment Fires for 1981, 10/28/82

Report, T. Karels, U.S. Imports of Heating Apparatus, 11/82

Speech, J. F. Hoebel to NFPA, Residential Auxiliary, Heating Equipment Fires: CPSC Projects, 11/15/82

Briefing package, Labeling Rule for Wood and Coal Burning Appliances, J. F. Hoebel, 11/26/82

Tab A—**Federal Register**, 11/17/80, Coal and Wood Burning Appliance Proposed Rule

Tab B—Draft Coal and Wood Burning Appliance Final Rule

Tab C—Report on the Coal and Woodburning Stove Survey, E. Gomilla and E. Kessler, 7/14/82

Tab D—Memo, E. Perry, Provisions for Labeling and Instruction Manuals in the UL Standards for Fireplace Stoves and Solid Fuel Room Heaters, 5/25/82

Tab E—Memo, E. Perry, Labeling and Instruction Manual Requirements for Wood and Coal Burning Fireplace Stoves and Room Heaters, 11/8/82

Tab F—Memo, W. Mathers, Wood Heating Applicances: Comparison of UL 1482 Installation and Labeling Requirements to CPSC's Proposed Requirements, 5/24/82

Tab G—Memo, W. Mathers, Wood Stove Chimney Connector Pipe/Owner's Installation Manual, 8/11/82

Tab H—Memo, D. Ray, Wood Stove Labeling Rule Briefing Package, Economic Analysis, 11/24/82

Tab I—Examples of Existing Labels

Memo, B. Harwood, Chimney Fires in Wood Stoves, 11/30/82

Log of Meeting, 12/2/82, Wood Heating Alliance, Comments on possible voluntary labeling

Record of Commission Briefing, 12/9/82

Correspondence, C. Keithley, Wood Heating Alliance, willingness to facilitate a voluntary program, 12/28/83

Correspondence, J. Nosse, International Conference of Building Officials, Comments on 11/24/82 briefing package, 1/4/83

Correspondence, E. Morgan to J. E. Evered, Department of Energy, Concerning DOE wood stove data, 1/10/83

Record of meeting, Chairman Steorts with industry, 1/11/83, Concerning current labeling practices

Correspondence, C. Keithley, Wood Heating Alliance, Contacts with certifying laboratories, 1/14/83

Federal Register, 45 FR 1954, 1/17/83, Use of Materials Bulletin No. 84–HUD Building Products Certification Program for Solid Fuel Type Room Heaters and Fireplace Stoves

Record of Commission meeting, 1/19/83

UL 1482—Solid Fuel Type Room Heaters, Second Edition, Underwriters Laboratories, Inc., 1/24/83

Memo, H. Ewell, 1/24/83 concerning HUD Use of Materials Bulletin No. 84.

Correspondence, C. Keithley, Wood Heating Alliance, invitation to participate in seminar on compliance with new CPSC labeling rule, 1/25/83

Correspondence, D. Stimson, Vermont Castings Inc., economic effects of rule, 2/7/83

UL 103—Factory Built Chimneys, Residential Type and Building Heating Appliances; Sixth Edition, Underwriters Laboratories, Inc., 333 Pfingsten Road, Northbrook, Illinois 60062, 2/9/83.

Correspondence, J. Hoebel to J. Nosse, International Conference of Building Officials, response to 1/4/83 correspondence, 2/15/83

Log of meeting, 2/18/83, Wood Heating Alliance, concerning effective date and furnishings provisions of rule.

Correspondence, M. Herschel, Wood Heating Alliance, concerning effective date, 2/22/83

Report on Woodburning Heating Equipment Project, J. F. Hoebel, 2/24/83

Tab A—Fires in Woodburning Appliances, D. Kale, 12/82

Tab B—Memo, T.R. Karels, Year End Report—Woodburning Heating Equipment, 12/21/82

Memo, D. Ray, Comparative Risk Table for Home Heating Appliances, 12/29/82

Tab C—Memo, W. A. Mathers, Wood Stove Year End Report, 12/23/82

Tab D—Memo, E. Perry, Wood and Coal Burning Heating Equipment, 1/10/83

Tab E—Memo, E. F. Johnson, Wood Heating Appliance Information Report, 1/19/83

Correspondence, R. Robinson, Grand Haven Fire Department, supporting labeling, 2/10/83

Correspondence, J. Nosse, International Conference of Building Officials, adoption of UL Standards, 2/18/83

National Voluntary Laboratory Accreditation Program Stove LAP Handbook, 2/83

NVLAP Proficiency Testing, Stove LAP, Round 1, 2/83

Log of meeting, 2/28/83, Underwriters Laboratories, concerning furnishings and visibility provisions of rule.

Memo, T. Karels and D. Ray, Wood and Coal Stove Labeling Rule, 3/4/83.

Correspondence, E. Morgan to M. Herschel, responding to 2/22/83 correspondence, 3/8/83

Memo, E. Perry, Requirements for Coal and Wood Burning Appliance Labeling and Instructions, 3/9/83

Log of Meeting, 3/11–15/83, Wood Heating Alliance Annual Trade Show and Seminars

Speech, N. H. Steorts, "Label We Must", 3/13/83

Briefing package, Labeling Rule for Wood and Coal Burning Appliances, J. F. Hoebel, 3/25/83

Tab A—Draft **Federal Register** notice to issue a final rule

Tab B—Memo. T. R. Karels and D. R. Ray, Wood and Coal Stove Labeling Rule, 3/4/83

Tab C—48 FR 1954; Use of Materials Bulletin No. 84—HUD Building Products Certification Program for Solid Fuel Type Room Heaters and Fireplace Stoves, 1/17/83

Memo, W. R. Hobby, Wood/Coal Stove Labeling Rule: Installation and Maintenance Requirements, 3/25/83

Letter, C. Keithly, Executive Director of the Wood Heating Alliance, to N. H. Steorts, concerning "considerably away from" language, 4/29/83

Memo, H. Ewell, Changes to the Wood and Coal Burning Stoves **Federal Register** Notice, 4/29/83

Woodstove incidents from September 1981 Special Study:[1]

790303HIA0605	801205DEN5035
790303HIA0606	801205PHL3003
790419HIA0102	801205PHL3006
790419HIA0104	801205PHL3010
791113HIA0131	801213BOS0110
791116HIA0101	801223BOS0119
791116HIA0106	801224HIA2022
791120HIA0111	801229HIA3024
791120HIA0112	801231HIA2033
791206HIA0164	810102HIA1047
800110HIA0632	810105HIA2048
800114HIA0603	810106BEP0013
800115BOS5003	810113HIA2083
800116HIA0101	810117SEA0186
800124HIA0625	810121HIA1092
800204HIA0102	810129HIA2105
800206HIA0101	810122BOS0172
800206HIA0102	810203MIN5046
800206HIA0104	810206CEP1046
800211CEP0804	810206SFO5034
800307HIA0101	810210BOS0207
800310HIA0101	810210HIA1123
800312CEP0102	810210HIA1124
800409HIA0102	810210HIA1128
800409HIA0103	810217HIA2139
800415HIA0104	810217SEA0238
800415HIA0105	210219HIA1142
800522HIA0002	810224HIA3150
800522HIA0003	810224HIA3155
800707NYC5031	810303HIA2196
800717CEP0001	810304HIA2206
801001SEA0178	810304HIA2207
801003CEP0011	810309HIA2216
801114BOS0052	810317HIA2226
801114BOS0054	810324DEN5048
801126BOS0086	810409HIA3231
801201SEA0132	810413HIA1207
801205DEN5034	810413HIA3238
	810413HIA3239

[1] Fires Involving Fireplaces, Chimneys, and Related Appliances, B. Harwood and D. Kale, 9/81.

310414HIA3242	810428HIA1229
810415HIA2281	810504HIA3305
810415HIA3255	810504HIA3308
810423HIA2304	810504HIA3307
810424HIA2320	810505HIA1237
810424HIA3289	810505HIA2330
810427HIA1224	810512HIA3334
810427HIA1225	791128CEP0806
810427HIA1226	801123CEP0124
810426HIA1227	810127SFO5065

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BILLING CODE 6355-01-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 12

Emergency Interim Rules; Rules Relating to Reparation Proceedings

AGENCY: Commodity Futures Trading Commission.

ACTION: Promulgation of interim rules and Statement of Interpretation.

SUMMARY: On January 11, 1983, amendments to Section 14 of the Commodity Exchange Act (the "Act") were enacted effective May 11, 1983. Among other things the amendments narrow the class of persons against whom reparations actions may be brought and enable the Commission to adopt rules of procedure to streamline the entire reparations process. Section 14(a) of the Act, as so amended, will permit reparations claims to be filed based on violations of the Act or the Commission's rules committed only by persons who are registered with the Commission. Previously, reparations claims could also be brought based on violations committed by persons who, although not registered under the Act, had engaged in activities requiring them to be registered. Section 14(b) of the Act, as amended, authorizes the Commission to "promulgate such rules, regulations and orders as it deems necessary or appropriate for the efficient and expeditious adminstration of * * * [Section 14 of the Act]."

The Commisson is amending § 12.21 of its Reparation Rules, 17 CFR 12.21, effective May 11, 1983, to bring the rule into conformity with new Section 14(a) of the Act. In so doing, the Commission also is stating its interpretation concerning the class of persons who may be sued in reparations on and after the effective date of the amendment to Section 14(a). The Commission also has determined to amend § 12.1 of the Rules Relating to Reparation Proceedings to make clear that the balance of the reparations rules will continue to apply to proceedings pending on May 11, 1983, or instituted thereafter, until the Commission revises those rules with new rules of procedure promulgated pursuant to new Section 14(b) of the Act. Although the Amendments to Reparation Rules 12.1 and 12.21 become effective on May 11, 1983, the Commission nevertheless invites public comment on these amendments and the matters discussed herein.

DATE: Interim rules are effective on May 11, 1983; comments must be received on or before July 15, 1983.

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

FOR FURTHER INFORMATION CONTACT: Kenneth M. Raisler, Acting General Counsel, or Edward S. Geldermann, Attorney, Office of General Counsel, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581. Telephone: (202) 2254-9880.

SUPPLEMENTARY INFORMATION:

I. Background

Prior to the enactment of the Futures Trading Act of 1982,[1] Section 14(a) of the Commodity Exchange Act provided: "Any person complaining of any violation of any provision of this Act or any rule, regulation, or order thereunder by any person who is registered *or required to be registered* under * * * this Act may, at any time within two years after the cause of action accrues, apply to the Commission * * * [for an award]." (Emphasis added.) Thus, prior to the 1982 amendments, Section 14(a) permitted reparation claims to be filed against registrants as well as persons who, although not registered under the Act, had engaged in activities requiring them to be registered. Recognizing that "unregistered firms and individuals often file in bankruptcy, are distitute, or have disappeared by the time a claim is asserted, resulting in uncollectible reparations awards," and that claims against such persons "delay the entire reparations process," H.R. Rep. No. 565, 97th Cong., 2d Sess. 56 (1982), *see also* S. Rep. No. 384, 97th, Cong., 2d Sess. 48 (1982), Congress, in its amendments to Section 14(a), omitted the phrase "or required to be registered" in order to limit reparations complaints to those concerning violations committed by persons registered under the Act.

Because § 12.21 of the Commission's existing Reparation Rules, 17 CFR 12.21, currently permits reparation claims to be filed for violations committed against both registrants and those "required to be registered," that rule must be revised to conform with amended Section 14(a) of the Act, which becomes effective on May 11, 1983. Accordingly, the Commission has determined to adopt an amendment to § 12.21, which omits any reference to persons "required to be registered" in defining the class of persons against whom reparation claims may be filed.[2]

Section 14(a) of the Commodity Exchange Act, as amended by Section 231 of the Futures Trading Act of 1982, provides:

> Any person complaining of any violation of any provision of this Act, or any rule, regulation, or order issued pursuant to this Act, by any person who is registered under this Act may, at any time within two years after the cause of action accrues, apply to the Commission for an order awarding actual damages proximately caused by such violation.

Although it is clear that on May 11, 1983 claims may be filed in reparations only alleging violations of the Act or Commission's rules committed by registrants, a question has arisen whether the registered status of a person against whom a claim is filed must exist at the time the violation occurs, or at the time when the complaint is filed. The Commission interprets Section 14(a) as creating a cause of action whenever there has been a "violation of any provision of this Act * * * by any person who is registered," causing loss to another person. Accordingly, the critical inquiry will be whether the person against whom the reparation claim is filed was registered at the time of the alleged violation.

In practical terms, as long as a complainant has alleged a violation of the Act, or Commission regulation or order, committed by a person who was registered at the time of the violation, the Commission will regard such person as a "person who is registered" within the meaning of Section 14(a) of the Act. Accordingly, the Commission may exercise its reparations jurisdiction over that person as to any claim filed against him within two years after the cause of action accrues, even though, for example, the alleged violator may have permitted his registration to lapse before the claim is filed.[3]

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[1] Pub. L. No. 97-444, 96 Stat. 2294 (January 11, 1983).

[2] The Commission has also determined to delete from Section 12.21 references to the different classes of commodity professionals who are subject to registration requirements as well as the provisions of law under which they are required to register. This change is consistent with the language of amended Section 14(a) of the Act which no longer contains references to specific categories of registrants.

[3] Conversely, the Commission normally will not exercise its reparations jurisdiction over a person

Under Section 4m of the Act, 7 U.S.C. 6m, certain dealers, processors, brokers, or sellers in cash market transactions in agricultural commodities and non-profit general farm organizations who provide advice on agricultural commodities are exempt from having to register as a commodity trading advisor. Nevertheless Section 4m provides that such persons are subject to proceedings in reparations. Nothing in the 1982 amendments has affected this provision of the Act. Thus, after May 11, 1983, the Commission will continue to hear reparations claims filed against persons who, at the time of the violation, were exempt from registration pursuant to Section 4m of the Act. Section 12.21 has been modified to make this clear.

Finally, Section 14(b) of the Act, as amended, authorizes the Commission to "promulgate such rules, regulations and orders as it deems necessary or appropriate for the effective and expeditious administration of * * * [Section 14]." Section 14(b) continues:

> [n]otwithstanding any other provision of law, such rules, regulations, and orders may prescribe, or otherwise condition, without limitation, the form, filing and service of pleadings or orders, the nature and scope of discovery, counterclaims, motion practice (including the grounds for dismissal of any claim or counterclaim), hearings (including the waiver thereof, which may relate to the amount in controversy), rights of appeal, if any, and all other matters governing proceedings before the Commission under this section.

On February 15, 1983, the Commission published in the **Federal Register** advance notice of proposed rulemaking concerning rules to be promulgated pursuant to Section 14(b). 48 FR 6720. Although the Commission expects to publish notice of proposed rules in the near future, the new rules will not be ready for final adoption on May 11, 1983. Accordingly, the Commission has determined to amend § 12.1 of the Reparation Rules to provide that these rules shall continue to be applicable to reparation proceedings pending on May 11, 1983, or commenced thereafter, until the Commission adopts its new rules.

II. Basis for Emergency Adoption of Interim Regulations

The Administrative Procedure Act, 5 U.S.C. 553, generally provides that a notice of proposed rulemaking must be published in the **Federal Register** and that an opportunity for comment be afforded to the public when an agency proposes new regulations. However, the notice and comment requirements do not apply to interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice. The Commission's interpretation concerning the class of registered persons who may be sued in reparations after the effective date of amended Section 14(a) of the Act, *see* Part I above, even if considered to be a "rule" within the purview of the Administrative Procedure Act, is wholly "interpretative" in nature, and thus, not subject to section 553's notice and comment requirements. Moreover, the Commission's amendments to §§ 12.1 and 12.21 of the Rules Relating to Reparation Proceedings are related solely to agency organization, procedure or practice. Nevertheless, the Commission invites public comment on the amendments and any matters discussed herein. Such comments must be received by the office of the Secretariat by July 15, 1983.

III. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA")[4] requires that agencies, in proposing rules, consider their impact on small businesses. Section 3(a) of the RFA defines the term "rule" to mean "any rule for which the agency publishes a general notice of proposed rulemaking pursuant to section 553(b) of this title * * * for which the agency provides an opportunity for notice and public comment."[5] As the amendments to §§ 12.1 and 12.21 announced in this Release have not been effected pursuant to 5 U.S.C. 553(b), they are not "rules" as defined in the RFA and the analysis or certification specified in that Act do not apply.

List of Subjects in 17 CFR Part 12

Administrative practice and procedure, Commodity exchanges, Commodity futures, Reparations.

PART 12—[AMENDED]

In consideration of the foregoing, and pursuant to sections 2(a)(11) and 8a(5) of the Commodity Exchange Act, as amended, 7 U.S.C. 4a(j) and 12a(5), the Commission hereby amends Chapter 12 of Title 17 of the Code of Federal Regulations by revising §§ 12.1 and 12.21 as follows:

1. Section 12.1 of the Reparation Rules is revised to read as follows:

§ 12.1 Scope and applicability of rules of practice relating to reparation proceedings.

These rules of practice are applicable to reparation proceedings pursuant to section 14 of the Commodity Exchange Act, as amended, 7 U.S.C. 18. The rules in this part shall be construed liberally so as to secure the just, speedy and inexpensive determination of the issues presented with full protection for the rights of all parties to the proceedings envisioned by the Commodity Exchange Act, as amended. These rules shall continue to apply to reparation proceedings pending on May 11, 1983, and to all proceedings commenced thereafter until further rule, regulation or order of the Commission.

2. The introductory paragraph of § 12.21 of the Reparation Rules is revised to read as follows:

§ 12.21 Complaint.

Any person complaining of any violation of any provision of the Act or any rule, regulation, or order thereunder by any person who is registered with the Commission under the Act or who is exempt from registration as a commodity trading advisor by virtue of the second sentence of Section 4m of the Act, may, at any time within two years after the cause of action accrues, apply to the Commission for a reparation award by petitioning the Commission to determine the amount of damage, if any, to which the complainant is entitled as a result of the violation and to issue an order directing the offender to pay that amount to the complainant on or before a date fixed by the order: Provided that no such application shall be considered with respect to claims that arise prior to January 23, 1975.

* * * * *

Issued in Washington, D.C. on May 11, 1983 by the Commission.

Jane K. Stuckey,

Secretary of the Commission.

[FR Doc. 83-13089 Filed 5-13-83; 8:45 am]

BILLLING CODE 6351-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

Federal Old-Age, Survivors, and Disability Insurance Benefits; Lump-Sum Death Payment Changes, Changes in Month Benefits Begin, Termination of Mother's and Father's Benefits When Child Attains Age 16, Change in Benefits to Students

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: These rules implement sections 2202, 2203, 2205 and 2210 of

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who, although not registered at the time when the violation occurred, later does become registered, and is registered at the time a complaint is filed.

[4] Pub. L. No. 96-354, 94 Stat. 1164 (1980), 5 U.S.C. 601 *et seq.*

[5] 5 U.S.C. 601(2).

Pub. L. 97–35. These provisions: (1) Eliminate payment of the lump-sum death payment on the basis of the payment of burial expenses; (2) Change the first month of entitlement for a retired worker under age 65, the spouse, under age 65, of a retired or disabled worker, and certain children to the first month throughout which they each meet the requirements for entitlement; (3) Terminate mother's and father's benefits and wife's and husband's benefits based on child "in-care" when the child becomes 16 years of age; and (4) Pay benefits to students in elementary and secondary schools to age 19, phase out benefits to certain students age 18 or over attending post-secondary schools, and end payment of benefits to all other students age 18 or over attending post-secondary schools after July 1982.

DATES: These rules are effective May 16, 1983, but the statutory changes which the regulations reflect are generally effective on earlier dates.

FOR FURTHER INFORMATION CONTACT: Dave Smith, 3–B–4 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 594–7336.

SUPPLEMENTARY INFORMATION:

Lump-Sum Death Payment Changes

The amendments to the regulations implement section 2202 of Pub. L. 97–35 by changing the manner in which lump-sum death payments are made effective with respect to deaths after August 1981. Under the new provision, such payments are only payable to certain surviving relatives of the deceased. Burial expenses are no longer a factor in determining entitlement to the lump-sum death payment. Where death occurs after August 1981, the lump-sum death payment will be made to the widow or widower of the deceased who was living in the same household as the deceased at the time of death. If no such person survives, payment will be made to the widow or widower who is entitled (or would have been entitled had a timely application been filed) to monthly benefits on the work record of the deceased for the month of death. Persons entitled to divorced spouse's benefits do not qualify. If no such widow or widower survives, the payment will be made to the surviving children who are entitled (or would have been entitled had a timely application been filed) to benefits on the work record of the deceased for the month of death. If no such spouse or child survives the worker, no lump-sum death payment will be made.

Changes in Month Benefits Begin

The amendments to the regulations implement section 2203 of Pub. L. 97–35. The amendments affect the first month of entitlement for a person filing for retirement or spouse's benefits who becomes age 62 after August 1981. The person must be age 62 for a full month or, in the case of a spouse under age 62, must have a child "in-care" throughout a full month.

Thus, an individual born on the first or second day of the month (attainment of age 62 on the last day of the preceding month or the first day of the current month) could be entitled to benefits for the month of his or her 62nd birthday. Birth on any other day of the month would preclude entitlement for the month in which the birthday occurs since the individual would not be age 62 for the entire month. Similarly, a spouse filing to receive benefits on the basis of having an entitled child "in-care" cannot be first entitled for a month unless a child was "in-care" for every day of that first month.

Effective September 1981, a claimant for child's monthly benefits based on the earnings of a living worker can become entitled effective only with the first full month throughout which he or she meets all the requirements. Thus, a child must have the appropriate relationship to the worker, be dependent on the worker, be unmarried, be under age 18 or age 18 or over and a student, or be disabled throughout the entire month to be entitled for that month. There are some exceptions to this provision relating to students, stepchildren, grandchildren, stepgrandchildren, and certain deemed children.

Termination of Certain Benefits When Child Attains Age Sixteen

The amendments to the regulations implement section 2205 of Pub. L. 97–35. Under this provision, entitlement to wife's and husband's benefits based on child "in-care" and to mother's and father's benefits will terminate when the child "in-care" becomes 16 years of age, unless the child is disabled. Under the previous law, these benefits were terminated when the child became age 18, unless the child was disabled. For a person entitled to these benefits for August 1981, there is a grace period which ends when the child becomes age 18, or in September 1983, whichever comes first. For all other persons the provision is effective immediately.

Changes in Benefits to Students

The amendments to the regulations implement section 2210 of Pub. L. 97–35. Under this provision, benefits terminate at age 19 to a child who attends an elementary or secondary school, effective with benefits payable for the month of August 1982. A student who first became entitled to a child's benefit after August 1981 and who was in full-time attendance at a post-secondary school by July 1982 can receive benefits from age 18 through age 21 but only for months before August 1982. A student who was entitled to a child's benefit for August 1981 and was in full-time attendance at a post-secondary school before May 1982 can receive benefits from age 18 through age 21, but those benefits will be gradually reduced and phased out. Under the "phase out" provision, no benefits are payable for May through August beginning in 1982. After August 1981, benefits are figured without regard to changes in the cost-of-living. Benefits for September 1982 through April 1983 will be reduced by 25 percent; benefits for September 1983 through April 1984 will be reduced by 50 percent; benefits for September 1984 through April 1985 will be reduced by 75 percent; and no benefits will be payable for months after April 1985.

We have also made a minor technical change in § 404.346(b) to indicate that a spouse by a deemed marriage may qualify for benefits if the legal spouse loses his or her status as such under State law. The current regulation does not clearly state this provision which is in section 216(h)(1)(B)(i) of the Social Security Act.

Minor technical changes were also made in §§ 404.315(a) and 404.320(b)(2) to correct cross-references.

Comments Received Following Publication of Notice of Proposed Rulemaking

We received eight comments from seven sources. A single response follows the listing of the following five comments.

Comment: Although the parent's benefits stop when the child reaches the age of 16, the parents have a legal responsibility to the minor until the child reaches the age of 18. The Social Security benefits should continue to be paid to the parents until the child reaches the age of 18. Continuation of parent's benefits would enable the parent to continue to fulfill his or her duties as a full-time homemaker.

Comment: The phase out of Social Security benefits to students attending post-secondary schools has a dramatic impact on the number of students applying for financial aid. This is aggravated by the Federal reduction in the amount of funds available to

institutions to award to needy students seeking to develop employable skills.

Comment: The phase out of Social Security benefits to students attending post-secondary institution is the calloused act of an insensitive Federal agency in dealing with the poorest element of our society.

Comment: Many children of disabled and deceased parents have been able to obtain a post-secondary education because they were eligible for student benefits. The Social Security Administration should not terminate these benefits when a child reaches the age of 18. The benefits should remain the same as the former program or at least the Administration should extend child's benefits to full-time (post-secondary) students to age 19 to give students a chance to get a start on their education.

Comment: A commenter objected to the "reduction" of the lump-sum death payment as being unfair.

Response: The regulations objected to by the foregoing comments merely apply provisions mandated by Pub. L. 97–35. The regulations do not grant or deny rights or do not impose obligations which do not already exist in the statute; hence, they may not be changed without legislation.

Comment: Three commenters reflected a misunderstanding as to the circumstances under which adult children may receive the lump-sum death payment under the new provisions.

Response: Under the statute, surviving children may receive the lump-sum death payment only if no widow or widower qualifies for the payment *and* only if such surviving children were eligible for benefits, (as a child, disabled adult child, or student) on the work record of the deceased worker for the month of his or her death.

Regulatory Procedures

Economic Impact: (Executive Order 12291 and Regulatory Flexibility Act)

These regulations merely conform the existing rules to the changes legislated by Pub. L. 97–35. Although the law created substantial changes in the structure of certain benefits in the Old-Age, Survivors and Disability Insurance program, the resulting impact was solely the result of legislation and is in place and effective regardless of regulatory action on our part. Therefore, these regulations do not "result in" a cost impact of $100 million or more or otherwise trigger the criteria for a major rule established in Executive Order 12291.

Similarly, although these changes may adversely affect some small entities, such as funeral homes and educational institutions, such impact is not the result fo these regulations. Therefore, we certify that promulgation of these regulations will not have a significant economic impact on a substantial number of small entities and a regulatory flexibility analysis as provided in Pub. L. 96–354, The Regulatory Flexibility Act, is not required.

Paperwork Reduction Act—These regulations impose no reporting/recordkeeping requirements requiring OMB clearance.

These amendments are issued under the authority contained in sections 202, 205, 216, and 1102 of the Social Security Act, as amended; Secs. 2202, 2203, 2205 and 2210 of Pub. L. 97–35; 49 Stat. 623, as amended; 53 Stat. 1362, as amended; 49 Stat. 647, as amended; 64 Stat. 510, as amended; 42 U.S.C. 402, 405, 416, and 1302. These amendments are hereby adopted as set forth below.

(Catalog of Federal Domestic Assistance Program No. 13.803 Social Security—Retirement Insurance; 13.805 Social Security—Survivors Insurance)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Death benefits, Disabled, Old-age, Survivors, and Disability Insurance.

Dated: February 23, 1983.

John A. Svahn,

Commissioner of Social Security.

Approved: April 26, 1983.

Margaret M. Heckler,

Secretary of Health and Human Services.

PART 404—FEDERAL OLD-AGE SURVIVORS AND DISABILITY INSURANCE (1950—)

Part 404 of Chapter III of Title 20 of the Code of Federal Regulations is amended as follows:

1. Section 404.311 is revised to read as follows:

§ 404.311 When entitlement to old-age benefits begins and ends.

(a) You are entitled to old-age benefits at age 65 beginning with the first month covered by your application in which you meet all the requirements for entitlement.

(b) You are entitled to old-age benefits if you have attained age 62, but are under age 65, beginning with the first month covered by your application throughout which you meet all the requirements for entitlement.

(c) Your entitlement to benefits ends with the month before the month of your death.

2. Section 404.330 is amended by revising paragraphs (a)(1) and (c) to read as follows:

§ 404.330 Who is entitled to wife's or husband's benefits.

You are entitled to benefits as the wife or husband of an insured person who is entitled to old-age or disability benefits if—

(a) * * *

(1) Your relationship to the insured as a wife or husband has lasted at least 1 year. (You will be considered to meet the one year duration requirement throughout the month in which the first anniversary of the marriage occurs.)

* * * * *

(c) You are age 62 or older throughout a month and you meet all other conditions of entitlement, or you are the insured's wife or husband and have "in your care" (as defined in §§404.348–404.349), throughout a month in which all other conditions of entitlement are met, a child who is entitled to child's benefits on the insured's earnings record and the child is either under age 16 or disabled; and

* * * * *

3. Section 404.331 is amended by revising paragraphs (c) and (d) to read as follows:

§ 404.331 Who is entitled to wife's or husband's benefits as a divorced spouse.

* * * * *

(c) You are not married. (For purposes of meeting this requirement, you will be considered not to be married throughout the month in which the divorce occurred);

(d) You are age 62 or older throughout a month in which all other conditions of entitlement are met; and

* * * * *

4. Section 404.332 is amended by revising paragraphs (a) and (b)(4) and adding paragraph (c) to read as follows:

§ 404.332 When wife's and husband's benefits begin and end.

(a) You are entitled to wife's or husband's benefits beginning with the first month covered by your application throughout which you meet all the other requirements for entitlement under § 404.330 or § 404.331.

(b) * * *

(4) If you are under 62 years old, the child who was in your care becomes age 16 (unless disabled) or is otherwise no longer entitled to child's benefits. (See paragraph (c) of this section if you were entitled to wife's or husband's benefits

for August 1981 on the basis of having a child in care.)

* * * * *

(c) If you were entitled to wife's or husband's benefits for August 1981 on the basis of having a child in care, your entitlement will continue until September 1983, until the child reaches 18 (unless disabled) or is otherwise no longer entitled to child's benefits, or until one of the events described in paragraph (b)(1), (2), (3), (5), (6) or (7) of this section occurs, whichever is earliest.

5. Section 404.339 is amended by revising paragraph (e) to read as follows:

§ 404.339 Who is entitled to mother's or father's benefits.

* * * * *

(e) You have "in your care" the insured's child who is entitled to child's benefits and he or she is under 16 years old or is disabled. Sections 404.348 and 404.349 described when a child is "in your care."

6. Section 404.340 is amended by revising paragraph (e) to read as follows:

§ 404.340 Who is entitled to mother's or father's benefits as a surviving divorced spouse.

* * * * *

(e) You have "in your care" the insured's child who is under age 16 or disabled, is your natural or adopted child, and is entitled to child's benefits on the insured person's record. Sections 404.348 and 404.349 describe when a child is "in your care."

7. Section 404.341 is amended by revising paragraph (b)(2) and adding paragraph (c) to read as follows:

§ 404.341 When mother's and father's benefits begin and end.

* * * * *

(b) * * *

(2) The child "in your care" becomes age 16 and not disabled or is otherwise no longer entitled to child's benefits. (See paragraph (c) of this section if you were entitled to mother's or father's benefits for August 1981.)

* * * * *

(c) If you were entitled to spouse's benefits on the basis of having a child in care, or to mother's or father's benefits for August 1981, your entitlement will continue until September 1983, until the child reaches 18 (unless disabled) or is otherwise no longer entitled to child's benefits, or until one of the events described in paragraph (b)(1), (3), (4) or (5) of this section occurs, whichever is earliest.

8. Section 404.346 is amended by revising paragraph (b) to read as follows:

§ 404.346 Your relationship as wife, husband, widow or widower based upon a deemed valid marriage.

* * * * *

(b) *Entitlement based upon a deemed valid marriage.* To be entitled to benefits as the result of a deemed valid marriage, you and the insured must have been living in the same household (see § 404.347) at the time the insured died or, if the insured is living, at the time you apply for benefits. You may not be entitled to benefits as the result of a deemed valid marriage if at the time you apply, another person is or has been entitled to benefits as the wife, husband, widow, or widower of the insured and this person is a wife, husband, widow, or widower under State law as explained in § 404.345. If this person loses his or her status as a wife, husband, widow or widower under State law you may become entitled to benefits. Also, if after your entitlement, we find that another person is the wife, husband, widow, or widower of the insured under State law as explained in § 404.345, your entitlement will end with the month before the month in which this determination is made.

9. Section 404.348 is amended by revising paragraphs (b), (c), and (d) to read as follows:

§ 404.348 When a child living with you is "in your care."

* * * * *

(b) The child is 16 years old or older and not disabled;

(c) The child is 16 years old or older with a mental disability, but you do not actively supervise his or her activities and you do not make important decisions about his or her needs, either alone or with help from your spouse; or

(d) The child is 16 years old or older with a physical disability, but it is not necessary for you to perform personal services for him or her. Personal services are services such as dressing, feeding, and managing money that the child cannot do alone because of a disability.

10. Section 404.349 is amended by revising the material in paragraph (a)(2) preceding paragraph (a)(2)(i), and paragraphs (a)(3) and (b)(4) to read as follows:

§ 404.349 When a child living apart from you is "in your care."

(a) * * *

(2) The child is under 16 years old, you supervise his or her activities and make important decisions about his or her needs, and one of the following circumstances exist:

* * * * *

(3) The child is 16 years old or older, is mentally disabled, and you supervise his or her activities, make important decisions about his or her needs and help in his or her upbringing and development.

(b) * * *

(4) The child is 16 years old or older, is mentally competent, and either has been living apart from you for 6 months or more or begins living apart from you and is expected to be away for more than 6 months;

* * * * *

11. Section 404.350 is amended by revising paragraph (e) to read as follows:

§ 404.350 Who is entitled to child's benefits.

* * * * *

(e) You are under age 18, you are 18 years old or older and have a disability that began before you became 22 years old, or you are 18 years or older and qualify for benefits as a full-time student as described in § 404.367 or § 404.369.

12. Section 404.351 is amended by revising paragraph (a) to read as follows:

§ 404.351 Who may be reentitled to child's benefits.

* * * * *

(a) The first month in which you qualify as a full-time student. (See §§ 404.367 and 404.369).

* * * * *

13. Section 404.352 is amended by revising paragraphs (a), the introductory text of (b) and (b)(1) to read as follows:

§ 404.352 When child's benefits begin and end.

(a) *When benefits begin.* (1) If the insured is deceased, you are entitled to child's benefits beginning with the first month covered by your application in which you meet all other requirements for entitlement.

(2) If the insured is living, you are entitled to child's benefits beginning with the first month covered by your application:

(i) *Throughout* which you meet all the other requirements for entitlement if your first month of entitlement is September 1981 or later; or

(ii) *In* which you meet all the other requirements for entitlement if your first month of entitlement is before September 1981.

(b) *When benefits end.* Your entitlement to benefits ends with the

month before the month in which one of the following events first occurs:

(1) You become 18 years old, unless you are disabled or a full-time student. If you become 18 years old and you are disabled, you entitlement ends, subject to the exception in paragraph (c) of this section, with the second month following the month in which your disability ends. If you become 18 years old and you qualify as a full-time student who is not disabled, your entitlement ends with the last month you are a full-time student or, if earlier, the month before the month you became age 19 (age 22 in certain situations described in § 404.369). If you become age 19 in a month in which you have not completed the requirements for, or received, a diploma or equivalent certificate from an elementary or secondary school, your entitlement will end with the month in which the quarter or semester in which you are enrolled ends if you are required to enroll for each quarter or semester. If the school you are attending does not have a quarter or semester system which requires reenrollment, your benefits will end with the month you complete the course or, if earlier, the first day of the third month following the month in which you become 19 years old.

* * * * *

§ 404.353 [Amended]

14. In § 404.353, the reference in the last sentence of paragraph (a) is changed from "§ 404.304" to §§ 404.304 and 404.369".

15. Section 404.355 is amended by revising paragraph (c) to read as follows:

§ 404.355 Who is the insured's natural child.

* * * * *

(c) Your mother has not married the insured but the insured is your father and he has either acknowledged in writing that you are his child, been decreed by a court to be your father, or been ordered by a court ot contribute to your support because you are his child. For purposes of determining whether the conditions of entitlement are met *throughout* the first month as stated in § 404.352(a)(2)(i), the written acknowledgment, court decree, or court order will be condsidered to have occurred on the first day of the month in which it actually occurred if you are entitled on the earnings record of a retirement beneficiary.

* * * * *

16. Section 404.357 is revised to read as follows:

§ 404.357 Who is the insured's stepchild.

You may be eligible for benefits as the insured's stepchild if, after you birth, your natural or adopting parent married the insured. The marriage between the insured and your parent must be a valid marriage under State law or a marriage which would be valid except for a "legal impediment" described in § 404.346(a). If the insured is alive when you apply, you must have been his or her stepchild for at least 1 year immediately preceding the day you apply. For purposes of determining whether the conditions of entitlement are met *throughout* the first month as stated in § 404.352(a)(2)(i), you will be considered to meet the one year duration requirement throughout the month in which the anniversary of the marriage occurs. If the insured is not alive when you apply, you must have been his or her stepchild for at least 9 months immediately preceding the day the insured died. This 9-month requirement will not have to be met if the marriage between the insured and your parent lasted less than 9 months under the conditions described in §404.335(a)(2).

17. Section 404.358 is amended by revising paragraph (a) to read as follows:

§ 404.358 Who is the insured's grandchild or stepgrandchild.

(a) *Grandchild and stepgrandchild defined.* You may be eligible for benefits as the insured's grandchild or stepgrandchild if you are the natural child, adopted child, or stepchild of a person who is the insured's child as defined in §§ 404.355–404.357, or § 404.359. Additionally, for you to be eligible as a grandchild or stepgrandchild, your natural or adoptive parents must have been either deceased or under a disability, as defined in § 404.1501(a), at the time your grandparent or stepgrandparent became entitled to old-age or disability benefits or died; or if your grandparent or stepgrandparent had a period of disability that continued until he or she became entitled to benefits or died, at the time the period of disability began. If your parent is deceased, for purposes of determining whether the conditions of entitlement are met *throughout* the first month as stated in § 404.352(a)(2)(i), your parent will be considered to be deceased as of the first day of the month of death.

* * * * *

18. Section 404.366 is amended by revising the heading, revising paragraph (c), and adding paragraph (d) to read as follows:

§ 404.366 "Contributions for support," "one-half support," and "living with" the insured defined—determining first month of entitlement.

* * * * *

(c) *"Living with" the insured.* You are living with the insured if you ordinarily live in the same home with the insured and he or she is exercising, or has the right to exercise, parental control and authority over your activities. You are living with the insured during temporary separations if you and the insured expect to live together in the same place after the separation. Temporary separations may include the insured's absence because of active military service or imprisonment if he or she still exercises parental control and authority. However, you are not considered to be living with the insured if you are in active military service or in prison. If "living with" is used to establish dependency for your eligibility to child's benefits and the date your application is filed is used for establishing the point for determining dependency, you must have been living with the insured throughout the month your application is filed in order to be entitled to benefits for that month.

(d) *Determining first month of entitlement.* In evaluating whether dependency is established under paragraphs (a), (b), or (c) of this section, for purposes of determining whether the conditions of entitlement are met *throughout* the first month as stated in § 404.352(a)(2)(i), we will not use the temporary separation or temporary interruption rules.

19. Section 404.367 is revised to read as follows:

§ 404.367 When you are a "full-time elementary or secondary school student".

Beginning August 1982 you may be eligible for child's benefits if you are a full-time elementary or secondary school student. You are a full-time elementary or secondary school student if you meet all the following conditions:

(a) You attend a school which provides elementary or secondary education, respectively, as determined under the law of the State or other jurisdiction in which it is located;

(b) You are in full-time attendance in a day or evening non-correspondence course and are carrying a subject load which is considered full-time for day students under the institution's standards and practices, with scheduled attendance at the rate of at least 20 hours per week and a course of study which is at least 13 weeks in duration. For purposes of determining whether the conditions of entitlement are met

throughout the first month as stated in § 404.352(a)(2)(i), if you are entitled as a student on the basis of attendance at an elementary or secondary school, you will be considered to be in full-time attendance for a month during any part of which you are in full-time attendance;

(c) You are not being paid while attending the school by an employer who has requested or required that you attend the school; and

(d) You are in grade 12 or below.

20. Section 404.368 is revised to read as follows:

§ 404.368 When you are considered a full-time student during a period of nonattendance.

If you are a full-time student, your eligibility may continue during a period of nonattendance (including part-time attendance) if all the following conditions are met:

(a) The period of nonattendance is 4 consecutive months or less;

(b) You show us that you intend to resume your studies as a full-time student at the end of the period or at the end of the period you are a full-time student; and

(c) The period of nonattendance is not due to your expulsion or suspension from the school.

21. A new § 404.369 is added to read as follows:

§ 404.369 Special rules for entitlement to child's benefits if you are a full-time student for months before August 1982.

(a) *Full-time student for months before August 1982.* You are a full-time student for purposes of benefits for months before August 1982 if:

(1) You are under age 22;

(2) You are attending an educational institution as defined in paragraph (b) of this section;

(3) You are enrolled in noncorrespondence courses and carrying a subject load that is considered full-time for day students under the practices and standards of the educational institution. If you are enrolled in a junior college, college, or university, your course of study must last at least 13 weeks. If you are enrolled in any other educational institution, your course of study must last at least 13 weeks and your scheduled attendance must be at least 20 hours a week. If your full-time attendance either begins or ends in a month, you will be considered a full-time student for that month. You will not be considered a full time student in the month you graduate if you complete your course of study and stop carrying a full-time subject load in a month before the month preceding the month you graduate; and

(4) You are not being paid while attending the educational institution by an employer who has requested or required that you attend the school.

(b) *Educational institution defined.* An educational institution is a school (including a technical, trade, or vocational school), junior college, college, or university that meets any one of the following conditions:

(1) It is operated or directly supported by the United States, by any State or local government, or by a political subdivision of any State or local government;

(2) It is approved by a State agency or subdivision of the State or accredited by a State or nationally recognized accrediting body. A nationally recognized accrediting body is one determined to be such by the U.S. Secretary of Education. A State-recognized accrediting body is one designated or recognized by a State as the proper authority for accrediting schools, colleges, or universities. Approval by a State agency or subdivision includes approval of a school, college, or university as an educational institution or approval of one or more of the courses offered by a school, college or university; or

(3) It is a nonaccredited school, college, or university, but its credits are accepted by at least 3 educational institutions that have been accedited by a State or nationally recognized accrediting body.

(c) *When benefits can be paid after July 1982 based on attendance at a school other than an elementary or secondary school.* If you meet the conditions for entitlement to student benefits for months before August 1982 as explained in paragraphs (a) and (b) of this section, but do not meet the conditions for entitlement beginning in August 1982 (see § 404.367), your benefits will end with July 1982 unless you meet the following requirements:

(1) You have attained age 18;

(2) You are not under a disability;

(3) You were entitled to child's benefits (as a child, student or disabled child) for August 1981; and

(4) You were in full-time attendance as described in paragraph (a)(3) of this section at a post-secondary school for any month before May 1982. (A post-secondary school is any school which meets the definition of an educational institution as defined in paragraph (b) of this section but is not an elementary or secondary school as defined in § 404.367(a).)

(d) *Limitations on payments for months after July 1982.* If you are entitled to child's benefits based on the requirements of paragraphs (a) and (c) of this section, your benefit amount (prior to any reduction due to the family maximum or deduction on account of work) will be subject to the following limitations:

(1) You will receive no benefits for May through August beginning with calendar year 1982;

(2) Your benefit for September 1982 through April 1983 will be 75 percent of the benefit to which you were entitled for August 1981;

(3) Your benefit for September 1983 through April 1984 will be 50 percent of the benefit to which you were entitled for August 1981;

(4) Your benefit for September 1984 through April 1985 will be 25 percent of the benefit to which you were entitled for August 1981;

(5) You will receive no benefit for months after April 1985; and

(6) If your student benefits continue beyond July 1982 but later end for any reason, you may not become reentitled to student benefits.

§ 404.390 [Amended]

22. Section 404.390 is amended by changing the reference in the last sentence from "§ 404.392" to "§§ 404.392 and 404.393".

23. Section 404.391 is amended by revising the heading and introductory language to read as follows:

§ 404.391 Who is entitled to the lump-sum death payment as a widow or widower who was living in the same household.

You are entitled to the lump-sum death payment as a widow or widower who was living in the same household if—

* * * * *

24. Section 404.392 is redesignated as § 404.393, § 404.393 is redesignated as § 404.394, § 404.394 is redesignated as § 404.395, and a new § 404.392 is added to read as follows:

§ 404.392 Who is entitled to the lump-sum death payment when there is no widow or widower who was living in the same household—death occurs after August 1981.

(a) *General.* If the insured individual dies after August 1981 and is not survived by a widow or widower who meets the requirements of § 404.391, the lump-sum death payment shall be paid as follows:

(1) To a person who is entitled (or would have been entitled had a timely application been filed) to widow's or widower's benefits (as described in § 404.335) or mother's or father's benefits (as described in § 404.339) on the work record of the deceased worker for the month of that worker's death; or

(2) If no person described in (1) survives, in equal shares to each person who is entitled (or would have been entitled had a timely application been filed) to child's benefits (as described in § 404.350) on the work record of the deceased worker for the month of that worker's death.

(b) *Application requirement.* A person who meets the requirements of paragraph (a)(1) of this section need not apply to receive the lump-sum death payment if, for the month prior to the death of the insured, that person was entitled to wife's or husband's benefits on the insured's earnings record. Otherwise, an application must be filed within 2 years of the insured's death.

25. The heading and introductory language of § 404.393 as redesignated are changed to read as follows:

§ 404.393 Who is entitled to the lump-sum death payment when there is no widow or widower who was living in the same household—death occurs before September 1, 1981.

If the insured individual dies before September 1, 1981 and is not survived by a widow or widower who meets the requirements of § 404.391, the lump-sum death payment shall be paid as follows:

* * * * *

26. The reference in the first sentence of the text of § 404.394 as redesignated is changed from "§ 404.392" to "§ 404.393".

§ 404.315 [Amended]

27. Section 404.315(a) is amended by changing the reference from "§ 404.116" to "§ 404.130".

§ 404.320 [Amended]

28. Section 404.320(b)(2) is amended by changing the reference from "§ 404.116" to "§ 404.130".

[FR Doc. 83-13053 Filed 5-13-83; 8:45 am]

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20 CFR Part 404

[Reg. No. 4]

Federal Old-Age, Survivors, and Disability Insurance Benefits; Withdrawal of Applications of Deceased Claimants

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: The Social Security Administration is amending its regulations on withdrawal of applications for benefits. The applications affected are those for old-age benefits that would be reduced because of the worker's age. Currently, even if the worker dies before we take action to pay the first of the reduced old-age benefits for which he or she applied, the amount of the widow's or widower's benefits must be limited because the worker was technically entitled to reduced benefits. These regulations will remedy this by permitting the person eligible for widow's or widower's benefits based on the worker's earnings to withdraw the worker's application if the worker died before we certified his or her benefit entitlement to the Treasury Department for payment.

EFFECTIVE DATE: These regulations are effective on May 16, 1983.

FOR FURTHER INFORMATION CONTACT: Lawrence V. Dudar, Legal Assistant, 3-B-4 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 594-6629.

SUPPLEMENTARY INFORMATION:

Background

Our existing regulations permit one person, under certain conditions, to withdraw another person's application for social security benefits but only if the person whose application is being withdrawn is alive at the time the withdrawal request is filed.

This was a reasonalbe requirement until Congress amended the law to require limitation of the amount of widow's or widower's benefits if the worker was ever entitled to old-age benefits that were reduced because of his or her age (under 65). Since then there have been instances in which the worker died after applying for reduced benefits, and thus the widow's or widower's benefits were limited, even though the worker died before we certified his or her entitlement to the Treasury Department for payment of any benefits whatsoever. This is because the worker is technically "entitled" to benefits as soon as he or she meets all the requirements for benefits which includes filing an application for those benefits.

We do not believe it was the intent of Congress to limit the widow's or widower's benefit amount where the worker met the technical requirements for entitlement, including the filing of an application, but then died before we actually certified his or her entitlement to the Treasury Department for payment.

New Regulations

There is no statutory provision governing withdrawal of an application for benefits. Accordingly, it is left wholly to the discretion of the Secretary of Health and Human Services to establish criteria for a valid withdrawal of an application. Since under the current law and regulation the worker's entitlement to reduced retirement benefits, regardless of whether actually paid to the worker, will permanently limit the benefit amount payable to the widow or widower, these regulations allow the withdrawal of the application after the worker's death, but only if the worker died before we certified the worker's entitlement to the Treasury Department for payment. The withdrawal may be accomplished by the person eligible for widow's or widower's benefits or by someone else on the widow's or widower's behalf, but requires the consent of any other individual who would lose benefits as a result of the withdrawal.

Public Comments

In order to obtain the public's views and comments before proceeding with these amendments, we published a Notice of Proposed Rule Making in the **Federal Register** on September 28, 1982 (47 FR 42587). The public was invited to submit comments pertaining to the proposed amendment within a period of 60 days from the date of publication of the notice. The comment period closed on November 27, 1982. There were no comments received during the comment period.

Regulatory Procedures

Executive Order 12291—These regulations have been reviewed under Executive Order 12291 and do not meet any of the criteria for a major regulation. Therefore, a regulatory impact analysis is not required. We estimate that by the end of the fifth year from the time that this regulation is first implemented, the Federal cost for the payment of the full amount of benefits to survivors affected by the regulation would be approximately $3 million. Any resulting administrative costs would be negligible.

Paperwork Reduction Act—These regulations impose no new reporting/recordkeeping requirements requiring OMB clearance. Our form SSA-521, Request for Withdrawal of Application, has OMB approval under control number 0960-0015.

Regulatory Flexibility Act—We certify that these regulations will not, if promulgated, have a significant economic impact on a substantial number of small entities because they affect only individuals. Therefore, a regulatory flexibility analysis as

provided in Pub. L. 96-354, the Regulatory Flexibility Act, is not required.

Accordingly, this regulation is adopted without change as set forth below.

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Death benefits, Disabled, Old-Age, Survivors and Disability Insurance.

(Secs. 202(j), 205 and 1102 of the Social Security Act, as amended (49 Stat. 623, as amended; 53 Stat. 1362, as amended; 49 Stat. 647, as amended; 42 U.S.C. 402(j), 405, and 1302))

(Catalog of Federal Domestic Assistance Program Nos. 13.802, Social Security Disability Insurance; 13.803, Social Security Retirement Insurance; 13.805 Social Security Survivors Insurance)

Dated: March 21, 1983.

John A. Svahn,

Commissioner of Social Security.

Approved: April 26, 1983.

Margaret M. Heckler,

Secretary of Health and Human Services.

Part 404 of Title 20 of the Code of Federal Regulations is amended as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950-)

In § 404.640, paragraph (c) is redesignated as paragraph (d), and a new paragraph (c) is added, to read as follows:

§ 404.640 Withdrawal of an application

* * * * *

(c) *Request for withdrawal filed after the claimant's death.* An application may be withdrawn after the claimant's death, regardless of whether we have made a determination on it, if—

(1) The claimant's application was for old-age benefits that would be reduced because of his or her age;

(2) The claimant died before we certified his or her benefit entitlement to the Treasury Department for payment;

(3) A written request for withdrawal is filed at a place described in § 404.614 by or for the person eligible for widow's or widower's benefits based on the claimant's earnings; and

(4) The conditions in paragraphs (b)(2) and (3) of this section are met.

* * * * *

[FR Doc. 83-13052 Filed 5-13-83; 8:45 am]

BILLING CODE 4190-11-M

20 CFR Parts 404 and 416

[Regulations No. 4, 16]

Disability and Blindness; Determination of Certain Impairment-Related Work Expenses for Substantial Gainful Activity Purposes and for Purposes of Determining Countable Earned Income

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: These rules implement section 302 of Pub. L. 96-265 which concerns certain impairment-related work expenses incurred on or after December 1, 1980, by disabled persons applying for or receiving benefits under the disability insurance program and the supplemental security income (SSI) program. Under these programs, a person who is able to do substantial gainful activity (SGA) is not considered disabled. In determining whether a person has done SGA we consider that person's services and earnings. In determining the amount of earnings for this purpose, regulations in effect for periods prior to December 1980 provide that we deduct the person's impairment-related expenses only if they are incurred solely because of his or her work. These regulations provide that the cost to the individual of impairment-related items and services which the individual needs in order to work, where the expenses were incurred on or after December 1, 1980, will be deducted from earnings even though the items and services also help that individual carry out normal functions of daily living. For the purpose of determining a person's eligibility and benefit amount for SSI, there is an exclusion from income of the first $20 of any income received in a month. Also excluded is $65 of earned income and one-half a person's earned income (not otherwise excluded) in a month. (In the Notice of Proposed Rule Making that preceded these final regulations, we used quarterly amounts in § 416.1112. In these final regulations we are using monthly amounts in accordance with Pub. L. 97-35 which established retrospective monthly accounting effective April 1, 1982. This amendment to the Social Security Act requires eligibility for SSI payments to be determined on a monthly rather than a quarterly basis. A Notice of Proposed Rule Making revising § 416.1112 was published on October 29, 1981 (46 FR 53449).) The regulations provide that we will also exclude from a disabled SSI recipient's earned income the same types of expenses that are deductible under the SGA provision. These impairment-related work expenses will be deducted after excluding $65 of earned income but before excluding one-half of what remains. However, a disabled individual must have countable income within the Federal SSI limit (currently $284.30 per month) without benefit of the work expense exclusion before the exclusion can apply. Once an individual qualifies under the basic Federal income limit for any month after November 1980, he or she continues to qualify for exclusion of work expenses for all subsequent consecutive months in which the Federal income limit or the income limit for federally administered optional State supplementation is met. If an individual later fails to meet the higher of these limits, he or she no longer qualifies for the work expense exlusion until the Federal SSI income limit is again met without benefit of the work expense exclusion.

EFFECTIVE DATE: These regulations are effective May 16, 1983.

FOR FURTHER INFORMATION CONTACT: Dave Smith, 3-B-4 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 594-7336.

SUPPLEMENTARY INFORMATION:

We published a Notice of Proposed Rule Making on January 6, 1982 (47 FR 642). Comments received are discussed in this preamble.

What Expenses May Be Deducted

We define the kinds of impairment-related items or services which are considered under this work incentive provision. We do not, however, present an all-inclusive list of such items and services because such a list would impose unintended limitations.

The regulations include definitions of the items and services for which expenses are deductible. The expenses for these items and services are considered extraordinary in that the individual, because of his or her impairment(s), must have or use the items or services in order to overcome functional limitations which would otherwise preclude his or her working or getting to and from work.

We will deduct certain transportation costs including the costs of modifications to vehicles, driver assistance, taxicabs and other hired vehicles when other means of transportation are not accessible. We considered deducting both the cost of a vehicle modification and the purchase price of the vehicle if it is needed to get to and from work. We rejected the option of deducting the purchase price because automobiles and vans are widely used by most members of the

public and their purchase is a common expense incurred by both disabled and nondisabled individuals. We decided that only the cost of the modification would meet the "extraordinary cost" standard and therefore decided to deduct only those costs. In addition, we have included a mileage allowance for both modified and unmodified vehicles. In the case of an unmodified vehicle, we will deduct the mileage allowance only where a disabled person has no choice, solely because of his or her impairment, but to drive to work. This allowance will be based on the national average costs of operating an automobile based on data provided by the Federal Highway Administration. The current rates range from 15 cents a mile to 26 cents a mile depending on the type of vehicle used. We will update the mileage allowance periodically.

We have provided that payment by a disabled person for attendant care services will be deductible only for services performed at work, going to and from work, or in preparing the individual to go to work and assisting the person in returning from work. Where a disabled person pays a member of his or her family for the performance of attendant care services, the payment will be deductible only if the family member suffers economic loss by reducing or termination his or her own employment or self-employment.

We have provided for a deduction of the cost of residential modifications under certain limited circumstances. Where the individual is employed outside the home, we will deduct only the cost of those changes to the exterior of the residence which enable the individual to get to work (e.g., exterior ramp for a wheel-chair confined person or special exterior railings or pathways for someone who requires crutches). Where the individual works at home, we provide for the deduction of modifications that pertain specifically to the working space in the home. Such costs, however, cannot be deducted as impairment-related work expenses if they are deducted by a self-employed person as business expenses.

We have provided for deduction of expenses for non-medical appliances and equipment (those which are not ordinarily used for medical purposes) only where it can be established that there is an impairment-related and medically verified need for the item because it is essential for the control of the disabling condition. Determinations regarding these types of expenses will be made on the facts of each case.

We have provided that the costs of drugs and medical services are deductible if they are used by the individual to control his or her impairment in order that the individual may work.

Relationship of Expenses to Period of Work

For the purpose of determining SGA we have provided that a payment toward the cost of an item can be deducted if payment is made in a month the person is working (including work in a sheltered workshop), regardless of when the actual purchase was made. We have provided that costs for services can be deducted if payment for the services is made in a month the person is working, provided that the services are received in a month the person is working. Thus, the payment must coincide with the person's earnings as well as his or her receipt of the services. For the purpose of determining the SSI payment amount, we have provided that a payment toward the cost of an item or service can be deducted if payment is made in the month the earned income is received for work performed while the individual utilized the impairment-related item or service. Recognizing that individuals may make purchases in anticipation of work, we provided for the allocation of amounts spent for non-expendable items in the 11 months preceding the first month or work. The payments will be allocated over the 12-consecutive month period beginning with the month of payment. However, only that portion of the payment which is allocated to work months is deductible. In this instance, in order to place the individual on an equal footing with persons who make purchases while working, we will consider the duductible amount to have been paid in the first month of work for the purpose of determining SGA and in the first month earned income is received for the purpose of determining the SSI payment amount. Accordingly, the amount will be deducted in that month or allocated over the 12-consecutive month period beginning with that month. The allocation process is explained in more detail in subsequent paragraphs. In no instance will expenses incurred before December 1, 1980, be deductible, though expenses incurred after November 1980 as a result of a contractual or other arrangement entered into before December 1980, are deductible.

When Expenses May Be Deducted

We have provided that impairment-related work expenses will generally be deductible when paid. If an item or service is paid for on a regular, periodic basis (e.g. monthly), those payments will be deductible in the months in which they are made. We identify these as recurring expenses. If an item or service is paid for at one time, we will deduct the amount of that payment when made or allocate the payment equally over a 12-consecutive month period beginning with the month of payment, whichever the individual selects. If a downpayment is made, we will deduct it when paid or allocate it equally over a 12-consecutive month period, or over the payment period involved if it is less than 12 months, beginning with the month of payment, whichever the individual selects. We identify these as nonrecurring expenses. We will use a special rule when the purchase involves both a recurring and nonrecurring expense.

We considered deducting each nonrecurring payment in the month paid. Where the expense, which could be large, is deducted entirely in the month paid, the person could be found engaging in SGA the following month (and would, therefore, not be disabled). Since SGA determinations are generally based on average earnings over an extended period of time, it is reasonable to allocate nonrecurring payments whenever it would be more beneficial to the disabled person to do so. Moreover, failure to allocate a large expense could discourage a disabled individual from obtaining an item or service needed for him or her to work. The question of the length of the period over which to allocate nonrecurring payments presented several options. We could allocate a one-time payment or downpayment over the item's useful life, but we did not feel it administratively feasible to determine the useful life of an item on a case-by-case basis. We could also allocate downpayments over the length of the installment contract, but this approach could result in unequal treatment of individuals in situations where they purchased identical items. We decided to allocate non-recurring payments over a period of 12 months because it parallels the period used to measure earnings for other program purposes, e.g., the 12-month period is the length of time an impairment must last for a person to be disabled, the 12-month retirement test period, and under the Internal Revenue Code, the 12-month tax year. Also, for SSI payment purposes, a relationship to need could not be reasonably established beyond a 12-month period. We did not choose a shorter period (e.g., 3 months or 6 months) because disability evaluation is generally concerned with the inability to work over an extended period rather than a short, isolated period.

What Kinds of Payments May Be Deducted

In order for impairment-related work expenses to be deductible, they must be paid for in cash or by check rather than in kind. The law states that deductions will be made only where the individual pays for the item or service. We consider this limitation to mean that the individual must pay an actual dollar amount "out-of-pocket" for the impairment-related item or service. Further, we believe this interpretation makes the best use of scarce dollar resources available to SSA to administer the disability program.

Limitations On Deductions of Expenses

Section 302 of Pub. L. 96-265 states with regard to the expenses that "the amounts to be excluded shall be subject to such reasonable limits as the Secretary may prescribe." In its report (No. 96-408) on H.R. 3236 the Senate Finance Committee stated on page 51:

> The committee intends that any such limits not be based on arbitrary conceptions of what amounts are reasonable but rather reflect actual prevailing costs of various categories of impairment-related expenses.

We have related the amounts paid for certain items and services to the prevailing charges listed for the same items and services in the Medicare guidelines under Part B of title XVIII of the Act (Health Insurance for the Aged and Disabled) where the Medicare information is readily available. That information is regularly used to determine reasonable charges for purposes of reimbursement under the Medicare program. We will consider an amount reasonable if it is no more than the prevailing charge established under that title. We will deduct an amount in excess of that charge where the individual shows that it is consistent with the standard or normal charge for the same or similar item or service in the individual's community. For items and services that are not covered by the Medicare guidelines, and for items and services that are listed in the Medicare guidelines but for which those guides cannot be used because the information is not readily available, we will consider as reasonable the actual costs paid, subject to the standard charge in the individual's community for the same or similar items or services.

We considered allocating deductions based on the time spent working and not working where the item or service is needed for both purposes. We decided to limit the deduction for attendant care to the costs of services performed by the attendant while the individual is at work, getting to and from work, and at home preparing the individual to go to work and assisting the individual in returning from work. In the case of medical devices, equipment and medical services, we decided to permit deduction of the full out-of-pocket costs rather than to allocate the deductions because it is impossible to establish a rational and fair standard for determining the extent to which the costs of an artificial limb, a pacemaker, or hemodialysis, for instance, are work-related.

Comments Received Following Publication of Notice of Proposed Rulemaking

We received comments from 13 sources including 8 private non-profit organizations, 4 State agencies and one individual. Each source commented on one or more provisions of the regulations. For ease of comprehension we have condensed, summarized or paraphrased the comments and have grouped them according to the subject and issues raised. We have tried, to the extent possible, to present the comments and our responses in the order in which the regulations are organized.

Comment: The final regulations should make it clear that for the purpose of determining SGA the impairment-related work expenses are always allowable, i.e., initially as well as for continuation.

Response: We placed the rules on impairment-related work expenses in the portion of the regulations dealing with SGA, beginning with § 404.1571 and § 416.971. These sections specify the following: "The work that you have done *during any period in which you believe you are disabled* may show that you are able to work at the substantial gainful activity level." (Underscoring added.) Thus, the regulations make it clear that impairment-related work expenses must be considered initially as well as for continuation.

Comment: To be deductible, the expense should be directly related, rather than incidentally related, to the individual's ability to work. Therefore, individual determinations may have to be made in some cases as to what constitutes a work-related expense, rather than only using the arbitrary lists of covered or noncovered items.

Response: We agree with this comment. As stated under Supplementary Information, we are defining the *kinds* of impairment-related items or services which will be considered, rather than establishing an all-inclusive list of these items and services which would impose unintended limitations. Where items or services are identified in the rules, we specify that they are examples. Examples are provided to enable the reader to more readily understand the rule. Decisions as to the deductibility of impairment-related work expenses will be made on an individual basis.

Comment: You allow as impairment-related work expenses payments for attendant care services performed by family members who have given up their jobs or reduced their hours of work. You should also recognize the family member who performs attendant care services which prevent him or her from seeking employment.

Response: When a family member sustains an economic loss as a result of providing attendant care, we can reasonably assume that the services were performed with the expectation of remuneration and we would allow a deduction for the payment. We cannot make this assumption in the absence of an economic loss. In writing the rules, we had to recognize that it is common for individuals to perform personal services for members of their families based on familial considerations rather than in expectation of payments.

Comment: The definition of "family member" in §§ 404.1576(c)(1)(iii) and 416.976(c)(1)(iii) is too broad and would discourage the use of those relatives most likely to be able to assist the disabled person. The definition of a family member should be changed to include only those relatives that live with the disabled person.

Response: If the definition were changed as suggested, a relative not living with the disabled person would not be considered to be a family member for purposes of this provision. As a result, any payment to that relative for attendant care services would be deductible whether or not he or she sustains an economic loss in order to provide the services. In our response to the preceding comment we explained that the rule on deductions for these payments to relatives is based on our recognition that individuals often perform services for relatives without expectation of pecuniary gain. In order to avoid deductions in cases of gratuitous services we included the economic loss condition. Although consideration of a relative's place of residence in determining the deductibility of payments would be easier to administer, it would be inconsistent with the aforementioned policy. The fact that a relative may not live with the disabled person should not be determinative of whether the deduction is allowed. The crucial factor is whether an economic loss is suffered.

Comment: The requirement that for payments to family members to be deductible the family member must suffer an economic loss should be applicable only to family members living in the household of the disabled person. While we understand the desire to avoid allowing deductions for services performed by family members living in the household who suffer no economic loss by performing the services, we believe the application of such a stringent criterion to family members not living in the household will, in many instances, defeat the purpose of section 302.

Response: Our response to the preceding comment also applies to this comment. As we interpret this comment it differs from the foregoing only to the extent that the economic loss condition would be applicable when the relative performing the services lives in the household of the recipient, which implies that the household is the property of the disabled person. Again, we do not believe this distinction is significant enough to warrant a change in the rule.

Comment: The regulations should clarify whether a deduction for payment to a family member should be allowed if the family member's normal working hours did not include the times in which the personal attendant services were rendered.

Response: We did not contemplate that it would be necessary to show a correlation between the time the family member performed the attendant care services and the time he or she normally worked. Even though the services may be performed during other than the normal working hours, the family member may, for example, have reduced his or her hours of work in order to obtain the rest needed to care for the disabled person. Thus, it is sufficient if the family member generally establishes that his or her work terminated or was reduced in order to perform the services. We believe the language in the regulations adequately covers this provision.

Comment: Under attendant care, the discussion about assistance with personal services at home in preparation for going to and from work should include deductions for payments to individuals who monitor and administer a visually handicapped individual's insulin.

Response: We have adopted the essence of this suggestion and have revised §§ 404.1576(c)(1)(ii) and 416.976(c)(1)(ii) to include an example which permits this type of deduction to be made.

Comment: Attendant care expenses should be deductible for assistance rendered in shopping, cooking, housekeeping, washing, ironing, and for assistance rendered on nonwork days, since a severely disabled person requires all of these services, every day, to sustain life.

Response: The law permits the deduction of the cost of only those impairment-related items and services which can be *directly associated with enabling a person to work even though the items and services are also needed to carry out the person's normal daily functions. The items or services mentioned cannot be so directly associated. Thus, their costs are generally beyond the scope of this provision.*

Comment: Limiting allowable attendant care deductions to services performed at work, going to and from work, or in preparing the individual to go to work and assisting the person in returning from work seems unreasonable and represents an overly restrictive interpretation of the law. Attendant care costs should be allowable up to and including bedtime, at least on working nights.

Response: Our response to the preceding comment would also apply here. Ordinarily, it can be expected that services within this context that are provided a disabled person upon his or her return home from work would require no more than 1 or 2 hours. However, where it can be shown that services of a longer duration are required to enable the individual to work, and not primarily associated with sustaining or facilitating the person's life, their costs would be deductible.

Comment: In §§ 404.1576(c)(4) and 416.976(c)(4), the term "visual aids" should be changed to either "vision aids" or "optical aids" to more accurately reflect what is intended, i.e., aids designed to enhance sight. Add to the examples in these sections, "sensory aids for the blind," meaning technological devices which have been developed to produce synthetic speech or braille which enables blind persons to use computers, calculators, and word processing equipment. In §§ 404.1576(c)(6) and 416.976(c)(6), change "seeing-eye dog" (which is a dog trained by a specific dog school) to the more generic term, "dog guide."

Response: We have revised the pertinent sections of part 404 as recommended. As the blind are not subject to an SGA test under title XVI we did not make the changes in part 416. The types of expenses referred to are deductible for title XVI payment purposes under § 416.1112.

Comment: Under payments for drugs and services, include as an example immunosuppressive medications that kidney transplant patients regularly take to protect against graft rejection.

Response: We have adopted this suggestion. Sections 404.1576(c)(5)(ii) and 416.976(c)(5)(ii) have been revised to include the additional example.

Comment: Several commenters felt that all or part of the purchase price of a van or automobile needed to get to work should be allowed as an impairment-related work expense. Reasons given are (1) public-transportation is not available to disabled consumers, so they have no option other than to purchase a vehicle, (2) disabled persons must have reliable (and, therefore, new) vehicles which are very expensive, and (3) the Department of Rehabilitation will not modify a vehicle which is more than 2 years old.

Response: While public transportation may not be available to the disabled, this may also be true for the nondisabled. We recognize that vans and automobiles are necessary for some disabled individuals to get to work. However, automobiles and vans are widely used by most members of the public and their purchase price is a common expense incurred by both the disabled and nondisabled. Thus, this expense is not "extraordinary," as is the cost of the modification to the vehicle. To account for the situation where the disabled person must, because of his or her impairment, use an automobile or van to get to and from work, we have provided for a mileage allowance.

Comment: The mileage allowance rates may be too low when the actual costs of operating a modified vehicle are considered. Actual costs should cover depreciation of the vehicle and equipment, insurance costs, and actual operating costs. The impairment-related work expense provision should coincide with the Internal Revenue Service provision which allows for the deduction of actual costs.

Response: Depreciating a vehicle has the same effect as deducting its cost. As indicated in the preceding response, the cost of the vehicle is not considered "extraordinary" and would not, therefore, be deductible. Likewise, the cost of regular equipment cannot be depreciated. However, if the equipment is part of a structural or operational modification that is critical to the operation or usage of the vehicle and is directly related to the individual's impairment, its cost is extraordinary and, therefore, deductible. In this event, a mileage allowance is deductible in addition to the actual cost of the

modification. In response to the recommendation that actual operating costs be deductible, this suggestion was thoroughly considered in the development of the regulations. We believe that the tendency for most people would be to not keep accurate records of their actual expenditures. And it would be difficult for us to evaluate the accuracy of those records. For administrative reasons we decided to use mileage rates established by the Federal Highway Administration. These rates are based upon data which include the costs of gas, oil, maintenance, parking, insurance, and taxes.

Comment: Deduct, under residential modifications, the cost of minor plumbing and electrical modifications that may be required for installation of dialysis equipment.

Response: These types of expenses are associated with a medical device and would be deductible. We have added paragraph (7) to § 404.1576(c) and to § 416.976(c) to reflect that these types of expenses are deductible.

Comment: The sections dealing with the relationship of expenses to the period of work seem unnecessarily complex and potentially troublesome for both disabled people and the Social Security Administration. In addition, it seems unreasonable to require that all bills, in order to be deductible, be paid during a working month. We suggest that the wording be changed to state that bills must be paid not later than the end of the month following when they were incurred. This allows for normal billing procedures. An individual should not be penalized for legitimately incurred work expenses in the previous month because of an inability to pay for services in the same month in which the services were rendered.

Response: The reason these rules seem to be complex is that the rules for determining SGA are different than the rules for determining the SSI payment amount. The amount of earnings from work that an individual performed may show that he or she engaged in SGA. Therefore, in determining whether an individual engaged in SGA, we are concerned with when the income (for the work) was "earned," rather than with when it was received by the individual. On the other hand, eligibility for SSI payments is dependent in part on the amount of income available to the individual. Therefore, for the purpose of determining the SSI payment amount, we are concerned with when the income is received, rather than with when it was earned by the individual.

The impairment-related work expense rules have been formulated on the basis of the preceding considerations. Thus, for the purpose of determining SGA we provide that the cost of an item or service is generally deductible if payment is made in a month the person is working. On the other hand, for the purpose of determining the SSI payment amount we provide that the cost of an item or service is generally deductible if payment is made in the month the income (for the work) is received.

Comment: The proposed rules allow for deductions only at the rate of prevailing charges under Medicare. The Medicare prevailing charge rates are too low and do not permit deducting the cost of custom-made devices and equipment which the individual needs. The actual amount paid should be allowed as a deduction.

Response: The Medicare prevailing rates are not an absolute standard. As specified in the rules, any time the actual cost exceeds the Medicare rate, the disabled person will have an opportunity to demonstrate that the amount paid is consistent with the standard or normal charge for the same or similar item or service in the individual's community. Where this can be established, the actual amount paid will be deductible.

Comment: A blind person may deduct different work expenses in the SSI program than in the disability insurance program. Also, the rules for deducting work expenses of blind SSI recipients are different than the rules for deducting work expenses of regular disabled SSI recipients. Therefore, § 404.1576(f)(4) should be clarified.

Response: Section 302 of Pub. L. 96–265 expressly provides the impairment-related work expense exclusion for the disabled (*not* the blind) under the SSI program. In addition, under the SSI program, the blind are not subject to an SGA test. Consequently, only those blind workers who are filing for or are receiving title II disability insurance benefits are affected by these rules.

Comment: If an employed SSI recipient cannot certify substantial work-related expenses, there is little incentive to work with the disregarding of only the first $65 a month of earned income before deducting one-half of the remaining earnings. A solution would be to liberalize the SGA amount under SSI to a level at, or approaching, the current $500 a month level under disability insurance for blind persons.

Response: The earnings test for SGA purposes which applies to persons who are filing for or receiving SSI benefits (title XVI) because of disability is the same as that which applies to persons who are filing for or receiving title II benefits because of a disability other than blindness. The test of whether a person is disabled is the same for the title XVI program as for the title II program and it would be inconsistent and inequitable to apply different SGA tests. Recognizing that blind persons face special problems with respect to employement, Congress, in 1977, provided higher SGA earnings amounts for the blind under title II. However, the Conference Report (Senate Report No. 95–612 and House of Representatives Report No. 95–837, 95th Congress, First Session) made clear that this more liberal SGA level should not be applied to persons disabled by impairments other than blindness. (Since the title XVI blind are not subject to an SGA test, this new level applies only to title II blind.) Application of this higher level to nonblind persons would clearly be contrary to Congressional intent. Under the SSI program all earnings, whether by a blind person or by a disabled person, are also evaluated under the income and resources provisions of the law. Eligibility for benefits and the amount of the benefit payable are dependent in part upon the amount of a person's income. As the amount of a person's countable income rises, his or her benefit payment is reduced. This evaluation is independent of the determination as to whether a person is doing SGA.

Comment: The SGA rules for the blind are in § 404.1584. But § 404.1584 does not provide that impairment-related work expenses can be excluded from earnings. Therefore, § 404.1584(d) should incorporate by reference § 404.1576 to make it clear that impairment-related work expenses of blind people can be subtracted from their income.

Response: This suggestion has been adopted. We have revised § 404.1584(d) to include the recommendation and to explain by cross-reference that subsidies described in § 404.1574(a)(2) and amounts described in § 404.1575(c) if an individual is self-employed should also be excluded.

Comment: Two commenters objected to the provisions of § 416.1112(c)(5) which provide (1) that the impairment-related work expense exclusion cannot be applied until countable income without benefit of the exclusion is within the Federal SSI limit, and (2) that if subsequently the countable income after the exclusion exceeds the Federal SSI limit or the federally administered optional State supplement limit, the individual no longer qualifies for the exclusion until his or her countable income without the exclusion is again within the Federal limit. It is felt that this provision will present an undue hardship on a disabled worker and,

therefore, a disincentive to employment. A provision must be made to protect employed individuals who temporarily fail to incur an impairment-related work expense (e.g., an individual misses work about 3 weeks in a month and during that time did not have transportation expenses he would normally have) so that their eligibility for the impairment-related work expense exclusion would continue.

Response: Section 1612(b) of the Act (as amended by section 302(b) of Pub. L. 96-265) specifically states that the impairment-related work expense exclusion applies ". . . For purposes of determining the amount of his or her benefits under this title and of determining his or her eligibility for such benefits for consecutive months of eligibility after the initial month of such eligibility." Therefore, the limitation in question is mandated by law. However, it affects use of the exclusion only for purposes of computing a person's countable earned income in determining SSI eligiblity and benefit amount. The limitation does not affect deduction of impairment-related work expenses for purposes of determining whether the person is performing SGA.

Comment: Any attempt to "nibble away" at the meager income of SSI recipients is opposed. A policy which takes away from those persons least able to give should be reconsidered.

Response: The purpose of these rules is to implement a change in the law. This change in the law provides that the cost to an individual of certain items and services which are needed in order to work can be deducted from the individual's earnings. The deduction can be made for the purpose of determining whether the individual engaged in SGA and for the purpose of determining the individual's SSI payment amount. This is a liberalizing change intended to encourage people to return to work. It can increase, but never decrease, the benefits of an SSI recipient.

Regulatory Procedures

Executive Order No. 12291—This regulation does not meet the criteria for a major rule as that term is defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. Estimated program costs (titles II and XVI combined) for fiscal years 1982, 1983, 1984, and 1985 are $12 million, $17 million, $22 million and $28 million, respectively. Estimated administrative costs are less than $1 million each year.

Paperwork Reduction Act—These regulations impose no additional reporting or recordkeeping requirements requiring OMB clearance. The reporting forms needed to implement this provision have been approved by OMB already: SSA Nos. 820 and 821 (OMB approval No. 09-60-0059) and SSA No. 3945 (OMB approval No. 09-60-0108).

Regulatory Flexibility Act—We certify that these regulations do not have a significant economic impact on a substantial number of small entities because these rules only affect individuals. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96-354, the Regulatory Flexibility Act, is not necessary.

List of Subjects

20 CFR Part 404.

Administrative practice and procedure, Death benefits, Disabled, Old-Age, Survivors and Disability Insurance.

20 CFR Part 416.

Administrative practice and procedure, Aged, Blind, Disabled, Public-Assistance programs, Supplemental Security Income (SSI).

(Secs. 205, 223, 1102, 1612, 1614, and 1631, Social Security Act, as amended; Sec. 302 of Pub. L. 96-265; 53 Stat. 1368, as amended; 70 Stat. 815, as amended; 49 Stat. 647, as amended; and 86 Stat. 1468, 1471, 1475, as amended; 94 Stat. 450, 451; 42 U.S.C. 405, 423, 1302, 1382a, 1382c and 1383)

(Catalog of Federal Domestic Assistance Program Nos. 13.802 Social Security—Disability Insurance; 13.807 Supplemental Security Income)

These amendments are hereby adopted as set forth below.

Dated: March 4, 1983.

John A. Svahn,

Commissioner of Social Security.

Approved: April 26, 1983.

Margaret M. Heckler,

Secretary of Health and Human Services.

Chapter III of Title 20 of the Code of Federal Regulations is amended as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950—)

1. In § 404.1574, paragraph (a)(4) is removed and paragraph (b) is revised to read as follows:

§ 404.1574 Evaluation guides if you are an employee.

* * * * *

(b) *Earnings guidelines.* (1) *General.* If you are an employee, we first consider the criteria in paragraph (a) of this section and § 404.1576, and then the guides in paragraphs (b) (2), (3), (4), (5), and (6) of this section.

* * * * *

2. In § 404.1575, paragraph (c) is revised to read as follows:

§ 404.1575 Evaluation guides if you are self-employed.

* * * * *

(c) *What we mean by substantial income.* After your normal business expenses are deducted from your gross income to determine net income, we will deduct the reasonable value of any unpaid help, any soil bank payments that were included as farm income, and impairment-related work expenses described in § 404.1576 that have not been deducted in determining your net earnings from self-employment. We will consider the resulting amount of income from the business to be substantial if—

(1) It averages more than the amounts described in § 404.1574(b)(2); or

(2) It averages less than the amounts described in § 404.1574(b)(2) but the livelihood which you get from the business is either comparable to what it was before you became severely impaired or is comparable to that of unimpaired self-employed persons in your community who are in the same or similar business as their means of livelihood.

* * * * *

3. A new § 404.1576 is added to read as follows:

§ 404.1576 Impairment-related work expenses.

(a) *General.* When we figure your earnings in deciding if you have done substantial gainful activity, we will subtract the reasonable costs to you of certain items and services which, because of your impairment(s), you need and use to enable you to work. The costs are deductible even though you also need or use the items and services to carry out daily living functions unrelated to your work. Paragraph (b) of this section explains the conditions for deducting work expenses. Paragraph (c) of this section describes the expenses we will deduct. Paragraph (d) of this section explains when expenses may be deducted. Paragraph (e) of this section describes how expenses may be allocated. Paragraph (f) of this section explains the limitations on deducting expenses. Paragraph (g) of this section explains our verification procedures.

(b) *Conditions for deducting impairment-related work expenses.* We will deduct impairment-related work expenses if—

(1) You are otherwise disabled as defined in §§ 404.1505, 404.1577 and 404.1581-404.1583;

(2) The severity of your impairment(s) requires you to purchase (or rent)

certain items and services in order to work;

(3) You pay the cost of the item or service. No deduction will be allowed to the extent that payment has been or will be made by another source. No deduction will be allowed to the extent that you have been, could be, or will be reimbursed for such cost by any other source (such as through a private insurance plan, Medicare or Medicaid, or other plan or agency). For example, if you purchase crutches for $80 but you were, could be, or will be reimbursed $64 by some agency, plan, or program, we will deduct only $16;

(4) You pay for the item or service in a month you are working (in accordance with paragraph (d) of this section); and

(5) Your payment is in cash (including checks or other forms of money). Payment in kind is not deductible.

(c) *What expenses may be deducted.*

(1) *Payments for attendant care services.* (i) If because of your impairment(s) you need assistance in traveling to and from work, or while at work you need assistance with personal functions (e.g., eating, toileting) or with work-related functions (e.g., reading, communicating), the payments you make for those services may be deducted.

(ii) If because of your impairment(s) you need assistance with personal functions (e.g., dressing, administering medications) at home in preparation for going to and assistance in returning from work, the payments you make for those services may be deducted.

(iii)(A) We will deduct payments you make to a family member for attendant care services only if such person, in order to perform the services, suffers an economic loss by terminating his or her employment or by reducing the number of hours he or she worked.

(B) We consider a family member to be anyone who is related to you by blood, marriage or adoption, whether or not that person lives with you.

(iv) If only part of your payment to a person is for services that come under the provisions of paragraph (c)(1) of this section, we will only deduct that part of the payment which is attributable to those services. For example, an attendant gets you ready for work and helps you in returning from work, which takes about 2 hours a day. The rest of his or her 8 hour day is spent cleaning your house and doing your laundry, etc. We would only deduct one-fourth of the attendant's daily wages as an impairment-related work expense.

(2) *Payments for medical devices.* If your impairment(s) requires that you utilize medical devices in order to work, the payments you make for those devices may be deducted. As used in this subparagraph, medical devices include durable medical equipment which can withstand repeated use, is customarily used for medical purposes, and is generally not useful to a person in the absence of an illness or injury. Examples of durable medical equipment are wheelchairs, hemodialysis equipment, canes, crutches, inhalators and pacemakers.

(3) *Payments for prosthetic devices.* If your impairment(s) requires that you utilize a prosthetic device in order to work, the payments you make for that device may be deducted. A prosthetic device is that which replaces an internal body organ or external body part. Examples of prosthetic devices are artificial replacements of arms, legs and other parts of the body.

(4) *Payments for equipment.* (i) *Work-related equipment.* If your impairment(s) requires that you utilize special equipment in order to do your job, the payments you make for that equipment may be deducted. Examples of work-related equipment are one-hand typewriters, vision aids, sensory aids for the blind, telecommunication devices for the deaf and tools specifically designed to accommodate a person's impairment(s).

(ii) *Residential modifications.* If your impairment(s) requires that you make modifications to your residence, the location of your place of work will determine if the cost of these modifications will be deducted. If you are employed away from home, only the cost of changes made outside of your home to permit you to get to your means of transportation (e.g., the installation of an exterior ramp for a wheelchair confined person or special exterior railings or pathways for someone who requires crutches) will be deducted. Costs relating to modifications of the inside of your home will not be deducted. If you work at home, the costs of modifying the inside of your home in order to create a working space to accommodate your impairment(s) will be deducted to the extent that the changes pertain specifically to the space in which you work. Examples of such changes are the enlargement of a doorway leading into the workspace or modification of the workspace to accommodate problems in dexterity. However, if you are self-employed at home, any cost deducted as a business expense cannot be deducted as an impairment-related work expense.

(iii) *Nonmedical appliances and equipment.* Expenses for appliances and equipment which you do not ordinarily use for medical purposes are generally not deductible. Examples of these items are portable room heaters, air conditioners, humidifiers, dehumidifiers, and electric air cleaners. However, expenses for such items may be deductible when unusual circumstances clearly establish an impairment-related and medically verified need for such an item because it is essential for the control of your disabling condition, thus enabling you to work. To be considered essential, the item must be of such a nature that if it were not available to you there would be an immediate adverse impact on your ability to function in your work activity. In this situation, the expense is deductible whether the item is used at home or in the working place. An example would be the need for an electric air cleaner by an individual with severe respiratory disease who cannot function in a non-purified air environment. An item such as an exercycle is not deductible if used for general physical fitness. If it is prescribed and used as necessary treatment of your impairment and necessary to enable you to work, we will deduct payments you make toward its cost.

(5) *Payments for drugs and medical services.* (i) If you must use drugs or medical services (including diagnostic procedures) to control your impairment(s) the payments you make for them may be deducted. The drugs or services must be prescribed (or utilized) to reduce or eliminate symptoms of your impairment(s) or to slow down its progression. The diagnostic procedures must be performed to ascertain how the impairment(s) is progressing or to determine what type of treatment should be provided for the impairment(s).

(ii) Examples of deductible drugs and medical services are anticonvulsant drugs to control epilepsy or anticonvulsant blood level monitoring; antidepressant medication for mental disorders; medication used to allay the side effects of certain treatments; radiation treatment or chemotherapy for cancer patients; corrective surgery for spinal disorders; electroencephalograms and brain scans related to a disabling epileptic condition; tests to determine the efficacy of medication on a diabetic condition; and immunosuppressive medications that kidney transplant patients regularly take to protect against graft rejection.

(iii) We will only deduct the costs of drugs or services that are directly related to your impairment(s). Examples of non-deductible items are routine annual physical examinations, optician services (unrelated to a disabling visual impairment) and dental examinations.

(6) *Payments for similar items and services.* (i) *General.* If you are required to utilize items and services not specified in paragraphs (c) (1) through (5) of this section but which are directly related to your impairment(s) and which you need to work, their costs are deductible. Examples of such items and services are medical supplies and services not discussed above, the purchase and maintenance of a guide dog which you need to work, and transportation.

(ii) *Medical supplies and services not described above.* We will deduct payments you make for expendable medical supplies, such as incontinence pads, catheters, ace bandages, elastic stockings, face masks, irrigating kits, and disposable sheets and bags. We will also deduct payments you make for physical therapy which you require because of your impairment(s) and which you need in order to work.

(iii) *Payments for transportation costs.* We will deduct transportation costs in these situations:

(A) Your impairment(s) requires that in order to get to work you need a vehicle that has structural or operational modifications. The modifications must be critical to your operation or use of the vehicle and directly related to your impairment(s). We will deduct the costs of the modifications, but not the cost of the vehicle. We will also deduct a mileage allowance for the trip to and from work. The allowance will be based on data compiled by the Federal Highway Administration relating to vehicle operating costs.

(B) Your impairment(s) requires you to use driver assistance, taxicabs or other hired vehicles in order to work. We will deduct amounts paid to the driver and, if your own vehicle is used, we will also deduct a mileage allowance, as provided in paragraph (c)(6)(iii)(A) of this section, for the trip to and from work.

(C) Your impairment(s) prevents your taking available public transportation to and from work and you must drive your (unmodified) vehicle to work. If we can verify through your physician or other sources that the need to drive is caused by your impairment(s) (and not due to the unavailability of public transportation), we will deduct a mileage allowance, as provided in paragraph (c)(6)(iii)(A) of this section, for the trip to and from work.

(7) *Payments for installing, maintaining, and repairing deductible items.* If the device, equipment, appliance, etc., that you utilize qualifies as a deductible item as described in paragraphs (c) (2), (3), (4) and (6) of this section, the costs directly related to installing, maintaining and repairing these items are also deductible. The costs which are associated with modifications to a vehicle are deductible. Except for a mileage allowance, as provided for in paragraph (c)(6)(iii) of this section, the costs which are associated with the vehicle itself are not deductible.)

(d) *When expenses may be deducted.* (1) *Effective date.* To be deductible an expense must be incurred after November 30, 1980. An expense may be considered incurred after that date if it is paid thereafter even though pursuant to a contract or other arrangement entered into before December 1, 1980.

(2) *Payments for services.* A payment you make for services may be deducted if the services are received while you are working and the payment is made in a month you are working. We consider you to be working even though you must leave work temporarily to receive the services.

(3) *Payments for items.* A payment you make toward the cost of a deductible item (regardless of when it is acquired) may be deducted if payment is made in a month you are working. See paragraph (e)(4) of this section when purchases are made in anticipation of work.

(e) *How expenses are allocated.* (1) *Recurring expenses.* You may pay for services on a regular periodic basis, or you may purchase an item on credit and pay for it in regular periodic installments or you may rent an item. If so, each payment you make for the services and each payment you make toward the purchase or rental (including interest) is deductible in the month it is made.

Example. B starts work in October 1981 at which time she purchases a medical device at a cost of $4,800 plus interest charges of $720. Her monthly payments begin in October. She earns and receives $400 a month. The term of the installment contract is 48 months. No downpayment is made. The monthly allowable deduction for the item would be $115 ($5520 divided by 48) for each month of work during the 48 months.

(2) *Nonrecurring expenses.* Part or all of your expenses may not be recurring. For example, you may make a one-time payment in full for an item or service or make a downpayment. If you are working when you make the payment we will either deduct the entire amount in the month you pay it or allocate the amount over a 12 consecutive month period beginning with the month of payment, whichever you select.

Example. A begins working in October 1981 and earns $525 a month. In the same month he purchases and pays for a deductible item at a cost of $250. In this situation we could allow a $250 deduction for October 1981, reducing A's earnings below the SGA level for that month.

If A's earnings had been $15 above the SGA earnings amount, A probably would select the option of projecting the $250 payment over the 12-month period, October 1981–September 1982, giving A an allowable deduction of $20.83 a month for each month of work during that period. This deduction would reduce A's earnings below the SGA level for 12 months.

(3) *Allocating downpayments.* If you make a downpayment we will, if you choose, make a separate calculation for the downpayment in order to provide for uniform monthly deductions. In these situations we will determine the total payment that you will make over a 12 consecutive month period beginning with the month of the downpayment and allocate that amount over the 12 months. Beginning with the 13th month, the regular monthly payment will be deductible. This allocation process will be for a shorter period if your regular monthly payments will extend over a period of less than 12 months.

Example 1. C starts working in October 1981, at which time he purchases special equipment at a cost of $4,800, paying $1,200 down. The balance of $3,600, plus interest of $540, is to be repaid in 36 installments of $115 a month beginning November 1981. C earns $500 a month. He chooses to have the downpayment allocated. In this situation we would allow a deduction of $205.42 a month for each month of work during the period October 1981 through September 1982. After September 1982, the deduction amount would be the regular monthly payment of $115 for each month of work during the remaining installment period.

Explanation:

Downpayment in 10/81	$1,200	
Monthly payments 11/81 through 09/82	1,265	
	12) 2,465	= $205.42

Example 2. D, while working, buys a deductible item in July 1981, paying $1,450 down. However, his first monthly payment of $125 is not due until September 1981. D chooses to have the downpayment allocated. In this situation we would allow a deduction of $225 a month for each month of work during the period July 1981 through June 1982. After June 1982, the deduction amount would be the regular monthly payment of $125 for each month of work.

Explanation:

Downpayment in 07/81	$1,450	
Monthly payments 09/81 through 06/82	1,250	
	12) 2,700	= $225

(4) *Payments made in anticipation of work.* A payment toward the cost of a deductible item that you made in any of the 11 months preceding the month you started working will be taken into

account in determining your impairment-related work expenses. When an item is paid for in full during the 11 months preceding the month you started working the payment will be allocated over the 12-consecutive month period beginning with the month of the payment. However, the only portion of the payment which may be deductible is the portion allocated to the month work begins and the following months. For example, if an item is purchased 3 months before the month work began and is paid for with a one-time payment of $600, the deductible amount would be $450 ($600 divided by 12, multiplied by 9). Installment payments (including a downpayment) that you made for a particular item during the 11 months preceding the month you started working will be totaled and considered to have been made in the month of your first payment for that item within this 11 month period. The sum of these payments will be allocated over the 12-consecutive month period beginning with the month of your first payment (but never earlier than 11 months before the month work began). However, the only portion of the total which may be deductible is the portion allocated to the month work begins and the following months. For example, if an item is purchased 3 months before the month work began and is paid for in 3 monthly installments of $200 each, the total payment of $600 will be considered to have been made in the month of the first payment, that is, 3 months before the month work began. The amount would be $450 ($600 divided by 12, multiplied by 9). The deductible amount, as determined by these formulas, will then be considered to have been paid in the first month of work. We will deduct either this entire amount in the first month of work or allocate it over a 12-consecutive month period beginning with the first month of work, whichever you select. In the above examples, the individual would have the choice of having the entire $450 deducted in the first month of work or of having $37.50 a month ($450 divided by 12) deducted for each month that he works over a 12-consecutive month period, beginning with the first month of work. To be deductible the payments must be for durable items such as medical devices, prostheses, work-related equipment, residential modifications, nonmedical appliances and vehicle modifications. Payments for services and expendable items such as drugs, oxygen, diagnostic procedures, medical supplies and vehicle operating costs are not deductible for purposes of this subparagraph.

(f) *Limits on deductions.* (1) We will deduct the actual amounts you pay towards your impairment-related work expenses unless the amounts are unreasonable. With respect to durable medical equipment, prosthetic devices, medical services, and similar medically-related items and services, we will apply the prevailing charges under Medicare (Part B of Title XVIII, Health Insurance for the Aged and Disabled) to the extent that this information is readily available. Where the Medicare guides are used, we will consider the amount that you pay to be reasonable if it is no more than the prevailing charge for the same item or service under the Medicare guidelines. If the amount you actually pay is more than the prevailing charge for the same item under the Medicare guidelines, we will deduct from your earnings the amount you paid to the extent you establish that the amount is consistent with the standard or normal charge for the same or similar item or service in your community. For items and services that are not listed in the Medicare guidelines, and for items and services that are listed in the Medicare guidelines but for which such guides cannot be used because the information is not readily available, we will consider the amount you pay to be reasonable if it does not exceed the standard or normal charge for the same or similar item(s) or service(s) in your community.

(2) Impairment-related work expenses are not deducted in computing your earnings for purposes of determining whether your work was "services" as described in § 404.1592(b).

(3) The decision as to whether you performed substantial gainful activity in a case involving impairment-related work expenses for items or services necessary for you to work generally will be based upon your "earnings" and not on the value of "services" you rendered. (See §§ 404.1574(b)(6) (i) and (ii), and 404.1575(a)). This is not necessarily so, however, if you are in a position to control or manipulate your earnings.

(4) The amount of the expenses to be deducted must be determined in a uniform manner in both the disability insurance and SSI programs.

(5) No deduction will be allowed to the extent that any other source has paid or will pay for an item or service. No deduction will be allowed to the extent that you have been, could be, or will be, reimbursed for payments you made. (See paragraph (b)(3) of this section.)

(6) The provisions described in the foregoing paragraphs of this section are effective with respect to expenses incurred on and after December 1, 1980, although expenses incurred after November 1980 as a result of contractual or other arrangements entered into before December 1980, are deductible. For months before December 1980 we will deduct impairment-related work expenses from your earnings only to the extent they exceeded the normal work-related expenses you would have had if you did not have your impairment(s). We will not deduct expenses, however, for those things which you needed even when you were not working.

(g) *Verification.* We will verify your need for items or services for which deductions are claimed, and the amount of the charges for those items or services. You will also be asked to provide proof that you paid for the items or services.

4. In § 404.1584 paragraph (d) is revised to read as follows:

§ 404.1584 Evaluation of work activity of blind people.

* * * * *

(d) *Evaluation of earnings.* The law provides a different earnings test for substantial gainful activity of people who are blind. We will not consider that you are able to engage in substantial gainful activity on the basis of earnings unless your monthly earnings average more than $334.00 in 1978; $375.00 in 1979; $417.00 in 1980; $459.00 in 1981; and $500.00 in 1982. (Sections 404.1574(a)(2), 404.1575(c) and 404.1576 are applicable in determining the amount of your earnings.) Thereafter, an increase in the substantial gainful activity amount will depend on increases in the cost of living. For work activity performed intaxable years before 1978, the earnings considered enough to show an ability to do substantial gainful activity are the same for blind people as for others.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

5. In § 416.974, paragraph (a)(4) is removed and paragraph (b) is revised to read as follows:

§ 416.974 Evaluation guides if you are an employee.

* * * * *

(b) *Earnings guidelines.* (1) *General.* If you are an employee, we first consider the criteria in paragraph (a) of this section, and § 416.976, and then the guides in paragraphs (b) (2), (3), (4), (5), and (6) of this section.

* * * * *

6. In § 416.975, paragraph (c) is revised to read as follows:

§ 416.975 Evaluation guides if you are self-employed.

* * * * *

(c) *What we mean by substantial income.* After your normal business expenses are deducted from your gross income to determine net income, we will deduct the reasonable value of any unpaid help, any soil bank payments that were included as farm income, and impairment-related work expenses described in § 416.976 that have not been deducted in determining your net earnings from self-employment. We will consider the resulting amount of income from the business to be substantial if—

(1) It averages more than the amounts described in § 416.974(b)(2); or

(2) It averages less than the amounts described in § 416. 974(b)(2) but the livelihood which you get from the business is either comparable to what it was before you became severely impaired or is comparable to that of unimpaired self-employed persons in your community who are in the same or similar business as their means of livelihood.

* * * * *

7. A new § 416.976 is added to read as follows:

§ 416.976 Impairment-related work expenses.

(a) *General.* When we figure your earnings in deciding if you have done substantial gainful activity, and in determining your countable earned income (see § 416.1112(c)(5)), we will subtract the reasonable costs to you of certain items and services which, because of your impairment(s), you need and use to enable you to work. The costs are deductible even though you also need or use the items and services to carry out daily living functions unrelated to your work. Paragraph (b) of this section explains the conditions for deducting work expenses. Paragraph (c) of this section describes the expenses we will deduct. Paragraph (d) of this section explains when expenses may be deducted. Paragraph (e) of this section describes how expenses may be allocated. Paragraph (f) of this section explains the limitations on deducting expenses. Paragraph (g) of this section explains our verification procedures.

(b) *Conditions for deducting impairment-related work expenses.* We will deduct impairment-related work expenses if—

(1) You are otherwise disabled as defined in §§ 416.905–416.907;

(2) The severity of your impairment(s) requires you to purchase (or rent) certain items and services in order to work;

(3) You pay the cost of the item or service. No deduction will be allowed to the extent that payment has been or will be made by another source. No deduction will be allowed to the extent that you have been, could be, or will be reimbursed for such cost by any other source (such as through a private insurance plan, Medicare or Medicaid, or other plan or agency). For example, if you purchase crutches for $80 but you were, could be, or will be reimbursed $64 by some agency, plan, or program, we will deduct only $16;

(4) You pay for the item or service in accordance with paragraph (d) of this section; and

(5) Your payment is in cash (including checks or other forms of money). Payment in kind is not deductible.

(c) *What expenses may be deducted.* (1) *Payments for attendant care services.* (i) If because of your impairment(s) you need assistance in traveling to and from work, or while at work you need assistance with personal functions (e.g., eating, toileting) or with work-related functions (e.g., reading, communicating), the payments you make for those services may be deducted.

(ii) If because of your impairment(s) you need assistance with personal functions (e.g., dressing, administering medications) at home in preparation for going to and assistance in returning from work, the payments you make for those services may be deducted.

(iii)(A) We will deduct payments you make to a family member for attendant care services only if such person, in order to perform the services, suffers an economic loss by terminating his or her employment or by reducing the number of hours he or she worked.

(B) We consider a family member to be anyone who is related to you by blood, marriage or adoption, whether or not that person lives with you.

(iv) If only part of your payment to a person is for services that come under the provisions of paragraph (c)(1) of this section, we will only deduct that part of the payment which is attributable to those services. For example, an attendant gets you ready for work and helps you in returning from work, which takes about 2 hours a day. The rest of his or her 8 hour day is spent cleaning your house and doing your laundry, etc. We would only deduct one-fourth of the attendant's daily wages as an impairment-related work expense.

