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federal register

Tuesday
May 24, 1983

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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

Executive Order 12422 of May 20, 1983

Level IV of the Executive Schedule

By the authority vested in me as President of the United States of America by Section 5317 of Title 5 of the United States Code, in order to place an additional position in level IV of the Executive Schedule, Section 1–101 of Executive Order No. 12154, as amended, is further amended by adding thereto the following new subsection:

"(i) Executive Secretary of the National Security Council.".

Ronald Reagan

THE WHITE HOUSE,
May 20, 1983.

[FR Doc. 83-14096
Filed 5-23-83; 11:03 am]
Billing code 3195-01-M

Rules and Regulations

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

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 212 and 214

Documentary Requirements for Nonimmigrants; Admission of Certain Inadmissible Aliens; Foreign Medical Graduates in Exchange Programs

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule makes a technical amendment in reference to the name change of the "International Communiction Agency" to "United States Information Agency". The rule also requires exchange aliens participating in graduate medical education and training programs to file annual affidavits attesting to their standing in the programs and certifying that they will leave the United States upon completion of their education and training. A new form which includes the affidavit must be submitted to the Service annually and must accompany all extension of stay applications filed by these exchange aliens.

EFFECTIVE DATE: May 24, 1983.

FOR FURTHER INFORMATION CONTACT: For General Information: Stanley J. Kieszkiel, Acting Instructions Officer, Immigration and Naturalization Service, 425 I Street, N.W., Washington, D.C. 20536, Telephone: (202) 633-3048. For Specific Information: Ron Lindquist, Immigration Examiner, 425 I Street, N.W., Washington, D.C. 20536, Telephone: (202) 633-5014.

SUPPLEMENTARY INFORMATION: This rule changes the name "International Communication Agency" to "United States Information Agency" in paragraphs (c)(2), (c)(9), and (c)(10) of 8 CFR 212.7. The name of the agency was changed by Executive Order 12388 of October 14, 1982.

Additionally, paragraph (j) of 8 CFR 214.2 is revised to provide that an alien in the exchange visitor program who is participating in graduate medical education or training (nonimmigrant admitted temporarily to the United States as defined in section 101(a)(15)(J) of the Immigration and Nationality Act) is required to submit an affidavit to the Service each year attesting to his good standing in the program and that he will return to the country of his nationality or last residence upon completion of the program. This affidavit requirement was added to section 212 (j)(1)(E) of the Immigration and Nationality Act by Pub. L. 97-116, section 5, 95 Stat. 1612, (8 U.S.C. 1182(j)(1)(E)), effective December 29, 1981. The Service has developed Form I-644, Supplementary Statement for Medical Graduate Trainees, which form, containing the affidavit, is required to be filed yearly and also must accompany all requests for extensions of stay in the United States.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because the agency name change is a technical correction and the amendment requiring the filing of affidavits by nonimmigrant exchange visitors participating in graduate medical training is mandated by statute.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule will not have a significant economic impact on a substantial number of small entities.

This order is not a major rule within the definition of section 1(b) of E.O. 12291.

List of Subjects

8 CFR Part 212

Administrative practice and procedure, Aliens.

8 CFR Part 214

Administative practice and procedure, Aliens Health professions.

Accordingly, Title 8, Chapter I is amended as follows:

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANT; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

§ 212.7 [Amended]

1. In § 212.7, paragraphs (c)(2), (c)(9), and (c)(10) are amended by removing the words "International Communication Agency" and inserting, in their place, the words "United States Information Agency."

PART 214—ADMISSION OF NONIMMIGRANTS

2. In § 214.2, paragraph (j) is revised to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(j) *Exchange aliens*—(1) *General.*—(i) "Exchange alien" means a nonimmigrant admitted under section 101(a)(15) (J) of the Act or who acquired such status, or who acquired exchange-visitor status under the United States Information and Education Exchange Act. Any exchange alien coming to the United States as a participant in a program designated under section 101(a)(15)(J) of the Act and accompanying spouse and minor children shall not be admitted without submitting a completely executed Form IAP-66. The spouse and minor children following to join the participant shall not be admitted without a copy of current Form IAP-66 endorsed by the program sponsor indicating the expiration of stay date as shown on Form I-94. Any alien seeking to change nonimmigrant status to exchange visitor status shall file Form I-506 and attach a valid Form IAP-66.

(ii) *Extensions of stay.* The initial admission and extensions of stay of an exchange aliens, spouse, and minor children may be authoried in increments of not more than 12 months, limited to the period specified on Form IAP-66. Exchange aliens shall apply for extensions of stay on current Form IAP-66. Extensions of stay for spouse and children require, as an attachment to Form IAP-66, forms I-94 and names of the applicants, dates and places of birth, passport numbers, issuing countries, and

expiration dates. Form IAP-66 presented by an exchange alien returning from a temporary absence may be retained for re-entries during the balance of the alien's stay.

(ii) *Readmission.* Any nonimmigrant alien, whose visa is revalidated under 22 CFR 41.125(f)(2) or who is within the purview of that regulation except that the alien's visa has not expired, returning as a nonimmigrant as defined by section 101(a)(15)(J) of the Act shall, if otherwise admissible, be readmitted without Form IAP-66 for the remainder of the initial admission or current extension of stay as shown on the alien's Form I-94.

(iv) *Extension of stay for spouse or child.* When granting an extension of stay, a spouse or child shall be classified under section 101(a)(15)(J) unless the extension of stay is for a purpose other than to accompany the participant. An accompanying spouse or child shall not be granted an extension of stay unless the participant has been granted an extension of stay.

(v) *Employment.* The accompanying spouse and minor children of a participant may accept employment for support (including, but not limited to, customary recreational and cultural activities and related travel) of the accompanying nonparticipating spouse and minor children in the United States if authorized by the Service. Employment shall not be authorized if this income is needed to support the participant. Application to accept employment must be made to the district director having jurisdiction over the place where the participant is residing temporarily. The application for employment does not have to be in writing.