(2) *Payments for medical devices.* If your impairment(s) requires that you utilize medical devices in order to work, the payments you make for those devices may be deducted. As used in this subparagraph, medical devices include durable medical equipment which can withstand repeated use, is customarily used for medical purposes, and is generally not useful to a person in the absence of an illness or injury. Examples of durable medical equipment are wheelchairs, hemodialysis equipment, canes, crutches, inhalators and pacemakers.

(3) *Payments for prosthetic devices.* If your impairment(s) requires that you utilize a prosthetic device in order to work, the payments you make for that device may be deducted. A prosthetic device is that which replaces an internal body organ or external body part. Examples of prosthetic devices are artificial replacements of arms, legs and other parts of the body.

(4) *Payments for equipment.* (i) *Work-related equipment.* If your impairment(s) requires that you utilize special equipment in order to do your job, the payments you make for that equipment may be deducted. Examples of work-related equipment are one-hand typewriters, visual aids, telecommunication devices for the deaf and tools specifically designed to accommodate a person's impairment(s).

(ii) *Residential modifications.* If your impairment(s) requires that you make modifications to your residence, the location of your place of work will determine if the cost of these modifications will be deducted. If you are employed away from home, only the cost of changes made outside of your home to permit you to get to your means of transportation (e.g., the installation of an exterior ramp for a wheel-chair confined person or special exterior railings or pathways for someone who requires crutches) will be deducted. Costs relating to modifications of the inside of your home will not be deducted. If you work at home, the costs of modifying the inside of your home in order to create a working space to accommodate your impairment(s) will be deducted to the extent that the changes pertain specifically to the space in which you work. Examples of such changes are the enlargement of a doorway leading into the work space or modification of the work space to accommodate problems in dexterity. However, if you are self-employed at home, any cost deducted as a business expense cannot be deducted as an impairment-related work expense.

(iii) *Nonmedical appliances and equipment.* Expenses for appliances and equipment which you do not ordinarily use for medical purposes are generally not deductible. Examples of these items are portable room heaters, air conditioners, humidifiers, dehumidifiers,

and electric air cleaners. However, expenses for such items may be deductible when unusual circumstances clearly establish an impairment-related and medically verified need for such an item because it is essential for the control of your disabling condition, thus enabling you to work. To be considered essential, the item must be of such a nature that if it were not available to you there would be an immediate adverse impact on your ability to function in your work activity. In this situation, the expense is deductible whether the item is used at home or in the working place. An example would be the need for an electric air cleaner by an individual with severe respiratory disease who cannot function in a non-purified air environment. An item such as an exercycle is not deductible if used for general physical fitness. If it is prescribed and used as necessary treatment of your impairment and necessary to enable you to work, we will deduct payments you make toward its cost.

(5) *Payments for drugs and medical services.* (i) If you must use drugs or medical services (including diagnostic procedures) to control your impairment(s), the payments you make for them may be deducted. The drugs or services must be prescribed (or utilized) to reduce or eliminate symptoms of your impairment(s) or to slow down its progression. The diagnostic procedures must be performed to ascertain how the impairment(s) is progressing or to determine what type of treatment should be provided for the impairment(s).

(ii) Examples of deductible drugs and medical services are anticonvulsant drugs to control epilepsy or anticonvulsant blood level monitoring; antidepressant medication for mental disorders; medication used to allay the side effects of certain treatments; radiation treatment or chemotherapy for cancer patients; corrective surgery for spinal disorders; electroencephalograms and brain scans related to a disabling epileptic condition; tests to determine the efficacy of medication on a diabetic condition; and immunosuppressive medications that kidney transplant patients regularly take to protect against graft rejection.

(iii) We will only deduct the costs of drugs or services that are directly related to your impairment(s). Examples of non-deductible items are routine annual physical examinations, optician services (unrelated to a disabling visual impairment) and dental examinations.

(6) *Payments for similar items and services.* (i) *General.* If you are required to utilize items and services not specified in paragraph (c)(1) through (5) of this section but which are directly related to your impairment(s) and which you need to work, their costs are deductible. Examples of such items and services are medical supplies and services not discussed above, and transportation.

(ii) *Medical supplies and services not described above.* We will deduct payments you make for expendable medical supplies, such as incontinence pads, catheters, bandages, elastic stockings, face masks, irrigating kits, and disposable sheets and bags. We will also deduct payments you make for physical therapy which you require because of your impairment(s) and which you need in order to work.

(iii) *Payments for transportation costs.* We will deduct transportation costs in these situations:

(A) Your impairment(s) requires that in order to get to work you need a vehicle that has structural or operational modifications. The modifications must be critical to your operation or use of the vehicle and directly related to your impairment(s). We will deduct the costs of the modifications, but not the cost of the vehicle. We will also deduct a mileage allowance for the trip to and from work. The allowance will be based on data compiled by the Federal Highway Administration relating to vehicle operating costs.

(B) Your impairment(s) requires you to use driver assistance, taxicabs or other hired vehicles in order to work. We will deduct amounts paid to the driver and, if your own vehicle is used, we will also deduct a mileage allowance, as provided in paragraph (c)(6)(iii)(A) of this section, for the trip to and from work.

(C) Your impairment(s) prevents your taking available public transportation to and from work and you must drive your (unmodified) vehicle to work. If we can verify through your physician or other sources that the need to drive is caused by your impairment(s) (and not due to the unavailability of public transportation), we will deduct a mileage allowance as provided in paragraph (c)(6)(iii)(A) of this section, for the trip to and from work.

(7) *Payments for installing, maintaining, and repairing deductible items.* If the device, equipment, appliance, etc., that you utilize qualifies as a deductible item as described in paragraphs (c)(2), (3), (4), and (6) of this section, the costs directly related to installing, maintaining and repairing these items are also deductible. (The costs which are associated with modifications to a vehicle are deductible. Except for a mileage allowance, as provided for in paragraph (c)(6)(iii) of this section, the costs which are associated with the vehicle itself are not deductible.)

(d) *When expenses may be deducted.* (1) *Effective date.* To be deductible an expense must be incurred after November 30, 1980. An expense may be considered incurred after that date if it is paid thereafter even though pursuant to a contract or other arrangement entered into before December 1, 1980.

(2) *Payments for services.* For the purpose of determining SGA, a payment you make for services may be deducted if the services are received while you are working and the payment is made in a month you are working. We consider you to be working even though you must leave work temporarily to receive the services. For the purpose of determining your SSI monthly payment amount, a payment you make for services may be deducted if the payment is made in the month your earned income is received and the earned income is for work done in the month you received the services. If you begin working and make a payment before the month earned income is received, the payment is also deductible. If you make a payment after you stop working, and the payment is made in the month you received earned income for work done in the month you received the services, the payment is also deductible.

(3) *Payment for items.* For the purpose of determining SGA, a payment you make toward the cost of a deductible item (regardless of when it is acquired) may be deducted if payment is made in a month you are working. For the purpose of determining your SSI monthly payment amount, a payment you make toward the cost of a deductible item (regardless of when it is acquired) may be deducted if the payment is made in the month your earned income is received and the earned income is for work done in the month you used the item. If you begin working and make a payment before the month earned income is received, the payment is also deductible. If you make a payment after you stop working, and the payment is made in the month you received earned income for work done in the month you used the item, the payment is also deductible. See paragraph (e)(4) of this section when purchases are made in anticipation of work.

(e) *How expenses are allocated.* (1) *Recurring expenses.* You may pay for services on a regular periodic basis, or you may purchase an item on credit and pay for it in regular periodic installments or you may rent an item. If so, each payment you make for the services and each payment you make

toward the purchase or rental (including interest) is deductible as described in paragraph (d) of this section.

Example. B starts work in October 1981 at which time she purchases a medical device at a cost of $4,800 plus interest charges of $720. Her monthly payments begin in October. She earns and receives $400 a month. The term of the installment contract is 48 months. No downpayment is made. The monthly allowable deduction for the item would be $115 ($5520 divided by 48) for each month of work (for SGA purposes) and for each month earned income is received (for SSI payment purposes) during the 48 months.

(2) *Nonrecurring expenses.* Part or all of your expenses may not be recurring. For example, you may make a one-time payment in full for an item or service or make a downpayment. For the purpose of determining SGA, if you are working when you make the payment we will either deduct the entire amount in the month you pay it or allocate the amount over a 12 consecutive month period beginning with the month of payment, whichever you select. For the purpose of determining your SSI monthly payment amount, if you are working in the month you make the payment and the payment is made in a month earned income is received, we will either deduct the entire amount in that month, or we will allocate the amount over a 12 consecutive month period, beginning with that month, whichever you select. If you begin working and do not receive earned income in the month you make the payment, we will either deduct or begin allocating the payment amount in the first month you do receive earned income. If you make a payment for services or items after you stopped working, we will deduct the payment if it was made in the month you received earned income for work done in the month you received the services or used the item.

Example. A begins working in October 1981 and earns and receives $525 a month. In the same month he purchases and pays for a deductible item at a cost of $250. In this situation we could allow a $250 deduction for both SGA and SSI payment purposes for October 1981, reducing A's earnings below the SGA level for that month.

If A's earnings had been $15 above the SGA earnings amount, A probably would select the option of projecting the $250 payment over the 12-month period, October 1981–September 1982, giving A an allowable deduction of $20.83 a month for each month of work (for SGA purposes) and for each month earned income is received (for SSI payment purposes) during that period. This deduction would reduce A's earnings below the SGA level for 12 months.

(3) *Allocating downpayments.* If you make a downpayment we will, if you choose, make a separate calculation for the downpayment in order to provide for uniform monthly deductions. In these situations we will determine the total payment that you will make over a 12 consecutive month period beginning with the month of the downpayment and allocate that amount over the 12 months. Beginning with the 13th month, the regular monthly payment will be deductible. This allocation process will be for a shorter period if your regular monthly payments will extend over a period of less than 12 months.

Example 1. C starts working in October 1981, at which time he purchases special equipment at a cost of $4,800, paying $1,200 down. The balance of $3,600, plus interest of $540, is to be repaid in 36 installments of $115 a month beginning November 1981. C earns and receives $500 a month. He chooses to have the downpayment allocated. In this situation we would allow a deduction of $205.42 a month for each month of work (for SGA purposes) and for each month earned income is received (for SSI payment purposes) during the period October 1981 through September 1982. After September 1982, the deduction amount would be the regular monthly payment of $115 for each month of work (for SGA purposes) and for each month earned income is received (for SSI payment purposes) during the remaining installment period.

Explanation:

Downpayment in 10/81	$1,200	
Monthly payments 11/81 through 09/82	1,265	
	12) 2,465	=$205.42

Example 2. D, while working, buys a deductible item in July 1981, paying $1,450 down. (D earns and receives $500 a month.) However, his first monthly payment of $125 is not due until September 1981. D chooses to have the downpayment allocated. In this situation we would allow a deduction of $225 a month for each month of work (for SGA purposes) and for each month earned income is received (for SSI payment purposes) during the period July 1981 through June 1982. After June 1982, the deduction amount would be the regular monthly payment of $125 for each month of work (for SGA purposes) and for each month earned income is received (for SSI payment purposes).

Explanation:

Downpayment in 07/81	$1,450	
Monthly payments 09/81 through 06/82	1,250	
	12) 2,700	=225

(4) *Payments made in anticipation of work.* A payment toward the cost of a deductible item that you made in any of the 11 months preceding the month you started working will be taken into account in determining your impairment-related work expenses. When an item is paid for in full during the 11 months preceding the month you started working the payment will be allocated over the 12-consecutive month period beginning with the month of the payment. However, the only portion of the payment which may be deductible is the portion allocated to the month work begins and the following months. For example, if an item is purchased 3 months before the month work began and is paid for with a one-time payment of $600, the deductible amount would be $450 ($600 divided by 12, multiplied by 9). Installment payments (including a downpayment) that you made for a particular item during the 11 months preceding the month you started working will be totaled and considered to have been made in the month of your first payment for that item within this 11 month period. The sum of these payments will be allocated over the 12-consecutive month period beginning with the month of your first payment (but never earlier than 11 months before the month work began). However, the only portion of the total which may be deductible is the portion allocated to the month work begins and the following months. For example, if an item is purchased 3 months before the month work began and is paid for in 3 monthly installments of $200 each, the total payment of $600 will be considered to have been made in the month of the first payment, that is, 3 months before the month work began. The deductible amount would be $450 ($600 divided by 12, multiplied by 9). The amount, as determined by these formulas, will then be considered to have been paid in the first month of work for the purpose of determining SGA and in the first month earned income is received for the purpose of determining the SSI monthly payment amount. For the purpose of determining SGA, we will deduct either the entire amount in the first month of work or allocate it over a 12 consecutive month period beginning with the first month of work, whichever you select. In the above examples, the individual would have the choice of having the entire $450 deducted in the first month of work or of having $37.50 a month ($450 divided by 12) deducted for each month that he works over a 12-consecutive month period, beginning with the first month of work. For the purpose of determining the SSI payment amount, we will either deduct the entire amount in the first month earned income is received or allocate it over a 12-consecutive month period beginning with the first month earned income is received, whichever you select. In the above examples, the individual would have the choice of having the entire $450 deducted in the first month earned income is received or of having $37.50 a month ($450 divided by 12) deducted for

each month he receives earned income (for work) over a 12-consecutive month period, beginning with the first month earned income is received. To be deductible the payments must be for durable items such as medical devices, prostheses, work-related equipment, residential modifications, nonmedical appliances and vehicle modifications. Payments for services and expendable items such as drugs, oxygen, diagnostic procedures, medical supplies and vehicle operating costs are not deductible for purposes of this subparagraph.

(f) *Limits on deductions.* (1) We will deduct the actual amounts you pay towards your impairment-related work expenses unless the amounts are unreasonable. With respect to durable medical equipment, prosthetic devices, medical services, and similar medically-related items and services, we will apply the prevailing charges under Medicare (Part B of Title XVIII, Health Insurance for the Aged and Disabled) to the extent that this information is readily available. Where the Medicare guides are used, we will consider the amount that you pay to be reasonable if it is no more than the prevailing charge for the same item or service under the Medicare guidelines. If the amount you actually pay is more than the prevailing charge for the same item under the Medicare guidelines, we will deduct from your earnings the amount you paid to the extent you establish that the amount is consistent with the standard or normal charge for the same or similar item or service in your community. For items and services that are not listed in the Medicare guidelines, and for items and services that are listed in the Medicare guidelines but for which such guides cannot be used because the information is not readily available, we will consider the amount you pay to be reasonable if it does not exceed the standard or normal charge for the same or similar item(s) or service(s) in your community.

(2) Impairment-related work expenses are not deducted in computing your earnings for purposes of determining whether your work was "services" as described in § 416.992(b).

(3) The decision as to whether you performed substantial gainful activity in a case involving impairment-related work expenses for items or services necessary for you to work generally will be based upon your "earnings" and not on the value of "services" you rendered. [See §§ 416.974(b)(6) (i) and (ii), and 416.975(a)). This is not necessarily so, however, if you are in a position to control or manipulate your earnings.

(4) The amount of the expenses to be deducted must be determined in a uniform manner in both the disability insurance and SSI programs. The amount of deductions must, therefore, be the same for determinations as to substantial gainful activity under both programs. The deductions that apply in determining the SSI payment amounts, though determined in the same manner as for SGA determinations, are applied so that they correspond to the timing of the receipt of the earned income to be excluded.

(5) No deduction will be allowed to the extent that any other source has paid or will pay for an item or service. No deduction will be allowed to the extent that you have been, could be, or will be, reimbursed for payments you made. (See paragraph (b)(3) of this section.)

(6) The provisions described in the foregoing paragraphs of this section are effective with respect to expenses incurred on and after December 1, 1980, although expenses incurred after November 1980 as a result of contractual or other arrangements entered into before December 1980, are deductible. For months before December 1980 we will deduct impairment-related work expenses from your earnings only to the extent they exceeded the normal work-related expenses you would have had if you did not have your impairment(s). We will not deduct expenses, however, for those things which you needed even when you were not working.

(g) *Verification.* We will verify your need for items or services for which deductions are claimed, and the amount of the charges for those items or services. You will also be asked to provide proof that you paid for the items or services.

8. In section 416.1112, paragraph (c)(5) is redesignated (c)(7) and paragraph (c)(6) is redesignated as (c)(8). Paragraph (c)(4) is revised and new paragraphs (c)(5) and (c)(6) are added to read as follows:

§ 416.1112 Earned income we do not count.

* * * * *

(c) *Other earned income we do not count.* We do not count as earned income—

* * * * *

(4) $65 of earned income in a month;

(5) Earned income you use to pay impairment-related work expenses described in § 416.976, if you are disabled (but not blind) and under age 65 or you are disabled (but not blind) and received SSI as a disabled person for the month before you reached age 65. (However, if your countable income without benefit of the exclusion exceeds the Federal SSI limit when we determine your initial eligibility, we cannot apply this provision until your countable income without benefit of this exclusion is within the Federal SSI limit.) Once you qualify for the exclusion of impairment-related work expenses, you continue to be entitled to the exclusion for all subsequent consecutive months in which your countable income after the exclusion is within the Federal SSI limit or, if applicable, the higher income limit for an optional supplement which we administer for the State where you live. If in a subsequent month your countable income after the exclusion exceeds either of these limits, you no longer qualify for the exclusion until your countable income without benefit of this exclusion is again within the Federal limit);

(6) One-half of remaining earned income in a month;

(7) Earned income used to meet any expenses reasonably attributable to the earning of the income if you are blind and under age 65 or if you receive SSI as a blind person for the month before you reach age 65. (We consider that you "reach" a certain age on the day before that particular birthday.); and

(8) Any earned income you receive and use to fulfill an approved plan to achieve self-support if you are blind or disabled and under age 65 or blind or disabled and received SSI as a blind or disabled person for the month before you reached age 65. See §§ 416.1180 through 416.1182 for an explanation of plans to achieve self-support and for the rules on when this exclusion applies.

9. In section 416.1124, paragraph (c)(11) is revised to read as follows:

§ 416.1124 Unearned income we do not count.

* * * * *

(c) *Other unearned income we do not count.* We do not count as unearned income—

* * * * *

(11) Any unearned income you receive and use to fulfill an approved plan to achieve self-support if you are blind or disabled and under age 65 or blind or disabled and received SSI as a blind or disabled person for the month before you reached age 65. See §§ 416.1180 through 416.1182 for an explanation of plans to achieve self-support and for the rules on when this exclusion applies.

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20 CFR Part 416

[Reg. No. 16]

Supplemental Security Income for the Aged, Blind and Disabled, Rounding of Supplemental Security Income Benefits

AGENCY: Social Security Administration, HHS.

ACTION: Final rule with request for comments.

SUMMARY: We are revising our regulations on how Supplemental Security Income (SSI) benefit amounts are established, to take account of section 182 of Pub. L. 97-248, the "Tax Equity and Fiscal Responsibility Act of 1982" which amends section 1617 of the Social Security Act. Under these revised regulations, SSI Federal benefit rates (FBRs), which are adjusted annually to reflect changes in the cost of living, will be rounded to the next lower whole dollar amount. The regulations provide that after future cost-of-living adjustments (COLAs) in SSI benefits have been calculated, the FBRs payable, when not in a whole dollar amount, will be rounded to the next lower whole dollar amount.

DATES: Although these rules are being issued as final regulations effective May 16, 1983, we will consider any comments we receive by July 15, 1983 and will revise these regulations if public comment warrants it.

ADDRESS: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203, or delivered to the Office of Regulations, Social Security Administration, 3-B-4 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Fred Miranda, Legal Assistant, 3-B-4 Operations Building, Baltimore, Maryland 21235, (301) 594-7341.

SUPPLEMENTARY INFORMATION:

Background

These regulations affect the monthly SSI benefit amounts that we pay. Our existing regulations, as did the law prior to October 1, 1982, provide that SSI FBRs, which are changed annually to reflect COLAs, are rounded to the next higher ten cents. Though the effect of the rounding of benefits on any one recipient is minimal, its overall impact is marked. Each time the COLA is computed, it is based on the previous higher rounded benefit amount. Consequently, over time, this upward rounding procedure has had a compounding effect that results in benefit rates and thus benefit payments that are higher than the COLAs alone would have caused. Accordingly, the cumulative effect of rounding benefit rates upward has been costly.

Section 182 of Pub. L. 97-248, which was enacted on September 3, 1982, provides, effective October 1, 1982, that the FBR's under title XVI of the Social Security Act be rounded to the next lower dollar whenever there is a COLA in the benefits payable which does not result in a whole dollar amount being paid. Under section 182, COLAs in subsequent years are to be based on the preceding year's unrounded Federal benefit rates and income eligibility amount. As a result there would be no singnificant detrimental cumulative effect on the benefits of individuals who, year after year, have their SSI benefits rounded downward.

The Revised Regulations

The revised regulations provide, whenever there is a COLA in the benefits payable under title II of the Social Security Act, that the SSI benefits payable to eligible individuals and couples (see §§ 416.410-416.414, and § 416.531) will likewise be increased, and that the monthly Federal benefit rates which result from any such COLA in SSI benefits will be rounded to the next lower dollar. They also provide that the COLAs in subsequent years will be based on the unrounded Federal benefit rates of the previous year.

Effective Dates

The statutory amendment on the rounding down of SSI benefit rates is effective October 1, 1982. The revised regulations are effective May 16, 1983.

Final Rule

Generally, it is the Department's policy to use notice and comment procedures in the development of rules. However, under the Administrative Procedure Act (5 U.S.C. 553(b)(B)), an agency for good cause may issue rules without using notice and public comment procedures. One such situation arises, as in this case, when the statute is so explicit that policy formulation is not required. Accordingly, we find that publication of a notice of proposed rulemaking is "unnecessary" because the statutory provision upon which the regulations are based allows for no discretion. Therefore, these rules are being issued as final rules and will become effective on the date they are published in the **Federal Register.**

Regulatory Procedures

Executive Order No. 12291—These regulations have been reviewed under Executive Order 12291 and do not meet any of the criteria for a major regulation because they will not have an annual effect on the economy of $100 million and will not cause increases in costs or prices. The anticipated savings in fiscal years 1983 and 1984 are $5 million and $14 million respectively (assuming the Congress does not delay the July 1983 COLA). Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act of 1980—These regulations impose no additional reporting and recordkeeping requirement requiring Office of Management and Budget clearance.

Regulatory Flexibility Act—We certify that these regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96-354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance program No. 13.807, Supplemental Security Income Program)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disabled, Public assistance programs, Supplemental Security Income (SSI).

Dated: March 4, 1983.

John A. Svahn,

Commissioner of Social Security.

Approved: April 26, 1983.

Margaret M. Heckler,

Secretary of Health and Human Service.

PART 416—[AMENDED]

Part 416 of Title 20 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Subpart D of Part 416 reads as follows:

Authority: Sec. 1102, 1611, 1612, 1617, and 1631 of the Social Security Act as amended; 49 Stat. 647 as amended, 86 Stat. 1465, 86 Stat 1468, 86 Stat. 1475 (42 U.S.C. 1302, 1382, 1382a, and 1383); Sec. 182 of Pub. L. 97-248, 96 Stat. 404.

2. Section 416.405 is amended to read as follows:

§ 416.405 Cost-of-living adjustments in benefits.

Whenever benefit amounts under title II of the Act (Part 404 of this chapter) are increased by any percentage effective with any month as a result of a determination made under section 215(i) of the Act, each of the dollar amounts in effect for such month under §§ 416.410, 416.412, 416.413, 416.414, and 416.531, as specified in such sections or as previously increased under this section, shall be increased by the same percentage. The result when not a multiple of $12 on an annual basis shall be rounded to the next lower multiple of $12 on an annual basis. The percentage increase shall be applied to the amounts which were derived pursuant to this section before having been rounded as described above.

[FR Doc. 83-13090 Filed 5-13-83; 8:45 am]

BILLING CODE 4910-11-M

DEPARTMENT OF THE TREASURY

31 CFR Part 1

Privacy Act of 1974; Final Rule Exempting a System of Records From Certain Requirements

AGENCY: Office of the Secretary, Office of the General Counsel, Treasury.

ACTION: Final rule.

SUMMARY: On January 5, 1983, the Department of the Treasury published a proposed rule which would amend 31 CFR 1.36, 48 FR 481. The rule would (1) change the name of a system of records, Treasury/OS 00.144, from "Civil Litigation Records" to "Treasury Interagency Automated Litigation System (TRIALS)", (2) exempt TRIALS from the application of certain parts of the Privacy Act in accordance with 31 CFR 1.23(c) and 1.36, and (3) amend § 1.36 to reflect TRIAL's operational characteristics. No comments were received concerning the proposed rule; this publication will thus promulgate the final rule.

EFFECTIVE DATE: June 15, 1983.

FOR FURTHER INFORMATION CONTACT: Stephanie Dick, Office of the Assistant General Counsel (Enforcement & Operations), Room 2000, Main Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

SUPPLEMENTARY INFORMATION: The existing system of records, Civil Litigation Records, is a manual system. The Office of the General Counsel has revised and supplemented this system through automation. The revised system, TRIALS, is essentially a computerized indexing version of the Civil Litigation Records System. TRIALS is a case-management index which provides summary data on Treasury non-tax litigation and administrative proceedings. This document amends 31 CFR 1.36 to reflect the existence of the revised system.

As required by Executive Order 12291, it has been determined that this rule is not a "major" rule and therefore does not require a Regulatory Impact Analysis.

Pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, it has been determined that this rule does not have a significant impact on a substantial number of small entities.

In accordance with the provisions of the Paperwork Reduction Act of 1980, Pub. L. 96-511, the Department of the Treasury has made a determination that this proposed rule will not impose new recordkeeping, application, reporting or other types of information collection requirements.

Authority: 5 U.S.C. 552a.

List of Subjects in 31 CFR Part 1

Privacy.

Dated: April 28, 1983.

Cora P. Beebe,

Assistant Secretary (Administration).

Promulgation of Regulations

Title 31 CFR 1.36 of Subpart C is amended by revising paragraphs (a), (b) and (c) to read as follows:

§ 1.36 [Amended]

* * * * *

Office of the Secretary

Office of the General Counsel

Noted Exempting a System of Records from Requirements of the Privacy Act.

(a) *In general.* The General Counsel of the Treasury exempts the system of records entitled "Treasury Interagency Automated Litigation System (TRIALS)" from the provisions of subsections (c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f) of 5 U.S.C. 552a. The manual part of this system of records contains information or documents relating to litigation or administrative proceedings involving or concerning the Department or its officials, and includes pending, active and closed files. The manual records consist of copies of pleadings, investigative reports, information compiled in reasonable anticipation of a civil action or proceeding, legal memoranda, and related correspondence. Pleadings which have been filed with a court or administrative tribunal are matters of public record and no exemption is claimed as to them. The computerized part of the system contains summary data on Treasury Department non-tax litigation and administrative proceedings, *e.g.*, plaintiff, defendant, attorney, witness, judge and/or hearing officer names, type of case, relief sought, date, docket number, pertinent dates, and issues. The purpose of the exemptions is to maintain the confidentiality of investigatory materials compiled for law enforcement purposes; information compiled in reasonable anticipation of a civil action a proceeding is exempt from access under section (d)(5) until the file is closed; thereafter section (k)(2) may apply in part to the information. Legal memorandum and related correspondence contain no personal information and are not subject to disclosure under section 552a. Determinations concerning whether particular information contained in this system is exempt from disclosure will be made at the time a request is received from an individual to gain access to information pertaining to him.

(b) *Authority.* These rules are promulgated pursuant to the authority vested in the Secretary of the Treasury by 5 U.S.C. 552a(k), and pursuant to the authority vested in the General Counsel by 31 CFR 1.23(c).

(c) *Name of System.* Treasury Interagency Automated Litigation System (TRIALS).

* * * * *

[FR Doc. 83-12964 Filed 5-13-83; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

Glacier Bay National Park and Preserve, Alaska; Protection of Humpback Whales

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: On April 6, 1983, the National Park Service, Department of the Interior, published in the **Federal Register** (48 FR 14976) a proposed rule to extend on a limited basis the existing temporary regulations for the protection of the humpback whale, an endangered species, at Glacier Bay National Park and Preserve. The affected regulations define terms, limit large and small vessel entry into Glacier Bay, place certain operating restrictions on all vessels within the Bay, and restrict certain commercial fishing activities at

the mouth of Glacier Bay. The proposed extension was made available for public review and comment for a period of thirty (30) days following publication in the **Federal Register**, and ending on May 6, 1982. Comments received consideration during preparation of the final rule. As a result of this rulemaking process, a final regulation is being published to extend the regulations applicable to vessel entry and operation for three and one-half months, *i.e.*, through August 31, 1983, and to extend the regulations applicable to certain commercial fishing activities through December 31, 1983. The extension gives the National Park Service time to review research being prepared by the National Marine Fisheries Service, and subsequently issue, as necessary, permanent regulations which may be less or more stringent according to the conclusions of the research. Minor technical changes reflecting a name change of the park are also incorporated in the final rule.

EFFECTIVE DATE: May 15, 1983.

FOR FURTHER INFORMATION CONTACT: Donald D. Chase, Chief of Operations, Glacier Bay National Park and Preserve, P.O. Box 1089, Juneau, Alaska 99802, Telephone: (907) 586–7137.

SUPPLEMENTARY INFORMATION:

Background

Glacier Bay, a marine body of water within Glacier Bay National Park, has been recognized since the early 1950's as a summer feeding ground for the humpback whale, a declining species placed on the Endangered Species List in 1970. Research showed an average of 20 to 25 whales used the Bay in the several years prior to 1978 for summer feeding. In 1978 and 1979 this pattern was drastically altered when whales entered the Bay, but shortly after abandoned it, leaving only three or four whales that spent the entire summer. On August 6, 1979, the National Park Service requested a formal consultation with the National Marine Fisheries Service (NMFS) to assess the problem, in accordance with the Endangered Species Act. NMFS concluded that the uncontrolled increase of vessel traffic, particularly of erratically traveling charter and pleasure craft, may have altered humpback behavior and that a continued increase was likely to jeopardize the existence of the humpback in Southeast Alaska. NMFS recommended that the amount of vessel traffic should be restricted to 1976 levels, that additional research be conducted, and that regulations should be developed that would address vessel routing, maneuvering, and speed.

Existing Regulations

Responding to NMFS conclusions and recommendations, the National Park Service promulgated regulations, 36 CFR 7.23(b)–(d), on May 15, 1980 (45 FR 32228), to remain in effect three years from the date of publication. In summary, these regulations limit the entry of cruise ships into Glacier Bay to 89 vessels during the whale season (June 1 through August 31), with not more than two entries per day. Without regard to size or kind of vessel, all motorized vessels are prohibited from intentionally positioning themselves within ¼ mile of a whale, or otherwise pursuing or attempting to pursue a whale. Requirements are also established to govern operations in the event of a vessel-whale encounter to restore the ¼ mile separation safely and with as little disturbance to the whale as possible. Finally, the superintendent is authorized to designate areas in Glacier Bay as "whale waters" where vessels must maintain a constant speed (not to exceed 10 knots) and course, except to avoid coming within ¼ mile distance from a whale.

On the same day the above regulations were published, interim rules were published (46 FR 32234) to limit the adverse impact of small vessels on whales within Glacier Bay, and to prohibit commercial harvesting of four major organisms upon which humpback whales feed. Under this regulation small vessel entries into Glacier Bay are limited to 538 during the whale season. The final rule, 36 CFR 7.23(e)–(f), was published in the **Federal Register** on December 30, 1980 (45 FR 85741) and became effective September 1, 1981. A further amendment pertaining to the collection of the information necessary to the issuance of small-vessel entry permits, as authorized by 36 CFR 7.23(e), was published October 13, 1981 (46 FR 50370) and codified as 36 CFR 7.23(g).

Rule Extension

The existing regulations were intended to be temporary until more conclusive research on the whales at Glacier Bay could be completed. At that time, the National Park Service would again request formal consultation with the National Marine Fisheries Service to review the research and seek recommendations. The Park Service would then propose any changes necessary in the regulations based upon the conclusions of the research. NMFS has indicated that the final research reports will not be completed and available to the National Park Service until the approximate time the existing temporary regulations expire on May 15, 1983. This makes it impossible to review the research data, reinitiate a consultation with NMFS, and develop regulations that properly address the results. The extension of regulations should not be construed to signify any premature conclusions about the need for or nature of any future rulemaking. As necessary, a permanent regulation, which may be more or less stringent than that now in effect, will be promulgated based on NMFS' research reports. Expiration of the regulations was not considered feasible since an unregulated situation, as the NMFS biological opinion states, may have created the disruption in humpback behavior, which the Endangered Species Act and other laws required the National Park Service to address.

Consequently the National Park Service is extending paragraphs (b)–(e), applicable to vessel entries and operations for three and one-half months, *i.e.*, through August 31, the end of the 1983 whale season. Paragraph (c)(1)(ii) is amended to reflect the extension by revising the phrase "For 1981 and 1982" to read "For 1981, 1982, and 1983."

Paragraph (f), relating to the fishing of certain food species important to the humpback whale, is extended through December 31, 1983. This latter extension represents an effort to protect food stock for whales during the longer fishing season.

A technical revision is also included at this time, *i.e.*, changing the name "Glacier Bay National Monument" to "Glacier Bay National Park and Preserve" where it appears in the title and text of section 7.23. This change conforms to the redesignation of the park pursuant to the Alaska National Interest Lands Conservation Act (94 Stat. 2371).

Public Participation

It is the policy of the Department of the Interior that, whenever practicable, the public will be afforded an opportunity to participate in the rulemaking process. During the 30-day comment period ending May 6, 1983, the National Park Service received no letters or telephone calls concerning the extension of the temporary regulations. Consequently, the final rule published here is identical to that appearing April 6 in the **Federal Register**.

Drafting Information

The following persons participated in the writing of this regulation: Arthur Eck, Division of Visitor Services, National Park Service; Maureen Finnerty, Division of Visitor Services,

National Park Service; Molly Ross, Division of Conservation and Wildlife, Office of the Solicitor; all in Washington, D.C.

Paperwork Reduction Act

The information collection requirement contained in 36 CFR 7.23 has been submitted to the Office of Management and Budget for approval as required by 44 U.S.C. 3501 *et seq.* The collection of this information will not be required until it has been approved by the Office of Management and Budget.

Compliance With Other Laws

The Department of the Interior has determined that this document is not a major rule under E.O. 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The regulations impose no new costs on small entities, nor are any new indirect or nonquantifiable costs anticipated. Thus, the aggregate effect of this extension on small entities is not considered significant. Pursuant to the National Environmental Policy Act (42 U.S.C. 4332), the National Park Service determined that these temporary regulations do not represent a major Federal action significantly affecting the quality of the human environment, which would require the preparation of an Environmental Impact Statement. An Environmental Assessment and Finding of No Significant Impact were prepared for the original regulation. These documents, which hold equally for the proposed extension, are available at the address listed at the beginning of this rulemaking.

Authority

Section 3 of the Act of August 25, 1916 (39 Stat. 535, as amended; 16 U.S.C. 3); Alaska National Interest Lands Conservation Act (Pub. L. 96–487; 94 Stat. 2371).

List of Subjects in 36 CFR Part 7

National parks.

§ 7.23 [Amended]

In consideration of the foregoing, § 7.23 of Title 36 of the Code of Federal Regulations is hereby amended as follows:

1. Paragraphs (b), (c), (d), and (e) are extended to remain in effect through August 31, 1983, and paragraph (f) is extended to remain in effect through December 31, 1983.

2. Paragraph (c)(1)(ii) is amended by removing the phrase "For 1981 and 1982" and inserting, in its place, the phrase "For 1981, 1982 and 1983".

3. Section 7.23 is further amended by removing the words "Glacier Bay National Monument" and inserting, in their place, the words "Glacier Bay National Park and Preserve" in the title of the section and in paragraphs (b)(5), (b)(6), and (e)(3).

4. Paragraph (a)(1) is amended by removing the work "monument" and inserting, in its place, the words "park and preserve".

Dated: May 11, 1983.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 83-13111 Filed 5-13-83; 8:45 am]

BILLING CODE 4310-70-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[A-5-FRL 2282-6]

Designations of Areas for Air Quality Planning Process; Attainment Status Designations: Illinois

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: On July 21, 1982 (47 FR 31588), EPA proposed rulemaking to revise the total suspended particulate (TSP) and ozone National Ambient Air Quality Standards (NAAQS) designations for certain Illinois counties based on a request from the State of Illinois to redesignate these areas and supporting data the State submitted under the Clean Air Act (Act). Designations can be changed if sufficient data are available to warrant the change. This notice responds to the public comments received on the notice of proposed rulemaking and finally approves the revision of the TSP designation of all or portions of the following 19 counties: Knox, Peoria, Tazewell, Cook, DuPage, Lake, Will, Kane, Jo Daviess, Monroe, Madison, St. Clair, Bureau, Putnam, DeKalb, Winnebago, Jefferson, Williamson and Sangamon Counties.

This notice also finally approves the revision of the ozone designation of the following 13 counties: Adams, Boone, DeKalb, Grundy, Kankakee, Kendall, LaSalle, McHenry, Macoupin, Peoria, Sangamon, Tazewell and Will.

EFFECTIVE DATE: This final rulemaking becomes effective on June 15, 1983.

ADDRESSES: Copies of the redesignation request, technical support documents and the supporting air quality data are available at the following addresses:

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

Illinois Environmental Protection Agency, Division of Air Pollution Control, 2200 Churchill Road, Springfield, Illinois 62706.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Air Programs Branch, Region V, Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886–6035.

SUPPLEMENTARY INFORMATION: Under Section 107(d) of the Act, the Administrator of EPA has promulgated the NAAQS attainment status for each area of every State. See 43 FR 8962 (March 3, 1978) and 43 FR 45993 (October 5, 1978). These area designations may be revised whenever the data warrant.

In the July 21, 1982, Notice of Proposed Rulemaking (47 FR 31588), EPA proposed to revise the TSP designation of townships in 19 Illinois counties as follows: From primary and secondary nonattainment to only secondary nonattainment: Knox County-Galesburg and Henderson Townships; Peoria County-Richwoods Township; Tazewell County-Cincinnati, Elm Grove, Pekin and Washington Townships; Cook County-Jefferson, Lakeview, Rogers Park, Oak Park, Palos and Proviso Townships; DuPage County-Lisle Township; Will County-Crete and Troy Townships; Jo Daviess County-East Galena, West Galena and Rawlins Townships; Monroe County-T.1N–R.10W, T.1N–R.11W, T.1S–R.10W and T.2S–R.10W; Madison County-Alhambra, Collinsville, Edwardsville, Fort Russel, Foster, Hamel, Helvetia, Jarvis, Marine, Moro, Omphghent, Pin Oak, Saline and St. Jacob Townships; St. Clair County-Freeburg, Lebanon, Millstadt, O'Fallon, Smithton and Stookey Townships.

From secondary nonattainment to attainment: Cook County-Evanston Township; Lake County-Antioch, Shields, Grant, Wauconda and Waukegan Townships; Will County-Monee Township; Kane County-Dundee Township; Jo Daviess County-Hanover Menominee, Pleasant Valley, Rush, Stockton, Vinegar Hill and Warren Townships; Monroe County-all Townships other than T.1N–R.10W, T.1N–R.11W, T.1S–R.10W, T.2S–R.10W, T.1S–R.11W, T.2S–R.9W, T.3S–R.7W and T.3S–R.8W; Bureau County-all Townships not already classified as

attainment; Putnam County-Hennepin Township, DeKalb County-except for DeKalb and Mayfield Townships all Townships are now attainment; Winnebago County-Rockford Township; Jefferson County-all Townships not already classified attainment; Williamson County-West Marion Township.

From primary and secondary nonattainment to attainment: DuPage County-Milton, Wayne and Winfield Townships; Jo Daviess County-Apple River, Council Hill, Elizabeth, Guilford, Rice, Scales Mound, Thompson and Woodbine Townships; Monroe County-T.1S–R.11W, T.2S–R.9W, T.3S–R.7W and T.3S–R.8W; Madison County-Leef, New Douglas and Olive Townships; St. Clair County-Englemann, Fayetteville, Lenzburg, Marissa, Mascoutah, New Athens and Prairie du Long Townships.

From unclassified to secondary nonattainment: Sangamon County-Springfield Township.

From unclassified to attainment: Sangamon County-all Townships other than Springfield.

From attainment to secondary nonattainment: Will County-Wilmington Township.

At the same time, EPA proposed to revise the ozone designations in 13 Illinois counties as follows: From nonattainment to attainment: Adams, Kankakee, LaSalle, McHenry, Peoria, Sangamon and Will Counties.

From nonattainment to attainment unclassified: Boone, DeKalb, Grundy, Kendall and Tazewell Counties.

From attainment unclassified to nonattainment: Macoupin County.

A number of public comments were received in response to the notice of proposed rulemaking. A general comment in support of this proposed rulemaking was submitted by an Illinois public utility. Additional comments were received from a metropolitan planning commission, a public interest group and from the State of Illinois. These comments and EPA's response are summarized below. EPA's detailed response to the public comments is contained in EPA's technical support document which is available at the locations listed at the front of this notice.

TSP Designation Comments

The State of Illinois presented the only detailed comments on the proposed changes in TSP designations. The State's comment letter of August 18, 1982, requested that EPA change the TSP attainment status designations for Hampton and Moline Townships in Rock Island County, and Derinda Township in Jo Daviess County. These changes were not proposed for rulemaking action in EPA's July 21, 1982, proposed rulemaking. EPA will publish a rulemaking notice on the attainment status of these counties in the near future.

The State's comment letter also pointed out that Prarie du Long Township and Mascoutah Township were incorrectly spelled as Maccoutah Township and Prairie du Long Township in EPA's Notice of Proposed Rulemaking. These errors have been corrected in this final rulemaking. Because these errors are considered minor and did not obscure the intent of the proposed rulemaking, EPA completes its final rulemaking today without an additional proposal.

EPA final Determination: Based on a request from the State of Illinois, EPA's technical review and consideration of the public comments received, EPA revises the TSP designation of townships in 19 Illinois counties as follows: From primary and secondary nonattainment to only secondary nonattainment: Knox County-Galesburg and Henderson Townships; Peoria County-Richwoods Township; Tazewell County-Cincinnati, Elm Grove, Pekin and Washington Townships; Cook County-Jefferson, Lakeview, Rogers Park, Oak Park, Palos and Proviso Townships; DuPage County-Lisle Township; Will County-Crete and Troy Townships; Jo Daviess County-East Galena, West Galena and Rawlins Townships; Monroe County-T.1N–R.10W, T.1N–R.11W, T.1S–R.10W and T.2S–R.10W; Madison County-Alhambra, Collinsville, Edwardsville, Fort Russel, Foster, Hamel, Helvetia, Jarvis, Marine, Moro, Omphghent, Pin, Oak, Saline and St. Jacob Townships; St. Clair County-Freeburg, Lebanon, Millstadt, O'Fallon, Smithton and Stookey Townships.

From secondary nonattainment to attainment: Cook County-Evanston Township; Lake County-Antioch, Shields, Grant, Wauconda and Waukegan Townships; Will County-Monee Township; Kane County-Dundee Township; Jo Daviess County-Hanover, Menominee, Pleasant Valley, Rush, Stockton, Vinegar Hill and Warren Townships; Monroe County-all Townships other than T.1N–R.10W, T.1N–R.11W, T.1S–R.10W, T.2S–R.10W, T.1S–R.11W, T.2S–R.9W, T.3S–R.7W and T.3S–R.8W; Bureau County-all Townships not already classified as attainment; Putnam County-Hennepin Township; DeKalb County-except for DeKalb and Mayfield Townships, all Townships are now attainment; Winnebago County-Rockford Township; Jefferson County-all Townships not already classified attainment; Williamson County-West Marion Townships.

From primary and secondary nonattainment to attainment: DuPage County-Milton, Wayne and Winfield Townships; Jo Daviess County-Apple River, Council Hill, Derinda, Elizabeth, Guilford, Rice, Scales Mound, Thompson and Woodbine Townships; Monroe County-T.1S–R.11W, T.2S–R.9W, T.3S–R.7W and T.3S–R.8W; Madison County-Leef, New Douglas and Olive Townships; St. Clair County-Englemann, Fayetteville, Lenzburg, Marissa, Mascoutah, New Athens and Prairie du Long Townships.

From unclassified to secondary nonattainment: Sangamon County-Springfield Township.

From unclassified to attainment: Sangamon County-all Townships other than Springfield.

From attainment to secondary nonattainment: Will County-Wilmington Township.

Ozone Designation Comments

A number of comments were submitted recommending changes to the proposed ozone designation changes. These comments are summarized below along with EPA's response.

Comment: The proposed rulemaking was based entirely on pre-1982 ozone data since no data from the 1982 ozone season were available at the time of the rulemaking. A public interest group comments that ozone standard exceedances have occurred in Will (0.147 ppm, August 16th), Kankakee (0.134 ppm, August 16th) and McHenry (0.135 ppm, August 15th) Counties during 1982. The commentor, therefore, considers EPA's proposed rulemaking for these counties to be premature and incorrect.

Response: EPA's ozone standard guidelines ("Guideline for the Interpretation of Ozone Air Quality Standards," EPA–450/4–79–003) recommend consideration be given to the most recent available data.

On November 5, 1982, IEPA transmitted 1982 ozone monitoring data for McHenry, Will and Kankakee Counties. These data agree with the data supplied by the commentor, but indicate that no further exceedances have been recorded in 1982 at any of these sites. That is, these sites have all recorded just one exceedance in 1982. The ozone air quality standard allows exceedances, but requires that the annual average expected number of exceedances (averaged over as many as three years) be no more than 1.0. These data indicate that EPA should proceed

with final rulemaking to designate the McHenry, Will and Kankakee Counties to attainment for ozone.

Comment: The public interest group comments that EPA's proposed rulemaking is premature because meteorology during the 1979–1981 period has not been conducive to ozone formation. The commentor considers the meteorology during this period to be atypical, and recommends delaying rulemaking, particularly for Kankakee, McHenry and Will Counties.

Response: As pointed out in the "Guidelines for the Interpretation of Ozone Air Quality Standards," EPA recognizes the existence of the positive and negative impacts on ozone formation due to fluctuating variations in meteorology. EPA consequently uses multiple years of air quality data in evaluating redesignations in an effort to average out these impacts of meteorology variations. On the other hand, use of too many years or data introduces complications caused by changes in precursor emissions. EPA considers 3 years to be long enough to average out the impacts of most meteorological variations and yet short enough that the entire period will have approximately the same emissions level. For these reasons, EPA uses the most recent three years of ozone data, where available, as the test of an area's attainment status. It is, therefore, inappropriate to delay rulemaking on the basis of an assumed nonconduciveness of the current meteorology for ozone formation.

Comment: The State and a metropolitan planning commission comment that based on three years of monitoring data in each county, the Counties of Rock Island and Winnebago should be redesignated to attainment for ozone. The State also comments that, based on one year of exceedance-free monitoring data and their rural nature, the Counties of Effingham, Jefferson and Warren should be redesignated to attainment for ozone. In support of the use of only one year of monitoring data for redesignation to attainment, the State cites rulemaking (November 20, 1981, **Federal Register**, 46 FR 57046) of such a nature by Region IV of EPA.

Response: In making its proposed rulemaking of July 21, 1982, EPA determined that no rulemaking was required for Rock Island, Winnebago, Effingham, Jefferson and Warren Counties because these areas are currently codified (40 CFR Part 81) as "cannot be classified or better than national standards" for ozone.

A distinction between attainment and unclassified, however, can be made for these counties on the basis of monitoring data. EPA agrees with the State that these areas can be considered to be attainment. The monitored ozone concentrations in these counties meet the requirements of EPA for classification as attainment, however, no formal designation change in Part 81 is required since all these counties are presently designated attainment/unclassifiable.

Comment: The State comments that EPA should redesignate to attainment a number of counties without ozone monitors. In support of this comment, the State cited rulemaking in the September 23, 1981 and November 20, 1981 **Federal Register** (46 FR 46929 and 46 FR 57046), as well as letters to the States of Kentucky, Mississippi and South Carolina, in which EPA stated that data from an ozone monitor are representative of a 50 kilometer radius area around the monitor. The letters further stated that counties without monitoring may be designated based on monitoring data from adjoining counties if more than 50 percent of the area of the county in question falls within the "representative" area(s) of coverage of the nearby monitor(s).

Response: EPA notes that no formal national policy exists for evaluating the ozone attainment status for counties in which no monitor is located. IEPA is also correct in noting that certain redesignations by EPA have been based on an assumption that ozone monitors are representative of a 50 kilometer radius circle. In response to IEPA's comment, EPA reevaluated the guidelines that should be used to assess the attainment status of the various Illinois counties.

Monitoring studies are not available to indicate what area can be represented by an ozone monitor. It is, therefore, necessary to make case-by-case judgments about the representativeness of monitors. Clearly, as acknowledged by IEPA, the area represented by a monitor must be homogeneous; e.g., the entire area must be rural. The area must also be "homogeneous" with respect to distance from urban areas. For example, a monitor which is 60 kilometers downwind of a city is not representative of locations 20 kilometers downwind of the city. This example illustrates the fact that monitors are representative of larger areas in rural, unindustrialized States and are representative of smaller areas in States with greater population density and more concentrated industry.

Assumptions concerning attainment status in unmonitored rural counties must ultimately be made on a case-by-case basis. EPA Region V has reconsidered the situation in the State of Illinois and concluded that it is appropriate in this State to use a 50 kilometer radius circle as a guideline for the typical representativeness of ozone monitors. This guideline is modified under two sets of circumstances.

1. Counties bordering major urban nonattainment areas will not be judged attainment without monitoring data from the counties themselves. (Until data are available, these counties will be judged on a case-by-case basis taking into account all available meteorological data and the data from nearby monitors.)

2. Counties without monitoring data located between a county or counties with monitor(s) showing attainment and a county or counties with monitor(s) showing nonattainment will be judged on a case-by-case basis taking into account all available meteorological data.

The decision on the attainment status of counties without monitoring data must be made on a case-by-case basis. However, in all cases in this rulemaking, the above guidelines were found to lead to the best assumption about attainment status.

It may be noted that Region V is in agreement with IEPA that most rural unmonitored counties can be considered to be in attainment of the standard. EPA agrees with the State that when the above criteria are applied in the counties of Boone, Grundy, Tazewell, De Kalb and Kendall, which EPA had proposed to classify as unclassified, these counties can now be considered to be attainment.

The State's comment letter also requested that EPA change the ozone attainment status designation for Williamson County to attainment. This change was not proposed for rulemaking action in EPA's July 21, 1982, proposed rulemaking. EPA will publish a rulemaking notice on the attainment status of Williamson County in the near future.

EPA Final Determination: Based on a request from the State of Illinois, EPA's technical review and consideration of the public comments received, EPA revises the ozone designation in Part 81 of the Code of Federal Regulations of Adams, Boone, De Kalb, Grundy, Kankakee, Kendall, La Salle, McHenry, Peoria, Sangamon, Tazewell and Will Counties from nonattainment to attainment-unclassifiable, and Macoupin County for attainment/unclassifiable to nonattainment.

Under Executive Order 12291, this action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review. Any

comments for OMB to EPA, and any EPA response, are available for public inspection at the EPA Region V office listed in the front of this notice.

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 (60 days from today). This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Sec. 107(d) of the Act, as amended (42 U.S.C.7407))

Dated: May 2, 1983.

Lee L. Verstandig,

Acting Administrator.

PART 81—DESIGNATIONS OF AREAS FOR AIR QUALITY PLANNING PURPOSES—ILLINOIS

Part 81 of Chapter 1, Title 40 of the Code Federal Regulations is amended as follows:

§ 81.314 [Amended]

1. The TSP and Ozone portions of § 81.314 are revised to read as follows:

Designated area	Does not meet primary	Does not meet secondary	Cannot be classified	Better than national standards
Illinois				
AQCR 65:				
Knox County		X		
Peoria County:				
Peoria	X	X		
Limestone	X	X		
All other twps		X		
Tazewell County:				
Fondulac	X	X		
Groveland	X	X		
All other twps		X		
Woodford County:				
El Paso				X
Kansas				X
All other twps		X		
Fulton County				X
Hancock County				X
Henderson County				X
Mason County				X
McDonough County				X
Warren County		X	X	
AQCR 66:				
McLean County:				
Bloomington		X		
Normal		X		
All other twps				X
Coles County				X
Vermillion				X
Champaign				X
Clark				X
Cumberland				X
De Witt				X
Douglas				X
Edgar				X
Ford				X
Iroquois				X
Livingston				X
Moultrie				X
Piatt				X
Shelby				X
AQCR 67:				
Cook County:				
Hyde Park	X	X		
Lake	X	X		
North Town	X	X		
South Town	X	X		
West Town	X	X		
Berwyn	X	X		
Calumet	X	X		
Cicero	X	X		
Lyons	X	X		
Riverside	X	X		
Stickney	X	X		
Thornton	X	X		
Worth	X	X		
Schaumburg				X
Barrington				X
Evanston				X
New Trier				X
All other twps		X		
AQCR 67:				
Du Page County:				
Bloomington		X		

Designated area	Does not meet primary	Does not meet secondary	Cannot be classified	Better than national standards
Downers Grove		X		
Lisle		X		
Milton				X
Naperville		X		
Wayne				X
Winfield				X
All other twps	X	X		
Kankakee County:				
Essex				X
Norton				X
Pilot				X
All other twps		X		
Kendall County		X		
Lake County:				
Antioch				X
Shields				X
Grant				X
Wauconda				X
Waukegan				X
All other twps		X		
Will County:				
Channahon		X		
Crete		X		
DuPage	X	X		
Florence		X		
Frankfort		X		
Green Garden		X		
Homer		X		
Jackson		X		
Joliet	X	X		
Lockport	X	X		
Manhattan		X		
New Lenox		X		
Peotone		X		
Plainfield		X		
Troy		X		
Wheatland		X		
Wilmington		X		
Wilton		X		
All other twps				X
Grundy County:				
Aux Sable Twp			X	
Morris Twp			X	
All other twps				X
Kane County:				
Aurora		X		
Elgin		X		
All other twps				X
McHenry County				X
AQCR 68:				
Jo Daviess County:				
Derinda		X		
East Galena		X		
Rawlins		X		
West Galena		X		
All other twps				X
AQCR 69:				
Henry County				X
Rock Island County:				
Blackhawk	X	X		
Hampton	X	X		
Moline	X	X		
Rock Island	X	X		
South Moline	X	X		
South Rock Island	X	X		
All other twps				X
Whiteside County:				
Clyde		X		
Coloma		X		
Genesse		X		
Hopkins		X		
Hume		X		
Jordan		X		
Lyndon		X		
Montomorency		X		
Mount Pleasant		X		
Prophetsown		X		
Sterling		X		
All other twps				X
Carroll County				X
Mercer County				X
AQCR 70:				
Monroe County:				
T.1N–R.10W		X		
T.1N–R.11W		X		
T.1S–R.10W		X		
T.2.S–R.10W		X		
All other twps				X
Madison County:				
Alton	X	X		
Granite City	X	X		
Nameoki	X	X		

Designated area	Does not meet primary	Does not meet secondary	Cannot be classified	Better than national standards
Venice	X	X		
Wood River	X	X		
Leef				X
New Douglas				X
Olive				X
All other twps		X		
St. Clair County:				
Englemann				X
Fayetteville				X
Lenzburg				X
Marissa				X
Mascoutah				X
New Athens				X
Prairie du Long				X
Freeburg		X		
Lebanon		X		
Millstadt		X		
Ofallen		X		
Smithton		X		
Stookey		X		
Bond County				X
Clinton				X
Randolph				X
Washington County				X
AQCR 71:				
Bureau County				X
LaSalle County:				
Deer Park		X		
Dimmick		X		
LaSalle	X	X		
Ottawa		X		
Peru		X		
Utica		X		
Waltham		X		
All other twps				X
Lee County				X
Putnam County				X
Marshall County				X
Stark County				X
AQCR 72:				
Massac County:				
T.15S.-R.4E		X		
T.16S.-R.4E		X		
All other twps				X
Pope County:				
All twps				X
Alexander County				X
Johnson County				X
Pulaski County				X
Union County				X
AQCR 73:				
DeKalb County:				
DeKalb		X		
Mayfield		X		
All other twps				X
Stephenson County				X
Winnebago County:				
All other twps				X
Boone County				X
Ogle				X
AQCR 74:				
Jefferson County:				
All twps				X
Williamson County:				
All twps				X
Clay County				X
Crawford				X
Edwards				X
Effingham				X
Fayette				X
Franklin				X
Gallatin				X
Hamilton				X
Hardin				X
Jackson				X
Jasper				X
Lawrence				X
Marion				X
Perry				X
Richland				X
Saline				X
Wabash				X
Wayne				X
White				X
AQCR 75:				
Adams County:				
Ellington		X		
Melrose		X		
Riverside		X		
All other twps				X
Macon County:				
Decatur	X	X		

Designated area	Does not meet primary	Does not meet secondary	Cannot be classified	Better than national standards
Hickory Point		X		
All other twps				X
Menard County:				
Petersburg East		X		
Petersburg North		X		
Petersburg South		X		
All other twps				X
Sangamon County:				
Springfield		X		
All other twps				X
Brown County				X
Calhoun County				X
Cass County				X
Christian County				X
Greene County				X
Jersey County				X
Logan				X
Marcoupin				X
Montgomery				X
Morgan				X
Pike				X
Schuyler				X
Scott				X

Designated area	Does not meet primary standards	Cannot be classified or better than national standards
Illinois		
AQCR 65:		
Fulton County		X
Hancock County		X
Henderson County		X
Knox County		X
McDonough County		X
Mason County		X
Peoria County		X
Tazewell County		X
Warren County		X
Woodford County		X
AQCR 66:		
Champaign County		X
Clark County		X
Coles County		X
Cumberland County		X
De Witt County		X
Douglas County		X
Edgar County		X
Ford County		X
Iroquois County		X
Livingston County		X
McLean County		X
Moultrie County		X
Piatt County		X
Shelby County		X
Vermilion County		X
AQCR 67:		
Cook County	X	
Du Page County	X	
Grundy County		X
Kane County	X	
Kankakee County		X
Kendall County		X
Lake County	X	
McHenry County		X
Will County		X
AQCR 68:		
Jo Daviess County		X
AQCR 69:		
Carroll County		X
Henry County		X
Mercer County		X
Rock Island County		X
Whiteside County		X
AQCR 70:		
Bond County		X
Clinton County		X
Madison County	X	
Monroe County	X	
Randolph County		X
St. Clair County	X	
Washington County		X
AQCR 71:		
Bureau County		X
La Salle County		X
Lee County		X
Marshall County		X
Putnam County		X
Stark County		X
AQCR 72:		
Alexander County		X
Johnson County		X
Massac County		X
Pope County		X
Pulaski County		X
Union County		X
AQCR 73:		
Boone County		X
De Kalb County		X
Ogle County		X
Stephenson County		X
Winnebago County		X
AQCR 74:		
Clay County		X
Crawford County		X
Edwards County		X
Effingham County		X
Fayette County		X
Franklin County		X
Gallatin County		X
Hamilton County		X
Hardin County		X
Jackson County		X
Jasper County		X
Jefferson County		X
Lawrence County		X
Marion County		X
Perry County		X
Richland County		X
Saline County		X
Wabash County		X
Wayne County		X
White County		X
Williamson County	X	
AQCR 75:		
Adams County		X
Brown County		X
Calhoun County		X
Cass County		X
Christian County		X
Greene County		X
Jersey County		X
Logan County		X
Macon County		X
Macoupin County	X	
Menard County		X
Montgomery County		X
Morgan County		X
Pike County		X
Sangamon County		X
Schuyler County		X
Scott County		X

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[FR Doc. 83-12728 Filed 5-13-83 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 271

[SW-1-FRL 2363-5]

Approval of State Hazardous Waste Management Program for Phase I Interim Authorization

AGENCY: Environmental Protection Agency.

ACTION: Approval of State Hazardous Waste Management Program for Phase I Interim Authorization.

SUMMARY: The Territory of Guam has applied for Interim Authorization Phase I. EPA has reviewed Guam's application for Phase I Interim Authorization, and has determined that Guam's hazardous waste program is substantially equivalent to the Federal Program covered by Phase I. The Territory of Guam is hereby granted Interim Authorization for Phase I to operate the Territory's hazardous waste program in lieu of Phase I of the Federal program.

EFFECTIVE DATE: May 16, 1983.

FOR FURTHER INFORMATION CONTACT: Gary Lance, Toxics & Waste Programs Branch, U.S. Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, Telephone: (415) 974-8125.

SUPPLEMENTARY INFORMATION

I. Background

In the May 19, 1980, **Federal Register** (45 FR 33063) the Environmental Protection Agency (EPA) promulgated regulations, pursuant to Subtitle C of the Resource Conservation and Recovery Act of 1976, as amended [RCRA], to protect human health and the environment from hazardous waste. The Act [RCRA] includes provisions whereby a State agency may be authorized by EPA to administer the hazardous waste program in that State in lieu of a Federally administered program. For a State program to receive Final Authorization, its hazardous waste program must be fully equivalent to and consistent with the Federal program under RCRA. In order to expedite the authorization of State programs, RCRA allows EPA to grant a State agency Interim Authorization if its program is substantially equivalent to the Federal program. During Interim Authorization, a State can make whatever legislative or regulatory changes that may be needed for the State's hazardous waste program to become fully equivalent to the Federal program. The Interim Authorization program is being implemented in two phases corresponding to the two stages in

which the underlying Federal program takes effect.

Phase I regulations were published on May 19, 1980, and became effective on November 19, 1980. The Phase I regulations include the identification and listing of hazardous wastes, standards for generators and transporters of hazardous waste, standards for owners and operators of treatment, storage and disposal facilities, and requirements for State programs. The Phase II regulations cover the procedures for issuing permits under RCRA and the standards that will be applied to treatment, storage, and disposal facilities in preparing permits. In the January 26, 1981, **Federal Register** (45 FR 7965), the Environmental Protection Agency announced that States could apply for Components A and B of Phase II of Interim Authorization. Component C was announced in the **Federal Register** July 26, 1982, (47 FR 32274). Component A, analogous to Federal regulations published in the **Federal Register** January 12, 1981, (46 FR 2802), contains standards for permitting containers, tanks, surface impoundments, and waste piles. Component B, analogous to Federal regulations published in the **Federal Register** January 23, 1982, (46 FR 7666), contains standards for permitting hazardous waste incinerators. Component C, analogous to Federal regulations published in the **Federal Register** July 26, 1982 (47 FR 32274), contains standards for permitting land disposal facilities.

A full description of the requirements and procedures for State Interim Authorization is included in 40 CFR Part 271, Subpart B as amended at 48 FR 14257, April 1, 1983.

II. Discussion

On November 10, 1982, the Territory of Guam submitted its complete application for Phase I Interim Authorization. In the January 5, 1983 **Federal Register** (48 FR 483), EPA announced the availability for public review of the Guam application. EPA also indicated that if significant public interest was expressed, EPA would hold a public hearing on the application on February 24, 1983. However, no public comments were received on the Territory's application and on February 7, 1983, EPA determined that significant interest did not exist in holding the public hearing.

After detailed review of the final Guam Interim Authorization application, EPA transmitted comments to the Guam EPA on February 17, 1983. These comments requested additions and revisions to the program Description, Attorney General's Statement, Memorandum of Agreement and Authorization Plan portions of the Interim Authorization application.

On March 21, 1983, the Territory of Guam submitted amendments to the above mentioned portions of the Interim Authorization application. The following summarizes the most significant of these comments and the State's responses:

(1) The Attorney General needed to demonstrate that the Territory of Guam has the authority to implement the Federal regulations where the Territory's regulations are less stringent or lacking. In a letter dated March 15, 1983, the Acting Attorney General indicated that Guam does have the necessary statutory authority to implement the Federal regulations where the Territory's regulations are less stringent or lacking. Also, the Territory of Guam has agreed in the revised Memorandum of Agreement to utilize the Federal regulations where Guam's hazardous waste regulations are lacking or are not substantially equivalent to the Phase I Federal regulations. Furthermore, Government Code Section 24201.1 provides for the promulgation of emergency regulations if the adoption or repeal of a regulation is necessary to comply with Federal law.

(2) The Attorney General needed to cite the statutory authority which allows the Territory to apply the Federal interim status regulations. The revised Attorney General's statement demonstrates that Guam does have the statutory authority to apply the Federal interim status standards pursuant to G.C. Section 57172(a)(7). In addition, Guam EPA pursuant to G.C. Section 24201.1 has amended Section VIII, A of Guam's Hazardous Waste Management Regulations to provide that until a permit is issued by the Administrator to operate a hazardous waste management facility, all existing facilities on Guam must meet the requirements contained in 40 CFR Part 265.

(3) The Attorney General needed to cite the specific statutory authority which allows the Territory to adopt Federal regulations by reference. The revised Attorney General's statement indicates that if a government agency, such as GEPA, desires to adopt Federal regulations by reference, all that is required is compliance with the rulemaking procedures of the Administrative Adjudication Law. Additionally, there is no Territorial law that prohibits Guam from adopting Federal regulations by reference.

(4) The Attorney General needed to provide a citation to the Guam statute which allows the Territory of Guam to share confidential information with EPA especially during ongoing enforcement actions. The revised Attorney General's statement indicates that the Territory of Guam has adequate authority pursuant to Section 6 of the Guam Code Annotated (G.C.A.) to share confidential information with EPA.

III. Decision

EPA has reviewed the complete application for Phase I Interim Authorization from the Territory of Guam and has determined that the Territory's program is "substantially equivalent" as defined in 40 CFR Part 271, Subpart B, to the Phase I Federal program. In accordance with Section 3006(c) of RCRA, the Territory of Guam is hereby granted Interim Authorization to operate its hazardous waste program in lieu of Phase I of the Federal hazardous waste program. The practical effect of this decision is that generators, transporters, and owners and operators of hazardous waste management facilities in Guam will be subject to the Territory of Guam's hazardous waste program in lieu of the Federal hazardous waste program (40 CFR Parts 260–263 and 265) and will not again be subject to Phase I of the Federal program unless: (1) The Territory fails to amend its Phase I submission to include all of the components of Phase II Interim Authorization by the deadline specified in 40 CFR 271.122(c), or (2) the State fails to obtain Final Authorization by the deadline specified in Section 3006(c) of RCRA and implementing regulations, or (3) authorization is withdrawn for good cause by EPA pursuant to Section 3006(e) of RCRA.

IV. Compliance With Executive Order 12291

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

V. Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. The authorization suspends the applicability of certain Federal regulations in favor of the State program, thereby eliminating duplicative requirements for handlers of hazardous wastes in the Territory of Guam. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Authority

This notice is issued under the authority of Sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

List of Subjects in 40 CFR Part 271

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

Dated: April 21, 1983.

Sonia F. Crow,

Regional Administrator.

[FR Doc. 83-13081 Filed 5-13-83; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 82-17; Notice 2]

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

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

ACTION: Final rule.

SUMMARY: This notice amends Safety Standard No. 108 to allow motor vehicles to be equipped with a new two-lamp rectangular sealed beam headlamp system. The individual lamps in the system will be smaller than those currently allowed in two-lamp systems. The new headlamps have external dimensions identical to those of headlamps used in four-lamp rectangular headlamp systems. The headlamps are required to be designed to conform to performance levels of the presently existing Federal standards met by other headlamps.

DATE: Effective date of the amendment: June 15, 1983. Because of the necessity of manufacturers to meet tooling deadlines, it is found for good cause shown that an effective date earlier than 180 days after issuance of the rule is in the public interest.

FOR FURTHER INFORMATION CONTACT: Jere Medlin, Office of Rulemaking, National Highway Traffic Safety Administration, Washington, D.C. 20590 (202-426-2720).

SUPPLEMENTARY INFORMATION: Chrysler Corporation petitioned for rulemaking to amend Standard No. 108 to permit the use of a new, smaller, rectangular dual-beam sealed beam headlamp in a two-lamp system. The lamp, which was developed by Wagner Electric Corporation, has the same external dimensions as the rectangular headlamps used in four-lamp systems, and is designed to meet the same photometric requirements as the larger lamp currently used in rectangular two-lamp systems.

The change was requested by Chrysler in order to allow aerodynamic improvements in vehicle front end designs which will result in increased fuel economy. The current four-lamp system of units of identical size is limited in application because of infringement of the extra pair of headlamps upon the amount of grille area required for engine cooling. This will become increasingly critical as the front edges of cars become more rounded in designs planned by the industry for vehicles to be introduced in the mid-1980's.

The new system will use halogen bulbs from Type 2B headlamps, the reflector from the current Type 2A headlamp, and a modified lens. In addition, the lamp ground terminal will be rotated 45 degrees to ensure that Type 1A or Type 2A lamps cannot be inserted as replacements.

To meet the agency's previously expressed concern over proliferation of headlamp types and the consequent possibility that some of them may not be readily available, Chrysler's suppliers, Wagner, General Electric, and GTE Sylvania, have reported that the lamp will be distributed to the field through their normal distribution centers and marketing channels. Thus, the lamps will be available at "well over ten thousand retail sales outlets". Service Parts Division at all of Chrysler's 20 parts depots would stock the new headlamps to supply dealers nationwide.

Because the new headlamp would be derived basically from components of current headlamps, Chrysler estimated that there will be a "considerable" cost decrease over the current larger halogen dual rectangular lamps.

Chrysler also argued that the environmental effects of the new system are all positive, and include reduction in both fuel consumption and raw materials used in lamp manufacture. It is aware of no alternatives which would produce the same level of public benefits.

NHTSA granted the Chrysler petition on October 8, 1982, and published a notice of proposed rulemaking on October 14, 1982 (47 FR 45890).

The agency, in essence, asked three questions in the proposal—whether the performance of a small two-lamp system can meet the needs of motor vehicle safety, whether it would not be better to require such a system to "conform" to the specified requirements instead of being only "designed to conform" with them, and whether the addition of a new headlamp type to the existing types would over-burden the existing distribution system so that replacement headlamps would be difficult to find.

In response to the proposal, NHTSA received 14 comments, including one from Chrysler. Virtually all supported an amendment which would allow the new system; virtually all opposed the proposal that the new headlamp be required to "conform" to specified requirements.

In response to an earlier notice (Request for comments, August 31, 1981; 46 FR 43,719) on new headlighting systems, several commenters had expressed concern about the implications of the possible changes for the simplicity and ease of manufacturing headlamps. In terms of these considerations, the optimum headlamp appears to be one having a relatively large diameter and a single beam. If a headlamp is smaller, contains more then one beam or has a noncircular shape, its photometrics are more difficult to control. Two of those parties who had previously criticized the concept of a system using smaller headlamps, BMW and Koito, did not comment on the current proposal. Volkswagen of America, a previous critic, voiced no objection to the smaller headlamp *per se*, though indicating its preference lay in other directions. California Highway Patrol concurred with the proposal but asked whether the smaller lamp could produce as good a roadlighting beam as a larger headlamp with the same size filament.

NHTSA has carefully reviewed all comments. The fact that the new smaller headlamp is required to meet the same photometric requirements as those of other sizes should ensure that roadway lighting on either high or low beam is sufficient for motor vehicle safety. NHTSA anticipates that manufacturers of these headlamps will maintain quality controls sufficient to insure that the photometrics of any lamp chosen at random will meet the minimum required for each headlamp, even if these controls are more rigorous than those required for a four-lamp system. Sealed beam lighting technology is wel' proven in practice, and lamps whose

dimensions are identical to those which would be used in the new headlamp system have been produced for almost ten years now. Thus, problems inherent in start-up production should be reduced to a minimum. NHTSA has concluded that, in spite of theoretical objections, the new lamps should provide equivalent performance while allowing manufacturers to improve vehicle aerodynamics by locating them to best advantage.

Commenters expressed almost universal opposition to the agency's proposal to require that the new lamps "conform" instead of being "designed to conform" with the requirements for those lamps. Because minor deviations at individual test points are not discernible to the naked eye, the commenters believed that very little real safety advantage would accrue from an approach requiring strict adherence to the performance specifications. (The agency is not willing to accept this argument without further study.) Further, commenters argue that the cost of lamps would increase. Similarly, the commenters stated that the administration burden on the agency would increase because manufacturers finding individual test point failures of a marginal nature would petition under Part 556 for determinations that they were inconsequential as they relate to motor vehicle safety and thus exempt from the statutory requirement for recall and remedy of noncomplying vehicles and equipment. These potential problems have been avoided under the "design to conform" requirements applicable to currently permitted headlamp systems since NHTSA has allowed random occasional failures without concluding that a lamp is noncompliant. Noting that the Society of Automotive Engineers is currently developing a headlamp performance standard, General Electric recommended that NHTSA review the SAE work and consider a new Federal standard instead of attempting to require strict compliance with existing performance requirements.

After reviewing these comments, NHTSA has concluded that if a requirement for strict compliance is to be introduced, it should be done simultaneously for all lamps, not just for one size of headlamp. Therefore, the agency has not adopted this portion of the proposal at this time but believes that the issue of "conform" versus "design to conform" should be considered in the future as a separate issue.

Because six types of headlamps in four sizes are currently permitted under Standard No. 108 and being offered in the United States, the agency raised the issue of proliferation, i.e., whether permitting an additional type would lead to replacement difficulties, either as a result of the failure of supply outlets to carry the new size, or as a result of the discontinuation of a currently permitted, less popular size to make way for the new headlamp. Truck Safety Equipment Institute expressed its concern that the new lamp would be available only through Chrysler dealerships and therefore its cost would tend to be high.

NHTSA has reviewed the proliferation issue and has concluded that the addition of a new type of headlamp should not create a problem. Current rectangular headlamps received wide availability soon after introduction in 1974 and 1977. Given the precedent of this tradition of availability, it is assumed that a similar pattern will evolve if the new lamp is allowed since it is made using parts from existing lamps and similar production machinery. It is true that it will take time for a supply of replacement lamps to become as available as current headlamps. However, Chrysler stated that its dealers will have replacement lamps and that its lamp suppliers are prepared to supply sufficient quantities quickly to handle both production and field replacement markets. Changing to a new design headlamp may cause occasional difficulties in the initial period of introduction, but reasonable solutions appear to be available to eliminate any safety related problems.

Under the amendment issued today, the new headlamp is identified as "2E1", in accordance with the lighting code currently used by Standard No. 108. The amendment specifies that 2E1 headlamps meet the dimensional specifications for Type 2A headlamps (SAE Standard J571d) except that the ground terminal is rotated clockwise 45 degrees. The 2E1 headlamp is required also to meet all requirements of SAE Standard J579c and subreferenced standards applicable to Type 2 headlamp units (these are basically the photometric, beam pattern, and beam color requirements, and laboratory test specifications). The maximum design wattage is 12.8 volts, 70 watts for upper beam, and 60 watts for lower beam. The lamp is also allowed for use on motorcycles.

NHTSA has considered the impacts of this amendment and has determined that it is not major within the meaning of Executive Order 12291 "Federal Regulation" or significant under Department of Transportation regulatory policies and procedures and that neither a regulatory impact analysis nor a full regulatory evaluation is required. The amendment imposes no additional requirements and thus no additional costs. Instead, it permits manufacturers greater flexibility in selecting the design of headlighting systems.

NHTSA has analyzed this amendment for the purposes of the National Environmental Policy Act. The amendment may have a small positive effect on the human environment since the weight and quantity of materials used in the manufacture of headlamps would be reduced. No impact on safety is anticipated.

The agency has also considered the impacts of this amendment in relation to the Regulatory Flexibility Act. I certify that this amendment will not have a significant economic impact on a substantial number of small entities. Accordingly, no initial regulatory flexibility analysis has been prepared. As already noted, the amendment does not impose additional requirements. Further, manufacturers of motor vehicles and headlamps, those affected by the amendment, are generally not small businesses within the meaning of the Regulatory Flexibility Act. Finally, small organizations and governmental jurisdictions will be affected only to the extent that they select vehicles equipped with the new headlamps. Even in those cases, they will not be significantly affected since the price of new vehicles and headlamps will be minimally impacted.

The engineer and lawyer primarily responsible for this proposal are Jere Medlin and Taylor Vinson, respectively

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Ruber and rubber products, Tires.

PART 571—[AMENDED]

§ 571.108 [Amended]

In consideration of the foregoing 49 CFR 571.108, Motor Vehicle Safety Standard No. 108, *Lamps Reflective Devices, and Associated Equipment*, is amended as follows:

1. New paragraphs S4.1.1.13, S4.1.1.14, and S4.1.1.15 are added to paragraph S4.1.1 to read:

S4.1.1.13 Instead of headlamps designed to conform to the requirements of Table 1 and Table III, a passenger car, multipurpose passenger vehicle, truck, or bus may be equipped with two white headlamps that are designed to conform to:

(a) the requirements of SAE Standard J571d "Dimensional Specifications for

Sealed Beam Headlamp Units", June 1976, that apply to Type 2A sealed beam headlamp units, except that the designation "2A" shall not appear on the lens, and the ground terminal shall be rotated clockwise 45 degrees; and

(b) the requirements of SAE Standard J579c "Sealed Beam Headlamp Units for Motor Vehicles", December 1974, and subreferenced standards, that apply to Type 2 headlamp units;

(c) SAE Standard J580a "Sealed Beam Headlamp Assembly"; February 1974.

S4.1.1.14 The lens of each headlamp that conforms with paragraph S4.1.1.13 shall be marked with the symbol "DOT" (printed horizontally) or "DOT" (printed vertically) which shall constitute a certification that the headlamp conforms to all applicable Federal motor vehicle safety standards, and shall be labelled 2E1.

S4.1.1.15 At a voltage of 12.8 volts, the maximum design wattage for the upper and lower beams of each Type 2E1 headlamp shall be 70 watts for the upper beam and 60 watts for the lower beam.

2. The word "four" in S4.1.1.34 is removed.

3. The chart in S4.1.1.34 is revised by adding at the end thereof:

System	Headlamp types	Number of headlamps
. . . . .		
5	Type 2E1	1

(Secs. 103, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegation of authority at 49 CFR 1.50.)

Issued on May 9, 1983

Raymond A. Peck, Jr.,

Administrator.

[FR Doc. 83-12986 Filed 5-13-83 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 32

Addition of Loxahatchee National Wildlife Refuge to the List of Open Areas for Big Game Hunting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule adds Loxahatchee National Wildlife Refuge to the list of open areas for big game hunting. The Director has determined that this action would be in accordance with the provisions of all applicable laws, would be compatible with the principles of sound wildlife management, would otherwise be in the public interest, and that such use is compatible with the major purposes for which the Loxahatchee National Wildlife Refuge was established. The hunting of big game, subject to additional special regulations, will provide additional public recreational opportunities.

EFFECTIVE DATE: June 15, 1983.

FOR FURTHER INFORMATION CONTACT: James W. Pulliam, Jr., Regional Director, U.S. Fish and Wildlife Service, Richard B. Russell Federal Building, 75 Spring St., SW, Atlanta, GA 30303; Telephone (404) 221-3588, or James Gillett, Chief, Division of Refuge Management, U.S. Fish and Wildlife Service, Washington, D.C. 20240; Telephone (202) 343-4311.

SUPPLEMENTARY INFORMATION: John Oberheu, U.S. Fish and Wildlife Service, Richard B. Russell Federal Building, 75 Spring St., SW, Atlanta, GA 30303; Telephone (404) 221-3538, and Ronald L. Fowler, Division of Refuge Management, U.S. Fish and Wildlife Service, Washington, D.C. 20240; Telephone (202) 343-4306 are the primary authors of this final rulemaking.

General

National Wildlife Refuges are closed to hunting until officially opened by rulemaking. The Director may open refuge areas to hunting upon a determination that such uses are compatible with the major purposes for which such areas were established and that funds are available for development, operation, and maintenance of the permitted forms of recreation.

On September 22, 1982, a proposed rulemaking was published (47 FR 41792) to add nine national wildlife refuges, including Loxahatchee National Wildlife Refuge, to the list of open areas for migratory game birds, upland game, and big game. Action has already been taken regarding the other eight areas. A public hearing regarding the proposal to open the Loxahatchee National Wildlife Refuge to big game hunting was held in Lake Worth, Florida on October 12, 1982. The public was also provided a 30-day comment period.

The public comments, both written and oral, raised a number of substantive issues. The closing date for public comments left little time for completing the hunt procedural requirements, including promulgation of special rules for this hunt, or time for scheduling the first hunt during the 1982-83 hunting season. Rather than holding a late hunt that would be outside the regular State season, it was decided, in cooperation with the State Game and Fresh Water Fish Commission, to delay the hunts until the 1983-84 season. This will provide adequate time for further study and additional comment before final decisions are made on hunt restrictions and access methods.

Response To Comments Received

A total of 108 written comments were received relative to this proposed rulemaking. In addition, a total of 58 individuals presented comments at a public hearing which was held on October 12, 1982. Letters were received from nine organizations and 96 individuals opposing the proposal. Three organizations wrote letters endorsing the proposed hunt. At the public hearing six organizations, 18 individuals and one State Agency presented statements favoring the proposal; twenty-two organizations and seven individuals presented statements opposing the proposal. Three individuals presented statements at the hearing, but gave no opinion on the proposal. A careful review of all these public comments, both written and verbal, identified a number of substantive issues concerning the proposed rulemaking. The Service notes that, prior to the actual hunt, it will promulgate special regulations defining the hunt's conditions and limits. Many comments addressed the contents of special regulations rather than the issue in this rulemaking, which is classifying the refuge as open to hunting and thus available for special rulemaking. The actual hunt will not be permitted until suitable special regulations have been drafted and put into effect. The following is a listing of each substantive issue, followed by the Service's response:

1. Several individuals and organizations stated that the hunt is being improperly proposed in Critical Habitat of the Everglade Kite.

Service Response: There is no law, regulation or policy which prohibits hunting one animal in critical habitat of another. However, it is the intent of the Service that forthcoming hunt regulations will be devised that will prevent any adverse effect by hunters on kites or kite habitat.

2. Several organizations raised the issue that the hunt as proposed will adversely affect two endangered species, the Florida Panther and the Everglade Kite.

Service Response: Special regulations can be devised to preclude adverse impact on these species. From the best information available there are no resident panthers on the refuge, and

there is only occasional use by transient animals. Though kite use of the refuge is more common, there have been few recent records of kite use in the northern half of the refuge. The chance of deer hunters directly affecting or harming kites is almost non-existent.

3. Several organizations made the point that the curly-leaf fern is a very rare plant presently known to exist in no other place than on Loxahatchee Refuge, that it is a Category 1 candidate for the Federal endangered species list, and that hunter use of the refuge will endanger the continued existence of this plant.

Service Response: Special regulations, which will be implemented prior to the hunt, will assure that the curly-leaf fern is given whatever protection is found to be necessary.

4. Several organizations stated that the recovery teams for the endangered Florida Panther and Everglade Kite did not provide comments on a hunt proposal which included use of air boats.

Service Response: There is no regulation or policy which requires recovery team review of proposed Service actions such as this one. Service biologists have reviewed the proposal in acordance with the requirements of Section 7 of the Endangered Species Act. They have determined there will be no effect on the Florida panther. A biological opinion prepared for the impacts on the Everglade Kite concluded that the action is not likely to jeopardize the continued existence of the Kite, or result in the destruction or adverse modification of its critical habitat.

5. Several organizations stated that funds are not available for holding the hunt as required by the Refuge Recreation Act.

Service Response: The Loxahatchee Refuge budget for 1983 includes $125,000 in Interpretation and Recreation Program funds which are designated for administration of public use. Administrative costs of a deer hunt at the Loxahatchee National Wildlife Refuge would come from these funds.

6. Several groups made the point that the cost of developing and holding a deer hunt at Loxahatchee Refuge is so great in comparison to the small number of hunters that would be benefited, that the cost-benefit ratio is extremely unfavorable.

Service Response: Fish and Wildlife Service policy given in 8 RM 5.4C is that "Economic feasibility will not be the sole determination in qualifying or disqualifying a particular hunt." It is also Service policy that as long as the costs are reasonable, the Service will maintain a liberal attitude with regard to economic justification.

7. Several organizations indicated that there is only a small deer herd and no "harvestable surplus." Section (2a)(5) of the cooperative agreement between the Service and the Water Management District does not permit harvesting of wildlife unless there are "surplus stocks of game."

Service Response: The term "surplus stock" implies that the important consideration is that resident populations of game, fish and furbearers not be depleted below levels required by a balanced conservation program. The term does not imply that an excess beyond what a refuge can biologically support is required before harvest can be considered. Though the Loxahatchee deer herd is not large, a limited harvest which does not exceed annual recruitment or threaten the continued existence or health of the herd, clearly constitutes harvesting "surplus stock." It is reasonable to assume that harvest of no more than an annual increment of population increase would have no lasting impact on the herd.

8. A number of organizations pointed out that airboat access should not be permitted because there is no way that restrictions against hunting from a moving airboat can be enforced.

Service Response: Hunt restrictions and access methods have not been decided and will be given further study. These will be determined in the special rules which will be promulgated prior to the hunt.

9. At least one organization expressed concern that the opening of deer hunting on Loxahatchee Refuge may provide incentive for some indivuduals to intentionally burn portions of the refuge to improve deer habitat or facilitate deer hunting.

Service Response: Starting such a fire would be a Federal felony, punishable by up to five years' imprisonment and a $5,000 fine (18 U.S.C 1855). Irrational acts are possible in any public use of refuges, but the probability here is undemonstrated.

10. Several organizations and individuals suggested that airboat use within that portion of the area that has been closed to all such activity may adversely affect the natural vegetation of the refuge by creating trails, modifying plant succession at the edges of tree islands, and causing spread of aquatic weeds such as water hyacinth.

Service Response: Hunt restrictions and access methods have not been decided and will be given further study prior to promulgating special rules. The area, pathways and intensity of airboat use, if any, may be limited in those rules in order to minimize or avoid these risks if they prove substantial.

11. Numerous commentors expressed concerns that hunting on a "refuge" is a violation of the complete protection for animals that such designation intended.

Service Response: National Wildlife Refuges were established primarily to safeguard species, populations and their habitats, not each individual animal. As provided in the National Wildlife Refuge System Administration Act of 1966 (as amended) and other applicable laws, hunting is consistent with the concept of providing habitat for healthy populations of wildlife and is compatible with sound wildlife management principles and practices. The Service believes that public hunting is a legitimate recreational activity and that hunting need not be restricted to situations where wildlife populations exist in "excessive" numbers (i.e., used as a corrective tool). On the other hand, sound wildlife management produces populations sufficiently healthy to sustain regulated harvests.

12. Numerous groups and individuals expressed their opinion that the proposed action is a major Federal action significantly affecting the quality of the human environment, thus requiring the preparation of an Environmental Impact Statement.

Service Response: A Finding of No Significant Impact was made February 11, 1983. The environmental impact assessment and the need for a full Environmental Impact Statement will be considered again when hunt methods and procedures are proposed.

13. Several individuals suggested that the northern portion of the refuge, since it is the last remaining tract of undisturbed habitat in the northern Everglades, should be preserved and perpetuated.

Service Response: Special regulations will limit the number of hunters, dates of hunting, and area to be hunted to insure that the proposed hunt will be in conformance with statutory authorities. Significant alteration of habitat is not expected, and should it occur, appropriate steps would be taken to stop future damage. The Service agrees that this remnant of Everglades habitat should be preserved, and will not permit actions which destroy it.

14. At least two organizations suggested that the Loxahatchee deer herd has been in balance with available habitat ever since the refuge was established. A hunt could, by selectively removing certain segments of the deer population, adversely affect the naturally evolved population structure.

Service Response: A "one-day-for-each hunter" hunt will tend to randomize take. A hunter with a one-day season is less likely to pass up a doe. The density of the deer is about one per two hundred acres which will further prevent entire sex or age classes of the population from being removed.

15. Several individuals suggested that the dates of the hunt are so late that some of the bucks will have lost antlers and the does will be carrying large fetuses.

Service Response: Both Service and State wildlife biologists agree that, ideally, the hunt should be scheduled during October/November. Though the original proposal would have scheduled the first hunts in December or January, this was due to the constraints for completing new hunt implementation. Since hunts have now been postponed, it will be possible to schedule them during the most perferred period.

16. Several commentors suggested that since the Loxahatchee deer herd has remained in balance with its habitat for so long, it constitutes a valuable model from which deer population dynamics that are undisturbed by man can be evaluated and that hunting will destroy that value.

Service Response: Although this value is recognized, no one to date has undertaken a comprehensive study of this deer herd's population dynamics, and we are unaware of any plans by any individual or agency to do so. Biological information obtained from animals taken during the hunt will provide some of the first data on population dynamics, reproductive physiology and general health of the herd. The deer population is not truly undisturbed by man as the refuge is managed as a water storage and flood control area. Water level regimes have been adopted which eliminated the extreme fluctuations which occurred under natural conditions, creating artificially maintained habitat conditions. In addition, the deer herd is affected by suburban development and agricultural lands on the periphery of the refuge.

17. One State Agency commented that the hunt regulations prohibit any movement of airboats under power between the hours of 7:30 a.m. and 2:00 p.m. making it impossible for hunters who make an early kill to bring it out so that it could be cooled and processed before the meat spoils.

Service Response: Hunt restrictions and access methods have not been decided and will be given further study.

18. Several commentors suggested that non-toxic shot should be required.

Service Response: The special regulations will list permitted firearms and ammunition types. The Service originally considered requiring use of shotguns with buckshot. That proposal is subject to modification in the special regulations, which may prohibit buckshot. If the use of buckshot is not permitted, the potential for lead poisoning associated with the proposed hunt will be minimal due to the larger size and reduced number of projectiles. Furthermore, non-toxic shot is not available in shot sizes that would be effective in harvesting deer.

19. One organization pointed out that an off-road recreational need/demand study has not been prepared in accordance with section 8 RM 7.5 of the Refuge Manual.

Service Response: Whether airboats will or will not be permitted will be determined in the special regulations. Although a management study as outlined in section 8 RM 7.5 of the Refuge Manual was not conducted, *per se*, the factors that would be included in such a study were included in the environmental assessment and hunt plan which considered administration, enforcement, added costs, manpower, and related items. Administration of permits, control of use, and the probable impact of off-road vehicles on wildlife and the habitat are also described in those documents. In view of the comprehensive nature in which these effects are addressed in the environmental assessment and hunt plan, a need demand study as outlined in the Refuge Manual is redundant and unnecessary.

20. Several commentors raised the issue that the hunt would adversely affect sandhill cranes in that it would disturb them during nesting.

Service Response: Any such distrubance would relate mostly to airboat use; the special regulations may establish controls on the dates, times, and areas of use as necessary. The exact sandhill crane production is not known; however, only a few cranes are produced on the refuge each year. Sandhill crane courting and nesting activity normally begins in December. The impact of the disturbance associated with the hunt will be mitigated by scheduling the hunts in the early portion of the State hunting season prior to sandhill crane courting and nesting activity.

21. Several commentors indicated that the hunt would disturb roost of wading birds and other wildlife.

Service Response: Disturbance to wading birds and other wildlife would be temporary. Hunt restrictions and methods have not been decided and will be given further study before distribution of special regulations.

22. Several commentors suggested that the environmental assessment does not lead to the selected alternative.

Service Response: The Preferred Alternative (Number 4) would open the northern 35 percent of the refuge to controlled deer hunting. Impacts would be identical to those described in Alternatives 1 and 2. Alternative 4 would make the opportunity to hunt available to a broader spectrum of the hunting public than Alternative 1 or 2. Impacts can be mitigated by the use of special regulations, including limiting the number of boats and hunt days, regulating operating hours and prohibiting both shooting from a moving boat and boat traffic on tree islands. By restricting hunting to the north end of the refuge, conflicts with other users will be minimized. The alternatives are described in the environmental assessment in sufficient detail to permit the comparison of their merits. The environmental consequences are identified and analyzed without passing judgement on whether they are beneficial or adverse. The decisionmaker is not required to select the alternative which causes the least environmental impact. The environmental assessment that has been prepared provides sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact. The assessment constitutes the agency's compliance with the National Environmental Policy Act when a determination has been made that an evironmental impact statement is not required. The environmental impact assessment will be re-evaluated prior to a final decision on hunt methods and procedure.

Conformance with Statutory and Regulatory Authorities

Section 4(d)(1)(A) of the National Wildlife Refuge System Administration Act authorizes the Secretary to permit the use of any area within the System for any purpose, including but not limited to hunting, fishing, public recreation and accommodations, and access when he determines that such uses are compatible with the major purposes for which such areas were established.

The Refuge Recreation Act of 1962 (16 U.S.C. 460k) authorizes the Secretary of the Interior to administer the refuge areas within the National Wildlife Refuge System for public recreation as an appropriate incidental or secondary use only to the extent that it is

practicable and not inconsistent with the primary objectives for which the areas were established. In addition, the Refuge Recreation Act requires that funds be made available for the development, operation, and maintenance of these permitted forms of recreation.

The Loxahatchee National Wildlife Refuge was established on June 8, 1951 through a Cooperative and License Agreement with the Central and Southern Florida Flood Control District for use ". . . as a Wildlife Management Area and to promote the conservation of wildlife, fish, and game and for other purposes embodying the principles and objectives of planned multiple land use. The current refuge objectives are (1) To provide habitat and protection for endangered, rare and threatened species; (2) To develop and manage habitat for a full spectrum of wildlife indigenous to this area, including both major wintering and migratory species, and resident species; (3) To preserve segments of unique wildlife habitats; (4) To provide compatible conservation education and wildlife-oriented recreation; and (5) To enhance the aesthetic values of the refuge.

The ". . . conservation of wildlife, fish, and game . . ." is the primary purpose for which the refuge was established and the regulated hunting of deer is clearly compatible with that purpose. Management of the deer herd would include imposing regulations to control the magnitude and timing of the harvest so as to insure that a healthy viable population continues to reside on the area.

In 1983, $125,000 has been allocated in the Interpretation and Recreation Program for the Loxahatchee Refuge, a portion of which will be used to administer the hunting program. The opening of the refuge to big game hunting will be consistent with all applicable laws and compatible with the principles of sound wildlife management and will otherwise be in the public interest. This determination is based upon consideration of, among other things, the Service's Final Environmental Statement on the Operation of the National Wildlife Refuge System published in November 1976 and an environmental assessment which has been prepared for this action.

NEPA consideration

The "Final Environmental Statement for the Operation of the National Wildlife Refuge System" [FES 76–59] was filed with the Council on Environmental Quality on November 12, 1976, and notice of availability was published in the **Federal Register** on November 19, 1976, (41 FR 51131), pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969, [42 U.S.C. 4332(2)(C)].

An environmental assessment was prepared for this proposed action and is available for public inspection and copying in Room 2341, Department of the Interior, 18th and C Streets, NW, Washington, D.C. 20240, or by mail, addressing the Director at the address above. The environmental impact assessment will be re-evaluated prior to a final decision on hunt methods and procedures.

A determination has been made that the proposal to open Loxahatchee National Wildlife Refuge to big game hunting will not have a significant effect on the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969. This determination is based on the following: (1) This opening directly affects only a single refuge in one State; (2) The opening is pursuant to a long-standing congressional authorization to open refuges to hunting, and makes no significant change of existing policies nor does it set a precedent for future ones; (3) Hunting is an accepted tool of scientifically based wildlife management and, properly administered will cause no long term adverse effects to wildlife populations. No geological or meteorological changes are likely to be caused. No permanent changes to the features of the land itself are envisioned. No relocation of persons, homes or commercial property is involved; (4) Opening the refuge to the potential for a hunt will not have any direct effect on the environment; and (5) Annual deer hunts will be governed by special regulations which the public will have an opportunity to comment on. The hunt proposal indicates a number of possible special regulations, not all of which may in fact prove necessary or advisable but do illustrate the variety of precautions and regulatory mechanisms which are available once the refuge is added to the list of areas open to big game hunting. These possible regulations do, however, make it clear that merely adding the Loxahatchee National Wildlife Refuge to the list of areas open for big game hunting will not commit the Service to a measure which leads to a significant effect on the environment. Accordingly, the preparation of an Environmental Impact Statement is not required.

Paperwork Reduction Act

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

Economic Effect

This regulation will not, of iself, have any economic effect. The addition of a refuge to the list of refuges open for hunting is unlikely to affect any economic resources. The actual hunt will not be permitted prior to promulgation of special rules for such hunt, at which time the economic impact if any, of the hunt can be appraised. Therefore, the Department of the Interior has determined that this document is not a "major rule" within the meaning of Executive Order 12291 and that this document will not have a significant economic effect on a substantial number of small entities under the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

List of Subjects in 50 CFR Part 32

Hunting, National Wildlife Refuge System, Wildlife, Wildlife refuges.

PART 32—HUNTING

Accordingly, it is proposed to amend 50 CFR Part 32 by the addition of Loxahatchee National Wildlife Refuge, Florida, in § 32.31 as follows:

§ 32.31 List of open areas; big game.

* * * * *

Florida

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Loxahatchee National Wildlife Refuge

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(16 U.S.C. 460k, 668dd)

Dated: February 28, 1983.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 83-13056 Filed 5-13-83; 8:45 am]

BILLING CODE 4310-55-M

Proposed Rules

Federal Register
Vol. 48, No. 95
Monday, May 16, 1983

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1004

[Docket No. AO-160-A61]

Milk in the Middle Atlantic Marketing Area; Hearing on Proposed Amendments to Tentative Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This hearing is being held to consider a proposal by a federation of six cooperative associations to amend the Middle Atlantic milk marketing order. The proposal would lower the pooling requirements for reserve processing plants operated by either a cooperative association or a federation of cooperative associations. The proponent federation has requested that the proposal be adopted on a expedited basis so that an amendment can be made effective beginning September 1, 1983. The proponent contends that the proposal is necessary because of marketing problems associated with an increasing reserve supply of milk.

DATE: The hearing will convene on May 25, 1983.

ADDRESS: The hearing will be held at the Holiday Inn, Independence Mall, 400 Arch St. (4th & Arch), Philadelphia, PA 19106.

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

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code, and therefore, is excluded from the requirements of Executive Order 12291.

Notice is hereby given of a public hearing to be held at the Holiday Inn, Independence Mall, 400 Arch St. (4th & Arch), Philadelphia, PA 19106 beginning at 9:30 a.m., e.d.t., on May 25, 1983, with respect to proposed amendments to the tentative marketing agreement and to the order, regulating the handling of milk in the Middle Atlantic marketing area. In view of the request for expedited action, the Department has concluded that less than 15 days' notice of the hearing is warranted in this proceeding.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended, (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreement and to the order.

Evidence also will be taken to determine whether emergency marketing conditions exist that would warrant omission of a recommended decision under the rules of practice and procedure (7 CFR 900.12(d)) with respect to the proposals.

Actions under the Federal milk order program are subject to the "Regulatory Flexibility Act" (Pub. L. 96-354). This act seeks to ensure that, within the statuatory authority of a program, the regulatory and information requirements are tailored to the size and nature of small businesses. For the purpose of the Federal order program, a small business will be considered as one which is independently owned and operated and which is not dominant in its field of operation. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

List of Subjects in 7 CFR Part 1004

Milk Marketing Orders, Milk Dairy Products.

PART 1004—[AMENDED]

The proposed amendments, as set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by Pennmarva Dairymen's Federation, Inc: Proposal No. 1

Revise § 1004.7(d) (1) and (2) to read as follows:

§ 1004.7 Pool plant.

* * * * *

(d) * * *

(1) A reserve processing plant operated by a cooperative association a* which milk from dairy farmers is received if the total of fluid milk products (except filled milk) transferred from such cooperative association plant(s) to, and the milk of member producers physically received at, pool plants pursuant to § 1004.7(a) is not less than 30 percent of the total milk of member producers during the month.

(2) A reserve processing plant operated by a federation of cooperative associations at which milk of member producers of the cooperatives is received if the total of fluid milk products (except filled milk) transferred from such federation plant(s) to, and the milk of member producers of the cooperatives physically received at, pool plants pursuant to § 1004.7(a) is not less than 30 percent of the combined milk of member producers of the cooperatives during the month.