(2) *Special Reporting Requirement.* Each exchange alien participating in a program of graduate medical education or training shall file Form I-644 (Supplementary Statement for Graduate Medical Trainees) annually with the Service attesting to the conditions as specified on the form. The exchange alien shall also submit Form I-644 as an attachment to a completed Form IAP-66 when applying for an extension of stay.

(3) *Alien in Cancelled Programs.* When the approval of an exchange visitor program is withdrawn by the Director of the United States Information Agency, the district director shall send a notice of the withdrawal to each participant in the program and a copy of each such notice shall be sent to the program sponsor. If the exchange visitor is currently engaged in activities authorized by the cancelled program, the participant is authorized to remain in the United States to engage in those activities until expiration of the period of stay previously authorized. The district director shall notify participants in cancelled programs that permission to remain in the United States as an exchange visitor, or extension of stay may be obtained if the participant is accepted in another approved program and a Form IAP-66, executed by the new program sponsor, is submitted. In this case, a release from the sponsor of the cancelled program will not be required

(4) *Eligibility requirements for section 101(a)(15)(J) classification for aliens desiring to participate in programs under which they will receive graduate medical education or training.*—(i) *Requirements.* Any alien coming to the United States as an exchange visitor to participate in a program under which the alien will receive graduate medical education or training, or any alien seeking to change nonimmigrant status to that of an exchange visitor on Form I-506 for that purpose, must have passed parts of I and II of the National Board of Medical Examiners Examination (or an equivalent examination as determined by the Secretary of Health and Human Services), and must be competent in oral and written English, and shall submit a completely executed and valid Form IAP-66.

(ii) *Exemptions.* From January 10, 1978 until December 31, 1983, any alien who has come to or seeks to come to the United States as an exchange visitor to participate in an accredited program of graduate medical education or training, or any alien who seeks to change nonimmigrant status for that purpose, may be admitted to participate in such program without regard to the requirements stated in subparagraphs (A) and (B)(ii)(I) of section 212(j)(1) of the Act if a substantial disruption in the health services provided by such program would result from not permitting the alien to participate in the program: *Provided* that the exemption will not increase the total number of aliens then participating in such programs to a level greater than that participating on January 10, 1978.

* * * * *

(Secs. 212 and 214 of the Immigration and Nationality Act, as amended; 8 U.S.C. 1181 and 1184)

Dated: May 6, 1983.

Alan C. Nelson,

Commissioner of Immigration and Naturalization.

[FR Doc. 83-13839 Filed 5-23-83; 8:45 am]

BILLING CODE 4410-10-M

8 CFR Part 214

Nonimmigrant Classes; Revisions in Regulations Pertaining to Nonimmigrant Students and the Schools Approved for Their Attendance

Correction

In FR Doc. 83-8728 beginning on page 14575 in the issue of Tuesday, April 5 1983 make the following correction:

On page 14592, column one, § 214.3(l)(3), line ten, "§ 214.1(c)" should read "§ 248.1(c)".

BILLING CODE 1505-01-M

DEPARTMENT OF ENERGY

Office of the Secretary

10 CFR Part 961

Standard Contract for Disposal of Spent Nuclear Fuel and/or High Level Radioactive Waste

AGENCY: Department of Energy.

ACTION: Final rule; correction.

SUMMARY: On April 18, 1983 the Department of Energy (DOE) published its final rule entitled, "Standard Contract for Disposal of Spent Nuclear Fuel and/or High-Level Radioactive Waste" (48 FR 16590). This notice corrects the definition of "kilowatt hours generated" in the said final rule (48 FR 16600), which inadvertently omitted a phrase from DOE's proposed rule published on February 4, 1983 (48 FR 5458). It also deletes superfluous words inadvertently repeated in Article IV.A.1(a) of the said final rule (48 FR 16601). Additionally, a reference omitted from § 961.11 is inserted.

EFFECTIVE DATE: May 24, 1983.

FOR FURTHER INFORMATION CONTACT: W. Michael Kurgan, Deputy Director, Office of Business, Operations and Financial Management, Nuclear Waste Policy Act Project Office, Department of Energy, Room 7B-084, Washington, D.C. 20585, (202) 252-6842.

Issued in Washington, D.C., May 16, 1983.

Hilary J. Rauch,

Director, Procurement & Assistance Management Directorate.

PART 961—[AMENDED]

§ 961.11 [Corrected]

Accordingly, 10 CFR 961.11 is corrected as follows:

1. Immediately following § 961.11, "Text of the contract," "[Approved by the Office of Management and Budget under control number 1091-0260]"

2. Article I, paragraph 13 (48 FR 16600) is corrected to read as follows:

13. The term 'kilowatt hours generated' means electricity generated by nuclear fuel at a civilian nuclear power reactor specified in Appendix A hereto as measured at the output terminals of the turbine generator, including an equivalent amount of electricity for any process heat generated by the reactor and used other than at the reactor.

3. Article IV.A.1(a) (48 FR 16601) is corrected so that the first sentence thereof shall read as follows:

(a) On an annual basis, commencing October 1, 1983, the Purchaser shall provide DOE with information on actual discharges to date and projected discharges for the next ten (10) years in the form and content set forth in Appendix B, annexed hereto and made a part hereof. * * *

[FR Doc. 83-13820 Filed 5-23-83; 8:45 am]
BILLING CODE 6450-01-M

FEDERAL RESERVE SYSTEM

12 CFR Part 220

[Docket No. R-0389]

Credit by Brokers and Dealers; Complete Revision and Simplification of Regulation T

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is adopting a completely revised and simplified Regulation T, credit by brokers and dealers. The new Regulation incorporates changes made in response to comments received on the complete revision of Regulation T as well as proposals previously published and adopted. The 11 accounts currently required to be maintained by brokers and dealers will be consolidated into 7 accounts along functional lines. In addition, the new regulation will facilitate options writing by institutions and permit options clearing agencies to accept, under specified conditions, any underlying security as the required Regulation T deposit. Terminology throughout the new regulation has been conformed to that of modern-day industry usage so that the regulation will henceforth refer to "equity/margin requirement" instead of "maximum loan value/adjusted debit balance."

In response to comments received, the revised Regulation T will permit brokers to maintain more than one account for a customer in two situations. Under the old regulation, a customer's transactions had to be consolidated into a single margin account. Under the new regulation, a clearing broker will be permitted to maintain separate margin accounts for a single person who is introduced by different brokers. Introducing brokers will also be permitted to maintain separate accounts for the same person if the accounts are cleared by different clearing brokers. A separate margin account may also be established for the same person if it is controlled by an investment adviser with discretionary authority.

The new regulation establishes a separate account for arbitrage transactions. This differs in form from the proposed revision, under which arbitrage transactions were to be recorded in the Market Functions Account.

Another difference between the proposed revision and the regulation adopted today is the elimination of the requirement in the Specialists' provision (§ 220.12) that exchanges file monthly reports with the Board disclosing the use of specialist credit. Regulation T currently requires a 25% margin on long and short positions in underlying stock serving as permitted offsets. The new regulation provides for a "good faith" margin in those situations. Specialists will have 7 days to deposit margin instead of the present 5 days in an effort to provide specialists with treatment parallel to that given public customers.

The regulation also takes cognizance of new instruments—securities-exchange-traded options on foreign currency, and options on certificates of deposit and equity stock indices—which were defined to be "securities" for purposes of the Securities Exchange Act of 1934 by Pub. L. 97-303. As has been previously announced (47 FR 47464 Oct. 26, 1982), Board staff is in the process of conducting a special study of the effectiveness, scope and structure of federal regulation of margin requirements. Accordingly, for the present time, the Board has set the margin level of these instruments as the amount specified by the rules of the national securities exchange on which the option is traded, provided that all such rules have been approved by the SEC. This is comparable to action taken in 1981 by the Board with respect to options on exempted debt securities (46 FR 49827 Oct. 8, 1981).

Other changes adopted today that are different from the proposed revision are as follows: (1) Permission to use a convertible or exchangeable security instead of the present 50% margin when the underlying security is sold short in a margin account; (2) permission for the use of convertible or exchangeable securities as proxies for the related security when call options are written in the cash account; (3) in connection with the writing of put options, permission to use the following instruments as substitutes for cash, provided their current market value at the time the put is written equals or exceeds the exercise price of the option and provided further that they mature in one year or less: securities issued or guaranteed by the United States or its agencies, negotiable bank certificates of deposit, or bankers acceptances issued by banking institutions in the United States and payable in the United States; (4) one of the conditions under which an over-the-counter margin bond will be marginable has been changed to make the $25 million size criterion applicable only at time of issuance, rather than at the time of the extension of credit, as was formerly the case and (5) minor refining language changes to the definitional section which will have no substantive effect on the regulation, but which were made to conform to industry usage.

EFFECTIVE DATE: November 21, 1983 but may be implemented after June 20, 1983, at the option of the creditor.

FOR FURTHER INFORMATION CONTACT: At the Board of Governors of the Federal Reserve System, Washington, D.C. 20551, contact: Laura Homer, Securities Credit Officer, or Robert Lord, Attorney, Division of Banking Supervision and Regulation (202) 452-2781. At the Federal Reserve Bank of New York, contact: Mindy Silverman, Assistant Counsel, (212) 791-5032.

SUPPLEMENTARY INFORMATION:

I. History of the Proposed Revision of Regulation T

As part of its Regulatory Improvement Project, and after an extensive study conducted by the Federal Reserve Bank of New York on the margin regulations, the Board, on March 30, 1982 published for public comment a completely revised and simplified Regulation T, which governs credit extended by securities brokers and dealers. (FR 13376). The proposed simplification incorporated amendments to Regulation T adopted by the Board earlier in the year, as well as two proposed amendments issued for public comment prior to publication of the proposed simplification. The amendments already adopted by the Board and incorporated into the proposed complete revision expanded the permissible arranging activities of brokers and dealers and removed the automatic equity building features in the Regulation. (47 FR 2981, Jan. 21, 1982). The two amendments that were still in the proposal stage at the time of publication of the complete revision were adopted, with certain

modifications, as final rules in May, 1982. They amended Regulation T (1) to permit letters of credit, CD's government securities and banker's acceptances to be used, in addition to cash, as collateral in broker/dealer securities borrowing and lending transactions (47 FR 21238, May 18, 1982), and (2) to specify new criteria for eligibility on the Board's List of OTC Margin Stocks (47 FR 21756, May 20, 1982).

Another amendment to Regulation T, proposed and adopted by the Board after publication of the complete revision, has been incorporated into the final rule. The amendment permits brokers and dealers to extend credit on the collateral of private mortgage pass-through securities meeting specified issue-size and reporting requirements (47 FR 55912, December 14, 1982).

A proposal to amend Regulation T by providing a framework for the regulation of credit extended in connection with transactions in stock index futures contracts has not been incorporated into the final rule adopted today. (47 FR 8788, March 2, 1982). This proposal is still under consideration by the Board.

II. Summary of Comments

There were thirty-eight (38) respondents to the Board's proposal to revise Regulation T. The respondents consisted of nine Federal Reserve Banks, sixteen broker/dealers, four self-regulatory organizations and exchanges, three trade associations, one clearing corporation, two law firms, two individuals and one State agency (North Carolina State Treasurer).