* * * * *

Proposed by the Dairy Division, Agricultural Marketing Service: Proposal No. 2

Make such changes as may be necessary to make the entire marketing agreement and the order conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the order may be procured from the Market Administrator, Joseph D. Shine, P.O. Box 710, Alexandria, VA 22313 or from the Hearing Clerk, Room 1077, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, or may be there inspected.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex

parte basis with any person having an interest in the proceeding. For this particular proceeding the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture
Office of the Administrator, Agricultural Marketing Service
Office of the General Counsel
Dairy Division, Agricultural Marketing Service (Washington office only)
Office of the Market Administrator, Middle Atlantic Marketing Area

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Signed at Washington, D.C., on May 11, 1983.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 83-13079 Filed 5-13-83; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 1007

[Docket No. AO-336-A21]

Milk in the Georgia Marketing Area; Hearing on Proposed Amendments to Tentative Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This hearing is being held to consider a proposal by a cooperative association to amend the Georgia Federal milk marketing order. The proposal would exempt from pooling any milk received from dairy farmers and disposed of as an aseptically processed fluid milk product (UHT milk) for export to any area located outside the continental United States. Proponent contends that the changes are needed to compete effectively in the export market for UHT milk.

DATE: The hearing will convene June 1, 1983.

EFFECTIVE DATE: The hearing will be held at the Atlanta Airport Hilton, 1031 Virginia Avenue, Hapeville, Georgia 30354, beginning at 9:30 a.m., local time.

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

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

Notice is hereby given of a public hearing to be held at the Atlanta Airport Hilton, 1031 Virginia Avenue, Hapeville, Georgia 30354, beginning at 9:30 a.m., local time, on Wednesday, June 1, 1983, with respect to the proposed amendments to the tentative marketing agreement and to the order, regulating the handling of milk in the Georgia marketing area.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreement and to the order.

Actions under the Federal milk order program are subject to the "Regulatory Flexibility Act" (Pub. L. 96-354). This act seeks to ensure that, within the statutory authority of a program, the regulatory and information requirements are tailored to the size and nature of small businesses. For the purpose of the Federal order program, a small business will be considered as one which is independently owned and operated and which is not dominant in its field of operation. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

List of Subjects in 7 CFR Part 1007

Milk marketing orders, Milk, Dairy products.

PART 1007—[AMENDED]

The proposed amendments, as set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by Dairymen, Inc.

Proposal No. 1. Revise the introductory text of § 1007.13 "Producer Milk" to read as follows:

§ 1007.13 Producer milk.

Except as provided in § 1007.21, "producer milk" means the skim milk and butterfat contained in milk of a producer that is:

* * * * *

Proposal No. 2. Add a new § 1007.21 "Exempt Milk" to read as follows:

§ 1007.21 Exempt milk.

"Exempt milk" means milk received at a pool plant in bulk form from a dairy farmer who produced it, or a cooperative association, to the extent of the quantity of any skim milk and butterfat disposed of in the form of an ultra-high temperature fluid milk product packaged in aseptic containers for export to any area located outside the continental United States; provided that, the dairy farmer, or cooperative association, by written notice to the market administrator and the receiving handler, elected non-producer status for such milk beginning with the month in which the election was made and continued for each subsequent month until cancelled in writing.

Proposal No. 3. In § 1007.44, paragraph (a)(2) is revised as follows:

§ 1007.44 Classification of producer milk.

* * * * *

(a) * * *

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in:

(i) receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order; and,

(ii) receipts of exempt milk,

* * * * *

Proposed by the Dairy Division, Agricultural Marketing Service:

Proposal No. 4. Make such changes as may be necessary to make the entire marketing agreement and the order conform with any amendments thereto that may result from the hearing.

Copies of this notice of hearing and the order may be procured from the Market Administrator, P.O. Box 49025, Atlanta, Georgia 30359, or from the Hearing Clerk, Room 1077, South Building, United States Department of Agriculture, Washington, D.C. 20250, or may be there inspected.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this

particular proceeding the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture
Office of the Administrator, Agricultural Marketing Service
Office of the General Counsel
Diary Division, Agricultural Marketing Service (Washington Office only)
Office of the Market Administrator, Georgia Marketing Area

Procedural Matters are not subject to the above prohibition and may be discussed at any time.

Signed at Washington, D. C., on May 10, 1983.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 83-13043 Filed 5-13-83; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 83-NM-19-AD]

Airworthiness Directives; British Aerospace Corporation Model BAC 1-11 200 and 400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes an Airworthiness Directive (AD) that would require repetitive inspections and repair or replacement, as necessary, of the flap beam spigots on the No. 1 left and right-hand flap beams on British Aerospace Model BAC 1-11 200 and 400 series airplanes. The AD also provides an optional modification which eliminates the repetitive inspection requirement. Several cases have been reported of broken flap beam spigots due to fatigue. Spigot failures would weaken the flap beam support structure and may result in the flap binding.

DATE: Comments must be received no later than July 5, 1983.

ADDRESS: The applicable service information may be obtained from British Aerospace, Inc., Librarian, Box 17414, Dulles International Airport, Washington, D.C. 20041 or may also be examined at the address shown below.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 83-NM-19-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The United Kingdom Civil Aviation Authority (CAA) has classified British Aerospace BAC 1-11 Alert Service Bulletin No. 53-A-PM805 as mandatory. Spigot failures on the No. 1 left and right-hand fuselage mounted flap beams have been reported. Laboratory analysis done by British Aerospace Corporation determined that the spigot failures resulted from fatigue. Each fuselage mounted flap beam has two spigots which transfer longitudinal flap loads to the fuselage. The failure of one spigot will eventually lead to failure of the second spigot and loss of flap beam integrity and result in binding of the inboard flap. British Aerospace issued BAC 1-11 Alert Service Bulletin No. 53-A-PM5805 to detect and correct spigot failures.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require inspection, and repair if necessary, of spigots on the No. 1 left and right-hand fuselage mounted flap beams.

The proposed AD includes an optional modification which, if accomplished, eliminates the repetitive inspection requirement and constitutes terminating action for AD.

It is estimated that 63 U.S. registered airplanes will be affected by this AD, that it will take approximately 62 manhours per airplane to accomplish the required actions, and that the average labor cost will be $35 per manhour. Repair parts ae estimated at $400 per airplane. Based on these figures, the total cost impact of this AD is estimated to be $161,910 to U.S. owners. For these reasons, the proposed rule is not considered to be a major rule under the criteria of Executive Order 12291. Few small entities within the meaning of the Regulatory Flexibility Act would be affected.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new Airworthiness Directive.

British Aerospace:

Applies to Model BAC 1-11 200 and 400 series airplanes, certificated in all categories. To prevent failure of the No. 1 left and right side fuselage mounted flap beam on aircraft that have not incorporated Modification No. PM5805, accomplish the following unless previously accomplished:

A. Inspect and repair or replace parts, as necessary, the forward and aft spigots of the No. 1 flap beam in accordance with paragraph 2, Accomplishment Instructions, of British Aerospace Alert Service Bulletin No. 53-A-PM5805, Issue 2, dated May 4, 1982, per the following schedule:

1. For aircraft which have accumulated 27,000 or more landings on the effective date of the AD, compliance is required prior to the accumulation of 30,000 lands, or within the next 1,000 landings, whichever occurs later.

2. For aircraft which have accumulated less than 27,000 landings on the effective date of the AD, compliance is required prior to the accumulation of 18,000 landings, or within the next 3,000 landings, whichever occurs later.

B. Repeat the actions of paragraph A., above, at intervals not to exceed 6,000 landings.

C. Terminating action to this AD is accomplished by incorporating modification No. PM5805.

D. For the purpose of this AD, and when approved by an FAA maintenance inspector, the number of landings may be computed by dividing each airplane's time in service by the operator's fleet average time from takeoff to landing for the aircraft type.

E. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

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

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

Note.—For the reasons discussed earlier in the preamble, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A regulatory evaluation has been prepared and has been placed in the public docket.

Issued in Seattle, Washington on May 5, 1983.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 83-12872 Filed 5-13-83; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 83-ASW-24]

Proposed Alteration of Control Zone: Houston William P. Hobby Airport, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Aviation Administration proposes to alter the control zone at Houston William P. Hobby Airport, TX. The intended effect of the proposed action is to provide additional controlled airspace for aircraft executing a new standard instrument approach procedure (SIAP) to the William P. Hobby Airport. This action is necessary since there is a proposed SIAP to Runway 35 using the Hobby VOR and additional airspace is required northeast of the airport for the protection of aircraft executing a SIAP to Runway 22.

DATE: Comments must be received on or before June 15, 1983.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8 a.m. and 4:30 p.m. The FAA Rules Docket is located in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Stephenson, Airspace and Procedures Branch, ASW-535, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101; telephone: (817) 877-2630.

SUPPLEMENTARY INFORMATION:

History

Federal Aviation Regulation Part 71, Subpart F § 71.171 as republished in Advisory Circular AC 70-3A dated January 3, 1983, contains the description of control zones designated to provide controlled airspace for the benefit of aircraft conducting instrument flight rules (IFR) activity. Alteration of the control zone at Houston William P. Hobby Airport will necessitate an amendment to this subpart. This amendment will be required at Houston William P. Hobby Airport, TX, since there is a proposed change in IFR procedures to the Houston William P. Hobby Airport, and a review of the designated airspace for Runway 22 revealed that a 1-mile extension is required to the northeast.

Comments Invited

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposals. (Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposals.) Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 83-ASW-24." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101, or by calling (817) 877-2630. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should contact the office listed above.

List of Subjects in 14 CFR Part 71

Aviation safety.

The Proposed Amendment

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

Houston William P. Hobby Airport, TX [Revised]

Within a 5-mile radius of the Houston William P. Hobby Airport (latitude 29°38'44" N., longitude 95°16'42" W.) and within 2 miles each side of Hobby VOR (latitude 29°39'00" N., longitude 95°16'44" W.) 056° radial extending to 5.5 miles northeast of the VOR; and within 2 miles each side of the Hobby VOR 142° radial extending to 6 miles southeast of the VOR; and within 2 miles each side of the Hobby VOR 191° radial extending to 7.5 miles south of the VOR; excluding that airspace designated as the Houston Ellington AFB, TX, control zone.

(Sec. 207(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.61(c))

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

Issued in Fort Worth, TX, on May 2, 1983.

Richard L. Failor,

Acting Director, Southwest Region.

[FR Doc. 83-12871 Filed 5-13-83; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 24

Proposed Customs Regulations Amendment Relating to Acceptance of Uncertified Checks From Customhouse Brokers

AGENCY: Customs Service, Treasury.

ACTION: Proposed rule.

SUMMARY: The Customs Regulations provide that an uncertified check drawn by an interested party shall be accepted by Customs for the payment of duty provided certain conditions are met. An uncertified check, drawn by a customhouse broker (broker) licensed in a district where an entry for merchandise is filed on behalf of an importer, shall be accepted by Customs for the deposit of estimated duties. This document proposes to amend the regulations to provide that a broker, not licensed in the district where an entry is filed, also is an interested party for the purpose of acceptance of such broker's own uncertified check for the deposit of estimated duties for the entry transactions on behalf of an importer, provided the broker has on file a power of attorney which is unconditioned geographically for the performance of ministerial acts. Customs may look to the principal (importer) or to the surety should the check be dishonored. The purpose of this proposal is to relieve brokers of the unnecessary burden of requiring them to submit certified checks.

DATE: Comments must be received on or before July 15, 1983.

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

FOR FURTHER INFORMATION CONTACT: Darrell D. Kast, Chief, Entry, Licensing and Restricted Merchandise Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5765).

SUPPLEMENTARY INFORMATION:

Background

Section 141.1(b), Customs Regulations (19 CFR 141.1(b)), provides, in part, that the liability for duties, both regular and additional, attaching on importation constitutes a personal debt due from the importer to the United States. An "importer", as defined in § 101.1(k), Customs Regulations, (19 CFR 101.1(k)), means the person primarily liable for the payment of any duties or an authorized agent acting on his behalf.

Section 111.1(b), Customs Regulations (19 CFR 111.1(b)), defines customhouse broker to mean a person who is licensed under Part 111 to transact Customs business on behalf of others.

Pursuant to section 111.2, Customs Regulations (19 CFR 111.2), a broker must obtain a separate license to transact the business of a broker, for each Customs district in which he desires to conduct business.

Section 24.1(a)(3), Customs Regulations (19 CFR 24.1(a)(3)), which relates to the collection of Customs duties, taxes, and other charges provides that an uncertified check drawn by an interested party on a national or state bank or trust company of the United States, shall be accepted by Customs if the check is acceptable for deposit by a Federal Reserve bank, branch Federal Reserve bank, or other designated depository. Further, an uncertified check can be accepted only if there is on file with the district director an entry bond or other bond to secure the payment of the duties, taxes, or other charges, or if a bond has not been filed, the organization or individual drawing and tendering the uncertified check has been approved by the district director to make payment in this manner. Section 24.1(a)(3) also provides that in determining whether an uncertified check shall be accepted in the absence of a bond, the district director shall use available credit data obtainable without cost to the Government, such as that furnished by banks, local business firms, better business bureaus, or local credit exchanges, sufficient to satisfy him of the credit standing or reliability of the drawer of the check.

Under this regulation, an uncertified check, drawn by a broker licensed in a district where an entry for merchandise is filed on behalf of an importer, shall be accepted by Customs for the deposit of estimated duties. However, a question has been raised as to whether a broker, tendering an uncertified check to Customs for deposit of estimated duties for entries filed by another broker on behalf of an importer in a district in which the tendering broker is not licensed, is an authorized agent of the importer and therefore, an interested party for the purpose of the acceptance of the payment by Customs.

In a ruling dated March 11, 1982, Customs held that a broker not licensed in a district where an entry is filed is an authorized agent of the importer for the purpose of acceptance of the broker's uncertified check for the deposit of estimated duties for entry transactions made by another broker on behalf of the importer if the unlicensed broker holds a power of attorney from the importer which is unconditioned geographically for the performance of ministerial acts.

Traditionally, most powers of attorney are limited geographically to particular districts, districts in which the importer is importing merchandise. In order to allow a broker to tender an uncertified check in districts in which he is not qualified, an unlimited power of attorney from the client-importer is necessary.

This ruling relieves a broker of an unnecessary burden in that the broker, not licensed in a district in which his client may file an entry, would no longer always be required to obtain a certified check for the payment of duties.

Customs believes it is necessary to incorporate the holding of this ruling into § 24.1 to assure uniformity of application by district directors and better inform brokers and broker associations of this practice.

This document proposes to amend § 24.1(a)(3) to provide that a broker, not licensed in the district where an entry is filed, is an interested party for the purpose of acceptance of such broker's own uncertified check for the deposit of estimated duties for entry transactions provided the broker has on file the necessary power of attorney which is unconditioned geographically for the performance of ministerial acts. Customs may look to the principal (importer) or to the surety should the check be dishonored.

Comments

Before adopting this proposal, consideration will be given to any written comments (preferably in triplicate) that are submitted timely to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with § 103.11(b), Customs Regulations (19 CFR 103.11(b)), during regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Room 2426, Headquarters, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in section 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

Pursuant to the provisions of section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 *et seq.*), it is hereby certified that the proposed regulation set forth in this document will not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Drafting Information

The principal author of this document was Charles D. Ressin, Regulations Control Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Authority

This amendment is proposed under the authority of R.S. 251, as amended (19 U.S.C. 66), section 1, 19 Stat. 247, 249 (19 U.S.C. 197); section 1, 36 Stat. 965 (19 U.S.C. 198), section 624, 46 Stat. 759 (19 U.S.C. 1624), section 641, 46 Stat. 759, as amended (19 U.S.C. 1641), section 648, 46 Stat. 762 (19 U.S.C. 1648).

List of Subjects in 19 CFR Part 24

Customs duties and inspection, Imports, Accounting.

Proposed Amendment

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

It is proposed to amend § 24.1(a)(3), Customs Regulations (19 CFR 24.1(a)(3)), by adding a new sentence at the end of the paragraph to read as follows:

§ 24.1 Collection of Customs duties, taxes, and other charges.

(a) * * *

(3) * * * For purposes of this paragraph, a customhouse broker, not licensed in the district where an entry is filed, is an interested party for the purpose of Customs acceptance of such broker's own check, provided the broker has on file the necessary power of attorney which is unconditioned geographically for the performance of ministerial acts. Customs may look to the principal (importer) or to the surety should the check be dishonored.

William von Raab,

Commissioner of Customs.

Approved: April 27, 1983.

Robert E. Powis,

Acting Assistant Secretary of the Treasury.

[FR Doc. 83-13057 Filed 5-13-83; 8:45 am]

BILLING CODE 4820-02-M

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19 CFR Part 101

Proposed Customs Regulations Amendments Relating to the Customs Field Organization

AGENCY: Customs Service, Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations by consolidating the ports of entry of Trout River, Chateaugay, and Fort Covington, New York, into a single port of entry with its headquarters at Trout River, New York. If adopted, this proposed change would eliminate duplication of port functions and permit better control of staffing resources without impairing services to area businesses or the general public. It would enable Customs to obtain more efficient use of its personnel, facilities, and resources.

DATE: Comments must be received on or before July 15, 1983.

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

FOR FURTHER INFORMATION CONTACT: Renee De Atley, Office of Inspection and Control, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-8157).

SUPPLEMENTARY INFORMATION:

Background

Customs ports of entry are locations (seaports, airports, or land border ports) where Customs officers are assigned to accept entries of merchandise, collect duties, clear passengers, examine baggage, and enforce the customs laws and related laws.

In the list of Customs regions, districts, and ports of entry set forth in § 101.3(b), Customs Regulations (19 CFR 101.3(b)), Trout River, Chateaugay, and Fort Covington, New York, are listed as ports of entry in the Ogdensburg, New York, district of the Northeast Region. Since 1972, the Chateaugay and Fort Covington ports have been under the administrative jurisdiction of the port director of Customs at Trout River. This has resulted in an improvement in the overall management of these three ports, as well as a considerable cost savings due to a reduction of management and clerical support personnel.

However, inasmuch as Chateaugay and Fort Covington are still listed as ports of entry in the table of Customs organization in § 101.3, there remains considerable duplication of effort and severe restrictions on manpower utilization.

After a comprehensive study of the ports of Trout River, Chateaugay, and Fort Covington, Customs has concluded that the most efficient and effective use of its resources would be made by formally consolidating these three ports into one port with its headquarters at Trout River. This change would eliminate duplication of port functions and permit better control of staffing resources without impairing services to area businesses or the general public. The existing Customs work force would be retained.

List of Subjects in 19 CFR Part 101

Customs duties and inspection, Imports, Organization and functions (Goverment agencies).

Proposed Regulations Amendments

PART 101—GENERAL PROVISIONS

1. It is proposed to amend § 101.3(b), Customs Regulations (19 CFR 101.3(b)), by removing Chateaugay and Fort Covington from the list of Customs ports of entry, and by indicating that Chateaugay and Fort Covington are part of the consolidated port of Trout River. The entry for "Trout River (T.D. 56074), would be revised to read "Trout River (Chateaugay, Fort Covington, T.D. 56074)".

2. It is proposed to amend § 101.4(c), Customs Regulations (19 CFR 101.4(c)), by removing Chateaugay as the port of entry having supervision over the Customs station of Churubusco, N.Y., and by inserting Trout River in its place.

Comments

Before adopting this proposal, consideration will be given to any written comments timely submitted to the Commissioner of Customs. Comments submitted will be available

for public inspection in accordance with § 103.11(b), Customs Regulations [19 CFR 103.11(b)], on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Room 2426, Headquarters, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

Authority

Customs ports of entry are established under the authority vested in the President by section 1 of the Act of August 1, 1914, 38 Stat. 623, as amended [19 U.S.C. 2], and delegated to the Secretary of the Treasury by Executive Order No. 10289, September 17, 1951 [3 CFR, 1949–1953 Comp., Ch. II], and pursuant to authority provided by Treasury Department Order No. 101–5 [47 FR 2449].

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis [5 U.S.C. 603, 604] are not applicable to this proposal because the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. There will be no reduction in Customs service as a result of this change.

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

Executive Order 12291

Because this change relates to the organization of the Customs Service, pursuant to section 1(a)(3) of Executive Order 12291, it will not result in a regulation or rule subject to the Executive Order.

Drafting Information

The principal author of this document was Gerard J. O'Brien, Jr., Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Alfred R. De Angelus,

Acting Commissioner of Customs.

Approved: April 27, 1983.

Robert E. Powis,

Acting Assistant Secretary of the Treasury.

[FR Doc. 83-13058 Filed 5-13-83; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 416

Federal Old-Age, Survivors, and Disability Insurance and Supplemental Security Income for the Aged, Blind, and Disabled; Limit on Future Effect of Applications and Related Changes in Appeals Council Procedures

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rule.

SUMMARY: We propose to revise our regulations on the validity of an application filed before the first month the claimant meets all the requirements for Old-Age, Survivors, and Disability Insurance benefits or Supplemental Security Income benefits, and our regulations on acceptance of evidence in administrative appeals. The changes are based on section 306 of the Social Security Disability Amendments of 1980.

Under these proposed regulations, if a person files an application before the first month in which all the requirements for benefits are met, the application will be a valid application only if all the requirements are met before the administrative law judge makes a hearing decision. If there is no hearing decision (for example, the claimant does not request a hearing or the request is dismissed), the claim will be allowed only if the claimant meets all the requirements before a final determination is made. We also propose to change our regulations on the administrative appeals process to provide that the Appeals Council will not consider evidence submitted after the issuance of a hearing decision by an administrative law judge. However, the right to submit new and additional evidence at the reconsideration level or in a hearing before an administrative law judge would not be affected in any way by this proposed change in Appeals Council procedures.

DATES: Your comments will be considered if we receive them no later than July 15, 1983.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203, or delivered to the Office of Regulations, Social Security Administration, 3–A–3 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235 between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Philip Berge, Legal Assistant, 3–A–3 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 594–7452.

SUPPLEMENTARY INFORMATION:

Background

These proposed regulations affect Old-Age, Survivors, and Disability Insurance (OASDI) and Supplemental Security Income (SSI) benefits under the Social Security Act (the Act), but not special age 72 benefits. Our existing regulations on applications for both OASDI benefits (including applications for a period of disability) and SSI benefits provide that an application filed before the first month in which the claimant meets all the requirements for benefits is valid until a final decision on the claim is made by us or a court. If the claimant meets all the requirements before a final decision on the application is made, we presently treat the application as if it had been filed in the month the claimant first met all the requirements.

For a claimant dissatisfied with our initial determination, SSA's administrative appeals process provides generally for (1) reconsideration of the initial determination, (2) a hearing before an administrative law judge (ALJ), and (3) review by the Appeals Council. Section 306 of Pub. L. 96–265, the Social Security Disability Amendments of 1980, limits the prospective effect of applications for OASDI benefits. (Exception: An application for special age 72 payments must still be filed no more than 3 months before the first month all requirements are met.) Under section 306, if a person files an application for OASDI benefits after June 30, 1980, and appeals our determination on it beyond the hearing level, the claimant must show that all the requirements for the benefits were met before the hearing decision in order to have us treat the application as if it had been filed in the month all the requirements were first met. If the claimant first meets all requirements after the date of the hearing decision, he or she must file a new application in order to get benefits.

Congress did not amend the SSI title of the Act (title XVI) because, unlike the OASDI title (title II), it leaves the period of validity for an application to be determined through regulations. However, the Senate Finance Committee report on Pub. L. 96–265

(Senate Report No. 96-408, 96th Congress, 1st Session, p. 57 (1979)) states that the Committee expects us to apply the same rules to SSI applications as to OASDI applications. Consequently, we are proposing the same rules for title XVI as for title II.

In enacting section 306 of Pub. L. 96-265, Congress indicated that its purpose was to permit the Secretary to issue regulations requiring that the Appeals Council consider only the evidence which had been considered by the administrative law judge. Under existing regulations the Appeals Council, in deciding whether to review a hearing decision and in actually reviewing it, considers any new and material evidence submitted. The House Committee on Ways and Means stated that "the amendment . . . would allow the issuance of regulations to foreclose the introduction of new evidence with respect to a previously filed application after the decision is made at the administrative ALJ hearing, but would not affect remand authority to remedy an insufficiently documented case or other defect." (House Report No. 96-100, 96th Congress, 1st Session, p. 14 (1979)).

These proposed regulations implement only section 306 of the Social Security Disability Amendments of 1980 and do not reflect the change in the law made by section 181 of Pub. L. 97-248 (Tax Equity and Fiscal Responsibility Act of 1982), effective October 1, 1982, which will be implemented separately along with numerous other regulatory changes required by Pub. L. 97-248. The latter section requires that SSI benefits for the first month of eligibility be prorated by the number of days in the month there is an effective application. (Prior to this change in the law, an application for SSI benefits was considered to be effective as of the first day of the month in which the application was filed.)

The Proposed Regulations

The proposed regulations provide that if an application for OASDI benefits, including a period of disability, or SSI benefits is filed before the applicant satisfies the requirements for the benefits or the period of disability, the application continues to be valid until the hearing decision is issued. However, if there is no hearing decision (for example, the claimant does not request a hearing or the hearing request is dismissed under § 404.957 or § 416.1457), the application continues to be valid only until we make a final determination on the application. Thus, if the claimant first meets the requirements after the date of the hearing decision, he or she would have to file a new application to establish entitlement.

In accord with congressional intent, the proposed regulations would also provide that the Appeals Council will not consider any additional evidence submitted after the hearing decision. This would be true both when the Appeals Council is deciding whether to review the hearing decision, either on the claimant's request for review or on its own initiative, and after it actually undertakes review of the hearing decision. If the Appeals Council receives new evidence not contained in the hearing record, it will return the additional evidence to the claimant. The claimant will be informed that if he or she wishes to have that evidence considered, he or she may either submit the evidence to the administrative law judge and request reopening of the hearing decision (if the evidence is material to the hearing decision), or file a new application. Additional evidence will be material to the hearing decision if it related to the claimant's eligibility for the period prior to the hearing decision, that is, the period for which the claimant's application was in effect. However, if the additional evidence related to the claimant's eligibility after the date of the hearing decision, a new application must be filed in order for us to consider that evidence.

The proposed changes would have no effect on the claimant's ability to submit new or additional evidence either at the reconsideration level or in a hearing before an administrative law judge. At either of these levels, the claimant would still be allowed to submit additional evidence and will still receive a completely new and independent determination or decision based on the record, including the additional evidence.

The proposed regulations would help remedy the situation in which, as described by the Senate Finance Committee report, a disability claimant "can continue to introduce new evidence at each step of the appeals process, even if it refers to the worsening of a condition or to a new condition that did not exist at the time of the initial application." We expect these regulations to promote more expeditious and orderly resolution of cases at the hearing stage and make Appeals Council review more genuinely appellate in nature.

The proposed regulations would not affect the authority of the Appeals Council to send a case back to an ALJ to remedy an insufficiently documented case or other defect. When this happens, the original hearing decision is set aside, so that additional evidence could then be entered into the record and the application would be valid until the new hearing decision is issued.

Further, under existing rules on reopening and revising a determination or decision (§§ 404.987 ff. and 416.1487 ff.), additional evidence relating to the claimant's eligibility for periods prior to the hearing decision might be considerd by an ALJ where the claimant requests reopening of the hearing decision. Thus, under these proposed regulations, if a claimant wishes to have new evidence considered after the date of a hearing decision, he or she would be required either to submit the new evidence to the ALJ for possible reopening (if the evidence relates to a period prior to the ALJ decision), or to file a new application.

Effective Dates

The statutory amendment is effective with respect to OASDI applications filed after June 30, 1980. An OASDI application filed before July 1, 1980, would be valid until the final decision on it is made, even if this occurs after June 30, 1980. The effective date of the new rule on the prospective life of SSI applications, however, will be the date of publication of the final regulations. For SSI claims, this means that only applications filed on or after the effective date of the regulations will be subject to the new provision limiting the prospective life of applications. If someone files applications under both programs between June 30, 1980, and the effective date of these regulations, the OASDI application would be subject to the new rule on prospective life, while the SSI application would still be subject to the old rule.

With respect to the changes in Appeals Council procedures, some evidence is already excluded from consideration by the Council under the 1980 statutory amendments. Specifically, the Council is no longer permitted to consider evidence relating to the time period following the administrative law judge's hearing decision in title II cases involving applications filed after June 30, 1980. The proposed regulations, further limiting the evidence that the Council can consider, would affect all title II and SSI applications filed on or after the effective date of the regulations.

The proposed changes in the regulations governing title II applications (20 CFR Part 404, Subpart G) and the title II administrative review process (20 CFR Part 404, Subpart J) would also affect entitlement to Medicare benefits. Under 20 CFR

404.601, persons wishing to become entitled to Medicare benefits are referred to the provisions of Subpart G governing title II applications "[s]ince the application form and procedures for filing a claim under this subpart are the same as those used to establish entitlement to Medicare benefits under 42 CFR Part 405." Except as specified in 42 CFR 405–701 ff., the provisions of Subpart J which govern the title II administrative review process are expressly made applicable to matters involving entitlement to Medicare benefits under 42 CFR 405.701(c).

Regulatory Procedures

Executive Order 12291—These proposed regulations have been reviewed under E.O. 12291 and do not meet any of the criteria for a major regulation. While they will generate some program savings and some administrative costs and savings, we estimate the costs and savings both at less than $1 million annually.

Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act—These proposed regulations impose no reporting/recordkeeping requirements.

Regulatory Flexibility Act—We certify that these regulations will not, if promulgated, have a singificant economic impact on a substantial number of small entities because these rules will affect only individuals. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act, is not required.

(Secs. 205(a), 1102, 1631(c)(1), (d)(1), and (e)(1), Social Security Act, as amended; sec. 306 of Pub. L. 96–265; 42 U.S.C. 405(a), 1302, 1383(c)(1), (d)(1), and (e)(1); 53 Stat. 1368, as amended; 49 Stat. 647, as amended; 86 Stat. 1475, as amended; and 94 Stat. 457)

(Catalog of Federal Domestic Assistance Program Nos. 13.714, Medical Assistance Program; 13.800, Medicare—Hospital Insurance; 13.801, Medicare—Supplementary Medical Insurance; 13.802, Social Security—Disability Insurance; 13.803, Social Security—Retirement Insurance; 13.805, Social Security—Survivors Insurance; and 13.807, Supplemental Security Income.)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Death benefits, Disabled, Old-Age, Survivors and Disability Insurance, Social Security Administration.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disabled, Public assistance programs, Social Security Administration, Supplemental Security Income (SSI).

Dated: February 9, 1983.

John A. Svahn,

Commissioner of Social Security.

Approved: April 26, 1983.

Margaret M. Heckler,

Secretary of Health and Human Services.

Parts 404 and 416 of 20 CFR are proposed to be amended as follows:

PART 404—[AMENDED]

1. The authority citation for Subpart G of Part 404 reads as follows:

Authority: Secs. 205 and 1102 of the Social Security Act and sec. 5 of Reorganization Plan No. 1 of 1953; 53 Stat. 1368, 49 Stat. 647, and 67 Stat. 631 (42 U.S.C. 405 and 1302 and 5 U.S.C. Appendix).

2. Section 404.620(a) is revised to read as follows:

§ 404.620 Filing before the first month you meet the requirements for benefits.

(a) *General rule.* If you file an application for benefits (except special age 72 payments) before the first month you meet all the other requirements for entitlement, the application will remain in effect until we make a final determination on your application unless there is a hearing decision on your application. If there is a hearing decision, your application will remain in effect until the hearing decision is issued.

(1) If you meet all the requirements for entitlement while your application is in effect, we may pay your benefits from the first month that you meet all the requirements.

(2) If you first meet all the requirements for entitlement after the period for which your application was in effect, you must file a new application for benefits. In this case, we may pay you benefits only from the first month that you meet all the requirements based on the new application.

* * * * *

3. The authority citation for subpart J of Part 404 reads as follows:

Authority: Secs. 205 and 1102, Social Security Act and sec. 5 of Reorganization Plan No. 1 of 1953; 53 Stat. 1368, 49 Stat. 647, and 67 Stat. 631 (42 U.S.C. 405 and 1302 and 5 U.S.C. Appendix).

4. The third sentence of § 404.900(b) is revised to read as follows:

§ 404.900 Introduction.

* * * * *

(b) *Nature of the administrative review process.** * * Subject to the limitation on Appeals Council consideration of additional evidence (see § 404.976(b)), we will consider at each step of the review process any information you present as well as all the information in our records.* * *

5. Section 404.970 is revised to read as follows:

§ 404.970 Cases the Appeals Council will review.

The Appeals Council will review a case if—

(a) There appears to be an abuse of discretion by the administrative law judge;

(b) There is an error of law;

(c) The action, findings, or conclusions of the administrative law judge are not supported by substantial evidence; or

(d) There is a broad policy or procedural issue that may affect the general public interest.

6. Section 404.976(b) is revised to read as follows:

§ 404.976 Procedures before Appeals Council on review.

* * * * *

(b) *Evidence.* The Appeals Council will consider only the evidence in the hearing record. If the Appeals Council decides that more evidence is needed, it will vacate the hearing decision and remand the case to an administrative law judge to receive further evidence and issue a new decision. If the Appeals Council receives new evidence not contained in the hearing record, it will return the additional evidence to you, with an explanation that you may either submit that evidence to the administrative law judge for consideration under the rules for reopening and revising a decision (§ 404.987ff..) if the evidence relates to a period prior to the hearing decision, or file a new application.

* * * * *

§ 404.979 [Amended]

7. Section 404.979 is amended by removing the phrase "and any additional evidence received" from the first sentence.

PART 416—[AMENDED]

8. The authority citation for Subpart C of Part 416 reads as follows:

Authority: Secs. 1102, 1611, and 1631 of the Social Security Act; 49 Stat. 647, 86 Stat. 1466, and 86 Stat. 1475 (42 U.S.C. 1302, 1382, and 1383).

9. Section 416.330 is revised to read as follows:

§ 416.330 Filing before the first month you meet the requirements for eligibility.

If you file an application for SSI benefits before the first month you meet all the other requirements for eligibility,

the application will remain in effect until we make a final determination on your application unless there is a hearing decision on your application. If there is a hearing decision, your application will remain in effect until the hearing decision is issued.

(a) If you meet all the requirements for eligibility while your application is in effect, we may pay you benefits from the first month that you meet all the requirements.

(b) If you first meet all the requirements for eligibility after the period for which your application was in effect, you must file a new application for benefits. In this case, we may pay you benefits only from the first month that you meet all the requirements based on the new application.

10. The authority citation for Subpart N of Part 416 reads as follows:

Authority: Secs. 1102, 1631(c), and 1633 of the Social Security Act; 49 Stat. 647, 86 Stat. 1475, and 86 Stat. 1478 (42 U.S.C. 1302, 1383, and 1383b).

11. The third sentence of § 416.1400(b) is revised to read as follows:

§ 416.1400 Introduction.

* * * * *

(b) *Nature of the administrative review process.* * * * Subject to the limitation on Appeals Council consideration of additional evidence (see § 416.1476(b)), we will consider at each step of the review process any information you present as well as all the information in our records. * * *

12. Section 416.1470 is revised to read as follows:

§ 416.1470 Cases the Appeals Council will review.

The Appeals Council will review a case if—

(a) There appears to be an abuse of discretion by the administrative law judge;

(b) There is an error of law;

(c) The action, findings, or conclusions of the administrative law judge are not supported by substantial evidence; or

(d) There is a broad policy or procedural issue that may affect the general public interest.

13. Section 416.1476(b) is revised to read as follows:

§ 416.1476 Procedures before Appeals Council on review.

* * * * *

(b) *Evidence.* The Appeals Council will consider only the evidence in the hearing record. If the Appeals Council decides that more evidence is needed, it will vacate the hearing decision and remand the case to an administrative law judge to receive further evidence and issue a new decision. If the Appeals Council receives new evidence not contained in the hearing record, it will return the additional evidence to you, with an explanation that you may either submit that evidence to the administrative law judge for consideration under the rules for reopening and revising a decision (§§ 416.1487ff.) if the evidence relates to a period prior to the hearing decision, or file a new application.

* * * * *

§ 416.1479 [Amended]

14. Section 416.1479 is amended by removing the phrase "and any additional evidence received" from the first sentence.

[FR Doc. 83-13054 Filed 5-13-83; 8:45 am]
BILLING CODE 4190-11-M

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20 CFR Parts 404 and 416

[Regs. No. 4, 16]

Federal Old-Age, Survivors, and Disability Insurance Benefits Supplemental Security Income for the Aged, Blind, and Disabled; Determining Disability and Blindness

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rule.

SUMMARY: These proposed rules revise procedures for processing certain cases where a person's benefits are being stopped because he or she has been found to be not disabled or blind, as defined in the law. Existing policy provides that a person's disability ceases as of the earliest date he or she does not meet the appropriate tests of disability or blindness, as established by medical or other evidence. These rules will provide, for the majority of such cases, that the month of cessation (i.e., the last month in which a person is still considered disabled) will be no earlier than the month in which we mail a notice to the beneficiary saying that the information we have shows that he or she is not disabled or blind. Generally, a person whose benefit payment is stopped under these rules will not be asked to repay any benefits paid to him or her for prior months, since his or her disability will not be considered to have "ceased" until the month notice is sent.

These proposed rules will apply to persons receiving benefits because of disability or blindness under title II or title XVI of the Social Security Act.

DATE: Comments must be received on or before July 12, 1983.

ADDRESSES: Written comments should be sent to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203, or delivered to 3–A–3 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235 between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Harry J. Short, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (301) 594–7337.

SUPPLEMENTARY INFORMATION: These proposed changes provide that in certain cases where a person's benefits are being stopped for medical reasons, disability will be found to have ceased as of the month notice is mailed to the person.

Because of the nature and complexity of the evidence on which we rely when a person's disability benefit payments are being terminated for medical reasons, it has sometimes been difficult for us to establish with precision a past date on which a person's disability or blindness ended. A determination that a person's disability ended at an earlier date can be made under existing regulations even though the beneficiary may not have been fully aware that, at the earlier point in time, medical and vocational evidence showed that he or she had regained the capacity to perform substantial gainful activity. The proposed changes amend the regulations to provide that the month that we mail a notice to the beneficiary in medical cessation cases that he or she is no longer considered disabled, generally will be the month of cessation (i.e., the last month in which a person is still considered disabled). A person receives benefits for the month of cessation, which under these proposed regulations is the month of mailed notification to a beneficiary, and the two succeeding months. Since generally under these proposed regulations disability will not be considered to have ceased earlier than the month in which we mail an appropriate notice to the person, a person will not have to repay any benefits received for months before the month of notification.

Background

Present regulations provide that a person's disability ceases as of the earliest month the medical or other

evidence on file shows that he or she is able to do substantial gainful activity. A person receives benefits for the month of cessation and the two succeeding months. Any benefits paid to a person beyond those three months are considered to be overpayments and the person is required to repay them unless the repayment can be waived under the provisions of sections 204(b) and 1631(b) of the Social Security Act (42 U.S.C. 404 and 1383) and implementing regulations, sections 404.506 and 416.550 (20 CFR 404.506 and 416.550).

Regulatory Provisions

The proposed regulations will apply to recipients of title II disabled worker's insurance benefits, disabled child's benefits, disabled widow(er)'s and disabled surviving divorced spouse's benefits, and title XVI supplemental security income benefits based on disability or blindness. Because it is generally possible to establish precise dates when we are terminating a person's benefits for other than medical reasons alone, we will continue to make retroactive cessations, where applicable, for anyone whose disability or blindness is found to have ceased because he or she—

(1) Returned to work and demonstrated the ability to do substantial gainful activity;

(2) Was asked to give us medical or other information or to go for a physical or mental examination by a certain date and refused to do so;

(3) Has failed to keep us advised of his or her whereabouts and we are unable to find the person;

(4) Has failed, without a good reason, to follow treatment prescribed by his or her physican that can be expected to restore his or her ability to work;

(5) Was told by his or her physician at an earlier date that his or her condition had improved or that he or she could return to work, and the earlier date is supported by the medical evidence; or

(6) Returned to full-time work with no significant medical limitations and the condition had been expected to improve.

These proposed regulations will provide that generally a person's disability will not be found to have ceased earlier than the month in which we mail a written notice to him or her saying that the information we have shows that he or she is not disabled. Generally, the month of notice will be considered the month of cessation unless one of the six above exceptions applies. These proposed changes amend §§ 404.1579, 404.1586, 404.1594, 416.986, and 416.994 to reflect this revised policy.

Other changes to §§ 404.1579, 404.1586, 404.1594, and 416.994 were published as proposed rules on October 19, 1982 (47 FR 46535). Those proposed changes reflect section 303 of Pub. L. 96-265, the Social Security Disability Amendments of 1980, which extends the length of time a disability beneficiary may test his or her ability to work. Those changes are not the subject of these proposed regulations and are not reflected in those sections as published with this Notice of Proposed Rulemaking.

Executive Order 12291

These proposed regulations have been reviewed under Executive Order 12291. Because they do not create costs of $100 million or more yearly, or otherwise meet the threshold of the Executive Order, we have determined that they do not constitute a major rule, and that a regulatory impact analysis is not required.

These proposed regulations implement a change which responds to long-standing criticism of SSA's policy of making retroactive termination of benefits (and requiring repayment of the overpaid amount) where a person medically recovers sometime prior to the date SSA makes the determination that medical recovery has occurred. After reviewing the policy in this area we have decided that for previously unajudicated cases, instead of determining that a person has medically recovered in the past and must therefore repay us benefits, it is better policy, when the evidence as to the date of recovery in the past may be uncertain and the delay in making the determination is the fault of the system and not the individual, to terminate benefit payments on a more current basis. While this change will cause some increase in benefit payments because we will be making fewer retroactive cessations, the change, overall, is not expected to have any significant cost impact. Further, because of the reduction in the number of overpayments and, therefore, the number of overpayment recovery actions undertaken, this proposed change will result in some administrative savings.

Paper work Reduction Act

These regulations impose no new reporting or recordkeeping requirements requiring OMB clearance.

Regulatory Flexibility Act

We certify that these proposed regulations will not, if promulgated, have a significant economic impact on a substantial number of small entities because these rules primarily affect only individuals. They will have some affect on those States that supplement the Federal Supplemental Security Income benefit. However, a regulatory flexibility analysis required under Pub. L 96-354, the Regulatory Flexibility Act, is not necessary.

(Catalog of Federal Domestic Assistance Program No. 13.802, Disability Insurance; No. 13.807, Supplemental Security Income Program.)

List of Subjects

20 CFR Part 404.

Administrative practice and procedure, Death benefits, Disabled, Old-Age, Survivors and Disability Insurance.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disabled, Public assistance programs, Suplemental Security Income (SSI).

Dated: Feburary 3, 1983.

John A. Svahn,

Commissioner of Social Security.

Approved: April 26, 1983.

Margaret M. Heckler,

Secretary of Health and Human Services.

PART 404—[AMENDED]

Part 404 of Chapter III of Title 20 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Subpart P of Part 404 reads as follows:

Authority: Secs. 202, 205, 216, 221, 222, 223, 225, and 1102 of the Social Security Act, as amended; 49 Stat. 623, as amended, 53 Stat. 1368, as amended, 68 Stat. 1080, as amended, 68 Stat. 1081, as amended, 68 Stat. 1082, as amended, 70 Stat. 815, as amended, 70 Stat. 817, as amended, 49 Stat. 647, as amended; 42 U.S.C. 402, 405, 416, 421, 422, 423, 425, and 1302.

2. In § 404.1579, paragraph (a) is revised to read as follows, a new paragraph (b) is added, and present paragraphs (b), (c), and (d) are redesignated as paragraphs (c), (d) and (e) respectively:

§ 404.1579 Why and when we will find that your disability has ended.

(a) *If you are not disabled.* If you are entitled to disability benefits as a disabled widow, widower, or surviving divorced spouse, we will find that your

disability ended in the earliest of the following months—

(1) The month your impairment, based on current medical evidence, no longer exists or is not an impairment listed in Appendix 1 or is not equal to a listed impairment; but not earlier than the month in which we mail you a notice saying that the information we have shows that you are not disabled;

(2) The month in which your physician tells you that your condition has improved or that you are able to work and the medical evidence shows that, as of that month, your impairment was not an impairment listed in Appendix 1 or was not equal to a listed impairment;

(3) The month you do substantial gainful activity; or

(4) The month in which you return to full-time work, with no significant medical restrictions, and we expected your impairment to improve (see § 404.1591).

(b) *If you do not follow prescribed treatment.* If your physician has prescribed treatment for you that can restore your ability to work, you must follow that treatment in order to be paid benefits. If you are not following that treatment and you do not have a good reason for failing to follow that treatment (see § 404.1530), we will find that your disability has ended. The month in which your disability will be found to have ended will be the first month in which you failed to follow the prescribed treatment.

* * * * *

3. In § 404.1586, paragraph (a) is revised to read as follows, a new paragraph (c) is added, and present paragraphs (c), (d), and (e) are redesignated as paragraphs (d), (e) and (f) respectively:

§ 404.1586 Why and when we will stop your cash benefits.

(a) *When you are not entitled to benefits.* If you become entitled to disability cash benefits as a statutorily blind person, we will find that you are no longer entitled to benefits beginning with the earliest of—

(1) The month your vision, based on current medical evidence, does not meet the definition of blindness (and any remaining impairments do not make you unable to do substantial gainful activity considering your age, education and work experience), but not earlier than the month in which we mail you a notice saying that the information we have shows that you are not disabled;

(2) The month in which your physician tells you that your condition has improved or that you are able to work and the medical evidence shows that, as of that month, your vision does not meet the definition of blindness and that you are able to do substantial gainful activity;

(3) If you are under age 55, the month in which you demonstrated your ability to engage in substantial gainful activity (following completion of a trial work period); or

(4) If you are age 55 or older, the month (following completion of a trial work period) when your work activity shows you are able to use, in substantial gainful activity, skills and abilities comparable to those of some gainful activity which you did with some regularity and over a substantial period of time. The skills and abilities are compared to the activity you did prior to age 55 or prior to becoming blind, whichever is earlier.

* * * * *

(c) *If you do not follow prescribed treatment.* If your physician has prescribed treatment for you that can restore your ability to work, you must follow that treatment in order to be paid benefits. If you are not following that treatment and you do not have a good reason for failing to follow that treatment (see § 404.1530), we will find that your disability has ended. The month in which your disability will be found to have ended will be the first month in which you failed to follow the prescribed treatment.

* * * * *

4. In § 404.1594, paragraph (b) is revised to read as follows, a new paragraph (c) is added, and present paragraphs (c), (d), and (e) are redesignated as paragraphs (d), (e) and (f) respectively:

§ 404.1594 Why and when we will find that your disability has ended.

* * * * *

(b) *Disabled workers and persons disabled since childhood.* If you are entitled to disability cash benefits as a disabled worker or to child's insurance benefits, we will find that your disability ended in the earliest of the following months—

(1) The month your impairment, based on current medical or other evidence, no longer exists or is such that you are able to do substantial gainful activity, but not earlier than the month in which we mail you a notice saying that the information we have shows that you are not disabled;

(2) The month in which your physician tells you that your condition has improved or that you are able to work and the medical evidence shows that, as of that month, you are able to do substantial gainful activity;

(3) The month in which you demonstrated your ability to engage in substantial gainful activity (following completion of a trial work period);

(4) The month in which you actually do substantial gainful activity (where you are not entitled to a trial work period); or

(5) The month in which you return to full-time work, with no significant medical restrictions, and we expected your impairment to improve (see § 404.1591).

(c) *If you do not follow prescribed treatment.* If your physician has prescribed treatment for you that can restore your ability to work, you must follow that treatment in order to be paid benefits. If you are not following that treatment and you do not have a good reason for failing to follow that treatment (see § 404.1530), we will find that your disability has ended. The month in which your disability will be found to have ended will be the first month in which you failed to follow the prescribed treatment.

* * * * *

PART 416—[AMENDED]

Part 416 of Chapter III of Title 20 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Subpart I of Part 416 reads as follows:

Authority: Secs. 1102, 1614, and 1631 of the Social Security Act; 49 Stat. 647, as amended, 86 Stat. 1471, as amended by 88 Stat. 52, 86 Stat. 1475; 42 U.S.C. 1302, 1382c, and 1383.

2. In § 416.986, paragraphs (a) and (b) are revised to read as follows:

§ 416.986 Why and when we will find that you are no longer entitled to benefits based on statutory blindness.

(a) *If your vision does not meet the definition of blindness.* If you become entitled to payments as a statutorily blind person and your statutory blindness ends, your eligibility for payments generally will end two months after your blindness ends. We will find that your statutory blindness has ended beginning with the earliest of the following months—

(1) The month your vision, based on current medical evidence, does not meet the definition of blindness, but not earlier than the month in which we mail you a notice saying that the information we have shows that you are not now blind;

(2) The month in which your physician tells you that your vision has improved or that you are not blind, and the medical evidence shows that, as of that month, your vision does not meet the definition of blindness; or

(3) The first month in which you fail to follow prescribed treatment that can restore your ability to work (see § 416.930).

(b) *If you were found blind as defined in a State plan.* If you became eligible for payments because you were blind as defined in a State plan, we will find that your blindness has ended beginning with the earlier of—

(1) The first month in which your vision, as shown by medical or other evidence, does not meet the criteria of the appropriate State plan or the first month in which your vision does not meet the definition of statutory blindness (§ 416.981), whichever is later, and in neither event earlier than the month in which we mail you a notice saying that we have determined that you are not now blind under a State plan or not now statutorily blind, as appropriate; or

(2) The month in which your physician tells you that your vision has improved or that you are not blind, and the medical evidence shows that, as of that month, your vision does not meet either the criteria of the appropriate State plan or the definition of statutory blindness (§ 416.981).

* * * * *

3. In § 416.994, paragraphs (b), (c), and (e) are revised to read as follows:

§ 416.994 Why and when we will find that your disability has ended.

* * * * *

(b) *Disabled persons age 18 or over.* If you are age 18 or older, we will find that your disability ended in the earliest of the following months—

(1) The month your impairment, based on current medical or other evidence, no longer exists or is such that you are able to do substantial gainful activity, but not earlier than the month in which we mail you a notice saying that the information we have shows that you are not disabled;

(2) The month in which your physician tells you that your condition has improved or that you are able to work and the medical evidence shows that, as of that month, you are able to do substantial gainful activity;

(3) The month in which you demonstrated your ability to engage in substantial gainful activity (following completion of a trial work period);

(4) The month in which you actually do substantial gainful activity (where you are not entitled to a trial work period);

(5) The month in which you return full-time work, with no significant medical restrictions, and we expected your impairment to improve (see § 416.991); or

(6) The first month you fail to follow prescribed treatment that can restore your ability to work (see § 416.930).

(c) *Disabled persons under age 18.* If you are under age 18, we will find that your disability ended in the earliest of the following months—

(1) The month your impairment, based on current medical evidence, is not an impairment listed in Appendix 1 of Subpart P of Part 404 of this chapter or is not equal to a listed impairment, but not earlier than the month in which we mail you a notice saying that the information we have shows that you are not disabled;

(2) The month in which your physician tells you that your condition has improved or that you are able to work and the medical evidence shows that, as of that month, your impairment is now such that it is not listed in Appendix 1 of Subpart P of Part 404 of this chapter or is not equal to a listed impairment; or

(3) The month in which you demonstrated your ability to engage in substantial gainful activity (following completion of a trial work period).

* * * * *

(e) *Persons who were found disabled under a State plan.* If you became entitled to benefits because you were found to be disabled under a State plan, we will find that your disability ended in the earlier of the following months—

(1) The month in which your disability, as shown by current medical or other evidence, does not meet the criteria of the appropriate State plan or the month in which your disability ended under the provisions of paragraphs (b), (c), or (d) of this section, whichever is later, and, unless otherwise indicated under the provisions of paragraphs (b), (c), or (d), not earlier than the month in which we mail you a notice saying that you are not now disabled under a State plan or not now disabled under the provisions of paragraphs (b), (c), or (d) of this section, as appropriate; or

(2) The month in which your physician tells you that your condition has improved or that you are able to work and the medical evidence shows that, as of that month, you are able to do substantial gainful activity

[FR Doc. 83-13055 Filed 5-13-83; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 466]

Altus Viticultural Area

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is considering the establishment of a viticultural area in Arkansas to be known as "Altus." This proposal is the result of a petition from Mr. Mathew J. Post, a grape grower in the area. The establishment of viticultural areas and the subsequent use of viticultural area names in wine labeling and advertising will enable industry to label wines more precisely, and will help consumers to better identify the wines they purchase.

COMMENT DATE: Written comments must be received by June 30, 1983.

ADDRESSES: Send written comments to: Chief, Regulations and Procedures Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044-0385 (Notice No. 466).

Copies of the petition, the proposed regulations, the appropriate maps, and the written comments will be available for public inspection during normal business hours at: ATF Reading Room, Office of Public Affairs and Disclosure, Room 4405, Federal Building, 1200 Pennsylvania Avenue NW, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Steve Simon, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue NW, Washington, DC 20226 (202-566-7626).

SUPPLEMENTARY INFORMATION:

Background

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

On October 2, 1979, ATF published Treasury Decison ATF-60 (44 FR 56692) which added a new Part 9 to 27 CFR, providing for the listing of approved American viticultural areas, the names

of which may be used as appellations of origin.

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

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical features (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on the features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. map with the boundaries prominently marked.

ATF has received a petition proposing an area near the town of Altus, Arkansas, as a viticultural area to be known as "Altus." The area extends for a length of about five miles, along a plateau situated between the Arkansas River bottomlands and the high peaks of the Boston Mountains. The width of the area is about four miles. The proposed boundaries encompass a total area of between 12,000 and 13,000 acres.There are about 800 acres of grape plantation on vineyards in the proposed area. There are four wineries now operating in the proposed area.

The petitioner claims that the proposed viticultural area is known by the name of "Altus" and is associated with grape growing for the following reasons:

(a) The official stationery of the city of Altus, Arkansas, declares that city to be the "wine capital" of the State.

(b) Wines produced at the area's four wineries (all located within a mile of the Altus Post Office) have won national and international awards.

(c) Labels of all four wineries bear the name "Altus" as part of their mailing address.

(d) Bumper plates used on the first automobiles in town bear the name, "Altus," and the legend, "The grapes grow best."

(e) An article by Joe Crump, entitled "Vintage Memories," appearing in the *Southwest Times Record* of June 25, 1981, discussed "Altus, the village known for its wine."

(f) The stationery of the local St. Joseph's Farmer Club, whose address is Altus, Arkansas, states: "Best flavored grapes grown in the country. Campbell's Early, Delaware and Niagara a specialty."

(g) The Rev. Placidus Oeschsle, a local parish priest from 1897 to 1935, wrote the following in 1930, in a work entitled "Historical Sketch of the Congregation of Our Lady of Perpetual Help":

> Some of our pioneers came from winemaking countries, and started to plant vineyards. Grapegrowing became a very profitable industry, and Altus was soon famous for its good wine.
>
> Our grape festivals are an attraction for thousands of visitors * * * After many years of experimenting with hundreds of varieties, only a few proved commercially valuable. Today, mostly Campbell's Early, Delaware, Niagara, Brighton, and Banner, and a few others are cultivated for market * * * The grapes of Altus are famous, and are shipped all over the country.

The petitioner claims that the proposed viticultural area is distinguished from the surrounding area for the following reasons:

(1) The moderating climatological effects of the Boston Mountains protect the area from the harshest of winter's weather.

(2) The elevation of the plateau above the surrounding river and creek valleys creates a microclimate wherein cold air is funneled down to the Arkansas River in the spring and fall. Thus, as the petitioner states, "It has been observed that growers in the hills around Altus enjoy additional frost-free growing days because the colder air sinks to the river valley, and forces warmer air into the hills in the early spring and late fall."

(3) The soils of the Altus region (known as the Linker-Mountainburg association) are distinctive in that within Arkansas they are found only along the edge of the Boston Mountains. These soils, states the petitioner, "are fine to gravelly in texture, sandy to silty loams, and slightly to strongly acid." It is implied that these soils are particularly suited to viticulture.

The boundaries of the proposed viticultural area may be found on five U.S.G.S. topographic maps in the 7.5 minute series: Ozark Quadrangle, Coal Hill Quadrangle, Hartman Quadrangle, Hunt Quadrangle, and Watalula Quadrangle. The boundaries are described in the proposed § 9.77.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this proposal because the notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities. The proposal is not expected to have significant secondary or incidental effects on a substantial number of small entities, because the value of the proposed viticultural area designation is intangible and subject to influence by other unrelated factors. Further, the proposal will not impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Executive Order 12291

In compliance with Executive Order 12291 of Feb. 17, 1981, the Bureau has determined that this proposal is not a major rule since it will not result in:

(a) An annual effect on the economy of $100 million or more;

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

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

Public Participation—Written Comments

ATF requests comments concerning this proposed viticultural area from all interested persons. Furthermore, while this document proposes possible boundaries for the Altus viticultural area, comments concerning other possible boundaries for this viticultural area will be given consideration.

Comments received before the closing date will be carefully considered. Comments received after the closing date and too late for consideration will be treated as possible suggestions for future ATF action.

ATF will not recognize any material or comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not exempt from disclosure.

Any person who desires an opportunity to comment orally at a public hearing on these proposed

regulations should submit his or her request, in writing, to the Director within the 45-day comment period. The request should include reasons why the commenter feels that a public hearing is necessary. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

Drafting Information

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

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Consumer protection, Wine.

Authority

Accordingly, under the authority in 27 U.S.C. 205, the Director proposes the amendment of 27 CFR Part 9 as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Par. 1. The table of sections in 27 CFR Part 9, Subpart C, is amended to add the title of § 9.77 to read as follows:

* * * * *

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.77 Altus.

Par. 2. Subpart C of 27 CFR Part 9 is amended by adding § 9.77, which reads as follows:

§ 9.77 Altus.

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

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Altus viticultural area are five U.S.G.S. maps in the 7.5 minute series. They are titled:

(1) Ozark Quadrangle, 1966.
(2) Coal Hill Quadrangle, 1961.
(3) Hartman Quadrangle, 1961.
(4) Hunt Quadrangle, 1963.
(5) Watalula Quadrangle, 1973.

(c) *Boundary*—(1) *General.* The Altus Viticultural area is located in Arkansas. The starting point of the following boundary description is the crossing of the Missouri Pacific Railroad over Gar Creek, near the Arkansas River at the southeast corner of the city of Ozark, Arkansas (on the Ozark Quadrangle map.)

(2) *Boundary Description:*

(i) From the crossing of the Missouri Pacific Railroad over Gar Creek, following the railroad tracks eastward to the crossing over Horsehead Creek (on the Hartman Quadrangle map.)

(ii) From there northward along Horsehead Creek to the merger with Dirty Creek (on the Coal Hill Quadrangle map.)

(iii) From there generally northwestward along Dirty Creek to Arkansas Highway 352 (where Dirty Creek pases under the highway as a perennial stream—on the Hunt Quadrangle map.)

(iv) From there along Highway 352 westward to Arkansas Highway 219 (on the Watalula Quadrangle map.)

(v) Then southward along Highway 219 to Gar Creek (on the Ozark Quadrangle map.)

(vi) Then southeastward along Gar Creek to the beginning point.

Approved: May 2, 1983.

Stephen E. Higgins,

Director.

[FR Doc. 83-12853 Filed 5-13-83; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD 9-83-04]

Drawbridge Operations Regulations; Manitowoc River, WI; Correction

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule, correction.

SUMMARY: This document corrects a typographical error in FR 83-9138 appearing on page 15165 in the **Federal Register** of Thursday, April 7, 1983, relating to drawbridge operations on the Manitowoc River, Wisconsin.

In 33 CFR 117.650(b)(1) "4:30 p.m." on lines two and three should be corrected to read "4:30 a.m."

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

Dated: April 29, 1983.

Henry H. Bell,

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

[FR Doc. 83-12857 Filed 5-13-83; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Docket No. NH-A-1-FRL 2351-4]

Approval and Promulgation of Air Quality Implementation Plans, New Hampshire; Group I VOC Source Compliance Schedules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve State Implementation Plan revisions submitted by the State of New Hampshire. These revisions will reduce emissions from major sources of volatile organic compounds (VOC's) in the State. The intended effect of this action is to satisfy conditions for Part D plan requirements for nonattainment areas under Section 172(b)(2) of the Clean Air Act.

DATES: Comments must be received on or before June 15, 1983.

ADDRESSES: Comments may be mailed to Harley F. Laing, Director, Air Management Division, Room 2311, JFK Federal Building, Boston, MA 02203. Copies of the submittal and EPA's evaluation are available for public inspection during normal business hours at the Environmental Protection Agency, Room 2111, JFK Federal Building, Boston, MA 02203 and the New Hampshire Air Resources Agency, Health and Welfare Building, Hazen Drive, Concord, NH 03301.

FOR FURTHER INFORMATION CONTACT: Alan E. Dion, (617) 223-5130.

SUPPLEMENTARY INFORMATION: On February 3, 1983 (48 FR 4972), EPA proposed to sanction the Southern New Hampshire Air Quality Control Region by imposing a moratorium on new construction, because the State had failed to meet all the requirements of its 1979 State Implementation Plan (SIP) for ozone (see 48 FR 5015). EPA proposed sanctions for two reasons.[1] First, the State had not yet satisfied the condition for approval of this SIP which required the submission of approvable compliance schedules for stationary sources of volatile organic compounds (VOC) (see 45 FR 24872, April 11, 1980). Second, the State had not submitted a fully approvable regulation for the Group II VOC source category of

[1] The reader is referred to 48 FR 4972 and the supporting documentation for a complete discussion of the reasons. This information is available for inspection at the location listed under **ADDRESSES.**

miscellaneous metal parts coaters (see 47 FR 58231, December 30, 1982).

Group I Compliance Schedules

The State submitted permits with compliance schedules for the nine sources affected by the condition in 45 FR 24872 on May 2, 1980 and May 16, 1980. However, EPA found at that time that not all of these permits were approvable, because of the technique the State used to determine whether a control strategy was equivalent to reasonably available control technology (RACT).

We approved four compliance schedules which satisfied RACT in the December 17, 1982 **Federal Register** (47 FR 56497). New Hampshire submitted updated permits and more information to determine approvability for Markem Corp. and Oak Materials Group on December 23, 1982, for Nashua Corp.'s Merrimack facility on December 30, 1982, for Ideal Tape Co. on January 19, 1983, and for Essex Group on March 18, 1983.

The Ideal Tape, Markem, and Essex Group permits restrict total VOC emissions from the affected coating lines to less than 100 tons per year. Therefore, these facilities are no longer major sources, and under EPA rural nonattainment area policy RACT is no longer required on these sources. Markem's permit gives the company until September 30, 1983 to complete its conversion of certain products to water-based coatings, and limits VOC emissions to 90 tons for 1983 and to 65 TPY thereafter. The Markem compliance schedule is approvable. The Essex Group permits limit the total emissions from the facility to less than 100 TPY. The Essex Group permits are approvable. Therefore, EPA concurs that these sources are not major, not required to meet RACT and, therefore, are not subject to the condition that approvable compliance schedules be submitted into the federally approved SIP.

Oak Materials' permit requires 90 percent overall control of VOC emissions through use of an incinerator. The RACT emission limit of 2.9 lbs. VOC/gal. coating is based upon an 81 percent level of control of the VOC emissions generated by a source. Therefore, Oak Materials' compliance schedule is acceptable as RACT or better.

Nashua Corp.'s permit limits VOC emissions at its Merrimack facility to 106 TPY. Although this facility remains a major source and so must still meet the requirements of RACT, the company maintains that the controls now in place represent RACT. The information submitted by Nashua shows that one coating line is achieving RACT through the use of a carbon adsorber and solvent recovery system with a daily total control efficiency of 85 percent, while the other line has converted almost entirely to water-based coatings which results in 100 percent control for all but approximately 6 percent of its operating days. The State has demonstrated that it is not reasonable on a technological or an economic basis to require the source to install further controls for this remaining 6 percent, considering the expense and efforts the source has already undergone and the amount of control already achieved. EPA concurs that the control program in place constitutes RACT for this source.

For a more detailed analysis of the compliance schedules for these sources, refer to the Technical Support Document available at the locations listed in the ADDRESSES section.

New Hampshire held a full public hearing on the Oak Materials, Essex Group and Markem permits on March 20, 1980. On May 15, 1980, the State held a hearing on the Ideal Tape and Nashua Corp. permits. No comments were received on the compliance schedules at these hearings. Of the revised permits only Markem was submitted to a public hearing on December 16, 1982 before the Air Resources Commission, because only Markem sought to extend its original compliance schedule beyond the December 31, 1982 deadline in New Hampshire Code of Administrative Rules—Air 1204.21(h), "Compliance Schedules." The permits for Oak Materials, Ideal Tape, Essex Group and Nashua Corp. were reissued by the Air Resources Agency without full proceedings (30 day notice, certification of notice, opportunity to comment), since under Air 205.02(a), "Public Notice of Application," the State found there were no significant increases or changes in stationary source emissions from those specified in the initial public notices. EPA agrees with the State that the control strategies and compliance deadlines in the present permits for Oak Materials and Nashua Corp. were put before the public in the 1980 hearings. In a permit for Ideal Tape dated April 15, 1982, and in a permit for Essex Group dated March 17, 1983, the State has limited emissions to less than 100 TPY VOC. As a result of these restrictions we feel that neither Ideal Tape nor Essex Group requires further hearings. Neither has to satisfy the April 11, 1980 condition to apply RACT as expeditiously as possible (45 FR 24872), and yet both have reduced their actual emissions. EPA is using this notice to provide an opportunity for the public to offer comments on these compliance schedules, and upon EPA's processing of the permits involved.

Proposed Action: EPA is proposing to approve the emission limits and compliance schedules for Oak Materials Group, Ideal Tape Co., Markem Corp., Essex Group, and Nashua Corp.'s Merrimack facility, and to remove the condition at 52.1527(a)(2) to submit operating permits with compliance schedules for each existing major VOC source.

EPA proposes to accept the permits for Ideal Tape Co., Essex Group and Markem Corp. as certification that these sources are no longer major, and so not subject to RACT. With final approval, the State will have satisfied the outstanding condition on its 1979 Ozone SIP. Therefore, this basis for sanctions proposed at 48 FR 4972 with respect to the Southern New Hampshire Air Quality Control Region will no longer apply.

Group II CTG Source Categories

In the December 30, 1982 **Federal Register** (47 FR 58231) EPA took no action on the Group II VOC source category of miscellaneous metal parts coaters because the State Regulation Air 1204.17 is not consistent with EPA guidance. In the February 3, 1983 **Federal Register** (48 FR 4872) this deficiency was noted as one of the reasons for proposing sanctions for the Southern New Hampshire Air Quality Control Region.

On March 8, 1983 the State of New Hampshire submitted a letter certifying that it has no major sources in this source category. Thus, the regulation is not necessary for inclusion in the federal SIP, and this basis for sanctions no longer applies.

Proposed Action: Remove the Part D—no action codified at 40 CFR 52.1527(c)(2) regarding miscellaneous metal parts coaters.

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 rule from the requirements of Section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

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

The Administrator's decision to approve or disapprove the plan revision

will be based on whether it meets the requirements of Sections 110(a)(2) (A)–(K) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51. This revision is being proposed pursuant to Sections 110(a) and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7410(a) and 7601(a)).

Dated: April 8, 1983.

Lester A. Sutton, P.E.,

Regional Administrator, Region I.

[FR Doc. 83-13000 Filed 5-13-83; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 271

[SW-3-FRL 2363-4]

Virginia's Application for Interim Authorization, Phase II, Components A and B, Hazardous Waste Management Program; Public Hearing and Comment Period

AGENCY: Environmental Protection Agency, Region III.

ACTION: Notice of Public Hearing and Public Comment Period.

SUMMARY: Today EPA is announcing the availability for public review of the Virginia Application for Phase II, Components A & B, Interim Authorization, inviting public comment, and giving notice of a public hearing to be held on the application. This is in accordance with agency regulations to protect human health and the environment from improper management of hazardous waste, including the provisions for authorization of State programs to operate in lieu of the Federal program and for a transitional stage in which States can be granted interim program authorization.

DATES: If significant public interest is expressed, a public hearing is scheduled for Thursday, June 16, 1983 at 7:30 p.m. EPA reserves the right to cancel the public hearing if significant public interest is not communicated by telephone or in writing by Monday, June 6, 1983. EPA will determine by Wednesday, June 8, 1983 whether there is significant interest to hold the public hearing. The Commonwealth of Virginia will participate in any public hearing held by EPA on this subject. Regardless of whether a public hearing is held, all written comments on the Virginia Phase II, Components A and B, Interim Authorization application must be received by the close of business on Friday, June 24, 1983.

ADDRESSES: To find out if EPA will hold a public hearing on Virginia's application based on EPA's decision that there is significant public interest in such a hearing, write or telephone after June 8, 1983, the EPA contact person listed below. Copies of the Virginia Phase II, Components A and B, Interim Authorization application are available during normal business hours at the following addresses for inspection and copying: Virginia Department of Health, James Madison Building—9th Floor, 109 Governor Street, Richmond, Virginia 23219 (804) 786-5271 (contact: Dr. Wladimir Gulevich). U.S. EPA Headquarters Library (PM211A), 401 M Street SW., Washington DC 20460 (202) 382-5926 (contact: Gloris Butler). U.S. EPA, Region III, Library, 2nd Floor, 6th and Walnut Streets, Philadelphia, PA 19106 (215) 597-0580 (contact: Diane McCreary). Written comments should be sent to Patricia Corbett, State Programs Section (3AW31), U.S. EPA, Region III, 6th and Walnut Streets, Philadelphia, PA 19106 (215) 597-7938. If significant public interest is expressed, and EPA decides to hold the public hearing on Thursday, June 16th, 1983 at 7:30 p.m., it will be held in the Metropolitan Room, Best Western Executive Motor Hotel, 5215 West Broad Street, Richmond, Virginia.

FOR FURTHER INFORMATION CONTACT: Patricia Corbett, State Programs Section (3AW31), U.S. EPA, Region III, 6th and Walnut Streets, Philadelphia, PA 19106 (215) 597-7938.

SUPPLEMENTARY INFORMATION: In the May 19, 1980 **Federal Register** (45 FR 33063) the Environmental Protection Agency promulgated regulations, pursuant to subtitle C of the Resource Conservation and Recovery Act of 1976, as amended, to protect human health and the environment from the improper management of hazardous waste. These regulations included provisions under which EPA can authorize qualified State hazardous waste management programs to operate in lieu of the Federal program. The regulations provide for a transitional stage in which qualified state programs can be granted interim authorization. The interim authorization program is being implemented in two phases corresponding to the two stages in which the underlying Federal program will take effect. Phase I of the Federal program, published in the May 19, 1980 **Federal Register** (45 FR 33063), includes regulations pertaining to the identification and listing of hazardous wastes; standards applicable to generators and transporters of hazardous waste, including a manifest system; and the "interim status" standards applicable to existing hazardous waste management facilities before they receive permits. The Commonwealth of Virginia received interim authorization for Phase I on November 3, 1981.

In the January 26, 1981 **Federal Register** (46 FR 7965), the Environmental Protection Agency announced the availability of portions or components of Phase II of interim authorization. Phase II of the Federal program includes permitting procedures and standards for hazardous waste mangement facilities. Component A, published in the **Federal Register** January 12, 1981 (46 FR 2802), contains standards for permitting storage and treatment in containers, tanks, surface impoundments and waste piles. Component B published in the **Federal Register** January 23, 1981 (46 FR 7666), contains standards for permitting hazardous waste incinerators. Component C, published in the **Federal Register** July 26, 1982 (47 FR 32274), contains standards for permitting surface impoundments, waste piles, land treatment facilities and landfills. These Component C standards for permitting surface impoundments and waste piles superseded the Component A standards for permitting storage and treatment in surface impoundments and waste piles published on January 12, 1981. The Commonwealth of Virginia is applying for Phase II, Components A and B, Interim authorization which would enable them to permit storage and treatment in containers and tanks and to permit hazardous waste incinerators in lieu of the Federal program.

A full description of the requirements and procedures for state interim authorization is included in 40 CFR Part 271, Subpart F, as amended, by 47 FR 32377. As noted in the May 19, 1980 **Federal Register**, copies of complete state submittals for Phase II interim authorization are to be made available for public inspection and comment. In addition, if significant public interest exists, a public hearing is to be held on the submittal.

List of Subjects in 40 CFR Part 271

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

Dated: May 9, 1983.

Stanley L. Laskowski,

Acting Regional Administrator.

[FR Doc. 83-13069 Filed 5-13-83; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 611

[Docket No. 30510-82]

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

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

ACTION: Proposed rule.

SUMMARY: NOAA issues a proposed rule to implement Amendment 7 to the fishery management plan for the Groundfish Fishery of the Bering Sea/Aleutian Islands Area. The intended effects of this action are (1) to alleviate some of the restrictive measures placed on foreign longline fleets in order to provide them with ample opportunity to harvest their groundfish allocations, and (2) to provide an incentive to foreign longline vessels to minimize their incidental take of Pacific halibut, a prohibited species in the foreign groundfish fisheries.

DATES: Comments are invited until June 24, 1983.

ADDRESSES: Comments should be addressed to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802. Individual copies of the amendment and the environmental assessment may be requested from the North Pacific Fishery Management Council, P.O. Box 3136 DT, Anchorage, Alaska 99510, 907-274-4563.

FOR FURTHER INFORMATION CONTACT: Susan J. Salveson (Regional Plan Coordinator), 907-586-7230.

SUPPLEMENTARY INFORMATION:

Background

The Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) was implemented January 1, 1982 (46 FR 63295, December 31, 1981), by the NOAA Assistant Administrator for Fisheries (Assistant Administrator) under the Magnuson Fishery Conservation and Management Act (Magnuson Act). Eight amendments to the FMP have been adopted by the North Pacific Fishery Management Council (Council). The notice of final approval and implementation of Amendments 1a and 2 was published January 12, 1982 (47 FR 1295), and that for Amendment 4 is under review. Amendment 5 was approved by the Assistant Administrator on December 30, 1982, and proposed rules are pending. Amendment 6 is being prepared by the Council for submission to the Secretary of Commerce (Secretary). Amendments 1 and 3 are currently undergoing Secretarial review.

Amendment 7 to the FMP is the subject of this action and was adopted by the Council at its September 1982 meeting. This amendment would modify current restructions on foreign longline operations in the Winter Halibut Savings Area (WHSA). This proposed rule is published under section 304(a)(1)(C)(ii) of the Magnuson Act, as amended by Pub. L. 97-453, which requires the Secretary to publish regulations proposed by a Council within 30 days of receipt of the amendment and regulations. Consequently, publication of this proposed rule does not indicate that the amendment it would implement has been determined to be consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, is required to take into account the data, views, and comments received from interested persons during the 75-day comments period starting from receipt of the amendment on April 11, 1983.

The FMP currently forbids foreign longline vessels to fish landward of the 500 meter depth contour in the WHSA from December 1 through May 31. This provision was originally intended to protect Pacific halibut, a prohibited species in foreign groundfish operations, when juvenile Pacific halibut concentrate in the WHSA during winter months. Amendment 7 would alleviate this restriction on the foreign longline fishery until the total incidental catch of Pacific halibut by foreign longline vessels in the Bering Sea and Aleutian Islands area reached 105 metric tons (mt) during the 12-month period of June 1 through May 31. At that time, the restriction on the incidental catch of Pacific halibut by foreign longline vessels would be reimposed. Thus, if the incidental catch of Pacific halibut taken by foreign longline vessels in the Bering Sea and Aleutian Islands area reaches 105 metric tons (mt) between June 1 and November 30, the WHSA will be closed to foreign longline fishing landward of the 500 meter depth contour for the 6-month period December 1 through May 31. If the incidental catch limit of 105 mt is reached between December 1 and May 31, the restriction will be reimposed for whatever remains of that 6-month period.

From 1977 through 1981, the foreign groundfish fishery in the Bering Sea and Aleutian Islands area was governed by a preliminary fishery management plan for the Trawl Fisheries and Herring Gillnet Fishery of the Eastern Bering Sea and Northeast Pacific (PMP) prepared by the Secretary. The PMP contained no restriction on foreign longline operations in the WHSA. Under the PMP, foreign longline vessels caught an average of 140 mt of Pacific halibut annually during the 4-year period 1978-81.

Since the FMP was implemented in 1982, representatives for the Japanese longline industry have argued that the 500 meter depth restriction in the WHSA will hinder the harvest of the industry's Pacific cod allocations. They further argued that relative to trawl operations, the foreign longline fishery has little impact on the Pacific halibut resource and requested that the restriction be eliminated from the regulations implementing the FMP.

In considering their request, the Council noted current U.S. observer information which indicated the incidental catch rate of Pacific halibut in foreign groundfish operations (number of Pacific halibut per metric ton of groundfish caught) is generally highest in the longline fishery. In terms of total catch, however, more Pacific halibut is taken as incidental catch in foreign trawl operations than is taken by other methods. further, the mortality rate of halibut caught on longline gear is only about 25 percent, compared to a 100 percent mortality of Pacific halibut caught in foreign trawl operations.

In view of the relatively small absolute catch of Pacific halibut by foreign longline vessels and the low mortality of those halibut that are caught, the Council decided that the current restriction on foreign longline operations in the WHSA should not be rescinded, but could be revised. The Council determined, therefore, that when the total incidential take of Pacific halibut by all foreign longline vessels in the Bering Sea and Aleutian Islands area reached 105 mt over the 12-month period of June 1 through May 31, the 500 meter depth restriction on longline operations in the WHSA would be reimposed for the remainder of the 6-month period December 1 through May 31. The 105 mt catch limit is 75 percent of the average 1978-81 take of Pacific halibut by foreign longline vessels. The 500 meter depth restriction was retained by the Council because the incidence of Pacific halibut per metric ton of groundfish is much higher in waters shallower than 500 meters.

In order to avoid grounds preemption problems and gear conflicts, foreign longliners have historically fished in the WHSA during winter months when

foreign trawl operations are excluded. The limit on Pacific halibut interceptions proposed by this amendment should provide an incentive to foreign longline vessels to keep their Pacific halibut catch below the 105 mt level so they may continue their longline operations in the WHSA throughout the December 1 through May 31 period. Representatives for the Japanese longline industry have indicated that the 105 mt catch limit for Pacific halibut should not be so burdensome as to prevent foreign longline fleets from catching their groundfish allocations.

Apportionment of the 105 mt limit on Pacific halibut among those foreign nations which conduct longline operations in the Bering Sea and Aleutian Islands area is not feasible. As a result, a nation's longline fleet could be excluded from fishing landward of the 500 meter depth contour in the WHSA under this proposal because of a high incidental take of Pacific halibut by longline vessels from other nations. Further, although this amendment would not likely be effective until August 1983, foreign nations would be held accountable for their total Pacific halibut catch in the entire management area as of June 1, 1983. Comments on whether this issue should be of particular concern are also requested. Comments should be submitted to the Alaska Regional Director at the address noted above.

Classification

This proposed rule is exempt from the procedures of E.O. 12291 under section 8(a)(2) of that order. Deadlines imposed under the Magnuson Act as amended by Pub. L. 97-453, require the Secretary to publish this proposed rule 30 days after its receipt. Consequently, publication of these proposed rules does not indicate that the amendment they would implement has been determined to be consistent with the national standards, other provisions of the Magnuson Act and other applicable law. The Secretary, in making that determination, is required to take into account the data, views, and comments received from interested persons during the 75-day comment period running from receipt of the amendment. The proposed rule is being reported to the Director, Office of Management and Budget, with an explanation of why it is not possible to follow procedures of the order.

The Assistant Administrator has determined that Amendment 7 will not significantly affect the quality of the human environment. This determination was based on an environmental assessment which will be filed with the Environmental Protection Agency on May 12, 1983. Accordingly, a supplement to the environmental impact statement for the FMP is not required. You may obtain a copy of the environmental assessment at the address above. The Council has determined that the rule to implement Amendment 7 will be consistent, to the maximum extent practicable, with the approved Coastal Zone Management Program of Alaska. The determination has been submitted for review by the responsible State agencies under Section 307 of the Coastal Zone Management Act.

The Administrator of NOAA (Administrator) has determined that this proposed rule is not a major rule requiring a regulatory impact analysis under Executive Order 12291, because the amount of Pacific halibut lost to foreign longline operations is too small for the proposed action to have a significant economic effect on the U.S. Pacific halibut industry. For purposes of this action, the environmental assessment was found to contain information adequate for this decision.

Based upon the environmental assessment, the General Counsel of the Department of Commerce has certified to the Small Business Administration that the rule to implement Amendment 7 will not have a significant economic impact upon a substantial number of small domestic entities for the purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The following is a summary of the analysis presented in the environmental assessment on the impacts of the proposed rule on the socioeconomic environment.

The net loss incurred by the U.S. Pacific halibut fishery as a result of the incidental take of Pacific halibut by foreign longline operations is not significant. The specific methodology employed in estimating the net loss is summarized in the environmental assessment. Under the proposed rule, the discounted real present value of the loss to the U.S. Pacific halibut industry in terms of gross ex-vessel earnings would be only $44,378 per year. This loss becomes relatively minor when compared to the total ex-vessel value of recent U.S. Pacific halibut quotas in the Bering Sea and Aleutian Islands area [International Pacific Halibut Commission (IPHC) regulatory area 4] and distributed among the total number of U.S. vessels commercially fishing for Pacific halibut in this area. The 1983 quota of 2.6 million pounds for Pacific halibut in IPHC area 4 1983 is a 73 percent increase over the 1.5 million pound quota established for 1982, when approximately 105 U.S. vessels commercially fished for Pacific halibut in this area. Assuming that at least 105 U.S. vessels would continue to commercially fish for Pacific halibut in IPHC area 4 during 1983, the ex-vessel discounted present value loss per vessel under the proposed rule may approach $423. This loss per vessel would decrease if there is an increase in the number of U.S. vessels commercially fishing for Pacific halibut in IPHC area 4 during 1983. This loss is not significant when compared to the average gross ex-vessel earnings of $19,129 per vessel that could be accrued if the entire 1983 Pacific halibut quota established for IPHC area 4 is harvested.

The Council approved Amendment 7 despite the resulting loss, albeit minor, to domestic fishermen because the amendment achieves an appropriate balance between the need to protect Pacific halibut while promoting the full use of Pacific cod. In adopting Amendment 7, the Council also considered the extent to which those foreign nations that engage in longline operations in the management area have (1) cooperated with the United States in contributing to, or fostering the growth of a sound and economic domestic groundfish fishing industry, including transferring harvesting technology that benefits the domestic industry, (2) made foreign markets available to domestic fish or fishing products, (3) advanced new opportunities for fisheries trade, particularly through the purchase of fish or fishery products from domestic fishermen, and (4) traditionally engaged in longline fishing for Pacific cod in the management area.

Because those foreign nations that would be affected by this amendment have cooperated with the United States in promoting development and growth of groundfish fishing through joint ventures, including transferring harvesting technology, and purchasing U.S.-caught groundfish for import to foreign nations, and have traditionally engaged in Pacific cod fishing in the management area, the Council judged that this amendment conveys an overall benefit to the United States in terms of international trade.

Finally, the proposed rule does not contain a collection of information requirement or involve any collection of information within the meaning of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*)

List of Subjects in 50 CFR Part 611

Fish, Fisheries, Foreign relations, Reporting and recordkeeping requirements.

Dated: May 11, 1983.

Carmen J. Blondin,

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

PART 611—FOREIGN FISHING

For reasons set out in the preamble, 50 CFR Part 611 is proposed to be amended as follows:

1. The authority citation for Part 611 reads as follows:

Authority: 16 U.S.C. 1801 *et seq.*, unless otherwise noted.

2. Section 611.93 is amended by revising paragraph (c)(3)(ii) to read as follows:

§ 611.93 Bering Sea and Aleutian Islands groundfish fishery.

* * * * *

(c) * * *

(3) * * *

(ii) When U.S. observer information or other reliable reported statistics indicate that foreign longline vessels have intercepted 105 metric tons of Pacific halibut in the entire management area during the 12-month period June 1 through May 31, the Regional Director shall prohibit further longlining by foreign vessels for the remainder of the 6-month period December 1 through May 31 in water less than 500 meters deep in the area designated under paragraph (c)(2)(ii)(C) of this section.

* * * * *

[FR Doc. 83-13087 Filed 5-12-83; 9:09 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 48, No. 95
Monday, May 16, 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

Forest Service

Decision Notice and Finding of No Significant Impact; Cooperative Federal-State Spruce Budworm Demonstration Project, Vermont, 1983

An environmental assessment (EA) that discusses the proposed budworm management demonstration project in Vermont has been prepared. In this project, the Vermont Department of Forests, Parks and Recreation in cooperation with the USDA Forest Service proposes to establish demonstration areas exhibiting silvicultural, utilization/marketing and foliage protection methods to the forestry community. Other alternatives considered in the Environmental Analysis were: Foliage protection with the biological insecticide *Bacillus thuringiensis (B.t.)*; silvicultural and utilization/marketing activities; and no action. A detailed explanation of each alternative, the environmental consequences and the criteria used to evaluate them may be found in the Environmental Assessment (pp. 5–10).

The goal of the proposed demonstration project is to reduce the vulnerability and susceptibility of spruce-fir stands to spruce budworm damage. Demonstration activities will be concentrated in the towns of Hyde Park, Eden, Wolcott, Greensboro, Hardwick, Walden, Stannard, and Wheelock in the counties of Lamoille, Orleans, and Caledonia, Vermont.

Decision Notice

It is my decision to provide Federal financial assistance for foliage protection and silvicultural assistance in Vermont's proposed demonstration project in FY 1983 (Alternative 3). This alternative was selected because it best meets Vermont's long- and short-term needs in managing the forest resources; promotes the creation of budworm resistant residual and future forests; and provides for continuous deer management and foliage protection in silviculturally treated stands. As required by the National Environmental Policy Act (NEPA), this decision is based on an environmental analysis, and the proposed Vermont demonstration project meets all USDA Forest Service special project criteria for financial assistance. The duration of the project is ten years. However, financial assistance for the current year does not imply that Federal assistance will be provided in future years.

Finding of No Significant Impact

I have determined that the proposed demonstration project, based on the analysis described in the Environmental Assessment, is not a major Federal action and will not cause significant environmental impacts or adverse effects. Therefore, an environmental impact statement will not be prepared. This determination was made considering the following factors: (a) EPA and Vermont have approved *B.t.* insecticides for the proposed use, and applicable State and Federal laws will be followed; (b) any physical and biological effects are limited to the proposed demonstration areas; (c) there will be no adverse effects on any endangered plants or animals known to inhabit the affected environment; and (d) there are no apparent adverse cummulative or secondary effects.

Copies of the Environmental Assessment are available for public review at the following offices:

Agency of Environmental Conservation, Department of Forests, Parks and Recreation, Montpelier, Vermont 05602.

USDA Forest Service, Northeastern Area, State and Private Forestry, P.O. Box 640, Louis C. Wyman Forestry Sciences Laboratory, Durham, New Hampshire 03824.

USDA Forest Service, Northeastern Area, State and Private Forestry, 370 Reed Road, Broomall, Pennsylvania 19008.

Implementation may take place immediately after the date of this decision. This decision is not subject to administrative review (appeal) pursuant to 36 CFR 211.19.

Dated: May 9, 1983.

Thomas N. Schenarts,

Area Director, Northeastern Area, State and Private Forestry.

[FR Doc. 83-13028 Filed 5-13-83; 8:45 am]

BILLING CODE 3410-11-M

CIVIL RIGHTS COMMISSION

New York 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 York Advisory Committee to the Commission will convene at 10:00a and will end at 12:00p, on May 26, 1983, at the Jacob K. Javits Building, 26 Federal Plaza, in Room 305B, New York, New York, 10278. The purpose of this meeting is to conduct a press conference to release the Committee's report of a conference held in June 1982 on Bigotry and Violence in New York State.

Persons desiring additional information should contact the Chairperson, Robert J. Mangum, 420 East Twenty-Third Street, New York, New York, 10010, (212) 420–3935 or the Eastern Regional Office, Jacob K. Javits Building, 26 Federal Plaza, Room 1639, New York, New York, 10278, (212) 264–0400.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., May 10, 1983.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 83-13086 Filed 5-13-83; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Invitation for Applications From New Firms for a Portion of the 1983 Virgin Islands Watch Quota

New firms are invited to apply for 400,000 units of the 1983 Virgin Islands duty-free watch quota (see 15 CFR Part 303). This amount is part of the 639,375 units which remained unallocated after

the 1983 allocation among existing firms in the Virgin Islands (see the notice in the May 3, 1983 issue of the **Federal Register**, 48 FR 19922).

For application forms and instructions, interested firms should write to the Statutory Import Programs Staff, Room 1523, U.S. Department of Commerce, Washington, D.C. 20230.

After a qualifying application has been received, an announcement will be published in the **Federal Register** establishing a closing date for further applications 30 days from the date of such notice. If the Departments do not receive a qualifying application prior to September 1, this invitation shall then expire. Contact Frank Creel, (202) 377–1660, for further information.

Background

The Secretaries of Commerce and the Interior are jointly responsible for making annual duty-free allocations to watch producers in the U.S. insular possessions (Pub. L. 97–446). These allocations authorize insular watch producers to enter specified amounts of watches and watch movements assembled in the possessions free of duty under general headnote 3(a) of the Tariff Schedules of the United States.

In 1983, 3,000,000 units were available for allocation to Virgin Islands producers. Existing producers, however, requested the allocation of only 2,360,625 units, leaving 639,375 units unallocated.

We have determined that it is in the best interest of the Virgin Islands economy to reserve 239,375 units of the unallocated portion for possible future use. First, it is possible that the firms receiving allocations in April underestimated their 1983 needs and may need additional amounts later this year. Second, other firms which ceased operations in 1981 or 1982 are eligible under the 1983 rules to receive special allocations if they resume operations by June of this year (or, potentially, later this year if they so petition the Departments pursuant to 15 CFR 303.11.)

The remaining 400,000 units, as explained above, are set aside for possible allocation to new entrants.

The number of new entrants selected to receive portions of the amount set aside will depend on the number and quality of the applications received. The Departments may decide that none of the applications received offers reasonable prospect of additional benefits to the Virgin Islands economy, or they may decide several applications offer such prospect. The Departments will also review applications during this period from firms which may be unable to establish operations during calendar year 1983 but wish to be considered for possible allocations in 1984.

In accordance with § 303.5(b) of Part 303, we have determined that:

(1) The established industry is not able to utilize all of the available quota;

(2) The amount being set aside is sufficient to support viable operations in 1983 for up to several new entrants, and there will be adequate quota in 1984 to support operations for a substantially enlarged industry (as many as fifteen firms have operated in the Virgin Islands in the past, and Pub. L. 97–446 authorized the Departments to adjust the total annual amount of the quota within specified ranges);

(3) The entry of new firms would strengthen the competitive character of the established industry, offer additional employment opportunities, and increase manufacturing activity in the territory; and

(4) The existing industry is not likely, in the anticipated market conditions, to be adversely affected by the addition of new firms.

Persons who may be interested in applying for a new entrant allocation are encouraged to read the governing regulations in 15 CFR Part 303, with particular attention to §§ 303.2(a)(5), 303.2(b)(1), 303.5(a)(4), 303.5(b), and the appendix, (48 FR 17580, April 25, 1983), which contains the special provisions for calendar year 1983. The information they will be required to provide includes, but is not limited to, the applicant's "financial capacity, production and marketing experience, proposed source of parts and components, affiliation with other business entities in the watchmaking and watchmarketing industry, proposed degree of assembly, proposed wage rates by job classification, and the applicant's intentions with regard to the number of units to be assembled and shipped duty-free into the customs territory, establishing or acquiring a local production facility, and seeking territorial tax exemptions or other local industrial incentive benefits." Applicants may also be required to describe the type of assembly operations they plan (conventional, quartz analog, or mixed) and their planned capital expenditures. We also advise interested persons that the Departments intend to adopt in 1984 minimum assembly requirements in addition to the existing Customs requirements (45 FR 37324 (1980)) and that these requirements are likely to include nearly complete assembly of quartz analog watches (see 48 FR 264 and 48 FR 7187 (1983) for more discussion of these points.)

Pedro A. Sanjuan,

Assistant Secretary for Territorial and International Affairs, Department of the Interior.

Frank W. Creel,

Acting Director, Statutory Import Programs Staff, Department of Commerce.

[FR Doc. 83-13091 Filed 5-13-83; 8:45 am]

BILLING CODE 4310-10-M 3510-25-M

DEPARTMENT OF COMMERCE

International Trade Administration

Certain Castor Oil Products From Brazil; Preliminary Results of Administrative Review of Countervailing Duty Order

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Preliminary Results of Administrative Review of Countervailing Duty Order.

The Department of Commerce has conducted an administrative review of the countervailing duty order on certain castor oil products from Brazil. The review covers the period January 1, 1980, through December 31, 1980. As a result of the review, the Department has preliminarily determined the net subsidy to be 2.22 percent *ad valorem*. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: May 16, 1983.

FOR FURTHER INFORMATION CONTACT: Lorenza Olivas or Edward Haley, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On December 24, 1980, the Department of Commerce ("the Department") published in the **Federal Register** (46 FR 62487) the final results of its last administrative review of the countervailing duty order on certain castor oil products from Brazil (42 FR 8634, March 16, 1976) and announced its intent to conduct the next administrative review. As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

Scope of the Review

Imports covered by the review are hydrogenated castor oil and 12-hydroxystearic acid, imported directly or indirectly from Brazil. Such imports are currently classifiable under items 178.2000, 490.2650 and 490.2670 of the

Tariff Schedules of the United States Annotated.

The review covers the period January 1, 1980 through December 31, 1980 and three programs found countervailable in the original investigation: preferential financing for exports, income tax exemptions for export earnings, and an export credit premium for the Industrial Products Tax ("IPI").

There are two known exporters of this merchandise to the United States, Ceralit A.A. Industria E Comercio and Sociedade Algodoeira Do Nordeste Brasil, S.A. ("(Sanbra").

Analysis of Programs

(1) *Preferential Financing for Exports.* Under this program companies are declared eligible by the Department of Foreign Commerce of the Banco Central do Brasil ("CACEX") to receive working capital loans at preferential rates. These loans have a duration of up to one year. Each firm producing castor oil products can obtain preferential financing for up to 20 percent of the value of its previous year's exports.

We calculated the subsidy under this program by multiplying the value of loans outstanding under the program during the period by the differential between the commercial interest rate and the preferential interest rate for each loan. For loans granted prior to the period, only that portion extending past January 1, 1980 was included in our calculation. We similarly prorated loans extending past December 31, 1980.

The commercial rate for short-term working capital is the rate established by the Banco do Brasil for discounting sales of accounts receivable. We chose this as the benchmark rate because information provided by the Government of Brazil indicates that working capital in normally raised within the Brazilian financial system through the sales of accounts receivable. The commercial rate includes tax on financial transactions, from which loans under the preferential financing program are exempt, and varied from 25.08 to 37.98 percent during the period April 23, 1979 to December 31, 1980.

During 1980, Ceralit and Sanbra had loans outstanding under Resolutions 515 (effective February 8, 1979) and 602 (effective March 5, 1980) of the Banco Central do Brasil. The effective annual rate for loans granted under these resolutions ranged from 8.70 percent to 26.39 percent and the differential between the commercial and preferential rates ranged from 16.38 percent to 11.59 percent. We calculated the benefit conferred by the program for 1980 to be 2.09 percent *ad valorem.*

With the publication of successor Resolution 674, effective January 22, 1981, there was an increase in potential benefits under the program. The effective rate of interest for loans under this resolution is 44 percent. The comparable rate for discounting sales of accounts receivable is now 72 percent plus a 4.60 percent tax on financial transactions. The differential is 32.60 percent.

To estimate the potential benefit and cash deposit of estimated countervailing duties for this program, we summed the prorated value of loans outstanding during 1980 and found an actual use rate of 16.80 percent. We then multiplied the current 32.60 percent differential between the benchmark commercial and preferential interest rates by the loan use rate to fine a potential benefit under this program of 5.48 percent *ad valorem.*

(2) *Income Tax Exemptions for Export Earnings.* Exporters of certain castor oil products are eligible under this program for exemption from income tax of the percentage of profit attributable to export revenue. The Brazilian government calculates the tax-exempt fraction of profit as the ratio of export revenue to total revenue. The benefit equals the product of the amount of tax-exempt profit and the prevailing 35 percent corporate income tax rate. We therefore preliminarily determine the benefit from this program to be 0.13 percent *ad valorem* for 1980.

(3) *IPI Export Credit Premium.* The Brazilian government eliminated the IPI export credit premium on December 7, 1979, but reinstated it on April 1, 1981. As a result, this program provided no benefit during the review period. Currently, the Government of Brazil collects a tax on exports of certain castor oil products to the United States which fully offsets the benefit received under this program. Therefore, for purposes of the cash deposit of estimated countervailing duties, the potential subsidy under this program is zero percent.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the net subsidy conferred during 1980 is 2.22 percent *ad valorem.* Accordingly, the Department intends to instruct the Customs Service to assess countervailing duties of 2.22 percent of the f.o.b. invoice price on all shipments of certain Brazilian castor oil products exported on or after January 1, 1980 and on or before December 31, 1980.

Further, as provided by section 751(a)(1) of the Tariff Act, we intend to instruct the Customs Service to collect a cash deposit of estimated countervailing duties of 5.61 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of the current review. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.41 of the Commerce Regulations (19 CFR 355.41).

Dated: May 7, 1983.

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 83-13041 Filed 5-13-83; 8:45 am]

BILLING CODE 3510-25-M

Ferrochrome From South Africa; Final Results of Administrative Review of Countervailing Duty Order

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Final Results of Administrative Review of Countervailing Duty Order.

SUMMARY: On March 28, 1983, the Department of Commerce published in the **Federal Register** the preliminary results of its administrative review of the countervailing duty order on ferrochrome from South Africa. The review covered the period April 11, 1981 through December 31, 1981. The notice stated that the Department had preliminarily determined the total bounty or grant to be 0.40 percent *ad valorem,* a rate the Department considers to be *de minimis.*

Interested parties were invited to comment on the preliminary results. We received no comments. Based on our analysis, the final results of the review are the same as those presented in the preliminary results.

EFFECTIVE DATE: May 16, 1983.

FOR FURTHER INFORMATION CONTACT: Charles Anderson or Philip Otterness, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On March 28, 1983, the Department of Commerce ("the Department") published in the **Federal Register** (48 FR 12762) the preliminary results of its administrative review of the countervailing duty order on ferrochrome from South Africa (46 FR 21155, April 9, 1981). The Department has now completed that administrative review.

Scope of the Review

The merchandise covered by the review is ferrochrome, imported directly or indirectly from South Africa. Such imports were classifiable during the period of review under items 606.2200, 606.2400 and 923.18 of the Tariff Schedules of the United States Annotated. The review covers the period April 11, 1981 through December 31, 1981, and the following programs: (1) Preferential railroad rates provided by the South African Transport Services for export shipments, (2) the Central Government Rebate of railage charges, (3) Categories A, B, C and D of the Export Incentives Program, (4) Industrial Development Corporation loans given at preferential rates for the purpose of developing export capacity, and (5) tax benefits received under a program which provides for "beneficiation" allowances for base mineral processing.

Final Results of the Review

Interested parties were invited to comment on our preliminary results. We received no comments. Based on our analysis, the final results of our review are the same as those presented in the preliminary results of review. We determine that the total bounty or grant for the period is 0.40 percent *ad valorem*. Because the total bounty or grant is less than 0.50 percent and therefore *de minimis*, the Department will instruct the Customs Service not to assess countervailing duties on any shipments of ferrochrome from South Africa entered, or withdrawn from warehouse, for consumption on or after April 11, 1981 and exported on or before December 31, 1981.

Further, the Department will instruct the Customs Service not to collect a cash deposit of estimated countervailing duties, as provided for by section 751(a)(1) of the Tariff Act of 1930 ("the Tariff Act"), on any shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit waiver shall remain in effect until publication of the final results of the next administrative review.

The Department is now beginning the next administrative review of the order. The suspension of liquidation previously ordered will continue for all entries of this merchandise exported on or after January 1, 1982.

The Department encourages interested parties to review the public record and submit applications for protective orders, if desired, as early as possible after the Department's receipt of the information in the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.41 of the Commerce Regulations (19 CFR 355.41).

Dated: May 7, 1983.

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 83-13039 Filed 5-13-83; 8:45 am]

BILLING CODE 3510-25-M

Oleoresins of Paprika From Spain; Preliminary Results of Administrative Review of Countervailing Duty Order

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of preliminary results of administrative review of countervailing duty order.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on oleoresins of paprika from Spain. The review covers the period July 1, 1980 through June 30, 1981. As a result of the review, the Department has preliminarily determined the net subsidy to be 1.00 percent *ad valorem* for the period of review. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: May 16, 1983.

FOR FURTHER INFORMATION CONTACT: Lorenza Olivas or Victoria Marshall, Office of Compliance, Room B–099, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On March 19, 1982, the Department of Commerce ("the Department") published in the **Federal Register** (47 FR 11916) the final results of its last administrative review of the countervailing duty order on oleoresins of paprika from Spain (44 FR 11214, February 28, 1979) and announced its intent to conduct the next administrative review. As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

Scope of the Review

Imports covered by the review are oleoresins of paprika, imported directly or indirectly from Spain. Such imports are currently classifiable under item 450.2010 of the Tariff Schedules of the United States Annotated.

The review covers the period July 1, 1980 through June 30, 1981, and the following programs: (1) A rebate upon exportation of indirect taxes, under the Desgravacion Fiscal a la Exportacion; and (2) an operating capital loans program.

Analysis of Programs

(1) Desgravacion Fiscal a la Exportacion ("the DFE"). Spain employs a cascading tax system. Under this system, the government levies a turnover tax ("IGTE") on each sale of a product through its various stages of production, up to (but not including) the final sale in Spain. Upon exportation of the product, the government, under the DFE, rebates both accumulated IGTE indirect taxes and final stage taxes.

Although the Spanish government rebates upon exportation all indirect taxes paid under the cascading tax system, the Tariff Act allows the rebate of only the following: (1) Taxes borne by inputs which are physically incorporated in the exported product (see Annex 1.1 of part 355 of the Commerce Regulations); and (2) indirect taxes levied at the final stage (see Annex 1.2 of part 355 of the Commerce Regulations). If the payment upon export exceeds the total amount of allowable indirect taxes described above, the Department considers the difference to be an overrebate of indirect taxes and, therefore, a subsidy.

Physical incorporation is a question of fact to be determined for each product in each case. In this case, the physically incorporated inputs are the raw materials previously allowed by the Department. The rebate of two final stage taxes, the parafiscal tax on export licenses and the tax on freight and insurance, is also allowable when

calculating whether or not there is an overrebate of indirect taxes under the DFE.

Based upon our analysis of the DFE and the allowable indirect taxes, we preliminarily determine that an overrebate upon export existed during the period July 1, 1980 through December 31, 1980. As of January 1, 1981, the Spanish government increased the IGTE turnover tax rate on business transactions from 2.40 to 3.80 percent while maintaining the previous rate for the export rebate. We preliminarily find that the change in aggregate indirect tax incidence eliminated the overrebate. Therefore, the net subsidy attributable to this program during the period July 1, 1980 through June 30, 1981 is 0.57 percent.

On January 1, 1982, the Spanish government further increased the IGTE rate to 4.60 percent, while once again keeping the DFE unchanged. As a result of the changes, we preliminarily determine, for purposes of cash deposits of estimated countervailing duties that the overrebate has been eliminated.

(2) Operating Capital Loans. The Spanish government requires banks to set aside funds to provide short-term operating capital loans. These loans are granted for a period of less than one year. Until March 1981, the Spanish government fixed the interest rate for such loans at 8 percent, which was 1.50 percent below the legally established commercial interest rate of 9.50 percent. Effective March 1, 1981, the Spanish government increased the interest rate on operating capital loans from 8 to 10 percent while eliminating the interest rate ceiling on comparable short-term commercial loans. To determine the interest rate on comparable commercial loans for the remaining four months in the review period, we took the average national prime interest rate for loans of comparable length, added the prevailing interest charge over prime facing borrowers of average creditworthiness and added the legally established fees and commissions. Comparing this benchmark with the 10 percent interest rate established for the operating capital loans program, we found a differential of 9.48 percent after March 1.

The Spanish government provided actual loan amounts outstanding during the period under this program. After prorating for the interest rate differentials prevailing during the period of review, we preliminarily determine the net subsidy conferred under this program to be 0.43 percent *ad valorem* for the period July 1, 1980 through June 30, 1981.

To determine the cash deposit of estimated countervailing duties for this program, we estimated a 10 percent actual usage rate by dividing the value of the loans outstanding during the period by the value of exports during the same period. Multiplying the estimated usage rate by the 1982 interest rate differential of 9.38 percent, we preliminarily determine, for purposes of cash deposits of estimated countervailing duties, that the net subsidy attributable to this program is 0.94 percent *ad valorem*.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the aggregate net subsidy conferred during the period July 1, 1980 through June 30, 1981 by the two programs is 1.00 percent *ad valorem*. Accordingly, the Department intends to instruct the Customs Service to assess countervailing duties of 1.00 percent of the f.o.b. invoice price on all shipments of Spanish oleoresins of paprika exported on or after July 1, 1980 and on or before June 30, 1981.

Further, as provided for by section 751(a)(1) of the Tariff Act, the Department intends to instruct the Customs Service to collect a cash deposit of estimated countervailing duties of 0.94 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of the current review. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and section 355.41 of the Commerce Regulations (19 CFR 355.41).

Dated: May 7, 1983.

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 83-13040 Filed 5-13-83; 8:45 am]

BILLING CODE 3510-25-M

Sugar From the European Communities; Preliminary Results of Administrative Review of Countervailing Duty Order

AGENCY: International Trade Administration, Commerce

ACTION: Notice of Preliminary Results of Administrative Review of Countervailing Duty Order.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on sugar from the European Communities. The review covers the period July 1, 1980 through June 30, 1981. There were no known shipments of this merchandise to the United States during the period of review. As a result of this review, the Department has preliminary determined the amount of the net subsidy to be 7.1¢ per pound. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: May 16, 1983.

FOR FURTHER INFORMATION CONTACT: Lorenza Olivas or Larry Hample, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On September 23, 1981, The Department of Commerce ("the Department") published in the **Federal Register** (46 FR 46984) the final results of its last administrative review of the countervailing duty order on sugar from the European Communities (43 FR 33239, July 31, 1978) and announced its intent to conduct the next administrative review by the end of July 1982. As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

Scope of the Review

The merchandise covered by the review is sugar from the European Communities ("EC"). Sugar is currently classifiable under items 155.2025, 155.2045 and 155.3000 of the Tariff Schedules of the United States Annotated. The review covers the period July 1, 1980 through June 30, 1981, and one countervailable program:

restitution payments made under the Guidance and Guarantee Fund which, in turn, is operated under the Common Agricultural Policy ("CAP") of the EC. During the period of review, the EC consisted of Belgium, Denmark, the Federal Republic of Germany, France, Ireland, Italy, Luxemburg, the Netherlands, the United Kingdom, and Greece.

Analysis of Program

The restituion payments made under the CAP vary in amount and are granted only when the world price of sugar as established in international markets is lower than the EC "threshold price". Under the Guidance and Guarantee Fund program, not all sugar exported from the EC benefits from the same level of export subsidies. Sugar produced in, and exported from, the EC is classified in one of three production quotas: A, B and C quota sugars. Only A and B quota sugars are eligible for restitution payments.

The EC provided no response to our questionnaire of October 27, 1981, nor was our follow-up request for information adequately answered. Thus, we are using data developed by an independent statistical gathering organization and the United States Department of Agriculture as the best information available.

There were no known shipments of this merchandise during the period of review.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the rate of net subsidy conferred by the restitution payments program is 7.16¢ per pound of sugar for the period July 1, 1980 through June 30, 1981.

Accordingly, as provided for by section 751(a)(1) of the Tariff Act, we intend to instruct the Customs Service to collect a cash deposit of estimated countervailing duties of 7.16¢ per pound on all shipments of sugar from the EC entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of this administration review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and section 355.41 of the Commerce Regulations (19 CFR 355.41).

Dated: May 7, 1983.

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 83-13042 Filed 5-13-83; 8:45 am]

BILLING CODE 3510-25-M

Office of the Secretary

President's Private Sector Survey on Cost Control

AGENCY: Office of the Secretary, Commerce.

ACTION: Change in Meeting Notice of the Subcommittee of the President's Private Sector Survey on Cost Control.

SUMMARY: This amends the agenda of a meeting notice published on May 2, 1983 (48 FR 19769).

The draft report from the Boards/Commissions—Business Task Force was not released to the public on May 6 and will not be included in the agenda for discussion at the May 17 meeting as initially planned. The report will be released and discussed at a later time which will be announced in the **Federal Register.**

All other information concerning the meeting remains unchanged.

FOR FURTHER INFORMATION CONTACT: Ms. Janet Colson, Committee Control Officer for the Executive Committee of the President's Private Sector Survey on Cost Control, telephone: (202) 466–4665.

Dated: May 9, 1983.

Marilyn S. McLennan,

Chief, Information Policy and Management Division Office of the Secretary.

[FR Doc. 83-13078 Filed 5-13-83; 8:45 am]

BILLING CODE 3510-CW-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

May 3, 1983.

The USAF Scientific Advisory Board Ad Hoc Committee of the advanced Tactical Fighter (AFT) Technology will meet at the Institute for Defense Analyses, Alexandria, VA, on June 8–10, 1983. The purpose of the meeting will be to receive briefings from contractors who are involved in technology development. The meeting will convene at 8:30 a.m. and adjourn at 5:00 p.m. each day.

The meeting concerns matters listed in Section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 697–4648.

Winnibel F. Holmes,

Air Force Federal Register Liaison Officer.

[FR Doc. 83-13035 Filed 5-13-83; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

May 3, 1983.

The USAF Scientific Advisory Board Ad Hoc Committee on Software will meet at Hanscom AFB, MA, on June 9–10, 1983. The purpose of the meeting will be to review the software intensive systems development experiences of the Electronic Systems Division. The meeting will convene at 8:00 a.m. and adjourn at 4:30 p.m. each day.

The meeting will be open to the public; however, any person seeking presentation time on the agenda should submit the topic, academic and/or industrial credentials associated with the topic, and a letter of justification to the Secretariat below.

For further information, contact the Scientific Advisory Board Secretariat at 697–4648.

Winnibel F. Holmes,

Air Force Federal Register Liaison Officer.

[FR Doc. 83-13036 Filed 5-13-83; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

May 3, 1983.

The USAF Scientific Advisory Board Advanced Tactical Fighter Program Supportability Panel will hold a meeting on June 15, 1983 from 8:30 a.m. to 4:00 p.m., at Wright-Patterson Air Force Base, Ohio, in the AFALD Commander's Conference Room, Room 233, Building 15, Area B.

The group will receive classified briefings and hold classified discussions on the Advanced Tactical Fighter Program. The meetings concern matters listed in Section 552b(c) of Title 5, United States Code, specifically

subparagraph (1) thereof and may be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Winnibel F. Holmes,

Air Force Federal Register Liaison Officer.

[FR Doc. 83-13037 Filed 5-13-83; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF EDUCATION

Executive Committee of the Intergovernmental Advisory Council on Education; Closed Meeting

SUMMARY: This notice sets forth the schedule and proposed agenda of the Executive Committee of the Intergovernmental Advisory Council on Education meeting. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act.

DATE: June 2, 1983.

ADDRESS: Department of Education, 400 Maryland Avenue SW., Room 3073, Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Laverne Johnson, Office of the Deputy Under Secretary for Intergovernmental and Interagency Affairs, Department of Education, 400 Maryland Avenue SW., Washington, D.C. 20202, (202) 472–6464.

SUPPLEMENTARY INFORMATION: The Executive Committee meeting will be closed to the public to review applications for the position of Executive Director of the Intergovernmental Advisory Council on Education. The meeting will be closed under the authority of Section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. Appendix 1) and under exemptions (2) and (6) contained in the Government in the Sunshine Act (Pub. L. 94–409; 5 U.S.C. 552b(c) (2) and (6)). Discussion will include consideration of the qualifications and fitness of the applicants and will touch upon matters that would disclose information of a personal nature, which disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session.

A summary of the activities at the closed session and related matters which are informative to the public consistent with the policy of Title 5 U.S.C. 552b(c) will be available to the public within 14 days of the meeting.

Signed at Washington, D.C., on Wednesday, May 11, 1983.

Wendy Borcherdt,

Acting Deputy Under Secretary for Intergovernmental and Interagency Affairs.

[FR Doc. 83-13086 Filed 5-13-83; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP83-59-002]

Lone Star Gas Co., a Division of ENSERCH Corp.; Petition To Amend

May 10, 1983.

Take notice that on April 18, 1983, Lone Star Gas Company, a Division of ENSERCH Corporation (Petitioner), 301 South Harwood Street, Dallas, Texas 75201, filed in Docket No. CP83–59–002 a petition to amend the order issued February 22, 1983, in Docket Nos. CP83–59–000 and CP83–59–001 so as to authorize the construction and operation of sales taps to serve residential, commercial, and industrial customers which are not presently served by Petitioner at other locations, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that it is primarily engaged in the distribution of natural gas at retail through its interstate facilities. In the conduct of this business, Petitioner states, it operates an integrated pipeline system including gathering, transmission and distribution facilities in the states of Texas and Oklahoma. Petitioner requests authority under its blanket certificate to provide retail natural gas service upon request to residential, commercial, and industrial customers located along its system. Such service would be subject to prior notice procedures substantially similar to those set forth in §§ 157.205 and 157.211 of the Commission's Regulations, it is asserted.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before May 31, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). 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. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-13001 Filed 5-13-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-280-000]

Lone Star Gathering Co.; Application

May 10, 1983.

Take notice that on April 18, 1983, Lone Star Gathering Company (Applicant), 301 South Harwood Street, Dallas, Texas 75201, filed in Docket No. CP83–280–000 an application pursuant to Section 79(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Natural Gas Pipeline Company of America (NGPL), under an existing transportation agreement from an additional delivery point, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant specifically proposes to transport natural gas for NGPL under an existing transportation agreement, as amended on March 11, 1983, from an additional delivery point that is mutually agreeable to both parties. It is asserted that Applicant would receive gas for NGPL's account from the Herring Ranch No. 56–1 Well in Live Oak County, Texas. It is further asserted such gas would ultimately be exchanged by NGPL with Lone Star Gas Company pursuant to Section 311(a) of the Natural Gas Policy Act of 1978.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 31, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). 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. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to

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 or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if 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 herin provide for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-13002 Filed 5-13-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP83-84-000]

Michigan Consolidated Gas Co.; Complaint of Michigan Consolidated Gas Company

May 10, 1983.

Take notice that on May 2, 1983, Michigan Consolidated Gas Company (Mich Con), pursuant to Sections 4 and 5 of the Natural Gas Act and Rules 206 and 207 of the Commission's Rules of Practice and Procedure (18 CFR 385.206 and 385.207), filed a request that the Commission: (1) issue an order terminating any obligations MichCon may have under its current service agreement to purchase gas from Panhandle Eastern Pipe Line Company (Panhandle) and authorizing the abandonment of any service obligation Panhandle may have under the Natural Gas Act to sell gas to Mich Con; or (2) issue and order eliminating the commodity portion of the minimum bill provision in Panhandle's Rate Schedule SS-1; and (3) in addition to the order described in either (1) or (2) above, grant Mich Con relief from its minimum bill obligation to Panhandle under the circumstances described in Mich Con's filing.

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 NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before June 9, 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 are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-13003 Filed 5-13-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83486-000]

Montaup Electric Co.; Filing

May 10, 1983.

The filing Company submits the following:

Take notice that on April 29, 1983, Montaup Electric Company (Montaup) tendered for filing a revised contract demand agreement between Montaup and Newport Electric Corporation (Newport). The revised agreement supersedes an agreement for contract demand service between Montaup and Newport. Under the revised agreement Montaup will make specified amounts of capacity and associated energy available to Newport through October 31, 1991 and will provide service thereafter in accordance with the conditions of the agreement.

Montaup requests an effective date of May 1, 1983, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing have been served on Newport and the Massachusetts Department of Public Utilities and the Rhode Island Public Utilities Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 27, 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 motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-13004 Filed 5-13-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-488-000]

New England Electric Transmission Corp., et al.; Filing

May 9, 1983.

The filing Company submits the following:

Take notice that New England Electric Transmission Corporation (VETCO), and New England Power Company (NEP) on May 2, 1983 tendered for filing one new agreement and amendments to three existing agreements, all relating to the transmission of electricity between Hydro-Quebec and the New England Power Pool.

NEET states that the amendments would refine, clarify, and correct—but not change the the basic substance of—three agreements that the Commission accepted by order dates August 27, 1982 in Docket No. ER82-600-000. The amendments are: (1) Amendment No. 2 to the Phase I Terminal Support Agreement between NEET and the participating New England utilities; (2) Amendment No. 2 to the Phase I Vermont Transmission Line Support Agreement between VETCO and the participating New England utilities; and (3) Second Amendment to Agreement with Respect to Use of Quebec Interconnection between and among the participating New England utilities.

The new agreement in the filing provides that NEP reinforce certain of its ac facilities in New Hampshire and Massachusetts and make improvements to its Comerford generating station in New Hampshire. These reinforcements and improvements must be made before power can be exchanged between Hydro-Quebec and NEPOOL, and NEET has agreed to support the costs of this work in the Agreement for Reinforcement and Improvement of New England Power Company's Transmission System.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 20, 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 motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-13005 Filed 5-13-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP83-85-000]

Northwest Central Pipeline Corp. v. Arkansas Louisiana Gas Co.; Complaint, Petition for Declaratory Order and Request for Evidentiary Hearing

May 10, 1983.

Take notice that on May 3, 1983, Northwest Central Pipeline Corporation (Northwest Central), pursuant to Section 5 of the Natural Gas Act, 15 U.S.C. 717d, and Rule 206 of the Commission's Rules of Practice and Procedure (18 CFR 385.206), filed a Complaint and Request for Evidentiary Hearing seeking a reduction in the minimum bill provision in Arkansas Louisiana Gas Company's (Arkla) Gas Tariff, Original Volume No. 3, Rate Schedule No. X-26, as more specifically described in the filing. Northwest Central states that the reduction is required because Arkla's existing minimum bill provision is unrelated to Arkla's cost of rendering the service or Northwest Central's need for the service and, therefore, is unjust and unreasonable, discriminatory and arbitrary under the Natural Gas Act.

Northwest Central also filed, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure (18 CFR 385.207), a Petition for a Declaratory Order that Northwest Central's current purchase obligation under Arkla's Rate Schedule No. X-26 and the underlying gas purchase contract is an average of 100,000 Mcf per day over the contract year with no minimum daily purchase obligation.

Any person desiring to be heard or to protest said complaint should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before June 9, 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 complaint are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-13006 Filed 5-13-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-256-000]

Oklahoma Gas & Electric Co.; Refund Report

May 10, 1983.

The filing Company submits the following:

Take notice that on March 31, 1983, Oklahoma Gas & Electric Company submitted for filing a refund report pursuant to the Commission's order of February 17, 1983.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before May 25, 1983. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-13008 Filed 5-13-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-282-000]

Ozark Gas Transmission System; Application

May 10, 1983.

Take notice that on April 20, 1983, Ozark Gas Transmission System (Applicant), 2700 Fidelity Union Tower, Dallas, Texas 75201, filed in Docket No. CP83-282-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities necessary to interconnect the Tenneco Oil Company Brashears No. 1-34 well to the Ozark Carter Lateral in Franklin County, Arkansas, all as more fully set forth in the application which is on file with the Commission and open to the public inspection.

Applicant indicates that the application is filed in accordance with the requirements of the stipulation and consent agreement executed by Applicant and the Commission which required, *inter alia*, that Applicant must obtain a certificate of public convenience and necessity before constructing any pipeline or compression facility in Township 9N, Range 26W in western Arkansas. It is noted that the facilities to be constructed are located in Township 9N, Range 26W in Franklin County, Arkansas.

Applicant proposes herein to construct and operate measuring facilities and tap connections and 1,200 feet of 4-inch gathering lines to interconnect the Tenneco Oil Company's Brashears No. 1-34 well. Applicant estimates the cost of such facilities to be $42,000 which would be financed from funds on hand.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 31, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). 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. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to 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 or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if 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 Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-13009 Filed 5-13-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-274-000]

Panhandle Eastern Pipe Line Co.; Application

May 10, 1983.

Take notice that on April 13, 1983, Panhandle Eastern Pipe Line Company (Applicant), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP83-274-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing an interruptible transportation of natural gas for Sohio Chemical Company (Sohio), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant indicates that pursuant to an agreement dated March 21, 1983, Michigan Consolidated Gas Company (Mich Con) has agreed to sell to Sohio an annual quantity of 25,000,000 dt equivalent of natural gas at a maximum daily delivery rate not to exceed 90,000 dt equivalent without the concurrence of Mich Con. The agreement states that this service is subject to interruption to the extent the gas supplies are required by Mich Con to provide adequate service to its own distribution customers.

It is indicated that Sohio's Lima, Ohio, ammonia-products plant has lost its ability to compete with manufacturers of similar products due to the cost of natural gas from its present supplier. It is further stated that even small changes in the cost of natural gas have a direct impact on production costs and the economic wellbeing of this plant since natural gas constitutes approximately 80 percent of the cost of ammonia production. Sohio indicates that production of ammonia, urea, and carbon dioxide at its Lima plant were shut down on July 21, 1982, and that subsequently 70 of its 271 employees have been laid off and additional layoffs are likely if the facilities cannot be restored to full operations.

Applicant states that it has entered into an agreement with Sohio dated April 8, 1983, which provides for the transportation of up to 90,000 dt equivalent of natural gas provided sufficient pipeline capacity is available for service to Applicant's jurisdictional and non-jurisdictional customers and firm transportation and exchange services. Applicant states that it would receive the natural gas supplies from Michigan Wisconsin Pipe Line Company (Mich Wis) at an existing interconnection located in Noble Township, Defiance County, Ohio. Redeliveries of thermally equivalent volumes would be made by Applicant to Columbia Gas Transmission Corporation (Columbia) in Emerald Township, Paulding County, Ohio, for subsequent delivery to Sohio through Columbia Gas of Ohio, Inc., it is asserted. Applicant informs that once a proposed interconnection between Mich Wis and Columbia is placed into service deliveries would be made directly from Mich Wis to Columbia and transportation by Applicant would no longer be required.

Applicant states that Sohio has agreed to pay it 4.01 cents per dt equivalent redelivered to Columbia. The term of the transportation agreement is stated to be the earlier of six months from the date of first deliveries or the date of completion of the interconnection between Mich Wis and Columbia.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 31, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). 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. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Ragulatory Commission by Sections 7 and 15 of the Natural Gas and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if 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 Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-13010 Filed 5-13-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ST82-395-001]

Riverway Gas Pipeline Co.; Amendment to Application

May 10, 1983.

Take notice that on April 8, 1983, Riverway Gas Pipeline Company (Applicant), P.O. Box 60252, New Orleans, Louisiana 70160, filed in Docket No. ST82-385-000 an amendment to its application filed pursuant to Section 311(a) of the Natural Gas Policy Act of 1978 (NGPA) and Section 284.127 of the Regulations so as to reflect a change to its proposed rate to be charged Bridgeline Gas Distribution Company (Bridgeline) for transportation of natural gas on Bridgeline's behalf, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Applicant states that on July 29, 1982, it proposed in Docket No. ST82-395-000 to transport natural gas on behalf of Bridgeline pursuant to Section 311(a)(2)(ii) of the NGPA for 25 cents per million Btu as of March 1980 subject to a monthly inflation adjustment predicated upon the NGPA inflation adjustment factor. It is asserted that competitive pressures have caused Applicant to reconsider its standard rate for transportation services. As a result, Applicant amends its rate for transportation services to Bridgeline to a flat fee of 25 cents per million Btu. Applicant asserts that this rate is fair and equitable.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before May 31, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). 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. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's

Rules. All persons who have heretofore filed need not file again.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-13011 Filed 5-13-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EF83-4021-000]

Southwestern Power Administration; Filing

May 10, 1983.

The filing agency submits the following: Take notice that on April 28, 1983, the Assistant Secretary for Conservation and Renewable Energy of the Department of Energy ("Assistant Secretary"), by Rate Order No. SWPA-10, confirmed and approved, on an interim basis, the proposed rate for the sale of power and energy from the Sam Rayburn Dam marketed by the Southwestern Power Administration (SWPA). The proposed rate would increase annual revenue $1,704,504 or 22.8 percent above the present annual revenue of $1,388,300, according to the Assistant Secretary.

The Assistant Secretary states that the need for additional revenue results mainly from significantly increased operation and maintenance expense related to hydroelectric power facilities operated by the Corps of Engineers and SWPA's general administrative and overhead expense. Estimated increases in cost related to major project replacements also contribute to the need for additional revenue.

The Assistant Secretary states that, pursuant to authority vested in the FERC by Delegation Order No. 0204-33, SWPA's proposed contract rate for the Sam Rayburn Dam project is submitted for Commission confirmation and approval beginning on or before June 1, 1983, through September 30, 1986.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 20, 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 motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-13012 Filed 5-13-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP75-23-014 and CP75-120-007]

Tennessee Gas Pipeline Co., a Division of Tenneco Inc.; Petition To Amend

May 10, 1983.

Take notice that on April 18, 1983, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Petitioner), P.O. Box 2511, Houston, Texas 77001, filed in Docket Nos. CP75-23-014 and CP75-120-007, a petition to amend Opinion No. 789 and order issued March 7, 1977,[1] in Docket Nos. CP75-23 and CP75-120, as modified March 20, 1978, and June 21, 1978, pursuant to Section 7(c) of the Natural Gas Act so as to authorize the transportation of natural gas for Tenneco Oil Company (TOC) from additional receipt points, all as more fully set forth in petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that in Docket No. CP75-23 it was authorized to transport natural gas for TOC from specified receipt points to a point of interconnection with Creole Gas Pipeline Corporation (Creole) at Yscloskey, Louisiana, for delivery to Air Products and Chemicals, Inc. Petitioner further states that in Docket No. CP75-120 it was authorized to transport natural gas for TOC from specified receipt points to Yscloskey, Louisiana, for delivery to Creole for transportation by Creole to TOC's Chalmette refinery.

Petitioner requests further amendment of the orders in the instant dockets to authorize receipt points for deliveries of TOC's gas from TOC's interest in Vermilion Block 246, South Timbalier Block 22 and South Timbalier Block 27. Deliveries of gas from Vermilion Block 246 would be made by TOC to Petitioner at Petitioner's Meter No. 1-1083 on the Vermilion 246-D platform, offshore Louisiana, and deliveries of gas from South Timbalier Block 22 and South Timbalier Block 27 would be made by TOC to Petitioner at Petitioner's Meter No. 1-0852 on the Bay Marchand Block 5 platform, offshore Louisiana, it is stated.

Petitioner also requests that the end-use restriction currently in force in the certificates in Docket Nos. CP75-23 and CP75-120 be eliminated with respect to the transportation of gas from these proposed receipt points. Petitioner asserts that on December 23, 1982, the Commission announced a new policy in Opinion No. 10-B, *Tenneco Oil Company, et al.*, Docket No. CI75-45-000 *et al.*, in which it would allow transportation of producer-reservation gas from the outer continental shelf. It is stated that this new policy permits the transportation of outer continental shelf gas for a producer's own use or for a producer's direct sale without restrictions as to the end-use of the gas. Petitioner claims Opinion No. 10-B indicates that restrictions of this type are no longer in the public interest.

Petitioner also proposes to transport gas from the proposed receipt points on a thermal equivalent basis, with the total volume delivered from all sources remaining within the maximum volume currently authorized.

For gas transported from the proposed receipt points, Petitioner proposes to charge TOC 14.92 cents per Mcf. It is stated that this rate was filed under Rate Schedule T-43 in Docket No. RP83-47-000.

Petitioner also seeks further amendment of the order issued in Docket No. CP75-23 so as to extend the transportation service until July 1, 1990. It is said that such an extension would make the term of the transportation end concurrently with TOC's contractual obligation with Air Products and Chemicals, Inc.

Any person desiring to be heard or make any protest with reference to said petition to amend should on or before May 31, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). 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. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-13013 Filed 5-13-83; 8:45 am]

BILLING CODE 6717-01-M

[1] This proceeding was commenced before the FPC. By joint regulation of October 1, 1977 (10 CFR 1000.1), it was transferred to the Commission.

[Docket No. CP83-266-000]

Tennessee Gas Pipeline Co., a Division of Tenneco Inc.; Application

May 10, 1983.

Take notice that on April 8, 1983, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Applicant), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP83-266-000 an application pursuant to section 7(c) of the Natural Gas Act and Subpart F of Part 284 of the Commission's Regulations for a certificate of public convenience and necessity authorizing the transportation of up to 25,000 Mcf of natural gas per day for Long Island Lighting Company (LILCO) for a term of sixty consecutive days from the date of initial deliveries, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to transport daily volumes of up to 25,000 Mcf of natural gas to LILCO for a 60-day term commencing on the date of initial deliveries to enable it to reduce the use of fuel oil in the generation of electric energy at its electric generation stations. Applicant states that the gas to be transported would be purchased by LILCO from New York State Electric & Gas Corporation (NYSEG) and made available for transportation at Applicant's existing Lockport sales meter station delivery point to NYSEG in Niagara County, New York. Applicant states that it would redeliver equivalent quantities to LILCO at Applicant's existing White Plains sales meter station delivery point to LILCO in Westchester County, New York. Applicant states that the gas would be transported only to the extent its operating conditions and available capacity permit.

Applicant proposes to charge LILCO the rate contained in Applicant's Rate Schedule IT which is currently 21.32 cents per Mcf.

Applicant states that the subject gas would be used by LILCO solely to displace fuel oil it would otherwise use in its electric generating stations and that the source of the gas to be sold is NYSEG's general system supply which NYSEG purchases from Applicant and which, it is indicated, is surplus to NYSEG's market requirements.

Applicant further states that on March 15, 1983, LILCO filed for a certificate of eligible use from the Economic Regulatory Administration in ERA Docket No. 83-CERT-008.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 31, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 285.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). 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. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to 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 or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if 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 Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-13014 Filed 5-13-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-292-000]

Texas Eastern Transmission Corp. and Columbia Gas Transmission Corp.; Requests Under Blanket Authorization

May 10, 1983.

Take notice that on April 26, 1983, Texas Eastern Transmission Corporation (TETCO), P.O. Box 2521, Houston, Texas 77252, and Columbia Gas Transmission Corporation (Columbia Gas), P.O. Box 1273, Charleston, West Virginia 15325, filed in Docket No. CP83-292-000 a joint request pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) in which TETCO proposes to construct a new sales delivery point in Lancaster County, Pennsylvania, and Columbia Gas proposes such point as an additional point of delivery of natural gas to one of its existing customers, UGI, Inc., under the authorization issued TETCO in Docket No. CP82-535-000 and Columbia Gas in Docket No. CP83-76-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request of file with the Commission and open to public inspection.

Applicants state that TETCO intends to construct a new sales meter station, M&R Station No., 1528, and establish such point as an additional point of delivery of natural gas. TETCO proposes to construct M&R Station No. 1528 as a new delivery point for the account of Columbia Gas in Lancaster County, Pennsylvania. Applicants state that the new M&R Station No. 1528 would be known as the West Lancaster delivery point and that Columbia Gas intends to establish M&R Station No. 1528 as a new delivery point to its existing customer, UGI, Inc.

Applicants state that deliveries of natural gas to UGI, Inc., for the account of Columbia Gas, would be performed under TETCO's Rate Schedule WS, DCQ-C, DCQ-D, I-C and I-D. Applicants assert that their existing tariffs do not prohibit the construction of the M&R Station No. 1528. It is further asserted that the construction would have no effect on Applicant's peak day or annual deliveries and total volume covered under the existing service agreements would not be changed. Applicants state that the proposed modification would be accomplished without detriment or disadvantage to their other customers.

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 Procedures 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. 83-13015 Filed 5-13-83; 8:45 am]

BILLING CODE 6717-01-M

Office of the Secretary

Record of Decision To Resume Operation of Purex and Uranium Oxide Plant Facilities; Hanford Site, Richland, Washington

Record of decision. This record of Decision has been prepared pursuant to Regulations of the Council on Environmental quality (40 CFR Part 1505) and Implementing Procedures of the U.S. Department of Energy (45 FR 20694).

Decision. The United States Department of Energy (DOE) has decided to resume operation of the *P*lutonium and *U*ranium *E*xtraction (PUREX) and Uranium Oxide (UO_3) chemical processing facilities at the Hanford Site near Richland, Washington.

Background. To meet national needs for special nuclear materials, DOE has determined that processing of irradiated nuclear fuel from the DOE-owned N Reactor is necessary. Other DOE-owned equivalent fuel, such as that from the Shippingport reactor, also could be processed. One alternative for processing of this irradiated nuclear fuel is to resume operation of the PUREX/UO_3 facilities. The PUREX/UO_3 facilities at the Hanford Site were operated for 17 years, from 1956 to 1972, and have been maintained in operational standby since 1972. Since about 1975, needed improvements identified in *The Final Environmental Statement on Waste Operations, Hanford Reservation, ERDA–1538* and additional improvements identified by DOE have been made to further mitigate potential environmental consequences by reducing emissions to the environment and improving the safety and security of operations.

An environmental impact statement (EIS) was prepared to analyze the impacts of processing in PUREX of up to 3000 metric tons per year (MT/yr) of N Reactor fuel. The 3000 MT/yr of N Reactor fuel was the reference case analyzed in the EIS. It was recognized that other DOE-owned equivalent fuel, such as from the Shippingport reactor, might also be processed. The alternative of operation of PUREX was examined, along with the alternatives identified below, in the *Environmental Impact Statement, Operation of PUREX and Uranium Oxide Plant facilities Hanford Site, Richland, Washington, DOE/EIS–0069.* The Final Environmental Impact Statement consists of the Draft Environmental Impact Statement and an addendum.

Description of Alternatives. Four alternatives were examined in the Environmental Impact Statement, three of which span the reasonable means of supplying the plutonium needed for U.S. defense and research and development programs. The fourth alternative was a no-action alternative required under the regulations of the Council on Environmental Quality. Although the no-action alternative would not provide the needed plutonium, it was examined as a basis for comparing the impacts of other alternatives.

a. *Proposed Action*: The proposed action is the resumption of operation of the Hanford PUREX/UO_3 facilities to process irradiated fuel from the Hanford N Reactor and equivalent fuel, at processing rates of up to 3000 MT/yr of N Reactor fuel (the reference case).

b. *Construct New Fuel Processing Plant at Hanford*: This alternative would include the construction and operation of a new fuel processing plant at Hanford based on currently demonstrated processing technology.

c. *Process Fuel Offsite*: This alternative involves processing of irradiated fuel at a site other than Hanford. The alternative site would be the DOE Savannah River Plant; about 10,000 MT of N Reactor irradiated fuel would be shipped to the Savannah River Plant near Aiken, South Carolina for processing during a ten year period. The 10,000 MT is based on the amount of fuel anticipated to be available for processing from N Reactor only. This alternative would require (1) the acquisition of shipping casks, (2) construction and use of cask loading facilities at Hanford and receiving facilities at Savannah River, and (3) construction of a new shear-leach facility (required for processing N Reactor fuel in the Savannah River Plant) at Savannah River.

d. *No Action*: This alternative assumes that the PUREX/UO_3 facilities would be maintained in their current standby mode, and that N Reactor would continue to produce irradiated fuel at its planned operating level. The irradiated N Reactor fuel would not be processed and the special nuclear material contained therein would not be made available for national needs.

Basis for Decision. The DOE based its decision to resume operations of the PUREX/UO_3 facilities upon the ability of this alternative to provide the amount of plutonium required in a timely and environmentally acceptable manner. The alternative of resuming operations at the PUREX facility would serve best the objective of providing the necessary plutonium in a timely fashion. Because the no-action alternative would defer processing indenfinitely, it would not meet the national needs. Constructing a new fuel processing plant at Hanford and shipping fuel offsite both would require several years lead time, and so could not provide plutonium in a timely manner. Only the proposed action can provide plutonium within the time fram required.

Discussion of environmentally preferred alternative. The evaluation contained in the EIS indicates that all four alternatives are environmentally acceptable. Although the environmental emissions from a new processing plant would be less than those from the present facilities at Hanford or Savannah River, a new plant would cause environmental impacts associated with construction of a major new facility.

The no-action alternative has the least environmental impact of the four alternatives; however, it does not fulfill the Department of Energy's programmatic responsibility to produce special nuclear material. The no-action alternative also would require construction of a new fuel storage facility for irradiated N Reactor fuel with the impacts attendant to construction of a major new facility. Resumption of PUREX/UO_3 opertions is the environmentally preferred choice among those alternatives which will provide the needed special nuclear material. Adoption of this alternative avoids the impacts associated with a major new construction project. The calculated radiation exposure to the general public from operation of the PUREX/UO_3 facilities is less than the calculated exposure for the alternative of offsite fuel processing.

Considerations in implementation of the decision. All releases to the air and groundwater and all population and occupational exposures from operation of the PUREX/UO_3 facilities will be below levels established under DOE standards and guidelines. All practicable means to further mitigate environmental impact and safety concerns have been adopted. In this regard, modifications that have been or are being made to the facilities include:

- Gaseous effluent control improvements
- Liquid effluent control improvements
- Upgraded PUREX ventilation system
- Additional security and safeguards procedures and systems for protection of special nuclear materials
- A new criticality alarm system to improve nuclear criticality accident detection and permit more effective mitigative steps

• Upgraded ventilation systems at the UO_3 Plant product load-out station

• Upgraded fire protection systems at both PUREX and UO_3 Plants

• New waste transfer lines to underground storage tanks

• Seismic protection upgrades

• Plutonium oxide production system within the PUREX building.

DOE will continue to monitor the site with environmental measurement and surveillance programs. In some form, these programs have been in place at the Hanford Site since the project began in 1944 and they have been expanded and improved over the years). An expanded radiological survellance program initiated in 1979 will be continued after the resumption of PUREX/UO_3 operations. The increase in radiation exposure to the general public from resumption of PUREX/UO_3 operations will be a small fraction of natural background radiation exposure.

For the United States Department of Energy.

Dated: May 11, 1983.

Herman E. Roser,

Assistant Secretary for Defense Programs.

[FR Doc. 83-13087 Filed 5-13-83; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPRM-FRL 2362-5]

AGENCY:

Agency Forms Under OMB Review

Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) requires the Agency to publish in the **Federal Register** a notice of proposed information collection requests that have been forwarded to the Office of Management and Budget (OMB) for review. The information collection requests listed are available to the public for review and comment.

FOR FURTHER INFORMATION CONTACT: David Bowers; Office of Standards and Regulations; Information Management Section (PM-223); U.S. Environmental Protection Agency; 401 M Street, S.W.; Washington, D.C. 20460; telephone (202) 382-2742 or FTS 382-2742.

SUPPLEMENTARY INFORMATION:

Solid Waste Programs

• Title: Recordkeeping and Reporting Requirements for RCRA Permittees (EPA ID 0970).

Abstract: RCRA permit regulations require hazardous waste facilities to report to EPA or to keep records to (1) substantiate information submitted in permit applications, (2) ensure that facilities are operating in compliance with their permits, and (3) identify instances where permits need revision.

Respondents: Owners and operators of hazardous waste facilities.

Air Programs

• Title: Investigation into Possible Noncompliance of Motor Vehicles with Federal Air Standards (EPA ID 0222).

Abstract: To fulfill one of its responsibilities under the Clean Air Act, EPA is collecting information to verify motor vehicle compliance with Federal emission standards.

Respondents: Motor vehicle owners (both individuals and businesses) and motor vehicle dealers.

Water Programs

• Title: Steam Electric Utility Request for Chlorine Effluent Discharge Waiver (EPA ID 1029).

Abstract: A utility needing to discharge excessive chlorine may request a waiver from the permit authority (EPA or State agency) to exceed the 2-hour daily limit specified in the Effluent Limitation Guidelines (40 CFR 423).

Respondents: Steam electric power generating facilities.

* * * * * * *

Comments on all parts of this notice should be sent to:

David Bowers, U.S. Environmental Protection Agency, Office of Standards and Regulations (PM-223), 401 M Street, S.W., Washington, D.C. 20460, and

Anita Ducca, Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building (Room 3228), 726 Jackson Place, N.W., Washington, D.C. 20503.

Dated: May 9, 1983.

N. Phillip Ross,

Chief, Statistical Policy Staff.

[FR Doc. 83-12904 Filed 5-13-83; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59122A; TSH-FRL 2362-8]

Certain Chemicals; Approval of Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of TM-83-40 and TM-83-41, two applications for test marketing exemptions (TME) under section 5(h)(6) of the Toxic Substances Control Act (TSCA). The test marketing conditions are described below.

EFFECTIVE DATE: May 4, 1983.

FOR FURTHER INFORMATION CONTACT: Theodore C. Jones, Acting Chief, Notice Review Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-204, 401 M St. SW., Washington, DC 20460 (202-382-3725).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and to permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities.

EPA has determined that test marketing of the new chemical substances described below, TM-83-40 and TM-83-41, under the conditions set out in the applications, and for the time periods specified below, will not present any unreasonable risk of injury to health or the environment. Production volume, number of workers exposed to the new chemical, and the levels and duration of exposure must not exceed that specified in the applications. All other conditions described in the applications must be met. The following additonal restrictions apply:

1. The applicant must maintain records of the date(s) of shipment(s) to each customer and the quantities supplied in each shipment, and must make these records available to EPA upon request.

2. A bill of lading accompanying each shipment must state that use of the substance is restricted to that approved in the TMA.

TMA 83-40

Date of Receipt: March 28, 1983.

Notice of Receipt: April 8, 1983 (48 FR 15323).

Applicant: Minnesota Mining and Manufacturing Company (3M).

Chemical: Perfluoroaliphatic isocyanate adduct (Generic).

Use: Site-limited isolated imtermediate.

Production Volume: Confidential.

Worker Exposure: Manufacture and processing: dermal, 3 workers, 8 hours/day, 19 days/years.

Test Marketing Period: 6 months.

Commencing on: May 4, 1983.

Risk Assessment: The Agency did not identify any significant health or environmental effects based on the information received from the submitter and other information presently available to the Agency. In addition, potential for exposure and release are very low. The overall concerns, therefore, for health and ecotoxicity are low.

Public Comments: None.

TME 83-41

Date of Receipt: March 28, 1983.

Notice of Receipt: April 8, 1983 (48 FR 15323).

Applicant: Minnesota Mining and Manufacturing Company (3M).

Chemical: Modified fluoroaliphatic adduct (Generic).

Use: Carpet fiber coating.

Production Volume: 1000 pounds.

Number of Customers: 1.

Worker Exposure: Manufacture: dermal, 3 workers, 8 hours/day, 19 days/year. Processing: dermal, 20 workers, 8 hours/day.

Test Marking Period: 6 months.

Commencing on: May 4, 1983.

Risk Assessment: No significant health effects or significant environmental effects were identified for the TME substance. Furthermore, any concerns would be mitigated because of low worker exposure during manufacture and processing of the chemical and because of low releases to the environment. Therefore, the Agency finds that the test marketing activity will not result in an unreasonable risk.

Public Comments: None.

The Agency reserves the right to rescind approval of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present an unreasonable risk to health or the environment.

Dated: May 4, 1983.

Marcia E. Williams,

Acting Director, Office of Toxic Substances.

[FR Doc. 83-13063 Filed 5-13-83; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

[Independent Ocean Freight Forwarder License No. 1924]

Geza Steiner; Order of Revocation

On May 9, 1983, Geza Steiner, 19 Winchester Street, #711, Brookline, MA 02126 surrendered his Independent Ocean Freight Forwarder License No. 1924 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. 1924 issued to Geza Steiner be revoked effective May 9, 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 Geza Steiner.

Albert J. Klingel, Jr.,

Director, Bureau of Certification and Licensing.

[FR Doc. 83-13084 Filed 5-13-83; 8:45 am]

BILLING CODE 6730-01-M

[Independent Ocean Freight Forwarder License No. 1540]

Porcella International, Guy R. Porcella d.b.a.; Order of Revocation

On April 29, 1983, Ms. Jean Porcella, the spouse of Guy R. Porcella advised us of the death of Guy R. Porcella, sole proprietor of Porcella International and submitted his license for voluntary 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), § 10.01(e) dated November 12, 1981;

It is ordered, that Independent Ocean Freight Forwarder License No. 1540 issued to Porcella International (Guy R. Porcella d.b.a.) be revoked effective April 29, 1983.

It is further ordered, that a copy of this Order be published in the **Federal Register** and served upon Mr. Porcella's estate.

Albert J. Klingel, Jr.,

Director, Bureau of Certification and Licensing.

[FR Doc. 83-13082 Filed 5-13-83; 8:45 am]

BILLING CODE 6730-01-M

[Independent Ocean Freight Fowarder License No. 1444]

Starck Van Lines, Inc.; Order of Revocation

On April 22, 1983, Starck Van Lines, Inc., R.D. No. 1, Burgettstown, PA 15021 requested the Commission to revoke its Independent Ocean Freight Forwarder Licence No. 1444.

Therefore, by virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 1 (Revised), § 10.01(e) dated November 12, 1981;

IT IS ORDERED, that Independent Ocean Freight Forwarder License No. 1444 issued to Starck Van Lines, Inc., be revoked effective April 22, 1983, without prejudice to reapplication for a license in the future.

It is further ordered, that Independent Ocean Freight Forwarder License No. 1444 issued to Starck Van Lines, Inc. be returned to the Commission for cancellation.

It is further ordered, that a copy of this Order be published in the **Federal Register** and served upon Starck Van Lines, Inc.

Albert J. Klingel, Jr.,

Director, Bureau of Certification and Licensing.

[FR Doc. 83-13083 Filed 5-13-83; 8:45 am]

BILLING CODE 6730-01-M

[Independent Ocean Freight Forwarder License No. 2337]

West Texas Forwarding Co., Inc.; Order of Revocation

On April 19, 1983, West Texas Forwarding Co., Inc., P.O. Box 81 Lubbock, Texas 79408 surrendered its Independent Ocean Freight Forwarder License No. 2337 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), § 10.01(e) dated November 12, 1981;

It is ordered, that Independent Ocean Freight Forwarder License No. 2337 issued to West Texas Forwarding Co., Inc. be revoked effective April 19, 1983, without prejudice to reapplication for a license in future.

It is further ordered, that a copy of this Order be published in the **Federal**

Register and served upon West Texas Forwarding Co., Inc.

Albert J. Klingel, Jr.,

Director, Bureau of Certification and licensing.

[FR Doc. 83-13085 Filed 5-13-83; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Acquistion of Bank Shares by Bank Holding Companies; Northeastern Bancorp.; Inc.; 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 application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Northeastern Bancorp, Inc.*, Scranton, Pennsylvania; to acquire 100 percent of the voting shares or assets of The Cement National Bank, Northampton, Pennsylvania. Comments on this application must be received not later than June 10, 1983.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Peoples National Corporation, Inc.*, Columbus Junction, Iowa; to acquire 92 percent of the voting shares or assets of Community National Bank of Muscatine, Muscatine, Iowa. Comments on this application must be received not later than June 8, 1983.

C. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *First Farmers Investment Corporation, Inc.*, Greenfield, Illinois; to acquire 75.6 percent of the voting shares or assets of Bank of Pawnee, Pawnee, Illinois. Comments on this application must be received not later than June 10, 1983.

Board of Governors of the Federal Reserve System, May 10, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-13018 Filed 5-13-83; 8:45 am]

BILLING CODE 6210-01-M

Bank Holding Companies; Proposed De Novo Nonbank Activities; Old Stone Corp., et al.

The organizations identified in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to these applications, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any comment that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

The applications may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated. Comments and requests for hearing should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than the date indicated.

A. **Federal Reserve Bank of Boston** (Richard E. Randall, Vice President), 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Old Stone Corporation*, Providence, Rhode Island (insurance underwriting; Arizona): To engage, through its indirect subsidiary, The Motor Life Insurance Company (Motor Life), in the underwriting, through reinsurance, of credit life and credit accident and health insurance directly related to extensions of credit. This activity would be conducted from Motor Life's existing office in Jacksonville, Florida and the service area for this activity would be the State of Arizona. Comments on this application must be received not later than June 7, 1983.

2. *Old Stone Corporation*, Providence, Rhode, Island (mortgage banking and insurance activities; California): To engage through two new offices of its subsidiary, UniMortgage Corporation of CA, in the origination, sale and servicing of first and second mortgage loans; and to engage through its subsidiary, American Standard Insurance Agency, in the sale of credit life and credit accident and health insurance, which insurance would be reinsured by an affiliate, The Motor Life Insurance Agency, Jacksonville, Florida, and in the sale of casualty insurance on property mortgaged in connection with extensions of credit by UniMortgage Corporation of CA through American Standard Insurance Agency. The sale of casualty insurance in connection with the extensions of credit by UniMortgage Corporation of CA is grandfathered under section 601(D) of the Garn-St Germain Depository Institutions Act and was approved on July 6, 1981. These activities would be conducted in the greater metropolitan areas of the cities of Riverside and Tarzana, California. Comments on this application must be received not later than June 6, 1983.

3. *Old Stone Corporation*, Providence, Rhode Island (mortgage banking and insurance activities; Arizona): To engage through an office of its new subsidiary, UniMortgage Corporation of Arizona, in the origination, sale and servicing of first and second mortgage loans; and to engage through its subsidiary, American Standard Insurance Agency, in the sale of credit life and credit accident and health insurance, which insurance would be reinsured by an affiliate, The Motor Life Insurance Agency, Jacksonville, Florida. These activities would be conducted in the State of Arizona. Comments on this application must be received not later than June 7, 1983.

4. *RIHT Financial Corporation*, Providence, Rhode Island (mortgage banking activities; Florida, Virginia): To engage through its subsidiary, RIHT Mortgage Corporation, in the origination and sale of residential and commercial mortgages and in the servicing of residential and commercial mortgage loans. The mortgage banking activities would be conducted from offices in Tampa, Florida, servicing Florida, and Virginia Beach, Virginia, servicing Virginia. The mortgage servicing activity

would be offered on a nationwide basis. Comments on this application must be received not later than June 8, 1983.

Board of Governors of the Federal Reserve System, May 10, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-13030 Filed 5-13-83; 8:45 am]

BILLING CODE 6210-01-M

Formation of Bank Holding Companies; Southern National Banks, 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. *Southern National Banks, Inc.*, Fort Walton Beach, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Okaloosa County, Fort Walton Beach, Florida. Comments on this application must be received not later than June 8, 1983.

2. **V.B.T. Holding Corporation,** Valparaiso, Florida: to become a bank holding company by acquiring 80 percent or more of the voting shares of The Valparaiso Bank and Trust Company, Valparaiso, Florida and Bank of Mary Esther, Mary Esther, Florida. Comments on this application must be received not later than June 10, 1983.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand avenue, Kansas City, Missouri 64198:

1. *Plymouth Investment Company,* Plymouth, Nebraska; to become a bank holding company by acquiring 100 percent of the voting shares of Farmers State Bank, Plymouth, Nebraska. Comments on this application must be received not later than June 6, 1983.

C. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard street, Dallas, Texas 75222:

1. *Metropolitan Bancshares, Inc.* Farmers Branch, Texas; to become a holding company by acquiring 100 percent of the voting shares of Metropolitan National Bank, Farmers Branch, Texas and Metropolitan National Bank—Richardson, Richardson, Texas. Comments on ths application must be received not later than June 8, 1983.

Board of Governors of the Federal Reserve System, May 10, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-13019 Filed 5-13-83; 8:45 am]

BILLING CODE 6210-01-M

Mercantile Texas Corp.; Proposed Extension of Activities of Financial Protection Insurance Company of Texas

Mercantile Texas Corporation, Dallas, Texas, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to engage through its wholly owned subsidiary, Financial Protection Insurance Company of Texas, Dallas, Texas in underwriting credit life and accident and health insurance related to outstanding balances on credit secured by liens on real estate.

These activities would be performed from offices of Applicant's subsidiary in Dallas, Texas, and the geographic area to be served is the State of Texas.

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produe benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C., not later than June 8, 1983.

Board of Governors of the Federal Reserve System, May 9, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-130178 Filed 5-13-83; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

June 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 bodies scheduled to assemble during the month of June 1983.

Basic Behavioral Processes Research Review Committee

June 2–3; 9:00 a.m.

The Capitol Hill Hotel, 200 C Street, S.E., Washington, D.C. 20003.

Open—June 2; 9:00–10:00 a.m.

Closed—Otherwise.

Contact: Ms. Doris East, Room 9C–26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–3936.

Purpose: The 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 experimental and physiological psychology and comparative behavior, with recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00–10:00 a.m., June 2, 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).

Neuropsychology Research Review Subcommittee of the Basic Psychopharmacology Research Review Committee

June 2–4; 9:00 a.m.

The Capitol Hill Hotel, 200 C Street, S.E., Washington, D.C. 20003.

Open—June 2; 9:00–10:00 a.m.

Closed—Otherwise.

Contact: Ms. Fay Polcak, Room 9C-26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-3936.

Purpose: The Subcommittee 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., June 2, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Subcommittee 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).

Psychopharmacological, Biological, and Physical Treatments Subcommittee of the Treatment Development and Assessment Research Review Committee

June 3-4; 9:00 a.m.

Sonesta Beach Hotel, 350 Ocean Drive, Key Biscayne, Florda 33149.

Open—June 3; 9:00-10:00 a.m.

Closed—Otherwise.

Contact: Ms. Pamela J. Mitchell, Room 9C-18, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-1367.

Purpose: The Subcommittee 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 in the fields of treatment development and assessment with recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00-10:00 a.m., June 3, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Subcommittee 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).

Epidemiologic and Services Research Review Committee

June 6-8; 9:00 a.m.

Key Bridge Marriott Hotel, 1401 Lee Highway, Arlington, Virginia 22209.

Open—June 6; 9:00-10:00 a.m.

Closed—Otherwise.

Contact: Ms. Gloria Yockelson, Room 9C-18, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-1367.

Purpose: The 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 as they relate to mental health epidemiology, mental health service systems research, and evaluation of clinical mental health services, with recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00-10:00 a.m., June 6, 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).

Psychopathology and Clinical Biology Research Review Committee

June 6-8; 9:00 a.m.

The Shoreham Hotel, Calvert Street and Connecticut Avenue, NW., Washington, D.C. 20008.

Open—June 6; 9:00-10:00 a.m.

Closed—Otherwise.

Contact: Ms. Irma Fisher, Room 9C-24, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-1340.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of activities in the fields of research and research training activities in the areas of clinical psychopathology and clinical biology as they relate to mental health, with recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00-10:00 a.m., June 6, 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).

Alcohol Psychosocial Research Review Committee

June 6-8; 9:00 a.m.

Embassy Square Hotel, 2000 N Street, NW., Washington, D.C. 20036.

Open—June 8; 9:00-11:00 a.m.

Closed—Otherwise.

Contact: Laura Weinstein, Ph. D., Executive Secretary.

Alcohol Psychosocial Research Review Committee, Room 16C-26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-6106.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Alcohol Abuse and Alcoholism for support of research and training activities and makes recommendations to the National Advisory Council on Alcohol Abuse and Alcoholism for final review.

Agenda: From 9:00-11:00 a.m., June 8, 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).

Mental Health Research Education Review Committee

June 8-10; 9:00 a.m.

Gramercy Inn, 1616 Rhode Island Avenue, NW., Washington, D.C. 20036.

Open—June 9; 1:30-3:00 p.m.

Closed—Otherwise.

Contact: Ms. Emilie Embrey, Room 9-101, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-3857.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research training activities in the areas of biological sciences, psychological sciences, and the applied behavioral sciences related to mental health, with recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 1:30-3:00 p.m., June 9, 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).

Alcohol Biomedical Research Review Committee

June 8-11; 9:00 a.m.

Embassy Square Hotel, 2000 N Street, NW., Washington, D.C. 20036.

Open—June 8; 9:00-11:00 a.m.

Closed—Otherwise.

Contact: Harvey P. Stein, Ph. D., Executive Secretary, Alcohol Biomedical Research Review Committee, Room 16C-26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-6106.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Alcohol Abuse and Alcoholism for support of research and training activities and makes recommendations to the National Advisory Council on Alcohol Abuse and Alcoholism for final review.

Agenda: From 9:00-11:00 a.m., June 8, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing intial 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 Metal 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).

Mental Health Small Grant Review Committee

June 9-11; 1:30 p.m.

The Canterbury Hotel, Room 208, 209, and 210, 1722 N Street, NW., Washington, D.C. 20036.

Open—June 9; 1:30–2:30 p.m.

Closed—Otherwise.

Contact: Ms. Virginia Harter, Room 9–95, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4843.

Purpose: The Committee is charged with the initial review of applications for research in all disciplines pertaining to alcohol, drug abuse, and mental health for support of research in the areas of psychology, psychiatry, and the behavioral and biological sciences, with recommendations to the National Advisory Council on Alcohol Abuse and Alcoholism, the National Advisory Council on Drug Abuse, and the National Advisory Mental Health Council.

Agenda: From 1:30–2:30 p.m., June 9, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of applications for 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).

Child and Family and Prevention Subcommittee of the Life Course and Prevention Research Review Committee

June 9–11; 9:00 a.m.

Holiday Inn, Adams Room, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.

Open—June 9: 9:00–10:00 a.m.

Closed—Otherwise.

Contact: Mrs. Christine Peers, Room 9C–08, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–1177.

Purpose: The 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 as they relate to the mental health of the child and family and the aging, with recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00–10:00 a.m., June 9, 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).

Criminal and Violent Behavior Research Review Committee

June 13–15; 9:00 a.m.

Gramercy Inn, 1616 Rhode Island Avenue, NW., Washington, D.C. 20036.

Open: June 13; 9:00–10:30 a.m.

Closed—Otherwise

Contact: Ms. Jean Byrne, Room 9C–14, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4868.

Purpose: The 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 as they relate to the mental health aspects of criminal and antisocial behavior, individual violent behavior, sexual assault, and law and mental health interactions, with recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00–10:30 a.m., June 13, 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).

Clinical Program Projects/Clinical Research Centers Subcommittee of the Treatment Development and Assessment Research Review Committee

June 16–17; 9:00 a.m.

Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

Open—June 16: 9:00–10 a.m.

Closed—Otherwise

Contact: Ms. Pamela J. Mitchell, Room 9C–18, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–1367.

Purpose: The Subcommittee is charged with the initial reivew of applications for assistance from the National Institute of Mental Health for support of research and research training activities in the fields of treatment devleopment and assessment with recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00–9:30 a.m., June 16, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Subcommittee 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).

Psychosocial and Biobehavioral Treatments Subcommittee of the Treatment Development and Assessment Research Review Committee

June 16–17; 9:00 a.m.

Shoreham Hotel, 2500 Calvert Street, NW., Washington, D.C. 20008.

Open—June 16; 9:00–9:30 a.m.

Closed—Otherwise

Contact: Ms. Maureen Eister, Room 9C–14, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4868.

Purpose: The Subcommittee 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 in the fields of treatment development and assessment with recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00–9:30 a.m., June 16, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for 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).

Aging Subcommittee of the Life Course and Prevention Research Review Committee

June 16–18; 9:00 a.m.

Shoreham Hotel, Connecticut Avenue and Calvert Road, NW., Washington, D.C. 20008.

Open—June 16; 9:00–10:00 a.m.

Closed—Otherwise.

Contact: Ms. Dee Herman, Room 9C–02, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–1220.

Purpose: The Subcommittee 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 as they relate to the mental health of the child and family and the aging, with recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00–10:00 a.m., June 16, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Subcommittee 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).

Mental Health Behavioral Sciences Research Review Committee

June 16–18; 9:00 a.m.

The Capitol Hill Hotel, 200 C Street, SE., Washington, D.C. 20003.

Open—June 16; 9:00–10:00 a.m.

Closed—Otherwise.

Contact: Ms. Naomi Rothbaum, Room 9C–26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–3936.

Purpose: The 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 behavioral science areas relevant to mental health and makes recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00–10:00 a.m., June 16, 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).

Cognition, Emotion, and Personality Research Review Committee

June 17; 9:00 a.m.

Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

Open—June 17; 9:00–10:00 a.m.

Closed—Otherwise.

Contact: Ms. Shirley Maltz, Room 9C–26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–3944.

Purpose: The 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 personality, emotion, cognition, and related higher mental processes, with recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00–10:00 a.m., June 16, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of appliations 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).

Research Scientist Development Review Committee

June 20–22; 9:00 a.m.

Coolfont Conference Center, Berkeley Springs, West Virginia 25411.

Open—June 20; 9:00–9:30 a.m.

Closed—Otherwise.

Contact: Ms. Diana Souder, Room 9C–05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–6470.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of activities to develop and execute a program of Research Scientist and Research Scientist Development Awards to appropriate institutions for support of individuals who are engaged full time in research and related activities relevant to mental health, with recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00–9:30 a.m., June 20, 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).

Substantive information may be obtained from the contact persons listed above. Summaries of the meetings and rosters of Committee members may be obtained as follows: NIAAA: Mrs. Diana Widner, Committee Management Officer, Room 16C–18, 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: May 10, 1983.

Sue Simons,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 83–12999 Filed 5–13–83; 8:45 am]

BILLING CODE 4160–20–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Chippewa Cree Tribe Rocky Boy's Reservation; Plan for the Use and Distribution of Chippewa Cree Tribe Judgment Funds in Docket 221–C Before the United States Court of Claims

April 20, 1983.

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary for Indian Affairs by 209 DM 8.

The Act of October 19, 1973 (Pub. L. 93–134, 87 Stat. 466) as amended, requires that a plan be prepared and submitted to Congress for the use or distribution of funds appropriated to pay a judgment of the Indian Claims Commission or Court of Claims to any Indian tribe. Funds were appropriated on April 30, 1982, in satisfaction of the award granted to the Chippewa Cree Tribe of Rocky Boy's Reservation in the United States Court of Claims Docket 221–C. The plan for the use and distribution of the funds was submitted to the Congress with a letter dated September 23, 1982, and was received (as recorded in the Congressional Record) by the House of Representatives and by the Senate on September 29, 1982. The plan became effective on March 10, 1983, as provided by Section 5 of the 1973 Act since Congress did not adopt a resolution disapproving it.

The plan reads as follows:

"The funds appropriated on April 30, 1982, in satisfaction of the award granted to the Chippewa Cree Tribe of Rocky Boy's Reservation in Docket 221–C before the U.S. Court of Claims, less attorney fees and litigation expenses, and including all interest and investment income accrued, shall be invested by the Secretary of the Interior. The principal, and all interest and investment income accrued, shall be utilized by the tribal governing body, subject to the approval of the Secretary, in the tribal office building fund."

Kenneth Smith,

Assistant Secretary, Indian Affairs.

[FR Doc. 83–13033 Filed 5–13–83; 8:45 am]

BILLING CODE 4310–02–M

Maricopa Ak-Chin Indian Community; Plan for the Use and Distribution of Maricopa Ak-Chin Indian Community Judgment Funds in Docket 235 Before the United States Court of Claims

April 20, 1983.

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary for Indian Affairs by 209 DM 8.

The Act of October 19, 1973 (Pub. L. 93–134, 87 Stat. 466) as amended, requires that a plan be prepared and submitted to Congress for the use or distribution of funds appropriated to pay a judgment of the Indian Claims Commission or Court of Claims to any Indian tribe. Funds were appropriated on February 3, 1982, in satisfaction of the award granted to the Maricopa Ak-Chin Indian Community in United States Court of Claims Docket 235. The plan for the use and distribution of the funds was submitted to the Congress with a letter dated October 25, 1982, and was received (as recorded in the Congressional Record) by the House of Representatives on November 29, 1982, and by the Senate on November 30, 1982. The plan became effective on March 14, 1983, as provided by Section 5 of the 1973 Act since Congress did not adopt a resolution disapproving it.

The plan reads as follows:

"The funds appropriated on February 3, 1982, in satisfaction of an award granted to the Maricopa Ak-Chin Indian Community in Docket 235, and any other funds appropriated in satisfaction of awards in the same docket, before the United States Court of Claims, less attorney fees and litigation expenses, and including all interest and investment income accrued, shall be used and distributed as provided herein.

Per Capita Aspect

The Secretary of the Interior (hereinafter 'Secretary') shall make a per capita distribution of eighty (80) percent of such funds, in a sum as equal as possible, to each enrollee of the Maricopa Ak-Chin Indian Community born on or prior to and living on the effective date of this plan. The membership roll of the tribe shall be brought current under existing tribal

procedures. Any amount remaining after the per capita payment to the enrollees shall revert to the tribe for use in the programming aspect of this plan.

Programming Aspect

Twenty (20) percent of the funds shall be utilized on an annual budgetary basis in tribal programs such as tribal administration expenses, Law and Order and Early Childhood, subject to the approval of the Secretary.

General Provisions

The per capita shares of living competent adults shall be paid directly to them. The per capita shares of legal incompetents shall be handled pursuant to 25 CFR 115.5. The per capita shares of minors shall be handled pursuant to 25 CFR 87.10 (a) and (b)(1) and 115.4. The per capita shares of deceased individual beneficiaries shall be determined and distributed in accordance with 43 CFR Part 4, Subpart D.

None of the funds distributed per capita or held in trust under the provisions of this plan shall be subject to Federal or State income taxes, and the per capita payments shall not be considered as income or resources when determining the extent of eligibility for assistance under the Social Security Act."

Kenneth Smith,

Assistant Secretary, Indian Affairs.

[FR Doc. 83-13034 Filed 5-13-83; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

Arizona Strip District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The Arizona Strip District Grazing Advisory Board will meet on Friday, June 10, 1983 at 9:00 A.M. to discuss funding for project developments.

DATE: June 10, 1983.

ADDRESS: Atkin's Sugar Loaf Cafe, 290 East St. George Blvd., St. George, Utah 84770.

FOR FURTHER INFORMATION CONTACT: G. William Lamb, District Manager, 196 East Tabernacle, St. George, Utah 84770 (801/673-3545).

SUPPLEMENTARY INFORMATION: The meeting will be open to the public throughout the day and comments can be received at any time.

G. William Lamb,

Arizona Strip District Manager.

[FR Doc. 83-13077 Filed 5-13-83; 8:45 am]

BILLING CODE 4310-84-M

Trans-Alaska Pipeline System Right-of-Way

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This Notice sets forth limitations and procedures for public access across and along the Trans-Alaska Pipeline System Right-of-Way across public lands. This is necessary for administration of the terms and conditions of the Agreement and Grant of Right-of-Way for the Trans-Alaska Pipeline between the Pipeline Owner Companies and the Department of the Interior. The access limitations and procedures are to protect the environment and the integrity of the Pipeline.

DATE: Effective upon publication.

FOR FURTHER INFORMATION CONTACT: James H. Richardson (914), Bureau of Land Management, 701 C Street, Box 30, Anchorage, Alaska 99513, (907) 271-3750.

The Agreement and Grant of Right-of-Way for the Trans-Alaska Pipeline closes the Right-of-Way to free and unrestricted public access unless the right of access is based on a pre-existing right or is specifically granted by permit as hereinafter mentioned. After consultation with Alyeska Pipeline Service Company (Alyeska), the Bureau of Land Management (BLM) has determined that for Pipeline integrity, environmental protection and security reasons the Right-of-Way on public lands will remain closed to motorized vehicle use, except that vehicles under 1,500 pounds G.V.W. and non-motorized traffic may cross the Right-of-Way at any point where safety, terrain, and Pipeline configuration permit, and other equipment and vehicles may cross it at public access crossings that have been identified by the Bureau of Land Management. These crossing points of the Pipeline Right-of-Way include all known pre-existing roads and trails and will be identified on the ground.

Any other access across the Right-of-Way on public lands or use of it will require a permit from the Bureau of Land Management which will be issued after its consultation with Alyeska, and only for purposes the Bureau finds compatible with Alyeska's Pipeline operation. Permit applicants must demonstrate the capability to restore any lands or repair facilities contained within the Right-of-Way damaged through applicant's activities. An appropriate bond or maintenance fee may be required from any holder of a permit. Longitudinal travel along the Pipeline by any means is not authorized without a permit.

This notice serves as authorization for the public in general to cross the Right-of-Way at undesignated points by vehicles under 1,500 pounds G.V.W. and by non-motorized traffic.

The general public does not need a permit to cross the Right-of-Way on roads or trails that predate the Pipeline, or if an individual can establish a private right of access across the Pipeline.

For additional information, including designated crossing locations, and permit application procedures, contact: Anchorage District Office, 4700 East 72nd Avenue, Anchorage, Alaska 99507, Telephone (907) 267-1200; Glennallen Resource Area Hdqs., P.O. Box 42, Glennallen, Alaska 99588, Telephone (907) 822-3218; Fairbanks District Office, North Post of Fort Wainwright, P.O. Box 1150, Fairbanks, Alaska 99707, Telephone (907) 356-2025; and Fortymile Resource Area Hdqs., P.O. Box 307, Tok, Alaska 99780, Telephone (907) 883-5121.

James H. Richardson,

Manager, Office of Special Projects.

[FR Doc. 83-13071 Filed 5-13-83; 8:45 am]

BILLING CODE 4310-84-M

INTERSTATE COMMERCE COMMISSION

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 June 15, 1983. Petitions for reconsideration must be filed by June 6, 1983. Petitions for stay must be filed by May 26, 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, DC 20423; or call (202) 289–4357 in the DC metropolitan area; or (800) 424–5403 Toll-free outside the DC area.

Decided: May 9, 1983.

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 particpate.

Agatha L. Mergenovich,

Secretary.

[No. MC–F–15056]

V & W, Inc.—Common Control Exemption—Vant Transfer, Inc.

Addresses: Send pleadings to: (1) Motor Section, Room 2139, Interstate Commerce Commission, Washington, DC 20423, and (2) Petitioners' representative: John B. Van de North, Jr., Briggs and Morgan, 2200 First National Bank Bldg., St. Paul, MN 55101. Pleadings should refer to No. MC–F–15056. 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)(5) the common ownership and control between V &W, Inc. and Vant Transfer, Inc. (No. MC–133189), resulting from the purchase by V & W of the common carrier authority of Vant (which will retain contract carrier authority) and the controlling interest of Leonard Vant and James Vant in both entities.

[No. MC–F–15162]

Clayton's Inc.—Purchase Exemption—Shoemaker Trucking Company (Loren Wetzel, Trustee-in-Bankruptcy)

Addresses: Send pleadings to: (1) Motor Section, Room 2139, Interstate Commerce Commission, Washington, DC 20423 (2) Petitioners' representative: David E. Wishney, P.O. Box 837, Boise, ID 83701. Pleadings should refer to No. MC–F–15162. 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)(2), the purchase by Clayton's Inc. of that portion of the operating rights of Shoemaker Trucking Company set forth in Certificate No. MC–138875 (Sub-No. 311), authorizing the irregular-route transportation of general commodities (except classes A and B explosives), metal products and prefabricated metal buildings, between points in Colorado, on the one hand, and, on the other, points in Idaho and Orgeon.

[FR Doc. 83–13046 Filed 5–13–83; 8:45 am]

BILLING CODE 7035–01

[No. 39177 et al.[1]]

Motor Carriers; Floyd & Beasley Transfer Co., Inc.—Petition for Exemption From Tariff Filing Requirements

AGENCY: Interstate Commerce Commission.

ACTION: Notice of provisional exemption.

SUMMARY: Nine motor contract carriers have each requested exemption from the tariff filing requirements of 49 U.S.C. 10702, 10761, and 10762. The sought relief is provisionally granted for future as well existing contracts.

DATES: Comments are due on May 31, 1983. The sought relief will become final on June 15, 1983, unless, in response to timely filed adverse comments, the Commission issues a further decision withdrawing this relief.

ADDRESSES: Send an orignial and 15 copies of comments to: Room 2139, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT:

Barbara Gardner, (202) 275–0961

or

Howell I. Sporn, (202) 275–7691.

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T. S. Infosystems, Inc., Room 2227, Washington, D.C. 20423, or call 289–4357 in the D.C. metropolitan area or toll free (800) 424–5403.

Decided: May 9, 1983.

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.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83–13047 Filed 5–13–83; 8:45 am]

BILLING CODE 7035–01–M

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[1] This proceeding embraces Nos. 39178 NTL, Inc., 39179 Youngblood Truck Lines, 39180 Caudell Transport, Inc., 39181 Circle W Transportation, Inc., 39183 Distribution Service Systems, Inc., 39184 Coastal Tank Lines, Inc., 39185 Jones Trucking Co., Inc., and 39186 Clark Transfer, Inc.

Motor Carriers; Permanent Authority Decisions; Restriction Removals; Decision-Notice

The following restriction removal applications, are governed by 49 CFR Part 1165. Part 1165 was published in the Federal Register of December 31, 1980, at 45 FR 86747 and redesignated at 47 FR 49590, November 1, 1982.

Persons wishing to file a comment to an application must follow the rules under 49 CFR 1165.12. A copy of any application can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the restriction removal applications are not allowed.

Some of the applications may have been modified prior to publication to conform to the special provisions applicable to restriction removal.

Findings

We find, preliminarily, that each applicant has demonstrated that its requested removal of restrictions or broadening of unduly narrow authority is consistent with the criteria set forth in 49 U.S.C. 10922(h).

In the absence of comments filed within 25 days of publication of this decision-notice, appropriate reformed authority will be issued to each applicant. Prior to beginning operations under the newly issued authority, compliance must be made with the normal statutory and regulatory requirements for common and contract carriers.

Please direct status inquiries about the following to Team 3, at (202) 275–5223.

Volume No. OP 3–204

Decided: May 6, 1983.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 17465 (Sub-26)X, filed: April 11, 1983. Applicant: BEAVER EXPRESS SERVICE, INC., P.O. Box 1147, Woodward, OK 73801. Representative: William P. Parker, 4400 N. Lincoln, Suite 10, Oklahoma City, OK 73105, (405) 424–3301. Subs 9, 12, 14, 15, 17, 18, 21 and 22F: (1) Remove the restriction moving in express service and (2) remove exception of commodities requiring special equipment, in Sub 22F, and authorize transportation of "general commodities (except classes A and B explosives, household goods and commodities in bulk)".

Please direct status inquiries about the following to Team 5, at (202) 275–7289.

Volume No. OP 5–219

Decided: May 3, 1983.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 126739 (Sub-11)X, filed: April 20, 1983. Applicant: MAHNENSMITH TRUCKING SERVICE, INC., P.O. Box 395, Van Buren, IN 46991. Representative: Robert W. Loser II, 512 Chamber of Commerce Bldg., Indianapolis, IN 46204, (317) 635-2339. Lead permit: Broaden (1) liquid fertilizers, fresh fruit and vegetables, raw peanuts, petroleum products, feed, fertilizer, and tomato plants to "chemicals and related products, food and related products, and petroleum, natural gas and their products", and (2) broaden the territorial description to "between points in the U.S. (except AK and HI), under continuing contract(s) with unnamed shippers."

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-13045 Filed 5-13-83; 8:45 am]

BILLING CODE 7035-01-M

Motor Carrier, Temporary Authority Application

The following are notices of filing of applications for temporary authority under Section 10928 of the Interstate Commerce Act and in accordance with the provisions of 49 CFR 1131.3. These rules provide that an original and two (2) copies of protests to an application may be filed with the Regional Office named in the **Federal Register** publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the **Federal Register**. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifiying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the serivce contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the ICC Regional Office to which protest are to be transmitted.

Note.—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

Motor Carriers of Property

Notice No. F-261

The following applications were filed in Region I: Send protests to: Interstate Commerce Commission, Regional Authority Center, 150 Causeway Street, Room 501, Boston, MA 02114.

MC 167744 (Sub-1-1TA), filed May 2, 1983. Applicant: JOSEPH BESSEY d.b.a. COLA Transport, RFD No. 1, Pownal, ME 04069. Representative: Hughan R. H. Smith, 26 Kenwood Place, Lawrence, MA 01841. *Contract carrier:* irregular routes: *Soft drinks, syrups, bottles and bottle caps,* between points in MA, CT, RI, VT, NH, ME, NY and NJ, under continuing contract(s) with Coca-Cola Bottling Company, So. Portland, ME. Supporting shipper: Coca-Cola Bottling Company, Main Street, So. Portland, ME 04106.

MC 166203 (Sub-1-3TA), filed May 2, 1983. Applicant: CUSTOMIZED TRANSPORTATION, INC., 54 Sheridan Avenue, Elmira Heights, NY 14903. Representative: Dixie C. Newhouse, 1329 Pennsylvania Avenue, P.O. Box 1417, Hagerstown, MD 21740. *Contract carrier:* irregular routes: *(1) Paper and paper products, including materials, equipment and supplies used in the manufacture, sale and distribution thereof,* between points in the U.S. (except AK and HI), under continuing contract(s) with Moore Business Forms, Inc., Northbrook IL; *(2) Pet foods, including materials, equipment and supplies used in the manufacture, sale and distribution thereof,* between Chervurne, NY, including its commercial zone, on the one hand, and, on the other, points in ME, VT, NH, RI, MA, CT, FL, AL, TN, PA, NJ, DE, MD, DC, WV, VA and OH, under continuing contract(s) with Chenango Valley Pet Foods, Inc., Chervurne, NY; *(3) Industrial adhesives, animal gules and gelatin products, including materials, equipment and supplies used in the manufacture, sale and distribution thereof,* between points in the U.S. in and east of WI, IL, KY, TN and MS, under continuing contract(s) with Peter Cooper Corporations, Charlotte, NC; and *(4) Machinery and Tooling, including materials, equipment and supplies used in the manufacture, sale and distribution thereof,* between Elmira, NY, including its commercial zone, on the one hand, and, on the other, points in the U.S. (except AK and HI), under continuing contract(s) with Hardinge Brothers, Inc., Elmira, NY. SUPPORTING SHIPPER(S): Moore Business Forms, Inc., 2215 Sand Road, Suite 400, Northbrook, IL 60062; Chenango Valley Pet Foods, Inc., 10 W. State Street, Chervurne, NY 13460; Peter Cooper Corporations, 7401 Carmel Executive Park, Charlotte, NC 28211; Hardinge Brothers, Inc., 1420 College Ave., Elmira, NY 14901.

MC 167508 (Sub-1-1TA), filed: April 29, 1983. Applicant: D & G MELLO TRUCKING, INC., 927 Rocky Woods Street, Taunton, MA 02780. Representative: Jeremy Kahn, Suite 733, Investment Bldg., 1511 K Street NW., Washington, DC 20005. *Contract carrier:* irregular routes: *Liquid petroleum products, in tank vehicles not exceeding 5,000 gallon capacity,* between points in MA, RI and NY, under continuing contract(s) with Agway Petroleum Corp., Syracuse, NY. Supporting shipper: Agway Petroleum corp., Box 4933, Syracuse, NY 13221.

MC 167389 (Sub-1-1TA), filed April 28, 1983. Applicant: DARI-FARMS ICE CREAM CO., INC., 40 Tolland Stage Road, Tolland, CT 06084. Representative: David J. Silva (same as applicant). *Contract carrier:* irregular routes: *Ice cream, ice cream products and frozen foods,* from the County of Middlesex, NJ to points in AL, AZ, AR, CA, NM, CO, CT, FL, GA, ID, IL, IN, IA, KS, KY, LA, MA, MN, MO, MT, NE, NV, NY, NC, ND, OH, OK, OR, PA, SC, TN, TX, UT, WA, WV, and WI, under continuing contract(s) with Woodbridge Sweets Corp. of Woodbridge, NJ. Supporting shipper: Woodbridge Sweets Corp., 1 Amboy Avenue, Woodbridge, NJ 07095.

MC 167700 (Sub-1-2TA), filed April 28, 1983. Applicant: C.A. FARMER CARTAGE LIMITED, 374 Algonquin East, P.O. Box 1106, Timmins, Ontario, CD P4N 7H9.. Representative: Robert D. Gunderman, Esq., Can-Am Building, 101 Niagara Street, Buffalo, NY 14022. *Contract carrier:* irregular routes: *Dairy products, confectionery products, juices, and juice concentrates, except in bulk in tank vehicles,* between ports of entry on the International Boundary line between the U.S. and CD in NY and MI, on the one hand, and, on the other, Elizabeth, NJ, Minneapolis, MN, and points in FL, under continuing contract(s) with Epletts Dairy Company Limited, Brampton, Ontario, CD. Supporting shipper: Epletts Dairy Company Limited, 16 Shaftsbury Lane, Brampton, Ontario, CD L6T 4G7.

MC 167700 (Sub-1-1TA), filed April 28, 1983. Applicant: C. A. FARMER CARTAGE LIMITED, 374 Algonquin East, P.O. Box 1106, Timmins, Ontario, CD P4N 7H9. Representative: Robert D.

Gunderman, Esq., Can-Am Building, 101 Niagara Street, Buffalo, NY 14202. *Contract carrier:* irregular routes: *Minerals, and chemical compounds, except in bulk in tank vehicles,* between ports of entry on the International Boundary line between the U.S. and CD in NY and MI, on the one hand, and, on the other, points in Erie, Albany, Rensselear, Nassau and Suffolk Counties, NY; Cuyahoga and Wood Counties, OH; Wayne County, MI; Union County, NJ; Bethleham, PA; and points in Ma, under continuing contract(s) with Extender Minerals of Canada Limited, Mississauga, Ontario, CD. Supporting shipper: Extender Minerals of Canada Limited, 6365 Northwest Drive, Mississauga, Ontario, CD L4V 1J8.

MC 119103 (Sub-1–4TA), filed April 29, 1983. Applicant: J. E. FORTIN, INC., 116 Fortin Boulevard, St. Bernard De Lacolle, PQ, CD J0J 1V0. Representative: W. Norman Charles, P.O. Box 724, Glens Falls, NY 12801. *Newspapers, periodicals, and magazines,* from ports of entry on the U.S./CD Boundary Line in ME, MI, NH, NY, and VT., to points in AL, CT, DE, FL, GA, IL, IN, KY, LA, ME, MD, MA, MI, MS, NC, NH, NJ, NY, OH, PA, RI, SC, TN, VT, VA, WV, WI, and DC. Supporting shipper(s): Globe Communications, Inc., 1440 St. Catherine Street W., Montreal, Quebec, CD H3G 1S2; Globe International, Inc., 1440 St. Catherine Street, W., Montreal, Quebec, CD H3G 1S2; Tri-Stan Associates, Inc., 1218 Shore Crest Street, Chomeday, Quebec, CD.

MC 167517 (Sub-1–1TA), filed May 2, 1983. Applicant: JOACHIN GIRARD, d.b.a. J. GIRARD ENRG., 64 Rue Lajoie, Repentigny, Quebec, CD J6A 4K4. Representative: Jacques Bujold, 2680 Chambly #6, Montreal, Quebec, CD H1W 5J7. *Glass, lumber and wood products* between points on the International Boundary line between U.S. and CD, on the one hand, and, on the other, point in GA, FL, KY, MA, ME, MI, NE, NH, NY, NJ, OH, PA, SC, TN, VA, VT, and WV. Supporting shipper: Vitrerie Bouchard, Inc., 9300 Ray Lawson Blvd., Montreal, PQ, CD; LesBois Blanchet, Inc., Bernieres, Quebec, CD.

MC 167729 (Sub-1–1TA), filed May 2, 1983. Applicant: JUICE SERVICES, INC., Blackstone Valley Way, 146–295 Industrial Park, P.O. Box 304, Lincoln, RI 02865. Representative: Edward G. Bazelon, 135 South LaSalle Street, Chicago, IL 60603. *Contract carrier:* Irregular routes: *General commodities (except Classes A and B explosives, household goods, and commodities in bulk),* between points in AL, DC, FL, GA, MD, MA, NJ, NY, NC, PA, RI, SC and VA, under continuing contract(s) with DFC Transportation Company of Huntley, IL. Supporting shipper: DFC Transportation Company, 12007 Smith Drive, P.O. Box 929, Huntley, IL 60142.

MC 164713 (Sub-1–2TA), filed April 29, 1983. Applicant: LEASEWAY DELIVERIES, INC., 85 Stanton Street, Rochester, NY 14611. Representative: Carla T. Novak, 1101 31st Street, Downers Grove, IL 60515. *Contract carrier:* Irregular routes: *Such commodities as are dealt in or used by retail department stores,* from Portland, OR to points in WA, under continuing contract(s) with Meier & Frank of Portland, OR. Supporting shipper: Meier & Frank, 621 SW 5th Avenue, Portland, OR 97229.

MC 167273 (Sub-1–1TA), filed April 28, 1983. Applicant: N. J. S. TRANSPORT CO., INC., 9 Puritan Road, Sayville, NY 11782. Representative: William J. Augello, Esq., Augello, Pezold & Hirschmann, P.C. 120 Main Street, Huntington, NY 11743. *Used Automobiles, Trucks and Vans,* between Nassau and Suffolk Counties, NY, on the one hand, and, on the other, Manheim, PA, Bordentown, NJ and Fairfield, NJ. Supporting shipper(s): There are 13 statements of support with this application which may be examined at the Regional Office of the I.C.C. in Boston, MA.

MC 167478 (Sub-1–1TA), filed April 29, 1983. Applicant: PIRES TRUCKING, INC., 140 Edward Street, Raynham, MA 02767. Representative: Jeremy Kahn, Suite 733, Investment Bldg., 1511 K Street NW., Washington, DC 20005. *Contract carrier:* irregular routes: *Liquid petroleum products, in tank vehicles not exceeding 5,000 gallon capacity,* between points in MA and RI, under continuing contract(s) with Agway Petroleum Corp., Syracuse, NY. Supporting Shipper: Agway Petroleum Corp., Box 4933, Syracuse, NY 13221.

MC 167542 (Sub-1–1TA), filed April 29, 1983. Applicant: TRANSPORT BERNARD LAURENDEAU INC., 41 rue Pontmain (Laval-des-Rapides), Laval, PQ, CD H7N 4K3. Representative: J. P. Vermette, 250 Napoleon-Provost Street, Repentigny, PQ, CD J6A 1H5. *Lumber and forest products,* between the ports of entry on the International Boundary Line between the U.S. and CD and points in CT, DE, KY, ME, MD, MA, MI, NH, NJ, NY, NC, OH, PA, RI, SC, TN, VT, VA and WV. Supporting shipper(s): Forestbec Inc., 1750 Haggerty Street, Drummondville, PQ, CD J2C 5P8; Les Produits Forestiers Saucier Ltee, 3988 Dagenais Blvd. (Fabreville) Laval, PQ, CD H7R 1L2; Rossco Forest Products, Inc., 20 Kimball Avenue, P.O. Box 2068, South Burlington, VT 05401.

MC 167724 (Sub-1–1TA), filed April 29, 1983. Applicant: TRINITY TRUCKING, LTD., R.D. No. 1, Randolph Center, VT 05061. Representative: James M. Burns, 1365 Main Street, Suite 403, Springfield, MA 01103. *(1) Lumber,* between points in VT, on the one hand, and, on the other, points in CT, ME, MA, NH, NY, and RI; *(2) Confectionaries, Health and Beauty Aids, Machinery, and Stone and Related Products,* between points in VT on the one hand, and, on the other, points in the U.S. (except AK and HI). Supporting shipper(s): There are six statements of support attached to this application which may be examined at the Regional Office of the I.C.C. in Boston, MA.

MC 167742 (Sub-1–1TA), filed May 2 1983. Applicant: TURCO TRUCKING CO., INC., 223 MacArthur Avenue, Garfield, NJ 07026. Representative: Robert B. Pepper, 168 Woodbridge Avenue, Highland Park, NJ 08904. *General commodities (except Class A and B explosives, household goods and commodities in bulk)* between New York, NY commercial Zone, on the one hand, and, on the other, points in CT, DE, DC, ME, MD, MA, NH, NJ, NY, PA, RI, VT and VA. Supporting shipper(s): There are six statements of support with this application which may be examined at the Regional Office of the I.C.C. in Boston, MA.

The following applications were filed in Region 2. Send protests to: ICC, Fed. Res. Bank Bldg., 101 North 7th St. Rm. 620, Philadelphia, PA 19106.

MC 85886 (Sub-11–1TA), filed April 21, 1983. Applicant: ALLEGHENY-BEDFORD EXPRESS, INC., P.O. Box 257, New Stanton, PA 15672. Representative: William Scalzitti (same address as applicant). *General commodities (except Class A and B explosives and household goods,* between points in PA, for 270 days. Applicant intends to interline at Allegheny, Butler, Lycomming, Luzerne and Bucks Counties, PA. Supporting shipper(s): The OK Trucking Co., RD. 1, Box 348, Evans City, PA 16003; Lee Way Motor Freight, 3501 Grand Ave., Pittsburgh, PA 15225.

MC 167663 (Sub-2–1TA), filed April 27, 1983. Applicant: BACK RIVER TRANSPORT, INC., 1104 Metfield Rd., Baltimore, MD 21204. Representative: Charles E. Creager, 1329 Pennsylvania Ave., P.O. Box 1417, Hagerstown, MD 21740. *General commodities* (except Classes A & B explosives and commodities in bulk), between Baltimore, MD; Norfolk, VA; Philadelphia, PA and Harrisburg, PA.

including their respective commercial zones, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Farrell Lines, Inc., 1 Whitehall St., New York, NY 10004.

MC 14885 (Sub-II–4TA), filed April 28, 1983. Applicant: BEN CAPOBIANCO TRUCKING, INC., 9814–9818 Princeton-Glendale Rd., Cincinnati, OH 45246. Representative: Ben Capobianco (same address as applicant). *Sporting goods equipment and apparel,* between Cincinnati, OH on the one hand, and, on the other, all points in the U.S. (except AK and HI) for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): Mid-American Sporting Goods, Inc., 9804 Princeton-Glendale Rd., Cincinnati, OH 45246.

MC 167379 (Sub-II–1TA), filed April 25, 1983. Applicant: ROBERT W. DIEFENDERFER, R.D. 5, Coatesville, PA 19320. Representative: Steven T. Blomberg, Suite 200, 444 N. Frederick Ave., Gaithersburg, MD 20877. Contract, irregular: *Such commodities as are dealt in or used by refiners of precious metals and manufacturers of precious metal products,* between points in the U.S. (except AK & HI), under continuing contract(s) with Johnson Matthey, Inc. An underlying ETA seeks 120 days authority. Supporting shipper(s): Johnson Matthey, Inc., 4 Malin RD, Malvern, PA 19355.

MC 167699 (Sub-II–1TA), filed April 28, 1983. Applicant: H & L TRANSPORT, INC., 5050 County Rd. 18, Findlay, OH 45840. Representative: James Duvall, 220 W. Bridge St., P.O. Box 97, Dublin, OH 43017. *Petroleum and petroleum products,* in bulk, in tank vehicles, between points in Macomb, Monroe, Oakland, Washtenaw and Wayne Counties, MI, on the one hand, and, on the other, points in OH. An underlying ETA seeks 120 days authority. Supporting shipper: Landmark, Inc., 35 E. Chestnut St., Columbus, OH 43215.

MC 2202 (Sub-II–36TA), filed April 27, 1983. Applicant: ROADWAY EXPRESS, INC., 1077 Gorge Boulevard, Post Office Box 471, Akron, OH 44309. Representative: William O. Turney, 7101 Wisconsin Ave., Suite 1010, Washington, D.C. 20814. Contract irregular. *General commodities* (except household goods as defined by the Commission, classes A and B explosives, and commodities in bulk) between points in the U.S., except AK and HI, under continuing contract(s) with J.C. Penney Company, Inc., New York, NY 10019 for 270 days. Supporting shipper(s): J.C. Penney Company, Inc., 1301 Avenue of the Americas, New York, NY 10019.

MC 110683 (Sub-II–21TA), filed April 25, 1983. Applicant: SMITH'S TRANSFER CORPORATION, P.O. Box 1000, Staunton, VA 24401. Representative: Harry J. Jordan, Esq., 1090 Vermont Avenue, NW, Washington, DC 20005. Contract, irregular: *General commodities (except household goods as defined by the Commission, commodities in bulk and Classes A and B explosives);* between points in the U.S. (except AK and HI), under continuing contract(s) with Davidson Rubber Division. Supporting shipper(s): Davidson Rubber Division, Industrial Park, Dover, NH 03820.

MC 110683 (Sub-II–22TA), filed April 27, 1983. Applicant: SMITH'S TRANSFER CORPORATION, P.O. Box 1000, Staunton, VA 24401. Representative: Harry J. Jordan, 1090 Vermont Ave., NW, Washington, DC 20005. Contract, irregular. *General commodities (except household goods as defined by the Commission, commodities in bulk and Classes A & B explosives)* between points in the U.S. (except AK & HI), under continuing contract(s) with Monsanto Co. An underlying ETA seeks 120 days authority. Supporting shipper(s): Monsanto Co., 800 N. Lindbergh Blvd., St. Louis, MO 63167.

This was first published in the **Federal Register** dated April 13, 1983.

MC 158923 (Sub-II–5TA), filed March 25, 1983. Applicant: JOHN R. VALENTINO TRUCKING, R.D. #2, Box 9B, Cochranville, PA 19330. Representative: John R. Valentino (same address as applicant). *Pulpboard and related paper products* between point in NJ, NY, PA, DE, MD, DC, OH, IN, MI, CT, RI, MA, ME and IL. An underlying ETA seeks 120 days. Applicant intends to task this authority with its authority in MC–158923. Supporting shipper(s): Dopaco, Inc., Boot Rd. & Chestnut St., Downingtown, PA 19335. The purpose of re-publication is to show the State of DE which was omitted in the previous publication.

MC 167664 (Sub-II–1TA), filed April 27, 1983. Applicant: R.W. YEAGER, d.b.a. R. W. YEAGER TRUCKING CO., Box 87, Norton, WV 26285. Representative: John M. Friedman 2930 Putnam Ave., P.O. Box 426, Hurricane, WV 25526. *Diesel Fuel and Gasoline, in bulk,* between points in Washington County, OH, on the one hand, and, on the other, points in Randolph County, WV. Supporting shipper(s): J. F. Allen Company, P.O. Box 49, Clarksburg, WV 26301.

MC 108631 (Sub-2–10TA), filed April 26, 1983. Applicant: BOB YOUNG TRUCKING, INC., Schoenersville Rd. at Industrial Dr., Bethlehem, PA 18017. Representative: Alan Kahn, 1430 Land Title Bldg., Philadelphia, PA 19110. *Traffic lighting poles, decorative lighting poles and overhead sign supports* from the facilities of Union Metal Manufacturing Co. in East Stroudsburg (Monroe County), PA to points in the U.S. (except AK and HI). An underlying ETA seeks 120 days authority. Supporting shipper: Union Metal Manufacturing Co., 830 Crowe Road, East Stroudsburg, PA 18301.

The following applications were filed in Region 3. Send protests to: ICC, Regional Authority Center, Room 300, 1776 Peachtree Street, N.E., Atlanta, GA 30309.

MC 150573 (Sub-3–6TA), filed May 5, 1983: Applicant: BEN KENNEDY TRUCKING COMPANY, INC., P.O. Box 13, Preston, GA 31824. Representative: C. E. Walker, 2945 Lynda Lane, Columbus, GA 31906. *Bulk commodities, in dump vehicles,* between the states of AR, IA, IL, IN, KY, LA, MS, ME, MN, MO, NY, OH, PA, TX, TN and VA. Also, between the said states on the one hand, and on the other, AL, FL, GA, NC and SC. There are six supporting shipper statements attached to this application, which may be reviewed at the ICC Regional Office in Atlanta, GA.

MC 163513 (Sub-3–4TA), filed May 5, 1983. Applicant: MORCO INDUSTRIES, INC. 7421 Morrison Drive, Mobile, AL 36609. Representative: Richard Cangemi, Director of Transportation, Morco Food Distributors, 146 Forest Parkway, Forest Park, GA 30050. *Contract:* Irregular; *Packaged sugar* from Gramercy, LA, to Jackson, MS and Huntsville, AL. Supporting shipper: Colonial Sugars, Inc., P.O. Box 1646, Mobile, AL 36633.

MC 163513 (Sub-3–3TA), filed May 5, 1983. Applicant: MORCO INDUSTRIES, INC., 7421 Morrison Drive, Mobile, AL 36609. Representative: Richard Cangemi, Director of Transportation, Morco Food Distributors, 146 Forest Parkway, Forest Park, GA 30050. *Contract;* Irregular; *Carpets and yarn* from all points in GA to all points in CA. Supporting shipper: Shaw Industries, Inc., P.O. Drawer 2128, Dalton, GA 30720.

MC 145738 (Sub-3–9TA), filed May 4, 1983. Applicant: EAST-WEST MOTOR FREIGHT, INC. P.O. Box 607, Highway 45, South, Selmer, TN 38375. Representative: Stephen L. Edwards, 806 Nashville City Bank Bldg., 315 Union Street, Nashville, TN 37201. (1) *Tin cans* from Chicago, IL, to St. Louis, MO, and (2) *Food products* from Dane and Jefferson Counties, WI, and Milwaukee, WI, St. Louis, MO, and Chicago, IL, to

McNairy County, TN. (Supporting shipper: Henco, Inc., P.O. Box 547, Selmer Industrial Park, Selmer, TN, 38375.)

MC 164313 (Sub-3–4TA), filed April 29, 1983. Applicant: QUALITY MULCH COMPANY, INC., Rte. 1, Box 203, Hamlet, NC 28345. Representative: Jack L. Schiller, 111–56 76th Dr., Forest Hills, NY 11375. *Contract*, irregular. *Pulpboard and fiberboard* from the facilities of Stone Container Corp., located at or near Florence, SC, to points in and East of CO, KS, ND, SD and TX, under continuing contract(s) with Stone Container Corp. of Florence, SC. Supporting shipper: Stone Container Corp., P.O. Box 4000, Florence, SC 29502.

The following applications were filed in region 4: Send protests to: ICC, Complaint and Authority Branch, P.O. Box 2980, Chicago, IL 60604.

MC 15735 (Sub-4–87TA), filed April 27, 1983. Applicant: ALLIED VAN LINES, INC., 2120 S. 25th Avenue, Broadview, IL 60153. Representative: Joseph P. Tuohy, P.O. Box 4403, Chicago, IL 60680. *Contract irregular: computers, printers, keyboard and related hardwar and such commodities as are dealt in and utilized by manufacturers and distributors* thereof between points in the U.S., (except AK and HI), under a continuing contract(s) with Modular Computer Systems, Inc. Supporting shipper: Modular Computer Systems, Inc., 1650 McNab Rd. Fort Lauderdale, FL.

MC 15735 (Sub-4–88TA), filed April 28, 1983. Applicant: ALLIED VAN LINES, INC., 2120 S. 25th Avenue, Broadview, IL 60153. Representative: Joseph P. Tuohy, P.O. Box 4403, Chicago, IL 60680. *Contract irregular: Household Goods,* between points in the U.S. (except AK and HI), under a continuing contract(s) with American Hospital Supply Corp., and its subsidiaries. Supporting shipper: American Hospital Supply Corp. One American Plaza, Evanston, IL 60201.

MC 15735 (Sub-4–89TA), filed April 28, 1983. Applicant: ALLIED VAN LINES, INC., 2120 S. 25th Avenue, Broadview, IL 60153. Representative: Martin T. Boratyn, P.O. Box 4403, Chicago, IL 60680. *Contract irregular: General commodities, except commodities in bulk and Classes A & B Explosives,* between points in the U.S. (except AK and HI) under a continuing contract(s) with USM Corp., its subsidiaries, and affiliates Emhart Industries, Inc.—Hartford Division, Farrel Corporation and Fellows Corporation. Supporting shipper: USM Corp., 181 Elliott Street, Beverly, MA 01915.

MC 15735 (Sub-4–90TA), filed April 29, 1983. Applicant: ALLIED VAN LINES, INC., 2120 S. 25th Avenue, Broadview, IL 60153. Representative: John P. Tuohy, P.O. Box 4403, Chicago, IL 60680. *Contract irregular: Household goods, electronic equipment, aircraft parts of a fragile nature and exhibits and displays,* between points in the U.S. (under continuing contract(s) with the Lockheed Corporation and its subsidiaries. Supporting shipper: Lockheed Corporation, P.O. Box 551, Burbank, CA 91520.

MC 15735 (Sub-4–91TA), filed April 29, 1983. Applicant: ALLIED VAN LINES, INC., 2120 S. 25th Avenue, Broadview, IL 60153. Representative: Joseph P. Tuohy, P.O. Box 4403, Chicago, IL 60680. *Contract irregular: Household Goods,* between points in the U.S., under a continuing contract(s) with Pabst Brewing Company. Supporting shipper: Pabst Brewing Company, 1000 N. Market St., Milwaukee, WI. 53201.