The majority of respondents supported the Board's efforts to simplify and reduce the language of Regulation T and to facilitate compliance with it. While the majority of the respondents requested both technical and language modifications, most felt that the proposed simplification would greatly reduce the burdens of recordkeeping and margin calculations for broker/dealers while not interfering with the Board's ability to regulate the extension of credit for the purchase of securities. Respondents such as the National Association of Securities Dealers, Merrill Lynch Pierce Fenner & Smith, and the Credit Division of the Securities Industry Association stated that the proposed regulation was responsive to changes taking place within the securities industry.

Several respondents, however, including the New York Stock Exchange (NYSE), repeated earlier positions that they have expressed to the Board and its staff that Regulation T should be eliminated and replaced by uniform margin regulations established by the self-regulatory organizations with or without oversight authority by the Federal Reserve Board. Seven of the thirty-eight respondents argued in support of this position. Most of these respondents suggested technical and language changes to the proposed revised regulation in the event Regulation T was not eliminated. The NYSE acknowledged that some of its proposals to amend Regulation T may first require amendments to the Securities Exchange Act of 1934.

The continued role of the Board in the area of margin regulation is now being reviewed by Board staff in cooperation with the staffs of the Securities and Exchange Commission and the Commodity Futures Trading Commission (47 FR 47464, October 26, 1982). The study will consider possible recommendations for legislative change.

Many of the commenters requested that the Board provide an adequate implementation period to give firms time to adapt existing computer programs to changes required by the proposed revision. The implementation period requested ranged from two to six months. Several commenters also requested that the Board allow an additional comment period before the proposed regulation changes become mandatory. In view of the nature of the comments received, the Board does not believe that an additional comment period is necessary and that implementation of the revised regulation at an early date outweighs any further technical changes that may be necessary. The new regulation will go into effect on November 21, 1983, but creditors may at their option, begin to operate under its terms as early as June 20, 1983.

Many commenters requested that specific requirements, the imposition of which is currently left up to exchanges of firms, be mandated by the Board. For example, a request was made that the Board establish mandatory procedures for transferring accounts between brokers and fixed time periods for completion. The commenter making this request believes that such Board-imposed requirements would better serve the public than the system where each self-regulator designs its own requirements. The Board believes that granting such a request would be inconsistent with its efforts to simplify the Regulation and, therefore, has not adopted such requirements.

III. Detailed Explanation of Changes

1. General Applicability

(a) The titles of the accounts have been changed to titles that are more descriptive of the contents of each account or simply to remove the term "special."

(b) The change in terminology from "adjusted debit balance/maximum loan value" to "margin/equity" is reflected in three sections of the regulation: Definitions (§ 220.2(a), (d), (f), (l), (m), and (n)), Margin Account (§ 220.4), and the Supplement (section 220.18).

2. Definitions, § 220.2

(a) The definition of "creditor" has been changed to conform the language to section 7 of the Securities Exchange Act of 1934 ("the Act") (15 U.S.C. section 78g) and to identify specific categories of persons coming within the definition.

(b) Language that is presently contained in paragraph (3) of the definition of "registered security" has been eliminated from the definition. That language is not necessary in light of the Board's authority, since 1968, to designate any security as marginable, *i.e.*, as having loan value in a margin account.

(c) The definition of "exempted security" has been removed from the regulation. The definition in section 3(a)(12) of the Act is sufficient because the only additional language presently in the regulatory definition is no longer necessary for the reason described in paragraph (b) above.

(d) In the definition of "OTC Margin Stock", the word "stock" has been replaced with the words "equity security" to clarify that the term includes convertible bonds and other instruments that are often not considered "stock." The criteria for inclusion on the list of OTC margin stocks has been moved from the Supplement to the body of the regulation, because it is not the type of requirement that the Board may need to change quickly, as are the margin levels.

(e) In response to several comments, the terms "equity deficiency" and "equity excess" have been changed to "margin deficiency" and "margin excess" in the definition section and throughout the regulation, as the terms in the proposal had a different meaning in the industry.

(f) A definition of "good faith margin" has been added because such a definition was added to the proposed revisions of Regulations G and U and is useful in simplifying language.

(g) A more descriptive definition of "short call or short put" (§ 220.2(w)) has been substituted for the definition contained in the original proposed revision. The new definitions will also refer to securities exchange-traded options on foreign currency, and options

on certificates of deposit and stock indices as these new instruments came within the Board's margin setting authority as a result of a legislative amendment (Pub. L. 97–303, amending 15 U.S.C. 78c(a)(10)) defining them as "securities" for purposes of the Securities Exchange Act of 1934.

(h) The definition of "OTC margin bond" has been changed to make the issue-size criterion applicable at time of issuance only. This will make the circumstances under which an OTC margin bond may be marginable consistent with the marginability of private mortage pass-through securities (adopted by the Board in December 1982, 47 FR 55912, December 14, 1982).

3. General Provisions, § 220.3

(a) *Separation of accounts, § 220.3(b).* (i) The term "segregation" has been replaced with "separation." A statement has been added to require written entries to be made when cash or securities are used to meet requirements in another account, if withdrawals of cash or securities are permitted under the regulation.

(b) *Receipt of Funds or Securities, § 220.3(e).* (i) The language that a creditor may "at his option" treat the various types of noncash payment as receipt of payment was removed as unnecessary.

(ii) Certain language was removed from the existing regulation describing a check, draft or order as drawn on a bank or a savings bank, which in the ordinary course of business is payable on presentation, as unnecessary. As long as the instrument is, by its terms or usage, payable on presentation and is accepted by the creditor in good faith, it may be considered receipt of payment, whether it is drawn on a "bank" or on one of the other types of depository institutions that may issue such payment instruments.

(iii) The reference to "telegraphic" notice was also removed; since the creditor has the right to obtain hard copy of a telegraphic notice, it may be considered to be included in the term "written notice."

(c) *Exchange of Securities, § 220.3(f).* The subsection entitled "Reorganizations" and certain language of that section was changed. Staff has received inquiries from time to time on the meaning of "reorganization" and "recapitalization," and there has not been a clear understanding of the scope of the section. The new language is intended to clarify that the section covers any exchange offer that is made to all holders of an issue of securities. The new language also clarifies the requirement that the consideration received in the exchange must be deposited in the account.

(d) *Variable Annuity Contracts Issued by Insurance Companies, § 220.3(i).* Most of the language from the present § 220.7(f) was eliminated as unnecessary.

(e) *Valuing Securities, § 220.3(g)(1).* Language has been added specifying that the computation of the total cost of a purchase or the net proceeds of a sale must include any commission charged. This is a formal statement of the accepted practice of including the cost of a commission when determining the cost of a transaction. Because the treatment of commissions has been addressed in this section, the reference to commissions in the section on service charges (present § 220.6(g)) has been deleted. (See new § 220.4(f).)

(f) *Innocent mistakes, § 220.3(h).* In response to comments the word "mechanical" was deleted so as to avoid any inference that violations may be excused for only "non-human" errors.

4. Margin Account, § 220.4(a)

In contrast to the proposed revision, this section permits separate margin accounts to be established for the same person by creditors that: (1) Clear transactions for other creditors where the transactions are introduced to the clearing creditor by separate creditors or (2) clear transactions through other creditors if the transactions are effected by separate creditors. Separate accounts may also be established for the same person by a creditor to provide one or more accounts over which the creditor or a third party investment advisor has investment discretion.

5. Transfer of Account, § 220.5(f)

(a) The description of the statement to be obtained by the transferee in present §220.6(d) was rephrased to state simply that any margin call issued under Regulation T has been satisfied.

(b) In subsection (2), the term "*bona fide*" was removed as unnecessary. Since the transaction must be one that is not undertaken to avoid Regulation T and the creditor is required to accept in good faith the statement describing the circumstances giving rise to the transfer, the creditor may not accept a statement that indicates that the transfer was not a legitimate incident to the transaction.

6. Cash Account, § 220.8

(a) The statement that *bona fide* cash transactions may be effected in the cash account has been removed as unnecessary. The description of permissible transactions includes only those that are *bona fide* cash transactions. Use of the term "*bona fide*" is redundant since permissible transactions must be done in good faith. The reference in the present § 220.4(c)(6) to "*bona fide* cash transactions" was removed for the same reason.

(b) A substantive change has been added in paragraph (a)(3)(i) concerning the issuance of a call option before payment is made for the purchase of a security. This will permit customers who cannot or do not maintain a margin account to take advantage of the investment strategy of taking a position in an option at the same time that they take a position in the underlying security or a security immediately convertible into the underlying security without the payment of money. It is anticipated that creditors permitting customers to write options on an underlying security using a convertible or exchangeable security as the proxy will require the customer to give written authorization for the conversion in the event an option exercise notice is received. Banks issuing escrow agreements against convertible securities should also have such written authorization.

(c) In response to comments received, securities issued by the United States or its agencies, negotiable certificates of deposit and bankers acceptances will be permitted as substitutes for cash in connection with the writing of put options, provided these instruments have a maturity of one year or less and their current market value at the time the put is written is equal to or greater than the put exercise price.

(d) Language has been added in § 220.8(b)(2) to clarify that the extension of time in a delivery against payment transaction is permitted if delivery of the security is delayed due to market conditions. See ¶ 5–501 in Securities Credit Transactions Handbook. The phrase "delivery against payment" is defined in the Definitions Section (see § 220.2(e)) rather than in the Cash Account Section.

(e) The 90-day freeze provision has been modified, as a clarifying measure, to apply only to transactions in *non-exempted* securities.

7. The Special Memorandum Account, § 220.6

As described in the proposal (46 FR 37517), the account is a renamed version of section 6 of the Special Miscellaneous Account. The types of deposit permitted in the Special Memorandum Account are now listed in the regulation.

8. Broker Dealer Credit Account, § 220.11

(a) As noted in the proposal (46 FR 37517 (1981)), this account contains the provisions that are presently in sections 1, 2 and 3 of the Special Miscellaneous Account and adds a provision to cover jointly owned clearing firms.

(b) There is new language that approval for emergency credit, credit for capital contributions and subordinated credit for capital purposes should be obtained from the appropriate Examining Authority, rather than from a committee of a national securities exchange. This reflects the fact that all creditors may not be members of a national securities exchange; it does not change the requirement for members of exchanges for whom the appropriate Examining Authority would be the exchange.

9. The Non-Securities Credit Account, § 220.9

(a) As described in the proposal (46 FR 37517 (1981)), this account contains provisions that are presently in the Special Commodity Account and sections 7 and 8 of the Special Miscellaneous Account.

(b) In the language comparable to present § 220.7(c) the phrase "on a margin security (other than an exempted security)" has been removed. The revised language will clarify that the required nonpurpose statement applies to unsecured credit as well as secured credit.

(c) Specific reference to form F.R. T–4 has been deleted from the Nonsecurities Credit Account (§ 220.9), but creditors must obtain such forms when extending nonpurpose credit.

10. The Market Functions Account, § 220.12

This account combines the Specialist Account and two sections of the Special Miscellaneous Account for credit to odd-lot dealers and to finance the underwriting or distribution of securities. There is a substantive addition, which provides for credit to OTC marketmakers and third-marketmakers similar to the provisions for bank loans to such marketmakers in present § 221.3(w) and (y) of Regulation U. Under the new regulation, exchanges will no longer have to file monthly reports (Form 2020) on the use of specialist credit. The required margin on long and short positions in underlying stock that serve as permitted offsets has been changed from a proposed 25% requirement to a "good faith" requirement. In addition, like public customers, specialists will have 7 days in which to deposit margin. The original proposal would have imposed a 5 day requirement.

11. The Arbitrage Account, § 220.7

Under the Board's March 30, 1982 proposal (47 FR 13376) this account would have been folded into the Market Functions Account. Due to comments received, a separate account for arbitrage transactions has been established.