MC 74755 (Sub-4–6TA), filed April 28, 1983. Applicant: SUELZER MOVING & STORAGE, INC., 4325 Meyer Road, Fort Wayne, IN 46806. Representative: Richard A. Huser, One Indiana Square, Suite 2120, Indianapolis, IN 46204. Contract: Irregular; *Household goods (as defined by the Commission).* Between points in the U.S. RESTRICTED: To service performed under continuing contract(s) with Essex Group, Inc. of Fort Wayne, IN. Supporting shipper: Essex Group, Inc., 1601 Wall St., Fort Wayne, IN 46804.

MC 87966 (Sub-4–9TA), filed April 27, 1983. Applicant: ELEVELD CHICAGO FURNITURE SERVICE, INC., 9630 South 76th Court, Hickory Hills, IL 60457. Representative: Joseph P. Tuohy, P.O. Box 4403 Chicago, IL 60680. *Contract irregular: Office Furniture, Fixtures, Cases, Counters, Cabinets, and such commodities utilized in the manufacture and distribution thereof,* between points in the U.S. (Except AK and HI) under a continuing contract(s), with Modern Mode, Inc., of Oakland, CA. Supporting shipper: Modern Mode, Inc., 6425 San Leandro St. P.O. Box 6664, Oakland, CA 94603.

MC 143636 (Sub-4–8TA), filed April 28, 1983. Applicant: RON SMITH TRUCKING INC., R. R. #1, Box 59, Arcola, IL 61910. Representative: Douglas G. Brown, P.C., 913 South Sixth St., Springfield, IL 62703. *Crushed lime (rock dust)* from Greencastle, IN to the Zeigler coal mines at or near Murdock, IL. Supporting shipper: Ziegler Coal Co., Box 66913 AMF, O'Hare, IL 60666.

MC 144948 (Sub-4–1TA), filed April 28, 1983. Applicant: BILLY WAYNE HUDSON, d.b.a. BILL HUDSON 860 West Nicholas St., Carlinville, IL 62626. Representative: Robert T. Lawley, 300 Reisch Building, Springfield, IL 62701. Contract; irregular: *Pork Meat,* from Perry, Ga. Carlinville, IL, Shelbyville, TN and Sherman, TX to points in the U.S. (except AK and HI), under continuing contracts with Diamond Meat Packers, Inc. of Carlinville, IL. An underlying E/T/A seeks 120 days authority. Supporting shipper: Diamond Meat Packers, Inc., Highway 108 West, Carlinville, IL 62626.

MC 145246 (Sub-4–11TA), filed April 28, 1983. Applicant: A. E. SCHULTZ CORPORATION, 901 Lyndale Ave., Neenah, WI 54956. Representative: Frank M. Coyne, 25 West Main St., Madison, WI 53703. *Pet Foods and Finished Feed Products,* between points in WI, IL, IA, MN, SD, ND, WY, ID, MT, CO, UT and NE. Supporting shipper: GTA Feeds Owatonna, P.O. Box 493, Owatonna, MN 55060.

MC 148994 (Sub-4–5TA), filed April 28, 1983. Applicant: MICHAEL W. AMABILE d.b.a. TRIPLE AAA TRUCKING, 29891 Red Arrow Highway, Paw Paw, MI 49079. Representative: Nancy J. Amabile (same as applicant). *Contract* irregular: *Pulp, paper and related products* (except commodities in bulk) from Kalamazoo, MI to points in FL under continuing contract(s) with James River corporation. Supporting shipper: James River Corporation, 111 South 7th St., Richmond, VA 23219.

MC 156517 (Sub-4–5TA), filed April 28, 1983. Applicant: GILLIAM TRUCKING, INC., Rural Route 31, P.O. Box 9, Terre Haute, IN 47803. Representative: Thomas M. O'Brien, 180 North Michigan Ave., Suite 1700, Chicago, IL 60601. *Such commodities as are dealt in or used by distributors of chemicals,* from points in IL and IN to points in CA and TX. Supporting shipper: Grower Service Corporation, 300 North Fruitridge Ave., Terre Haute, IN, 47803.

MC 165966 (Sub-4–3TA), filed April 29, 1983. Applicant: R & S TRUCK BROKERS 136 S. Main St., Ithaca, MI 48847. Representative: Jack L. Schiller, 111–56 76th Dr. Forest Hills, NY 11375. *Automotive parts and appliances* between points in IL, IN, MI, and OH, on the one hand, and, on the other, points in the U.S. (except AK and HI). Supporting shippers: Delfield Co., P.O. Box 470, Mt. Plesant, MI; Center Metals, Inc., 2145 Clybourn, Chicago, IL; Robinson Industries, Inc., 3051 Curtis Rd., P.O. Box V, Coleman, MI; and Indiana Vac Form, Warsaw, IN.

MC 167336 (Sub-4–1TA), filed April 27, 1983. Applicant: PAUL B. HICKS AND NANCY L. HICKS, A PARTENERSHIP, d.b.a. P.N.H. TRUCKING, 7661 Oneida Road, Grand Ledge, MI 48827.

Representative: Robert W. Loser II, 512 Chamber of Commerce Bldg., 320 N. Meridian St., Indianapolis, IN 46204 (317) 635–2339. Contract; irregular: *Building materials*, between points in the U.S. (except AK and HI), under continuing contract(s) with Universal Forest Products, Inc., of Grand Rapids, MI. Supporting shipper: Charles R. Felix, Vice President—Operations, Universal Forest Products, Inc., P.O. Box 129, Granger, IN 46530. Underlying ETA seeks 120 days authority.

MC 15735 (Sub-4–92TA), filed May 2, 1983. Applicant: ALLIED VAN LINES, INC., 2120 S. 25th Avenue, Broadview, IL 60153. Representative: Joseph P. Tuohy, P.O. Box 4403, Chicago, IL 60680. *Contract irregular: Household Goods*, between points in the U.S. (except AK and HI), under continuing contract(s) with Armstrong World Industries, Inc., and its subsidiaries. Supporting shipper: Armstrong World Industries, Inc., P.O. Box 3001, Lancaster, PA 17604.

MC 15735 (Sub-4–93TA), filed May 2, 1983. Applicant: ALLIED VAN LINES, INC., 2120 S. 25th Avenue, Broadview, IL 60153. Representative: Joseph P. Tuohy, P.O. Box 4403, Chicago, IL 60680. *Contract irregular: Household Goods*, between points in the U.S. (except AK and HI), under continuing contract(s) with Dayco Corporation of Dayton, Ohio and its subsidiaries. Supporting shipper: Dayco Corporation, P.O. Box 1004, Dayton, OH 45401.

MC 138569 (Sub-4–5TA), filed May 2, 1983. Applicant: BRAITHWAITE TRUCKING, INC., 3819 Sunset Dr., Rapid City, SD 57701. Representative: Dennis Braithwaite (same address as above). *Coal*, from Orangeville and Banning, UT to Townsend, MT, under contract with Island Creek Coal Sales Company, Lexington, KY. An underlying ETA seeks 120 days. Supporting shipper: Island Creek Coal Sales Company, 2365 Harrodsburg Road, P.O. Box 12029, Lexington, KY 40579.

MC 149284 (Sub-4–4TA), filed May 2, 1983. Applicant: MARION D. DAY d.b.a. DAY'S EXPRESS, 1942 7th St., Columbus, IN 47201. Representative: Jack L. Schiller, 111–56 76th Dr., Forest Hills, NY 11375. Contract, irregular: *commodities* (except commodities in bulk) as are dealt in by wholesale, retail and chain grocery and food business houses between points in the U.S. (except AK and HI) under continuing contract(s) with The Drackett Products Company, 5020 Spring Grove Ave., Cincinnati, OH.

MC 154953 (Sub-4–5 TA), Filed May 2, 1983. Applicant: DOKE TRANSPORT CO., INC., P.O. Box 109 Clarks Hill, IN 47930. Representative: Andrew K. Light, 1301 Merchants Plaza indianapolis, IN 46204. *Contract* irregular: *Plastic pellets, in packages*, between Farmingdale, NY, on the one hand, and, on the other, Chicago, IL; Indianapolis, IN and Minneapolis, MN and their commercial zones. Restricted to continuing contract(s) with Georgia-Pacific, P.O. Box 250, 100–120 Adams Blvd., Farmingdale, NY 11735. An underlying ETA seeks 120 days authority.

MC 157187 (Sub-4–1 TA), Filed May 2, 1983. Applicant: SUNRISE EXPRESS, INC., 454 Herman, Crete, IL 60417. Representative: Donald B. Levine, 180 North LaSalle St., Chicago, IL 60601. Contract; irregular: *General commodities (except Classes A and B explosives and household goods)* between points in the U.S. (except AK and HI) under continuing contract(s) with Sonnett Transportation Consultants, Inc., Supporting shipper, Sonnett Transportation Consultants, Inc., 1951 Bernice Road, Lansing, IL.

MC 160605 (Sub-4–1 TA), Filed May 2, 1983. Applicant: MORRIS LIVESTOCK EXPRESS, INC., POB 105, Morris, MN 56267. Representative: William J. Gambucci, 525 Lumber Exchange Bldg., Minneapolis, MN 55402. (1) *Beer*, between Stevens County, MN, on the one hand, and, on the other, Milwaukee, WI; Memphis, TN; Chicago, IL; and Detroit, MI; and (2) *meat and meat products*, between points in MN, on the one hand, and, on the other, points in the U.S. (except AK and HI). Supporting shippers: Landy Packing Co., POB 670, St. Cloud, MN 56302; Elmer's Distributing Co., Inc., E. Hwy. 28, POB 68, Morris, MN 56267.

MC 164764 (Sub-4–5 TA), Filed May 2, 1983. Applicant: WHITEFORD NATIONALEASE, INC. d.b.a. DEDICATED TRUCK SERVICE, 2020 West Sample St., P.O. Box 76, South Bend, IN 46624. Representative: Andrew K. Light Scopelitis & Garvin, 1301 Merchants Plaza, Indianapolis, IN 46204. *Contract* irregular: *General commodities* (except Classes A and B explosives, commodities in bulk and household goods), between points in the U.S. (except AK and HI). Restricted to continuing contract(s) with General Electric Company, 2000 Taylor Street, Fort Wayne, IN 46804. An underlying ETA seeks 120 days authority.

MC 165226 (Sub-4–1TA), filed May 2, 1983. Applicant: WISCONSIN ILLINOIS STAGES, INC., Rt. 3, Box 349B, Theatre Rd., Delavan, WI 53115. Representative: Steven L. Weiman, Suite 200, 444 N. Frederick Ave., Gaithersburg, MD 20877. *Passengers* between (1) Madison, WI and Chicago, IL; from Madison, WI over U.S. Hwy. 12 to its junction with WI Hwy. 67, thence south over WI Hwy. 11 to Delavan, WI, thence east over WI Hwy. 50 to junction Theatre Rd., at east Delavan, thence over Theatre Rd., to Williams Bay, WI, thence over Geneva St., to its junction with WI Hwy. 50, thence over WI Hwy. 50 to its junction with Kenosha Co., Hwy. P, thence over Kenosha Co., Hwy. P to its junction with Kenosha Co., Hwy. O, thence over Kenosha Co., Hwy. O to its junction with East Main St., in Twin Lakes, thence over East Main St., to its junction with Kenosha Co., Hwy. EM, thence over Kenosha Co., Hwy. EM to its junction with Kenosha Co., Hwy. F, thence over Kenosha Co., Hwy. F to Kenosha Co., Hwy. B, thence over Kenosha Co., Hwy. B to its junction with Kenosha Co., Hwy. AH, thence over Kenosha Co., Hwy. AH to its junction with Kenosha Co., Hwy. SA, thence over Kenosha Co., Hwy. SA to its junction with WI Hwy. 83, thence over WI Hwy. 83 to the WI–IL state line, thence over IL Hwy. 83 to its junction with IL Hwy. 173, thence over IL Hwy. 173 to its junction with Interstate Hwy. 94, thence over Interstate Hwy. 94 to its junction with Interstate Hwy. 294, thence over Interstate Hwy. 294 to its junction with Interstate Hwy. 90, thence over Interstate Hwy. 90 to Chicago, IL, and return over the same route, serving all intermediate points; (2) Williams Bay, WI and Lake Geneva, WI; from the junction of WI Hwy. 50 and WI Hwy. 67 at or near Williams Bay, WI, over WI Hwy. 67 to its junction with Walworth Co., Hwy. B, thence over Walworth Co., Hwy. B to its junction with Academy Rd., and Walworth Co., Hwy. BB, thence over Walworth Co., Hwy. BB to its junction with WI Hwy. 120, thence over WI Hwy. 120 to its junction with WI Hwy. 50 at Lake Geneva, WI, and return over the same route, serving all intermediate points; (3) junction WI Hwy. 50 and Walworth Co., Hwy. F and the junction of WI Hwy. 67 and Walworth Co., Hwy. F; from junction WI Hwy. 50 and Walworth Co., Hwy. F, over Walworth Co., Hwy. F to its junction with WI Hwy. 67, and return over the same route, serving all intermediate points; (4) junction Walworth Co., Hwy. B, BB, and Academy Rd., and the junction of Academy Rd., and South Shore Dr.; from junction Walworth Co., Hwy. B, BB, and Academy Rd., over Academy Rd., to its junction with South Shore Dr., and return over the same route, serving all intermediate points; (5) Ft. Atkinson, WI and Cambridge, WI; from Ft. Atkinson, WI over WI Hwy. 89 to its junction with U.S. Hwy. 18, thence over U.S. Hwy. 18 to Cambridge, and return over the same

route, serving all intermediate points; (6) Junction of Walworth Co., Hwy. BB and Willow Rd., southwest of Lake Geneva, WI and Chicago, IL; from junction of Walworth Co., Hwy. BB and Willow Rd., over Willow Rd., to its junction with WI Hwy. 120, thence over WI Hwy. 120 to the WI–IL state line, thence over IL Hwy. 47 to its junction with U.S. Hwy. 14, thence over U.S. Hwy. 14 to its junction with IL Hwy. 53, thence over IL Hwy. 53 to its junction with Interstate Hwy. 90, thence over Interstate Hwy. 90 to Chicago, IL, and return over the same route, serving all intermediate points; (7) junction WI Hwy. 120 and Walworth Co., Hwy. BB south of Lake Geneva, WI and the junction of WI Hwy. 120 and Willow Rd.; from junction WI Hwy. 120 and Walworth Co., Hwy. BB, over WI Hwy. 120 to its junction with Willow Rd., and return over the same route, serving all intermediate points and the off-route point of Nippersink Manor Resort approximately two miles southwest of Powers Lake, WI. There are five (5) supporting shippers.

MC 167733 (Sub-4–1TA), filed May 2, 1983. Applicant: ANTHONY N. HEMMERSBACH d.b.a. TONY'S TRUCKING, Route 1, Cashton, WI 54619. Representative: Michael J. Wyngaard, 150 East Gilman St., Madison, WI 53703. (1) *Wood products* from Bangor, WI to points in IL, IN, IA, MI, and MN; and (2) *materials, equipment and supplies* used in the manufacture or distribution of wood products from points in IL, IN, IA, MI and MN to Bangor, WI. Supporting shipper: Coulee Region Enterprises, Inc., P.O. Box 306, Bangor, WI 54614.

MC 167733 (Sub-4–2TA), filed May 2, 1983. Applicant: ANTHONY N. HEMMERSBACH d.b.a. TONY'S TRUCKING, Route 1, Cashton, WI 54619. Representative: Michael J. Wyngaard, 150 East Gilman St., Madison, WI 53703. *Ice melter, fertilizer, kitty litter, floor drying compounds, and such commodities as are distributed by, dealt in or used by retail stores,* between Viroqua, WI and Neosho, MO, on the one hand, and, on the other, points in the U.S. (except AK and HI). Supporting shipper: Howard Johnson's Enterprises, Inc., Railroad Ave., Viroqua, WI 54665.

The following applications were filed in region 5. Send protest to: Consumer Assistance Center, Interstate Commerce Commission, 411 West 7th Street, Suite 500, Fort Worth, TX 76102.

MC 2960 (Sub-5–11TA), filed May 3, 1983. Applicant: ENGLAND TRANSPORTATION COMPANY OF TEXAS, P.O. Box 4362, Houston, TX 77210. Representative: Doyle G. Owens, P.O. Box 7735, Beaumont, TX 77706. *Agricultural Implements, Machinery and/or Parts,* between Houston, TX and Heston, KS. Supporting shipper: Strachan Shipping Co. of Texas, Houston, TX.

MC 154596 (Sub-5–2TA), filed May 2, 1983. Applicant: BILL DAVIS TRUCKING, INC., P.O.Box 2504, Batesville, AR 72501. Representative: Bill Davis, President (same as above). *Electric Motors, Parts and Components used in the manufacture and distribution of Electric Motors thereof,* between points in AR, WI, OK, CA, OH, IL, and IN, restricted to the facilities of The General Industries Co. Supporting shipper: The General Industries Co., Elyria, OH.

MC 156619 (Sub-5–2 TA), Filed May 2, 1983. Applicant: JOE MONSON d.b.a. QUALITY LUMBER CO., Box 190, Ulysses, KS 67880 Representative: Joe Monson (same as above). Contract; Irregular: *Beer and malt beverages,* between Fort Worth, TX on the one hand and Pueblo, CO on the other. Supporting shipper: Carl Wills Beverage, Pueblo CO.

MC 167720 (Sub-5–1 TA), Filed May 2, 1983. Applicant: ATKINS PICKLE COMPANY, INC., 602 Southeast First Street Atkins, AR 72823. Representative: Edward G. Bazelon, 135 South LaSalle Street Chicago, IL 60603. Contract, Irregular: *General commodities (except classes A and B explosives, household goods, and commodities in bulk),* between points in AL, FL, GA, LA, MS, MO, OK, TN and TX, under continuing contract(s) with DFC Transportation Company of Huntley, IL.

MC 167735 (Sub-5–1 TA), Filed May 2, 1983. Applicant: SURE FREIGHT EXPRESS, 4255 LBJ Freeway Dallas, TX 75234. Representative: Don Garrison, Esq. P.O.B. 1065 Fayetteville, AR 72702 Contract, Irregular; *General Commodities (except household goods, classes A and B explosives and commodities in bulk)*—Between points in the U.S. (except AK and HI), under continuing contract(s) with Little Rock Transportation Services, Inc. d.b.a. Bear Trucking Company, of Dallas, TX.

MC 167748 (Sub-5–1 TA), Filed May 2, 1983. Applicant: BILLY D. McCRAW & S. JEAN McCRAW d.b.a. B&J McCRAW TRUCKING, 3403 93rd St., Lubbock, TX 79423. Representative: Chester A. Zyblut, 366 Executive Building 1030 Fifteenth Street, NW., Washington, D.C 20005. Contract irregular *General commodities (except classes A and B explosives, household goods as defined by the Commission and commodities in bulk)* between points in the U.S. (except AK and HI) under continuing contract(s) with VAL–AGRI Inc., of Wichita, KS.

MC 79658 (Sub-5–18 TA), Filed May 6, 1983. Applicant: ATLAS VAN LINES, INC., Post Office Box 509, Evansville, IN 47711. Representative: Robert C. Mills or Michael L. Harvey (same as above). Contract, Irregular; *household goods* between points in the U.S. (excluding AK and HI under continuing contract(s) with Kerr-McGee Corporation, Oklahoma City OK, and its subsidiaries.

MC 128087 (Sub-5–6TA), filed April 18, 1983. Applicant: JOHN N. JOHN III, INC., 1000 W. 2nd Street, Crowley, LA 70526. Representative: William M. John, P.O. Box 921, Crowley, LA 70526. *General Commodities* (Except those of unusual Value, Classes A & B explosives and Household Goods), having prior or subsequent movement by water. Between points in TX and Calcasieu, Cameron and Jefferson Davis Parishes, LA. Supporting shipper: Crown Zellerbach International, Portland, OR.

MC 134262 (Sub-6TA), filed May 6, 1983. Applicant: FARMERS FEED AND SUPPLY TRANSPORTATION, INC., Box 385, Boyden, IA 51234. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501–2028. *Plastic products,* from Oshkosh, WI to Gilmer, TX. Supporting shipper: Lakeside Plastic, Oshkosh, WI.

MC 147085 (Sub-5–3TA), filed May 6, 1983. Applicant: SIMON'S FEED STORE, INC., P.O. Box 8, Farley, IA 52046. Representative: Carl E. Munson, P.O. Box 796, Dubuque, IA 52001. *Fertilizer and fertilizer ingredients,* between points in IL, IA and WI. Supporting shippers: Twin State Engineering & Chemical Co., Davenport, IA; Kaiser Agricultural Chemicals, Des Moines, IA; and Mapco Fertilizer, Inc., Athens, IL.

MC 156013 (Sub-5–2TA), filed May 4, 1983. Applicant: WILSON FREIGHT LINES, INC., 8914 Oliver, Rowlett, TX 75088. Representative: William Sheridan, P.O. Drawer 5049, Irving, TX 75062. *Building and Construction Materials* between CA on the one hand, and, on the other, AR, AL, LA, GA, MS and TN. Restricted to traffic originating at or destined to the facilities of P. E. O'Hair & Co. Supporting shipper: P. E. O'Hair & Co., Pittsburgh, CA.

MC 158577 (Sub-5–2TA), filed May 4, 1983. Applicant: L & L CARTAGE CO., INC., P.O. Box 1041, Jonesboro, AR 72401. Representative: James T. Darby, 1021 Irving Ave., Colonial Beach, VA 22443. *Metal tubing or insulation* between points in MN, IA, MO, AR, LA, TX, OK, CA, CO, NV, AZ, MS, AL, GA, SC, TN, NC, KY, VA, WI, IL, IN, MI, OH, WV, PA, NY, NJ, CT, RI, and MA. Supporting shipper: Halstead Industrial Products, Wynne, AR.

MC 158733 (Sub-5–5TA), filed May 6, 1983. Applicant: LEONARD FEED & GRAIN, INC., 5511 16th Avenue SW., Cedar Rapids, IA 52404. Representative: Richard D. Howe, 600 Hubbell Building, Des Moines, IA 50309. *Popcorn*, between Marshall County, IA, on the one hand, and, on the other, points in the United States in and west of MT, ID, UT, and AZ (except AK and HI). Supporting shipper: Party Pac Popcorn Co., Marshalltown, IA.

MC 166149 (Sub-5–3TA), filed May 6, 1983. Applicant: WORTH INDUSTRIAL EQUIPMENT, INC., 206 East Mill Street, Butler, MO 64730. Representative: Arthur J. Cerra, P.O. Box 19251, Kansas City, MO 64141. *Chemicals and Related Products* between points in the U.S. (except AK and HI) Supporting shipper: Chemical Commodities, Inc., Olathe, KS.

MC 167092 (Sub-5–1TA), filed May 4, 1983. Applicant: FISHER TRUCKING, INC., P.O. Box 181, Springdale, AR 72764. Representative: Joseph C. Fisher (same as above). *Food products and related items (Except in bulk or tank vehicles)* between points in the U.S. (except AK and HI). Supporting shipper: The Thomas Lee Co., Springdale, AR.

MC 167853 (Sub-5–1TA), filed May 6, 1983. Applicant: F.S.C. CORP., P.O. Box 200, Delmar, IA 52037. Representative: Carl E. Munson, P.O. Box 796, Dubuque, IA 52001. *Fertilizer and fertilizer ingredients*, between points in IL and IA. Supporting shippers: Estech, Inc., East St. Louis, IL; Kaiser Agricultural Chemicals, Des Moines, IA; and Twin State Engineering & Chemical Co., Davenport, IA.

MC 167855 (Sub-5–1TA), filed May 6, 1983. Applicant: LUTHER JETER d.b.a. JETER TRUCKING CO., Rt 1, Box 32A, Jacksonville, AR 75766. Representative: Clint Oldham, 623 S. Henderson, 2nd Floor, Ft. Worth, TX 76104. Contract, Irregular; *Lumber* between points in TX, on the one hand, and, on the other, points in AR, LA, MS, OK and TX. Supporting shipper: Southern Timber Sales & Manufacturing Corp., Arlington, TX.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 83-13049 Filed 5-13-83; 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 Goods 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** on November 24, 1982 at 47 FR 53271. For compliance procedures, see 49 CFR 1160.86. Carriers operating pursuant to an intrastate certificate also must comply with 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 Commission's regulations.

We make an additional preliminary finding with respect to each of the following types of applications as indicated: common carrier of property—that the service proposed will serve as indicated: common carrier of property—that the service proposed will serve a useful public purpose, responsive to a public demand or need; water common carrier—that the transportation to be provided under the certificate is or will be required by the public convenience and necessity; water contract carrier, motor contract carrier of property, freight forwarder, and household goods broker—that the transportation will be consistent with the public interest and the transportation policy of section 10101 of chapter 101 of Title 49 of the United States Code.

These presumptions shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication, (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract." 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.

Please direct status inquiries about the following to team two at (202) 275–7293.

Volume No. OP2–211

Decided: May 4, 1983.

By the Commission, Review Board No. 2, Members Carleton, Williams and Ewing. Member Ewing not Participating.

MC 682 (Sub-50), filed April 25, 1983. Applicant: BURNHAM SERVICE COMPANY, INC., 5000 Burnham Blvd., Columbus, GA 31907. Representative: David Earl Tinker, 1000 Connecticut Ave., NW, Suite 1112, Washington, DC

20036–5391, 202–887–5868. Transporting *general commodities* (except classes A and B explosives and commodities in bulk), between points in the U.S., under continuing contract(s) with (a) the Lockheed Corporation, of Burbank, CA, and its subsidiaries, (b) the Lockheed Missiles & Space Company, Inc., of Sunnyvale, CA, (c) the Lockheed-California Company, of Burbank, CA, (d) the Lockheed Shipbuilding & Construction Company, of Seattle, WA, (e) the Lockheed Aircraft Service Company, of Ontario, CA, (f) Lockheed Air Terminal, Inc., of Burbank, CA, (g) the Murdock Machine & Engineering Co., of Irving, TX, (h) the Lockheed Engineering and Management Services Co., Inc., of Houston, TX, (i) the Lockheed-Georgia Company, of Marietta, GA, and (j) the Lockheed Electronics Company, Inc., of Plainfield, NJ.

MC 2202 (Sub-690), filed April 29, 1983. Applicant: ROADWAY EXPRESS, INC., 1077 Gorge Blvd., P.O. Box 471, Akron, OH 44309. Representative: William O. Turney, 7101 Wisconsin Ave., Suite 1010, Washington, DC 20814, 301–986–1410. 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 Mohasco Corporation, of Atlanta, GA.

MC 2202 (Sub-691), filed April 29, 1983. Applicant: ROADWAY EXPRESS, INC., 1077 Gorge Blvd., P.O. Box 471, Akron, OH 44309. Representative: William O. Turney, 7101 Wisconsin Ave., Suite 1010, Washington, DC 20814, 301–986–1410. 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 J.C. Penney Company, Incorporated, of New York, NY.

MC 61692 (Sub-21), filed April 26, 1983. Applicant: WARNERS MOTOR EXPRESS, INC., West Country Club Rd., Red Lion, PA 17356. Representative: Donald M. Warner (same address as applicant), 717–244–4537. 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 108453 (Sub-49), filed April 27, 1983. Applicant: BARBLINE, INC., P.O. Box 1166, State Rd. 13, Middlebury, IN 46540. Representative: Edward Malinzak, 900 Old Kent Bldg., Grand Rapids, MI 49503, 616–459–6121. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI).

MC 147323 (Sub-37), filed April 28, 1983. Applicant: HADDAD TRANSPORTATION, INC., 5000 Wyoming Ave., Dearborn, MI 48126. Representative: Colin Barrett, 11764 Indian Ridge Rd., Reston, VA 22091, 703–860–8521. 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 149072 (Sub-2), filed April 27, 1983. Applicant: ROBERT L. BELL, Box 4029 Skarr Rte., Sidney, MT 59270. Representative: Robert L. Bell (same address as applicant) 406–482–1733. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in MT and ND. Condition: Issuance of this certificate is subject to prior or coincidental cancellation of applicant's written request of Certificate of Registration No. MC–149072.

MC 150542 (Sub-4), filed April 28, 1983. Applicant: RIDGEFIELD PARK TRANSPORT CO., INC., P.O. Box 96, Ridgefield Park, NJ 07660–0096. Representative: Michael R. Werner, 241 Cedar Lane, Teaneck, NJ 07666, 201–836–1144. 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 Ralston Purina Company, of St. Louis, MO.

MC 152803 (Sub-2), filed April 15, 1983. Applicant: SAM LATTNER DISTRIBUTION COMPANY, 110 South Ellis St., P.O. Box 351, Groesbeck, TX 76642. Representative: Timothy Mashburn, P.O. Box 2207, Austin, TX 78768–2207, 512–476–6391. Transporting *such commodities* as are dealt in and used by manufacturers and distributors of glass, plastic and rubber products, between points in the U.S. (except AK and HI).

MC 156312 (Sub-1), filed March 2, 1983, published in the **Federal Register** issue of March 30, 1983, and republished, as corrected, this issue. Applicant: C MILE TRANSPORT, LTD., Exeter Rd., Box 578, 100 Mile House, British Columbia, Canada VOK 2EO. Representative: George Costello (same address as applicant) 604–395–2229. Transporting *general commodities* (except classes A and B explosives and household goods), between ports of entry on the international boundary line between the U.S. and Canada, in WA, ID, and MT, on the one hand, and, on the other, those points in the U.S. in and west of MT, WY, CO, and NM (except AK and HI). The purpose of this republication is to delete "commodities in bulk", as an exception in the commodity description.

MC 157563 (Sub-1), filed April 28, 1983. Applicant: ROBERT P. SILVAIN, d.b.a. R.P.M.S. TRUCKING, 3 Amherst Rd., South Hadley, MA 01075. Representative: Owen Clarke, 101 State St., Springfield, MA 01103, 413–781–4720. Transporting *food and related products*, between points in MA, ME, VT, NH, CT, RI, NJ, NY, PA, DE, MD, GA, FL, CA, SC, NC, and DC.

MC 157592, filed April 29, 1983. Applicant: JEFFREY FOSTER d.b.a. PACKAGE DELIVERY, 224 Hinckley St., Mankato, MN 56001. Representative: Charles T. Peterson, 325 South Broad St., Box 1387, Mankato, NM 56001, 507–387–3155. Transporting *pharmaceuticals, medicines, health and beauty aids, and sundries*, between Mankato, MN, and points in IA, under continuing contract(s) with Brown Drug, Inc., of Mankato, MN.

MC 161043 (Sub-2), filed April: 20, 1983. Applicant: DISTRON DIVISION OF BURGER KING CORPORATION, 7360 North Kendall Dr., Miami, FL 33156. Representative: Stephen Murphy (same address as applicant): 305–596–7063. 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 Distron Transportation Systems, Inc., of Miami, FL.

Volume No. OP2–214

Decided: May 6, 1983.

By the Commission, Review Board No. 2, Members Carleton, Williams, and Ewing. Member Ewing not participating.

MC 69833 (Sub-169), filed April 29, 1983. Applicant: ASSOCIATED TRUCK LINES, INC., 200 Monroe Ave., NW, Grand Rapids, MI 49503. Representative: Bruce A. Bullock, One Woodward Ave., 26th Fl., Detroit, MI 48226, 313–496–3534. 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 FMC Corporation, of Lexington, KY.

MC 135762 (Sub-25), filed April 29, 1983. Applicant: JOHN H. NEAL, INC., P.O. Box 3877, 6004 Hwy 271 South, Fort Smith, AR 72913. Representative: Don A. Smith, P.O. Box 43, 510 North Greenwood, Fort Smith, AR 72902, 501–

782–1001. 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 Hoover Universal, Inc., of Georgetown, KY.

MC 139253 (Sub-12), filed May 2, 1983. Applicant: SOUTHEASTERN WAREHOUSING AND DISTRIBUTION CORPORATION, 102 Ashe St., Johnson City, TN 37061. Representative: Roland M. Lowell, 5th Fl. 501 Union St., Nashville, TN 37219, 615–255–0540. Transporting *general commodities* (except classes A and B explosives, households goods, and commodities in bulk), between points in Escambia, Mobile and Washington Counties, AL, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 141733 (Sub-6), filed April 29, 1983. Applicant: UNION TRANSIT COMPANY, INC., 2460 Boston Rd., Wilbraham, MA 01095. Representative: James M. Burns, 1365 Main St., Suite 403, Springfield, MA 01103. Transporting (1) *general commodities* (except classes A and B explosives, households goods, and commodities in bulk), between points in CA, CT, IL, NC, TX, and WI, on the one hand, and, on the other, points in the U.S. (except AK and HI), and (2) *Paper and related materials*, between points in the U.S. (except AK and HI).

MC 144413 (Sub-3), filed May 2, 1983. Applicant: THOMPSON TRUCK TRANSPORTATION, 11218 Elm St., Omaha, NE 68144. Representative: E. Larry Wells, Suite 1125, Frito Lay Tower, P.O. Box 45538, Dallas, TX 75245, 214–358–3341. Transporting *food and related products*, between points in TX, KS, and NE, under continuing contract(s) with Mission Foods Corporation, of Dallas, TX.

MC 145552 (Sub-3), filed April 29, 1983. Applicant: HEDGE & HERBERG, INC., Lyon & Washington, P.O. Box 98, Big Stone City, SD 57216. Representative: Gayle E. Hedge (same address as applicant), 605–862–8143. Transporting *food and related products*, between points in MN, SD, and ND, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 146652 (Sub-3), filed May 2, 1983. Applicant: FEDERAL PRODUCE TRANSPORTATION CO., 8309 Tujunga Ave., Sun Valley, CA 91352. Representative: Daniel O. Hands, 104 S. Michigan Ave., Suite 410, Chicago, IL 60603, 312–641–1944. Transporting *food and related products*, between points in Yuma County, AZ, on the one hand, and, on the other, points in CA.

MC 147573 (Sub-7), filed April 25, 1983. Applicant: OAK ISLAND EXPRESS, INC., 2 Sixth St., Jersey City, NH 07302. Representative: Peter Wolff, 722 Pittston Ave., Scranton, PA 18505, (717) 342–7595. 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). Condition: Upon issuance of the authority above, applicant's Permits in MC–147573 and Sub-Nos. 1, 2, 3, 4, 5, and 6, issued June 6, 1980, March 10, 1981, May 7, 1982, August 2, 1982, December 17, 1982, February 18, 1983, and March 31, 1983, respectively, will be cancelled.

Note.—Applicant seeks to convert its contract carrier authority to common carrier authority.

MC 148102 (Sub-1), filed April 26, 1983. Applicant: BEHRING INTERNATIONAL EXPORT PACKERS, INC., P.O. Box 96147, Houston, TX 77015. Representative: John W. Carlisle, P.O. Box 967, Missouri City, TX 77459, 713–437–1768. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between Port Cities in the U.S., on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 151583 (Sub-7), filed April 29, 1983. Applicant: UTF CARRIERS, INC., Benson Rd., Middlebury, CT 06749. Representative: James M. Burns, 1365 Main St., Suite 403, Springfield, MA 01103, 413–781–8205. 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 Dunlop Tire and Rubber Corp., of Buffalo, NY.

MC 158003 (Sub-1), filed April 27, 1983. Applicant: CROWN TRANSPORTATION & DELIVERY SERVICE, INC., 810 Lynwood Lane, Broken Arrow, OK 74012. Representative: Jack R. Anderson, Suite 305, Reunion Center, Tulsa, OK 74103, 918–583–9000. 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 Avon Proudcts, Inc., of New York, NY.

MC 159283 (Sub-1), filed April 29, 1983. Applicant: W. L. LOGAN TRUCKING COMPANY, 3224 Navarre Rd. SW., Canton, OH 44706. Representative: Stephen L. Oliver, 275 E. State St., Columbus, OH 43215, 614–228–8575. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between those points in the U.S., in and east of ND, SD, NE, KS, OK, and TX.

MC 163202 (Sub-1), filed April 28, 1983. Applicant: MIDWEST DISTRIBUTION SYSTEMS, INC., 4040 West 40th St., Chicago, IL 60632. Representative: Carl L. Steiner, 135 South LaSalle St., Chicago, IL 60603, 312–236–9375. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between Atlanta, GA, Chicago, IL, Louisville, KY, Boston, MY, Kansas City, MO, Jersey City, NJ, Houston, TX, Seattle, WA, points in Houston County, AL, Hillsborough County, FL, Thomas County, GA, Vermilion County, IL, Elkhart and Orange Counties, IN, Pulaski County, KY, Frederick County, MD, Rice County, MN, Maries County, MO, Mecklenburg County, NC, Washoe County, NV, Cuyahoga County, OH, Lane County, OR, and CA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 165312, filed April 29, 1983. Applicant: McKENNA TRUCKING, INC., Sheldon St., Gratiot, WI 53541. Representative: James A. Spiegel, Olde Towne Office Park, 6333 Odana Rd., Madison, WI 53719, 608–273–1003. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in Jo Daviess, Stephenson, Carroll and Ogle Counties, IL, Grant, Iowa, Lafayette, Crawford and Green Counties, WI, on the one hand, and on the other, points in IA, IL, KS, MN, MO, and NE.

MC 167593, filed April 25, 1983. Applicant: SOUTHERN FREIGHTWAYS, INC., 3126 Carrier St., Memphis, TN 38116. Representative: William R. Swain, Jr., 208 Poplar Ave., Memphis, TN 38103, (901) 525–5443. Transporting *general commodities* (except classes A and B explosives, commodities in bulk, and household goods), between points in TN, on the one hand, and, on the other, points in AL, AR, GA, KY, LA, MO, MS, and TX.

MC 167682, filed April 28, 1983. Applicant: LOU SOMERVILLE TRUCKING, INC., P.O. Box 97, Onslow, IA 52321. Representative: Steven C. Shoenebaum, 1100 Carriers Bldg., 601 Locust, Des Moines, IA 50309, (515) 283–2076. Transporting *liquid fertilizer*, between Dubuque and Durant, IA, on the one hand, and, on the other, points in WI and IL, and between East Dubuque, IL, on the one hand, and, on the other, points in IA and WI.

MC 167683, filed April 28, 1983. Applicant: THE GREEN & SAWYER COMPANY, 209 West Elm St., Lima, OH 45801. Representative: John A. Robenalt, 110–112 North Elizabeth St., P.O. Box 1980, Lima, OH 45802, (419) 227–5006. Transporting *clay, concrete, glass or stone products,* betwen points in Monroe County, MI, on the one hand, and, on the other points in Allen and Hancock Counties, OH.

MC 167723, filed April 29, 1983. Applicant: ATLAS DISTRIBUTION CENTER, INC., 55 Delta Dr., Pawtucket, RI 02860. Representative: Catherine Carroll Poirier, 49 Columbine Ave., Pawtucket, RI 02861, (401) 722–7555. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in CT, MA, and RI.

Please direct status inquiries about the following to team 3 at (202) 275–5223.

Volume No. OP3–206.

Decided: May 9, 1983.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

FF 684, filed April 19, 1983. Applicant: PERSONAL FORWARDING, INC., 51 E. 42nd St., New York, NY 10017. Representative: Jim Pitzer, 15 S. Grady Way, Suite 321, Renton, WA 98055, (206) 235–1111. As a *freight forwarder* in connection with the transportation of (1) *used household goods and automobiles,* and (2) *household goods,* between points in the U.S.

MC 1214 (Sub-2), filed April 22, 1983. Applicant: SYSTEM TRANSFER AND STORAGE CO., 2400 6th Avenue South, Seattle, WA 98134. Representative: Jack R. Davis, 1200 IBM Building, Seattle, WA 98101, (206) 624–7373. Transporting *general commodities* (except classes A and B explosives and commodities in bulk), between points in WA, on the one hand, and, on the other, points in OR.

MC 2934 (Sub-149), filed April 22, 1983. Applicant: AERO MAYFLOWER TRANSIT COMPANY, INC., 9998 North Michigan Road, Carmel, IN 46032. Representative: W. G. Lowry (same address as applicant), (317) 875–1142. Transporting *household goods,* between points in the U.S. (excluding AK and HI), under continuing contract(s) with Burlington Northern Inc., and its subsidiaries, of Seattle, WA.

MC 15735 (Sub-80), filed April 22, 1983. Applicant: ALLIED VAN LINES, INC., 2120 S. 25th Avenue, Broadview, IL 60153. Representative: Richard V. Merrill, P.O. Box 4403, Chicago, IL 60680, (312) 681–8378. Transporting *general commodities* (except classes A and B explosives and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Nixdorf Computer Corporation, of North Reading, MA.

MC 17865 (Sub-3), filed April 26, 1983. Applicant: LUTHER TRANSFER, INC., 1910 11th St., Portsmouth, OH 45662. Representative: Mark C. Ellison, 300 Interstate N. Pkwy., Suite 329, Atlanta, GA 30339, (404) 955–4020. Transporting *household goods,* between those points in the U.S. in and east of ND, SD, NE, CO, and NM.

MC 67234 (Sub-84), filed April 29, 1983. Applicant: UNITED VAN LINES, INC., One United Dr., Fenton, MO 63026. Representative: B. W. LaTourette, Jr., 11 South Meramec, Suite 1400, St. Louis, MO 63105, (314) 727–0777. Transporting *household goods, office furniture,* and *electronic equipment,* between points in the U.S. (except AK and HI), under continuing contract(s) with Sun Refining and Marketing Company, of Philadelphia, PA.

MC 111274 (Sub-94), filed April 25, 1983. Applicant: SCHMIDGALL TRANSFER INC., P.O. Box 351, Morton, IL 61550. Representative: Frederick C. Schmidgall (same address as applicant), (309) 266–9773. Transporting *general commodities* (except classes A and B explosives and household goods), between point in the U.S. (except Ak and HI), under continuing contract(s) with Gateway Milling Co., of Peoria, IL.

MC 116164 (Sub-21), filed April 25, 1983. Applicant: ARROW TRANSPORTATION CO., a corporation, 1911 N.E. 58th Ave., Des Moines, IA 50313. Representative: James M. Hodge, 3730 Ingersoll Ave., Des Moines, IA 50312, (515) 274–4985. Transporting (1) *lumber and wood products,* and (2) *building materials,* between those points in the U.S. in and east of ND, SD, NE, KS, OK, and TX.

MC 133434 (Sub-3), filed April 27, 1983. Applicant: CONGRESSIONAL MOVERS, INC., 8933 D'Arcy Road, Upper Marlboro, MD 20772. Representative: David Earl Tinker, 1000 Connecticut Ave. NW., Suite 1112, Washington, DC 20036–5391, (202) 887–5868. Transporting *household goods, furniture and fixtures,* between points in DE, MD, WV and DC, on the one hand, and, on the other, points in the U.S.

MC 136774 (Sub-31), filed April 25, 1983. Applicant: MC-MOR-HAN TRUCKING CO., INC., P.O. Box 368, Shullsburg, WI 53586. Representative: Donald B. Levine, 180 North LaSalle St., Chicago, IL 60601, (312) 368–0100. Transporting *food and related products,* between points in the U.S. (except AK and HI), under continuing contract(s) with Indiana Sugars, Inc., of Gary, IN.

MC 138505 (Sub-23), filed April 25, 1983. Applicant: METROPOLITAN CONTRACT SERVICES, INC., 7465 East Peakview, Englewood, CO 80111. Representative: Wesley S. Chused, 15 Court Square, Boston, MA 02108, (617) 742–3520. 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 William Filene's Sons Company, Division of Federated Department Stores, Inc., of Boston, MA.

MC 143884 (Sub-6), filed April 25, 1983. Applicant: PERSONALIZED AGENT SERVICE, INC., P.O. Box 45111, Airport Station, Atlanta, GA 30320. Representative: K. Edward Wolcott, Atlanta Gas Light Towers, Suite 1200, 235 Peachtree St., NE, Atlanta, GA 30303, (404) 522–2322. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in AL, FL, GA, LA, MS, NC, SC, TN, and TX.

MC 163844, filed April 22, 1983. Applicant: CLOVERLEAF TRANSPORTATION, INC., 8801 S. 78th Ave., Bridgeview, IL 60455. Representative: Richard M. Keltner (same address as applicant), (312) 430–1940. 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).

Volume No. OP3–200

Decided: May 5, 1983.

By the Commission, Review Board No. 3, Members Krock, Joyce and Dowell.

MC 2934 (Sub-150), filed April 29, 1983. Applicant: AERO MAYFLOWER TRANSIT COMPANY, INC., 9998 N. Michigan Rd., Carmel, IN 46032. Representative: W. G. Lowry (same address as applicant), (317) 875–1142. Transporting *electronic equipment, switchboard parts, computer equipment,* and *delicate electronic instruments,* between points in the U.S. (except AK and HI), under continuing contract(s) with General Electric Company and its affiliates, of San Jose, CA.

MC 15735 (Sub-79), Filed April 21, 1983. Applicant: ALLIED VAN LINES, INC., 2120 S. 25th Ave., Broadview, IL 60153. Representative: Richard V. Merrill P.O. Box 4403 Chicago, IL 60680 (312) 681–8378. Transporting *household goods,* between points in the U.S. (except HI), under continuing contract(s)

with Arco Oil and Gas Company and its subsidiaries of Dallas, TX.

MC 123285 (Sub-17), Filed April 19, 1983. Applicant: CLETEX TRUCKING, INC., P.O. Box 812 Cleburne, TX 76031. Representative: Clayte Binion, 623 South Henderson, 2nd Floor, Fort Worth, TX 76104 (817) 332–4415. Transporting *commodities in bulk*, between point in the U.S. (except AK and HI).

MC 135974 (Sub-3), Filed April 20, 1983. Applicant: DONALD W. LEMMONS, d.b.a. INTERSTATE WOOD PRODUCTS, 2300 Talley Way, Kelso, WA 98626. Representative: Jack R. Davis, 1200 IBM Bldg., Seattle, WA 98101 (206) 624–7373. Transporting (1) *construction equipment*, (2) *Lumber and wood products*, (3) *Machinery* and (4) *paper and paper products*, beween points in WA, OR and ID and (5) *petroleum and petroleum products*, between points in OR and WA.

MC 138505 (Sub-22), Filed April 21, 1983. Applicant: METROPOLITAN CONTRACT SERVICES, INC., 7465 Peakview, Englewood, Co 80111. Representative: Joseph E. Rebman, 314 N. Broadway, Suite 1309, St. Louis, MO 63102 (314) 421–0845. Transporting *general commodities* (except classses A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under a continuing contract(s) with Boise Cascade Corporation, of Boise, ID.

MC 144314 (Sub-3), Filed April 18, 1983. Applicant: FARWEST INDUSTRIES OF LONGVIEW, INC., 225 Industrial Way, P.O. Box 1793, Longview, WA 98632. Representative: Robert Portner (Same address as applicant) (206) 425–6210. Transporting (1) *Lumber and building materials*, between points in WA, OR, CA, NV, AZ, ID, and MT and (2) *beer and wine*, between points in WA, OR, CA, and ID.

MC 145765 (Sub-18), filed April 20, 1983. Applicant: WIEST TRUCKLINE, INC., Route 2, I–94 West, Exit 57, Jamestown, ND 58401. Representative: Charles E. Johnson, Box 2056, Bismarck, ND 58502–2056 (701) 223–5306. Tranporting *agricultural implements, metal articles*, and *such commodities* as are dealt in by farm supply stores, between points in the U.S. (except HI).

MC 147145 (Sub-5), filed April 18, 1983. Applicant: ANDERSON AND SONS TRUCKING CO., INC., 1887 Deming Way, Sparks, NV 89432. Representative: James R. Anderson, Jr. (same address as applicant) (702) 331–1901. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between Sparks, NV, on the one hand, and, on the other, points in Mono and Inyo Counties, CA.

MC 149604 (Sub-5), filed April 20, 1983. Applicant: ACTION TRANSIT COMPANY, Rt. 21 South, P.O. Box 894, Mooresville, NC 28115. Representative: M. Diane Neal, 2230 Shepler Church Ave., SW., P.O., Box 6270, Canton, OH 44706 (216) 456–4571. Transporting *general commodities* (except household goods, commodities in bulk, and classes A and B explosives), between points in the U.S. under continuing contract(s) with C–E Industrial Products, Combustion Engineering, Inc., of Valley Forge, PA.

MC 151065 (Sub-3), filed April 11, 1983. Applicant: KANSAS CITY PIGGYBACK, INC., 3600 Great Midwest Dr., Kansas City, MO 64161. Representative: Donald J. Quinn, Commerce Bank Bldg., Suite 232, 8901 State Line, Kansas City, MO 64114. Tranporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between the Kansas City, MO, on the one hand, and, on the other, points in AR, IA, IL, KS, MO, NE, OK, and TN.

MC 154185 (Sub-4), filed April 21, 1983. Applicant: RENN TRANSPORTATION CO., INC., 949 Advance St., Green Bay, WI 54304. Representative: J. J. Gloeckler, P.O. Box 1412, Green Bay, WI 54305 (414) 497–7400. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except AK and HI), under continuing contract(s) with ITOFCA, INC., and ITOFCA Consolidators, Inc., both of Downers Grove, IL, The Larsen Company, of Green Bay, WI, Patrick Cudahy Incorporated, of Cudahy, WI, and Universal Foods Corporation, of Milwaukee, WI.

MC 162515, filed April 18, 1983. Applicant: MIDWESTERN TRUCKING COMPANY, INC., P.O. Box 1240, West Memphis, AR 72301. Representative: Fred W. Johnson, Jr., P.O. Box 1291, Jackson, MS 39205 (601) 355–3543. Transporting (1) *Chemicals and related products, clay products*, and *sand products*, between points in the U.S. (except AK and HI), under continuing contract(s) with International Minerals & Chemical Corporation (IMC), of Mundelein, IL; (2) *clay, concrete, glass or stone products, cleaning compounds*, and *automotive supplies*, between points in the U.S. (except AK and HI), under continuing contract(s with Moltan Company, Inc., of Middleton, TN; (3) *alcoholic beverages*, between points in the U.S. (except AK and HI), under continuing contract(s) with The Liquor Center, of West Memphis, AR; (4) *steel wire rope*, between points in the U.S. (except AK and HI), under continuing contract(s) with Universal Wire Products, Inc., of North Haven, CT; (5) *elelctrical transformers*, between points in the U.S. (except AK and HI), under continuing contract(s) with Magnetic Electric Company, of Memphis, TN; and (6) *lumber and wood products*, between points in the U.S. (except AK and HI), under continuing contract(s) with West Memphis Plywood Corporation, of West Memphis, AR.

MC 163504 (Sub-1), filed April 21, 1983. Applicant: CUMBERLAND MILLS TRANSPORT, INC., P.O. Box 89, Eton, GA 30724. Representative: Archie B. Culbreth, Suite 570, 2200 Century Parkway, Atlanta, GA 30345 (404) 321–1765. Transporting (1) *building materials, pulp, paper and related products*, between points in GA, on the one hand, and, on the other, points n the U.S. (except AK and HI), (2) *food and related products*, between points in the U.S. (except AK and HI), and (3) *Textile mills products and floor covering*, between points in Lake County, IL, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 166555, filed April 25, 1983. Applicant: GLENN F. JOHNSON, R. R. #1, Box 49, Altona, IL 61414. Representative: Robert T. Lawley, 300 Reisch Bldg., Springfield, IL 62701 (217) 544–5468. Transporting *water tanks, farrowing stalls and liquid manure handling equipment*, beteen points in the U.S. (except AK and HI), under continuing contract(s) with Pearson Brothers Company, Inc. of Galva, IL.

MC 167574, filed April 22, 1983. Applicant: TIEFENTHALER AG LIME INC Breda, IA 51436. Representative: Dale Tiefenthaler (same address as applicant) (712) 673–2686. Transporting *concrete and stone products*, between points in IA and NE.

MC 167584, filed April 22, 1983. Applicant: RUDY'S FARM COMPANY, 2424 Music Valley Drive, Nashville, TN 37214. Representative: Don Garrison, P.O. Box 1065, Fayetteville, AR 72702 (501) 521–8121. Transporting *general commodities*, (except household goods, classes A and B explosives and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Charles McAlpin Brokerage, Inc., of Decatur, AL.

MC 167625, filed April 26, 1983. Applicant: RALPH WILSON PLASTICS CO., 600 General Bruce Dr., Temple, TX 76501. Representative: John L. Jones (Same address as applicant) (817) 778–2711. 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 McLane/Southwest and S & S Transportation Company, Inc. both of Temple, TX.

MC 167634, filed April 25, 1983. Applicant: AMERICAN CARTAGE COMPANY, P.O. Box 5817, Bakersfield, CA 93308. Representative: Earl N. Miles, 3704 Candlewood Dr., Bakersfield, CA 93306 (805) 872–1106. Transporting *chemicals and related products, rubber and plastic products and transportation equipment*, between points in CA, on the one hand, and, on the other, points in AZ, NV, OR and WA.

Volume No. OP3–202

Decided: May 5, 1983.

By the Commission, Review Board No. 3 Members Krock, Joyce and Dowell. Member Krock not participating.

MC 143484 (Sub-2), filed March 29, 1983, and previously noticed in the **Federal Register** issue of April 22, 1983. Applicant: GLENN'S DELIVERY SERVICE, INC., 211 St. Mihiel Dr., Riverside, NJ 08075. Representative: James W. Patterson, 1800 Penn Mutual Tower, 510 Walnut St., Philadelphia, PA 19106 (215) 925–8300. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in CT, DE, MD, MA, NJ, NY, NC, OH, PA, RI, VA, WV and DC.

Note.—The purpose of this republication is to correctly reflect the territorial description.

MC 163814, filed April 14, 1983. Applicant: PITT EXPRESS SYSTEMS, INC., P.O. Box 12372, 115 McLaughlin Run Rd., Pittsburgh, PA 15231. Representative: John D. Gamble III (Same address as applicant) (412) 262–2380. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in DE, IL, IN, KY, MO, MI, MD, NJ, NY, NC, OH, PA, SC, TN, VA, WV and DC.

MC 167594, filed April 22, 1983. Applicant: BAY CITY TOURS, INC. d.b.a. GRAY LINE OF MOBILE, 301 Government St., P.O. Box 1711, Mobile, AL 36633. Representative: Carol E. Peterson (Same address as applicant) (205) 432–2229. Transporting *passengers*, in charter and special operations, between points in the U.S. (except AK and HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

Please direct status inquiries about the following to Team 4 at (202) 275–7669.

Volume No. OP4–277

Decided: May 5, 1983.

By the Commission, Review Board No. 3, Members Krock, Joyce and Dowell.

MC 46797 (Sub-10), filed May 2, 1983. Applicant: PHILLIPS TRUCK LINE, INC., 773 East St., Memphis, TN 38104. Representative: L. A. Hyde III (same address as applicant), (901) 774–5551. Transporting: *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in AR, AL, TN and MS, on the one hand, and, on the other, points in the U.S. (except AK and HI).

Note.—Applicant intends to tack this authority with its existing operating rights.

MC 136646 (Sub-8), filed May 2, 1983. Applicant: LEMARS TRANSPORT, INC., P.O. Box 353, LaMars, IA 51031. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501–2028, (402) 475–6761. Transporting: *commodities in bulk*, between points in IL, IA, KS, MI, MN, MO, NE, ND, SD and WI.

MC 148867 (Sub-7), filed May 2, 1983. Applicant: TRANS-ADVO, INC., 239 Service Rd., West, Hartford, CT 06101. Representative: Frank M. Cushman, 36 S. Main St., Sharon, MA 02067, (617) 784–6041. Transporting: *printed matter*, between points in the U.S. (except AK and HI), under continuing contract(s) with Montgomery Ward and Co., Inc., of Chicago, IL.

MC 149616 (Sub-7), filed April 28, 1983. Applicant: R. C. R., INC., Box 157, Yutan, NE 68073. Representative: Marshall D. Becker, Suite 610, 7171 Mercy Rd., Omaha, NE 68106, (402) 392–1220. Transporting: *meats, meat products, meat byproducts and articles distributed by meat-packing houses*, between points in the U.S. (except AK and HI), under continuing contract(s) with Omega Food Group, Inc., d.b.a. Omaha Meat Processors, of Omaha, NE.

MC 152146 (Sub-6), filed April 26, 1983. Applicant: FAR WEST TRANSPORTERS, INC., 14901 Chandler Rd., Omaha, NE 68138. Representative: Arlyn L. Westergren, Suite 201, 9202 W. Dodge Rd., Omaha, NE 68114, (402) 397–7033. Transporting: *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in NE, IA, KS, and MO, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 158467, filed April 29, 1983. Applicant: LA RAYTO ENTERPRISES LTD., 3642 204th St., Langley, B.C., Canada V3A 1X2. Representative: George La Bissoniere, 15 S. Grady Way, Suite 239, Renton, WA 98055. Transporting *food and related products and wood and lumber products*, between points in WA, OR and CA, and points on the International Boundary line between the U.S. and British Columbia, Canada.

MC 160736 (Sub-1), filed April 29, 1983. Applicant: DAVID R. BELL TRUCKING, 7718 Kendall Rd., Pavilion, NY 14525. Representative: David R. Bell (same address as applicant), (716) 237–5078. Transporting *agricultural fertilizer and soil conditioners*, (1) between ports of entry on the International Boundary line between the U.S. and Canada along the Niagara River in NY, on the one hand, and, on the other, points in NY, PA and OH, and (2) between points in NY, on the one hand, and, on the other, points in OH, MD, DE, VA, MA and PA.

MC 165827, filed April 29, 1983. Applicant: ALBANY-BINGHAMPTON EXPRESS, INC., P.O. Box 251, Chenango Bridge, NY 13745. Representative: Neil D. Breslin, 11 N Pearl St., Albany, NY 12207, (518) 434–1136. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in Broome, Chemung, Tioga, Tompkins, Otsego, Chenango, Delaware, Cortland, and Schoharie Counties, NY.

MC 167717, filed April 29, 1983. Applicant: HAKES BROS, CONTRACTORS, INC., R.D. Box #179, Meads Creek Rd., Painted Post, NY 14870. Representative: Michael C. Foley, Bankers Trust Bldg., 4th Fl., Jamestown, NY 14701, (716) 664–5210. Transporting *salt and salt products*, between points in Tompkins County, NY, on the one hand, and, on the other, points in PA and NJ.

MC 167726, filed April 29, 1983. Applicant: PROMPT REFRIGERATED TRANSPORT, INC., 6401 E. UpRiver Dr., Spokane, WA 99207. Representative: Boyd Hartman, P.O. Box 3641, Bellevue, WA 98009 , (206) 453–0312. Transporting *food and related products*, between points in IA, WA, OR, ID, MT, WY, ND, SD, NE, KS, MN, WI, UT, and CO.

MC 167727, filed April 29, 1983. Applicant: CONVERTINNS INC., d.b.a. THE ANDERSON HOUSE, 333 West Main St., Wabasha, MN 55981. Representative: John S. Hall (same address as applicant), (612) 565–4524. Transporting *passengers*, in charter and special operations, beginning and ending at points in Wabasha County, MN, and extending to points in the U.S. (except HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

Volume No. OP4–280

Decided: May 6, 1983.

By the Commission, Review Board No. 2, Members Carleton, Williams, and Ewing.

MC 164747 (Sub-1), filed March 29, 1983, previously noticed in the Federal Register issue of April 13, 1983, and republished this issue. Applicant: RON J. NIEWOHNER and GERI S. NIEWOHNER, d.b.a. MIDNIGHT EXPRESS, 1811 Maple Dr., Huron, SD 57350. Representative: Arlyn L. Westergren, Suite 201, 9202 W. Dodge Rd., Omaha, NE 68114, (402) 397–7033. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in ND, SD, MN, IA and NE, on the one hand, and, on the other, points in the U.S. (except AK and HI).

Note.—The purpose of this republication is to correctly state applicant's name and address.

Volume No. OP4–284

Decided: May 9, 1983.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 152257, filed May 3, 1983. Applicant: LORDCO TRUCKING, INC., 555 North Tripp Ave., Chicago, IL 60624. Representative: Paul J. Maton, 27 E. Monroe St., Suite 1000, Chicago, IL 60603 (312) 332–0905. Transporting *food and related products*, between points in the U.S. (except AK and HI), under continuing contract(s) with Gateway Foods of LaCrosse, WI.

MC 161957 (Sub-1), filed May 3, 1983. Applicant: EXPRESS TRANSPORTATION CO., INC., 1230 W. 7th Street, Houston, TX 77270. Representative: Mick Graeber, P.O. Box 70611, Houston, TX 77270, (713) 880–0644. 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 163147 (Sub-1), filed May 3, 1983. Applicant: ADAMS & COMPANIES, INC., P.O. Box 53, Chino, CA 91710. Representative: Earl N. Miles, 3704 Candlewood Dr., Bakersfield, CA 93306, (805) 872–1106. Transporting (1) *building materials, machinery, metal products, and lumber and wood products*, between points in the U.S. (except AD and HI), and (2) *plastic articles*, between points in MO, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 164336 (Sub-1), filed May 3, 1983. Applicant: WINTERLAND EXPRESS, INC., 1729 13th Ave. N., Grand Forks, ND 58210. Representative: Dale Kuzel (same address as applicant), (701) 775–3907. 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 167706, filed April 29, 1983. Applicant: YARD HORSE, INC., 14443 South 85th Ave., Orland Park, IL 60462. Representative: Paul J. Maton, 27 East Monroe St., Suite 1000, Chicago, IL 60603, (312) 332–0905. 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 Doug Lavery, Limited, of Alsip, IL.

Volume No. OP4–286.

Decided: May 10, 1983.

By the Commission, Review Board No. 3, Members Krock, Joyce and Dowell.

MC 144606 (Sub-26), filed March 17, 1983. Applicant: DUNCAN & SON LINES, INC., 714 E. Baseline Rd., Buckeye, AZ 85326. Representative: Donald W. Powell, 4150 N. 12th St., Phoenix, AZ 85014, (602) 241–0777. Transporting (1) *lumber and wood products, building materials*, and *machinery* used or useful in the erection of buildings, between points in the U.S. (except (HI); (2) *general commodities* (except classes A and B explosives, household goods and commodities in bulk), in foreign commerce only, between points in the U.S. (except AK and HI); (3) *transportation equipment* and *machinery*, between points in TX, AZ, NM and CO, on the one hand, and, on the other, points in the U.S. (except AK and HI); (4) *petroleum products*, between points in Los Angeles County, CA, on the one hand, and, on the other, points in AZ; (5) *chemicals and related products*, (a) between points in CA and AZ; and (b) between points in AZ, on the one hand, and, on the other, points in CO, NM, UT, OK and TX; and (6) *glass containers*, between points in AZ and CA.

Please direct status inquiries about the following to Team 5 at (202) 275–7289.

Volume No. OP5–215

Decided: May 5, 1983.

By the Commission, Review Board No. 2, Members Carleton, Williams and Ewing.

MC 167228, filed April 4, 1983. Applicant: SUPPORT SYSTEMS, INC., 5910 Winner Road, Kansas City, MO 64125. Representative: A. J. Schmidtlein (same address as applicant), (816) 483–9800. Transporting (1) *paper bags*, under continuing contract(s) with Percy Kent Bag Co., Inc., of Kansas City, MO, (2) *flour products*, under continuing contract(s) with C. H. Guenther & Son, Inc., d.b.a. Pioneer Flour Mills, of San Antonio, TX, and (3) *sauces*, under continuing contract(s) with Pace Picante, Inc., of San Antonio, TX, between points in the U.S. (except AK and HI).

Volume No. OP5–217

Decided: April 29, 1983.

By the Commission, Review Board No. 3, Members Krock, Joyce and Dowell.

MC 46219 (Sub-23), filed April 18, 1983. Applicant: STERNBERGER MOTOR CORP., 45–55 Pearson St., Long Island City, NY 11101. Representative: Jon F. Hollengreen, 1020 Pennsylvania Bldg., Pennsylvania Ave. and 13th St. NW., Washington, DC 20004, (202) 628–4600. Transporting *furniture and fixtures*, between points in the U.S. (except AK and HI).

MC 105269 (Sub-114), filed April 15, 1983. Applicant: GRAFF TRUCKING CO., INC., 2110 Lake St., P.O. Box 986, Kalamazoo, MI 49005. Representative: Edward Malinzak, 900 Old Kent Bldg., Grand Rapids, MI 49003, (616) 459–6121. Transporting *general commodities* (except classes A and B explosives, commodities in bulk, and household goods), between points in the U.S. (except AK and HI), under continuing contract(s) with James River Corporation, of Richmond, VA.

MC 138069 (Sub-21), filed April 14, 1983. Applicant: LUCIUS, INC., 8331 Pontiac, Commerce City, CO 80022. Representative: Lester G. Huskey (same address as applicant), (303) 289–2941. Transporting (1)(a) *such commodities* as are dealt in by grocery and food business houses and variety stores, (b) *oil and petroleum products*, and (c) *toys, games, and helium containers*, between points in the U.S. (except AK and HI) and (2) *paper and paper products*, between points in CA, IL, KY, and PA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 148849 (Sub-11), filed April 20, 1983. Applicant: EQUITABLE BAG COMPANY, INC., 45–50 Vandan St., Long Island City, NY 11101. Representative: Robert J. Gallagher, 1000 Connecticut Ave., NW., Suite 1200, Washington, DC 20036, (202) 785–0024. Transporting *general commodities* (except classes A and B explosives, and household goods), between points in the U.S. (except AK and HI), under continuing contract(s) with National Automotive & Rubber Marketing, Inc., of Huntington Woods, MI.

MC 154368 (Sub-2), filed April 20, 1983. Applicant: TRUC-WAY, INC., P.O. Box 8, Collingswood, NJ 08108. Representative: James H. Sweeney, P.O.

Box 9023, Lester, PA 19113, (205) 365–5141. Transporting *food and related products*, between points in the U.S. under continuing contract(s) with (1) Ocean Spray Cranberries, Inc., of Bordentown, NJ; (2) Sun Diamond Growers of California, of San Ramon, CA; and (3) Stokley-Van Camp, Inc., of Indianapolis, IN.

MC 160279 (Sub-7), filed April 21, 1983. Applicant: EXCEL TRANSPORTATION, INC., 2901 North Mead, P.O. Box 2519, Wichita, KS 67201. Representative: James T. Ferguson, 2155 North Mosley, P.O. Box 2519, Wichita, KS 67201, (316) 262–2066. Transporting *such commodities* as are dealt in by home improvement centers, between points in the U.S. (except AK and HI), under continuing contract(s) with E. E. Vliet & Company, of Wichita, KS.

MC 167499, filed April 18, 1983. Applicant: GEORGE H. TRUCK LEASING CO., INC., 2463 Soundview Court, Florissant, MO 63031. Representative: B. W. LaTourette, Jr., 11 South Meramec, Suite 1400, St. Louis, MO 63105, (314) 727–0777. Transporting *metal products*, between points in St. Louis County, MO, on the one hand, and, on the other, points in Kay County, OK, Pulaski County, AR, Davidson County, TN, Johnson County, KS, Marshall County, KY, Marion County, IN, and Williamson County, IL.

MC 167508, filed April 18, 1983. Applicant: D & G MELLO TRUCKING, INC., 927 Rocky Woods St., Taunton, MA 02780. Representative: Jeremy Kahn, Suite 733, Investment Bldg., 1511 K St. NW., Washington, DC 20005, (202) 783–3525. Transporting *liquid petroleum products*, between points in MA, RI, and NY, under continuing contract(s) with Agway Petroleum Corp., of Syracuse, NY.

MC 167509, filed April 18, 1983. Applicant: ALLIED TOWING SERVICE, INC., 5241 E. McNichols, Detroit, MI 48201. Representative: David E. Jerome, 436 N. Center St., Northville, MI 48167, (313) 348–4433. Transporting *transportation equipment*, between points in PA, WI, IL, IN, OH, MI, NY, KY, MO, TN, WV, and IA.

Volume No. OP5–220

Decided: May 6, 1983.

By the Commissioner, Review Board No. 1, Members Parker, Chandler and Fortier.

FF 688, filed April 26, 1983. Applicant: FRONTIER VAN LINES INTERNATIONAL, INC., 400 West 70th Ave., Suite 3, Anchorage, AK 99502. Representative: J. G. Dail, Jr., P.O. Box LL, McLean, VA 22101, 703–893–3050. As a freight forwarder in connection with the transportation of *used household goods, unaccompanied baggage*, and *used automobiles*, between points in the U.S.

MC 10029 (Sub-1), filed April 26, 1983. Applicant: ANN ARBOR WAREHOUSE COMPANY, d.b.a. GODFREY MOVING & STORAGE COMPANY, 2420 South Industrial Hwy., Ann Arbor, MI 48104. Representative: Rich W. Brown (same address as applicant), 313–769–4100. Transporting *household goods*, between points in MI, WI, IA, MO, IL, IN, KY, TN, OH, WV, VA, NC, MD, NJ, PA, NY, CT, MA, RI, DE, VT and DC.

MC 79658 (Sub-70), filed April 22, 1983. Applicant: ATLAS VAN LINES, INC., 1212 St. George Rd., P.O. Box 509, Evansville, IN 47711. Representative: Michael L. Harvey (same address as applicant), (812) 424–2222. Transporting *household goods, electronic equipment, aircraft parts, and display material*, between points in the U.S. (except AK and HI), under continuing contract(s) with Lockheed Corporation, of Burbank, CA.

MC 99328 (Sub-3), filed April 19, 1983. Applicant: BAILEY'S EXPRESS, INC., 61 Industrial Park Rd., Middletown, CT 06457. Representative: Jack L. Schiller, 111–56 76th Drive, Forest Hills, NY 11375, (212) 263–2078. 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 113459 (Sub-148), filed April 22, 1983. Applicant: H. J. JEFFRIES TRUCK LINE, INC., P.O. Box 94850, Oklahoma City, OK 73143. Representative: James W. Hightower, Allied Bank-Oak Cliff Bldg., Suite 301, 5801 Marvin D. Love Freeway, Dallas, TX 75237–2385, (214) 339–4108. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except AK and HI), under continuing contract(s) with Standard Oil Company of Chicago, IL, and its subsidiaries.

MC 144839 (Sub-2), filed April 18, 1983. Applicant: MURRAY'S EXPRESS, INC., Concord Industrial Park, South Main Street, Concord, NH 03301. Representative: Guy H. Postell, Suite 675, 3384 Peachtree Rd., NE., Atlanta, GA 30326, (404) 237–6472. 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 Avon Products, Inc., of New York, NY.

MC 151478 (Sub-2), filed April 21, 1983. Applicant: DOC'S CARTAGE CO., INC., 5027 W. 81st St., Burbank, IL 60459. Representative: James O'Grady, 8550 W. Golf Rd., Niles, IL 60648, (312) 827–6191. Transporting *general commodities* (except classes A and B explosives, commodities in bulk, and household goods), between Chicago, IL, on the one hand, and, on the other, points in IL, IN, OH, MI, WV, KY, TN, WI, MN, MO, IA, and PA.

MC 154489, filed April 22, 1983. Applicant: EMMETT HATCHER HAULING, INC., 24333 Southfield Rd., Suite 205, Southfield, MI 48075. Representative: William B. Elmer, P.O. Box 801, Traverse City, MI 49685–0801, (616) 941–5313. Transporting *commodities in bulk*, between points in AR, CO, IA, IL, IN, KS, KY, LA, MI, MN, MO, MT, NE, ND, NM, OH, OK, PA, SD, TX, WI, WV, and WY.

MC 164388, filed April 19, 1983. Applicant: FRANK O. WRIGHT d.b.a. PARKINSON T & T, 240 King St., Delta, CO 80416. Representative: Dale E. Isley, 50 S. Steele St., Suite 330, Denver, CO 80209, (303) 320–6100. Transporting *general commodities* (except classes A and B explosives, commodities in bulk) between points in CO.

MC 164998, filed April 21, 1983. Applicant: GENCARELLI OIL CO., INC., 110 Oak St., Westerly, RI 02891. Representative: Charles R. Reilly, 391 Davisville Road, North Kingstown, RI 02852, 401–884–0969. Transporting *petroleum, natural gas, and their products*, between points in Providence County, RI, on the one hand, and on the other, points in New London County, CT.

MC 164348, filed April 22, 1983. Applicant: MID–CONTINENTAL TANK LINES INC., 910 Meridian Road NE., P.O. Box 265 Station "T", Calgary, Alberta, Canada, T2H 2G9. Representative: Ben Froese (same address as applicant), (403) 248–1530. Transporting *sulfur*, between ports of entry on the international boundary line between the United States and Canada in MT, ID, and WA, on the one hand, and on the other, points in MT, ID, and WA.

MC 165399 (Sub-1), filed April 21, 1983. Applicant: L. S. TRUCKING, INC., 9003 Tara Blvd., Jonesboro, GA 30236. Representative: Philip L. Martin, 3537 Habersham at Northlake, P.O. Box 450107, Atlanta, GA 30345, (404) 939–9494. Transporting *clay, concrete, glass or stone products*, between points in the U.S., under continuing contract(s) with Armstrong Glass Company, Inc., of Atlanta, GA.

MC 165578, filed April 21, 1983. Applicant: CARL N. HATTON, d.b.a. CARL HATTON BUTANE COMPANY, Sequoyah Bldg. Suite C–1, P.O. Box 100,

Altus, OK 73521. Representative: Kim D. Parrish, 4420 N. Lincoln, Oklahoma City, OK 73105, (405) 424–5535. Transporting *petroleum, natural gas and their products*, between points in OK and TX.

MC 167528, filed April 19, 1983. Applicant: VENICE ENTERPRISES, INC., Venice Center, Venice Center, NY 13161. Representative: Michael R. Werner, 241 Cedar Lane, Teaneck, NJ 07666, (201) 836–1144. Transporting (1) *machinery* and (2) *food and related products*, between points in NY, NJ, RI, MA, PA, OH, WV, KY, TN, ND, IA, and NE, on the one hand, and on the other, points in the U.S. (except AK and HI).

MC 167548, filed April 20, 1983. Applicant: OGLESBY, INC., Route #14, Greenville, SC 29607. Representative: Larry Oglesby, P.O. Box 705, Mauldin, SC 29662, 803–963–8547. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in VA, NC, SC, GA, AL, and TN.

MC 167569, filed April 21, 1983. Applicant: MAPP VACUUM & TRUCKING SERVICE, INC., P.O. Box 1026, Brookhaven, MS 39601. Representative: Donald B. Morrison, P.O. Box 22628, Jackson, MS 39205, (601) 948–8820. Transporting *Mercer commodities* between points in AL, AR, FL, LA, MS, OK, and TX.

MC 167578, filed April 22, 1983. Applicant: ANSON SERVICE, LIMITED, 1726 West 5th Ave., Vancouver, B.C., Canada V6J 1P2. Representative: Wallace B. Farbo, P.O. Box 1181, Milton, WA 98354, (206) 241–2010. Transporting *building materials, millwork items, office furnishings, appliances, and construction equipment*, between points in the U.S. (except AK and HI), under continuing contract(s) with Doranson Systems, Inc., and J. R. Bezanson, Ltd., both of Vancouver, B.C., Canada.

MC 167589, filed April 22, 1983. Applicant: SUNBELT TRANSPORTATION SERVICES, INC., 3055 Watson St., Memphis, TN 38118–3097. Representative: John T. O'Connell, 521 S. LaGrange Rd., LaGrange, IL 60525, (312) 352–7220. Transporting *fans and related accessories*, between points in Shelby County, TN, on the the one hand, and on the other, points in the U.S. (except AK and HI), under continuing contract(s) with Robbins & Meyers, Inc., of Memphis, TN.

MC 154768 (Sub-4), filed April 25, 1983. Applicant: IOWA EXPRESS DISTRIBUTION, INC., 2165 N.W. 108th, Suite B, Des Moines, IA 50322. Representative: Harold W. Sternburg (same address as applicant), 515–278–5864. Transporting *soap and soap products*, (1) between points in IA, (2) between points in IA, on the the one hand, and, on the other, points in Douglas County, NE., and (3) between points in Douglas County, NE, and points in IA, on the the one hand, and, on the other, points in Rock Island County, IL, under continuing contract(s) with Desoto, Inc., of Des Plaines, IL.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-13080 Filed 5-13-83; 8:45 am]

BILLING CODE 7035-01-M

Motor Carrier; Permanent Authority Decision; Decision-Notice

Correction

In FR Doc. 83–9702 beginning on page 15971 in the issue of Wednesday, April 13, 1983, make the following correction:

On page 15975, middle column, fourth paragraph, MC 166149, Worth Industrial Equipment, Inc., in the first line, "(Sub-21)" should be deleted.

BILLING CODE 1505-01-M

[Finance Docket No. 30161]

Rail Carriers; the Chesapeake and Ohio Railway Co.—Abandonment Exemption—Allegan County, MI

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts the abandonment by the Chesapeake and Ohio Railway Company of a 0.90-mile line in Allegan County, MI, from the requirements of prior approval under 49 U.S.C. 10903 *et seq.* The exemption is subject to standard labor protection provisions.

DATES: This exemption shall be effective on June 15, 1983. Petitions to stay the effectiveness of this decision must be filed by May 26, 1983. Petitions for reconsideration must be filed by June 6, 1983.

ADDRESSES: Send pleadings referring to Finance Docket No. 30161 to:

(1) Rail Section, Room 5349, Interstate Commerce, Commission, Washington, DC 20423

(2) Petitioner's representative: Rene J. Gunning, 100 North Charles Street, Suite 2204, Baltimore, MD 21201.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289–4357 (D.C. Metropolitan area) or toll free (800) 424–5403.

Decided: May 6, 1983.

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

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-13046 Filed 5-13-83; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

[Directive No. 44]

Delegation of Authority Relating to Criminal Tax Cases (Including Authority To Approve and Decline Prosecution and Related Matters)

By virtue of the authority vested in me by Part O, Subpart N of Title 28 of the Code of Federal Regulations, particularly § 0.70, delegation of authority with respect to criminal tax cases within the cognizance of the Tax Division is hereby conferred as follows:

1. *Authority to Approve Criminal Proceedings.*

(a) *Unanimous Recommendation for Prosecution.* Except as hereinafter indicated, criminal tax cases referred to the Tax Division by the Internal Revenue Service and within the cognizance of the Tax Division can be approved for criminal proceedings by either the Chief; Special Litigation Counsel; Senior Assistant Chief or an Assistant Chief in charge of a Regional Unit; in the Criminal Section. *Provided,* that recommendations within the Criminal Section, including the recommendation by the docket attorney, unanimously propose criminal action, and the case is not considered by the approving official to warrant higher level consideration within the Tax Division.

In addition to the authority conferred in paragraph 1(a), the Chief; Special Litigation Counsel; Senior Assistant Chief or Assistant Chief in charge of a Regional Unit; in the Criminal Section is authorized to:

(b) Approve tax prosecutions, in accord with the authority and limitations contained in paragraphs 1(a), (e), and (f) in cases where the Criminal Section's recommendations are other than unanimous. *Provided,* that either an Assistant Chief, or a Reviewer has recommended prosecution.

(c) Authorize dismissal in direct referral cases as described in U.S.A.M. 6–2.230. *Provided,* notification is received from the appropriate United

States Attorney, in accord with the procedures described in U.S.A.M. 6–2.420, indicating why proceeding with prosecution is not believed advisable *and* the Assistant Chief or the Reviewer who acts on the matter does not recommend continuing the prosecution with attorneys from the Tax Division.

(d) Pass prosecution of the first year recommended for prosecution by the Internal Revenue Service in all cases received with less than seven (7) calendar months remaining before the expiration of the statute of limitations.

(e) *Criminal Proceedings Covered by this Delegation.* Except for such offenses described in the U.S.A.M., Title 6–2.220, as being under the general responsibility of the Criminal Division, and U.S.A.M., Title 6–2.230, concerning direct referral cases, the criminal proceedings encompassed by this delegation concern the initiation of prosecution for tax and/or tax-related violations, including charges described in 28 CFR 0.179 offenses defined in the Internal Revenue Code (Title 26, United States Code) and such offenses defined in Title 18 and Title 31, United States Code, as may be investigated by special agents of the Internal Revenue Service's Criminal Investigation Division in connection with enforcement of federal revenue laws, including 26 U.S.C. 7201–7207, 7210, 7215; 18 U.S.C. 286, 287, 1501–1511, 1621–1623; 31 U.S.C. 1058, 1059; and conspiracies to commit such offenses, including conspiracies in violation of 18 U.S.C. 371 to defraud the Government by impeding, impairing, obstructing, and defeating the lawful function of the U.S. Department of Treasury, Internal Revenue Service, in the ascertainment, computation, assessment, and collection of the revenue. Charges under 18 U.S.C. 1001 require the approval of either the Deputy Assistant Attorney General (Criminal Tax) or the Assistant Attorney General, Tax Division.

(f) *Selection of Charges and Matters Related to the Handling of Criminal Tax Cases.* The authority hereby delegated includes the authority to approve tax prosecutions based on the charges recommended by the Internal Revenue Service, or Criminal Section attorneys, or whatever tax and/or tax-related charges are deemed appropriate by the approving official. In addition, the authority to approve criminal proceedings as herein described includes the authority to designate, in accord with Tax Division policy and practice, potential defendants, and to select charges, approve plea agreements, and make determinations as to the Tax Division's position concerning (1) whether dual prosecution considerations may be applicable in a criminal tax case in which the Revenue Service requests advice, and (2) whether civil action proposed by the Revenue Service should be undertaken during the pendency of a criminal tax case. In addition, this delegation includes the authority to execute correspondence in the name of the Chief, Criminal Section, transmitting cases to the appropriate United States Attorney's office requesting that prosecution be initiated in accord with such approval. Authority to execute correspondence in the name of the Chief, Criminal Section, is also delegated to Assistant Chiefs and Reviewers in the Criminal Section. The authority to execute correspondence specifically relating to ministerial matters in the processing and handling of cases including, when appropriate, the scheduling and confirmation of conferences; requesting of status reports; and the processing of closing letters, in cases in which pleas or convictions have been obtained; is hereby delegated to Criminal Section attorneys in all cases assigned to them.

2. *Authority Concerning Grand Jury Matters.*

(a) *Recommendation for Grand Jury Investigation Originating in Criminal Section.* Except in cases they considered to warrant higher level consideration within the Tax Division, the Chief; Special Litigation Counsel; Senior Assistant Chief or an Assistant Chief in charge of a regional Unit; in the Criminal Section can approve the initiation of a grand jury investigation concerning potential tax and/or tax-related violations in cases referred from the Revenue Service with a prosecution recommendation if such official believes that grand jury inquiry is warranted prior to a decision being made on the prosecutorial merits of such case.

(b) *Joinder of Tax Aspects with Ongoing Non-tax Grand Jury Investigation.* The authority to approve requests seeking to initiate a grand jury investigation into matters concerning tax and/or tax-related violations, as part of an already ongoing non-tax grand jury investigation, made or initiated by on on behalf of officers within the Department of Justice is hereby delegated to the Chief; Special Litigation Counsel; Senior Assistant Chief or an Assistant Chief in charge of a Regional Unit; in the Criminal Section. *Provided*, the request in not considered to warrant higher level consideration within the Tax Division.

(c) *IRS Generated Requests for Grand Jury Investigation.* The authority to approve or disapprove initiation of a grand jury investigation concerning potential tax and/or tax-related violations in cases referred to the Tax Division from the Revenue Service without a prosecution recommendation, or with a recommendation for initiation of a grand jury investigation, in which the Revenue Service has generated such referral is hereby delegated to the Deputy Assistant Attorney General (Criminal Tax).

(d) *Scope of Grand Jury Investigation Concerning Tax Matters.* The delegation in paragraphs 2. (a), (a) and (c) regarding the approval of grand jury investigations concerning potential tax and/or tax-related violations includes the authority to designate the subjects and scope of such grand jury inquiry and the tax years considered to warrant investigation.

3. *Additional Authority Delegated to the Chief, Criminal Section.*

In addition to the authority conferred in paragraphs 1 and 2, the Chief, Criminal Section, is authorized to:

(a) Approve Tax prosecutions, in accord with the authority and limitations contained in paragraphs 1 (a), (e), and (f) in cases where the Criminal Section's recommendations are other than unanimous.

(b) Decline prosecution in cases involving unanimous recommendations to deline prosecution by the Criminal Section Docket attorney *and* either a Special Litigation Counsel; a Senior Assistant Chief or Assistant Chief in charge of a Regional Unit; an Assistant Chief or Reviewer; in the Criminal Section. *Provided* the case in not considered to warrant higher level consideration within the Tax Division.

(c) Approve or disapprove requests to apply for search warrants relating to searches for evidence that a tax offense has been committed in accord with the procedures described in U.S.A.M. 6–2.330. Provided the request does not require higher level consideration within the Department of Justice pursuant to the provisions of 28 CFR Part 59.

(d) Decline prosecution or approve prosecution (reversing the earlier decision to decline prosecution). *Provided*, that the case was not acted on at a higher level within the Tax Division when previously considered *and* there is then a unanimous recommendation within the Criminal Section which includes a recommendation by either the Senior Assistant Chief or an Assistant Chief in Charge of a Regional Unit.

(e) Approve or disapprove recommendations made in cases forwarded to the Chief, Criminal Section, in accord with the procedures described in paragraph 1(c) concerning whether prosecution should continue in

a direct referral case notwithstanding notification from the appropriate United States Attorney indicating why proceeding with prosecution is not believed advisable.

(f) Approve or disapprove recommendations to pass prosecution of the first year in cases received from the Revenue Service with less than seven (7) calendar months remaining before the expiration of the statute of limitations and forwarded to Chief, Criminal Section, when warranted under the procedures set forth in paragraph 1(d).

4. *Additional Authority Delegated to the Deputy Assistant Attorney General (Criminal Tax).*

In addition to the authority conferred in paragraphs 1 and 2, the Deputy Assistant Attorney General (Criminal Tax) is authorized to:

(a) Approved and decline tax prosecution in cases forwarded to that Deputy Assistant Attorney General from the Chief, Criminal Section, in accord with procedures heretofore stated. *Except* when in the opinion of that Deputy Assistant Attorney General, the case should receive the personal consideration of the Assistant Attorney General, Tax Division, or where such consideration has been requested by the United States Attorney to whom the case would be referred.

(b) Approve or disapprove recommendations in cases forwarded to that Deputy Assistant Attorney General from the Chief, Criminal Section, concerning whether tax prosecutions which have been previously authorized shall continue, be declined, or be dismissed, if the determination is in concurrence with a recommendation from the appropriate United States Attorney's office.

(c) Approve or disapprove recommendations in cases forwarded to that Deputy Assistant Attorney from the Chief, Criminal Section, concerning whether prosecution should be initiated or declined in a case in which prosecution was previously declined when, after reconsideration, a decision on the prosecutorial merits cannot be made under the provisions of paragraph 3.(d).

5. *Scope and Effect of this Delegation.*

(a) This delegation supersedes Tax Division Directive No. 37 and all other delegations of authority to approve criminal proceedings or decline prosecutions for tax purposes previously issued.

(b) Except as authorized by this delegation, authority to (1) approve or disapprove the initiation of criminal proceedings for tax and/or tax-related violations; or (2) take any action, the effect of which would be to preclude prosecution for such violations, including but not limited to entering into agreements not to prosecute and approving requests to apply for court orders compelling the testimony of witnesses under 18 U.S.C. 6003(b), 6004, and 28 CFR 0.175 (b) and (c); or (3) execute a written request for a tax return or return information to be obtained from the Internal Revenue Service for tax administration purposes in accord with 26 U.S.C. 6103 (h)(2) and (3)(B), remains vested in the Assistant Attorney General in charge of the Tax Division, subject to the general supervision of the Attorney General and under the direction of the Deputy Attorney General as provided in 28 CFR 0.70. In addition, authority to alter any action taken pursuant to the delegations contained in paragraphs 1 through 4, inclusive, is retained by the Assistant Attorney General in charge of the Tax Division, in accord with the authority contained in 28 CFR 0.70.

(c) In the event a Tax Division official designated herein other than the Assistant Attorney General, Tax Division, or Deputy Assistant Attorney General (Criminal Tax) is recused from acting on a particular case and there is no other official of similar rank available to act in a particular case, then the next higher ranking official shall be the appropriate official to act on such case. When either or both the Assistant Attorney General, Tax Division, or Deputy Assistant Attorney General (Criminal Tax) are recused in a particular case, a ranking Tax Division official will be designated to act as either the Assistant Attorney General or Deputy Assistant Attorney General (Criminal Tax) as the need arises for purposes of that particular case in accord with the authority contained in 28 CFR 0.132(e).

(d) In situations in which the Assistant Attorney General, Tax Division, designates an individual to be "Acting" in the capacity of an official specified herein the individual designated as "Acting" shall have the same authority as herein delegated to that official. *Provided*, the "Acting" official has not previously acted on the matter then being considered, in a subordinate capacity. 28 CFR 0.132 (d) and (e).

Approved to take effect on May 9, 1983.

Glenn L. Archer, Jr.,

Assistant Attorney, General Tax Division.

[FR Doc. 83-13032 Filed 5-13-83; 8:45 am]

BILLING CODE 4410-01-M

Proposed Consent Decree for Violations of The Clean Water Act and Two NPDES Permits by the City of Fort Smith, Arkansas at Their Sewage Treatment Plants

In accordance with Departmental policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that on April 28, 1983, a proposed consent decree in *United States* v. *City of Fort Smith and the State of Arkansas*, Civil Action No. 83-2121, was lodged with the United States District Court for the Western District of Arkansas.

The proposed consent decree requires the City of Fort Smith to submit for EPA approval a correction plan to bring its two sewage treatment plants, the Massard Plant and P Street Plant, into compliance with the Clean Water Act, and to implement the plan as approved. In addition, the consent decree requires the defendant to pay penalties.

The Department of Justice of will receive, for a period of thirty (30) days from the date of this notice, written comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *City of Fort Smith*, D.J. No. 90-5-1-1-1782.

The proposed consent decree may be examined at the Office of the United States Attorney, Western District of Arkansas, 6th and Rogers Street, Fort Smith, Arkansas 72901, the Environmental Protection Agency, Region VI, 1201 Elm Street, Dallas, Texas 75279 and the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1521, Ninth Street and Pennsylvania Avenue, NW., Washington, D.C. 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Divison of the Department of Justice. In requesting a copy, please enclose a check or money order in the amount of $1.90 (10 cents per page reproduction charge) payable to the Treasurer of the United States.

Carol E. Dinkins,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 83-13029 Filed 5-13-83; 8:45 am]

BILLING CODE 4410-01-M

Proposed Consent Decree in an Action To Enjoin Discharge of Water Pollutants

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that on April 7, 1983, a proposed Consent Decree in *United States* v. *Temple-Eastex, Inc.*, Civil Action No. TY–81–108–CA, was lodged in the United States Court for the Eastern District of Texas.

The proposed decree requires that Temple-Eastex undertake the necessary water pollution control improvements to bring its Diboll, Texas facility into compliance with its National Pollutant Discharge Elimination System Permit. The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments related to the proposed decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530 and refer to *United States* v. *Temple-Eastex*, DJ Ref. No. 90–5–1–1–1461.

The proposed consent decree may be examined at the Region VI Office of the Environmental Protection Agency, 1201 Elm Street, Dallas, Texas 75270 and at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1515, 10th and Pennsylvania Avenue, NW., Washington, D.C. 20530. A copy of the proposed decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice. All requests for copies should be accompanied by a check in the amount of $3.00 (10 cents per page reproduction costs) made payable to the Treasurer of the United States.

Mary L. Walker,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 83-13031 Filed 5-13-83; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Judgment Order Pursuant to Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that on April 28, 1983 a proposed Judgment Order in *United States* v. *Inland Steel Company*, Civil Action No. H81–216, was lodged with the United States District Court for the Northern District of Indiana. Motion for entry of the proposed Judgment Order was made by defendant, Inland Steel Corporation. The United States has preliminarily indicated that it does not oppose entry of the Judgment Order, conditional upon the publication of this notice, and the evaluation of any comments received in response to this notice. The proposed Order provides for the payment of a civil penalty and installation of air pollution control equipment at Inland's blast furnaces, BOF Shop, Open Health Shop, Electric Arc Furnace, Coke Batteries, and certain sources of fugitive dust.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Order. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States of America* v. *Inland Steel Company*, D.J. Ref. 90–5–2–1–445.

The proposed Judgment Order may be examined at the office of the United States Attorney, Northern District of Indiana, 507 State Street, Hammond, Indiana, and at the Region V Office of the U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois. Copies of the Judgment Order may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1644, Ninth Street and Pennsylvania Avenue, NW., Washington, D.C. 20530. A copy of the proposed Judgment Order may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $2.80 (10 cents per page reproduction charge) payable to the Treasurer of the United States.

Carol E. Dinkins,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 83-13088 Filed 5-13-83; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

United States v. GTE Corporation; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (b) through (h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement, as set forth below, have been filed with the United States District Court for the District of Columbia, in *United States v. GTE Corporation*, Civil Action No. 83–1298.

The complaint alleged, among other things, that the acquistion would violate Section 7 of the Clayton Act because it could substantially lessen competition in the provision of intercity telecommunications services, and that GTE's expansion through its regulated telephone companies into the information services field would create a substantial probability of anticompetitive conduct in violation of Section 2 of the Sherman Act.

The proposed Final Judgment would require that (1) GTE maintain total separation, in assets, operations and personnel, between the acquired companies and all GTE local telephone operating companies, (2) GTE offer equal and nondiscriminatory exchange access, on an unbundled, tariffed basis, to all long-distance telephone carriers and information service providers and (3) any information services offered by a GTE local telephone company be offered only through an entity within the telephone company kept separate from its regulated operations. The proposed decree would further prohibit GTE's local telephone companies from providing intercity telecommunications services outside defined areas, while permitting those companies to utilize, subject to some conditions, their existing intercity facilities.

Comments to the Department regarding the proposed decree are invited from the public. The comment period under the Tunney Act typically runs for a period of sixty days. If the Court grants a request submitted by the Department, the public comment period will not expire until twenty days after a decision by the Federal Communications Commission on GTE's application to acquire the Southern Pacific telecommunications subsidiaries, but in no event, however, will the comment period be less than sixty days from the date of necessary publications to be made in the **Federal Register**. GTE cannot consummate the proposed acquisition unless it receives the approval of the FCC. Comments concerning the proposed Final Judgment should be sent to Stanley M. Gorinson, Chief, Special Regulated Industries Section, Antitrust Division, U.S. Department of Justice, Washington, D.C. 20530.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

U.S. District Court, for the District of Columbia

Stipulation

United States of America: Plaintiff v. *GTE Corporation*, Defendant

Civil Action N. 83–1298

Filed: May 4, 1983.

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (b)–(h), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on the defendant and by filing that notice with the Court.

2. In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall be without prejudice to plaintiff or defendant in this or any other proceeding.

For the Plaintiff: William F. Baxter, *Assistant Attorney General;* Ronald G. Carr, *Deputy Assistant Attorney General;* Mark P. Leddy, Stanley M. Gorinson, Jeffrey Blumenfeld, Richard O. Levine, *Attorneys, Antitrust Division, U.S. Department of Justice;* Charles F. Parthum III, Linda S. Chapman, Andrew C. Gilbert, Glenn B. Manishin, Eneid A. Francis, *Attorneys, Antitrust Division, U.S. Department of Justice, Washington, D.C. 20530, (202) 724–6693.*

For the Defendant:

George E. Shertzer,

General Counsel and Senior Vice President, GTE Corporation, Stamford, Connecticut 06904.

U.S. District Court for the District of Columbia

Final Judgment

United States of America, Plaintiff v. *GTE Corporation,* Defendant.

Plainfiff, the United States of America, having filed its complaint herein on May 4, 1983; the parties, by their respective attorneys, having consented to the entry of this Final Judgment; and without this Final Judgment constituting any evidence or admission by any party with respect to any issue of fact or law herein;

Now, therefore, before the taking of any testimony, without trial or adjudication of any issue of fact or law, and upon the consent of the parties, it is hereby

Ordered, adjudged, and decreed as follows:

I

This Court has jurisdiction over the parties and the subject matter of this action. The complaint states a claim upon which relief may be granted against the defendant under Section 2 of the Sherman Act (15 U.S.C. 2) and under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II

As used in this Final Judgment:

A. "Acquired entities" means the stock and assets acquired by GTE from Southern Pacific Company, including but not limited to Southern Pacific Communications Company and Southern Pacific Satellite Company, and shall also include any assets transferred to or from such entities, or any new entity created pursuant to Paragraph IV(D) of this Final Judgment.

B. "Affiliate" or "affiliates" means any organization or entity in which, directly or indirectly, GTE has any ownership or equity interest or control.

C. "AT&T" means American Telephone and Telegraph Company and the affiliates of AT&T. "Affiliates of AT&T" means any organization or entity, including Western Electrjc Company, Incorporated, Bell Telephone Laboratories, Incorporated, and American Bell, Incorporated, that is under direct or indirect common ownerhip with or control by AT&T or is owned or controlled by another affilaite. "Interexchange telecommunications services or information services of AT&T" shall include interexchange telecommunications services and information services of GTE provided jointly or on a joint through basis with or for AT&T or on a concurring tariff basis with such services of AT&T.

D. "Bell Operating Companies" and "BOCs" means the corporations listed in Appendix C of this Final Judgment, their successors and assigns, and any entity directly or indirectly owned or controlled by a BOC or affiliated through substantial common ownership.

E. "Carrier" means any person deemed a carrier under the Communications Act of 1934 or amendments thereto, or, with respect to intrastate telecommunications, under the laws of any state.

F. "Customer premises equipment" means equipment employed on the premises of a person (other than a carrier) to originate, route, or terminate telecommunications, but does not include equipment used to multiplex, maintain, or terminate access lines.

G. "Exchange access" means the provison of exchange services for the purpose of originating or terminating interexchange telecommunications. Exchange access services include any activity of function performed by a GTOC in connection with the origination or termination of interexchange telecommunications, including but not limited to the provision of network control signalling, answer supervision, automatic calling number identification, carrier access codes, directory services, testing and maintenance of facilities; and the provision of information necessary to bill customers. Such services shall be provided by facilities in an exchange or serving area for the transmission, switching, or routing, within the exchange or serving, of interexchange traffic originating or terminating within the exchange or serving area, and, except as provided in Paragraph A(2) of Appendix B of this Final Judgment, shall include switching traffic within the exchange area above the end office and delivery and receipt of such traffic at a point or points within an exchange or serving area designated by an interexchange carrier for the connection of its facilities with those of the GTOC. Such connections, at the option of the interexchange carrier, shall deliver traffic with signal quality and characteristics equal to that provided to similar traffic of AT&T or any IOC, including equal probability of blocking, based on reasonable traffic estimates supplied by each interexchange carrier. Exchange services for exchange access shall not include the performance by any GTOC of interexchange traffic routing for any interexchange carrier, except that tariffed routing of traffic among multiple points of presence designated by an interexchange carrier (solely at the option of such carrier) within an exchange or serving area based on the destination of such traffic outside a GTOC's facilities (but not routing of traffic among trunk groups from an end office or access tandem to a point of presence or any routing beyond such points of presence) shall not be considered interexchange traffic, routing. There shall not be more than one point of presence of any interexchange carrier at any physical location.

H. "Exchange area" or "exchange" means those geographic areas established by a GTOC within which the GTOC has the facilities and capability (on the schedule set forth in Paragraph A of Appendix B of this Final Judgment) to provide traffic switching above and offices and delivery and receipt of such traffic at a point or points designated by an interexchange carrier within such exchange areas for the connection of its facilities with those of the GTOC. Additional or different exchange areas shall be established by the GTOCs in the future, with the approval of the Department of Justice and the court, when and where the foregoing criteria are met. No later than July 5, 1983, GTE shall submit to the Department of Justice for its approval, and file with the Court, a list of its proposed exchange areas. In addition to the foregoing, each GTOC exchange area shall meet the following criteria:

1. Any such exchange area shall encompass one or more contiguous local exchange areas serving common social, economic, or other purposes, even where such configuration transcends municipal or other local governmental boundaries, and shall take into consideration BOC exchange areas and associated serving areas approved by the Court in *United States* v. *Western Electric Co.,* No. 82-0192 (D.D.C.);

2. No such area which includes part or all of one metropolitan statistical area (or a consolidated statistical area, in the case of densely populated states) shall include a substantial part of any other metropolitan statistical area (or consolidated statistical area, in the case of densely populated states), unless the Court shall allow; and

3. Except with approval of the Court, no exchange area located in one state shall include any point located within another state.

I. "Exchange telecommunications ' means:

1. Telecommunications between points within an exchange or serving area;

2. Telecommunications between or among a point or points within a GTOC exchange or serving area and either

(a) A point or points within another GTOC exchange or serving area,

(b) A point or points within the serving area of any IOC, or

(c) A point or points within an exchange area of a BOC (as defined in the Modified Final Judgment in *United States* v. *Western Electric Co.*, No 82-0192 (D.D.C.)),

If the GTOC exchange or serving area(s) and the IOC serving area have been associated with the BOC exchange area pursuant to an order of the Court in *United States* v. *Westen Electric Co.*, No. 82-0192 (D.D.C.); and

3. Telecommunications between a point or points within a GTOC exchange or serving area and a point or points within an IOC serving area which has been associated with such GTOC exchange or serving area with the approval of the Department of Justice as permitted by Paragraph II(P) of this Final Judgment.

J. "GTE" means defendant GTE Corporation and its affiliates.

K. "GTE Operating Companies" and "GTOCs" mean the corporations listed in Appendix a of this Final Judgment, their successors and assigns, any entity hereafter acquired by GTE that provides any regulated wireline exchange telecommunications and exchange access services in a manner similar to that of a GTOC, and any entity directly or indirectly owned or controlled by a GTOC or affiliated through substantial common ownership, but shall not include GTE Corporation or any affiliate of GTE not having an ownership interest in a GTOC.

L. "Independent Operating Company" and "IOC" mean any carrier, other than AT&T or any BOC or GTOC, providing exchange telecommunications and exchange access services.

M. "Information" means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or other symbols.

N. "Information access" means the provision of specialized exchange telecommunications services by a GTOC in an exchange or serving area in connection with the origination, termination, transmission, switching, forwarding, or routing of telecommunications traffic to or from the facilities of a provider of information services. Such specialized exchange telecommunications services include, where necessary, the provision of network control signalling, answer supervision, automatic calling number identification, carrier access codes, testing and maintenance of facilities, and the provision of information necessary to bill customers.

O. "Information service" means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information which may be conveyed via telecommunications, except that such service does not include (1) any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service, or (2) the provision of time, weather, and such other similar audio services that are offered by any GTOC as of the date of entry of this Final Judgment.

P. "Interexchange telecommunications" means telecommunications between a point or points located in one exchange or serving area (as defined herein or as established by a BOC pursuant to the Modified Final Judgment in *United States* v. *Western Electric Co.*, No. 82-0192 (D.D.C.)) and a point or points located in one or more other such areas or a point outside such an area; provided, however, that telecommunications between or among a point or points within a GTOC exchange or serving area and either

(1) A point or points within another GTOC exchange or serving area,

(2) A point or points within the serving area of any IOC, or

(3) A point or points within an exchange area of a BOC (as defined in the Modified Final Judgment in *United States* v. *Western Electric Co.*, No. 82-0192 (D.D.C.)),

If the GTOC exchange or serving area(s) and the IOC serving area have been associated with the BOC exchange area pursuant to an order of the Court in *United States* v. *Western Electric Co.*, No. 82-0192 (D.D.C.), shall not be interexchange telecommunications; and privided further that, with the approval of the Department of Justice, a GTOC may associate the serving areas of other IOCs with its exchange or serving areas, and in such cases telecommunications between a point or points within the GTOC exchange or serving area and a point or points within the associated IOC serving area shall also not be interexchange telecommunications.

Q. "Person" means any individual, partnership, firm, corporation, association, or other business or legal entity.

R. "Serving area" means (1) a geographic area, not within an exchange area, in which a GTOC does not have the facilities and capability identified in Paragraph II(H) but in which it provides exchange telecommunications and exchange access services, provided that all GTOC geographic areas associated with a single BOC exchange area pursuant to an order of the Court in *United States* v. *Western Electric Co.*, No. 82-0192 (D.D.C.), may be combined into a single GTOC serving area, and (2) a geographic area in which an IOC provides exchange telecommunications and exchange access services.

S. "Technical information" means intellectual property of all types, including, without limitation, patents, copyrights, and trade secrets, relating to planning documents, designs, specifications, standards, and practices and procedures, including employee training.

T. "Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received, by means of electromagnetic transmission, with or without benefit of any closed transmission medium, including all instrumentalities, facilities, apparatus, and services (including the collection, storage, forwarding, switching, and delivery of such information) essential to such transmission.

U. "Telecommunications service" means the offering for hire of telecommunications facilities, or of telecommunications by means of such facilities.

V. "Transmission facilities" means equipment (including without limitation cable, microwave, satellite, and fiber optics) that transmits information by electromagnetic means or which directly support such transmission.

III

The provisions of this Final Judgment shall be binding upon GTE, its successors and assigns, officers, directors, agents, employees, and attorneys, and upon any person in active concert or participation with any of them who receives actual notice of this Final Judgment by personal service or otherwise, except that this Final Judgment shall not apply to any GTOC, or any portion thereof, as to which GTE may hereafter sell, transfer, or otherwise dispose of its interests, both direct and indirect, to any non-affiliated person.

IV

A. GTE shall maintain total separation between the acquired entities and GTE as follows:

1. No GTOC shall directly or indirectly transfer to or obtain from the acquired entities any assets, operations, or line of business, except as provided in Paragraphs IV(D) and IV(E);

2. GTE shall not, under any circumstances, maintain for the acquired entities and any GTOC (a) common directors, officers, or employees (other than the Chief Executive Officer and President of GTE Corporation), (b) common facilities or assets, or (c) common books of accounts, costs, or expenditures;

3. In no event shall GTE directly or indirectly provide to, or utilize for the benefit of, the acquired entities any proprietary GTOC telecommunications information, including but not limited to non-public GTOC customer information or non-public network engineering information;

4. Neither a GTOC, nor the Telephone Operations Group of GTE Service Corporation or its successors, shall directly or indirectly provide any administrative, engineering, research and development, or similar services to the acquired entities, nor shall the acquired entities directly or indirectly provide any such services to any GTOC or such Telephone Operations Group (or its successors);

5. All financing of the acquired entities shall be provided directly by GTE Corporation, any financing affiliate wholly owned by GTE, or by unaffiliated sources;

6. The GTOCs and the acquired entities shall not jointly provide telecommunications or information services or jointly own the assets used to provide such services; and

7. The acquired entities shall (a) obtain all services, information, and products from other GTE affiliates (other than the the GTOCs or the Telephone Operations Group of GTE Service Corporation or its successors) only pursuant to contracts, and on terms and conditions no more favorable than such services, information, and products are offered to the GTOCs, and (b) bear the fully allocated cost of any services, information, and products obtained from any such GTE

affiliate that are not offered by that affiliate to the GTOCs.

B. No officer or employee of a GTOC or any officer or employee of GTE who has direct or indirect managerial or operational authority over a GTOC shall also have any such authority with respect to the acquired entities, provided, however, that this requirement shall not apply to the Chief Executive Officer and the President of GTE Corporation.

C. The acquired entities may not be identified with, nor may their services be marketed or identified in connection with, any GTOC or the services offered by any GTOC, except that a GTOC may inform its subscribers in a non-discriminatory manner of the services offered by interexchange carriers. Nothing contained herein shall prevent the acquired entities and the GTOCs from each separately being identified with GTE.

D. Nothing in Paragraphs IV(A) or IV(B) shall prohibit GTE from:

1. Transferring to the acquired entities the assets, stock, operations, or telecommunications or information services of:

(a) GTE Satellite Corporation;

(b) GTE Telenet Incorporated;

(c) Any GTE affiliate which provides only interexchange telecommunications or information services, customer premises equipment (but not the manufacture thereof or research and development therefor), or unregulated exchange telecommunications or information services;

(d) Any GTE affiliate not providing goods or services to a GTOC; or

(e) Any other GTE affiliate subject to the approval of the Department of Justice; or

2. Consolidating in a newly created affiliate the assets, stock, operations, or services of the acquired entities, and:

(a) GTE Satellite Corporation;

(b) GTE Telenet Incorporated;

(c) Any GTE affiliate which provides only interexchange telecommunications or information services, customer premises equipment (but not the manufacture thereof or research and development therefor), or unregulated exchange telecommunications or information services;

(d) Any GTE affiliate not providing goods or services to a GTOC; or

(e) Any other GTE affiliate subject to the approval of the Department of Justice.

3. Any assets, stock, operations, or services of GTE Satellite Corporation, GTE Telenet Incorporated, or such other GTE affiliate transferred or consolidated pursuant to Paragraphs IV(D)(1) or IV(D)(2) shall not include any that were at any time owned, operated, conducted, or offered by any GTOC as a regulated exchange or exchange access service.

E. Nothing in Paragraph IV(D) shall prohibit GTE from transferring any unregulated exchange telecommunications services or customer premises equipment from the GTOCs.

F. GTE shall submit an annual written report to the Department of Justice, accompanied by an affidavit of its Chief Executive Officer and of its President, setting out a summary of the transactions described by this Section IV and attesting to GTE's compliance with this Final Judgment, and shall provide all further information concerning such transactions as may be requested by the Department of Justice.

V

A. Subject to Appendix B of this Final Judgment, each GTOC shall provide to all interexchange carriers and information service providers exchange access, information access, and exchange services for such access on an unbundled, tariffed basis, that is equal in type, quality, and price for all interexchange carriers and information service providers, including any information services of a GTOC.

B. No GTOC shall discriminate between the interexchange telecommunications services, information services, or customer premises equipment of GTE (including any information services of a GTOC) and the interexchange telecommunications services, information services, or customer premises equipment of other persons in the:

1. Establishment and dissemination of technical information and interconnection standards;

2. Interconnection and use of the GTOC's exchange telecommunications or exchange access services and facilities or in the charges for each element of service; and

3. Provision of new exchange access and information access services and the planning for and implementation of the construction or modification of facilities used to provide exchange access and information access.

C.1. No GTOC shall provide interexchange telecommunications services or own jointly with GTE or any other person facilities that are used to provide such services, provided that nothing in this Final Judgment shall prohibit Hawaiian Telephone Company and General Telephone Company of Alaska from providing telecommunications services between Hawaii and Alaska, respectively, and points outside of the United States, and owning the assets necessary to provide such services.

2. Notwithstanding Paragraph V(C)(1), a GTOC's capacity for interexchange switching and interexchange transmission in facilities in service on January 1, 1984, or in a GTOC's construction program as of January 1, 1983 and in service by January 1, 1987, may be leased by the GTOC to any interexchange carrier (or any successor) with which such GTOC was, as of January 1, 1983, providing interexchange telecommunications services jointly or on a joint through or concurring tariff basis, for the provision of interexchange telecommunications services by such carrier. Any such leases shall ensure that the GTOC retains control of sufficient switching and transmission capacity to provide exchange telecommunications and exchange access services in accordance with the requirements of this Final Judgment.

3. Nothing contained herein shall prohibit a GTOC, in any state in which it has assets subject to Paragraph V(C)(2) for which it has not recovered its capital investment and for which the leases described in Paragraph V(C)(2) are not in effect, from replacing existing agreements with the BOCs with an agreement with an interexchange carrier (other than the acquired entities) that will permit the recovery of the net book value of such capital investment and the costs thereof, including a return on debt or equity, so long as that agreement terminates when such net book value has been recovered.

4. In the event that the arrangements described in Paragraphs V(C)(2) and V(C)(3) are not in effect, each GTOC shall make its interexchange routing and transmission capacity provided by assets subject to Paragraph V(C)(2) available to all interexchange carriers on non-discriminatory terms and conditions, and may expand or modernize (but not replace) such interexchange routing and transmission facilities if it offers to make available such expanded or modernized capacity to all interexchange carriers on non-discriminatory terms and conditions.

5. Nothing in Paragraphs V(C)(2), V(C)(3), or V(C)(4) shall preclude, either explicitly or implicitly, any GTOC or GTE from pursuing appropriate remedies before regulatory bodies and elsewhere to recover the GTOC's financial investment in the assets subject to Paragraph V(C)(2).

D. 1. No GTOC shall provide information services or own jointly with GTE or any other person facilities that are used to provide such services.

2. Notwithstanding Paragraph V(D)(1), a GTOC may provide information services through a separate entity (either an incorporated subsidiary or an unincorporated division having separate books of account and reporting directly to the chief operating officer of the GTOC) that obtains from the GTOC telecommunications services, telecommunications facilities (including the right to co-locate its equipment in buildings used to provide exchange telecommunications), and billing services, only to the extent that such services and facilities are made available to other persons pursuant to tariffed and unbundled schedules of charges and in accordance with the requirements of Paragraph V(B), and obtains adminstrative and other services (including the use of GTOC maintenance and installation personnel) from the GTOC (a) only on the same terms that such services are obtained by non-affiliated persons, and (b) in other cases only at fully allocated costs. No such separate entity shall to any extent own or control facilities used to provide regulated exchange telecommunications or exchange access services, have personnel who simultaneously market both regulated exchange telecommunications or exchange access services and information services, or directly or indirectly obtain proprietary GTOC marketing, customer, or network engineering information.

3. The limitations of Paragraphs V(D)(1) and V(D)(2) shall expire:

(a) Five (5) years after entry of this Final Judgment, unless one (1) year prior thereto the Department of Justice applies to the court for an extension of the limitations or for other relief as to one or more categories of information services, and the court thereafter finds by a preponderance of the evidence that there is a substantial danger that, without the continuance of the limitations or the

imposition of further relief, competition in the relevant information service in any exchange or serving area will be materially lessened, taking into account, without limitation, the development of competition in the provision of the relevant information sevice and the development of competition and potential competition in the provision of exchange telecommunications facilities or services. If the Court so finds, the limitations or such further relief as the Court may order shall continue for such period as the Court may determine as to such service or services in those exchange or serving areas; or

(b) Whenever and to the extent that a BOC is relieved of the provisions of Section II(D) of the Modified Final Judgement in *United States* v. *Western Electric Co.*, No. 82-0192 (D.D.C.)., either (i) throughout a state, in which case the limitations of Paragraphs V(D)(1) and V(D)(2) shall not apply to the information services of a GTOC within that state, or (ii) in any BOC exchange area, in which case the limitations of Paragraphs V(D)(1) and V(D)(2) shall not apply to the information services of a GTOC within any GTOC exchange or serving area if telecommunications between such GTOC exchange or serving area and such BOC exchange area are not interexchange telecommunications.

4. Neither failure by the United States to institute a proceeding pursuant to Paragraph V(D)(3) nor findings made by the Court in any such proceeding shall prevent, or constitute an estoppel in, any subsequent action by the United States under the antitrust laws.

E.1. Prior to the effective date of this Final Judgment, GTE shall submit to the Department of Justice proposed procedures for ensuring compliance with the requirements of Section IV of this Final Judgment;

2. Within nine (9) months after the effective date of this Final Judgment, GTE shall submit to the Department of Justice procedures for ensuring compliance with the requirements of section V and Appendix B of this Final Judgment.

VI

A. For ten (10) years after the effective date of this Final Judgment, except with the approval of the Department of Justice or of this Court, GTE shall not acquire a direct or indirect equity interest in (or the equivalent thereto), whether or not controlling, or the assets of, any carrier, other than the acquired entities, providing interexchange telecommunications services in the United States.

B. Paragraph VI(A) shall not prohibit GTE's insurance subsidiaries, if any, and the pension and profit-sharing trusts of GTE and its subsidiaries, from acquiring, or holding for investment purposes, interest in the assets, stock, or other beneficial interests in any organization to the extent permitted by the laws governing investments of insurance companies and pension and profit-sharing trusts.

C. Paragraph VI(A) shall not prohibit the acquisition by GTE, by purchase or other form of transfer, of (a) assets used to provide exchange telecommunications which shall only incidentally be used to provide interexchange services, or (b) an interexchange carrier which obtains less than five percent of its gross telecommunications revenues from telecommunications services between points within the United States.

VII

A. Jurisdiction is retained by this Court for the purpose of enabling any party to this Final Judgment to apply to the Court at any time for such further orders or directions as may be necessary or appropriate for the construction or implementation of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violation hereof.

B. Upon application to this Court by the United States to enforce compliance with this Final Judgment, the Court may grant further relief, including but not limited to divestiture of the acquired entities or, at the election of GTE, divestiture of the GTOCs, if (1) GTE is found to have engaged in a pattern of substantial violations of section IV, Section V, or Appendix B of this Final Judgment, or (2) any GTOC is found to have violated Section IV, Section V, or Appendix B or this Final Judgement in a manner that materially injures interexchange carriers or information service providers in their ability to offer services competitive with those offered by GTE or the acquired entities.

VIII

A within ninety (90) days from the effective date of this Final Judgment, GTE is ordered and directed to advise its officers and other management personnel with significant responsibility for matters addressed in this Final Judgement of their obligations hereunder, including the obligations under Paragraph VIII(B).

B. GTE shall undertake the following with respect to each such officer or management employee:

1. The distribution to them of a written directive setting forth their employer's policy regarding compliance with the antitrust laws and with this Final Judgment, with such directive to include:

(a) An admonition that non-compliance with such policy and this Final Judgment will result in appropriate disciplinary action determined by their employer and which may include dismissal; and

(b) Advice that legal advisors are available at all reasonable times to confer with such persons regarding any compliance questions or problems; and

2. The imposition of a requirement that each of them sign and submit to their employer a certificate in substantially the following form:

The undersigned hereby (1) acknowledges receipt of a copy of the 1983 *United States v. GTE Corporation* Final Judgment and a written directive setting forth Company policy regarding compliance with the antitrust laws and with such Final Judgment, (2) represents that the undersigned has read such Final Judgment and directive and understands those provisions for which the undersigned has responsibility, (3) acknowledges that the undersigned has been advised and understands that non-compliance with such policy and Final Judgment will result in appropriate disciplinary measures determined by the Company and which may include dismissal, and (4) acknowledges that the undersigned has been advised and understands that non-compliance with the Final Judgment may also result in conviction for contempt of court and imprisonment and/or fine.

C. GTE shall advise each new officer and other management employee with significant responsibility for matters addressed in this Final Judgment in the same manner as under Paragraphs VIII(B)(1) and VIII(B)(2) within thirty (30) days after they assume such responsibility.

D. GTE shall retain in its files the certificates required by Section VIII for at least five (5) years from the date of signature by each officer and management employee.

IX.

A. For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

1. Upon written request of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice of GTE made to its principal office, duly authorized representatives of the Department of Justice shall be permitted access during office hours of GTE to depose or interview officers, employees, or agents, who may have counsel present, and to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession of under the control of GTE relating to any matters contained in this Final Judgment; and

2. Upon the written request of the Assistant Attorney General in charge of the Antitrust Division made to its principal office, GTE shall submit such written reports as may be requested, under oath if requested, with respect to any of the matters contained in this Final Judgment.

B. No information or documents obtained pursuant to this Section shall be divulged by any representative of the Department of Justice to any person other than a duly authorized reprsentative of the Executive Branch of the United States or the Federal Communications Commission, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

C. If at the time such information or documents are furnished to the United States, GTE represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and GTE marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days notice shall be given by the United States to GTE prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which GTE is not a party.

X

This Final Judgment shall become effective upon the later of the date of entry of this Final Judgment by this Court or the consummation of the acquisition of the acquired entities, and shall expire if GTE no longer provides exchange or exchange access services pursuant to any federal or state regulation.

XI

Entry of this Final Judgment is in the public interest.

Entered this ——— day of ———, 1983.

United States District Judge.

Appendix A

General Telephone Company of Alaska
General Telephone Company of California
General Telephone Company of Florida
General Telephone Company of Illinois
General Telephone Company of Indiana, Inc.
General Telephone Company of Kentucky
General Telephone Company of Michigan
General Telephone Company of the Midwest
General Telephone Company of the Northwest, Inc.
General Telephone Company of Ohio
General Telephone Company of Pennsylvania
General Telephone Company of the Southeast
General Telephone Company of the Southwest
General Telephone Company of Wisconsin
Hawaiian Telephone Company

Appendix B—Phased-in GTOC Provision of Equal Exchange Access

A.1. As part of its obligation to provide non-discriminatory access to interexchange carriers, each GTOC shall, as promptly as possible, and in no case more than twelve (12) months after receipt of a written request from any interexchange carrier other than AT&T, offer to all interexchange carriers exchange access on an unbundled, tariffed basis, that is equal in type and quality to that provided for the interexchange telecommunications services of AT&T or any IOC, through its end offices which employ switches technologically capable of providing equal exchange access or for which the capability of providing equal exchange access is commercially available to the GTOCs, consistent with the following:

(a) Each GTOC shall offer equal exchange access through its end offices employing (i) 1–ESS (Electronic Switching System) switches, DMS–100 (Digital Multiplex System) switches, or other electronic stored program control switches, other than those referred to in (ii) and (iii) below, technologically capable of providing equal exchange access, no later than January 1, 1985; (ii) GTD–5 (General Telephone Digital) switches no later than January 1, 1987; and (iii) 1–EAX and 2–EAX (Electronic Automatic Exchange) switches no later than September 1, 1987;

(b) No later than September 1, 1987, equal exchange access shall be offered through end offices serving at least two-thirds of the exchange access lines provided by the GTOCs, provided that (i) a GTOC need not offer equal exchange access through an end office if, because of changed circumstances which could not reasonably have been foreseen, it is no longer economically feasible to install at that end office a switch technologically capable of providing equal exchange access, and (ii) if any non-affiliated manufacturer of switches shall fail to provide to the GTOCs the hardware and software necessary to provide equal exchange access, the two-thirds amount shall be reduced to that extent; and

(c) No later than December 31, 1990, equal exchange access shall be offered through all end offices serving greater than ten thousand (10,000) exchange access lines, provided that a GTOC need not offer equal exchange access through such an end office if, because of changed circumstances which could not reasonably have been foreseen, it is no longer economically feasible to install at that end office a switch technologically capable of providing equal exchange access.

Nothing in this Final Judgment shall be construed to permit a GTOC to refuse to provide to any interexchange carrier or information service provider, upon bona fide request, exchange or information access superior or inferior in type or quality to that provided for the interexchange servces or information services of AT&T or any IOC at charges reflecting the reduced or increased cost of such access.

2. Notwithstanding Paragraph A(1), a GTOC shall not have the obligation to provide the facilities and capability for switching interexchange traffic above an end office if the end office is located in a GTOC serving area, or to transport such traffic between the end office and a point or points within the serving area designated by an interexchange carrier other than by direct GTOC transmission facilities. A GTOC shall use its best efforts to obtain from other carriers those functions the GTOC is not obligated to provide under the preceding sentence.

3. (a) Notwithstanding Paragraph A(1), in those instances in which a GTOC is providing exchage access for Message Telecommunications Service as of the date of entry of this Final Judgment through access codes that do not permit the designation of more than one interexchange carrier, then, in accordance with the schedule set out in Paragraph A(1), exchange access for additional carriers shall be provided through access codes containing the minimum number of digits necessary at the time access is sought to permit nationwide, multiple carrier designation for the number of interexchange carriers reasonably expected to require such designation in the immediate future.

(b) Each GTOC shall, in accordance with the schedule set out in Paragraph A(1), offer as a tariffed service exchange access that permits each subscriber automatically to route, without the use of access codes, all the subscriber's interexchange communications to the interexchange carriers of the customer's designation.

(c) At such time as the national numbering area (area code) plan is revised to require the use of additional digits, (but in no event earlier than the schedule set out in Paragraph A(1)(a)) each GTOC shall provide exchange access to every interexchange carrier through a uniform number of digits.

4. No GTOC shall be required to provide equal exchange access through an end office employing switches of the technology known generically as step-by-step, provided that (a) GTE compiles with the requirements of Paragraph A(1), and (b) at all end offices employing electromechanical (including step-by-step) switches the GTOC offers a commercially available trunkside interconnect arrangement to all interexchange carriers, unless such access is not physically possible except at costs that clearly outweigh potential benefits to users of telecommunications services. GTE will provide to the Department of Justice such information as it may request concerning any such analysis.

B.1. The GTOCs shall file tariffs, to be effective January 1, 1984, for the provisions of exchange access, including the provision by each GTOC of exchange access for the acquired entities' interexchange telecommunications. Such tariffs shall provide unbundled schedules of charges for exchange access, and shall not discriminate against any carrier or other customer.

2. Each tariff for exchange access shall be filed on an unbundled basis specifying each type of service, element by element, and no tariff shall require an interexchange carrier to pay for types of exchange access that it does not utilize. The charges for each type of exchange access shall be cost justified and any differences in charges to carriers shall be cost justified on the basis of differences in services provided.

3. Notwithstanding the requirements of Paragraph B(2), from the effective date of the tariffs referred to in Paragraph B(1) until September 1, 1991, the changes for delivery or receipt of traffic of the same type between end offices and facilities of interexchange carriers within an exchange area, or within reasonable subzones of an exchange area, shall be equal, per unit of traffic delivered or received, for all interexchange carriers; provided, that the facilities of any interexchange carrier within five (5) miles of a GTOC switch performing a class 4 function shall, with respect to end offices served by such switch, be considered to be in the same subzone as such switch.

4. Each GTOC offering exchange access as part of a joint or through service shall offer to make exchange access available to all interexchange carriers on the same terms and conditions, and at the same charges, as are provided as part of a joint or through service, and no payment or consideration of any kind shall be retained by the GTROC for the provision of exchange access under such joint or through service other than through tariffs filed pursuant to Paragraph B(1).

C.1. Subject to the provisions of Paragraphs V(B) and V(D), this Final Judgment shall not require a GTOC to allow joint ownership or use of its switches, or to require a GTOC to allow co-location in its building of the equipment of other carriers. When a GTOC uses facilities that (a) are employed to provide exchange telecommunications or exchange access or both, and (b) are also used for the transmission or switching of

interexchange telecommunications, then the costs of such latter use shall be allocated to the interexchange use and shall be excluded from the cost underlying the determination of charges for either of the former uses.

2. Nothing in this Final Judgement shall either require a GTOC to bill customers for the interexchange services of any interexchange carrier or preclude a GTOC from billing its customers for the interexchange services of any interexchange carrier it designates, provided that when a GTOC does provide billing services to an interexchange carrier, the GTOC may not discontinue local exchange service to any customer because of nonpayment of interexchange charges unless it offers to provide billing services to all interexchange carriers. The GTOC's cost of any such billing shall be included in its tariffed access charges to that interexchange carrier. If a GTOC provides billing services to the acquired entities, it shall include upon the portion of the bill devoted to interexchange services the following legend:

This protion of your bill is provided as a service to [the acquired entities]. You may choose another company for your long distance telephone calls while still receiving your local telephone service from this company.

3. Whenever, as permitted by this Final Judgment, a GTOC fails to offer exchange access to an interexchange carrier that is equal in type and quality to that provided for the interexchange traffic of AT&T or any IOC, nothing in this Final Judgment shall prohibit the GTOC from collecting reduced charges for such less-than-equal exchange access to reflect the lesser value of such exchange access to the interexchange carrier and its customers compared to the exchange access provided AT&T or any IOC, provided that the tariffs filed for such less-than-equal access reflect the lesser cost, if any, of such access as compared to the exchange access provided AT&T or any IOC.

D. GTE shall file with the Federal Communications Commission such requests for waivers of orders of the Commission as may be necessary to permit full compliance with all the requirements of this Final Judgment.

Appendix C

Bell Telephone Company of Nevada
Illinois Bell Telephone Company
Indiana Bell Telephone Company, Inc.
Michigan Bell Telephone Company
New England Telephone and Telegraph Company
New Jersey Bell Telephone Company
New York Telephone Company
Northwestern Bell Telephone Company
Pacific Northwest Bell Telephone Company
South Centeral Bell Telephone Company
Southern Bell Telephone and Telegraph Company
Southwestern Bell Telephone Company
The Bell Telephone Company of Pennsylvania
The Chesapeake and Potomac Telephone Company
The Chesapeake and Potomac Telephone Company of Maryland
The Chesapeake and Potomac Telephone Company of Virginia
The Chesapeake and Potomac Telephone Company of West Virginia
The Diamond State Telephone Company
The Mountain States Telephone and Telegraph Company
The Ohio Bell Telephone Company
The Pacific Telephone and Telegraph Company
Wisconsin Telephone Company

U.S. District Court for the District of Columbia

Competitive Impact Statement

United States of America, Plaintiff v. *GTE Corporation*, Defendant.

Civil Action No. 83–1298.

Filed: May 4, 1983.

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C. 16(b)–(h)), the United States of America files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry against GTE Corporation in this civil antitrust proceeding.

I. Nature and Purpose of This Proceeding

On October 15, 1982, GTE Corporation ("GTE") and Southern Pacific Company ("SP") executed an agreement under which GTE would acquire the telecommunications enterprises of SP, including Southern Pacific Communications Company ("SPCC") and Southern Pacific Satellite Company ("SPSC"). Subsequently, GTE and SP applied to the Federal Communications Commission ("FCC") for authority to transfer SP's construction and radio licenses to GTE under Sections 214 and 310(d) of the Communications Act of 1934 (47 U.S.C. 214, 310(d)). GTE may not consummate its proposed acquisition absent approval by the FCC of these applications.

On May 4, 1983, the United States filed a civil antitrust complaint under Section 15 of the Clayton Act (15 U.S.C. 25), challenging this acquisition as a violation of Section 7 of the Clayton Act (15 U.S.C. 18), and under Section 4 of the Sherman Act (15 U.S.C. 4), challenging GTE's provision of information services as a violation of Section 2 of the Sherman Act (15 U.S.C. 2). The complaint alleged that the effect of the acquisition may be substantially to lessen competition in the provision of interexchange telecommunications services to those geographic areas, among others, in which GTE provides local exchange telecommunications services. The complaint also alleged that GTE's provision of information services creates a substantial probability of monopolization of the provision of information services in those markets.

The United States and GTE have stipulated that the proposed Final Judgment may be entered after compliance with the Antitrust Procedures and Penalties Act. Entry of the proposed Final Judgment will terminate the action, except that the Court will retain jurisdiction to construe, modify, and enforce compliance with the provisions of the proposed Judgment, to punish any violations of the proposed Judgment, and to grant further relief should violations of the proposed Judgment occur. The proposed Final Judgment would become effective upon the later of the date of entry by the Court of GTE's consummation of the acquisition.

II. Events Giving Rise to the Alleged Violation

Intercity (or "interexchange") telecommunications services in the United States have enjoyed a history similar to that of several other regulated industries. At the close of World War II, one firm, AT&T, enjoyed a *de facto* monopoly in the provision of intercity voice telecommunications services throughout the country. Since that time competition has slowly but surely begun to emerge. Technological development, steadily increasing demand, and decisions of the FCC and the courts have all aided this trend. In consequence, all segments of the intercity telecommunications industry are now characterized by some degree of competitve activity.

Similar technoligical and concomitant legal developments have yet to occur within the markets for local (or "exchange") telecommunications services in the United States. Local Exchange telecommunications, including local telephone services, are provided by firms that enjoy a monopoly within their franchised serving areas, subject to regulation, including regulation of their rate-of-return on investment, by the states. Although technology may at some point facilitate the introduction of realistic competition into these local markets,[1] for the foreseeable future local telecommunications services will remain almost exclusively the province of such franchised rate-of-return regulated monopolists.

Several significant competitive concerns arise from the interface between these local regulated monopoly markets and the more competitive markets for intercity (or "interexchange") telecommunications sevices. Firms seeking to provide intercity telecommunications services to customers in any market must reach those customers over facilities owned and operated by the firm providing local telecommunications services in that market. These local distribution facilities, including both exchange switching and transmission facilities, are essential facilities to which firms providing intercity services must have non-discriminatory access in order to compete effectively over the full range of services. Thus, when a single firm provides both local, regulated telecommunications and intercity telecommunications sevices in a given market, its control over local exchange monopolies gives it the ability—and its simultaneous presence as an intecity carrier provides it an economic incentive—to foreclose or impede competition in the provision of interexchange

[1] Local distribution facilities operated by regulated "wireline" carriers within their franchised serving areas are the dominant form of exchange telecommunications. Although complementary and supplementary technologies, such as cellular radio and digital termination services, are being developed, these technologies have not yet been commercially introduced to the point of providing a widespread competitive substitute for the local exchange "bottleneck."

telecommunications in that market. Vertical integration by local telephone operating companies therefore creates both the incentive and ability, through abuse of monopoly power over local distribution facilities and through evasion of rate-of-return regulation and cross-subsidization, for the leverage of monopoly power in regulated markets to impede competition (or the development of competition) in related competitive, or potentially competitive, markets.

These dual concerns, discrimination and cross-subsidization, also arise as a consequence of the vertical integration by local telephone operating companies into the provision of more specialized "information services," such as videotext and some forms of electronic mail. Indeed, because the technologies for such information services are only now beginning to be marketed commercially, and have yet to demonstrate significant, independent profitability, vertical integration by local exchange monopolists creates a very significant potential for retarding the otherwise natural competitive development of the information services industry.

The potential for abuse of monopoly power over exchange access and for evasion of regulatory constraints underlies the present action and the proposed Final Judgment. In its complaint, the United States alleged that the acquisition by GTE of SPCC and SPSC may substantially lessen competition for the provision of enterexchange telecommunications services to customers of GTE's regulated, monopoly local operating companies, in violation of Section 7 of the Clayton Act. The United States also alleged that the provision by the GTE operating companies ("GTOCs") of information sevices creates a substantial probability of monopolization of the provision of information services in such markets, in violation of Section 2 of the Sherman Act. The United States accordingly sought a judgment that GTE's proposed acquisition of SPCC and SPSC would violate Section 7 of the Clayton Act, and injunctive relief addressing the Section 7 and Section 2 violtions, including the following:

(a) The prohibition of the acquisition or any similar arrangement that would combine the ownership or operations of the telecommunications enterprises of SP and GTE; and

(b) The permanent preclusion of GTE, including the GTOCs, from the business of providing information services.

The basic antitrust theories of this action are the same as those of *United States* v. *American Telephone & Telegraph Co.*, No. 74-1698 (D.D.C.). On August 24, 1982, the *AT&T* case was terminated upon entry by the United States District Court for the District of Columbia of an agreed upon modification to the Final Judgment in *United States* v. *Western Electric Co.*, No. 82-0192 (D.D.C.). That Modified Final Judgment (hereinafter referred to as the "*AT&T* decree" or the "MFJ") mandated "a basic restructuring of the telecommunications industry,"[8] consisting of, among other things, (1) the divestiture by AT&T, no later than February 24, 1984, of the exchange telecommunications and exchange access functions of 22 of the Bell Operating Companies ("BOCs"), (2) injunctive provisions designed to ensure that the divested BOCs do not disadvantage any competitor of AT&T engaged in the provision of interchange telecommunications services or information services, (3) injunctive provisions requiring the phased-in provision of equal exchange access by the BOCs to all interexchange carriers and information service providers, and (4) line-of-business restrictions for the divested BOCs barring them from providing interexchange services or other services, except exchange telecommunications, customer premises equipment, and printed directory advertising, that are not natural monopoly services actually regulated by tariff.

The allegations of the complaint in this action, and the provisions of the proposed Final Judgment, must be viewed in the context of the telecommunications industry that will emerge from the restructuring mandated by the *AT&T* degree. After the divestitures required by the MFJ, AT&T will no longer control local exchanges representing over 80% of the telephones in the country. The United States alleged in the *AT&T* case that AT&T's control over both the BOCs and its Long Lines intercity operations gave AT&T the incentive and ability, which it had exercised continuously over a number of years, to restrain and impair competition in markets in which competition was increasingly possible given the development of technology and the easing of regulation. The structural separation of the BOCs from Long Lines, coupled with the mandatory provision of equal exchange access by the divested BOCs, separates the provision of regulated, monopoly telephone service from the provision of intercity services in substantially all of the country. By removing the incentives and abilities that gave rise to the alleged anticompetitive conduct of AT&T, the MFJ opens many new markets to the possibility of realistic competition for the provision of interexchange telecommunications services.

One of the various aspects of the telecommunications industry not addressed by the *AT&T* decrease was the continuing relationship between AT&T and the non-Bell or "independent" operating companies. Through its ownership of the GTOCs, GTF is the largest of the independents, providing local exchange telecommunications and exchange access services in 31 states to eight percent of the nation's telephones. As a provider of local telephone service, GTE participates in a joint venture with Long Lines, the BOCs, and the independent operating companies for the provision of intercity telecommunications services, a joint venture known in the telecommunications industry as the "partnership". Revenues from intercity telephone services are allocated among the members of the partnership through a procedure, known variously as "settlements" and "division of revenues," which provides a common rate of return to all members of the partnership on the aggregate, undepreciated investment of each partnership member in interexchange telecommunications switching and transmission facilities. In its complaint in this case the United States alleged that as a member of the partnership, and thus with an economic incentive to favor AT&T, GTE acquiesced in various actions of AT&T which had the effect of impairing competition for the provision of interexchange telecommunications services by competitors of the partnership.

III. Explanation of the Proposed Final Judgment

The United States and GTE have stipulated that the proposed Final Judgment may be entered by the Court at any time after compliance with the Antitrust Procedures and Penalties Act is completed. The proposed Final Judgment does not constitute an admission by any party as to any issue of fact or law. Under the provisions of the Antitrust Procedures and Penalties Act, entry of the proposed Final Judgment is conditioned upon a determination by the Court that the proposed Judgment is in the public interest.

The proposed Final Judgment is designed to circumscribe GTE's ability, through cross-subsidization or discriminatory actions, to leverage the power the GTOCs enjoy in their regulated monopoly markets to foreclose or impair the development of competition in the related markets for the provision of interexchange telecommunications services and information services. Accordingly, the proposed Judgment encompasses a wide range of restrictions, discussed in greater detail below, including (a) corporate and operational separation of GTE's regulated monopoly and unregulated (or competitive) operations, (b) a prohibition of discrimination among, and phased-in equal exchange access for, interexchange carriers and information service providers, (c) a ban on the provision by the GTOCs of interexchange services beyond those currently existing, (d) transitional arrangements for use by interexchange carriers of the GTOCs' existing interexchange assets, and for reimbursement to the GTOCs for such use, (e) a ten-year restriction on future acquisitions by GTE, absent the approval of the Department of Justice or the Court, of firms providing interexchange telecommunications services as more than an incidental part of their business, and (f) the limitation of GTOC information services to a subsidiary of each GTOC separated from the GTOC's monopoly exchange and exchange access services and facilities. The proposed Final Judgment also grants the Department the right to seek further relief, including the divestiture of the acquired entities or the GTOCs, should GTE violate the terms of the proposed Judgment.

A. Corporate Separation

Section IV of the proposed Final Judgment requires GTE to maintain complete corporate and operational separation between the GTE operating companies and SPCC and SPSC ("the acquired entities"). This Section would also permit GTE to reorganize its corporate structure by transferring to or consolidating

[8] *United States* v. *Western Electric Co.*, Competitive Impact Statement in Connection with Proposed Modification of Final Judgment, 47 FR 7170, 7170 (February 17, 1982).

with the acquired entities all of GTE's unregulated operations, or by transferring out of the GTOCs their existing unregulated operations.

The corporate separation requirement of Paragraph IV(A)(1) prohibits the GTOCs, subject to a limited exception discussed below, from transferring to or from the acquired entities any assets, operations, or lines of business. Paragraph IV(A)(2) of the proposed Final Judgment prohibits common facilities, assets, books of account, costs, and expenditures for the acquired entities and any GTOC. Paragraphs IV(A)(6), IV(A)(3), and IV(A)(4), respectively, prohibit the joint provision of telecommunications services and the sharing of proprietary customer information, network engineering data, or research and development, and limit authority over the acquired entities to the highest-level GTE officials or to subordinates who are not directly or indirectly responsible for local telephone operations. Paragraph IV(C) of the proposed Final Judgment precludes GTE from marketing the acquired entities' services through, or identifying them with, the GTOCs or the GTOCs' services, although the acquired entities may be renamed "GTE-Sprint" or otherwise identified with GTE as a parent corporation.

Financial and other interactions between GTE and the acquired entities are expressly limited. The proposed Final Judgment has no effect on GTE's right to invest as much capital in SPCC and SPSC as it may choose. However, Paragraph IV(A)(5) provides that all such capital must be provided directly by GTE, its financial affiliates, or unaffiliated sources. Commercial transactions between the acquired entities and GTE's unregulated affiliates—*i.e.*, affiliates other than the GTOCs—are limited by the two-tier standard of Paragraph IV(A)(7). If products, information (including the results of research and development), or services are offered by any GTE affiliate to the GTOCs, they may not be offered to the acquired entities on more favorable terms or conditions; if they are not offered to the GTOCs, they may not be obtained by the acquired entities at less than their fully allocated cost. Paragraph IV(A)(7) is thus designed to prevent the provision of products, information, and services to the acquired entities from functioning as an indirect vehicle for cross-subsidization from the regulated monopoly operations of the GTOCs.[3]

The key structural requirement of Section IV of the proposed Final Judgment is the internal separation of the acquired entities from the GTOCs and the supporting administrative operations of GTE Service Corporation. Although the principle governing this separation is clear, the proposed Judgment necessarily allows GTE a degree of flexibility in formulating the precise details of its corporate and operational procedures. The constraints imposed by Section IV are designed to circumscribe financial and operational intermingling of the acquired entities and the GOTCs, thereby reducing the anticompetitive potential inherent in the acquisition.

To ensure that the Department of Justice is fully apprised of GTE's implementation of this separation, Paragraph V(E)(1) requires that GTE submit to the Department, prior to the effective date of the proposed Judgment, procedures for ensuring compliance with its obligations under Section IV. Paragraph IV(F) of the proposed Final Judgment also requires GTE to provide the Department with an annual report summarizing all permitted interactions between the regulated and unregulated aspects of GTE's operations accompanied by an affidavit of its chief executive officer certifying the company's compliance with the requirements of Section IV. The Department may request additional information from GTE, pursuant to Paragraph IV(F), in order to evaluate compliance with Section IV of the proposed Final Judgment.

Paragraph IV(D) of the proposed Judgment provides that, consistent with the requirement of separating the acquired entities from the GTOCs and the supporting administrative portions of GTE Service Corporation, GTE may create an "unregulated sector" by transferring to or consolidating with the acquired entities the assets, stock, operations, or telecommunications or information services of (1) GTE's other affiliates operating in unregulated markets, or (2) any "unregulated" exchange telecommunications services, including the provision of customer premises equipment, currently provided by the GTOCs. GTE affiliates which may be consolidated with the acquired entities under Paragraph IV(D) include GTE Satellite Corporation, which operates satellite communications systems, and GTE Telenet Incorporated, which provides enhanced telecommunications services. Following any such corporate reorganization, GTE's unregulated sector would remain subject to the corporate separation obligations of Paragraphs IV(A), IV(B), and IV(C). However, Paragraph IV(D)(3) of the proposed Final Judgment expressly prevents this permissive corporate reorganization procedure from being used as an indirect conduit through which to funnel regulated exchange or exchange access assets or services from the GTOCs to the acquired entities.

B. Equal Access and the Partnership

The provisions of Section V of the proposed Final Judgment have a dual function. Paragraph V(A) requires that each GTOC provide to all interexchange carriers and information service providers, on an unbundled, tariffed basis, exchange access, information access, and exchange services for such access equal in type, quality, and price. This requirement of equal exchange access imposes on GTE the identical substantive obligation imposed on the divested BOCs under the AT&T decree. It is designed to preclude the wide array of practices through which integrated telecommunications enterprises have in the past characteristically exercised the monopoly power of their franchised local operating companies.

Paragraph V(C) of the proposed Final Judgment is designed to redress the long-standing competitive problems created by the GTOCs' integration into interexchange services, and by the joint provision of services and allocation of revenues among AT&T, GTE, and the independents, under the partnership. By requiring a phased-out termination of GTE's partnership cooperation with AT&T, Paragraphs V(C)(2), V(C)(3), and V(C)(4) of the proposed Final Judgment eliminate any lingering incentive the GTOCs may have to discriminate in favor of AT&T. By precluding future vertical integration by the GTOCs, Paragraph V(C)(1) eliminates the potential for monopolization of interexchange markets by the GTOCs in the future.

1. *Equal Access/Non-Discrimination.* Paragraph V(A) sets out the requirement that each GTOC provide to all interexchange carriers and information service providers, on an unbundled, tariffed basis, exchange access, information access, and exchange services for such access that is equal in type, quality, and price for all such interexchange carriers and information services providers. Appendix B (discussed in more detail below) establishes a timetable for the phasing-in of equal exchange access, and also imposes several requirements with respect to the tariffing of exchange access. Both Paragraph V(A) and Appendix B parallel the provisions of the *AT&T* decree.[4]

Paragraph V(B) of the proposed Final Judgment prohibits each GTOC from discriminating between the services offered by any GTE affiliate (including the acquired entities) and those offered by other persons with respect to a broad range of GTOC activities. In particular, Paragraph V(B) forbids discrimination with respect to interconnection, technical information, exchange access services, and planning for new facilities or services.

Paragraph V(E)(2) of the proposed Judgment provides that, within nine months following the effective date of the proposed Final Judgment, GTE must submit to the

[3] The Department does not intend the provisions of Paragraphs IV(A)(4) or IV(A)(7) of the proposed Final Judgment to bar GTE from assessing each of its affiliates, including the GTOCs and the acquired entities, a charge for the provision of general overhead and administrative services by the GTE Service Corporation calculated in proportion to the revenues earned by each such affiliate. However, the Department emphasizes that Paragraph IV(A)(4) of the proposed Judgment expressly prohibits the GTOCs and the Telephone Operations Group of GTE Service Corporation (and its successors) from directly or indirectly providing any administrative, engineering, research and development, or similar services to the acquired entities. The assessment of the general revenue-based charges described above will not, in the Department's view constitute the indirect provision of administrative or related services by the GTOCs or the Telephone Operations Group of GTE Service Corporation. A similar general revenue assessment may be used to fund general research and development activities of GTE Laboratories, Incorporated, provided that any project or results specifically related to the acquired entities must be paid for by the acquired entities on a fully allocated cost basis as required by Paragraph IV(A)(7).

[4] Because Paragraph V(D) permits the GTOCs to provide information services subject to certain restrictions, Paragraph V(A) differs from the otherwise identical provision of the MFJ to make clear that, for purposes of equal exchange access, a separate entity within the GTOC providing information services is considered an "information service provider."

Department procedures for ensuring compliance with the equal access and non-discrimination obligations of Section V and the equal access phase-in obligations of Appendix B. Consistent with GTE's obligations under Paragraphs V(B) and V(E)(2), these procedures should ensure that the GTOCs grant the highest quality interconnection offered through any end office to any interexchange carrier requesting that form of interconnection; that the GTOCs fill interconnection orders placed by all interexchange carriers on a uniformly expeditious basis; that GTE create and administer standardized procedures for the resolution of interconnection problems; that GTE ensure uniform review by the GTOCs of interconnection complaints registered by all interexchange carriers; and that the GTOCs uniformly resolve service problems encountered by interexchange carriers with respect to exchange access lines or circuits. The Department believes that such procedures can be developed in a timely fashion without placing an undue burden on GTE in its provision of exchange access services.

2. *The Partnership.* Paragraph V(C) deals with the existing relationship between GTE and AT&T, under which the GTOCs provide interexchange telecommunications services jointly with AT&T over their proprietary intercity transmission and switching facilities. This portion of the proposed Final Judgment thus relates to the settlements procedures between AT&T and the largest independent telephone company in the United States.

Paragraph V(C)(1) prohibits the GTOCs from providing interexchange telecommunications services and from owning facilities that are used to provide such services. In connection with the definitions of "exchange area" and "serving area," which, as discussed below, delineate the division between exchange and interexchange functions in a manner consistent with the similar definitions contained in the MFJ, Paragraph V(C)(1) is a general prohibition against expansion by the GTOCs of their present interexchange functions. Since "interexchange telecommunications" is defined in Paragraph II(P) to include telecommunications between the United States and foreign countries, Paragraph V(C)(1) contains a proviso which permits GTE's operating companies in Hawaii and Alaska to continue to offer such international telecommunications. This proviso is expressly limited to General Telephone Company of Alaska and the Hawaiian Telephone company.

Paragraphs V(C)(2), V(C)(3), and V(C)(4) are integrally related to the general prohibition of Paragraph V(C)(1). These provisions allow several alternative methods by which the GTOCs' existing interexchange operations are to be phased out over a transition period. Expansion beyond the interexchange functions permitted by these provisions (except as stated in Paragraph V(C)(4)) is barred by the general prohibition against interexchange services and facilities contained in Paragraph V(C)(1).

Paragraph V(C)(2) permits GTE to lease to any current partnership member the GTOCs' investment in interexchange transmission and switching facilities in service as of January 1, 1984, or planned as of January 1, 1983 and in service as of January 1, 1987. If it enters into the lease or leases permitted by this Paragraph, GTE is required to retain sufficient exchange switching and transmission facilities to meet its obligations under Paragraph V(A) and Appendix B to offer equal exchange access to all interexchange carriers.[5] The leases permitted by Paragraph V(C)(2) will if consummated, substitute for the existing division of revenues process under which revenues are divided between GTE and the BOCs.

Paragraph V(C)(3), on the other hand, permits a limited retention of the division of revenues process for any interexchange facilities that are not leased by the GTOCs under Paragraph V(C)(2). GTE may replace the GTOCs' division of revenues agreements with the BOCs with a comparable agreement with any interexchange carrier, other than the acquired entities, permitting the recovery of the net book value of the GTOCs' capital investment in partnership facilities,[6] including a reasonable return on debt or equity, provided that the agreement terminates when such net book value has been recovered.[7]

Paragraph V(C)(4) governs three situations: first, where a lease entered into under Paragraph V(C)(2) has expired; second, where an agreement permitted by Paragraph V(C)(3) has allowed the recovery of the net book value (and a reasonable return thereon) of an interexchange transmission or switching asset; and third, where such lease or capital recovery agreement has been consummated. In these situations, Paragraph V(C)(4) require GTE to make available such uncommitted facilities to all interexchange carriers on non-discriminatory terms and conditions. As the GTOCs' interexchange investment becomes available [8] under this paragraph, GTE is then permitted to expand or modernize (but not replace) those interexchange switching and transmission facilities. Paragraph V(C)(4) does not require GTE to make these facilities available on a tariffed basis.

The distinction between exchange and interexchange telecommunications, which closely tracks the provisions of the AT&T decree, relates both to prohibition of GTOC interexchange services and facilities under Paragraph V(C)(1), and to the exchange access services to be provided by the GTOCs under Paragraph V(A) and Appendix B of the proposed Final Judgment.[9] Paragraph II(H) of the proposed Judgment provides a procedure, similar to the procedure involved in implementation of Paragraph IV(G) of the MFJ, under which GTE is to establish exchange areas where it presently has the facilities and capability to provide traffic switching above end offices and delivery and receipt of such traffic at a point or points designated by an interexchange carrier for the interconnection of its facilities with those of the GTOC. GTE is required to submit to the Department for its approval a list of all such exchange areas by July 5, 1983, which will permit the court to make reference to GTE's proposed exchange areas in making its determination whether the proposed Judgment is in the public interest. Areas in which a GTOC provides exchange telecommunications services but does not have such facilities and capability are denominated "serving areas" under Paragraph II(R) of the proposed judgment. The equal access obligation of the GTOCs in these serving areas are set out in Paragraph A(2) of Appendix B, discussed below.[10]

GTOC exchange areas are required by paragraphs II(H)(1), II(H)(2), and II(H)(3) to meet the same criteria applied in the MFJ for the establishment of BOC exchange areas. Paragraph II(H) also requires that when and where such criteria are met in the future, the GTOCs are to establish new exchange areas with the approval of the Department of Justice and the Court.[11] The Department

[5] Similarly, the equal access obligations of Paragraph V(A) and Appendix B would apply to the GTOCs after any sale of exchange switching or transmission facilities.

[6] Of course, if any GTOC facility is retired from interexchange service, it is no longer an interexchange facility subject to Paragraph V(C)(3).

[7] Paragraph V(C)(5), in turn, provides that the requirements of the proposed Final Judgment shall not impair any remedies GTE may have, before regulatory bodies and elsewhere, for recovery of the GTOCs' existing financial investment in interexchange transmission and switching facilities.

[8] Paragraph V(D) of the proposed Judgment sets no time period for the leases or capital recovery arrangements contemplated. However, the general prohibition of Paragraph V(D)(1), in connection with the identification of assets in Paragraph V(D)(2), precludes further GTOC investment in interexchange assets after January 1, 1984, unless such investment was already in the GTOC's construction program as of January 1, 1983 and is in service as of January 1, 1987. GTE is permitted to expand or modernize its interexchange facilities under Paragraph V(D)(4) only when and to the extent that such expanded or modernized capacity is made available to all interexchange carriers on non-discriminatory terms and conditions. Accordingly, GTE retains the discretion to determine the manner and length of the phase out, but is limited to its present GTOC interexchange facilities until, with respect to a given asset, the phase out is completed.

[9] For a detailed explanation of the interrelationship between the definitions of "exchange area," "telecommunications service," and "interexchange telecommunications" *see* United States v. Western Electric Co., Competitive Impact Statement in Connection with Modification of Final Judgment, 47 FR 7170, 7176 February 17, 1982).

[10] Under Paragraph II(R)(1) of the proposed Final Judgment, all GTOC geographic areas associated with a single BOC exchange area pursuant to an order of the Court in United States v. Western Electric Co. may combined into a single GTOC serving area.

[11] Paragraph II(I) of the proposed Judgment defines "exchange telecommunications" to include not only telecommunication between points within an exchange area, but also telecommunications between or among points in a GTOC exchange or serving area, the serving area of an independent operating company, and a BOC exchange area, if both the GTOC exchange or serving area and the independent serving area have been associated with the BOC exchange area pursuant to an order of the Court in United States v. Western Electric Co. In addition, where a GTOC exchange or serving area is associated with the adjacent serving area of an independent operating company, as permitted under

believes this procedure is extremely important to effective implementation of the terms of the proposed Final Judgment. Given the nature of the similar proceedings before the District Court for the District of Columbia in *United States* v. *Western Electric Co.*, it is clear that the process of drawing exchange boundaries involves the resolution of numerous considerations. Providing for a similar process under this proposed Final Judgment ensures that GTOC exchange area boundaries are drawn in a manner consistent with the substantive provisions of the proposed Judgment and with the "association" of some GTOC and independent exchange areas with BOC exchange areas under the supervision of the District Court for the District of Columbia.[12]

C. Appendix B: Phased-In GTOC Equal Access Obligations

Appendix B of the proposed Final Judgment sets out in further detail the obligations established by Paragraph V(A). The GTOCs are to provide all interexchange carriers and information service providers with exchange access, information access, and exchange services for such access equal in type, quality, and price. The general principles of the MFJ—and the vast majority of the specific provisions governing unbundled, tariffed, element-by-element cost justified exchange access services—are also contained in Appendix B of the proposed Judgment.

The provisions of Appendix B are based on three basic principles that also support the MFJ. First, the GTOCs should have the flexibility to provide equal exchange access in the manner and with the facilities they deem most efficient. Second, notwithstanding the flexibility granted the GTOCs with respect to the physical configuration of facilities used to provide exchange access, each GTOC must meet specified performance and pricing criteria to ensure the availability of equal access. Finally, because facilities to provide fully equal exchange access do not now exist in most GTOC exchanges, a transition period is necessary to phase in the proposed Final Judgment's equal access requirements.

Given the great similarity between Appendix B of the proposed Judgment and Appendix B of the *AT&T* decree, the Department's explanation of these provisions in the Department's Competitive Impact Statement in *United States* v. *Western Electric Co.*,[13] and in the Department's Response to Public Comment on the Proposed Modification of Final Judgment in *United States* v. *Western Electric Co.*,[14] are incorporated by reference herein.[15] Accordingly, the following discussion address only those aspects of Appendix B which differ from the MFJ.

Appendix B of the proposed Final Judgment permits a phase-in of the GTOCs' equal exchange access obligations on a schedule somewhat different that that equired for the BOCs under Appendix B of the MFJ. This schedule reflects the significant differences between the demographic characteristics of GTOC and BOC franchise areas. Virtually all major metropolitian areas, which account for a substantial majority of interexchange telecommunications in the United States, are served by the BOCs. GTOC franchise areas are generally smaller and have lower population densities than those of the BOCs.[16] As a result, GTOC areas have not attracted significant entry, or demand for entry, by interexchange carriers other than AT&T. In addition, the GTOCs have fewer advanced switching systems than the BOCs and lack the traffic and demand necessasry to support rapid conversion to more sophisticated facilities. Appendix B of the proposed judgment requires the conversion of a significant proportion of GTOC end office facilities, but the schedule it sets out takes into account the demographic and technical characteristics of the GTOCs.

GTE is obligated to provide exchange access to all interexchange carriers and information service providers equal in type and quality to that provided for the interexchange telecommunications services of the partnership [17] as promptly as possible, but in no case more than twelve months after a written request for such access from any carrier other than AT&T.[18] Paragraph A(1) of Appendix B obligates GTE to provide such phased-in equal exchange access through GTOC end offices that employ switches technologically capable of providing equal exchange access or for which the capability of providing equal exchange access is commercially available to the GTOCs.

Paragraph A(1)(a) of Appendix B sets out a timetable for the offering of equal exchange access through end offices employing specific types of switches. Under this schedule, GTE must offer equal access through all GTOC end offices utilizing electronic, stored program control switches capable of providing equal exchange access (other than the GTD–5, 1–EAX, and 2–EAX switches) no later than January 1, 1985. Subject to the general obligation of Paragraph A(1) of Appendix B to provide equal access no later than twelve months after a request from an interexchange carrier other than AT&T, GTE is obligated under this timetable to offer equal access through all GTOC end offices employing electronic, stored program control switches by September 1, 1987.

Paragraphs A(1)(b) and A(1)(c) require GTE, during the equal access phase-in period, to equip a progressively increasing proportion of GTOC end offices with switches technologically capable of providing equal exchange access. Paragraph A(1)(b) requires that, not later than September 1, 1987, equal exchange access shall be offered through end offices, regardless of size, serving at least two-thirds of the exchange access lines provided by the GTOCs. Paragraph A(1)(c) further requires that, not later than December 31, 1990, equal exchange access shall be offered through all GTOC end offices serving greater than 10,000 exchange access lines.[19] In order to meet these obligations, it is necessary for GTE to replace many of its existing step-by-step and other electromechanical switches with switches technologically capable of providing equal access.[20]

The requirements of both Paragraphs A(1)(b) and A(1)(c) are suspended to the extent that, because of changed circumstances which could not reasonably have been foreseen, it is no longer economically feasible to employ at any end office a switch technologically capable of providing equal exchange access. Neither GTE nor the Department is aware of any

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Paragraph II(P) with the approval of the Department of Justice, telecommunications between the GTOC exchange or serving area and the independent serving area are exchange telecommunications. In reviewing proposed associations of independent serving areas, the Department will apply criteria consistent with those established in Paragraph II(H) of the proposed Final Judgment for approval of GTOC exchange areas. Paragraph II(F) excludes from the definition of "interexchange telecommunications" those telecommunications considered "exchange telecommunications" under Paragraph II(I).

[12] This process is underway in United States v. Western Electric Co., No. 82-0192 (D.D.C.), and in connection with it GTE has already drawn some exchange and serving areas for the GTOCs.

[13] 47 FR 7170, 7177–78 (Feb. 17, 1982).

[14] 47 FR 23320, 23331–32, 23347–49 (May 27, 1982).

[15] *See also* Brief of the United States in Response to the Court's Memorandum of May 25, 1982, at 33–36 (filed June 14, 1982), United States v. AT&T, 552 F. Supp. 131 (D.D.C. 1982).

[16] Nationwide, the density of the BOCs is more than twice that of the GTOCs. *See* Department of Commerce, *Telephone Areas Serviced by Bell and Independent Companies in the United States*, Table 1 (1982).

[17] Paragraph A(1) of Appendix B requires that access be provided equal in type and quality to that provided for "the interexchange telecommunications services of AT&T or any IOC." Paragraph II(C) of the proposed Judgment in turn defines "interchange telecommunications services or information services of AT&T" to include those provided by GTE or a GTOC on a joint through or concurring tariff basis with AT&T. Thus, whether partnership interchange services are provided by a GTOC, GTE, AT&T, or an interconnected IOC, Appendix B requires that, during the phase-in period, all carriers must be offered exchange access equal in type and quality to that provided for the interexchange telecommunications services of the partnership.

[18] There is no limitation on how early such written requests may be made.

[19] As discussed *infra*, Paragraph A(4) of Appendix B requires the GTOCs to offer an enhanced form of interconnection at end offices employing its remaining electromechanical switches as soon as the means for such enhanced interconnection becomes commercially available.

[20] The provisions of Appendix B of the MFJ require the BOCs to provide equal exchange access through all electronic, stored program control end offices upon a bonafide request by 1987. The provisions of Appendix B of this Final Judgment are slightly different. They require that the GTOCs "offer" equal exchange access through certain end offices by certain dates. GTE must "provide" equal exchange access to any carrier requesting such access only within 12 months after such a request. In effect, Appendix B requires the GTOCs to lay the groundwork on a phased-in schedule for the provision of equal exchange access, but does not require the actual installation of software packages necessary to provide such access until it is clear that non-AT&T interexchange carriers desire to obtain equal exchange access in any particular GTOC exchange. In addition, Appendix B contemplates, as did the MFJ, that certain interexchange carriers may not find it economically advantageous to reach customers in certain exchanges through arrangements for equal reflecting the lesser cost, if any, of such access.

present reason why GTE should not find it economically feasible to install switches technologically capable of providing equal exchange access at the requisite percentage of end offices by September 1987, and at all larger (i.e., greater than 10,000 exchange access line) end offices by the end of 1990.[21]

Paragraph A(2) of Appendix B is related to the definition of "serving area" contained in Paragraph II(R) of the proposed Final Judgment, which defines serving area to include those geographic areas, not within a GTOC exchange area, in which the GTOC provides telephone services but does not have the facilities and capability to provide traffic switching above end offices and delivery and receipt of such traffic at a point or points designated by an interexchange carrier within such geographic area for the connection of its facilities with those of the GTOC. Such serving areas of the GTOCs are thus those GTOC franchised areas in which the GTOCs do not have control of transmission and switching facilities necessary to provide the exchange access services required in order to provide equal exchange access to all interexchange carriers. Under Paragraph A(2) of Appendix B, the GTOCs are not required to provide such exchange access services in their serving areas other than by direct GTOC transmission facilities, but are required to use their best efforts to obtain from the BOC or from any other carrier the exchange access functions which they have been relieved of the responsibility of providing.

Paragraph A(4) of Appendix B provides an exemption from the phased-in provision of equal exchange access for exchange areas served by GTOC end offices employing switches of the technology known generically as step-by-step. This exemption is subject to two conditions. First, GTE must comply with the phase-in schedule set out in Paragraph A(1), including the requirement in Paragraphs A(1)(b) and A(1)(c) that the GTOCs offer equal exchange access through end offices serving two-thirds of their exchange access lines by September 1987, and through all end offices serving more than 10,000 exchange access lines by the end of 1990. Second, the GTOCs must provide a commercially available trunkside interconnect arrangement [22] to all interexchange carriers at all end offices employing electro-mechanical (including step-by-step) switches, unless such access is not physically possible except at costs that clearly outweigh potential benefits to users of telecommunications services. Paragraph A(4) also requires GTE to provide the Department of Justice with such information as the Department may request in order to evaluate the cost/benefit analysis permitted by subparagraph (b).

[21] Paragraph A(1)(b)(ii) makes clear that, if the capability of providing equal exchange access through switches manufactured by non-affiliates is not commercially available to the GTOCs, the two-thirds requirement imposed by Paragraph A(1)(b) is reduced accordingly.

[22] Thus, as means of providing interexchange carriers with improved interconnection are developed, whether by GTE's Automatic Electric subsidiary or by other manufacturers, they will be installed by the GTOCs.

Appendix B of the proposed Judgment also includes some minor variations from the MFJ, designed to take account of the modifications suggested by the Court in *United States* v. *Western Electric Co.* and incorporated into the MFJ upon the consent of the parties. Paragraph B(1) of Appendix B requires the GTOCs to file their unbundled exchange access tariffs by January 1, 1984.[23] Paragraph C(1) of Appendix B has been altered for consistency with the provision of Paragraphs V(B) and V(D) of the proposed Final Judgment. Paragraph V(B) requires non-discriminatory treatment of all interexchange carriers and information services providers (including a separate entity within a GTOC providing information services under Paragraph V(D)). Paragraph V(D) requires the GTOCs, if co-location rights are granted to the separate entities providing information services, to provide co-location on the same terms and conditions, on an unbundled, tariffed basis, to all information service providers.[24]

The proposed Final Judgment also permits the GTOCs to provide a limited additional form of exchange access service which the BOCs may not provide by virtue of the definition of "exchange access" contained in the MFJ. Under Paragraph II(G) of the proposed Final Judgment, a GTOC may provide as an ancillary service included in its exchange access tariffs the routing of traffic (solely at the option of an interexchange carrier) among multiple points of presence designated by the interexchange carrier within an exchange or serving area based on the destination of such traffic outside of the exchange or serving area. Such an ancillary service may not include the routing of traffic among trunk groups from an end office or access tandem to a particular point of presence or any routing beyond such points of presence.

This provision permits interexchange carriers efficiently to construct their own facilities within an exchange area while, at the same time, preventing the GTOCs from effectively avoiding the prohibition against interexchange traffic routing contained in Paragraph II(G).[25] The provision also mandates that there is not to be more than one point of presence of an interexchange carrier at any physical location (which could include any facilities leased from a GTOC). This clause precludes undercutting of the restriction on GTOC interexchange routing through the establishment of "sham" multiple points of presence, for example, by establishing several points of presence in a single building or on a single switching or transmission facility.[26]

The provision of this ancillary routing function by the GTOCs shoud not raise any significant competitive concerns, particularly given the relatively small areas that the GTOCs serve and the limited number of multiple points of presence that might efficiently be located there by interexchange carriers. In addition, the GTOCs may be perfomring interexchange routing for AT&T and other carriers through use of existing interexchange routing facilities, as permitted on a transitional basis pursuant to Paragraphs V(C)(2) and V(C)(3) of the proposed Final Judgment. Finally, so long as such ancillary interexchange routing functions are performed by the GTOCs on a non-discriminatory basis under tariff, as required by Paragraphs II(G) and V(B), each interexchange carrier is free to choose the most efficient means of routing its traffic within GTOS exchanges.

D. Information Services

Paragraph V(D) places specific separation obligations on the GTOCs as a condition of their being permitted to provide information services. These separation provisions are intended to circumscribe leverage by the GTOCs of their market power as rate-of-return regulated monopolists into the competitive information services industry.

Paragraph V(D)(1) contains a general prohibition against the provision of information services, and the ownership of facilities used to provide such services, by the GTOCs. Paragraphs V(D)(2) and V(D)(3) are integrally related to the general prohibition of Paragraph V(D)(1). The GTOCs are permitted to offer information services only through a separate entity, either an incorporated subsidiary or an unincorporated division maintaining separate books of account and reporting directly to the chief operating officer of the GTOC. This separate

[23] This coincides with the deadlines for filing access tariffs under the FCC's Third Report and Order, In the Matter of MTS and WATS Market Structure, CC Docket No. 78-72, Phase I (released Feb. 28, 1983). However, Paragraph V(D) of Appendix B requires GTE to file with the FCC such requests for waivers of orders of the Commission as may be necessary to permit full compliance with all the requirements of the proposed Judgment.

[24] Thus, consistent with the Department's interpretation of the *AT&T* decree, the GTOCs have no obligation to permit the co-location on their premises of the facilities of any competing interexchange carrier or information service provider. If a GTOC leases space in its buildings used to provide exchange access services to any affiliated interexchange carrier or information service provider, however, the GTOC would then be required to make such space available to all interexchange carriers or information services providers, respectively, in a non-discriminatory manner.

[25] For example, GTE's Santa Barbara-Oxnard territory is located between Los Angeles and San Francisco. An interexchange carrier might construct facilities at the northern end of that territory heading toward San Francisco and other facilities at the southern end of the territory, heading toward Los Angeles, but have no switching capability within the territory. In such a circumstance, the GTOC could route originating traffic destined for San Francisco and points north, *e.g.*, Oregon and Washington, either directly or through an access tandem, to the point of presence at the north end of the territory and direct all other interexchange traffic to a point of presence at the Los Angeles end of the territory. The GTOC, however, could not switch traffic among various circuits and trunk groups headed toward these points of presence based on additional destinations beyond the point of presence, *i.e.*, could not also sort traffic heading for the northern point of presence between that destined for San Francisco and that destined for Seattle.

[26] However, this would not prohibit the location of points of presence for different types of services, *e.g.*, private line and switched services, at the same location.

entity may obtain telecommunications services, telecommunications facilities (including co-location of its equipment with facilities used to provide exchange telecommunications), and billing services from the GTOC only to the extent that such services and facilities are made available to non-affiliated firms on an unbundled, tariffed basis, and in accordance with the non-discrimination obligations of Paragraph V(B) of the proposed Final Judgment. Use of the GTOCs' local exchange networks must therefore be provided to all information services providers on an equal and non-discriminatory basis.

Administrative and other services, including those provided by GTOC maintenance and installation personnel, may be obtained by the separate entity under Paragraph V(D)(2) only in accordance with a two-tier standard similar to that contained in Paragraph IV(A)(7). If such services are obtained from the GTOC by non-affiliated firms, they may be provided to the separate entity only on the same terms and conditions; if such services are proprietary, and are not offered to non-affiliated firms, they may be obtained by the separate entity only at their fully allocated costs.[27]

Paragraph V(D) (2) also requires separation of the facilities of the separate entity used to provide information services from facilities of the GTOC used to provide regulated exchange telecommunications and exchange access services. No such separate entity may to any extent own or control facilities used to provide exchange telecommunications or exchange access services. This requires the separate entity to utilize information service technologies not integrated with the exchange switching and transmission facilities of the GTOCs. The GTOC and the separate entity may not maintain marketing personnel who simultaneously market both regulated exchange telecommunications or exchange access services and information services.[28] Finally, Paragraph V(D)(2) prohibits the separate entity from directly or indirectly obtaining proprietery GTOC marketing, customer, or network engineering information.

Paragraph V[D](3) provides for a sunset of the separation obligations of Paragraphs V(D)(1) and V(D)(2). This sunset may occur in one of two ways. Under Paragraph v(d)(3)(a), the limitations of Paragraphs V(D)(1) and V(D)(2) expire automatically five years after the effective date of the proposed Final Judgment, unless the Department of Justice applies to the Court for an extension of the limitations as to one or more categories of information services and the Court finds by a preponderance of the evidence that, without the limitations, there is a substantial danger that competition in the relevant information service in any exchange or serving area will be substantially lessened.[29] Among the factors that are to be taken into account in making such a determination under Paragraph V(D)(3)(a) are the development of competition in the provision of the relevant information service, and the development of competition and potential competition in the provision of exchange telecommunications facilities and services. Therefore, the development of alternative local exchange networks, which might represent a realistic limitation on the market power of the GTOC's within their franchised exchange and serving areas, may be a factor that could ameliorate the competitive concerns arising from GTOC provision of information services without the necessity of extending the limitations of Paragraph V(D)(1) and V(D)(2). any application by the Department under this Paragraph must be made at least one year prior to the expiration of the separation obligations, in order to allow GTE a reasonable lead time in which to conduct its corporate planning.

Paragraph V(D)(3)(b) allows an alternative means by which the separation obligations may expire. Under this provision, the restrictions of paragraphs V(D)(1) and V(D)(2) of the proposed Final Judgment are tied to the line-of-business restrictions imposed on the divested BOCs under section II(D) of the *AT&T* decree, which prohibit the divested BOCs from providing information services. The GTOCs will be freed of these limitations to the extent that the BOCs are freed of the line-of-business restrictions. If those restrictions are lifted for a BOC throughout a state, then the separation obligations of the proposed Judgment expire with respect to the information services of a GTOC within that state. If the line-of-business restrictions are lifted in any BOC exchange area, then the separation obligations of the proposed Judgment expire with respect to the information services of a GTOC within any GTOC exchange or serving area that is associated with the BOC exchange area under the orders entered by the Court in *United States* v. *Western Electric Co.*[30]

Paragraph V(D)(4) provides expressly that neither failure by the United States to apply for an extension of the separation obligations or for further relief as permitted by Paragraph V(D)(3)(a), nor any findings made by the Court in any such proceeding, shall prevent, or constitute an estoppel in, any subsequent action by the United States under the antitrust laws.

E. Future Acquisitions

Section VI of the proposed Final Judgment places certain restrictions on GTE's ability to expand its presence in the interexchange telecommunications industry through future acquisitions.

Paragraph VI(A) provides that for ten years after the effective date of the proposed Judgment, except with the approval of the Department of Justice or of the Court, GTE may not acquire a direct or indirect equity interest in, or the assets of, any interexchange carrier providing services in the United States. Paragraph VI(A) does not limit or affect the provisions of, or any obligations of GTE under, the Hart-Scott-Rodino Antitrust Improvements Act (15 U.S.C. 18a) and the Premerger Notification Rules and Regulations (16 CFR 803.20 *et seq.*).

Paragraphs VI(B) and VI(C) exempt from the approval requirment of Paragraph VI(A) acquisitions by GTE or its affiliates which would not present competitive concerns similar to those alleged in the complaint in this action and addressed in the proposed Final Judgment. Paragraph VI(B) exempts acquisitions by GTE's pension and profit-sharing trusts or subsidiaries, in the ordinary course of business, solely for investment purposes. Paragraph VI(C) exempts the purchase by GTE [31] of assets used to provide exchange telecommunications which are only incidentally used to provide interexchange services, thus permitting GTE, if it chooses, to acquire other local operating companies in the future notwithstanding the *de minimis* provision of interexchange services by such operating companies.[32] Paragraph VI(C) also exempts acquisitions by GTE of international record carriers, or other carriers providing interexchange telecommunications services, which obtain less than five percent of their gross telecommunications revenues from the provision of telecommunications services between points located within the United States. The exemptions contained in Paragraphs VI(B) and VI(C) are not intended by the Department of Justice or GTE to grant any antitrust immunity to the acquisitions described therein, or to limit or affect the provisions of, or any obligations of GTE under, the Hart-Scott-Rodino Antitrust Improvements Act (15 U.S.C. 18a) and the Premerger Notification Rules and Regulations (16 CFR 803.20 *et seq.*).

F. Enforcement

Under Section VIII of the proposed Final Judgment, GTE is required to undertake several steps to insure that, after entry, its employees become familiar with the terms of the proposed Judgment and GTE's policy regarding compliance with the antitrust laws and with the proposed Judgment. Under Section IX, the Department of Justice is given

[27] Nothing in Paragraph V(D)(2) prohibits a GTOC, if it chooses to do so, from providing to the separate entity administrative services not offered to non-affiliates at greater than their fully allocated cost. This provision of the proposed Final Judgment sets a minimum standard designed to prevent artificially low internal prices from serving as a vehicle for cross-subsidization, and does not represent a maximum for intra-corporate pricing.

[28] The term "simultaneous" is used to preclude an individual from performing both functions while in the same corporate position, but makes clear that this provision does not bar transfer of marketing personnel between the GTOC and the separate entity, so long as such transfers are not utilized to evade the explicit prohibition of Paragraph V(D)(2).

[29] Paragraph V(D)(3)(a) also permits the Department to apply to the Court for the imposition of further relief relating to the provision of information services by the GTOCs. Further relief available to the Department under this provision includes, upon an appropriate showing, divestiture by the GTOCs of their information services operations and of the assets used to provide such services.

[30] Paragraph V(D)(3)(b) accomplishes this by incorporating by reference the definitions of "exchange telecommunications" and "interexchange telecommunications" contained in Paragraphs II(I) and II(P).

[31] Because GTE is defined in Paragraph II(J) to include the GTOCs, the exemptions in Paragraph VI(C) also apply to the GTOCs.

[32] Of course, under Paragraph II(J), any after-acquired operating company becomes a GTOC, and succeeds to all the obligations of a GTOC under the proposed Final Judgment.

extensive rights of investigation to ensure that GTE, the GTOCs, and the acquired entities comply with the provisions of the proposed Final Judgment.

Under Section VII of the proposed Final Judgment, the Department of Justice and GTE are granted the right to seek Court modification or construction of the terms of the proposed Judgment, and to seek from the Court further orders and directions that may be necessary for implementation of the proposed Judgment. Paragraph VII(A) also provides the Department with the right to seek enforcement of the proposed Judgment and subsequently to seek punishment of any violation.

Paragraph VII(B) provides that, upon application of the Department of Justice, the Court may require divestitures that would separate GTE's ownership of local exchange monopolies from ownership of competitive interexchange facilities, either by divestiture of the acquired entities or, at the election of GTE, of the GTOCs. A condition precedent to any such further relief is a finding by the Court that GTE has engaged in a pattern of substantial violations of Section IV, Section V, or Appendix B of the proposed Final Judgment, or that any GTOC has violated Section IV, Section V, or Appendix B of the proposed Judgment in a manner that materially injures interexchange carriers or information service providers in their ability to offer services competitive with those offered by GTE or the acquired entities. The listing of divestitures considered appropriate as further relief is intended to be non-exhaustive. For example, Section VII also encompasses the right of the Department to request divestiture of the separate entities through which the GTOCs are permitted to provide information services by Paragrpah V(D)(2) if GTE or the GTOCs is found to have violated the requirements of Paragraph V(D).

IV. Competitive Effect of the Proposed Final Judgment

The proposed Final Judgment provides some significant competitive benefits, and thus continues the transition to a competitive interexchange telecommunications industry begun in the *AT&T* case. While there is also the possibility that some competitive harm may result from the acquisition, the proposed Judgment signficantly reduces that potential for competitive harm. Moreover, in the event a violation does occur, the proposed Final Judgment makes clear that the Department of Justice will be prepared to seek appropriate divestitures.

The guarantee of equal exchange access and non-discrimination for all interexchange carriers in Paragraphs V(A), V(B), and Appendix B of the proposed Judgment removes GTE's basic ability to disadvantage competitors of SPCC and SPSC through exercise of its control of the local exchange bottleneck. The prohibition of GTOC interexchange services and assets, and the phased elimination of GTE's partnership relation with AT&T, mitigates the incentives that GTE's operating companies have enjoyed in the past to favor AT&T and to restrain competition in interexchange markets in the future. In addition, the separation obligations imposed by Section IV and Paragraph V(D) of the proposed Judgment circumscribe GTE's ability to exploit the ratebase regulated nature of local telephone communications.

Although not as extensive as the relief sought by the United States in its complaint, these measures substantially reduce the competitive problems raised by this specific set of facts. The proposed Final Judgment permits GTE to consummate the acquisition on the basis of separation between its regulated affiliates and the acquired entities. Such a separate subsidiary requirement cannot, as the Department of Justice has stated frequently, eliminate the incentive for cross-subsidization from regulated to unregulated markets.[33] However, the Department's prior comments on this issue have generally been directed to the AT&T factual context and the low probability that a separate subsidiary would be of appreciable value where a firm historically has been fully intergrated, with common facilities and personnel and joint and common costs. Here, the separate subsidiary requirement is imposed on two firms that have never been intergrated, and the proposed Final Judgments places significant limitations on the degree to which they may be intergrated in the future.

The proposed Judgment constrains GTE's ability to cross-subsidize by precluding the most likely and most serious forms of such cross-subsidization. For example, under Section IV of the proposed Final Judgment, common costs, facilities, and services for the GTOC's and the acquired entities are prohibited. Transactions between them must be on an arm's-length basis, under contract or tariff as appropriate. And in Paragraph IV(A)(3), the proposed Judgment precludes the use of customer information or engineering information as an indirect means of cross-subsidization and discriminatory treatment.

The Department does not believe this relief alone would be sufficient to curb the inherent anticompetitive potential of this acquisition. The equal access and corporate separation obligations of the proposed Judgment, however, are mutually reinforcing. By opening the corporate interface to public scrutiny, Section IV makes the evasion of regulatory constraints more difficult and increases the likelihood that such conduct will be detected. The requirement that GTE provide equal, non-discriminatory exchange access to all intercity carriers—including its newly acquired long-distance carriers—reinforces this separation by removing a major avenue for anticompetitive conduct. The corporate separation provisions in turn reinforce the equal access provisions by barring preferential treatment in the various subtle ways engendered by the otherwise close cooperation typical of affiliated companies. Finally, the interconnection conduct of the divested BOC's freed of their incentive to favor any interexchange carrier, will serve as a significant benchmark against which to measure the conduct of the GTOCs following consummation of the acquisition.

The compliance requirements contained in the proposed Final Judgment also enhance the potential for restraining exercise of the GTOCs' power as regulated monopolists. Each present and new managerial employee must affirm that he or she is aware of the obligations imposed by the Judgment and sign a certificate to that effect. GTE's chief executive officer must annually affirm the compliance of his company with all terms of the Judgment. Absent willful misconduct, GTE itself will therefore be carefully monitoring its compliance with the requirements of the proposed Judgment. The deterrent effect of these specific obligations, backed by the contempt power of the Court, is significantly greater that the general obligations imposed by the antitrust law.

The proposed Final Judgment does not—and cannot, given the lack of complete structural separation—eliminate all possibilities for exercise of GTE's power as a regulated monopolist in its franchised serving areas. However, the proposed Judgment grants the Department the right to seek further relief, including divestiture of the acquired entities or the GTOCs, should the proposed Judgment not prove to be adequate protection. The Department will not hesitate to move expeditiously for divestiture or further relief under the proposed Final Judgment if the present relief proves insufficient to assure the continued progression toward a competitive intercity telecommunications industry.[34] Indeed, the possibility of such divestitures should serve as a further deterrent to anticompetitive conduct by GTE following consummation of the acquisition.

Paragraph V(D) of the proposed Judgment permits the GTOCs to expand into some information services markets; the divested BOCs are prohibited from offering such services by the line-of-business limitations of the MFJ. The proposed Judgment permits the GTOCs to offer information services on the condition that they do so through an entity separated from the operation and facilities involved in exchange telecommunications and exchange access. From the Department's perspective this is a second-best solution. The Department's preferred remedy would be a complete prohibition on a regulated monopolist's provision of any competitive service.

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[33] *See, e.g.*, Comments of the Department of Justice, In the Matter of Policy and Rules Concerning the Furnishing of Customer Premises Equipment, Enhanced Services and Cellular Communications Services by the Bell Operating Companies, CC Docket No. 85-115, at 13 (filed April 25, 1983); Reply Comments of the Department of Justice in Cellular, CC Docket No. 79-318 (filed July 3, 1980); Brief for United States at 20;–34 CCIA v. FCC, 693 F. 2d 198 (D.D.C. 1982) ("Computer II"); Pretrial Brief for United States at 79–84, United States v. AT&T, 552 F. Supp. 131 (D.D.C. 1982).

[34] Any proceeding for further relief under the proposed Final Judgment would be shorter, since it would involve a more limited inquiry, than an action under Section 2 of the Sherman Act. Of course, the Department of Justice also retains the right to bring an action under Section 2 of the Sherman Act at any time that GTE uses its newly acquired intercity carriers to monopolize, or attempt to monopolize, the provision of interexchange telecommunications services in any relevant market or markets.

But the proposed Final Judgment is a negotiated resolution; this provision is a compromise. The Department believes that, for several reasons, this compromise reduces the danger that GTOC provision of information services would lessen competition in those markets. First, the BOCs' treatment of information services providers will serve as a clear benchmark against which to measure the GTOCs' conduct. Second, the structural separations imposed will eliminate the most likely and most problematic forms of cross-subsidization. Finally, the Department retains the right to seek further relief, including divestiture under the decree, should anticompetitive consequences arise. The proposed Final Judgment permits the Department to file such a separate lawsuit even after a proceeding for further relief under the Judgment itself. Therefore, at worst, this negotiated settlement simply postpones a Sherman Act challenge to the GTOCs' integration into information services, while in the interim reducing the likelihood that such integration will have significant anticompetitive consequences.

The proposed Final Judgment thus achieves a balance. Opportunities are granted to GTE to engage in new businesses. These opportunities are subject to continuing restrictions designed to circumscribe GTE's ability to leverage the monopoly power of its operating companies through cross-subsidization or discriminatory actions. The United States retains the option to obtain complete structural relief, through appropriate divestitures, if these opportunities are exploited to impair the otherwise efficient competitive development of the interexchange telecommunications and information services industries.

V. Remedies Available to Potential Private Litigants

Entry of the proposed Final Judgment will in no way affect the right of any present or potential private plaintiff who has been or may be damaged by an alleged violation of the antitrust laws to bring an action for monetary damages or equitable relief. Section 4 of the Clayton Act (15 U.S.C. 15) provides that any person who has been injured in this business or property as a result of conduct prohibited by the antitrust laws may bring suit for treble damages and reasonable attorneys' fees. Under the provisions of Section 5(a) of the Clayton Act (15 U.S.C. 16(a)), however, the proposed Final Judgment has no *prima facie* effect in any private lawsuit that is pending or may subsequently be brought against the defendant.

VI. Procedures Available for Modification of the Proposed Final Judgment

The proposed Final Judgment is subject to a stipulation between the United States and the defendant providing that the United States may withdraw its consent to the proposed Judgment at any time before it is entered by the Court. The Antitrust Procedures and Penalties Act conditions entry upon the Court's determination that the proposed Judgment is in the public interest. Under Section VII of the proposed Final Judgment, the Court would retain jurisdiction over this action in order, among other things, to permit either party to apply for any necessary or appropriate modification of the proposed Judgment or construction of its provisions.

The Antitrust Procedures and Penalties Act provides a period of at least sixty (60) days preceding the entry of the proposed Final Judgment within which any person may submit to the United States comments regarding the proposed Final Judgment. The United States invites comments from any interested person regarding the proposed Judgment. The United States will evaluate the comments and determine whether it should withdraw its consent. The comments and the response of the United States to the comments will be filed with the Court and published in the **Federal Register** in accordance with the Antitrust Procedures and Penalties Act.

Written comments should be submitted to: Stanley M. Gorinson, Chief, Special Regulated Industries Section, Antitrust Division (SAFE 504–B), United States Department of Justice, Washington, D.C. 20530.

VII. Alternatives to the Proposed Final Judgment

As an alternative to a consent decree, the United States has considered seeking a preliminary and permanent injunction blocking the acquisition and a permanent injunction barring GTE from providing information services. However, considering the likelihood that a preliminary injunction could be obtained in this matter, and the further likelihood that protracted litigation might follow if a preliminary injunction were not granted, the United States decided to accept a negotiated resolution dealing with a wide range of concerns related to GTE's position in the telecommunications industry. An essential element of that resolution is the right of the United States to seek further relief under the decree in the event the safeguards it incorporates prove inadequate.

Unlike the situation in *AT&T*, where a vertically integrated structure had been in existence for more than a century, GTE has never been operated in common with SPCC. The prospective effectiveness of a separate subsidiary requirement, including its policeability, should be greater in this situation than with respect to the BOCs. Although the proposed Final Judgment permits GTE's ownership of both local operating companies and interexchange and information service operations, and thus does not reduce GTE's economic incentive to engage in anticompetitive conduct, the proposed Judgment reduces GTE's ability to cross-subsidize and removes GTE's ability to deny equal access. Coupled with other provisions of the proposed Final Judgment, such as the extension of equal exchange access obligations to the second largest telephone operating company in the nation and the phased elimination of GTE's partnership with AT&T, the proposed Judgment should significantly reduce the present anticompetitive potential of the acquisition and should allow for the development of competition in those markets where, given the development of technology and the changing nature of the telecommunications industry following the *AT&T* divestitures, realistic competition is now possible.

Although most of the provisions of the proposed Final Judgment were revised and refined in the course of negotiations, no other relief substantially different in kind was considered by the United States.

IX. Determinative Documents

There are no materials or documents that the United States considered determinative in formulating the proposed Final Judgment. Accordingly, none is being filed along with this Competitive Impact Statement.

Respectfully submitted,

Charles F. Parthum III, Linda S. Chapman, Glenn B. Manishin, Andrew C. Gilbert, Eneid A. Francis, *Attorneys, Antitrust Division, U.S. Department of Justice, Washington, D.C. 20530, (202) 724–6693.*

Certificate of Service

I, Glenn B. Manishin, an attorney for the United States, hereby certify that I have on this day served the foregoing *Competitive Impact Statement* on defendant GTE Corporation by delivering a copy thereof to Dean Rohrer, Esq., GTE Corporation, 1120 Connecticut Avenue, NW., Suite 900, Washington, D.C. 20036.

Glenn B. Manishin.

May 4, 1983.

[FR Doc. 83-13025 Filed 5-13-83; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL ADVISORY COMMITTEE ON OCEANS AND ATMOSPHERE

Meeting Change

May 11, 1983.

Changes have been made to the meeting agenda of the National Advisory Committee on Oceans and Atmosphere (NACOA) scheduled to meet on Monday and Tuesday, May 23-24, 1983 and published in the **Federal Register** of May 9, 1983 (Pages 48 FR 20831–20832).

The revised, tentative agenda is as follows:

Monday, May 23, 1983

2001 Wisconsin Avenue NW., Page Building #1, Rooms 416 & B–100, Washington, D.C.

9:00 a.m.–12:00 Noon—Plenary

9:00 a.m.–9:15 a.m.—Announcements, Room 416

9:15 a.m.–12:00 Noon—Shipbuilding/Shipyards, Room 416

Speakers:

Admiral Harold E. Shear, Administrator, Maritime Administration, U.S. Department of Transportation

Rear Admiral James W. Lisanby, Principal Commander for Acquisition, Naval Sea Systems Command

Lee Rice, President-elect of the Shipbuilders Council of America
Herman Molzahn, Vice President for Shipyard Operations, The American Waterways Operators, Inc.
12:00 Noon–1:00 p.m.—Lunch
1:00 p.m.–5:00 p.m.—Panel meetings
1:00 p.m.–3:00 p.m.—Ocean Research, Chairman: Sylvia A. Earle, Room 416
Topic: Undersea Technology
Speakers:
John Steele, Director, Woods Hole, Oceanographic Institution
Carl Helwig, Vice President, Sub-Sea International
1:00 p.m.–3:00 p.m.—Marine Minerals, Chairman: Burt Keenan, Room B–100A
Topic: Panel Work Session
1:00 p.m.–5:00 p.m.—Coastal Zone, Co-Chairmen: Sharron Stewart, Jack R. Van Lopik, Room B–100
Topic: Wetlands
Speakers: TBA
5:00 p.m.—Adjourn

Tuesday, May 24, 1983

2001 Wisconsin Avenue NW., Page Building #1, Rooms 416 & B–100, Washington, D.C.
8:30 a.m.–12:30 p.m.—Panel meetings
8:30 a.m.–10:30 p.m.—Radioactive Waste Disposal, Chairman: John A. Knauss, Room 416
Topic: Panel Work Session
10:30 a.m.–12:30 p.m.—Weather Satellites, Chairman: FitzGerald Bemiss, Room B–100
Topic: Panel Work Session
Exclusive Economic Zone, Chairman: Don Walsh, Room 416
Topic: Panel Work Session
Speakers:
Bill Phillips, Legislative Assistant, to Senator Ted Stevens
Tim Smith, Counsel, House Fisheries and Wildlife Subcommittee
Will Stelle, Professional Staff, House Merchant Marine and Fisheries Committee
Jim Drewry, Professional Staff, Senate Commerce Committee
Deb Stirling, Professional Staff, Senate Commerce Committee
Bill McCluskey, Policy Staff Member, Senate National Ocean Policy Study.

Note.—A final decision to hold a Weather Satellites Panel Meeting has not yet been reached. Please call Stephanie Hughes at 653–7818 to verify this agenda item.

12:30 p.m.–1:30 p.m.—Lunch
1:30 p.m.–3:30 p.m.—Plenary—Action Items—Panel Reports
3:30 p.m.—Adjourn.

Additional information concerning this meeting may be obtained through the NACOA Executive Director, Mr. Steven N. Anastasion. The mailing address is: NACOA, 3300 Whitehaven Street, NW. (Suite 438, Page Building #1), Washington, DC 20235. The telephone number for NACOA is 202/653–7818.

Dated: May 11, 1983.

Steven N. Anastasion,

Executive Director.

[FR Doc. 83–13075 Filed 5–13–83; 8:45 am]

BILLING CODE 3510–12–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Dance Advisory Panel (Dance/Film/Video Section); Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel (Dance/Film/Video Section) to the National Council on the Arts will be held on June 1–3, 1983, from 9:00 a.m.–5:30 p.m. in Room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

A portion of this meeting will be open to the public on June 3, from 3:30 p.m.–5:00 p.m. to discuss policy.

The remaining sessions of this meeting on June 1–2, from 9:00 a.m.–5:30 p.m. and on June 3, from 9:00 a.m.–3:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation of 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. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 683–5433.

Dated: May 9, 1983.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 83–13076 Filed 5–13–83; 8:45 am]

BILLING CODE 7537–01–M

Humanities Panel: Meetings

AGENCY: National Endowment for the Humanities.

ACTION: Notive 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 Pannel will be held at 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506:

1. Date: 1, 1983.
Time: 9:00 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review application submitted for Central Disciplines/Improving Introductory Courses Programs, Division of Education, for projects beginning after October 1, 1983.

2. Date: June 1, 1983.
Time: 9:00 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications for Summer Seminars for Secondary School Teachers in English and American Literature, submitted to the Division of Fellowships and Seminars for projects beginning after June 4, 1984.

3. Date: June 6–7, 1983.
Time: 9:00 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications submitted by State humanities committees, Division of State Programs for projects beginning after November 1, 1983.

4. Date: June 7, 1983.
Time: 9:00 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review applications for Summer Seminars for Secondary School Teachers in History, submitted to the Division of Fellowships and Seminars, for projects beginning after June 4, 1984.

5. Date: June 9, 1983.
Time: 9:00 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review applications for Summer Seminars for Secondary School Teachers in Literature, except British and American, submitted to the Division of Fellowships and Seminars, for projects beginning after June 4, 1984.

6. Date: June 10, 1983.
Time: 9:00 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review applications for Summer Seminars for Secondary School Teachers in Religion and Philosophy submitted to the Division of Fellowships and Seminars, for projects beginning after June 4, 1984.

7. Date: June 13–14, 1983.
Time: 9:00 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications submitted by state humanities committees, Division of State Programs, for activity beginning after November 1, 1983.

8. Date: June 20–21, 1983.
Time: 9:00 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications submitted by state humanities committees, Division of State Programs, for activity beginning after November 1, 1983.

9. Date: June 6, 1983.
Time: 9:00 a.m. to 5:00 p.m.

Room: 315.

PROGRAM: This meeting will review the applications Submitted for the Planning and Policy Assessment Studies Program, Office of Planning and Policy Assessment, for project beginning after October 1, 1983.

10. Date: June 9–10, 1983.
Time: 8:30 a.m. to 5:30 p.m.
Room: 415.

PROGRAM: This meeting will review applications submitted for the Humanities in Museums and Historical Organizations Program, Division of General Programs, for projects beginning after January 1, 1984.

11. Date: June 13–14, 1983.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315.

PROGRAM: This meeting will review applications submitted for the Humanities Projects in Museums and Historical Organizations Program, Division of General Programs, for projects beginning after January 1, 1984.

12. Date: June 16–17, 1983.
Time: 8:30 a.m. to 5:30 p.m.
Room: 415.

PROGRAM: This meeting will review applications submitted for the Humanities Projects in Museums and Historical Organizations Program, Division of General Programs, for projects beginning after January 1, 1984.

13. Date: June 22–23, 1983.
Time: 8:30 a.m. to 5:30 p.m.
Room: 415.

PROGRAM: This meeting will review applications submitted for the Humanities Projects in Museums and Historical Organizations Program, Division of General Programs, for projects beginning after January 1, 1984.

The proposed meeting are for the purpose of panel review, discussion, evluation 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 552b 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. 83-13089 Filed 5-13-83; 8:45 a.m.]

BILLING CODE 7536-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-346]

The Toledo Edison Co. and the Cleveland Electric Illuminating Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–3, issued to The Toledo Edison Company and The Cleveland Electric Illuminating Company (the licensees), for operation of the Davis-Besse Nuclear Power Station, Unit No. 1 (the facility) located in Ottawa County, Ohio.

The amendment would extend the surveillance test due date from May 17, 1983 to September 17, 1983, for the steam generator outlet steam pressure channels of the Remote Shutdown Instrumentation and Post Accident Monitoring Instrumentation, in accordance with the licensees' application for amendment dated May 2, 1983.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The extension of the surveillance due date involves only a slight increase in the probability that the instrumentation channels may have drifted out of calibration. The interval from previous calibration to the proposed extended due date represents an extension normally allowed by existing Technical Specifications for a single surveillance interval but exceed the permissible time for three successive calibration intervals by less than 7 percent. This increased interval is not significant. Previous testing and calibrations have found the instrumentation to be within FSAR tolerances.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attn: Docketing and Service Branch.

By June 15, 1983, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the

petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John F. Stolz: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Gerald Charnoff, Esq., Shaw, Pittman, Potts, and Trowbridge, 1800 M Street, N.W., Washington, D.C. 20036, attorney for the licensees.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and at the University of Toledo Library, Documents Department, 2801 West Bancroft Avenue, Toledo, Ohio 43606.

Dated at Bethesda, Maryland, this 11th day of May 1983.

For the Nuclear Regulatory Commission.

John F. Stolz,

Chief, Operating Reactors Branch No. 4, Division of Licensing.

[FR Doc. 83-12725 Filed 5-13-83; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

National Airspace Review; Meeting

AGENCY: Federal Aviation Administration, Department of Transporation.

ACTION: Notice of Meeting.

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 1) notice is hereby given of a meeting of Task Group 1–7 of the Federal Aviation Administration (FAA) National Airpspace Review Advisory Committee. The agenda for this meeting is as follows: A review of airspace classification as it relates to pilot certification/requirements/endorsement is needed for possible simplification and application to each airspace category.

DATE: Beginning June 13, 1983, at 11 a.m., continuing daily, except Saturdays, Sundays, and holidays, not to exceed two weeks.

ADDRESS: The meeting will be held at the Federal Aviation Adiminstration, conference room 8 A/B, 800 Independence Avenue, SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: National Airspace Review Program Management Staff, Room 1005, Federal Aviation Adiminstraion, 800 Independence Avenue, SW., Washington, D.C. 20591, (202) 426–3560. Attendance is open to the interested public, but limited to the space available. To insure consideration, persons desiring to make statements at the meeting should submit them in writing to the Executive Director, National Airspace Review Advisory Committee, Air Traffic Service, AAT–1, 800 Independence Avenue, SW., Washington, D.C. 20591, by June 9, 1983. Time permitting and subject to the approval of the chairman, these individuals may make oral presentations of their previous submitted statements.

Issued in Washington, D.C., on May 10, 1983.

Karl D. Trautmann,

Manager, Special Projects Staff, Air Traffic Service.

[FR Doc. 83-13094 Filed 5-13-83; 8:45 am]

BILLING CODE 4910-13-M

Office of the Secretary

Reports, Forms, and Recordkeeping Requirements; Submittals to OMB April 29, 1983

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements, transmitted by the Department of Transportation, on April 29, 1983 to the Office of Management and Budget (OMB) for its approval. This notice is published in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

FOR FURTHER INFORMATION CONTACT: John Windsor, John Chandler, or Annette Wilson, Information Requirements Division, M-34, Office of the Secretary of Transportation, 400 7th Street, S.W., Washington, D.C. 20590, (202) 426-1887 or Gary Waxman or Wayne Leiss, Office of Management and Budget, New Executive Office Building, Room 3001, Washington, D.C. 20503, (202) 395-7313

SUPPLEMENTARY INFORMATION:

Background

Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register**, listing those information collection requests submitted to the Office of Management and Budget (OMB) for approval under that Act. OMB reviews and approves agency submittals in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms, reporting and recordkeeping requirements.

On Mondays and Thursdays, as needed, the Department of Transportation will publish in the **Federal Register** a list of those forms, reporting and recordkeeping requirements that it has submitted to OMB for review and approval under the Paperwork Reduction Act. The list will include new items imposing paperwork burdens on the public as well as revisions, renewals and reinstatements of already existing requirements. OMB approval of an information collection requirement must be renewed at least once every three years. The published list also will include the following information for each item submitted to OMB:

(1) A DOT control number.

(2) An OMB approval number if the submittal involves the renewal, reinstatement or revision of a previously approved item.