12. Arranging for Loans by Others, § 220.13

The arranging provision has been clarified to indicate that sales of all non-margin securities (not just non-margin securities with installment or other deferred payment provisions) are excluded from the arranging prohibitions if such sales are exempt from registration under sections 4(2) or 4(6) of the Securities Act of 1933 (§ 220.13(b)).

13. Borrowing By Creditors, § 220.15

(a) The statutory prohibition in section 8 of the Act was rephrased to make it clear that borrowing "on" a security means using that security as collateral for a loan.

(b) The last sentence of present § 220.5(b) was removed as unnecessary. Blank forms and information regarding filing or termination of agreements are available at any Federal Reserve Bank.

(c) The provisions for loans from other creditors has been shortened considerably. The substance of present §§ 220.15(a)(3) and (c) are contained in § 220.5(a)(3) of the revised version. The revised version does not specifically refer to loans from other creditors to meet emergency needs or to the fact that credit from another creditor would be subject to any other applicable provisions of law. The former provision is included in the list of permissible loans by creditors under a provision of the Broker Dealer Credit Account (§ 220.11(a)); the latter provision applies to all activities of a creditor, *i.e.*, a creditor is always subject to any other applicable provisions of law in addition to those provisions contained in Regulation T.

14. Credit for Clearance of Securities, § 220.14

(a) The terminology was changed from a "fraction of a day" to "not for more than one day" because it is simpler and does not actually expand the permissible time period from that defined in present § 220.6(i). Since § 220.6(i) places no limit on the fraction of a day during which the credit may be extended, it could apply to credit outstanding for an entire day (minus one minute, for example). Recognizing that that is the case, it is less confusing to simply permit the credit for no more than one day. Also, the term "association" (referring to a national securities association) was added in recognition of the fact that creditors may be members of a national securities exchange or association.

(b) A provision was added to permit a clearing broker to acquire an option position from an option clearing agency, such as the Options Clearing Corporation, by depositing securities other than the particular securities underlying the option. Under the present provisions, only cash, government securities, letters of credit or the particular securities may be used for the required deposit.

15. Supplement, § 220.18

In view of a pending SEC rule change (Release No. 34–19162 October 20, 1982), the language of the section describing margin required for OTC options on exempted debt securities has been modified to exclude any options on exempt securities that the SEC determines are themselves exempt securities.

16. Reports

The subsection entitled "Reports" (§ 220.7(d)) in the present Regulation was removed as unnecessary; section 17 of the Securities Exchange Act of 1934 (15 U.S.C. § 78q) requires persons subject to the margin regulations to file reports required by the Board.

17. Miscellaneous

(a) As under the present regulation, convertible or exchangeable securities may be used instead of the present 50% margin when the related security is sold short.

(b) Other requests for modification of the proposed revision have not been adopted because of insufficient supporting data or because they are inappropriate in light of the Board's statutory responsibilities.

Final Regulatory Flexibility Analysis

The **Federal Register** documents published in June and July of 1981 (46 FR 32592 and 46 FR 37516) by the Board contained an Initial Regulatory Flexibility Analysis for the complete revision of Regulation T. Comments received on the proposal appear to agree with the Board's analysis.

List of Subjects 12 CFR Part 220

Banks, banking, Brokers, Credit, Federal Reserve System, Margin, Margin

requirements, Investments, Reporting requirements, Securities.

Accordingly, pursuant to sections 3, 7, 8 and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78c, g, h and w) the Board completely revises Regulation T as follows:

PART 220—CREDIT BY BROKERS AND DEALERS

Sec.

220.1 Authority, purpose, and scope.
220.2 Definitions.
220.3 General provisions.
220.4 Margin account.
220.5 Margin account exceptions and special provisions.
220.6 Special memorandum account.
220.7 Arbitrage account.
220.8 Cash account.
220.9 Nonsecurities credit account.
220.10 Omnibus account.
220.11 Broker-dealer credit account.
220.12 Market functions account.
220.13 Arranging for loans by others.
220.14 Clearance of securities.
220.15 Borrowing by creditors.
220.16 Borrowing and lending securities.
220.17 Requirements for list of OTC margin stocks.
220.18 Supplement to Regulation T.

§ 220.1 Authority, purpose, and scope.

(a) *Authority and purpose.* Regulation T (this part) is issued by the Board of Governors of the Federal Reserve System (the Board) pursuant to the Securities Exchange Act of 1934 (the Act) (15 U.S.C. 78a et seq.). Its principal purpose is to regulate extensions of credit by and to brokers and dealers; it also covers related transactions within the Board's authority under the Act. It imposes, among other obligations, initial margin requirements and payment rules on securities transactions.

(b) *Scope.* (1) This part provides a margin account and seven special purpose accounts in which to record all financial relations between a customer and a creditor. Any transaction not specifically permitted in a special account shall be recorded in a margin account.

(2) This part does not preclude any exchange, national securities association, or creditor from imposing additional requirements or taking action for its own protection.

§ 220.2 Definitions.

The terms used in this part have the meanings given them in section 3(a) of the Act or as defined in this section.

(a) "Credit balance" means the cash amount due the customer in a margin account after debiting amounts transferred to the special memorandum account.

(b) "Creditor" means any broker or dealer (as defined in sections 3(a)(4) and 3(a)(5) of the Act), any member of a national securities exchange, or any person associated with a broker or dealer (as defined in section 3(a)(18) of the Act), except for business entities controlling or under common control with the creditor.

(c) "Customer" includes: (1) Any person or persons acting jointly: (i) to or for whom a creditor extends, arranges, or maintains any credit; or (ii) who would be considered a customer of the creditor according to the ordinary usage of the trade;

(2) any partner in a firm who would be considered a customer of the firm absent the partnership relationship; and

(3) any joint venture in which a creditor participates and which would be considered a customer of the creditor if the creditor were not a participant.