(3) The name of the DOT Operating Administration or Secretarial Office involved.

(4) The title of the information collection request.

(5) The form numbers used, if any.

(6) The frequency of required responses.

(7) The persons required to respond.

(8) A brief statement of the need for and uses to be made of the information collection.

Information Availabilty and Comments

Copies of the DOT information collection requests submitted to OMB may be obtained from the DOT officials listed in the "For Further Information Contact" paragraph set forth above.

Comments on the request should be forwarded, as quickly as possible, directly to the OMB officials listed in the "For Further Information Contact" paragraph set forth above. If you anticipate submitting substantive comments, but find that more than 5 days from the date of publication is needed to prepare them, please notify the OMB officials of your intent immediately.

Items Submitted for Review by OMB

The following information collection requests were submitted to OMB on April 29, 1983:

DOT No.: 2160.

OMB No.: 2115-0142.

BY: United States Coast Guard.

Title: Plan Approval and Records for Marine Engineering Systems (46 CFR Subchapter F).

Forms: CG-2936, CG-2832.

Frequency: On Occasion.

Respondents: Thermal fluid heater manufacturers; barge and other vessel operators.

Need/Use: Thermal fluid heaters are currently a class of boiler. This rulemaking will create a distinction between boilers and thermal fluid heater for operational testing. There will be no substantial change in the reporting and recorkeeping requirements placed on the public as a result to this distinction.

DOT No.: 2161.

OMB No.: (New) None.

By: Office of Secretary.

Title: Effects of Transportation Deregulation on Motor Carrier Service in Florida and Arizona.

Forms: Six survey forms.

Frequency: Once—Nonrecurring.

Respondents: Motor carriers in Florida and Arizona; commercial and industrial users of motor carrier services in Florida and Arizona.

Need/Use: This survey is part of DOT's research to assess the impacts of deregulation on the trucking industry.

DOT No.: 2162.

OMB No.: None.

By: United States Coast Guard.

Title: International Oil Pollution Prevention Certificate.

Forms: CG-5352 and CG-5352B.

Frequency: Four and five years.

Respondents: Owners and operators of ships operating in U.S. waters while engaged in international voyages. (Tankers of less than 150 gross tons and non-tankers of less than 400 gross tons are excluded.)

Need/Use: To prevent pollution of coastal waters and beaches 33 U.S.C. 1901-1911 requires that the provisions of MARPOL 73/78 be implemented in U.S. regulations. International Oil Pollution Prevention (IOPP) Certificates will be used for ensuring and documenting compliance with MARPOL 73/78 and 33 CFR Parts 151 and 155. Ships will suffer severe restrictions in international voyages if they do not possess an IOPP Certificate.

DOT No.: 2163.

OMB No.: 2115-0077.

By: United States Coast Guard.

Title: Letter of Intent (33 CFR 154.110 and 154.740).

Forms: None.

Frequency: On Occasion.

Respondents: Owners/operators of marine bulk oil facilities.

Need/Use: Owners/operators of waterfront bulk oil facilities which intend to transfer oil to or from vessels must notify the Coast Guard of this intention. The Coast Guard may then conduct an inspection to ensure compliance with pollution prevention regulations (33 CFR 154 and 156).

DOT No.: 2164.

OMB No.: 2125-0033.

By: Federal Highway Administration.

Title: Statement of Material and Labor

Used by Contractors on Highway Construction.

Forms: FHWA-47.

Frequency: On Occasion.

Respondents: Highway construction/state and local highway agencies.

Need/Use: To obtain information on usage of materials and labor in Federal-aid highway construction.

DOT No.: 2165.

OMB No.: 2125-0080 and 0091 (combination).

By: Federal Highway Administration.

Title: Medical Examination; or Waiver—Initial and Renewals.

Forms: None.

Frequency: Biennially.

Respondents: Commercial truck or motor carrier businesses.

Need/Use: Safety requirements are that drivers be qualified, i.e., they must show medical certificates or a waiver if the driver has physical defects.

DOT No.: 2166.

OMB No.: 2125-0081.

By: Federal Highway Administration.

Title: Qualification Certificate.

Forms: None.

Frequency: On Occasion.

Respondents: Trucking, motor carrier businesses.

Need/Use: The certificate is permitted in lieu of other documentation required in 49 CFR 391 of driver used is employed by another motor carrier.

DOT No.: 1931.

OMB No.: 2115-0075.

By: United States Coast Guard.

Title: Application and Report of Physical, First Aid, and Ship Sanitation Examination for Color Vision.

Forms: CG-954 (optional).

Frequency: On occasion.

Respondents: Individuals seeking merchant marine licenses, or renewal of a pilots license.

Need/Use: This modified regulation implments changes to the pilot licensing requirements created by Section 4 of the Port and Tanker Safety Act (Pub. L. 95-474), which requires, among other things, annual physical exams for pilots. A physical exam is required for individuals to obtain all other merchant mariners licenses, in order to determine an applicant's physical competency.

Issued in Washington, D.C., on May 9, 1983.

Karen S. Lee,

Deputy Assistant Secretary for Administration.

[FR Doc. 83-13024 Filed 5-13-83; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Circ. 570, 1982 Rev., Supp. No. 24]

Niagara Fire Insurance Company; Surety Companies Acceptable on Federal Bonds: Termination of Authority

Notice is hereby given that the certificate of authority issued by the Treasury to Niagara Fire Insurance Company, Wilmington, Delaware, under Sections 9304 to 9308 of Title 31 of the United States Code, to qualify as an acceptable surety on Federal bonds is hereby terminated effective this date.

The company was last listed as an acceptable surety on Federal bonds at 47 FR 28880, July 1, 1982.

With respect to any bonds currently in force with Niagara Fire Insurance Company, bond-approving offices for the Government may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from the company.

Questions concerning this notice may be directed to the Operations Staff (Surety), Banking and Cash Management, Bureau of Government Financial Operations, Department of the Treasury, Washington, DC 20226, telephone (202) 634-5745.

Dated: May 6, 1983.

W. E. Douglas,

Commissioner, Bureau of Government Financial Operations.

[FR Doc. 83-13000 Filed 5-13-83; 8:45 am]

BILLING CODE 4810-35-M

Office of the Secretary

[Number: 108-1]

Organization and Responsibilities of the Office of the Assistant Secretary (International Affairs)

Dated: May 6, 1983.

By virtue of the authority vested in the Secretary of the Treasury, including the authority vested in me by 31 U.S.C. 321(b), it is ordered that:

1. The Assistant Secretary (International Affairs) is the principal advisor to the Secretary of the Treasury and the Under Secretary (Monetary Affairs) in their exercise of policy direction and control over Treasury positions and areas dealing with international financial, economic, monetary, trade, investment, and commercial matters as well as energy policies and programs.

2. Within the Office of the Assistant Secretary (International Affairs) (OASIA), there are four Deputy Assistant Secretaries: Developing Nations, International Monetary Affairs, Trade and Investment Policy, and Arabian Peninsula Affairs. The functions and responsibilities of the Deputy Assistant Secretaries are defined by the Assistant Secretary and the Deputy Assistant Secretaries serve under the policy guidance of the Assistant Secretary. Each Deputy Assistant Secretary supervises a number of offices managed by Directors. The functions and responsibilities of the Deputy Assistant Secretaries shall include, but not be limited to, the following:

a. *Deputy Assistant Secretary (Developing Nations).*

(1) The Deputy serves as the principal policy advisor to the Assistant Secretary in formulating and implementing Treasury positions on U.S. economic and financial programs with respect to developing nations, except those of the Arabian Peninsula. The Deputate helps initiate, review, and oversee U.S. policies toward these nations, on such issues as debt owed to private and public sector entities, and evaluates the development and financial impact on these nations of U.S. policies on trade, investment, and commodities. Staff support is provided to senior Treasury officials in the formulation of U.S. policies on developed/developing nations relations generally, especially in connection with multilateral fora such as the UN General Assembly, UN Conference on Trade and Development (UNCTAD), and the IBRD/IMF Development Committee and its subordinate bodies. The Deputate maintains representatives in key developing nations who are responsible for analyzing local economic conditions and recommending appropriate policies. It also maintains liaison with and reviews policies of other USG agencies on development issues.

(2) The Deputate collects and maintains data, giving particular attention to balance of payments, official and private capital flows, debt and IMF credit, and provides comprehensive analyses and forecasts of the economic, financial, and political situation in developing countries for use in formulating Treasury policy on financial assistance, debt rescheduling, and other matters. The Deputate also has the responsibility for providing support to the Secretary of the Treasury as a member of the joint economic commissions which have been established with certain of these countries.

(3) The Deputate formulates, reviews, and oversees Treasury positions on

policies, operations, and activities of the international lending institutions. The Deputate maintains liaison with and reviews policies of international, United States, and interagency development finance and policy formulating bodies, such as the Development Assistance Committee of the OECD and the Development Loan Staff Committee. The Deputate administers the Secretariat of the National Advisory Council on International Monetary and Financial Policies (NAC). The NAC operates under the authority of Executive Order No. 11269, as amended.

b. *Deputy Assistant Secretary (International Monetary Affairs).*

(1) The Deputy serves as the principal policy advisor to the Assistant Secretary in formulating and implementing Treasury policies concerned with (a) the maintenance and operation of a smoothly functioning international monetary system; (b) coordination of economic policy among industrial nations; (c) the development and conduct of U.S. financial relations with the market economy industrial nations; (d) monetary relationships with the U.S. Government sought by other nations; (e) foreign exchange operations and management of U.S. reserve assets; and (f) the international role of the private money and capital markets, including banking, securities, and insurance issues. In carrying out these functions the Deputate provides support for U.S. participation in multilateral financial institutions, principally the International Monetary Fund and the OECD, as well as in other fora related to its functional areas of responsibility.

(2) The Deputate provides analyses and forecasts of economic developments in and policies of the major industrial nations. It maintains representatives in key industrial countries and in the OECD. It also analyzes and forecasts regional and global payments patterns and their implications for the functioning of the monetary system and the international economy.

(3) With guidance furnished by senior Treasury officials, direction is given to the Federal Reserve Bank of New York concerning Exchange Stabilization Fund operations and liaison is maintained to assure that foreign operations of the Federal Reserve System are coordinated. In this regard, foreign exchange markets are intensively monitored. Continuing oversight of gold markets and related developments is also maintained.

(4) The Deputate provides analyses and assembles information relevant to international banking, portfolio investment and insurance matters and the international practices of U.S. and foreign banks, their regulatory authorities and the impact of their activities on the operation of the international monetary system.

(5) The Deputate provides macroeconomic analyses that relate to the formulation of international economic policies, prepares analyses and reports on current developments and near-term prospects for the U.S. current-account balance and for capital flows, develops analytic techniques for the study of current international economic issues, uses macroeconometric models as tools to analyze the above, and provides econometric modeling assistance to other offices in OASIA.

c. *Deputy Assistant Secretary (Trade and Investment Policy).*

(1) The Deputy serves as the principal policy advisor to the Assistant Secretary in the areas of trade policy, economic relations with nonmarket economy countries, international investment, commodity policy, non-fuel minerals and agricultural policy, and oceans policy.

(2) The Deputate formulates and implements Treasury positions on: (a) U.S. trade and commercial policy in general; (b) multilateral and bilateral trade negotiations; (c) trade finance matters; (d) U.S. military sales abroad; (e) U.S. economic relationships with the USSR, Eastern Europe, and China, including support for operations of the East-West Foreign Trade Board and its Working Group; (f) programs in relation to the Secretary's responsibilities for trade relations with other countries; (g) direct investment issues, including matters pertaining to multinational corporations, expropriation and the Overseas Private Investment Corporation; (h) basic natural resources which are not energy related, particularly non-fuel minerals and agricultural commodities; (i) U.S. commodity policy; and (j) oceans policy matters, including "Law of the Sea" negotiations. The Deputate serves as Secretariat for the interagency Committee on Foreign Investment in the United States established by Executive Order No. 11858.

(3) In carrying out these functions, the Deputate (a) assembles information and provides analyses relevant to the formulation of Treasury policies; (b) advises the Assistant Secretary and senior Treasury officials on economic and financial implications of issues which may be considered at interagency or international levels; (c) develops and implements Treasury policy with respect to such issues within the area of responsibility of the Deputate arising in international fora, such as the General Agreement on Tariffs and Trade, United Nations Conference on Trade and Development, Development Committee of the International Monetary Fund and the International Bank for Reconstruction and Development, and various committees of the Organization for Economic Cooperation and Development.

d. *Deputy Assistant Secretary (Arabian Peninsula Affairs).*

(1) The Deputy serves as the principal policy advisor to the Assistant Secretary in formulating and implementing Treasury positions on U.S. economic and financial policies and programs with respect to (a) the nations of the Arabian Peninsula; and (b) questions relating to international energy policy, with special emphasis on the economic, financial, and investment aspects of such policy. The Deputate encompasses the U.S.-Saudi Arabian Joint Commission Program with an office in Washington, D.C., and the Joint Commission in Riyadh, Saudi Arabia, and serves as the principal policy advisor to the Assistant Secretary in formulating and implementing the projects and programs undertaken by the U.S.-Saudi Arabian Joint Commission on Economic Cooperation established on June 8, 1974.

(2) The Deputate (a) assembles information and provides analyses relevant to international energy policy formulation, (b) advises the Assistant Secretary and senior Treasury officials on economic and financial implications of international energy issues which may be considered at interagency or international levels, and (c) develops and implements Treasury policy with respect to international energy issues arising in international fora such as the International Energy Agency and the Development Committee of the International Bank for Reconstruction and Development and International Monetary Fund.

(3) The Deputate collects and analyzes data and prepares reports on (a) foreign currency transactions required by statute or otherwise needed by the Assistant Secretary and on foreign portfolio investment in the United States as required by statute; (b) complies and prepares for publication statistics on U.S. capital flows as required by law or traditional practice; and (c) indebtedness to the U.S. Government, as well as potential liabilities under guarantee and insurance programs.

3. Within the Office of the Assistant Secretary (International Affairs), there also are the Administrative staff and the OASIA Secretariat. These offices

perform administrative and other support operations for the Assistant Secretary.

4. This Order is effective immediately.

5. Treasury Department Order No. 108–1 dated October 1, 1979, is rescinded.

R. T. McNamar,

Acting Secretary of the Treasury.

[FR Doc. 83-13073 Filed 5-13-83; 8:45 am]

BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register
Vol. 48, No. 95
Monday, May 16, 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 COMMUNICATION COMMISSION

DELETION OF AGENDA ITEM FROM MAY 12TH CLOSED MEETING

The following item has been deleted from the list of agenda items scheduled for consideration at the May 12, 1983, Closed Meeting and previously listed in the Commission's Notice of May 5, 1983.

Agenda, Item No. and Subject

Hearing—1—Application for Review in Illinois Bell Telephone Company DPLMRS application/complaint proceeding (CC Docket Nos. 78–314 and 315).

Issued: May 11, 1983.

William J. Tricarico,

Secretary, Federal Communications Commission.

[S-693-83 Filed 5-12-83; 11:08 am]

BILLING CODE 6712-01-M

2

FEDERAL RESERVE SYSTEM

BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Friday, May 20, 1983.

PLACE: 20th Street and Constitution Avenue., N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank building expansion proposal.
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: May 12, 1983.

James McAfee,

Associate Secretary of the Board.

[S-695-83 Filed 5-12-83; 3:39 am]

BILLING CODE 6210-01-M

3

NATIONAL TRANSPORTATION SAFETY BOARD

[NM-83-11]

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 48 FR 21043, May 10, 1983.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9 a.m., Tuesday, May 17, 1983.

CHANGE IN MEETING: A majority of the Board determined by recorded vote that the business of the Board required revising the agenda of this meeting and that no earlier announcement was possible. The following item was deleted from the agenda:

4. *Opinion and Order:* Petition of Meade, Docket SM–2898; disposition of the Adminstrator's appeal.

CONTACT PERSON FOR MORE INFORMATION: Sharon Flemming, (202) 382–6525.

May 12, 1983.

[FR Doc. S-694-83 Filed 5-12-83; 12:22 pm]

BILLING CODE 4910-58-M

federal register

Monday
May 16, 1983

Part II

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

Topsoil; Permanent Regulatory Program; Surface Coal Mining and Reclamation Operations

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 701, 780, 784, 816, and 817

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Topsoil

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

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is adopting final rules for the removal, storage, and redistribution of topsoil, topsoil substitutes and supplements, and other subsoil layers to ensure soil capability consistent with the approved postmining land use. The final rules provide greater flexibility to the States to accommodate local conditions, clarify intent, and improve the organization of the regulations.

EFFECTIVE DATE: June 15, 1983.

FOR FURTHER INFORMATION CONTACT: LeRoy A. DeMoulin, Soil Scientist, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, DC 20240; 202–343–3190.

SUPPLEMENTARY INFORMATION:

I. Background
II. Discusssion of Rules Adopted and Responses to Comments
III. Procedural Matters

I. Background

On March 11, 1982 (47 FR 10742), the Office of Surface Mining Reclamation and Enforcement (OSM) proposed to amend 30 CFR 816.21–816.25 (surface mining activities) and 817.21–817.25 (underground mining activities) to allow regulatory authorities more flexibility to develop topsoil-protection rules consistent with local soils, climate, and topography.

The final rules implement specifically the requirements of Sections 515(b)(5), 515(b)(6), and 516(b)(10) of the Surface Mining Control and Reclamation Act of 1977 (the Act), 30 U.S.C. 1201 *et seq.*, as well as certain other statutory requirements relating to revegetation, protection of the hydrologic balance, minimization of air and water pollution attendant to erosion, and prompt reclamation. The new rules require persons conducting surface coal mining and reclamation operations to remove topsoil, or other approved plant-growth material and subsoil strata when necessary to ensure soil capability, before beginning mining operations; to store these materials for later use; to protect them from contamination and erosion; and to redistribute them in a manner which enhances their capability to support vegetation and to control erosion. Other important goals of the new rules are to fulfill the requirements of Section 515(b)(2) of the Act to restore mined land to its premining land-use capabilities, or to higher or better uses for which there is reasonable likelihood of success.

The performance standards proposed March 11, 1982, for topsoil removal, storage, and redistribution during surface mining and reclamation operations offered two alternatives for underground mining activities. Alternative I was identical to the proposed changes for Part 816. Considering the long life of surface disturbances from certain facilities associated with underground mining, Alternative II offered two approaches for dealing with problems peculiar to topsoil reclamation for areas with long-term facilities.

Under the first of these approaches, when long-term stockpiling of topsoil would be impractical, a regulatory authority could allow an operator to distribute topsoil over an approved site for current use and to retrieve it later for purposes of reclaiming the originally disturbed site at the end of the mining operation. Under the second approach, when the site being disturbed would not have sufficient suitable topsoil material for reclamation purposes or when soil salvage would be impractical, for example because of erosion, excessive stoniness, or steep slopes, the regulatory authority could allow an operator to use topsoil or topsoil substitutes from borrow areas within the permit area at the time of reclamation.

During the comment period, which extended through September 10, 1982, OSM received comments from approximately 55 sources representing industry and associations, environmental groups, individuals, and Federal and State agencies. No one requested a public hearing or meeting and therefore none was held.

After analyzing the recommendations made by the various commentors, OSM has adopted rules for underground mining activities that are the same as those for surface mining activities. Additionally, in response to numerous public comments recommending either the adoption of Alternative II for underground mining activities or its inclusion in the regulation of the long-term facilities associated with surface mining activities as well, OSM has incorporated aspects of Alternative II in its rules for both Parts 816 and 817. These and other changes to the proposed rules are addressed in detail in the discussion that follows.

II. Discussion of Rules Adopted and Response to Comments

In the final rules, OSM has reorganized certain of the sections dealing with topsoil performance standards.

As an aid to the reader, the following table shows the relationship of the final rules to the proposed and previous rules.

DERIVATION TABLE

New section No.	Proposed section No.[1]	Previous section No.
780.18(b)(4)	816.22(e) [part]	816.22(e) [part].
784.13(b)(4)	817.22(e) [part]	817.22(e) [part].
		816.21.
		817.21.
Parts 816 and 817:		
.22(a)(1)	.22(a) [part]	.22(b).
.22(a)(2)	.22(b)	.22(c).
.22(a)(3)	.22(a) [part]	
.22(a)(4)	.22(c)	.22(a).
.22(b)	.22(e) [part]	.22(e) [part].
.22(c)(1)	.23(a)	.23(a).
.22(c)(2)	.23(b)	.23(b).
.22(c)(3)	[2]	
.22(d)(1)	.24(b)	.24(b).
.22(d)(2)	.24(a)	.24(a).
.22(d)(3)	.24(c)	
.22(d)(4)		.25.
.22(e)	.22(d)	.22(d).

[1] Alternative I unless otherwise indicated.
[2] Section 817.22(a) [part], Alternative II.

A. Section 701.5 Definitions of "soil horizons" and "topsoil"

A number of comments were received suggesting revisions to the definition of topsoil in 30 CFR 701.5. The Illinois Department of Mines and Minerals suggested that OSM clarify its "topsoil" definition in relation to the new classification established by the U.S. Department of Agriculture Soil Conservation Service (SCS) in the National Cooperative Soil Survey. The original definition of topsoil included the A horizon only. The A horizon contained a number of subclassifications including the A1 and A2 subhorizons. Recently, the SCS has redesignated the A2 subhorizon as a separate master horizon, identified as the E horizon. Thus, to ensure consistency between the two agencies and to avoid confusion as to which horizons are properly includable in the topsoil definition, OSM has revised its definition to specifically include both the A and E horizons. This is not a substantive change from the previous definition but is intended merely to conform to the new SCS classification system. Similarly, the definition of "soil horizons" is amended to reflect the addition of the E horizon and the SCS

change from "major" to "master" horizons.

One commenter suggested that many problems relating to the topsoil requirements stemmed from the lack of an adequate definition. He recommended using the definition developed in the Conservation Glossary of the Soil Conservation Society of America. This commenter, and another, thought that the definition for topsoil should include both the A and B horizons.

The comments recommending the combination of both the A and B horizons have been rejected. Performance standards in Parts 816 and 817 are predicated upon the new definition which describes topsoil as the A and E horizons layers of the four master horizons. Any change that would include the B or C horizons would necessitate a restructuring of the performance standards and would be inconsistent with the requirements of the Act.

B. Sections 780.18(b)(4) and 784.13(b)(4) Reclamation plan

The factors which an operator must evaluate to demonstrate to the regulatory authority that the soil medium to be removed is equal to, or more suitable for sustaining vegetation than, the existing topsoil and that the resulting soil medium is the best available in the permit area to support revegetation were described in proposed §§ 816.22(e) and 817.22(e). However, these requirements have been moved to the permitting rules at final 30 CFR 780.18(b)(4) and 784.13(b)(4), respectively, because such demonstrations will be central to any topsoil-reclamation plan an operator will submit with a permit application. The movement of the analysis requirements to Parts 780 and 784 is not a substantive change but rather one of organization

Two commenters objected to OSM's deletion of the requirements in previous §§ 816.22(e) and 817.22(e) for test such as net acidity or alkalinity, phosphorus, and potassium and for the standardized testing procedures. One commenter supported the addition of the test parameters that OSM did include. The other commenter characterized OSM's proposed tests as "vague" and "marginally useful."

Another group of commenters preferred to have the reference to specific tests eliminated. They thought it was better for the regulatory authority to have the option to select the appropriate parameters for testing in order to account for local conditions.

OSM has chosen A middle ground. Section 780.18 and 784.13 specify the basic level of testing needed to determine topsoil-substitute or supplement suitability. Sufficient flexibility has been built into the final rules to allow the regulatory authority to look at local conditions and to require other kinds of tests as may be appropriate.

One commenter was concerned that under the proposal the regulatory authority could require additional tests if desirable. The commenter thought this could lead to arbitrary testing requirements by the regulatory authority.

This commenter's concern is groundless. OSM has purposely included the "necessary or desirable" options for the regulatory authority so that adequate flexibility is built into these rules. There is no evidence to infer that the discretion will be used in an arbitrary manner. Moreover, OSM's oversight responsibilities will help ensure proper implementation of these provisions.

A State commenter pointed out that the test analyses were for soil characteristics, yet the proposed provision related to the evaluation of overburden materials. The commenter thought this created confusion.

The term "overburden," as used in new §§ 816.22(b) and 817.22(b), encompasses the B and C soil horizons and other underlying strata. Since the materials being selected are to be used as topsoil substitutes or supplements, the information necessary for their evaluation pertains to their soil characteristics.

C. Sections 816.21 and 817.21 Topsoil: General requirements

The general requirements for topsoil removal, storage, and redistribution were discussed in previous §§ 816.21 and 817.21 and were reported in detail in subsequent sections. Consequently, in order to eliminate that redundancy, OSM has removed previously §§ 816.21 and 817.21 in the final rules.

One commenter, who wished to minimize erosion and other losses, objected to the proposed deletion of this section and argued that the other proposed rules did not emphasize that redistribution or storage should be handled expeditiously.

Another commenter viewed the deletion as involving no substantive change.

The recommendation to retain previous §§ 816.21 and 817.21 has been rejected. Other sections in the final rules deal with the questions of timing for topsoil storage or redistribution and erosion control.

D. Sections 816.22 and 817.22 Topsoil and subsoil

All of the topsoil-removal, storage, and redistribution requirements have been incorporated in §§ 816.22 and 817.22 (see derivation table).

1. *Paragraph (a) Removal.* Paragraph (a) deals with the kinds of material to be removed and the timing of removal. It contains an exception to the topsoil-removal requirement. Proposed Paragraph (a)(3) has been redesignated as Paragraph (e) because the rule relates specifically to the handling of subsoil, rather than the handling of topsoil.

Paragraph (a)(1). Paragraph (a)(1) requires that all topsoil, which is defined at 30 CFR 701.5 as the A and E soil horizons, be separately removed and segregated. If the topsoil is of insufficient quantity or of poor quality for sustaining vegetation, the operator must separately remove the topsoil, together with the overburden material that will be used as a substitute for, or as a supplement to, the topsoil. However, the operator must first demonstrate to the regulatory authority that the resulting medium is equal to, or more suitable for sustaining vegetation than, the existing topsoil and is the best available in the permit area.

The language of the proposed rule has been revised editorially to describe in new paragraphs (a)(1) (i) and (ii) the soil conditions most likely to be present. In addition, the phrase "and segregated" has been added to each of the paragraphs to make it clear that both the topsoil and the other materials approved by the regulatory authority under paragraph (b) must be segregated, as is required by Section 515(b)(5) of the Act.

One commenter suggested language changes to the general topsoil-removal provision to make it clear that on lands other than prime farmland, segregation of the soil horizons will not always be required. The commenter thought that the regulatory authority could approve the intermixing of all strata to be redistributed.

Section 515(b)(5) of the Act requires topsoil to be removed in a "separate layer" and "segregate[d] . . . in a separate pile from other spoil. . . ." The same section requires similar treatment for other strata which are being used as topsoil substitutes or supplements. Paragraph (a)(1) describes the topsoil materials which must be separately removed. This material may consist of either topsoil or topsoil substitutes and supplements.

Two commenters with opposing points of view raised questions about

the amount of topsoil to be removed. One commenter recommended amending proposed paragraph (a) so that the removal of topsoil would be limited to that amount necessary to meet the objectives of the approved postmining land use. In contrast, a representative of the National Forest Service objected to the proposed language because it did not clearly state that *all* topsoil was to be removed unless substitutes were approved.

OSM agrees with the latter commenter. Except where the topsoil is of insufficient quantity or of poor quality, Section 515(b)(5) of the Act mandates the removal and redistribution of all topsoil. To make this clear, the word "all" has been included in final paragraph (a)(1).

Paragraph (a)(2). Paragraph (a)(2) concerns situations where the existing topsoil layer is less than 6 inches thick. Under such circumstances, an operator may remove and treat as an acceptable soil medium the mixture that includes the topsoil and the unconsolidated material immediately below it. The mixture need not be separately removed provided the operator has obtained approval to use a topsoil substitute under paragraph (b).

Several commenters objected to the proposed thin-topsoil provision. One thought that since operators would be required to meet specific revegetation requirements, they should have the choice not to jeopardize the quality of the soil medium by being forced to mix it with lower quality materials. Another recommended removing the paragraph because if no topsoil is present, the topmost material may be the worst rooting medium in the overburden. A third commenter wanted the language to make it clear that operators would have to remove only the unconsolidated material that is available, even if it is less than 6 inches thick.

OSM has modified the proposed rule for clarity and in response to the comments. The final rule encourages operators to use the existing topsoil layer, even if very thin, but recognizes the practical limitations on topsoil removal in thin-topsoil situations. Thus, where the topsoil is less than 6 inches thick, the rule allows the operator to remove the topsoil and the unconsolidated materials immediately below and to treat the mixture as topsoil.

Paragraph (a)(3). Paragraph (a)(3), which was proposed as paragraph (a)(4), allows the regulatory authority to grant narrow exceptions to the general requirement to remove topsoil. These exceptions are applicable if minor disturbances result from the construction of small structures such as power poles, signs, or fence lines or if the activity will not destroy the existing vegetation and will not cause erosion. OSM has replaced the phrase "light traffic" in the proposed rule with the phrase "minor disturbances" to make it clear that the activity being covered is distinct from the kinds of traffic which occur on roads (see 30 CFR 816.150, 816.151, 817.150, and 817.151).

Several commenters addressed the proposed "light traffic" exception. Some supported the concept because in their opinion it would enhance the objectives of decreasing surface disturbances and reducing erosion. They preferred to see the rule applied to both surface and underground mining activities. OSM generally agrees with this assessment and has adopted the provision, as described above, for both Parts 816 and 817.

Other commenters wanted to see the provision modified or expanded. One of these felt that the language should be broadened to include small semi-permanent facilities such as ground-water monitoring wells and meteorologic stations situated outside the area to be mined. Another suggested eliminating the condition not to destroy existing vegetation because, in the opinion of the commenter, the purpose was to preserve topsoil rather than vegetation. A third commenter thought that the light-traffic exemption should be mandatory and he proposed language to assure application of the exception. Additionally, this and another commenter thought that the exception should apply where removal of topsoil would result in needless damage to soil characteristics. A State commenter thought that not causing compaction should be included among the conditions for approval.

One commenter suggested having the term "light traffic" defined because of its vagueness. One State regulatory authority had found from experience that actual enforcement of the standard is difficult. The State recommended requiring a management technique such as posting signs to limit the frequency of use and heavy equipment. The same commenter wanted it made clear to operators that departures from the general topsoil-removal requirements would be limited to the kinds of small construction structures listed or similar to those listed in the rule. As far as the State was concerned, even construction activities for those kinds of structures could necessitate topsoil removal.

To clarify OSM's intent that the provision could be applied to activities such as the movement of equipment over frozen ground, or to small areas such as the construction sites of power poles, signs or fence lines, the final rule includes the term "minor disturbances" rather than the phrase "light traffic." This language change is coupled with two disjunctive tests: either that the minor disturbance must occur at the site of small structures or that the minor distrubance will not destroy the existing vegetation and will not cause erosion. Although some topsoil could be lost at the site of small structures, the amount would be minimal.

Applying the tests provided, the regulatory authority has the discretion not to require topsoil removal for a variety of minor disturbances. Although the examples provided in the rule are not meant to be exhaustive, they are illustrative of the kinds of small structures that may be eligible for the exemption.

Except for minor disturbances that occur at the sites of small structures, the suggestion to delete as a test the destruction of existing vegetation is rejected because the loss of vegetation or the presence of erosion would indicate conditions where the removal and preservation of topsoil is appropriate. If heavy use is anticipated or local soil conditions exist so that vegetation would be destroyed under light traffic, then the exception in paragraph (a)(4) is not applicable. Moreover, a road used in a mining operation must meet the appropriate regulatory standards (§§ 816.150, 816.151, 817.150, and 817.151). OSM agrees that the possibility of needless soil removal and damage to soil properties should be considered, as well as vegetative cover, terrain, and climate, when determining the need for topsoil removal under this exception. Finally, OSM agrees that avoiding compaction is a factor which regulatory authorities may wish to consider when deciding whether to apply this exception.

Paragraph (a)(4). Paragraph (a)(4), which was proposed as paragraph (a)(5), sets the time frame for removal of the material to be salvaged under paragraph (a)(1). The removal of this material must occur after clearing the vegetative cover that would interfere with the soil-retrieval process, but before any surface disturbance such as drilling, blasting, or mining occurs.

One commenter recommended substituting the word "salvage" for the word "use" in the paragraph to make it clear that the material in question is being stored for later use. OSM has accepted this recommendation and has made an appropriate change in the final rule.

2. *Paragraph (b) Substitutes and supplements.* The regulatory language for final paragraph (b) is basically the same as was proposed at paragraph (e), except that the factors which an operator must evaluate will appear in the permitting rules at §§ 780.18(b)(4) and 784.13(b)(4), rather than in Parts 816 and 817, as proposed. The rule provides that selected overburden materials may be substituted for, or used as a supplement to, topsoil if the operator demonstrates to the regulatory authority that the resulting soil medium is equal to, or more suitable for sustaining vegetation than, the existing topsoil, and the resulting soil medium is the best available in the permit area to support revegetation. The phrase "in the permit area" has been added in the final rule to make it clear that the operator need not go outside the permit area to secure the topsoil substitute or supplement material. Most of the comments on proposed paragraph (e) concerned the kinds of tests being required to demonstrate the suitability of topsoil substitutes and supplements. These comments are discussed in this preamble under §§ 780.18(b)(4) and 784.13(b)(4).

One commenter objected to the proposed finding that the substitute material is "the best available to support revegetation." The commenter thought that this placed an unnecessary requirement on the operator, whereas showing the medium to be equal to, or more suitable than, the existing topsoil for sustaining vegetation was reasonable. This comment must be rejected. The requirement that the soil medium resulting from the use of topsoil substitutes or supplements must be the best available in the permit areas to support revegetation derives directly from the last clause of Section 515(b)(5) of the Act.

3. *Paragraph (c) Storage.*

Paragraph (c)(1). Paragraph (c)(1) provides that materials removed under paragraph (a) must be stockpiled when it is impractical to redistribute such materials promptly on regraded areas. This requirement was proposed as §§ 816.23(a) and 817.23(a).

One commenter objected to the use of the word "only" in specifying when stockpiling could occur. The commenter believed that this exceeded the requirements of the Act. The commenter thought that there could be times when an operator would want to stockpile topsoil from areas where it was abundant so that it could be used later on areas where the topsoil was thin. OSM has accepted this suggestion because it gives the operator increased flexibility without lessening protective standards.

Paragraph (c)(2). Paragraph (c)(2) sets out certain performance standards to be met when stockpiling occurs. These standards were in proposed §§ 816.23(b) and 817.23(b). It provides that stockpiled materials must be selectively placed on a stable site within the permit area; be protected from contaminants and unnecessary compaction that would interfere with revegetation; be protected from wind and water erosion through prompt establishment and maintenance of an effective, quick-growing vegetative cover or through other measures approved by the regulatory authority; and not be moved until required for redistribution unless approved by the regulatory authority.

The proposed rule prohibited moving the stockpiled material before redistribution. In response to commenter objections to this limitation, the final rule allows the material to be moved if approved by the regulatory authority.

Two commenters objected to the term "selectively placed." They thought that the language implied a requirement to segregate the material. They did not think that the Act requires such action. In a related vein, another commenter suggested language which would have allowed stockpiled materials to be placed in contact with other spoil if approved by the regulatory authority.

OSM intends the rule to require segregation of topsoil and topsoil substitutes and supplements. Section 515(b)(5) of the Act prohibits anyone from allowing segregated topsoil materials from mixing with other spoil.

One commenter wanted to know whether the stockpiled material referred to by the phrase "selectively placed" is the topsoil, the subsoil, or some other material. The phrase refers to whatever materials are to be used as a soil medium under paragraph (a)(1), whether topsoil or topsoil substitute or supplement.

Several commenters thought that the rule should indicate when the operator must begin to take steps to protect stockpiled materials. One thought that failure to specify a time limit would make it difficult for the regulatory authority to enforce the performance standard and asserted that this could lead to delays in protecting topsoil, resulting in erosion and air- and water-quality impacts. Two other commenters suggested allowing seeding at the first seasonal opportunity.

The final rule has not been changed from the proposed rule because the performance standards specified in paragraph (c)(2) should accommodate all situations. The specific methods used to meet the performance standards should be determined on a case-by-case basis. If a regulatory authority finds these standards difficult to enforce, it may develop other no less effective standards.

Another commenter objected to the deletion of the specific protection measures which appeared in the previous rules. The commenter thought it necessary to specify the establishment of both annual and perennial plants on topsoil stockpiles, because even if the reclamation plan called for the pile to be in place for less than 1 year, unanticipated delays could develop.

In developing these performance standards, OSM has given operators more flexibility in the choice of methods used to meet the standards. The standards are not less protective than those appearing in the previous rule. Moreover, the purpose of the final rule is to protect against wind and water erosion, not to establish diverse temporary vegetation. Questions about the kinds of plant species to use should relate to the reestablishment of vegetation, not to stockpiling. See the revegetation rules at 30 CFR 816.111 through 816.116 and 817.111 through 817.116.

One commenter pointed out that there was some confusion in the proposed language concerning the avoidance of contamination and compaction by maintenance of a vegetative cover. OSM agrees with the commenter and has written the final rule to eliminate the misunderstanding.

A commenter recommended including language which appeared in the previous rule describing the kind of contaminants to be avoided. According to the commenter, the Act does not require that topsoil be kept free of all contaminants, but only of acid- and toxic-forming materials.

OSM has adopted the commenter's suggestion in part and has modified the final rule so that stockpiled materials must be protected from contaminants that would interfere with revegetation. Such contaminants need not be limited to acid- and toxic-forming materials.

Paragraph (c)(3). In Paragraph (c)(3), OSM has included a modified version of the Alternative II proposal for § 817.22(a) that pertained to long-term surface disturbances associated with underground mining activities. The Alternative would have allowed the temporary distribution of soil materials on an approved "host" site. OSM agrees with several commenters that the alternative is equally applicable to certain long-term facilities associated

with surface mining activities. Thus, in Paragraph (c)(3) OSM has authorized an alternative to stockpiling material removed under Paragraph (a)(1), provided that certain conditions are met. First, stockpiling must be detrimental to the quality or quantity of the material to be stored. Second, the material so removed must be moved to an approved site within the permit area. Third, the temporary redistribution of the soil must not permanently diminish the capability of the soil of the host site. And fourth, the material being so stored must be kept in a condition more suitable for redistribution than if it had been stockpiled.

Two commenters were concerned with the proposed provision. One commenter thought that it would result in more extensive and costly stabilizing measures than stockpiling; it could increase bulk density, compaction, and topsoil loss through excessive handling; and it would increase reclamation costs by disturbing previously undisturbed "borrow" areas and then reclaiming the borrow areas. The other commenter objected to it because he believed that topsoil should be segregated and preserved even where long-term disturbances occur. He thought that topsoil, even when stockpiled for decades, would be superior to the use of other earthen material. Additionally, according to this commenter, the retention of stockpiled topsoil would not result in the needless borrowing of soil from areas that would normally remain undisturbed.

Under the final rule, the regulatory authority must evaluate specific conditions to determine whether use of the option is appropriate. Furthermore, any regulatory authority may exclude this provision from its regulatory program under Section 505 of the Act. Whether application of this option would result in increased reclamation costs is a consideration which an operator must weigh.

Another commenter thought that although this proposal for storage of topsoil had promise, OSM had not provided technical data to support the procedure. The commenter felt that while the degradation of the removed topsoil, after placement and management on similar areas of undisturbed soil, would probably be less than if it had been stockpiled, nevertheless there might be adverse effects on the A horizon of the buried soil due to reduction in microbiological activity, compaction, and disturbances during the initial placement and subsequent removal of the overlying topsoil. The commenter wanted to know whether the possible detriment to the host soil would be greater or less than the likely degradation of stockpiled topsoil.

The trade-off between the effects on stored topsoil versus those on the host soil would be evaluated by the regulatory authority at the time of permit approval. The amount of topsoil to be removed, the thickness of the topsoil in the disturbed area, the acreage available for topsoil dispersal within the permit area, and other local factors will influence the regulatory authority's decision. Moreover, the operator will have to demonstrate that the action would enhance the current use of the host site, that it would not permanently diminish the capability of the topsoil of the host site, and that the material so stored would be retained in a condition more suitable for redistribution than if it were being stockpiled. Additionally, it is accepted in the industry that a 6-inch layer of soil is a minimum practical depth for root development. And since most A horizons are less than 10 inches thick,[1] and the roots of many plants penetrate several feet in a favorable material, the additional layer of topsoil placed on a site should enhance the vegetative cover and host soil rather then degrade them.

Two commenters felt that the OSM proposal left several unanswered questions. One commenter thought that disturbance of a host area could substantially increase the cost of the performance bond. The commenter surmised that in Illinois, prime farmland would be used as host areas. Because, in the commenter's opinion, some adverse impacts on the host soil would likely occur, it would take some time to demonstrate restoration of the soil's capacity. The second commenter thought that it was unclear what alternative uses could be made of the stored topsoil during the life of the long-term facility.

The final rules have been written to make it clear that the host areas must be within the permit area. Whether prime farmland or other types of land are used as host areas, they will be subject to all of the bonding and reclamation protection afforded by the Act. With respect to the question of alternative uses for the topsoil during the storage period, the regulatory authority will consider the proposed use, which may include agricultural uses, during its review of the permit application.

[1] McCormack, D. E., 1976, Soil reconstruction—Selecting materials for placement in mine reclamation: Mining Congress Journal, Vol. 62, No. 9, pp. 32-26.

One commenter thought that use of the proposed word "impractical" in reference to stockpiling of topsoil was inaccurate, assuming the intended meaning was "undesirable." The commenter felt that the proposal gave the impression that topsoil need not be removed or salvaged at all under some circumstances.

OSM has modified the rule to make it clear that the alternative storage option is not available simply because it is more desirable than stockpiling. Rather, the test for applying the provision is whether stockpiling would be detrimental to the quality or quantity of the materials removed under Paragraph (a)(1). Lastly, *all* topsoil must be removed except in the limited circumstances provided for in Paragraph (a).

One commenter thought that the proposal in Paragraph (a)(2) of Alternative II to have "borrow" areas for topsoil or suitable substitute material for reclamation of long-term facilities was less promising than the "host" arrangement. The commenter said that in order to reclaim an already disturbed area, another equivalent undisturbed area would have to be disturbed. The commenter thought this would violate Section 515(b)(2) of the Act.
OSM has not adopted that portion of the proposed Alternative II, which would have explicitly authorized the use of topsoil or other suitable soil material from approved borrow areas if the originally disturbed site had insufficient topsoil or when topsoil salvage would have been impractical because of erosion, excessive stoniness and steep slopes. This provision is unnecessary because operators are not precluded from obtaining topsoil or substitutes from borrow areas if such areas are included within the permit area. Section 515(b)(5) of the Act specifically recognizes the need to deal with situations where an area to be disturbed has topsoil of insufficient quantity or of poor quality for sustaining vegetation. In such situations, the operator is authorized to use other strata which are best able to support vegetation. However, if this results in the disturbance of a previously undisturbed area, reclamation of that area will have to meet performance standards of the Act, including those in Section 515(b)(2).

4. *Paragraph (d) Redistribution.* Paragraph (d)(1) sets forth the standards under which the material removed under Paragraph (a) must be redistributed. These are the same as were proposed at §§ 816.24(b) and 817.24(b). Paragraph (d)(2) deals with treatment of the disturbed area to reduce the potential

for slippage. This provision is basically the same as was proposed at §§ 816.24(a) and 817.24(a), except that the treatment will be applied "to reduce potential slippage of the redistributed material" rather than "to eliminate slippage surfaces." This change was made because slippage surfaces generally cannot be totally eliminated. Paragraph (d)(3) specifies those limited circumstances under which the regulatory authority may choose not to require the redistribution of topsoil or topsoil substitutes and supplements. As described below, the language adopted by OSM restricts the application of this paragraph to specific kinds of embankments. Paragraph (d)(4) authorizes the use of nutrients and soil amendments. A similar requirement had appeared in the previous rules. In response to several comments, OSM has authorized the use of these aids for the initial establishment of the vegetative cover.

Paragraph (d)(1). Two commenters objected to a performance standard requiring the material removed under Paragraph (a) to be redistributed so as to achieve an approximately uniform, stable thickness. They thought that this was really a design criterion that could lead to the development of a monoculture vegetative community rather than a diverse native species community. One of the commenters went on to say that the proposed topsoil rules were not compatible with the revegetation aims and planned reclamation objectives.

The final rules are compatible with revegetation aims and planned reclamation objectives. Topsoil thickness is but one of several factors affecting plant growth and species diversification. Soil horizons commonly develop in variable thicknesses, with abrupt changes occurring within short linear distances that make it difficult at times to remove the soil layers exactly as they occur. Likewise, it is not aways easy to redistribute soil layers to the same depth as when they were removed. In consideration of these facts, the final rule requires redistribution to an approximately uniform soil thickness, "consistent with the approved postmining land uses." This is the common-sense approach to provide a workable standard that will sufficiently protect the environment and achieve the goals of the Act.

In keeping with a concern raised in a related context, the U.S. Forest Service felt that the requirement for a uniform distribution of topsoil material could result in Forest Service lands getting a lesser amount than they originally had if not all of the topsoil were salvaged in areas of mixed ownership.

The requirement for the redistributed material to have an approximately uniform, stable thickness will protect the interests of all landowners, including the Forest Service, for several reasons. Generally, most contiguous areas which are part of the same contour will have approximately the same topsoil thickness. Also, the performance standard requires that the thickness of the topsoil-material layer be consistent with the postmining land use.

A commenter requested an explanation for the term "excess compaction" in proposed §§ 816.24(b)(2) and 817.24(b)(2). After redistribution, a loose structureless soil surface is susceptible to wind and water erosion. A certain amount of compaction will increase soil stability and reduce the erosion hazard. However, excessive compaction will reduce soil pore space, thereby reducing infiltration and permeability, increasing runoff, and encouraging erosion. Compaction that restricts root penetration and water infiltration (excessive compaction) must be avoided during topsoil redistribution. Such factors as soil properties and soil-moisture content at the time of redistribution should guide the soil-handling procedures to prevent excessive compaction as required by Paragraph (d)(1)(ii).

Paragraph (d)(2). One commenter opposed deletion of the requirement to scarify regraded land which had appeared in previous §§ 816.24(a) and 817.24(a). The commenter viewed scarification as a standard best practice for soil construction. Another commenter supported the rewording of the proposed rule. He saw little benefit in scarifying regraded land to eliminate slippage zones when postmining slopes were required by law to be gentle enough to preclude slippage problems. Furthermore, he thought the benefits of scarifying regraded soil were nullified by the use of heavy equipment to redistribute topsoil.

OSM's decision to remove the specific reference to scarification is in keeping with the general policy to establish performance standards rather than design criteria. OSM believes that the regulatory authority will be in the best position to determine what forms of treatment will be necessary to reduce potential slippage of the redistributed materials and to promote root penetration. Scarification is one such treatment that the regulatory authority may require.

Another commenter recommended substituting the phrase "agrees with" in proposed §§ 816.24(a) and 817.24(a) for the word "approves" in connection with the timing of treatment to reduce slippage of the redistributed material. OSM has not adopted the proposed requirement for obtaining regulatory authority approval for treating slippage after redistribution of material removed under Paragraph (a). However, an operator may treat the land after redistribution occurs only if no harm will be caused to the redistributed material and reestablished vegetation.

Paragraph (d) (3). Several commenters supported proposed §§ 816.24(c) and 817.24(c), which would have allowed the regulatory authority to approve the "selective placement of topsoil materials." The general language in the proposed rule caused confusion among some of the commenters. Although the preamble described OSM's intent, the proposed rule language was susceptible to varying interpretation. Therefore, changes have been made in new Paragraph (d)(3) to clarify OSM's intent.

One commenter thought that where final-cut lakes and their associated access roads were approved, it would be counterproductive to require additional grading of slopes simply to provide a surface to which topsoil would cling. Some commenters suggested language modifications. One of these recommended substituting the phrase "other methods" for "selective placement" (§§ 816.24(c) and 817.24(c)). He also suggested that the provision be made applicable to situations other than those discribed in the preamble to the proposal (47 FR 10744) pertaining to cut slopes where conditions such as low water availability may warrant alternative methods. Yet another commenter recommended deleting the words "choose to," believing that without this change an operator's ability to obtain a bond release could be severely impaired.

The final rule clarifies OSM's intent, which was expressed in the preamable to the proposed rule. In certain circumstances, placing topsoil material on approved postmining embankments of permanent impoundments or of roads would likely be impractical and could cause the loss of topsoil that could be better used elsewhere in the permit area. To avoid such losses, the regulatory authority must be in a position to choose not to require topsoil redistribution in such locations. Under the final rule, the regulatory authority, as the governmental entity having the most familiarity with local conditions, can make that choice if the placement of topsoil material on such embankments would be inconsistent with the

requirement to use the best technology currently available to prevent sedimentation and the embankments will be otherwise stabilized to control erosion.

Another commenter opposed the provision, believing it would encourage regulatory authority approval of angle-of-repose slopes which, in the commenter's opinion, are undesirable because they tend to be unstable, difficult to revegetate, and highly susceptible to erosion. The commenter thought that no provision of the Act could be interpreted to allow exceptions to topsoil replacement. The commenter believed that authorizing angle-of-repose slopes would run counter to the requirements of Section 515(b)(3) of the Act, which calls for restoration of the approximate original contour (AOC).

Paragraph(d)(3) does not authorize angle-of-repose slopes. Restoration of AOC is governed by the backfilling and grading rules. The purpose of this paragraph is to provide the regulatory authority with flexibility to specify that the operator need not redistribute topsoil in those situations where stability of the topsoil layer is likely to be low due to erosion. Moreover, the option not to require redistribution of topsoil in such areas should conserve topsoil for distribution elsewhere and should reduce the protential for water pollution.

One commenter asserted that the topsoil-redistribution requirement of final Paragraph (d)(3), which appeared as the preferred alternative in OSM's "Final Environmental Impact Statement OSM–EIS–1: Supplement" (EIS), allowed two "categorical exclusions" that were not part of the proposed rule. He also argued that the change in language between the proposed rule and the preferred alternative was environmentally significant.

OSM rejects both contentions. First, the preamble to the proposed rule described the situations OSM was trying to address by proposing to authorize selective placement of topsoil material. In that preamble, OSM expressed concern for the loss of topsoil material if distributed on embankments which would exist as part of the postmining land-use configuration. This final rule implements that expressed intention for treatment of embankments. With regard to the commenter's second assertion, the environmental consequences of this change are analyzed in the final EIS and are not considered to be significant (see Vol. I, p. VI–28). Moreover, the adopted language for Paragraph (d)(3) is more environmentally protective than the proposed language referred to by the commenter. The proposed rule did not restrict selective placement of topsoil material on embankments, as does the final rule. In addition, the proposed standard to prevent erosion has been replaced by a comparable requirement allowing nonplacement of topsoil only where the redistribution would be inconsistent with the use of the best technology currently available to prevent sedimentation. The proposed standard requiring the promotion of revegetation by selective placement of topsoil material was not an appropriate standard because allowing topsoil not to be placed in a particular location would not contribute to the revegetation efforts at that location.

Paragraph (d)(4). Six State commenters opposed deleting the provision which would require the use of nutrients and soil amendments. In the experience of one State commenter, failure to fertilize and lime properly was a principal reason for failure to establish vegetative cover on mined land. The commenter preferred not having to wait until the question of bond release was raised before requiring corrective action. Another commenter considered the provision to be an unnecessary requirement.

In response to the majority of these commenters, OSM has included a provision authorizing the regulatory authority to require the use of nutrients and soil amendments on the initially redistributed materials in amounts necessary to establish the vegetative cover.

Paragraph (e) Subsoil segregation. Paragraph (e) provides the regulatory authority the option of requiring the removal and segregation of underlying strata, such as the B and C horizons, if it finds that retention of such material for redistribution as subsoil is necessary to comply with the revegetation requirements.

Proposed §§ 816.22(d) and 817.22(d) would have required the segregation of the underlying layers to be used as topsoil substitutes and supplements. Such activity is covered by final Paragraphs (a)(1)(ii) and (b). The provision dealing with the segregation of underlying layers that has been adopted as Paragraph (e) is similar to previous §§ 816.22(d) and 817.22(d) and permits the regulatory authority to require the removal, segregation, stockpiling, and redistribution of underlying layers if necessary to comply with the revegetation requirements.

One commenter objected to inclusion of a provision addressing subsoil segregation on the grounds that the only requirement in the Act for segregation of soil horizons applies to prime farmlands. Another commenter objected to the use of the word "segregate" and recommended limiting the provision to removal of the B horizon and its use as a topsoil substitute. A third commenter viewed the proposal as unduly restrictive and an unnecessary economic burden on large western operations because the chemical and physical nature of soils in the arid West make subsoil segregation a generally unproductive endeavor. This commenter thought that the provision should be restricted to prime farmlands or agricultural postmining land uses. Two commenters approved of the proposal. One of these was a State commenter who viewed the proposal as an improvement over the existing requirement because it would authorize the regulatory authority to require the B horizon to be segregated and used as a topsoil supplement without necessitating chemical and physical analysis.

OSM believes that in order to achieve successful revegetation, attention must be given to the profile of the soil and thus has adopted a rule that authorizes the regulatory authority to require the segregation and preservation of subsoil layers in order to fulfill the revegetation requirements. OSM has sufficient statutory authority under Sections 515(b)(2), (b)(5), (b)(6), (b)(19), and (b)(20) and 201(c)(2) of the Act to authorize such a provision.

Another commenter approved of the basic thrust of the proposal but did not think it adequately addressed the issue of when the subsoil segregation should occur. OSM agrees that the proposed rule was somewhat confusing and has revised the final rule to provide a simpler standard. Subsoil segregation may be required when the regulatory authority determines that it is necessary to achieve compliance with the revegetation requirements. The regulatory authority will be in the best position to determine the extent of soil reconstruction needed to achieve the desired physical or chemical soil characteristics for revegetation. Since revegetation is required elsewhere, this rule does not impose an undue burden on operators; it provides recognition that in some limited circumstances separate handing of subsoil strata may be necessary to meet those standards.

Two commenters thought that the regulatory authority should first have to show that the subsoil material being segregated is better than any other material in the permit area. One of these also wanted it made clear that the operator would not have to go outside the permit boundaries to obtain borrow material.

Where underlying strata are used as a topsoil substitute or supplement, the responsibility for demonstrating its suitabiity rests with the operators in the first instance. This requirement is dealt with in final Paragraph (b) and §§ 780.18(b)(4) and 784.13(b)(4). Where such material should be preserved for later use as subsoil, OSM has established the standards that will allow a regulatory authority to determine the optimum utilization of the available material. OSM agrees that operators need not go outside the permit area to obtain topsoil-substitute material.

E. Miscellaneous Issues

Limiting topsoil-removal areas. OSM did not include a provision in its proposed rules to require limiting the size of the removal area or the timing of redistribution in order to protect against erosion. This had been specified in previous §§ 816.23(f) and 817.23(f). Two commenters opposed this decision; one commenter approved it.

OSM has chosen not to include such a paragraph because other final rules are in place that limit the size of topsoil-removal areas. The operator is required to complete reclamation as contemporaneously as possible (§§ 816.100 and 817.100), store and protect topsoil (§§ 816.22(c) and 817.22(c)), protect against erosion (§§ 816.95 and 817.95), and meet the effluent limitations of the final rules (§§ 816.42 and 817.42). The requirement for redistribution of topsoil in a manner that protects against erosion is contained in §§ 816.22(d) and 817.22(d) of the final rules. Furthermore, the regulatory authority has the discretion to limit the size of disturbed areas if local soil and climatic conditions necessitate such action.

III. Procedural Matters

Executive Order 12291 and the Regulatory Flexibility Act

The Department of the Interior (DOI) has determined that this rule is not a major rule requiring a regulatory impact analysis under Executive Order 12291. Also, DOI has determined that this rule will not have a significant economic effect on a substantial number of small entities and therefore does not require a regulatory flexibility analysis under Public Law 96-354. The rule is expected to ease the regulatory burden on small operators by providing regulatory authorities flexibility in determining the amount of information that must be submitted with each permit application.

National Environmental Policy Act

OSM has analyzed the impacts of these final rules in its "Final Environmental Impact Statement OSM-EIS-1: Supplement" according to Section 102(2)(c) of the National Environmental Policy Act of 1969, (NEPA) (42 U.S.C. 4332(2)(C)). The final EIS is available in OSM's Administrative Record, Room 5315, 1100 L Street, NW., Washington, DC, or by mail request to Mark Boster, Chief, Branch of Environmental Analysis, Room 134, Interior South Building, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240. This preamble serves as the record of decision under NEPA. Changes to the rule that are not included in the preferred alternative published in Volume III of the EIS have been considered. For the most part these involve organizational and editorial changes, such as moving draft final § 816.22(a)(3) as it appeared in the FEIS to a new § 816.22(e). There are also a few words added or removed, but these do not markedly affect the FEIS analysis. For instance, these include the addition of the words "and segregated" in § 816.22(a)(1)(i) and the removal of the words "and other transportation facilities" and "to control erosion" in § 816.22(d)(3). The revisions to the two definitions in § 701.5 will have no environmental effect because they merely reflect nomenclature differences.

Paperwork Reduction Act

The new information-collection requirements in §§ 780.18 and 784.13 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance numbers 1029-0047 and 1029-0048. The information is being collected by the regulatory authority to determine the suitability of topsoil substitutes or supplements. The obligation to respond is mandatory.

Agency Approval

Section 516(a) requires that, with regard to rules directed toward the surface effects of underground mining, OSM must obtain written concurrence from the head of the department which administers the Federal Mine Safety and Health Act of 1977, the successor to the Federal Coal Mine Health and Safety Act of 1969. OSM has obtained the written concurrence of the Assistant Secretary for Mine Safety and Health, U.S. Department of Labor.

List of Subjects

30 CFR Part 701

Coal mining, Law enforcement, Surface mining, Underground mining.

30 CFR Part 780

Coal mining, Reporting and recordkeeping requirements, Surface mining.

30 CFR Part 784

Coal mining, Reporting and recordkeeping requirements, Underground mining.

30 CFR Part 816

Coal mining, Environmental protection, Reporting and recordkeeping requirements, Surface mining.

30 CFR Part 817

Coal mining, Environmental protection, Reporting and recordkeeping requirements, Underground mining.

Accordingly, 30 CFR Parts 701, 780, 784, 816, and 817 are amended as set forth herein.

Dated: April 22, 1983.

Daniel N. Miller, Jr.,

Assistant Secretary, Energy and Minerals.

PART 701—PERMANENT REGULATORY PROGRAM

1. Section 701.5 is amended by revising the definitions of "soil horizons" and "topsoil" to read as follows:

§ 701.5 Definitions.

* * * * *

Soil horizons means contrasting layers of soil parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The four master soil horizons are—

(a) *A horizon.* The uppermost mineral layer, often called the surface soil. It is the part of the soil in which organic matter is most abundant, and leaching of soluble or suspended particles is typically the greatest;

(b) *E horizon.* The layer commonly near the surface below an A horizon and above a B horizon. An E horizon is most commonly differentiated from an overlying A horizon by lighter color and generally has measurably less organic matter than the A horizon. An E horizon is most commonly differentiated from an underlying B horizon in the same sequum by color of higher value or lower chroma, by coarser texture, or by a combination of theses properties;

(c) *B horizon.* The layer that typically is immediately beneath the E horizon and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A, E, or C horizons; and

(d) *C horizon.* The deepest layer of soil profile. It consists of loose material

or weathered rock that is relatively unaffected by biologic activity.

* * * * *

Topsoil means the A and E soil horizon layers of the four master soil horizons.

* * * * *

PART 780—SURFACE MINING PERMIT APPLICATIONS—MINIMUM REQUIREMENTS FOR RECLAMATION AND OPERATION PLAN

2. Paragraph (b)(4) of § 780.18 is revised to read as follows:

§ 780.18 Reclamation plan: General requirements.

* * * * *

(b) * * *

(4) A plan for removal, storage, and redistribution of topsoil, subsoil, and other material to meet the requirements of § 816.22 of this chapter. A demonstration of the suitability of topsoil substitutes or supplements under § 816.22(b) of this chapter shall be based upon analysis of the thickness of soil horizons, total depth, texture, percent coarse fragments, pH, and areal extent of the different kinds of soils. The regulatory authority may require other chemical and physical analyses, field-site trials, or greenhouse tests if determined to be necessary or desirable to demonstrate the suitability of the topsoil substitutes or supplements.

* * * * *

PART 784—UNDERGROUND MINING PERMIT APPLICATIONS—MINIMUM REQUIREMENTS FOR RECLAMATION AND OPERATION PLAN

3. Paragraph (b)(4) of § 784.13 is revised to read as follows:

§ 784.13 Reclamation plan: General requirements.

* * * * *

(b) * * *

(4) A plan for removal, storage, and redistribution of topsoil, subsoil, and other material to meet the requirements of § 817.22 of this chapter. A demonstration of the suitability of topsoil substitutes or supplements under § 817.22(b) of this chapter shall be based upon analysis of the thickness of soil horizons, total depth, texture, percent coarse fragments, pH, and areal extent of the different kinds of soils. The regulatory authority may require other chemical and physical analyses, field-site trials, or greenhouse tests if determined to be necessary or desirable to demonstrate the suitability of the topsoil substitutes or supplements.

* * * * *

PART 816—PERMANENT PROGRAM PERFORMANCE STANDARDS—SURFACE MINING ACTIVITIES

§ 816.21 [Removed]

4. Section 816.21 is removed.

5. Section 816.22 is revised to read as follows:

§ 816.22 Topsoil and subsoil.

(a) *Removal.* (1)(i) All topsoil shall be removed as a separate layer from the area to be disturbed, and segregated.

(ii) Where the topsoil is of insufficient quantity or poor quality for sustaining vegetation, the materials approved by the regulatory authority in accordance with paragraph (b) of this section shall be removed as a separate layer from the area to be disturbed, and segregated.

(2) If topsoil is less than 6 inches thick, the operator may remove the topsoil and the unconsolidated materials immediately below the topsoil and treat the mixture as topsoil.

(3) The regulatory authority may choose not to require the removal of topsoil for minor disturbances which—

(i) Occur at the site of small structures, such as power poles, signs, or fence lines; or

(ii) Will not destroy the existing vegetation and will not cause erosion.

(4) *Timing.* All material to be removed under this section shall be removed after the vegetative cover that would interfere with its salvage is cleared from the area to be disturbed, but before any drilling, blasting, mining, or other surface disturbance takes place.

(b) *Substitutes and supplements.* Selected overburden materials may be substituted for, or used as a supplement to topsoil if the operator demonstrates to the regulatory authority that the resulting soil medium is equal to, or more suitable for sustaining vegetation than, the existing topsoil, and the resulting soil medium is the best available in the permit area to support revegetation.

(c) *Storage.* (1) Materials removed under paragraph (a) of this section shall be segregated and stockpiled when it is impractical to redistribute such materials promptly on regraded areas.

(2) Stockpiled materials shall—

(i) Be selectively placed on a stable site within the permit area;

(ii) Be protected from contaminants and unnecessary compaction that would interfere with revegetation;

(iii) Be protected from wind and water erosion through prompt establishment and maintenance of an effective, quick growing vegetative cover or through other measures approved by the regulatory authority; and

(iv) Not be moved until required for redistribution unless approved by the regulatory authority.

(3) Where long-term surface disturbances will result from facilities such as support facilities and preparation plants and where stockpiling of materials removed under paragraph (a)(1) of this section would be detrimental to the quality or quantity of those materials, the regulatory authority may approve the temporary distribution of the soil materials so removed to an approved site within the permit area to enhance the current use of that site until needed for later reclamation, provided that—

(i) Such action will not permanently diminish the capability of the topsoil of the host site; and

(ii) The material will be retained in a condition more suitable for redistribution than if stockpiled.

(d) *Redistribution.* (1) Topsoil materials removed under paragraph (a) of this section shall be redistributed in a manner that—

(i) Achieves an approximately uniform, stable thickness consistent with the approved postmining land use, contours, and surface-water drainage systems;

(ii) Prevents excess compaction of the materials; and

(iii) Protects the materials from wind and water erosion before and after seeding and planting.

(2) Before redistribution of the material removed under paragraph (a) of this section the regraded land shall be treated if necessary to reduce potential slippage of the redistributed material and to promote root penetration. If no harm will be caused to the redistributed material and reestablished vegetation, such treatment may be conducted after such material is replaced.

(3) The regulatory authority may choose not to require the redistribution of topsoil or topsoil substitutes on the approved postmining embankments of permanent impoundments or of roads if it determines that—

(i) Placement of topsoil or topsoil substitutes on such embankments is inconsistent with the requirement to use the best technology currently available to prevent sedimentation, and

(ii) Such enbankments will be otherwise stabilized.

(4) *Nutrients and soil amendments.* Nutrients and soil amendments shall be applied to the initially redistributed material when necessary to establish the vegetative cover.

(e) *Subsoil segregation.* The regulatory authority may require that the B horizon, C horizon, or other

underlying strata, or portions thereof, be removed and segrgated, stockpiled, and redistributed as subsoil in accordance with the requirements of paragraphs (c) and (d) of this section if it finds that such subsoil layers are necessary to comply with the revegetation requirements of §§ 816.111, 816.113, 816.114, and 816.116 of this chapter.

§ 816.23 [Removed]

§ 816.24 [Removed]

§ 816.25 [Removed]

6. Sections 816.23, 816.24, and 816.25 are removed.

PART 817—PERMANENT PROGRAM PERFORMANCE STANDARDS—UNDERGROUND MINING ACTIVITIES

§ 817.21 [Removed]

7. Section 817.21 is removed.

8. Section 817.22 is revised to read as follows:

§ 817.22 Topsoil and subsoil.

(a) *Removal* (1)(i) All topsoil shall be removed as a separate layer from the area to be disturbed, and segregated.

(ii) Where the topsoil is of insufficient quantity or of poor quality for sustaining vegetation, the materials approved by the regulatory authority in accordance with paragraph (b) of this section shall be removed as a separate layer from the area to be distrubed, and segrgated.

(2) If topsoil is less than 6 inches thick, the operator may remove the topsoil and the unconsolidated materials immediately below the topsoil and treat the mixture as topsoil.

(3) The regulatory authority may choose not to require the removal of topsoil for minor disturbances which—

(i) Occur at the site of small structures, such as power poles, signs, or fence lines; or

(ii) Will not destroy the existing vegetation and will not cause erosion.

(4) *Timing.* All materials to be removed under this section shall be removed after the vegetative cover that would interfere with its salvage is cleared from the area to be disturbed, but before any drilling, blasting, mining, or other surface disturbance takes place.

(b) *Substitutes and supplements.* Selected overburden materials may be substituted for, or used as a supplement to, topsoil if the operator demonstrates to the regulatory authority that the resulting soil medium is equal to, or more suitable for sustaining vegetation than, the existing topsoil, and the resulting soil medium is the best available in the permit area to support revegetation.

(c) *Storage.* (1) Materials removed under Paragraph (a) of this section shall be segregated and stockpiled when it is impractical to redistribute such materials promptly on regraded areas.

(2) Stockpiled materials shall—

(i) Be selectively placed on a stable site within the permit area;

(ii) Be protected from contaminants and unnecessary compaction that would interfere with revegetation;

(iii) Be protected from wind and water erosion through prompt establishment and maintenance of an effective, quick growing vegetative cover or through other measures approved by the regulatory authority; and

(iv) Not be moved until required for redistribution unless approved by the regulatory authority.

(3) Where long-term surface disturbances will result from facilities such as support facilities and preparation plants and where stockpiling of materials removed under paragraph (a)(1) of this section would be detrimental to the quality or quantity of those materials, the regulatory authority may approve the temporary distribution of the soil materials so removed to an approved site within the permit area to enhance the current use of that site until needed for later reclamation, provided that—

(i) Such action will not permanently diminish the capability of the topsoil of the host site; and

(ii) The material will be retained in a condition more suitable for redistribution than if stockpiled.

(d) *Redistribution.* (1) Topsoil materials removed under paragraph (a) of this section shall be redistributed in a manner that—

(i) Achieves an approximately uniform, stable thickness consistent with the approved postmining land use, contours, and surface-water drainage systems;

(ii) Prevents excess compaction of the materials; and

(iii) Protects the materials from wind and water erosion before and after seeding and planting.

(2) Before redistribution of the material removed under paragraph (a) of this section, the regraded land shall be treated if necessary to reduce potential slippage of the redistributed material and to promote root penetration. If no harm will be caused to the redistributed material and reestablished vegetation, such treatment may be conducted after such material is replaced.

(3) The regulatory authority may choose not to require the redistribution of topsoil or topsoil substitutes on the approved postmining embankments of permanent impoundments or of roads if it determines that—

(i) Placement of topsoil or topsoil substitutes on such embankments is inconsistent with the requirement to use the best technology currently available to prevent sedimentation, and

(ii) Such embankments will be otherwise stabilized.

(4) *Nutrients and soil amendments.* Nutrients and soil amendments shall be applied to the initially redistributed material when necessary to establish the vegetative cover.

(e) *Subsoil segregation.* The regulatory authority may require that the B horizon, C horizon, or other underlying strata, or portions thereof, be removed and segregated, stockpiled, and redistributed as subsoil in accordance with the requirements of paragraphs (c) and (d) of this section if it finds that such subsoil layers are necessary to comply with the revegetation requirements of §§ 817.111, 817.113, 817.114, and 817.116 of this chapter.

§ 817.23 [Removed]

§ 817.24 [Removed]

§ 817.25 [Removed]

9. Sections 817.23, 817.24, and 817.25 are removed.

(Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*)

FR Doc. 83-13072 Filed 5-13-83; 8:45 am]

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federal register

Monday
May 16, 1983

Part III

Department of Energy

Federal Energy Regulatory Commission

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Volume 890]

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: May 9, 1983.

The following notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" before the section code. Estimated annual production (PROD) is in million cubic feet (MMCF).

The applications for determination are available for inspection except to the extent such material is confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol St., Washington, D.C. Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 275.204, file a protest with the Commission within fifteen days after publication of notice in the **Federal Register.**

Source data from the Form 121 for this and all previous notices is available on magnetic tape from the National Technical Information Service (NTIS). For information, contact Stuart Weisman (NTIS) at (703) 487–4808, 5285 Port Royal Rd., Springfield, Va. 22161.

Categories within each NGPA section are indicated by the following codes:

Section 102–1: New OCS lease
102–2: New well (2.5 Mile rule)
102–3: New well (1000 Ft rule)
102–4: New onshore reservoir
102–5: New reservoir on old OCS lease
Section 107–DP: 15,000 feet or deeper
107–GB: Geopressured brine
107–CS: Coal Seams
107–DV: Devonian Shale
107–PE: Production enhancement
107–TF: New tight formation
107–RT: Recompletion tight formation
Section 108: Stripper well
108–SA: Seasonally affected
108–ER: Enhanced recovery
108–PB: Pressure buildup.

Kenneth F. Plumb,

Secretary.

NOTICE OF DETERMINATIONS
ISSUED MAY 9, 1983
VOLUME 890

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
ALABAMA OIL & GAS BOARD									
-ANDERMAN OPERATING COMPANY				RECEIVED:	04/19/83	JA: AL			
8332641	4-14-831PD	0107520442		102-2		WEYERHAEUSER 26-1	MCGEE LAKE	400.0	TENNESSEE GAS PIP
-DOMINEX INC				RECEIVED:	04/19/83	JA: AL			
8332644	4-14-836PD	0100320119		102-2		MICHAEL FOYE 20-4 #1	PLEASANT VIEW	0.0	
-EXXON CORPORATION				RECEIVED:	04/19/83	JA: FL			
8332643	4-14-837-PD	0105320179		107-DP		SCOTT PAPER CO CU 11-18 #1	BIG ESCAMBIA CREEK	2500.0	CIBA-GEIGY CORP
-MOON-HINES-TIORETT OPERATING CO INC				RECEIVED:	04/19/83	JA: AL			
8332642	4-14-835PD	0100320123		102-2		STYRON 36-1 #1	WEST FOLEY	360.0	AMOCO PRODUCTION
-TERRA RESOURCES INC				RECEIVED:	04/19/83	JA: AL			
8332645	4-14-835PD	0105720283		102-4		CORNER 18-10	BLOOMING GROVE	0.0	MOWELL PIPELINE C
8332840	4-14-833PD	0105720303		102-4		POWERS 30-15	MUSGROVE CREEK	0.0	MOWELL PIPELINE C
LOUISIANA OFFICE OF CONSERVATION									
-MORAN EXPLORATION INC				RECEIVED:	04/18/83	JA: LA			
8332678	82-2386	1710922596		102-4	103	STATE LEASE 9414 #2	FOUR LEAGUE BAY 3938	0.0	DOW INTRASTATE GA
MONTANA BOARD OF OIL & GAS CONSERVATION									
-DIAMOND SHAMROCK CORPORATION				RECEIVED:	04/18/83	JA: MT			
8332674	3-82-74	2509121424		102-2		HINER FEE 14-11	COMERTOWN	6.0	PHILLIPS PETROLEU
-EXETER EXPLORATION COMPANY				RECEIVED:	04/18/83	JA: MT			
8332675	4-82-85	2508321579		103		JACOBSON #2-27	FAIRVIEW	44.0	MOPC INC
-FARMERS UNION CENTRAL EXCHANGE INC				RECEIVED:	04/18/83	JA: MT			
8332677	4-82-87	2509121358		102-2		ANDERSON 9-17	CLEAR LAKE	5.0	PHILLIPS PETROLEU
-LADD PETROLEUM CORPORATION				RECEIVED:	04/18/83	JA: MT			
8332673	4-8286	2508321541		102-2		DUNCAN HEDBERG #11-22	SOUTH VAUX	35.6	
-TOM BROWN INC				RECEIVED:	04/18/83	JA: MT			
8332676	3-82-73	2508321426		102-4		FOSS #15-21X	WILDCAT	0.0	PHILLIPS PETROLEU
NEW MEXICO DEPARTMENT OF ENERGY & MINERALS									
-AMERADA HESS CORPORATION				RECEIVED:	04/18/83	JA: NM			
8332703		3002527949		103		B M MARCUS #2 - TUBB	WARREN TUBB	44.9	WARREN PETROLEUM
8332702		3002527949		103		B M MARCUS #2 - DRINKARD	SKAGGS DRINKARD	182.5	WARREN PETROLEUM
-AMOCO PRODUCTION CO				RECEIVED:	04/18/83	JA: NM			
8332695		3004524954		103		ANDERSON GAS COM "A" #1	BLOOMFIELD - CHACRA	41.0	
8332696		3004524954		103		ANDERSON GAS COM "A" #1	AZTEC - PICTURED CLIF	25.5	EL PASO NATURAL G
-ARCO OIL AND GAS COMPANY				RECEIVED:	04/18/83	JA: NM			
8332701		3002527569		103		FEDERAL 17 STATE #30	JALMAT YATES-SEVEN RI	21.7	EL PASO NATURAL G
8332653		3002527558		103		SEVEN RIVERS QUEEN UNIT #57	EUNICE - 7 RIVERS QUE	25.0	PARTNERSHIP PROPE
-CONOCO INC				RECEIVED:	04/18/83	JA: NM			
8332697		3001524234		103		DAGGER DRAW #4	DAGGER DRAW	408.0	
8332681		3001524273		103		STATE 5-19 #4	EUNICE	20.0	PHILLIPS PETROLEU
-DALLAS MCCASLAND				RECEIVED:	04/18/83	JA: NM			
8332679		3002500000		108-PB		LITTIE MOLLOHORN #3	JALMAT	0.0	EL PASO NATURAL G

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
-EXXON CORPORATION				RECEIVED:	04/18/83	JA: NM			
8332692		3001523625		102-3		NEW MEXICO CZ STATE #1	UNDESIGNATED TURKEY T	181.0	
-GETTY OIL COMPANY				RECEIVED:	04/18/83	JA: NM			
8332694		3002524909		108-PB		A L CHRISTMAS #2	JALMAT (GAS)	21.9	EL PASO NATURAL G
8332704		3002503999		108		MONSTATE #1	EUNICE MONUMENT G-SA	13.1	WARREN PETROLEUM
-NORTHWEST PIPELINE CORPORATION				RECEIVED:	04/18/83	JA: NM			
8332685		3003922678		108		SAN JUAN 30-5 UNIT 41	BLANCO MESAVERDE	0.0	NORTHWEST PIPELIN
-PHILLIPS PETROLEUM COMPANY				RECEIVED:	04/18/83	JA: NM			
8332693		3002508540		105		EAST VAC GB/SA UNIT TR 3315 #004	VACUUM GB/SA	12.0	EL PASO NATURAL G
-REAR E STEVENS INC				RECEIVED:	04/15/83	JA: NM			
8332650		3001524044		103		DAKOTA #5	BUNKER HILL PENROSE	62.8	PHILLIPS PETROLEU
-SANDERS OIL & GAS INC				RECEIVED:	04/13/83	JA: NM			
8332695		3000561845		103		MARTIN #1	PECOS SLOPE	150.0	TRANSWESTERN PIPE
-SUN EXPLORATION & PRODUCTION CO				RECEIVED:	04/18/83	JA: NM			
8332632		3001500300		108		EAST MILLMAN POOL UNIT #4-4	MILLMAN QUEEN GRAYBUR	4.0	PHILLIPS PETROLEU
-YATES PETROLEUM CORPORATION				RECEIVED:	04/18/83	JA: NM			
8332691		3001522711		108		CITIES "JO" #1	PENASCO DRAW-PERMO PE	0.0	TRANSWESTERN PIPE
8332686		3000563904		102-2		PAULETTE "PV" ST #1	WILDCAT	0.0	TRANSWESTERN PIPE
8332687		3000561156		102-2		PAULETTE "PV" ST #2	UND ABO	0.0	TRANSWESTERN PIPE
8332689		3001523294		108		PUDGO "NO" COM #1	RICHARD KNOB ATOKA-MO	0.0	TRANSWESTERN PIPE
8332684		3000563964		102-2		REDMAN "OY" ST #1-Y	UND ABO	0.0	TRANSWESTERN PIPE
8332699		3001523301		103		RIO PENASCO "KD" COM #3	WILDCAT STRAIN	0.0	TRANSWESTERN PIPE
8332685		3000561925		102-2		SKINNY "CO" ST #1	UND ABO	0.0	TRANSWESTERN PIPE
8332698		3001500088		108		STATE "DF" #1	WILDCAT CANYON	0.0	TRANSWESTERN PIPE
8332703		3001521810		108		TERRY "FU" #1	WILDCAT	0.0	TRANSWESTERN PIPE
NEW YORK DEPARTMENT OF ENVIRONMENTAL CONSERVATION									
-BATH ELECTRIC GAS & WATER SYSTEMS				RECEIVED:	04/18/83	JA: NY			
8332713	3592	3110115492		107-DV		FEE #1	EXPERIMENTAL DEVONIAN	10.0	CONSOLIDATED GAS
8332714	3591	3110116103		107-DV		FEE #3	EXPERIMENTAL DEVONIAN	7.1	CONSOLIDATED GAS
8332712	3590	3110116102		107-DV		WOOD #1	EXPERIMENTAL DEVONIAN	5.4	CONSOLIDATED GAS
-BEREA OIL AND GAS CORPORATION				RECEIVED:	04/18/83	JA: NY			
8332735	4954	3101317962		107-TF		COUNTY OF CHAUTAUQUA #4	WILDCAT	14.0	COLUMBIA GAS TRAN
8332736	4955	3101317720		107-TF		H OAG #5	GETRY	15.0	COLUMBIA GAS TRAN
-CONSOLIDATED EXPLORATION & GATHERIN				RECEIVED:	04/18/83	JA: NY			
8332737	4959	3102917937		107-TF		ECKHARDT-AGLE #1	EDEN-EVANS	18.3	SCG GAS QUEST INC
8332738	4960	3102917938		107-TF		ECKHARDT-AGLE #2	EDEN-EVANS	18.3	SCG GAS QUEST INC
8332739	4961	3102917939		107-TF		ECKHARDT-AGLE #3	EDEN-EVANS	18.3	SCG GAS QUEST INC
-GYPSUM ENERGY MANAGEMENT CO				RECEIVED:	04/18/83	JA: NY			
8332740	4979	3103717362		107-TF		BOWKER #1	HURON CREEK	12.0	U S GYPSUM CO
8332741	4980	3103717360		107-TF		GREEN #1	INDIAN FALLS	9.6	U S GYPSUM CO
-LENAPE RESOURCES CORP				RECEIVED:	04/18/83	JA: NY			
8332723	5003	3112113992		107-TF		B HORAN #1 LRC #42	DANLEY CORNERS	20.0	NEW JERSEY NATURA
8332731	5012	3112113971		107-TF		BLAKKE #2 LRC #27	LEICESTER	20.0	NEW JERSEY NATURA
8332711	3880	3112117075		107-TF		C A OLSOWSKY UNIT #1 LRC #108	LEICESTER	20.0	NEW JERSEY NATURA
8332726	5006	3112113994		107-TF		C STEDMAN JR #1 LRC #49	DANLEY CORNERS	20.0	NEW JERSEY NATURA
8332727	5007	3112113993		107-TF		C STEDMAN JR #2 LRC #50	DANLEY CORNERS	20.0	NEW JERSEY NATURA
8332729	5010	3103713961		107-TF		CROSS #1 LRC #21	PAVILION	20.0	NEW JERSEY NATURA
8332719	3882	3112117295		107-TF		E KINGSLEY UNIT #1 LRC #128	LEICESTER	20.0	NEW JERSEY NATURA
8332734	5008	3105117370		107-TF		E NIXON #2 LRC #156	CALEDONIA	20.0	NEW JERSEY NATURA
8332728	5009	3112113964		107-TF		F CZYZOSKA #1 LRC #16	DANLEY CORNERS	20.0	NEW JERSEY NATURA
8332722	5002	3103713987		107-TF		FOUND #1 LRC #35	PAVILION	20.0	NEW JERSEY NATURA
8332716	3799	3105116191		107-TF		G P MANCUSO #1 LRC #83	CALEDONIA	20.0	NEW JERSEY NATURA
8332732	5013	3112113998		107-TF		GASTON #1 LRC #28	LEICESTER	20.0	NEW JERSEY NATURA
8332747	3813	3105117316		107-TF		H & R SINCLAIR #1 LRC #91	WILDCAT	20.0	NEW JERSEY NATURA
8332717	3800	3105116194		107-TF		H W STEIN #1 LRC #84	CALEDONIA	20.0	NEW JERSEY NATURA
8332721	3579	3112113962		107-TF		HALMA #1 LRC #13	LEICESTER	20.0	NEW JERSEY NATURA
8332733	5014	3103713956		107-TF		LRC #34 - SPENCER #1	DANLEY CORNERS	20.0	NEW JERSEY NATURA
8332725	5005	3112113990		107-TF		P BARBERO #1 LRC #46	DANLEY CORNERS	20.0	NEW JERSEY NATURA
8332720	3881	3112117048		107-TF		R L HALMA P4 LRC #109	WILDCAT	20.0	NEW JERSEY NATURA
8332730	5011	3103713995		107-TF		RIDLEY #1 LRC #22	PAVILION	20.0	NEW JERSEY NATURA
8332742	4994	3105117371		107-TF		S B POWELL UNIT #2 LRC #157	CALEDONIA	20.0	NEW JERSEY NATURA
8332724	5004	3112113995		107-TF		T GEITNER #1 LRC #43	DANLEY CORNERS	20.0	NEW JERSEY NATURA
8332748	3811	3105116188		107-TF		W A NIXON #1 LRC #39	CALEDONIA	20.0	NEW JERSEY NATURA
8332718	3812	3105116189		107-TF		W A NIXON #2 LRC #90	CALEDONIA	20.0	NEW JERSEY NATURA
8332744	4985	3105117372		107-TF		W H DOOLITTLE UNIT #1 LRC #165	CALEDONIA	20.0	NEW JERSEY NATURA
8332743	4983	3105117355		107-TF		WEEMOOD FARM UNIT #2 LRC #150	CALEDONIA	20.0	NEW JERSEY NATURA
-LOCAL ENERGY INC				RECEIVED:	04/18/83	JA: NY			
8332710	5001	3102914601		107-TF		ELIA LAND #1	LAKE SHORE	1.0	NATIONAL FUEL GAS
8332709	4999	3102915171		107-TF		HANDY #1	BUFFALO CREEK	2.0	NATIONAL FUEL GAS
8332706	5000	3102914529		107-TF		HEINTZ #1	LAKE SHORE	10.0	NATIONAL FUEL GAS
-MAYNARD OIL COMPANY				RECEIVED:	04/18/83	JA: NY			
8332746	4992	3102917652		103		BAUER R #1	ORCHARD PARK	0.0	NATIONAL FUEL GAS
8332745	4993	3102917652		107-TF		BAUER R #1	ORCHARD PARK	0.0	NATIONAL FUEL GAS
-SHALMER EXPLORATION INC				RECEIVED:	04/18/83	JA: NY			
8332707	4996	3102918060		107-TF		MECCA BROS #1	BRANT	15.0	SCG GAS QUEST INC
-SINCLAIRVILLE PETROLEUM CORP				RECEIVED:	04/18/83	JA: NY			
8332708	3759	3102914457		107-TF		BOKUN #2	AURORA	5.0	NATIONAL FUEL GAS
-TRISON PETROLEUM				RECEIVED:	04/18/83	JA: NY			
8332705	3679	3102915831		107-TF		BIXBY #1	AURORA	12.0	NATIONAL FUEL GAS
-VISCO-MCDONALD				RECEIVED:	04/18/83	JA: NY			
8332715	4912	3100918001		107-TF		VISCO #1	PERSIA	25.0	COLUMBIA GAS TRAN
OKLAHOMA CORPORATION COMMISSION									
-AMOCO PRODUCTION CO				RECEIVED:	04/18/83	JA: OK			
8332804	21101	3509322501		103		INDIAN OIL UNIT "M" #3	EAST CAMPBELL - CHUNT	50.0	MICHIGAN WISCONSI
-APACHE CORPORATION				RECEIVED:	04/18/83	JA: OK			
8332791	20059	3514920224		102-2		ROGERS #1-18		346.8	EL PASO NATURAL G
-ARCO OIL AND GAS COMPANY				RECEIVED:	04/15/83	JA: OK			
8332654	20044	3511921920		102-4		CITIES SERVICE #1	M W STILLWATER AIRPOR	36.5	ARCO OIL & GAS CO
-ARCO OIL AND GAS COMPANY				RECEIVED:	04/18/83	JA: OK			
8332784	19478	3506100000		108-FB		A H COX UNIT #1	KINTA	10.0	OKLAHOM GAS & ELE
-CITIES SERVICE COMPANY				RECEIVED:	04/15/83	JA: OK			
8332654	21107	3506120256		108		GRAVES D-1	M RUSSELLVILLE	18.0	ARKANSAS LOUISIAN
-CLARK EXPLORATION				RECEIVED:	04/18/83	JA: OK			
8332781	10294	3515100000		103-ER		CLINE #1		0.0	NORTHWEST CENTRAL
8332780	15283	3515100000		108-ER		JOHNSON #1		0.0	NORTHWEST CENTRAL
-CLARK OPERATING SERVICES INC				RECEIVED:	04/18/83	JA: OK			
8332839	21126	3509120252		108		CARWAY #1	TIGER FLATS	4.5	PHILLIPS PETROLEU
-CONOCO INC				RECEIVED:	04/18/83	JA: OK			
8332795	20852	3501922509		103		VELMA CAMP DEESE #233	S E VELMA FIELD	0.0	GETTY OIL CO
-DEMENEX US OIL COMPANY				RECEIVED:	04/15/83	JA: OK			

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8332648	23957	3507300000		107-TF		FORMAN 64	N REEDING	5.0	CONOCO INC
-DYNE EXPLORATION CO				RECEIVED:	04/15/83	JA: OK			
8332662	21080	3511124033		103		BEAL #1	COALTON	36.0	PHILLIPS PETROLEU
8332663	21081	3511123814		103		ROSSITER #1	COALTON	36.0	PHILLIPS PETROLEU
-EAGLE PETROLEUM CORP				RECEIVED:	04/18/83	JA: OK			
8332799	21024	3500322483		103		NASH #2-15		40.0	UNION TEXAS PETRO
-EARLSBORO OIL AND GAS CO INC				RECEIVED:	04/15/83	JA: OK			
8332652	20033	3513520111		102-2		FEDERAL #1-23	WILDCAT-DISCOVERY	250.0	
-EDINGER INC				RECEIVED:	04/15/83	JA: OK			
8332817	21079	3510320708		103		INGMIRE #1	EAST BILLINGS	37.0	ARCO OIL & GAS CO
8332816	21078	3510320730		103		THOMAS #1	EAST BILLINGS	21.0	ARCO OIL & GAS CO
-EL PASO NATURAL GAS COMPANY				RECEIVED:	04/15/83	JA: OK			
8332672	21535	3512920141		108-PB		PIERCE #1	S E REYDON - HUNTON	26.1	EL PASO NATURAL G
-EL PASO NATURAL GAS COMPANY				RECEIVED:	04/18/83	JA: OK			
8332792	20701	3500920136		108-PB		MONTGOMERY #2	ERICK SOUTH - BROWN D	18.9	EL PASO NATURAL G
8332775	14512	3500900000		108-PB		PUCKETT #2		0.0	EL PASO NATURAL G
-EMPIRE EQUIPMENT CO				RECEIVED:	04/18/83	JA: OK			
8332798	20758	3507323621		103		DUFFY #1	SOONER TREND	0.0	CITIES SERVICE CO
-EYLER CORP				RECEIVED:	04/18/83	JA: OK			
8332811	21157	3511721197		103		LOWE #1	UNKNOWN	3.6	H J D CATTLE CO
-FUNK EXPLORATION INC				RECEIVED:	04/18/83	JA: OK			
8332756	20052	3500721422		102-4 103		BECKER #1		0.0	PANHANDLE EASTERN
-GHO OIL & GAS CORP				RECEIVED:	04/18/83	JA: OK			
8332820	21112	3511123363		103		DETHEROW 1-10	EAST OKMULGEE	9.0	PHILLIPS PETROLEU
8332819	21111	3511123433		103		DETHEROW 2-10	EAST OKMULGEE	12.0	PHILLIPS PETROLEU
8332821	21113	3511123397		103		GALE 1-17	EAST MORRIS	75.0	PHILLIPS PETROLEU
-GEORGE L LONG				RECEIVED:	04/18/83	JA: OK			
8332814	20569	3505320910		103		MITCHELL FARMS ID #25-1	EAST WICHITA AREA	36.5	SUN PRODUCTION CO
-GRACE PETROLEUM CORPORATION				RECEIVED:	04/18/83	JA: OK			
8332782	19866	3500920485		102-3		JOHNSON 1-24	MERRITT	0.0	EL PASO NATURAL G
-GULF OIL CORPORATION				RECEIVED:	04/18/83	JA: OK			
8332779	12079	3500700000		108-ER		KORAN /A/ #1	LAVERNE (CHESTER & MO	0.0	TRANSWESTERN PIPE
-HADSON PETROLEUM CORP				RECEIVED:	04/18/83	JA: OK			
8332803	21100	3505121318		103		LESTER #1-29	WILDCAT	365.0	ARKANSAS LOUISIAN
-HAMM PRODUCTION CO				RECEIVED:	04/15/83	JA: OK			
8332655	20247	3508320611		103		POST #1	S E MARSHALL	4.4	EASON OIL CO
-HARPER OIL COMPANY				RECEIVED:	04/15/83	JA: OK			
8332656	20744	3507323673		103		AYERS #1	E KINGFISHER	105.0	EXXON CORP
-HARPER OIL COMPANY				RECEIVED:	04/15/83	JA: OK			
8332797	20759	3508322129		103		NIDA #1	S ORLANDO	0.0	EASON OIL CO
-HAZELWOOD PRODUCTION & EXPLORATION				RECEIVED:	04/18/83	JA: OK			
8332812	19336	3510300633		103		RIST "A" #1	LUCIEN	60.0	AMINOIL U S A INC
-HELMERICH & PAYNE INC				RECEIVED:	04/15/83	JA: OK			
8332650	20027	3503920695		102-2		STINSON NO 1-6	HAIDON	730.0	
-HESTON OIL CO				RECEIVED:	04/18/83	JA: OK			
8332796	20753	3510920630		103		QUILLIN 22-4		0.0	GARFIELD GAS GATH
-HPC INC				RECEIVED:	04/18/83	JA: OK			
8332793	20749	3501722402		103		CLARK #2	FORT RENO	8.0	PHILLIPS PETROLEU
8332823	21123	3504521042		103		STUART #16-2		1.0	PHILLIPS PETROLEU
-KETAL OIL PRODUCING CO				RECEIVED:	04/18/83	JA: OK			
8332802	21097	3504723128		103		BEICHAN #1	SOUTH HAYWARD	36.1	EASON OIL CO
-MACK OIL CO				RECEIVED:	04/18/83	JA: OK			
8332794	20750	3504723121		103		STORMS #2		108.0	UNION TEXAS PETRO
-MAHAN-ROWSEY INC.				RECEIVED:	04/18/83	JA: OK			
8332807	21144	3502720587		103		B-F #2		110.0	SUN GAS CO
8332806	21143	3502720596		103		B-F #3		300.0	SUN GAS CO
-MARSHALL OIL CORP				RECEIVED:	04/15/83	JA: OK			
8332651	20028	3509520343		102-2		BUCK #1		0.0	NATURAL GAS PIPEL
-MIMS OIL & GAS INC				RECEIVED:	04/15/83	JA: OK			
8332659	21140	3511100000		103		KING 54		472.0	PHILLIPS PETROLEU
-MIMS OIL & GAS INC				RECEIVED:	04/18/83	JA: OK			
8332805	21141	3511100000		103		KING 73		185.0	PHILLIPS PETROLEU
-MOBIL OIL CORP				RECEIVED:	04/15/83	JA: OK			
8332834	21171	3508700000		103		LAWSON BULL UNIT #1-D	WEST STEALY	3.4	WARREN PETROLEUM
-MONEXCO				RECEIVED:	04/15/83	JA: OK			
8332813	19696	3502500000		102-4		LIVINGSTON #1-3		0.0	PANHANDLE EASTERN
-NORTHERN LEASING CO				RECEIVED:	04/15/83	JA: OK			
8332830	21339	3510524263		108		COFFEYVILLE RE-CON INC #1	SOUTH COFFEYVILLE	9.1	PELICAN PIPELINE
-OIL LIFT INC				RECEIVED:	04/18/83	JA: OK			
8332838	21160	3510526098		102-2		BANTA #3	SOUTH COFFEYVILLE	27.7	PELICAN PIPELINE
8332827	22699	3510523271		108		HUSTON #1 (API #105232 71)	SOUTH COFFEYVILLE	12.8	PELICAN PIPELINE
8332829	22697	3510525716		108		HUSTON #1-14 (API 105257 16)	SOUTH COFFEYVILLE	1.5	PELICAN PIPELINE
8332826	22695	3510525428		108		HUSTON #2 (API #105254 28)	SOUTH COFFEYVILLE	14.0	PELICAN PIPELINE
8332824	22800	3510526033		102-2		HUSTON #3		0.0	PELICAN PIPELINE
8332825	22700	3510525431		108		TITUS #1-23 (API #105254 31)	SOUTH COFFEYVILLE	11.7	PELICAN PIPELINE
8332828	22699	3510525271		108-2		WILKINS #2		0.0	PELICAN PIPELINE
-OSBORN HEIRS CO				RECEIVED:	04/15/83	JA: OK			
8332671	21150	3501121735		103		HALSTED #2	N W OMEGA	150.0	MUSTANG FUEL CORP
8332670	21149	3501121723		103		STATE-LEWIS #1	N W OMEGA	150.0	MUSTANG FUEL CORP
-PEAK EXPLORATION INC				RECEIVED:	04/15/83	JA: OK			
8332657	20809	3510321480		103		BRAND #1	S W PERRY	73.0	AMINOIL USA INC
-PETRO-LEWIS CORPORATION				RECEIVED:	04/15/83	JA: OK			
8332661	20933	3509322582		103		ANDREWS 32-2	SOONER TREND	402.0	CITIES SERVICE GA
-PETRO-LEWIS CORPORATION				RECEIVED:	04/18/83	JA: OK			
8332832	21178	3500700000		103		CATES 1-8		0.0	PHILLIPS PETROLEU
-PEYTON OIL INC				RECEIVED:	04/18/83	JA: OK			
8332835	21167	3503724032		103		HALFPOON #1		21.0	GOLDEN ARROW GAS
-PHILLIPS PETROLEUM COMPANY				RECEIVED:	04/15/83	JA: OK			
8332667	21134	3501721396		108		HEUPEL B #1	N CONCHO	13.9	PANHANDLE EASTERN
8332666	21130	3501721418		108		SCHIEDER A #1	N CONCHO	7.5	PANHANDLE EASTERN
-PHILLIPS PETROLEUM COMPANY				RECEIVED:	04/15/83	JA: OK			
8332836	21165	3507323039		108		TRINDLE A #1	SOONER TREND	3.6	ONG WESTERN INC
-PLAINS PRODUCTION INC				RECEIVED:	04/18/83	JA: OK			
8332818	21094	3511921124		103		DEWITT #1	YALE	25.0	PHILLIPS PETROLEU
-PORTS OF CALL OIL CO				RECEIVED:	04/15/83	JA: OK			
8332787	20053	3501722358		102-2		GREEN #2-1	SE YUKON	200.0	CONOCO INC
8332788	20054	3501521938		102-2		OLD TIMER 16-1	E EAKLEY	350.0	EL PASO NATURAL G
8332790	20056	3501521180		102-2		RUNNING BEAR #21-1	E EAKLEY	350.0	EL PASO NATURAL G
8332789	20055	3510920636		102-2		WOLF 16-1	S E YUKON	185.0	CONOCO INC
-PRIME ENERGY CO				RECEIVED:	04/15/83	JA: OK			
8332831	21184	3507122169		103		SMITH-ORELL 7-1		91.0	DAMAR ENERGY INC
-RAY JONES OIL PRODUCER				RECEIVED:	04/15/83	JA: OK			
8332649	20024	3511921178		102-4		TURNER #1	MARKHAM	1.0	PARKS ENERGY INVE
-REYNOLDS EXPLORATION CO				RECEIVED:	04/15/83	JA: OK			

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8332655	20903	3509322510		103		BORELLI #1	SOONER TREND	0.0	CITIES SERVICE CO
8332659	20904	3507323184		103		EMERICH #1	SOONER TREND	0.0	CITIES SERVICE CO
8332660	20905	3507323188		103		JAMES #1	SOONER TREND	0.0	CITIES SERVICE CO
-RICK BUCK OIL & GAS CORP				-RECEIVED:	04/13/83	JA: OK			
8332822	21120	3501722524		103		DICKERSON BROTHERS #1-28	SOONER TREND	106.0	PHILLIPS PETROLEU
-RICKS EXPLORATION CO				RECEIVED:	04/13/83	JA: OK			
8332837	21163	3501521441		103		MAUDE 1-10		706.0	PIONEER GAS PRODU
-ROSCO OIL CO INC				RECEIVED:	04/18/83	JA: OK			
8332815	20929	3511720735		103		JARVIS 1-35	UNAMED	10.8	HJD CATTLE CO
-SABINE CORP				RECEIVED:	04/18/83	JA: OK			
8332800	21063	3509322610		103		KUSCH #4-2	NE CEDAR SPRINGS	365.0	PHILLIPS PETROLEU
-SABINE PRODUCTION COMPANY				RECEIVED:	04/15/83	JA: OK			
8332853	20942	3503920562		102-2	103	LEE #1		54.8	
-SENECA OIL CO				RECEIVED:	04/18/83	JA: OK			
8332765	19657	3504321522		102-4	103	ROGERS #1-36		255.1	
-SOUTHLAND ROYALTY CO				RECEIVED:	04/12/83	JA: OK			
8332783	19247	3515130010		108-FB		WILSON #1-11	N E LOVEDALE	14.8	EL GRANDE PIPELIN
-STANTON ENERGY INC				RECEIVED:	04/15/83	JA: OK			
8332668	21138	3503724328		103		RAMEY #1		108.0	
-SUN EXPLORATION & PRODUCTION CO				RECEIVED:	04/18/83	JA: OK			
8332833	21177	3508100090		108		CRIESS WFU TR 1 #4	STROUD	4.0	EUFAULA ENTERPRIS
-TEXACO INC				RECEIVED:	04/18/83	JA: OK			
8332809	21155	3507323699		103		A HUSMANN #36-1	REEDING SOUTH POOL	55.5	PHILLIPS PETROLEU
8332801	21087	3507323090		103		RALPH WITTROCK #1	OKARCHE N E	23.2	CONOCO INC
-VAN HORN OIL & GAS INC				RECEIVED:	04/18/83	JA: OK			
8332810	21156	3509322570		103		DECKER 34-1	NORTHEAST MCO	120.0	UNION TEXAS PETRO
-WHEELER IRA G JR				RECEIVED:	04/18/83	JA: OK			
8332808	21145	3514322341		103		SHEEHAN #3	FLATROCK	25.0	PHILLIPS PETROLEU
-WILTMAR EXPLORATION CO				RECEIVED:	04/15/83	JA: OK			
8332665	21125	3506120495		103		NUNN #1-4	KINTA	0.0	ARKANSAS LOUISIAN

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** DEPARTMENT OF THE INTERIOR, MINERALS MANAGEMENT SERVICE, CASPER,WY

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-AMINOIL USA INC				RECEIVED:	04/18/83	JA: MT 5			
8332755	M 301-2	2508321587		103		FEDERAL #1-2	RIDGELAWN FIELD	75.0	MONTANA DAKOTA UT
-BURTON/HAWKS INC				RECEIVED:	04/18/83	JA: MT 5			
8332759	M 329-2	2510121919		108		ALOE-FEDERAL 4-1 SECTION 4-33N-3W	SOUTHWEST KEVIN GAS F	9.2	ALOE VENTURES GAT
-FALCON-COLORADO EXPLORATION INC				RECEIVED:	04/18/83	JA: MT 5			
8332758	M 243-2	2507121758		108		FEDERAL 1-23	SWANSON CREEK	11.0	MONTANA-DAKOTA UT
-MIDLANDS GAS CORPORATION				RECEIVED:	04/15/83	JA: MT 5			
8332756	M 286-2	2507121578		108		FEDERAL 1 1871	WILDCAT	12.0	K N ENERGY INC
-SOUTHLAND ROYALTY CO				RECEIVED:	04/18/83	JA: MT 5			
8332757	M 293-2	2507121747		108		FEDERAL 0962 #1	BOUDOIN DOME	10.0	K N ENERGY INC
-CHEVRON U S A INC				RECEIVED:	04/18/83	JA: WY 5			
8332771	W 341-2	4904120332		102-2		CHEVRON FEDERAL #1-18F	CARTER CREEK	9.2	COLUMBIA GAS TRAN
8332773	W 343-2	4902320203		102-2		CHEVRON FEDERAL #1-29	CARTER CREEK	269.9	COLUMBIA GAS TRAN
8332775	W 345-2	4904120310		102-2		CHEVRON FEDERAL #1-30F	WHITNEY CANYON	365.0	COLUMBIA GAS TRAN
8332772	W 342-2	4902320224		102-2		CHEVRON FEDERAL #1-32	CARTER CREEK	416.6	COLUMBIA GAS TRAN
8332770	W 340-2	4904120208		102-2		CHEVRON FEDERAL #1-5	CARTER CREEK	333.7	COLUMBIA GAS TRAN
8332776	W 346-2	4904120322		102-2		CHEVRON FEDERAL #1-6E	WHITNEY CANYON	714.3	COLUMBIA GAS TRAN
8332774	W 344-2	4904120192		102-2		CHEVRON FEDERAL #21-30E	WHITNEY CANYON	357.0	COLUMBIA GAS TRAN
-CIG EXPLORATION INC				RECEIVED:	04/18/83	JA: WY 5			
8332763	W 333-2	4901321025		103		MADDEN DEEP - DOLIS 2-35 (35-39-91)	MADDEN DEEP - CODY	225.0	COLORADO INTERSTA
8332764	W 334-2	4901320836		103		MADDEN DEEP-LOOKOUT 1-27 (27-39-91)	MADDEN DEEP - LOOKOUT	60.0	COLORADO INTERSTA
8332765	W 335-2	4901321060		103		PFEIFFER 1-10 (10-38-90)	CEDAR GAP - SHANNON	362.0	COLORADO INTERSTA
-CITY OIL COMPANY				RECEIVED:	04/18/83	JA: WY 5			
8332762	W 332-2	4903721345		107-TF		NORTHERSON SPRINGS #23-2	NORTH STATE LINE PROS	98.0	COLORADO INTERSTA
8332763	W 338-2	4902320347		107-TF		WHISKEY BUTTES #1-6	WHISKEY BUTTES UNIT	100.0	NORTHWEST PIPELIN
-HPC INC				RECEIVED:	04/18/83	JA: WY 5			
8332769	W 339-2	4903721444		107-TF		HAY RESERVOIR UNIT #28	HAY RESERVOIR	63.0	PANHANDLE EASTERN
8332755	W 276-2	4903722113		102-2		HAY RESERVOIR UNIT #41	HAY RESERVOIR	1000.0	PANHANDLE EASTERN
-JERRY CHAMBERS EXPLORATION CO				RECEIVED:	04/18/83	JA: WY 5			
8332761	W 331-2	4900720733		107-TF		STANDARD DRAW #14-1	STANDARD DRAW	620.0	CITIES SERVICE GA
8332760	W 330-2	4900720733		102-2		STANDARD DRAW #14-1	STANDARD DRAW	620.0	CITIES SERVICE GA
-PHILLIPS PETROLEUM COMPANY				RECEIVED:	04/18/83	JA: WY 5			
8332767	W 337-2	4900526293		102-2		THUNDER CREEK FED J#1	SCHOOL CREEK FIELD	253.3	PANHANDLE EASTERN
8332766	W 336-2	4900526615		102-2		THUNDER CREEK FED T#2	SCHOOL CREEK	32.5	PANHANDLE EASTERN
-TRIGG DRILLING COMPANY INC				RECEIVED:	04/15/83	JA: WY 5			
8332749	W 212-2	4901320212	D	103		TRIBAL GULF #32-6	EAST RIVERTON	0.0	MONTANA DAKOTA UT
-WOODS PETROLEUM CORPORATION				RECEIVED:	04/18/83	JA: WY 5			
8332777	W 347-2	4900526402		103		PINE TREE 09-42	PINE TREE	1.0	WESTERN GAS PROCE
8332754	W 262-2	4900526434		102-4		PINE TREE UNIT #32-39	PINE TREE	34.0	WESTERN GAS PROCE
8332753	W 261-2	4900526434		103		PINE TREE UNIT #32-39	PINE TREE	1.0	WESTERN GAS PROCE
8332751	W 255-2	4900526374		102-4		PINE TREE UNIT 29-35	PINE TREE	1.0	WESTERN GAS PROCE
8332752	W 260-2	4900526405		102-4		PINE TREE UNIT 4-40	PINE TREE	1.0	WESTERN GAS PROCE

federal register

Monday
May 16, 1983

Part IV

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

Surface Coal Mining and Reclamation Operations Permanent Regulatory Program; Roads

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 701, 816, and 817

Surface Coal Mining and Reclamation Operations Permanent Regulatory Program; Roads

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

ACTION: Final rules.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is issuing final rules governing roads under the Surface Mining Control and Reclamation Act of 1977. These rules will replace the classification system contained in the previously suspended rules by designating roads as either primary or ancillary. OSM has adopted performance standards which permit the regulatory authorities to approve designs more tailored to local needs and allow them to place greater emphasis on results through analysis of design practices.