(d) "Debit balance" means the cash amount owed to the creditor in a margin account after debiting amounts transferred to the special memorandum account.

(e) "Delivery against payment," "Payment against delivery," or a "C.O.D. transaction" refers to an arrangement under which a creditor and a customer agree that the creditor will deliver to, or accept from, the customer, or the customer's agent, a security against full payment of the purchase price.

(f) "Equity" means the total current market value of security positions held in the margin account plus any credit balance less the debit balance in the margin account.

(g) "Escrow agreement" means any agreement issued in connection with a call or put option under which a bank, holding the underlying security, foreign currency, certificate of deposit, or required cash, is obligated to deliver to the creditor (in the case of a call option) or accept from the creditor (in the case of a put option) the underlying security, foreign currency, or certificate of deposit against payment of the exercise price upon exercise of the call or put.

(h) "Examining authority" means: (1) The national securities exchange or other self-regulatory organization of which a creditor is a member; or

(2) if not a member of any such self-regulatory organization, the Regional Office of the Securities and Exchange Commission (SEC) where the creditor has its principal place of business; or

(3) if a member of more than one self-regulatory organization, the organization designated by the SEC as the examining authority for the creditor.

(i) "Good faith margin" means the amount of margin which a creditor, exercising sound credit judgment, would customarily require for a specified security position and which is established without regard to the customer's other assets or securities positions held in connection with unrelated transactions.

(j) "In or at the money" means the current market price of the underlying security is not more than one standard exercise interval below (with respect to a call option) or above (with respect to a put option) the exercise price of the option.

(k) "In the money" means the current market price of the underlying security is not below (with respect to a call option) or above (with respect to a put option) the exercise price of the option.

(l) "Margin call" means a demand by a creditor to a customer for a deposit of additional cash or securities to eliminate or reduce a margin deficiency as required under this part.

(m) "Margin deficiency" means the amount by which the required margin exceeds the equity in the margin account.

(n) "Margin excess" means the amount by which the equity in the margin account exceeds the required margin. When the margin excess is represented by securities, the current value of the securities is subject to the percentages set forth in § 220.18 (the Supplement).

(o) "Margin security" means any registered security, OTC margin stock, OTC margin bond, or any security issued by either an open-end investment company or unit investment trust which is registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8).

(p) "Nonexempted security" means any security other than an exempted security (as defined in section 3(a)(12) of the Act).

(q) "Nonmember bank" means a bank that is not a member of the Federal Reserve System.

(r) "OTC margin bond" means: (1) A debt security not traded on a national securities exchange which meets all of the following requirements:

(i) At the time of the original issue, a principal amount of not less than $25,000,000 of the issue was outstanding;

(ii) The issue was registered under section 5 of the Securities Act of 1933 (15 U.S.C. 77e) and the issuer either files periodic reports pursuant to section 13(a) or 15(d) of the Act or is an insurance company which meets all of the conditions specified in section 12(g)(2)(G) of the Act; and

(iii) At the time of the extension of credit, the creditor has a reasonable basis for believing that the issuer is not

in default on interest or principal payments; or

(2) A private mortgage pass-through security (not guaranteed by an agency of the U.S. government) meeting all of the following requirements:

(i) An aggregate principal amount of not less than $25,000,000 (which may be issued in series) was issued pursuant to a registration statement filed with the SEC under section 5 of the Securities Act of 1933;

(ii) Current reports relating to the issue have been filed with the SEC; and

(iii) At the time of the credit extension, the creditor has a reasonable basis for believing that mortgage interest, principal payments and other distributions are being passed through as required and that the servicing agent is meeting its material obligations under the terms of the offering.

(s) "OTC margin stock" means any equity security not traded on a national securities exchange that the Board has determined has the degree of national investor interest, the depth and breadth of market, the availability of information respecting the security and its issuer, and the character and permanence of the issuer to warrant being treated like an equity security traded on a national securities exchange. An OTC stock is not considered to be an "OTC margin stock" until it appears on the Board's periodically published list of OTC margin stocks.

(t) "Overlying option" means: (1) A put option purchased or a call option written against a long position in an underlying security in the specialist record in § 220.12(b); or

(2) a call option purchased or a put option written against a short position in an underlying security in the specialist record in § 220.12(b).

(u) "Purpose credit" means credit for the purpose of: (1) Buying, carrying, or trading in securities; or

(2) buying or carrying any part of an investment contract security which shall be deemed credit for the purpose of buying or carrying the entire security.

(v) "Registered security" means any security that: (1) Is registered on a national securities exchange; or

(2) Has unlisted trading privileges on a national securities exchange.

(w) "Short call or short put" means a call option or a put option that is issued, endorsed, or guaranteed in or for an account.

(1) A short call obligates the customer to sell the underlying security, foreign currency, or certificate of deposit at the exercise price upon receipt of an exercise notice at any time prior to the expiration date of the option.

(2) A short put obligates the customer to purchase the underlying security, foreign currency, or certificate of deposit at the exercise price upon receipt of an exercise notice at any time prior to the expiration date of the option.

(3) A short call or a short put on stock index options obligates the customer to pay the holder of an "in the money" long put or call who has exercised the option the cash difference between the exercise price and the current assigned value of the index as established by the option contract.

(x) "Specialist joint account" means an account which, by written agreement, provides for the commingling of the security positions of the participants and a sharing of profits and losses from the account on some predetermined ratio.

(y) "Underlying security" means the security that will be delivered upon exercise of an option.

§ 220.3 General provisions.

(a) *Records.* The creditor shall maintain a record for each account showing the full details of all transactions.

(b) *Separation of accounts.* Except as provided for in the margin account and the special memorandum account, the requirements of an account may not be met by considering items in any other account. If withdrawals of cash or securities are permitted under the regulation, written entries shall be made when cash or securities are used for purposes of meeting requirements in another account.