EFFECTIVE DATE: June 15, 1983.

FOR FURTHER INFORMATION CONTACT: Robert Wiles, Division of Engineering Analysis, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, D.C. 20240; 202–343–5245.

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion of Rules Adopted
III. Discussion of Comments
IV. Procedural Matters

I. Background

On April 16, 1982, OSM proposed rules for its permanent regulatory program regarding the design, construction, maintenance and use of roads utilized in surface coal mining operations. (See 47 FR 16592.) The proposal included a road classification system, together with performance standards for primary and ancillary roads. A separate definition of "road" was published on January 4, 1982 (47 FR 56). These rules finalize those proposals.

OSM has adopted a two level approach in these rules. First, OSM has established basic performance standards with nationwide relevance. Second, when considered necessary to ensure environmental protection and safety consistent with the planned duration and use of the regulated roads, the regulatory authorities may develop design criteria particular to their regions. This combination of national standards, together with any necessary design criteria developed by regulatory authorities will prevent and/or address the adverse effects from road construction, maintenance, and use. Because the areas where surface coal mining operations occur have great diversity in their territorial, climatic, biologic, chemical and other physical conditions, it is difficult to develop design criteria for road construction, maintenance and use with universal applicability.

Sections 515(b) (17) and (18) of the Surface Mining Control and Reclamation Act (the Act), 30 U.S.C. 1201 *et seq.*, specify standards for roads used in surface coal mining and reclamation operations. These rules are intended to implement those standards. In addition, Section 516(b)(10) of the Act requires OSM to consider the differences between surface and underground mining when promulgating rules. However, OSM has not identified any differences between roads for surface mines and roads for underground mines that necessitate differing regulatory provisions. Thus, the performance standards for road construction, maintenance and use being adopted here for surface mining (Part 816) and for underground mining (Part 817) are identical. The discussions which follow, of the rules adopted and the public comment received, will reference surface mining requirements unless a specific issue concerning underground mining was raised.

On March 13, 1979 (44 FR 14902, 15320), OSM promulgated permanent program rules pertaining to road location, construction and restoration which established design criteria and which applied a classification system consisting of three classes. (30 CFR 816.150–816.176 and 817.150–817.176.) At the same time, the term "road" was defined at 30 CFR 701.5.

Soon after adoption of the permanent program rules, they were challenged in a lawsuit filed in the U.S. District Court for the District of Columbia. With respect to the road rules, the court found in favor of the challengers and remanded the rules to OSM for further consideration. *In re: Permanent Surface Mining Regulation Litigation*, Civ. No. 79–1144, Slip op. at 32–36 (D.D.C. May 16, 1980). As a result of this court decision, OSM suspended these rules and the definition for "road" (45 FR 51547, August 4, 1980). Therefore, there have been no permanent program rules for roads in effect.

In 1982 OSM again proposed road rules and a 30-day comment period was opened on April 16, 1982. It was scheduled to be closed on May 17, 1982, but on May 13, 1982 (47 FR 20631), OSM extended the public comment period indefinitely. On July 13, 1982 (47 FR 30266), OSM issued a notice closing the public comment period on August 25, 1982. During the comment period, OSM received approximately 160 individual comments from 30 sources representing industry and associations, environmental groups and Federal and State agencies. The OSM Administrative Record for these and other rules was reopened to allow consideration of the oral comments made at the oversight hearings held by the House Interior and Insular Affairs Committee on September 9 and 10, 1982.

As part of its April 16, 1982 notice, OSM proposed to regulate "other transportation facilities" together with ancillary roads. However, on June 25, 1982 (47 FR 27690), OSM proposed that § 816.180 (other transportation facilities) and § 816.181 (support facilities and utility installations) of the suspended rules be combined into new § 816.180—*Support facilities*, and that a new definition of "support facilities" include "other transportation facilities" such as railroads, surface conveyor systems, chutes, aerial tramways or other transportation facilities. OSM has decided to resolve the overlapping approaches by regulating "other transportation facilities" as "support facilities" in final § 816.181, in another rulemaking.

II. Discussion of Rules Adopted

This portion of the preamble consists of a brief description of the rules adopted. A more detailed discussion of the bases and purpose of these rules is included in the *Response to Comments*.

In its proposal, OSM presented two options for consideration in establishing standards for primary and ancillary roads. Option (1) included both performance standards and design criteria. Option (2) set performance standards only. In the final rules, OSM has set general performance standards for primary and ancillary roads in 30 CFR 816.150. Under this rule, all roads must meet the performance standards for their design, location, construction, use, maintenance and reclamation which are set forth in § 816.150(b)–(e). Final § 816.150(a) pertains to the road definition and is discussed below. A separate provision has been adopted for primary roads, 30 CFR 816.151, which incorporates components of Options (1) and (2) of the proposed rules.

To assist the reader in understanding the changes in the final rules the following Derivation Table shows the relationship of the final rules to the previous suspended rules and the proposed rules, including both options. The same changes apply for Part 817—Underground mining activities.

DERIVATION TABLE—ROADS

Final rule	Previous suspended rules	Proposed rules
§ 816.150:		
(a)(1)		Definition of "road" in § 701.5.
(a)(2)(i)		Do.
(a)(2)(ii)		Do.
(a)(2)(iii)		Do.
(a)(3)		Do.

Final rule	Previous suspended rules	Proposed rules		
		Option 1	Option 2	§ 816.160
§ 816.150:				
(b)	§§ 816.150(a), 816.160(a), 816.170(a)	§ 816.150(a)	§ 816.150(a)	(a).
(b)(1)	§§ 816.150(a), 816.160(a), 816.170(a)	§ 816.150(a)	§ 816.150(a)(1)	(a) (1) and (b).
(b)(2)	§§ 816.150(a), 816.160(a), 816.170(a)	§ 816.150(b)	§ 816.150(a)(2)	(a)(2).
(b)(3)	§§ 816.150(a), 816.160(a), 816.170(a)	§ 816.150(b)	§ 816.150(a)(3)	(a)(3).
(b)(4)	§§ 816.150(a), 816.160(a), 816.170(a)	§ 816.150(b)	§ 816.150(a)(4)	(a)(4).
(b)(5)	§§ 816.150(a), 816.160(a), 816.170(a)		§ 816.150(a)(5)	(a)(5).
(b)(6)			§ 816.150(a)(6)	(a)(6).
(b)(7)	§§ 816.150(a), 816.160(a), 816.170(a)	§ 816.150(a)	§ 816.150(a)(7)	(a)(7).
(b)(8)	§§ 816.154(b), 816.164(b), 816.174(b)	§ 816.154(b)		
(b)(9)	§§ 816.152(d)(9), 816.162(d)(9),	§ 816.151(d)(9)		
(c)			§ 816.150(b)(1).	
(d)(1)	§§ 816.151(b), 816.161(b), 816.171(b)	§ 816.151(b)		
(d)(2)	§§ 816.151(d)(1), 816.161(d)(1), 816.171(d)(1)	§ 816.151(d)		
(e)(1)	§§ 816.155(a), 816.165(a), 816.175(a)	§ 816.155(a)	§ 816.150(c)	
(e)(2)	§§ 816.155(c), 816.165(c)	§ 816.155(c)		
(f)	§§ 816.156(a), 816.166(a), 816.176 intro	§ 816.156(a)	§ 816.150(d)	
(f)(1)	§§ 816.156(a)(1), 816.166(a)(1), 816.176(a)	§ 816.156(a)(1)	§ 816.150(d)(1)	
(f)(2)	§§ 816.156(a)(3), 816.166(a)(3), 816.176(c)	§ 816.156(a)(3)	§ 816.150(d)(2)	
(f)(3)	§§ 816.156(a)(2), 816.166(a)(2), 816.176(b)	§ 816.156(a)(2)	§ 816.150(d)(3)	
(f)(4)	§§ 816.156(a)(5), 816.166(a)(5), 816.176(e)	§ 816.156(a) (5) and (6)	§ 816.150(d)(4)	
(f)(5)	§§ 816.156(a)(9), 816.166(a)(9), 816.176(h)	§ 816.156(a)(9)	§ 816.150(d)(5)	

Final rule	Previous suspended rules	Proposed rules	
		Option 1	Option 2
§ 816.151:			
Intro			
(a)	§§ 816.150(d)(1), 816.160(d)(1)	§ 816.150(d)	§ 816.150(b) (1 & 2).
(b)(1)	§§ 816.151(a), 816.161(a), 816.171(a)	§ 816.151(a)	
(b)(2)	§§ 816.151(c), 816.161(c), 816.171(c)	§ 816.151(c)	
(c)(1)	§§ 816.153(a)(1), 816.163(a)(1)	§ 816.153(a)	
(c)(2)	§§ 816.153(c)(1)(ii), 816.163(c)(1)(ii)	§ 816.153(c)(1)(ii)	
(c)(3)	§§ 816.153(c)(1)(iii)	§ 816.153 (b) and (c)(1)(iii)	
(c)(4)	§§ 816.153(c)(1)(iv), 816.163(c)(1)(v)	§ 816.153(c)(1)(iv)	
(c)(5)	§§ 816.153(d), 816.163(d), 816.173(c)	§ 816.153(d)	
(c)(6)	§§ 816.153(e), 816.163(e), 816.173(d)	§ 816.153(e)	
(d)	§§ 816.154(a), 816.164(a)	§ 816.154(a)	
(e)	§§ 816.155(b)	§ 816.155(b)	

Definition of Road. In its January 4, 1982 notice, OSM had proposed to adopt a general definition for "road" which was similar to the suspended definition and described the physical components of a road. That proposed definition, however, made no reference to road classifications. The January 4 proposal was made in connection with proposed rules for the exemption of operations affecting less than two acres provided for in Section 528(2) of the Act. A portion of those rules was adopted on August 2, 1982 (47 FR 38424). Readers should consult that **Federal Register** notice for discussion about the relationship between the terms "affected area" and "road."

In this rulemaking OSM has adopted a definition for the term "road" which limits its application to routes within the "affected area." The term encompasses the entire area and structures within a surface right-of-way. A "road" includes areas such as the roadbed, shoulders, parking, side areas and approaches. The proposed phrase "and such contiguous appendages as are necessary for the total structure" has not been included in the final definition because it is unnecessary. A road consists of structures such as bridges, ditches, drains and culverts. The term "road" applies to access and haul roads which are constructed, used, reconstructed, improved or maintained for use during coal exploration or are within the affected area during surface coal mining and reclamation operations. The definition specifically excludes pioneer or construction roadways used during the road construction procedure and roads within the immediate mining pit area.

Section 816.150(a)

The April 16, 1982 proposal provided for the designation of roads as either "primary" or "ancillary." Proposed definitions for these two terms were offered which focused on the frequency of use and the length of time in use. (47 FR 16596).

Rather than incorporate the classification system of primary and ancillary roads as part of the general definition of "road" as was proposed on April 16, 1982, these terms appear as Paragraph (a) in final § 816.150.

In final § 816.150(a) OSM has defined primary roads so as to include those roads which, in OSM's opinion, have the potential for greater adverse

environmental impacts. These comprise all roads which are used for transporting coal or spoil; frequently used for access or for other purposes in excess of six months; or are to be retained as part of the approved postmining land use. Ancillary roads are all roads which are not designated as primary. This division is more clear-cut than the proposal with the result that it will reduce confusion over the identification of a road's classification.

Section 816.150(b)

Final § 816.150(b) enumerates performance standards that operators must meet when locating, designing, constructing, reconstructing, using, maintaining and reclaiming all roads associated with surface coal mining operations. These listed performance standards complement other relevant provisions in Part 816. OSM has modified its proposal by adding to the list of performance standards. These new standards call for stabilizing exposed surfaces to control or prevent erosion, siltation, and air pollution attendant to erosion, through vegetation or other means; prohibiting the use of acidic or toxic substances on road surfaces; and applying a minimum static safety factor of 1.3 for all embankments. Additionally, Paragraph (b)(5) has been changed to make it clear that adverse effects to surface- and ground-water systems must be minimized. The standards also require an operator to control or prevent damage to fish, wildlife or their habitat and related environmental values; control or prevent additional contributions of suspended solids to stream flow or runoff outside the permit area; neither cause nor contribute, directly or indirectly, to the violation of State or Federal water quality standards applicable to receiving waters; refrain from significantly altering the normal flow of water in streambeds or drainage channels; and prevent or control damage to public or private property.

Section 816.150(c)

Final § 816.150(c) includes the specific requirement that in order to ensure environmental protection and safety during their planned duration and use, including consideration of the size and type of equipment used, the design and construction or reconstruction of roads and other transportation facilities shall incorporate appropriate limits for grade, width, surface materials, surface drainage control, culvert placement and culvert size as well as any necessary design criteria established by the regulatory authority. This meets a specific Congressional concern that these parameters will be considered and also provides authority to regulatory authorities to specify criteria where needed for local conditions. See the later discussion of comments for additional explanation of this provision.

Section 816.150(d)

Final § 816.150(d) concerns performance standards for the location of all roads. It is a distillation of provisions appearing in Option (1) of the proposed rule. These requirements also appeared in the preferred alternative in the Final Environmental Impact Statement OSM EIS–1: Supplement (FEIS) for the regulation of primary roads. However, OSM views them has having more general applicability and, therefore, has placed them in final § 816.150 for both primary and ancillary roads. The location performance standards prohibit the placement of any part of a road in the channel of an intermittent or perennial stream unless the regulatory authority specifically approves such an action. Also, roads must be located to minimize downstream sedimentation and flooding.

Section 816.150(e)

Final § 816.150(e) concerns general maintenance responsibilities. These appeared in Options (1) and (2) of the proposed rules and in the preferred alternative in the FEIS. OSM has placed them in final § 816.150 because of their general applicability. Under this paragraph, a road must be maintained throughout its entire life to meet all performance standards and any additional design criteria established by the regulatory authority. Rather than prohibiting the use of flood damaged roads until they can be reconstructed, as was proposed in § 816.155(c) of Option (1), the final rule provides that in event of damage due to a catastrophic event, roads must be repaired as soon as practical. This is derived from the second sentence of § 816.155(c) of the previous rules.

Section 816.150(f)

Final § 816.150(f) addresses reclamation of roads which are not to be retained under an approved postmining land use. This section is derived from proposed Option 1 and Option 2 (see the derivation table). Such roads must be reclaimed immediately when no longer being used for mining and reclamation operations. The five reclamation activities listed in this paragraph include (1) closing the road to traffic; (2) removing all bridges and culverts; (3) restoring the natural drainage patterns; (4) reshaping cut and fill slopes to be compatible with the postmining land use and to complement the drainage pattern of the surrounding terrain; and (5) replacing topsoil and revegetating disturbed surfaces. These requirements, plus the other relevant reclamation requirements of Part 816, obviate the need for the additional provisions in Option (1) for proposed § 816.156.

3. *Section 816.151 Primary Roads.* Because primary roads have the potential to result in greater adverse environmental impacts, OSM has adopted an additional set of performance standards for their design, construction, and maintenance. These more detailed performance standards appear in final § 816.151 and are based on standards which appeared in Option (1) of the proposed rule.

Section 816.151(a)

Final § 816.151(a) requires an operator to secure certification by a qualified registered professional engineer that the design and construction or reconstruction of a primary road meets the performance standards of Part 816, current, prudent engineering practice, and any design criteria established by the regulatory authority. This certification requirement is discussed in greater detail in the *Response to Comments* portion of this preamble. The phrase "current, prudent engineering practices" has been adopted to make the rules consistent with the rules of the Mine Safety and Health Administration in 30 CFR 77.215. It includes practices well-established by engineering principles and widely recognized by experts and with experience in the subject.

Section 816.151(b)

Final § 816.151(b) limits the location of primary roads.

Final § 816.151(b)(1) requires primary roads to be located, insofar as practical, on the most stable available surfaces to minimize erosion. The reference to limiting primary road location "outside of valley bottoms," which appeared in the preferred alternative of the FEIS has not been adopted because it was an incorrect statement. The material in this paragraph is based on Option (1) of the proposed rule. Proposed § 816.151(a) in Option (1) would have required primary road locations on ridges, or the most stable slopes available to minimize erosion. The reference to "ridges" is not necessary as long as the most stable route is chosen. The word "surfaces" rather than "slopes" is used because roads are often constructed on flat terrain.

Final § 816.151(b)(2) prohibits primary roads from using stream fords unless specifically approved by the regulatory authority for temporary routes during road construction. This provision tracks proposed § 816.151(c). The proposed sentence concerning stream fords not adversely affecting stream sedimentation or fish and wildlife values was redundant in light of final § 816.150(b)(2) and (d)(3) and so has not been adopted.

Section 816.151(c)

Final § 816.151(c) concerns drainage control and is based upon the performance standards which appeared in Option (1) as proposed § 816.153. It requires that, at a minimum, drainage control systems shall be designed to safely pass the peak runoff from a 10-year, 6-hour precipitation event. To provide flexibility to regulatory authorities to account for particular situations likely to be encountered over the life of the mine or related to specific downstream conditions, the rule allows for modification by the regulatory authority in those situations when the 10-year, 6-hour precipitation event measurement will not be appropriate.

The storm design event being adopted is consistent with the criteria of the Mine Safety and Health Administration (MSHA) published as "Design Guidelines for Coal Refuse Piles and Water, Sediment, or Slurry Impoundments and Impoundment Structures" (IR 1109). OSM recognizes the 24-hour duration storm usually results in a runoff volume and peak somewhat higher than the 6-hour storm for the same area (See 44 FR 15207). However, in some watersheds, a 6-hour event can result in a higher peak flow. For a given storm frequency, the time of concentration and watershed shape can be more influential in determining the peak flow than the storm duration. Therefore, in most cases the differences in any increased volume of peak flows will be minor from a practical design and construction standpoint. Any computed increase in peak flow volume would most likely not result in any significant change in flow depth or flow velocities, and correspondingly, any alteration in drainage channel design.

Final § 816.151(c) also includes the requirement of proposed § 816.153(a) that primary roads must be designed, constructed, reconstructed and maintained so that they have adequate drainage control by using structures such as bridges, ditches and drains. Drainage pipes and culverts must be constructed and maintained to avoid plugging or collapse and erosion at inlets and outlets. Drainage ditches must be designed to prevent uncontrolled drainage over the road surface and embankment. Trash racks and debris basins shall be installed in drainage ditches where debris may impair functions. Culvert design, installation and maintenance shall take into account the vertical soil pressure, passive resistance of the foundation and weight of vehicles using the road. Natural stream channels shall not be altered or relocated except as provided by the rules on hydrologic balance. All stream crossings, except as provided for in paragraph (b)(2), are to be accomplished using bridges, culverts or other structures designed, constructed and maintained using current, prudent engineering practices. These provisions are derived from proposed § 816.153(b), (c) and (d).

Section 816.151(d)

Final § 816.151(d) specifies the kinds of materials, which may be used when surfacing primary roads and includes rock, crushed gravel, asphalt, or other material approved by the regulatory authority as being sufficiently durable for the anticipated volume of traffic and the weight and speed of vehicles using the road. This section was proposed at § 816.154(a) in Option (1). The prohibition on the use of acid- and toxic-forming substances for road surfacing, which appeared in proposed § 816.154(b) and in the preferred alternative for primary roads, has been moved to the more general final § 816.150, thereby making it applicable to ancillary roads as well.

Section 816.151(e)

Final § 816.151(e) details routine maintenance responsibilities for primary roads. It is based on the Option (1) proposal at § 816.155(b). The final rule eliminates redundant language and references to an activity which the Act does not regulate, *i.e.*, watering for dust control. Such maintenance includes repairs to the road surface, blading, filling potholes and adding replacement gravel or asphalt. It also includes revegetation, brush removal, and minor reconstruction of road segments as necessary. Proposed § 816.155(a) requiring maintenance throughout the life of the road has been subsumed within final § 816.150(e).

III. Discussion of comments

A. General Comments

OSM Authority. One commenter maintained that no section of the Act could be found that mandated OSM to give any advice, guidance, or instruction to operators on road building. The same commenter felt that Section 101(f) of the Act gave the States, not OSM, the responsibility for developing rules for surface mining and reclamation operations and that OSM rules basically should consist of the requirement for certification of road design by a registered professional engineer.

The authority for developing rules pertaining to roads is found in Sections 102, 201, 501, 503, 504, 515, 516 and 701 of the Act. While the cited Section 101(f) of the Act recognizes that the primary governmental responsibility for developing, authorizing, issuing and enforcing rules for surface mining and reclamation operations should rest with the States, Section 201(c)(2) of the Act specifically mandates that the Secretary, acting through OSM, shall publish and promulgate such rules and regulations as may be necessary to carry out the purposes and provisions of the Act. Also Section 501(b) of the Act charges the Secretary with the responsibility for promulgating rules covering a permanent regulatory procedure for surface coal mining and reclamation operation performance standards based on and conforming with Title V of the Act. Additionally, Section 503(a)(7) of the Act requires that, in order to be approved, State programs must contain provisions consistent with the Secretary's regulations. Furthermore, the Secretary's authority to promulgate regulations implementing the Act and to require that State programs be consistent with them was upheld in *In re: Permanent Surface Mining Regulation Litigation*, Civ. No. 79–1144, Slip-op. at 5–8 (D.D.C., February 26, 1980).

These rules were developed to implement the environmental protection performance standards for the design, construction, use, maintenance, and restoration of roads at surface and underground coal mining operations. Together with the certification by professional engineers in the case of primary roads, these performance standards are necessary for adequate assurance that roads at mine operations will minimize adverse environmental effects and not cause damage to public or private property.

One commenter thought that improperly constructed roads could violate Section 515(b)(17) of the Act, and argued that a number of the proposed rules failed to consider the critical significance of the potential for erosion and sediment contributions from "haul roads." In addition to suggesting that the proposed rules violated the Act, the commenter felt that the previous rules for roads were heavily supported with

scientific data while no new data were cited as evidence for the proposed changes.

The essential environmental protection requirements for roads are highlighted in Sections 515(b) (17) and (18) of the Act. The final rules succinctly set out required performance standards to accomplish these ends and are consistent with the Act.

With regard to the commenter's concern about haul roads, a road used for transporting coal or spoil, in essence a haul road, is defined as a primary road and its design and construction or reconstruction must be certified by a professional engineer as meeting both the performance standards of Part 816 and any design criteria set by the regulatory authority. Potential erosion and sediment problems from primary roads are adequately addressed by the requirements of § 816.151. Moreover, OSM has separately addressed the general problem of erosion by adopting a performance standard in § 816.95 which implements Section 515(b)(4) of the Act. This requirement is applicable to all roads associated with surface coal mining operations.

With respect to the comment concerning scientific data, the technical data which were listed under Reference Materials in the **Federal Register** notice (47 FR 16595, April 16, 1982) supplemented the technical materials which were used in the development of the suspended rules. (44 FR 15245, March 13, 1979). The data continue to support these final rules.

Option (1) vs. Option (2) and Performance Standards vs. Design Criteria. Option (1) of the proposed rules (47 FR 16592, April 16, 1982), included both design and performance standards for roads. Option (2) contained performance standards only. It was anticipated that either one of the options would be selected or features from both would be combined into a final rule after comments were evaluated. The final rules adopted combine aspects of Options (1) and (2) with modifications incorporated in response to comments and analysis in the FEIS.

One commenter felt that OSM's conclusion in the April 1982 preamble that general performance standards under Option (2) would provide equivalent environmental protection to detailed design criteria under Option (1) was not buttressed by the material in the March 13, 1979 preamble to the previous rules (44 FR 15246).

Although OSM has chosen not to include design criteria within the rules, these final rules have incorporated more detailed performance standards for primary roads than were contained in Option (2). Upon reviewing the legislative history of the Act, it is OSM's view that the adoption of these prformance standards, coupled with the ability of regulatory authorities, provided under § 816.150(c), to set design criteria for specified parameters and the requirement (under § 816.15(1)(a)) that the design and construction of primary roads be certified by qualified registered professional engineers, will result in the necessary environmental and public safety protection. This approach also advances the finding in Section 101(f) of the Act because it takes into account regional, physical, biological, and climatic diversity among the States by giving the regulatory authorities the responsibility to develop appropriate design criteria when necessary.

One commenter opposed the adoption of design criteria arguing that the operator could not be held liable for consequences in the event such design criteria failed to meet peformance standard requirements.

OSM disagrees with the commenter's conclusion. When engaged in a surface coal mining operation, an operator is responsible to meet the performance standards of the Act and the implementing rules as promulgated in 30 CFR Part 816. Establishment by a regulatory authority of a design criterion will not insulate an operator from this responsibility. In the event a specific design fails to meet the performance standards, an operator must take appropriate mitigative measures. *See* previous 30 CFR 786.29 and proposed 30 CFR 773.17(e) at 47 FR 27694, June 25, 1982.

Though preferring Option (2), one State commenter recommended the adoption of Option (1) with the design criteria because this would allow the State to propose standards based on its existing State requirements. The commenter thought that the State's rules would then be "as effective as" the OSM rules. The question of whether a State's rules are no less effective than OSM's rules in Part 816 depends on the substance of the State's rules and not merely on whether a regulation does or does not contain design criteria.

One commenter suggested that OSM insert language in the preamble to make it clear that under Option (2) the States would have the opportunity to establish design criteria to meet their respective conditions. The final rules have been written so that regulatory authorities may develop general design criteria as part of the State program, or evaluate road designs on a case-by-case basis.

One commenter thought that incorporating specific design criteria for primary roads under Option (1) would be less burdensome for the operators and regulatory authorities because it would not require an operator to design a road system completely, therefore saving additional engineering costs. Another commenter saw Option (1) as simplifying the review and enforcement process and pointed out that the relatively high initial construction costs would be offset, to some extent, by lower long-term maintenance costs.

OSM disagrees with the assessment of the first commenter. The establishment of design criteria by OSM or the regulatory authority would not necessarily be the equivalent of specifications which must be included in a design for a specific road. Operators have the responsibility to submit sufficiently detailed designs for each road that demonstrate compliance with the performance standards promulgated in Part 816.

With respect to the second comment, construction cost savings can be realized by the establishment of design criteria on a localized or regional basis, rather than by national criteria. Construction costs can escalate from underdesign, as well as overdesign, and maintenance costs are minimized when a road is designed to meet specific needs and then used as intended.

One commenter felt that elimination of design standards would substantially increase the likelihood that roads would be improperly constructed for the following three reasons: (1) The proposed performance standards were vague and difficult to enforce; (2) OSM had indicated its intent to eliminate detailed information requirements for road design during permit review; and (3) OSM assumed that professional engineers would design roads but this was not required in the proposal and would result in design by non-engineers to cut costs.

OSM disagrees with the commenter's first point. The performance standards in final §§ 816.150 and 816.151 are sufficiently specific to allow the regulatory authorities to evaluate whether roads are being properly designed, constructed, and maintained. Although OSM has minimized the use of design criteria in the national standards, regulatory authorities may include additional design criteria in their individual programs (either generally or on a case-by-case basis) and may develop technical guidelines when they consider such added specificity is needed. Furthermore, as an aid to regulatory authority review, OSM requires certification by a registered professional engineer that proposed design and actual construction or

reconstruction for primary roads meet Part 816 performance standards and any design criteria required by the regulatory authority.

In response to the commenter's second point, OSM has not proposed changes to the information collection rules for road design under 30 CFR Parts 780 and 784 and no changes are made in this final rule.

Finally, the commenter misstates OSM's intention concerning the development of road designs. The final rules do not specify who must prepare the design. Rather, they require certification by a qualified registered professional engineer that the design submitted to the regulatory authority meets the performance standards of Part 816 and any design criteria required by the regulatory authority. The important consideration is whether the design meets the prescribed standards and not who does the preparation.

One commenter considered it "noteworthy" that § 816.150(d)(1) in the suspended rules allowed use of alternative design specifications if the design by a professional engineer resulted in performance equal to or better than the design standards. The commenter felt this added important flexibility and pointed out that the provision for alternative specifications had been eliminated from proposed Option (1).

OSM agrees that important flexibility is attained by allowing for approval by the regulatory authority of designs which will take into account site specific or regional conditions. This adaptability is intended by this final rule.

One commenter thought that the degree of environmental protection to be achieved under Option (2) would depend on the attitude of each operator, permit reviewer and inspector. The commenter felt that review of design proposals would be inconsistent and problematic, and that some operators would attempt to cut costs by designing roads which would eventually develop instability, erosion and flooding problems leading to high maintenance costs for correction. In the commenter's opinion the operators who continued in good faith to construct properly designed roads would find themselves at an economic disadvantage.

As pointed out in the FEIS, inconsistent implementation of the permanent program rules among States or within a State is as likely under previous rules as under the new rules. Consistent application of the rules depends upon the personnel involved. The final road rules provide sufficient guidance to regulatory authorities to result in consistent application. In addition, §§ 780.11, 780.14 and 780.37 of the permitting rules require sufficient technical information from the operator to allow proper permit application evaluation. Moreover, regulatory authorities may require supplemental information. Finally, although those regulatory authorities which choose not to incorporate design criteria within their rules could place demands for increased competence on their reviewing personnel, these demands can be reduced significantly through the use of technical and policy guidelines.

The commenter's fear that poor attitudes would result in problematic and inconsistent design review and subsequent constuction problems is based on the view that the regulatory authority cannot adequately develop standards and will not proceed in the review, inspection or enforcement actions. Under the provisions of Section 503 of the Act, the State is required to demonstrate that it has the capability to carry out the provisions of the Act both from administrative and technical standpoints. After implementation of a State program, OSM maintains a continuing oversight role to help assure that the provisions of the Act are being met. These two factors in the regulatory scheme should militate against ineffective or incomplete enforcment by the regulatory authorities.

Several commenters proposed changes to Option (1) and Option (2) which included different combinations of performance standards, design criteria, and constraints. The emphasis and importance that the commenters placed on the individual areas of road design varied widely. For example, one commenter preferred Option (2) but felt it was necessary to retain the Option (1) provisions that prohibited the use of unsuitable material in road embankment construction, required compaction of road building material, and dealt with disposal of excess material from excavations. Another commenter did not express a preferred option but proposed a combination which called for the adoption of most of Option (1) with modifications and specific sections selected for deletion. A third commenter expressed opposition to Option (2) and offered a compromise which provided for a variance for road routes and grades, deletion of embankment specifications, reduction of the design storm frequency, establishment of a safety factor on all cuts and fills, sediment sumps in the drainage systems, and imposition of time limits for drainage and stabilization on infrequently used roads.

As described earlier in this preamble, OSM has considered the comments and adopted performance standards for primary roads (§ 816.151) in addition to the more general performance standards of § 816.150. The wide range of comments received on the proposed alternatives demonstrates the need for leeway on the part of the regulatory authority to establish criteria which address the prevailing conditions and potential severity of environmental problems associated with particular situations. Some of these comments suggested rule changes that reflect concerns considered critical to particular interests and regions, but which are not necessarily important or appropriate for other regions or interest. The final rules allow regulatory authorities to adapt their programs beyond the minimum requirements to cover any particular situation. If some of the comment proposals representing regional conditions had been adopted nationwide, the final rules could have become unnecessarily inflexible or inappropriate for application based upon site- or region-specific conditions.

Many commenters expressed general opposition to Option (1) and supported the use of performance standards under Option (2). They found Option (2) provided greater flexibility, was result-oriented and would be cost effective. Conversely, a number of commenters expressed general opposition to adoption of Option (2) and the use of performance standards within the rules.

They cited a wide range of environmental and public safety concerns that they believed would result from the removal of Federal minimum design criteria.

The adoption of performance standards rather than design criteria is not contrary to the environmental concerns of the Act. The central issue is whether, in addition to performance standards, minimum design criteria are necessary within the body of the rules in order to effect the requirements of the Act. There has been insufficient evidence presented to rebut OSM's conclusion that allowing a variety of designs subject to the approval of the regulatory authority through the permit and, which will be adapted to specific settings, will offer overall protection at least as effective as a single design applied uniformly and irrespective of local conditions. At the same time, the approach adopted gives the regulatory authority the leeway to match the design to its particular situation. Furthermore, the requirement in the rules that the design and construction of primary roads to be certified by a qualified registered professional engineer gives added assurance that the requirements

of the Act will be met. (A further discussion of the relative merits of the design criteria versus the preformance standards approach appears in OSM's final environmental impact statement. FEIS Volume I, pp. II–7 and IV–5.)

Finally, the imposition of rigid limits through design and construction specifications to ensure a high degree of control over adverse environmental effects associated with construction, operation and reclamation of roads would result, in many instances, in excessive and unnecessary construction and operation costs.

B. Specific Comments

Section 701.5 and 816.150(a)—Definition of Road and Primary and Ancillary Roads. One commenter was of the opinion that the primary/ancillary designations might be more burdensome then the suspended classification system because the majority of the roads on a mine site would have to be designed and constructed to more stringent standards under primary road requirements. The commenter suggested designating roads as "light use," "access" and "haul" roads.

All roads, both primary and ancillary, must be designed appropriately for their planned duration and use. This means that consideration must be given to such items as the total life of the road, schedule of use, type and size of vehicles and equipment used, and trip frequency. These are the considerations which establish whether or not the majority of roads within a given site fall within OMS's specific categories. Although most roads may well fall into the category of primary road, such a classification is necessary for compliance with the environmental protection requirements of the Act.

One State commenter disagreed with OSM's assertion that the potential severity of damage and risk of harm are less from short-term and infrequently used roads than from long-term and heavily used roads. The commenter thought that whenever the conditions and potential for damage were the same for both types of roads, that the potential severity and risk of harm were also the same and that conditions could be such that roads of a temporary nature could have more potential for harm than those heavily used. The commenter questioned establishing the two categories indicating that, as proposed, some roads my not fit in either class, resulting in decreased flexibility. The commenter viewed the primary/ancillary designations as ambiguous. The commenter suggested that the primary/ancillary designations be eliminated and that all roads be required to meet the performance standards under proposed § 816.150, with the regulatory authority deciding how best to meet performance standards after considering site-specific conditions.

Another group of commenters concurred in the belief that the primary/ancillary designations should be eliminated but for a contrasting reason. They believed that all roads should meet the design criteria under Option (1) for primary roads and felt this was a sound approach to regulation and one which would serve automatically to reduce erosion potential.

OSM agrees that certain roads (*e.g.*, haul roads) have a potential for environmental damage regardless of whether their use is frequent or long-term. These have been included in the category of primary roads. Generally, the potential for both environmental and property damage attributable to the operation of roads varies with their frequency of use and their conditions of use, such as vehicle speed, vehicle type, operational restrictions, maintenance schedules, etc. The level of use associated with those roads which are "ancillary" roads and the decrease in area disturbance necessary for their construction significantly reduces their potential for environmental or property damage as compared to the potential for damage from long-term or heavily-used roads. This distinction was cited by many commenters who advocated some form of categorization of roads during development of the definition for the term "road" in the previous permanent program rules (44 FR 14937, March 13, 1979). The distinction was applied by OSM when it finalized the classification system in the 1979 rules which were later suspended. (44 FR 15246, March 13, 1979). Some form of categorization for roads is necessary from both environmental and economic points of view due to the wide range of road uses and needs and associated with coal mining operations. The primary/ancillary designations were proposed in response to the need for flexibility in design consideration. Rather than developing numerous categories for roads centered around specific use conditions, OSM has decided to use only two classifications.

Several commenters expressed confusion with the proposed definitions for primary and ancillary roads. In contrast, one commenter encouraged adoption of the primary/ancillary designations and felt they thoroughly covered the uses of coal haul roads and should be self-explanatory. Another commenter felt that the proposed definitions were not all inclusive and that roads of frequent use over short duration and roads of infrequent use throughout the life of the mine were not covered by either definition. Several of the commenters cited the preamble to the proposed rules (47 FR 16593, April 16, 1982) and their belief that it was OSM's intention to allow some longer term roads of infrequent use to be classified as ancillary roads. The commenters suggested changing "and" to "or" within the proposed definition for ancillary roads to allow roads used infrequently throughout the life of the mine to be designated ancillary.

To eliminate possible confusion about the coverage of the two terms, OSM has specified which roads will come within the primary road designation and left all other roads to come within the ancillary road designation. The commenter was correct in saying that the proposed categories for primary and ancillary roads did not adequately address roads frequently used for short periods of time or infrequently used for substantial periods of time. After further analysis, OSM has concluded that regardless of their frequency of use, roads used to transport coal or spoil and roads that will be retained for postmining land uses shall be classified as primary. Any other road which is used frequently for a period in excess of six months is also to be classified as primary. This six month period was selected to set an objective limit between short- and long-term usage. Thus, an ancillary road is one that is (1) not used for transporting coal or spoil; (2) not to be retained following mining and reclamation; and (3) either used infrequently for any length of time or used at any level of frequency for periods of less than six months.

The performance standards of § 816.150 apply to both primary and ancillary roads. These standards will be sufficient to meet the potential environmental risks for ancillary roads. In OSM's experience the roads classified as "primary" have the greater potential for adverse environmental and property damage than ancillary roads and, therefore, have the added protection of professional engineer certification for design and construction as well as specific performance standards for location, drainage control, surfacing, etc. Because the risks from ancillary roads are less than for primary roads, the added expense for design and construction certification by a registered professional engineer is not justified. In the case of ancillary roads an operator may use technicians with specialized background experience to locate and

design such roads at considerable savings through use of standard field design methods and any minimum design criteria which the regulatory authority may establish to meet environmental and safety requirements. For example, while it could be necessary to have geotechnical analysis to demonstrate stability on the large cut and fill embankments associated with primary roads, nevertheless such analysis is often unnecessary for ancillary roads because their low volume of embankment materials and low traffic volumes decrease both the potential for environmental harm as well as harm to public health and safety. Also, since ancillary roads are not eligible for retention under postmining land use, engineering input for long range maintenance and operational considerations is not warranted.

In response to those commenters who urged the same design criteria for all classes or roads, the imposition of design criteria for all roads, regardless of their planned use, and the resulting unnecessary costs from instances of overdesign, cannot be justified. Such an approach will not assure that all environmental concerns will automatically be satisfied. Additionally, under Section 505 of the Act, the regulatory authorities may establish supplemental criteria within their rules for dealing with situations that may require distinctions beyond the primary/ancillary classifications. In summary, it is appropriate to give the regulatory authorities the flexibility to develop rules that address site and local conditions and, at the same time, are cost effective.

Two commenters suggested language to allow all roads located within a drainage area controlled by a sediment pond or other sediment control structure to be exempted from the definition for "road" under § 701.5.

OSM has not accepted the suggestion. The control or prevention of siltation and water pollution, as afforded by a controlled drainage, addresses only part of the requirements for environmental protection for roads. Section 515(b)(17) of the Act requires environmental protections for other matters such as fish and wildlife and public and private property. Moreover, despite their small size relative to the total permit area, roads located outside the immediate pit area can have the potential for increased adverse environmental effects because they form a narrow corridor where the impacts on the adjacent area may be magnified due to the extended periphery and the steady use patterns over a long duration (*e.g.* air pollution attendant to erosion, damage to wildlife and wildlife habitat, and damage to public or private property). Attention to these other statutory concerns are reflected in the performance standards prescribed under § 816.150. If all roads within controlled drainage situations were exempted from the definition for "road" under § 701.5, then they would necessarily be exempt from the performance standards of § 816.150, with the resulting protection level being insufficient to meet all of the requirements of the Act.

One commenter felt that the proposed definitions of primary road and ancillary road should take into account those portions of a road that may be classified differently depending upon use, location or special minesite factors. The final rules provide ample latitude for classification of a road segment based on type of use and other conditions. Further delineation is unnecessary.

One commenter expressed concern that ramp roads from the pit area would fall under the primary road category because such roads are "frequently used" for access, coal hauling and other purposes for extended periods of time. Another commenter suggested that pioneer or construction roads, which are to be either stabilized or replaced in accordance with Parts 816 or 817, not be included within the definition for road. The commenter also suggested exempting from the performance standards those roads which do not require extensive upgrading to meet the general performance standards which are maintained by county, State or Federal governments.

The final definition for "road" is similar to that used in the suspended rules. This definition provides a description of the physical area and structures covered and the kinds of roads included for purposes of specific road regulation. The definition includes the entire area within the right-of-way, including the roadbed, shoulders, parking and side areas, approaches, structures, ditches and surface. The definition excludes roads outside the "affected area," pioneer or construction roadways used for road construction procedures and roads within the immediate mining-pit area. Although pioneer roads, construction roads or ramps from the pit area will not be subject to the performance standards for roads, nevertheless as part of the permit area, they will be subject to the other Part 816 performance standards, such as the topsoil, backfilling and grading, and revegetation rules.

With respect to the question of regulating public roads, OSM recognizes that there is a limit to the types of roads which should be considered as part of a "surface coal mining operation." This is reflected in the definition of "affected area" in § 701.5 which has been revised to clarify those circumstances under which access or haul roads are sufficiently public so as not to be considered part of the affected area. The reader is referred to the **Federal Register** notice of August 2, 1982 (47 FR 33430) and April 15, 1983 (48 FR 14819), for further discussion on the exclusion of roads which are controlled and maintained by a public entity.

Section 816.150(b)–(e) General Standards For All Roads. Several comments dealt with specific portions of the design criteria for primary road rules that were proposed under Option (1). Since some of these comments did not discuss the merits of keeping or not keeping the design criteria, but rather dealt with specific wording and other details of design criteria not included in this final rule, it is not necessary to address them in this preamble.

Section 816.150(b) Performance standards. Proposed § 816.150(a) is being adopted as final § 816.150(b). One commenter suggested that proposed § 816.150(a) be rewritten using the language from section 515(b) (17) and (18) of the Act and deleting the seven proposed requirements. The commenter thought that, as proposed, the paragraph was confusing and left too many unanswered questions. The commenter believed that Congress intended OSM to set "attainable" standards because total prevention of adverse hydrologic effects is impossible and cited House report language in support of this position (H.R. Rep. No. 95–218, 95th Cong., 1st Sess., 110 (1977)).

The general performance standards under Section 515(b) (1) through (25) of the Act apply to *all* surface coal mining and reclamation operations, including, where applicable, roads. Therefore, limiting the effect of final § 816.150(b) to only Section 515(b) (17) and (18), as suggested by the commenter, would not completely fulfill the requirements or the intent of the Act. The final rules accurately reflect the intent of Congress, denote standards that are both attainable and feasible and highlight those concerns that are especially significant for roads.

Section 816.150(b)(1)

Several commenters proposed deleting the requirement to control or prevent air pollution attendant to erosion. They argued that Section 515(b)(17) of the Act did not mention controlling air pollution from roads and

that according to the decision in *In re: Permanent Surface Mining Regulation Litigation, supra,* Congress only intended to regulate air pollution related to wind erosion. Two of the commenters believed that § 816.95 of the previous rules adequately addressed wind erosion.

In *In re: Permanent Surface Mining Regulation Litigation, supra,* §§ 816.95 and 817.95 of the permanent program rules were remanded by the court to the Secretary of the Interior for revision. In the court's opinion, the legislative history to Section 515(b)(4) of the Act indicated that Congress intended to regulate only air pollution related to erosion and not air pollution from an entire mining operation. OSM agrees with the court's interpretation which is reflected in this final rule, as well as in the revisions to §§ 816.95 and 817.95. (48 FR 1160, January 10, 1983). Instead of requiring coal mine operators to plan and use specific fugitive dust control measures as part of the total operation, the final rules at §§ 816.95 and 817.95 require operators to take steps to stabilize and protect all exposed surface areas in order to effectively control erosion and air pollution related to erosion. Because air pollution from road-related erosion can be a serious concern, and because Section 515(b)(17) of the Act specifically requires control or prevention of erosion resulting from roads, a provision regulating air pollution attendant to erosion appears in the final § 816.150(b)(1). The proposed provision has been modified to provide a more specific standard. The final rule requires all exposed surfaces to be revegetated or otherwise stabilized in accordance with current, prudent engineering practices. This was included to emphasize the ongoing nature of erosion control.

Section 816.150(b)(2)

One commenter suggested that endangered species be addressed under proposed § 816.150(a)(2) such that no primary road would be constructed which was likely to jeopardize the continued existence of endangered or threatened species or destruction of critical habitat.

The performance standards for protection of fish and wildlife in 30 CFR 816.97(b) require consideration of threatened or endangered plant and animal species and their critical habitats listed by the Secretary under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). The provisions of § 816.97 coupled with the performance standards of final § 816.150(b)(2), which provide that roads shall be operated and reclaimed so as to control or prevent damage to fish and wildlife habitat, will provide adequate protection for threatened and endangered species and other fish and wildlife.

Section 816.150(b)(3)

One commenter suggested rewording proposed § 816.150(a)(3) to read: "Prevent to the extent possible, additional contributions of suspended solids to stream flows or runoff outside the permit area" in order to track the language of Section 515(b)(10)(B)(i) of the Act.

This commenter's suggested language does not exactly follow Section 515(b)(10)(B)(i) as that statutory provision also requires the use of the best technology currently available to prevent additional contributions of suspended solids. The standards of Section 515(b)(10)(B)(i) will be incorporated in the performance standards for protection of the hydrologic balance at §§ 816.41–816.46. The requirement in final § 816.150(b)(3) to control or prevent additional contributions of suspended solids to stream flow or runoff outside the permit area is intended to emphasize OSM's concern in this matter.

Section 816.150(b)(4)

One commenter stated that it was understood that other applicable State and Federal water quality standards could not be violated during the conduct of operations, and that statements to that effect should be removed from the rules.

Roads have long been recognized as major contributors to stream sedimentation (47 FR 16592, April 16, 1982). Section 515(b)(10)(B)(i) of the Act further provides that in no event shall contributions be in excess of requirements set by applicable State and Federal law. The language in § 816.150(b)(4) simply reflects these requirements.

Section 816.150(b)(5)

Although no comments were received specific to proposed § 816.150(a)(5), OSM has modified the language of this provision in final § 816.150(b)(5) to emphasize that protection is for both surface- and ground-water systems.

Section 816.150(b) (6) and (7)

No comments were received specific to proposed § 816.150(a) (6) or (7). They are redesignated § 816.150(b) (6) and (7) and are adopted as proposed.

Section 816.150(b)(8)

One commenter objected to the preferred alternative in the final EIS which would have allowed operators to use acidic or toxic materials in ancillary road surfacing. OSM has accepted this comment and placed the prohibition under the general performance standards applicable to all roads as new final § 816.150(b)(8).

Section 816.150(b)(9)

OSM has adopted in new final § 816.150(b)(9) a minimum static safety factor of 1.3 rather than 1.25 which appeared in the suspended rules. This standard is the same as that being required for backfilled areas and is slightly more stringent than that required in the suspended rules. It is based on engineering analysis used by OSM for the development of the suspended rules. See 43 FR 41739 (September 18, 1978) and 44 FR 15245 (March 13, 1979). Rather than specify particular design criteria for road embankments, the 1.3 factor of safety sets a standard to be attained. Where it is clear to the regulatory authority that a particular design will meet the standard, there is no need to require geotechnical or other more rigorous analysis of such embankments.

Section 816.150(c)—Establishment of Design Criteria. Final § 816.150(c) is based on proposed § 816.150(b)(1). One State commenter thought that while the regulatory authorities should ensure that roads do not create environmental problems, nevertheless, they should not become involved in establishing and enforcing highway design criteria for haul roads nor should they use technical guidelines as implicit regulatory standards. It was suggested by another commenter that design criteria such as were contained in Option (1) be furnished as guidelines to be used and modified as appropriate by professionals to meet local conditions. A different commenter felt that the operator should have the complete flexibility to handle unique situations.

Regulatory authorities are not required to adopt design criteria for roads. However, the regulatory authorities have the responsibility to see that any design submitted with a permit application will assure that operators achieve the required performance standards. If, due to local conditions or situations, design criteria are needed to assure the performance standards are met, then the regulatory authority is authorized under § 816.150(c) to establish necessary design criteria. While OSM has minimized the use of specific design criteria within these rules, each road design must include appropriate limits for grade, width, surface materials, surface drainage

control, culvert placement, and culvert size. OSM has compiled abstracts of publications related to the design, construction and reclamation of roads for use as a reference by the regulatory authorities and others.

Several commenters were confused by the phrase "recognized engineering minimum design criteria" in proposed § 816.150(b)(1). They recommended use of the phrase "recognized engineering practice" because it has accepted meaning among engineers. They objected to having minimum design criteria established by the regulatory authority, preferring that designs be reviewed on a case-by-case basis so as to encourage technological advances in mining and reclamation.

The phrase "recognized engineering minimum design criteria" has not been adopted in these final rules. As adopted, § 816.150(c) identifies instead the above-referenced parameters for which appropriate consideration must be given in the design. This requirement fulfills the Congressional intent as revealed in the following quotation appearing in the legislative history.

> Access and haul roads constructed for the purpose of the mining operation area are major sources of siltation on a continuing basis both during and after mining. In order to overcome the continuing and longstanding environmental problems these roads present, the committee specifies in the Bill that roads are to be designed and constructed with appropriate limits to grade, width, surface material and culvert placement and size in order to control drainage and prevent erosion outside the permit area. H.R. Rep. No. 90-218, 95th Cong., 1st Sess. 128 (1977).

OSM agrees that one intent of the Act is to encourage advances in mining and reclamation. Section 816.150(c) will encourage advances in mining and reclamation techniques because the regulatory authority may modify any design criteria it develops to accommodate future technological advances, and also may approve designs on a site-specific basis.

The Mine Safety and Health Administration requested that OSM ensure that, in establishing design and construction limits for roads, consideration be given to the type and size of equipment using the roads. This suggestion is accepted. Final § 816.150(c) has been revised accordingly.

Section 816.150(e)—Maintenance. One commenter suggested striking the word "criteria" from proposed § 816.150(c) so that the road would be "maintained to meet the approved design," not "to meet the approved design criteria." The commenter argued that the engineer should have the latitude to design the road to meet performance standards and not specific design criteria.

The design and construction or reconstruction of roads must meet the performance standards of § 816.150 and any design criteria that the regulatory authority may set under § 816.150(c). The language of the maintenance provision (§ 816.150(e)) has been written taking both of these factors into account. Regardless of how well a road is planned and constructed, lack of a maintenance program will lead to failure of the road to function as it was planned. The adverse environmental effects and threats to public safety from abandoned or upkept roads are well known.

Section 816.150(f)—Reclamation. One commenter found it illogical and counter-productive to require removal of perfectly useable roads after mining, and felt that removal was not required by the Act. In contrast, another commenter suggested that road reclamation be strictly enforced because abandoned roads are one of the major contributors to watershed degradation in mined areas.

The final rules allow for retention of any roads that will be part of the approved postmining land use. The postmining land use plan must outline the need to retain the roads and should establish the responsibilities for their long-term maintenance.

However, many mine roads have little continuing social or economic value. This, in turn, leads to cessation of maintenance and abandonment. In many instances, abandoned roads associated with surface mining contribute substantially to stream sedimentation, thus affecting water quality flowing from the mined watersheds. Section 515(b)(17) of the Act explicitly covers postmining conditions. Therefore, specific performance standards for the control or prevention of postmining environmental and property damage from roads are needed. The provision for removal of all roads not part of the approved postmining land use will assist in controlling or preventing such damage.

Two commenters suggested deleting the proposed requirement that roads not in use be "immediately" reclaimed. The commenters asked that the word "immediately" be removed from proposed § 816.150(d) to bring the section more in agreement with Section 508(a) of the Act. They claimed that imposition of a time constraint was not supported in the preamble. One of the commenters believed that such a modification to proposed § 816.150(d) would allow the regulatory authority more flexibility to permit the operator to re-use the road as local conditions changed. The other suggested that road reclamation should be in accordance with the schedule approved in the permit.

OSM believes that the word "immediately" is in keeping with the intentions of the Act as expressed in Sections 102(e), 515(b) (2) and (16). Since roads serving the mining operation are often needed in their entirety until the very last stages of reclamation, they represent significant areas of disturbance which are not reclaimed as contemporaneously as other segments of the permit area. Thus, immediate reclamation presents a means of satisfying the requirements of Section 515(b)(10) of the Act for minimizing the disturbance to the hydrologic balance, and the requirements of Section 515(b)(10)(B)(i) of the Act to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to stream flow or runoff outside the permit area. Any possible re-use of a road should be established as part of the postmining land use plan to allow proper consideration of interim protection requirements or treatment.

One commenter proposed deletion of the word "natural" so that proposed § 816.150(d)(3) would read, "restore drainage patterns". The commenter contended that the phrase "natural drainage patterns" implied no man-made disturbances and introduced the possibility for excessive requirements.

The construction of roads often involves some relocation or alteration of existing natural drainage ways which subsequently depends on maintenance by the operator to ensure continued environmental protection. It is OSM's intention that these drainage ways be restored to their preconstruction condition in accordance with 30 CFR 816.43.

One commenter objected to the language of proposed § 816.150(d)(4) contending that the establishment of cut and fill slopes which would support the postmining land use should be the objective to be attained without setting a universal requirement for "reshaping" cuts and fills. The commenter felt that substituting the word "insuring" for "reshaping" would require less regrading and disturbance of vegetated areas thus minimizing the potential for additional contributions to stream flow. The commenter pointed out that the preamble to the proposed rules failed to indicate why "reshaping" was selected over "insuring" as provided in the Act. Also, the commenter thought that other sections of the rules, *e.g.*, § 817.102(k)(2),

allowed slopes to be left in place and thus it was not always necessary, as a uniform practice, to reshape or redisturb an area where an operator ensures slope stability.

This comment is rejected. OSM intends that reclaimed roads be regraded when necessary in order to restore the approximate original contour of the land as required by Section 515(b)(3) of the Act. The word "reshaping" was chosen because it encompasses the action of regrading. The word "insuring" could be read to mean that the roadbed need not be removed in order to be compatible with the postmining land use. Unless the retention of the road to be used as a right of way is specifically approved as part of the postmining land use, retention of the roadbed would not be consistent with OSM's intent.

Section 816.151 Primary Roads.

Section 816.151(a)—Certification. Final § 816.151(a) is based on proposed § 816.150(d) of Option 1 and § 816.150 (b)(1) and (b)(2) of Option 2. Two commenters objected to requiring certification of design, construction and reconstruction for primary roads by a qualified registered professional engineer. One thought that the type of engineer relied upon should be left to the operator. The commenter also felt that professional registration *per se* did not always guarantee that the most qualified person would be consulted and that any design deficiencies would be exposed ruling the permit review process. The other commenter stated that it was standard engineering practice to use recognized engineering procedures in large mines, and therefore, it was unfair to require smaller operators to obtain professional engineer design and certification on roads that had limited traffic.

The requirement for certification of design and construction or reconstruction of primary roads by registered professional engineers is in keeping with the Act's reliance on the input from these professionals for review of other critical structures and preparation of important plans. *See* Sections 507(b)(14), 515(b)(10)(B)(ii) and 515(b)(22)(H) of the Act. No such requirement is established for ancillary roads because the risks from such roads are less, making the added expense less justified.

Because the overall adverse environmental effects from coal mine roads can be equally as great or greater from a small mining operation or series of small operations as from one large operation, it is necessary to apply this certification standard to small operations as well as large ones. Insofar as the provisions of § 816.150(c) require that each road must be designed only to the extent necessary to assure the required environmental protection and safety for its planned duration and use, the engineering costs will likely be kept commensurate with the size of the operation.

One commenter felt that while engineers could design roads to meet certain standards, nevertheless they could not guarantee compliance. Another commenter felt that the practice of engineering did not include expertise in environmental disciplines, and therefore, engineers could not certify that environmental performance standards were met. By way of support, the commenter quoted from the definition of "practice of engineering" used by the National Council of Engineering Examiners (NCEE).

While engineers cannot guarantee compliance with a design, nevertheless they can evaluate it prior to implementation and later determine whether it was carried out as specified. This view accords with the spokesman for the engineering profession in a recent hearing itself. During an oversight hearing on the Act before the House Subcommittee on Energy and the Environment, a spokesman for the American Consulting Engineers Council (ACEC), which has a membership of 3,800 private firms representing over 110,000 professional engineers and other scientific technical personnel, testified that "the public and environmental interests are best served if all technical design work is conducted under the supervison of a registered professional engineer who also certifies that the actual field construction is in accordance with those designs." The spokesman went on to make the following point:

> The engineering profession has the training and experience to design and certify the geotechnical, structual, mining, and environmental facilities used in the mineral extraction industry. The engineering profession is recognized in registration laws and by this nation's legal system for just such tasks. Moreover, the profession is bound by a code of ethics that makes the public welfare and safety the highest priority, superior even to its responsibility to the client. [Oversight hearing on Pub. L. 95-87, House of Representatives, Subcommittee on Energy and the Environment, Committee on Interior and Insular Affairs, September 9, 1981, Transcript p. 181, Insert 3b-1.]

Moreover, the position espoused on behalf of the ACEC is consistent with the NCEE definition for the "practice of engineering" referred to by the commenter.

One commenter suggested changing the word "and" to "or" immediately preceding proposed § 816.150(b)(2) to give operators the added option of designing their own roads in accordance with recognized and approved engineering practice rather than providing a certification.

The comment is rejected. Competent design involves more than the mere application of standard criteria to all situations, including the assessment of potential environmental effects. Certification by a qualified registered professional engineer that both the proposed design and construction or reconstruction of primary roads meet the performance standards and any design requirements of the regulatory authority is a critical element in the regulatory scheme to assure compliance with the Act.

§ 816.151(b)—Location. One commenter was concerned that the absence of specific criteria for route location as was contained in suspended § 816.150(a)(1) would encourage the selection of the shortest feasible route, even if on excessively steep and unstable slopes, causing a very high potential for erosion.

Selection of the shortest, environmentally protective route should be encouraged. The final rule does respond to the commenter's concern. Section 816.151(b) requires primary roads to be located on the most stable available surface.

One commenter was of the opinion that the lack of specific restrictions against stream fords would most likely result in their use as a common cost-saving method and contended this would result in downstream erosion because heavy equipment would be driven over the stream bed instead of using bridges and culverts. In contrast, another commenter believed that both the Act and Congress clearly intended that the use of fords, culverts and bridges should not be prohibited. The commenter interpreted the proposed rules as prohibiting the use of all structures such as bridges and culverts.

While the final rules do not prohibit the use of fords, bridges or culverts, nevertheless they do limit the use of stream fords in a similar way to that in the suspended rules. Under the suspended rules, OSM recognized that the use of fords over intermittent or ephemeral streams for controlled, low-frequency use roads, and over streams during construction of permanent structures, would have minimal adverse environmental effect (44 FR 15248, March 13, 1979).

The regulatory authority's evaluation of a proposed stream crossing, including fords, under both the suspended and the final rules centers on whether requirements of Section 515(b) (10), (17), (18), and (24) of the Act and subsequent regulatory programs are met.

Discussion of Comments Specific to Ancillary Roads. One commenter wanted to allow wide latitude in the types and construction of ancillary roads, so that regulatory authorities would not impose uniform or stringent standards on all ancillary roads.

The general performance standards are the same for ancillary and primary roads. However, when establishing design criteria, regulatory authorities may set different limits for different classes of roads. Although some design and construction latitude is afforded by these rules, they should not be construed as abandoning proper design consideration. The regulatory authority is responsible to see that the environmental and safety performance standards are met for both ancillary and primary roads. It also has the authority to establish any additional standards it deems necessary to meet these requirements.

Two commenters felt that because ancillary roads were of short duration, they should be maintained only throughout their planned duration and use.

For maintenance to be effective in minimizing the adverse environmental effects from roads, it must be preventative as well as corrective in nature. A standard simply to maintain a road to its "planned duration and use" will not ensure that design integrity will be maintained throughout the life of the road. Because the assurance of environmental performance is based on design adherence, roads must be maintained throughout their lives.

Several commenters maintained that there should be provisions for retention of ancillary roads when they are a part of the postmining land use.

No provision has been made for retention of any roads for postmining land uses without satisfaction of the final § 816.151 requirements. This has been reflected in the definition for "primary road" under final § 816.150(a). The longer time frames associated with roads to be retained for postmining land use warrant the requirement of design and construction certification by a qualified registered professional engineer and the imposition of additional performance standards.

The occasion may arise when it will be desirable to consider retention of a road classified earlier as ancillary. In that event, OSM expects the operator to apply for a permit revision and to present to the regulatory authority the necessary engineer certification for design and construction or reconstruction. The operator will also have to present information on special maintenance or other steps to be taken based on the changed duration and use so as to meet the required performance standards.

IV. Procedural Matters

Executive Order 12291. The Department of the Interior (DOI) has examined these final rules according to the criteria of Executive Order 12291 [February 17, 1981]. OSM has determined that these are not major rules and do not require a regulatory impact analysis because they would impose only minor costs on the coal industry and coal consumers. The final rules emphasize the use of performance standards instead of design criteria which will allow operators to use the most cost effective means of achieving the performance standards.

Regulatory Flexibility Act. The DOI has also determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that these rules will not have a significant economic impact on a substantial number of small entities. The funds a small operator will have to invest in the construction of roads to comply with these final rules will only be minimally increased over what would normally be spent to ensure efficient transportation and minimal vehicle damage. The cost of the road will be defrayed by less maintenance costs for the road and vehicles. The operator will also avoid losses from a shutdown of operations due to impassable roads.

Paperwork Reduction Act. The information collection requirements in 30 CFR Parts 816 and 817 were approved by the Office of Management and Budget [OMB] under 44 U.S.C. 3507 and assigned new clearance number 1029–0048. OSM has codified the OMB approvals under the new §§ 816.10 and 817.10.

The information required by these parts will be used by the regulatory authority in monitoring, evaluating, and inspecting surface mining and the surface impacts of underground mining activities to ensure that they are conducted in a manner which preserves and enhances environmental and other values of the Act. This information requirement is mandatory.

National Environmental Policy Act. OSM has analyzed the impacts of these final rules in the Final Environmental Impact Statement OSM EIS–1: Supplement in accordance with Section 102(2)(c) of the National Environmental Policy Act of 1969 (NEPA) [42 U.S.C. 4332(2)(c)]. This supplement is available in OSM's Administrative Record in Room 5315, 1100 L Street, NW., Washington, D.C., or by mail request to Mark Boster, Chief, Branch of Environmental Analysis, Room 134, Interior South Building, U.S. Department of the Interior, Washington, D.C. 20240.

This preamble serves as a record of decision under NEPA. The final rules differ from the preferred alternative published in Volume III of the FEIS in the following ways:

1. References to "other transportation facilities" have been eliminated from the performance standards for roads; such facilities will be regulated as support facilities, and option encompassed by Alternative C in the FEIS;

2. Additions have been made to the list of general performance standards;

3. Certain standards which appeared in Option (1) of the proposed rules or in the preferred alternative under regulation of primary roads have been moved to §§ 816.150 and 817.150 because they are of general applicability; and

4. Clarification was made that drainage control systems may be designed to pass events other than the 10-year, 6-hour precipitation event.

The inclusion of some new provisions and the rearrangement of other provisions will result in the final rule having less potential for adverse environmental impacts than the preferred alternative. Thus, the analyses in the FEIS supplement under Alternatives A, B, C and D encompass the potential impacts from these final rules.

Agency Approval. Section 516(a) requires that, with regard to rules directed toward the surface effects of underground mining, OSM must obtain written concurrence from the head of the department which administers the Federal Mine Safety and Health Act of 1977, the successor to the Federal Coal Mine Health and Safety Act of 1969. OSM has obtained the written concurrence of the Assistant Secretary for Mine Safety and Health, U.S. Department of Labor.

List of Subjects

30 CFR Part 701

Coal mining, surface mining, underground mining.

30 CFR Parts 816

Coal mining, environmental protection, reporting and recordkeeping requirements, surface mining.

30 CFR Part 817

Coal mining, environmental protection, reporting and recordkeeping requirements, underground mining.

Accordingly, 30 CFR Parts 701, 816 and 817 are amended as set forth herein.

Dated: April 15, 1983.

William P. Pendley,

Acting Assistant Secretary, Energy and Minerals.

PART 701—PERMANENT REGULATORY PROGRAM

1. In § 701.5 the definition of *road* is revised to read as follows:

§ 701.5 Definitions.

* * * * *

Road means a surface right-of-way for purposes of travel by land vehicles used in coal exploration or coal mining and reclamation operations. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side areas, approaches, structures, ditches and surface. The term includes access and haul roads constructed, used, reconstructed, improved, or maintained for use in coal exploration or within the affected area of surface coal mining and reclamation operations, including use by coal hauling vehicles leading to transfer, processing, or storage areas. The term does not include pioneer or construction roadways used for part of the road-construction procedure or roads within the immediate mining-pit area.

* * * * *

PART 816—PERMANENT PROGRAM PERFORMANCE STANDARDS—SURFACE MINING ACTIVITIES

2. Section § 816.150 is revised to read as follows:

§ 816.150 Roads: General.

(a) *Road classification system.*

(1) Each road shall be classified as either a primary road or an ancillary road.

(2) A primary road is any road which is:

(i) Used for transporting coal or spoil;

(ii) Frequently used for access or other purposes for a period in excess of six months; or

(iii) To be retained for an approved postmining land use.

(3) An ancillary road is any road not classified as a primary road.

(b) *Performance standards.* Roads shall be located, designed, constructed, reconstructed, used, maintained and reclaimed so as to:

(1) Control or prevent erosion, siltation and the air pollution attendant to erosion by vegetating or otherwise stabilizing all exposed surfaces in accordance with current, prudent engineering practice;

(2) Control or prevent damage to fish, wildlife or their habitat and related environmental values;

(3) Control or prevent additional contributions of suspended solids to stream flow or runoff outside the permit area;

(4) Neither cause nor contribute to, directly or indirectly, the violation of State or Federal water quality standards applicable to receiving waters;

(5) Minimize the diminution to or degradation of the quality or quantity of surface- and ground-water systems;

(6) Refrain from significantly altering the normal flow of water in streambeds or drainage channels;

(7) Prevent or control damage to public or private property;

(8) Use nonacid- or nontoxic-forming substances in road surfacing; and

(9) Have, at a minimum, a static factor of safety of 1.3 for all embankments.

(c) *Design and construction limits and establishment of design criteria.* To ensure environmental protection and safety appropriate for their planned duration and use, including consideration of the type and size of equipment used, the design and construction or reconstruction of roads shall incorporate appropriate limits for grade, width, surface materials, surface drainage control, culvert placement, culvert size, and any necessary design criteria established by the regulatory authority.

(d) *Location.* (1) No part of any road shall be located in the channel of an intermittent or perennial stream unless specifically approved by the regulatory authority.

(2) Roads shall be located to minimize downstream sedimentation and flooding.

(e) *Maintenance.* (1) A road shall be maintained throughout its life to meet the performance standards of this part and any additional criteria specified by the regulatory authority.

(2) A road damaged by a catastrophic event, such as a flood or earthquake, shall be repaired as soon as practical after the damage has occurred.

(f) *Reclamation.* A road not to be retained for use under an approved postmining land use shall be reclaimed immediately after it is no longer needed for mining and reclamation operations, including:

(1) Closing the road to traffic;

(2) Removing all bridges and culverts;

(3) Restoring the natural drainage patterns;

(4) Reshaping all cut and fill slopes to be compatible with the postmining land use and to complement the drainage pattern of the surrounding terrain; and

(5) Replacing topsoil and revegetating disturbed surfaces in accordance with §§ 816.22 and 816.111–816.116.

3. Section 816.151 is revised to read as follows:

§ 816.151 Primary roads.

Primary roads shall meet the requirements of § 816.150 and the additional requirements of this section.

(a) *Certification.* The design and construction or reconstruction of primary roads shall be certified by a qualified registered professional engineer as meeting the requirements of this part; current, prudent engineering practices; and any design criteria established by the regulatory authority.

(b) *Location.* (1) To minimize erosion, a primary road is to be located, insofar as practical, on the most stable available surfaces.

(2) Stream fords by primary roads are prohibited unless they are specifically approved by the regulatory authority as temporary routes during periods of construction.

(c) *Drainage control.* (1) Each primary road shall be designed, constructed or reconstructed, and maintained to have adequate drainage control, using structures such as, but not limited to, bridges, ditches, cross drains, and ditch relief drains. The drainage control system shall be designed to pass the peak runoff safely from a 10-year, 6-hour precipitation event or greater event, unless otherwise specified by the regulatory authority.

(2) Drainage pipes and culverts shall be constructed to avoid plugging or collapse and erosion at inlets and outlets.

(3) Drainage ditches shall be designed to prevent uncontrolled drainage over the road surface and embankment. Trash racks and debris basins shall be installed in the drainage ditches where debris from the drainage area may impair the functions of drainage and sediment control structures.

(4) Culverts shall be designed, installed, and maintained to sustain the vertical soil pressure, the passive resistance of the foundation, and the weight of vehicles using the road.

(5) Natural stream channels shall not be altered or relocated without the prior approval of the regulatory authority in accordance with §§ 816.41–816.43 and 816.57.

(6) Except as provided in Paragraph (b)(2) of this section, drainage structures shall be used for stream channel

crossings shall be made using bridges, culverts, or other structures designed, constructed, and maintained using current, prudent engineering practice.

(d) *Surfacing.* Primary roads shall be surfaced with rock, crushed gravel, asphalt, or other material approved by the regulatory authority as being sufficiently durable for the anticipated volume of traffic and the weight and speed of vehicles using the road.

(e) *Maintenance.* Routine maintenance for primary roads shall include repairs to the road surface, blading, filling potholes and adding replacement gravel or asphalt. It shall also include revegetation, brush removal, and minor reconstruction of road segments as necessary.

§§816.152 through 816.176 [Removed]

4. Sections 816.152, 816.153, 816.154, 816.155, 816.156, 816.160, 816.161, 816.162, 816.163, 816.164, 816.165, 816.166, 816.170, 816.171, 816.172, 816.173, 816.174, 816.175, and 816.176 are removed.

PART 817—PERMANENT PROGRAM PERFORMANCE STANDARDS—UNDERGROUND MINING ACTIVITIES

5. Section 817.150 is revised to read as follows:

§817.150 Roads: General.

(a) *Road classification system.* (1) Each road shall be classified as either a primary road or an ancillary road.

(2) A primary road is any road which is—

(i) Used for transporting coal or spoil;

(ii) Frequently used for access or other purposes for a period in excess of six months; or

(iii) To be retained for an approved postmining land use.

(3) An ancillary road is any road not classified as a primary road.

(b) *Performance Standards.* Roads shall be located, designed, constructed, reconstructed, used, maintained and reclaimed so as to:

(1) Control or prevent erosion, siltation and the air pollution attendant to erosion by vegetating or otherwise stabilizing all exposed surfaces in accordance with current, prudent engineering practice;

(2) Control or prevent damage to fish, wildlife or their habitat and related environmental values;

(3) Control or prevent additional contributions of suspended solids to stream flow or runoff outside the permit area;

(4) Neither cause not contribute to, directly or indirectly, the violation of State or Federal water quality standards applicable to receiving waters;

(5) Minimize the diminution to or degradation of the quality or quantity of surface- and ground-water systems;

(6) Refrain from significantly altering the normal flow of water in streambeds or drainage channels;

(7) Prevent or control damage to public or private property;

(8) Use nonacid- or nontoxic-forming substances in road surfacing; and

(9) Have, at a minimum, a static factor of safety of 1.3 for all embankments.

(c) *Design and construction limits and establishment of design criteria.* To ensure environmental protection and safety appropriate for their planned duration and use, including consideration of the type and size of equipment used, the design and construction or reconstruction of roads shall incorporate appropriate limits for grade, width, surface materials, surface drainage control, culvert placement, culvert size, and any necessary design criteria established by the regulatory authority.

(d) *Location.* (1) No part of any road shall be located in the channel of an intermittent or perennial stream unless specifically approved by the regulatory authority.

(2) Roads shall be located to minimize downstream sedimentation and flooding.

(e) *Maintenance.* (1) A road shall be maintained throughout its life to meet the performance standards of this part and any additional criteria specified by the regulatory authority.

(2) A road damaged by a catastrophic event, such as a flood or earthquake, shall be repaired as soon as practical after the damage has occurred.

(f) *Reclamation.* A road not to be retained for use under an approved postmining land use shall be reclaimed immediately after it is no longer needed for mining and reclamation operations, including:

(1) Closing the road to traffic;

(2) Removing all bridges and culverts;

(3) Restoring the natural drainage patterns;

(4) Reshaping all cut and fill slopes to be compatible with the postmining land use and to complement the drainage pattern of the surrounding terrain; and

(5) Replacing topsoil and revegetating disturbed surfaces in accordance with §§ 817.22 and 817.111–817.116.

6. Section § 817.151 is revised to read as follows:

§ 817.151 Primary roads.

Primary roads shall meet the requirements of § 817.150 and the additional requirements of this section.

(a) *Certification.* The design and construction or reconstruction of primary roads shall be certified by a qualified registered professional engineer as meeting the requirements of this part; current, prudent engineering practices; and any design criteria established by the regulatory authority.

(b) *Location.* (1) To minimize erosion, a primary road is to be located, insofar as practical, on the most stable available surfaces.

(2) Stream fords by primary roads are prohibited unless they are specifically approved by the regulatory authority as temporary routes during periods of construction.

(c) *Drainage control.* (1) Each primary road shall be designed, constructed or reconstructed, and maintained to have adequate drainage control, using structures such as, but not limited to, bridges, ditches, cross drains, and ditch relief drains. The drainage control system shall be designed to pass the peak runoff safely from a 10-year, 6-hour precipitation event, or greater event unless otherwise specified by the regulatory authority.

(2) Drainage pipes and culverts shall be constructed to avoid plugging or collapse and erosion at inlets and outlets.

(3) Drainage ditches shall be designed to prevent uncontrolled drainage over the road surface and embankment. Trash racks and debris basins shall be installed in the drainage ditches where debris from the drainage area may impair the functions of drainage and sediment control structures.

(4) Culverts shall be designed, installed, and maintained to sustain the vertical soil pressure, the passive resistance of the foundation, and the weight of vehicles using the road.

(5) Natural stream channels shall not be altered or relocated without the prior approval of the regulatory authority in accordance with §§ 817.41–817.43 and 817.57.

(6) Except as provided at Paragraph (b)(2) of this section, drainage structures shall be used for stream channel crossings shall be made using bridges, culverts, or other structures designed, constructed, and maintained using current, prudent engineering practice.

(d) *Surfacing.* Primary roads shall be surfaced with rock, crushed gravel, asphalt, or other material approved by the regulatory authority as being sufficiently durable for the anticipated volume of traffic and the weight and speed of vehicles using the road.

(e) *Maintenance.* Routine maintenance for primary roads shall include repairs to the road surface, blading, filling potholes and adding replacement gravel or asphalt. It shall

also include revegetation, brush removal, and minor reconstruction of road segments as necessary.

§§ 817.152–817.176 [Removed]

7. Sections 817.152, 817.153, 817.154, 817.155, 817.156, 817.160, 817.161, 817.162, 817.163, 817.164, 817.165, 817.166, 817.170, 817.171, 817.172, 817.173, 817.174, 817.175, and 817.76 are removed.

817.171, 817.172, 817.173, 817.174, 817.175, and 817.76 are removed.

(Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*)

[FR Doc. 83–13006 Filed 5–13 83; 8:45 am]

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federal register

Monday
May 16, 1983

Part V

Department of Health and Human Services

Office of Human Development Services

Administration for Native Americans; Availability of Fiscal Year 1984 and 1985 Financial Assistance for Alaska Native Social and Economic Development Projects

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

[Program Announcement 13612-833]

Administration for Native Americans; Availability of Fiscal Year 1984 and 1985 Financial Assistance for Alaska Native Social and Economic Development Projects

AGENCY: Office of Human Development Services, DHHS.

ACTION: Announcement of Availability of Fiscal Year 1984 and 1985 Financial Assistance for Alaska Native Social and Economic Development Projects.

SUMMARY: The Administration for Native Americans (ANA) announces that applications are being accepted for financial assistance under Section 803 of the Native American Programs Act of 1974, Pub. L. 93-644, as amended. Regulations covering this program are published in the Code of Federal Regulations in 45 CFR Part 1336.

DATES: The two closing dates for receipt of all applications under this program announcement are August 15, 1983, and June 30, 1984.

ANA Mission

The purpose of the Administration for Native Americans is to promote economic and social self-sufficiency for American Indians, Alaska Natives, and Native Hawaiians. Self-sufficiency for purposes of this program announcement is the level of development and degree to which a Native Alaskan community can provide for the needs of its community members and pursue its own social and economic goals.

ANA Program Goals

ANA has three program goals:

- To develop or strengthen tribal governments and Native American institutions and local leadership to assure local control and decision making over all resources.
- To foster the development of stable, diversified local economies and economic activities which provide jobs, promote economic well-being, and reduce dependency on welfare services.
- To support local access to and coordination of services and programs which safeguard the health and well-being of Native Americans and which are essential to a thriving and self-sufficient community.

In FY 1982, the Administration for Native Americans implemented a new program direction that moved forward from the previous funding of core administration for Native American organizations and providing funds for services on a gap-filling basis. The new program direction involves funds for projects that reflect community-determined social and economic development strategies (SEDS) on a competitive basis.

In FY 1983, ANA continues this broader focus which promotes self-determination and local decision-making through support for balanced social and economic development of Native American communities.

In FY 1984, ANA will provide financial support to Alaska Native villages on a competitive basis. This is to assist them to implement specific local development projects to impact directly on social and economic self-sufficiency at the village level. In this context, ANA will consider applications for financial assistance from non-profit corporations in Alaska for social and economic development projects which involve one or more specific villages. The non-profit corporations in Alaska are seen as being able to play an important supportive role in assisting individual villages to develop and implement their own locally determined strategies for moving toward social and economic self-sufficiency. However, it is at the village level where a balanced approach to social and economic development must ultimately have a payoff. The key to balanced development is the local village (tribal) government itself. The prior emphasis of ANA's program effort in Alaska was on developing the capacity of the non-profit Alaska Native Regional Corporations to promote self-sufficiency at the village level. This program announcement represents a further development of this commitment by ANA to social and economic development through working directly at the village or Indian community level. This new phase will be a long-term developmental process—a community-based strategy developed at the local level. It will allow for maximum local flexibility for self-determination and will provide the capability for marshalling and directing Federal, state, and local resources toward local objectives.

The ANA program will provide financial assistance to Alaska Native villages, non-profit Alaskan Native organizations and Indian communities, local communities or villages to create and implement effective local social and economic development strategies which promote self-sufficiency. The implementation of these strategies is expected to result in sustained improvement in the social and economic conditions of Native Alaskans within their communities. In addition, these strategies are expected to increase effectiveness and efficiency of the Native Alaskan villages and Indian communities in defining and achieving their own economic and social goals.

The local village or community has the primary responsibility to determine its own needs and priorities, and to plan and implement its own programs. A balanced and interrelated approach to social and economic development is believed to be the most workable and appropriate way in which self-sufficiency can be attained. Only the local community is in a position to consider its own cultural values, and weigh the trade-offs in deciding on various strategies and programs which have socio-cultural as well as economic outcomes.

Purpose of This Program Announcement

The purpose of this program announcement is to provide financial assistance to promote self-sufficiency for Alaska Natives through support of locally determined social and economic development strategies which take advantage of the opportunities afforded to Alaska Natives under the Alaska Native Claims Settlement Act (ANCSA) Public Law 92-203. The proposed project(s) must directly relate to social and economic development in the local community in keeping with local needs, resources and cultural values.

Examples of the types of projects that ANA is seeking to fund include, but are not limited to, projects that will:

- Assist villages to develop businesses and industries which (1) use local materials, (2) create jobs for Alaska Natives, and (3) are capable of high productivity at a small scale of operations, and be counter-seasonal when needed to complement traditional and necessary seasonal activities.
- Assist villages in labor export, i.e., people leaving the local communities for seasonal work and returning.
- Assist villages in developing the service sector.
- Assist in developing training and education programs for those jobs in education, government and health found in most local communities and also work with the various agencies to encourage the replacement of non-Natives by Natives.
- Initiate a demonstration or pilot program at a regional level to allow Native people to become involved in and actually develop strategies to maintain and develop their subsistence base.
- Substantially increase and strengthen efforts to establish and

improve the village and regional economic infrastructure and the capabilities to develop and manage resources in a highly competitive monitized system.

• Assist in developing land use capabilities and develop skills in the areas of land and natural resource management including resource assessment and development, as well as potential impacts upon the environment and the subsistence ecology.

• Help Native people to exploit options available to protect and benefit from their land holdings.

The applicant must clearly identify the expected impact of achievement of the proposed objectives in the local community in terms that are objective and measurable. Some examples are: number of jobs created, payroll to be generated, reduction in the number of children going into foster care, increase in the number of children going home or being adopted from foster care, investments leveraged, needed services established, new government responsibilities assumed, new businesses started, new housing starts through private sector investments, reduction of need for publicly supported services. This is not intended to be an all inclusive list. There are many other definitive results that can accrue from a project. The major emphasis is that ANA resources are to be used to create a definite, measurable and positive impact in the community by the end of the project period.

The application must evidence the commitment and involvement of the Alaskan village or tribal community where the specific project will be directed. Non-profit Alaskan Native organizations, if applicants, should note that ANA expects the application to reflect more evidence tha just a resolution of approval from a village. ANA expects that the roles and responsibilities of the village will be defined in the application, as well as the involvement and commitment of the governing village council.

Non-profit regional corporations and profit regional corporations established under ANCSA are sources from which village applicants could obtain technical assistance and participate in joint-venture social and economic development projects. ANA encourages the for-profit corporations to cooperate in assisting the villages in developing applications and may participate in the project(s) as sub-contractors. However, for-profit organizations are not eligible to be the applicant organization.

Contact Person

Applicants who wish information regarding this program announcement may contact Ted George, ANA Regional Program Director, Region X, (206) 442–0993, DHHS M/S411, 2901 Third Avenue, Seattle, Washington 98121.

Eligible Applicants

The following are eligible to apply for a grant award under this program announcement:

- Alaskan Native villages as defined in the Alaska Native Claims Settlement Act
- The non-profit Native Alaskan Regional Corporations in Alaska
- Non-profit organizations in Alaska with village specific projects
- Current ANA grantees in Alaska funded under Section 803 of the Native American Programs Act with the exception of Metlakatla. Metlakatla has had the opportunity to apply for fiscal year 1983 funds under ANA Program Announcement 13612–831.
- Alaska Native Indian communities as recognized by the Bureau of Indian Affairs

Although for-profit corporations are not eligible applicants, individual villages and Indian communities are encouraged to utilize the for-profit corporations as sub-contractors and to collaborate with them in joint-venture projects for promoting social and economic self-sufficiency.

Please Note: This program announcement represents ANA's program policy and funding priorities for Alaska in Fiscal Year 1984. Current ANA Alaska grantees who wish to be considered for any Fiscal Year 1984 funding must apply under this program announcement.

Available Funds

ANA expects to award approximately $4.5 million for grant awards under this program over the next three years. In Fiscal Year 1984, ANA plans to award $1.5 million for 10–15 grants awards.

Projects of one, two or three years duration or fraction thereof may be submitted. The budget period for each grant award will be twelve (12) months. Applicants who are proposing a two or a three year project must submit full applications, including detailed budgets, for the entire project period, not just for the first year. Refunding after the first year for multi-year project period grantees will depend upon the grantee's satisfactory progress, the availability of funds and the grantee's compliance with the Native-American Programs Regulations.

Grantee Share of Project

Grantees must provide at least 20% of the total approved cost of the project which may be in cash or in kind. The contributions must be project related and must be allowable under the Department's applicable regulations in 45 CFR Part 74, Subparts G and Q.

Under certain circumstances, some or all of the non-Federal share may be waived by ANA. Further explanation is contained in § 1336.52 of ANA's regulations (45 CFR 1336), a copy of which will be provided in the application kit.

The Applicant Process

Availability of application forms. In order to be considered for a grant under this program announcement, an application must be submitted on the forms supplied and in the manner prescribed by ANA. The application kit containing the necessary forms may be obtained from: Department of Health and Human Services, Administration for Native Americans, Room 5300, North Building, 330 Independence Avenue, SW, Washington, D.C. 20201. Attention: No. 13612–833, Ms. Cassandra Byrd, (202) 245–7727.

Application submission. One signed original and the appropriate number of copies of the grant application, including all attachments, must be submitted to the address specified in the application kit. The application shall be signed by an individual authorized to act for the applicant agency and to assume for the agency the obligations imposed by the terms and conditions of the grant award, including Native American Programs Rules and Regulations.

A–95 notification process. In compliance with the Department of Health and Human Services' implementation of the Office of Management and Budget Circular No. A–95 Revised (procedures at 41 FR 2052, January 13, 1976), applicants with the exception of Federally recognized tribes, must notify both the State and Areawide Clearinghouses of their intent to apply for Federal financial assistance prior to applying. Some State and Areawide Clearinghouses provide their own forms and others use the facesheet (SF–424) of the application form. Contact the appropriate Clearinghouses (listed at 42 FR 2210, January 10, 1977) for information on how your organization can meet the A–95 requirements.

Application consideration. The Commissioner of ANA determines the final action to be taken with respect to each grant application for this program. Applications which do not conform to

this announcement or are not complete will not be accepted for review, and applicants will be notified in writing accordingly. Applications which are complete and conform to the requirements of this program announcement are subjected to an objective, competitive review and evaluation process by qualified persons. The results of the review assist the Commissioner in the consideration of competing applications. The Commissioner's consideration also takes into account the comments of the A–95 Clearinghouse, ANA staff, and other interested parties. The Commissioner makes grant awards consistent with the purpose of the Act, the regulations, and program announcement within the limits of funds available.

After the Commissioner has reached a decision to disapprove, defer or fund a grant application, unsuccessful applicants will be notified in writing. Successful applicants will be notified through an official Notice of Financial Assistance Awarded. This notice states the amount of funds awarded, the purpose of the grant, the terms and conditions of the grant award, the effective date of the award, the budget period, the project period, and the amount of grantee participation.

Criteria for Review

Applications which are complete and on time will be evaluated against the following criteria:

(1) The proposed project(s), if successful will measurably increase the social and economic self-sufficiency of a specific community. The benefits or impact expected in the community are defined in quantifiable, measurable terms. (30 points)

(2) Overall application specifies long-range community goals, priority objectives, and definitive results expected based on a locally developed social and economic development strategy (SEDS). The application has clear evidence of the commitment of the local village community and the involvement of the governing body. (20 points)

(3) Application contains objectives which are realistic, results oriented, measurable, reflect sound methodology, can be evaluated, and directly contribute to meeting local priority needs and goals for self-sufficiency. The application identifies a work plan for the objectives of proposed activities which are clearly defined, sufficiently detailed, and in logical order, to explain the tasks to be done, to achieve each objective and provide a basis for project monitoring. (15 points)

(4) Application presents a detailed budget, with complete explanations and justifications of line items, including specialized assistance if needed, and directly related to the objectives and activities in the work plan. The budget must be of reasonable cost to the government for the outcomes and benefits expected. (10 points)

(5) Application identifies all proposed key personnel by position or role and the consultant/contractors, and demonstrates their qualifications to achieve project objectives by resumes, position descriptions or capability statements. (15 points)

(6) Application provides sufficient evidence of the necessary management and administrative capabilities to ensure accountability and to justify receipt of Federal funds. (5 points)

(7) Application describes a plan for a coordinated use of resources from all sources, other than from ANA, which support the proposed project. (5 points)

Closing Date for Receipt of Application

The closing dates for receipt of all applications under this program announcement are August 15, 1983, and June 30, 1984.

Applications received for the August 15, 1983, closing date will be considered for a grant award during the first quarter of fiscal year 1984. Applications received for the June 30, 1984, closing date will be considered for a grant award in the last quarter of FY 1984 or the first quarter of FY 1985.

Mailed applications. Applications mailed through the U.S Postal Service shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date; or,

2. Sent by first class mail, postmarked on or before the deadline date, and received in time for submission to the review panel (one week after closing date). (Applicants are cautioned to request a legible U.S. Postal Service postmark or to use express mail or certified or registered mail and obtain a legibly dated mailing receipt from the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.) *Applications submitted by other means.* Applications submitted by any means except mailing first class through the U.S Postal Service shall be considered as meeting the deadline only if they are physically received before close of business on or before the deadline date.

Late applications. Applications which do not meet these criteria are considered late applications and will not be considered in the current competiton.

(Catalog of Federal Domestic Assistance Program Number 13.612 Native American Programs)

Dated: May 6, 1983.

Casimer Wichlacz,

Acting Commission, Administration for Native Americans.

Approved: May 12, 1983.

Dorcas R. Hardy,

Assistant Secretary for Human Development Services.

[FR Doc. 83-13203 Filed 5-13-83; 8:45 am]

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). 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.

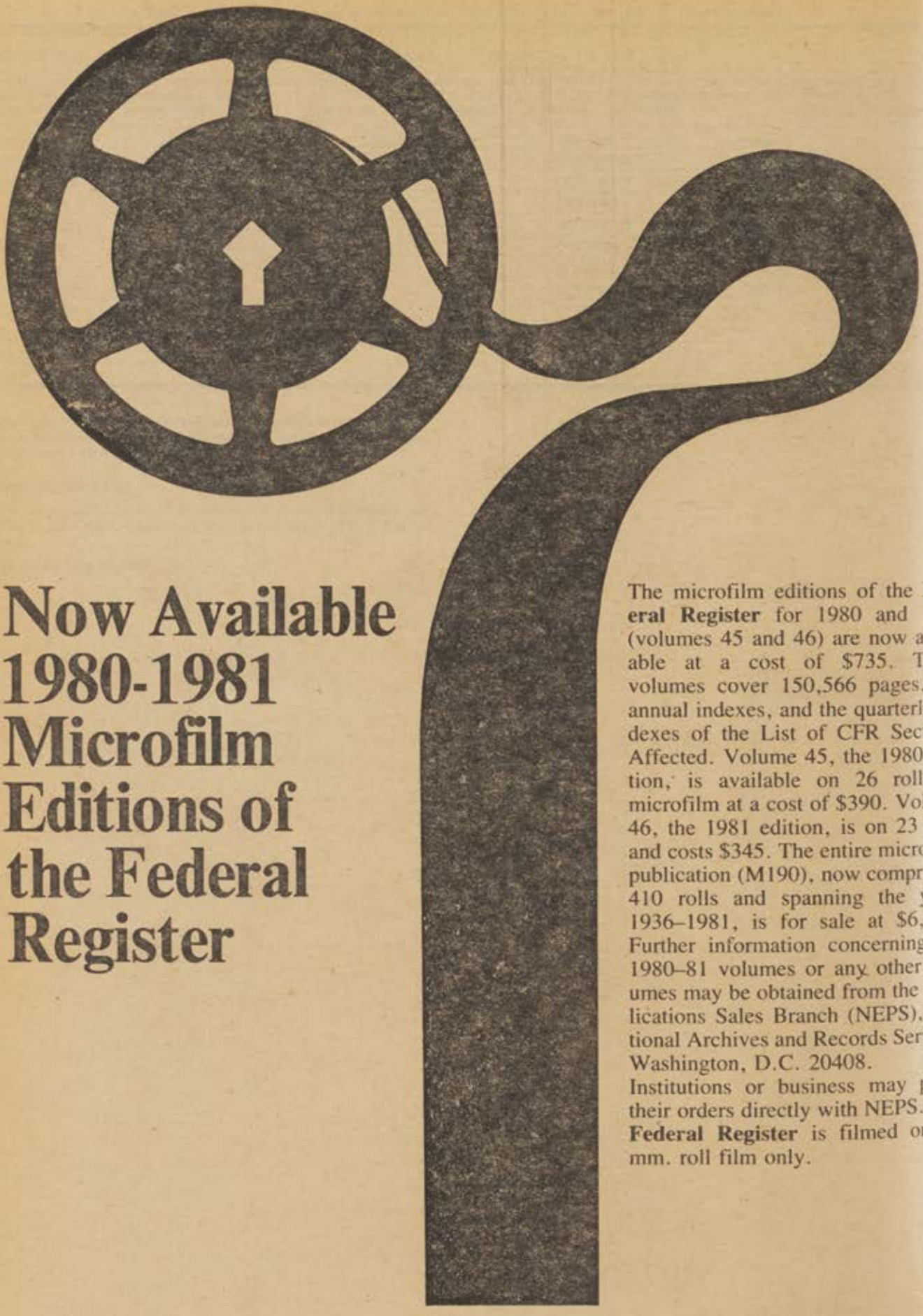
Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
DOT/COAST GUARD	USDA/FNS		DOT/COAST GUARD	USDA/FNS
DOT/FAA	USDA/REA		DOT/FAA	USDA/REA
DOT/FHWA	USDA/SCS		DOT/FHWA	USDA/SCS
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/MA	LABOR		DOT/MA	LABOR
DOT/NHTSA	HHS/FDA		DOT/NHTSA	HHS/FDA
DOT/RSPA			DOT/RSPA	
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	

Note: The Office of the Federal Register proposes to terminate the formal program of agency publication on assigned days of the week. See 48 FR 19283, April 28, 1983.

List of Public Laws

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last Listing May 13, 1983



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