(c) *Maintenance of credit.* Except as prohibited by this part, any credit initially extended in compliance with this part may be maintained regardless of: (1) Reductions in the customer's equity resulting from changes in market prices;

(2) any security in an account ceasing to be margin or exempted; or

(3) any change in the margin requirements prescribed under this part.

(d) *Guarantee of accounts.* No guarantee of a customer's account shall be given any effect for purposes of this part.

(e) *Receipt of funds or securities.* (1) A creditor, acting in good faith, may accept as immediate payment:

(i) Cash or any check, draft, or order payable on presentation; or

(ii) Any security with sight draft attached.

(2) A creditor may treat a security, check or draft as received upon written notification from another creditor that the specified security, check, or draft has been sent.

(3) Upon notification that a check, draft, or order has been dishonored or when securities have not been received within a reasonable time, the creditor shall take the action required by this part when payment or securities are not received on time.

(f) *Exchange of securities.* (1) To enable a customer to participate in an offer to exchange securities which is made to all holders of an issue of securities, a creditor may submit for exchange any securities held in a margin account, without regard to the other provisions of this part, provided the consideration received is deposited into the account.

(2) If a nonmargin, nonexempted security is acquired in exchange for a margin security, its retention, withdrawal, or sale within 60 days following its acquisition shall be treated as if the security is a margin security.

(g) *Valuing securities.* The current market value of a security shall be determined as follows:

(1) Throughout the day of the purchase or sale of a security, the creditor shall use the security's total cost of purchase or the net proceeds of its sale including any commissions charged.

(2) At any other time, the creditor shall use the closing sale price of the security on the preceding business day, as shown by any regularly published reporting or quotation service. If there is no closing price, the creditor may use any reasonable estimate of the market value of the security as of the close of business on the preceding business day.

(h) *Innocent mistakes.* If any failure to comply with this part results from a mistake made in good faith in executing a transaction or calculating the amount of margin, the creditor shall not be deemed in violation of this part if, promptly after the discovery of the mistake, the creditor takes appropriate corrective action.

(i) *Variable annuity contracts issued by insurance companies.* Any insurance company that issues or sells variable annuity contracts or engages in a general securities business as a broker or dealer shall be subject to this part only for transactions in connection with those activities. Extensions of credit associated with conventional lending practices of insurance companies are subject to Part 207 of this Chapter.

§ 220.4 Margin account.

(a) *Margin transactions.* (1) All transactions not specifically authorized for inclusion in another account shall be recorded in the margin account.

(2) A creditor may establish separate margin accounts for the same person to:

(i) Clear transactions for other creditors where the transactions are introduced to the clearing creditor by separate creditors; or

(ii) Clear transactions through other creditors if the transactions are effected by separate creditors; or

(iii) Provided one or more accounts over which the creditor or a third party investment adviser has investment discretion.

(b) *Required margin.* The required margin for each position in securities is set forth in section 220.18 (the Supplement) and is subject to the exceptions and special provisions contained in section 220.5 (Margin Account Exceptions and Special Provisions).

(c) *When additional margin is required.* (1) *Computing deficiency.* All transactions on the same day shall be combined to determine whether additional margin is required by the creditor. For the purpose of computing equity in an account, security positions are established or eliminated and a credit or debit created on the trade date of a security transaction. Additional margin is required on any day when the day's transactions create or increase a margin deficiency in the account and shall be for the amount of the margin deficiency so created or increased.

(2) *Satisfaction of deficiency.* The additional required margin may be satisfied by a transfer from the special memorandum account or by a deposit of cash, margin securities, exempted securities, or any combination thereof.

(3) *Time limits.* (i) A margin call shall be satisfied within 7 business days after the margin deficiency was created or increased.

(ii) The 7 day period may be extended for one or more limited periods upon application by the creditor to a self-regulatory organization or national securities association unless the organization or association believes that the creditor is not acting in good faith or that the creditor has not sufficiently determined that exceptional circumstances warrant such action. Applications shall be filed and acted upon prior to the end of the 7 day period or the expiration of any subsequent extension. However, applications filed by firms having no direct electronic access to the organization or association may be accepted as timely filed if postmarked by midnight of the last day of the 7 day period or any subsequent extension.

(4) *Satisfaction restriction.* Any transaction, position, or deposit that is used to satisfy one requirement under this part shall be unavailable to satisfy any other requirement.

(d) *Liquidation in lieu of deposit.* If any margin call is not met in full within the required time, the creditor shall liquidate securities sufficient to meet the margin call or to eliminate any margin deficiency existing on the day such liquidation is required, whichever is less. If the margin deficiency created or increased is $500 or less, no action need be taken by the creditor.

(e) *Withdrawals of cash or securities.* (1) Cash or securities may be withdrawn from an account, except if:

(i) Additional cash or securities are required to be deposited into the account for a transaction on the same or a previous day; or

(ii) The withdrawal, together with other transactions, deposits, and withdrawals on the same day, would create or increase a margin deficiency.

(2) Margin excess may be withdrawn or may be transferred to the special memorandum account (§ 220.6) by making a single entry to that account which will represent a debit to the margin account and a credit to the special memorandum account.

(3) If a creditor does not receive a distribution of cash or securities which is payable with respect to any security in a margin account on the day it is payable and withdrawal would not be permitted under this paragraph, a withdrawal transaction shall be deemed to have occurred on the day the distribution is payable.

(f) *Interest, service charges, etc.* (1) Without regard to the other provisions of this section, the creditor, in its usual practice, may debit the following items to a margin account if they are considered in calculating the balance of such account:

(i) Interest charged on credit maintained in the margin account;

(ii) Premiums on securities borrowed in connection with short sales or to effect delivery;

(iii) Dividends, interest, or other distributions due on borrowed securities;

(iv) Communication or shipping charges with respect to transactions in the margin account; and

(v) Any other service charges which the creditor may impose.

(2) A creditor may permit interest, dividends, or other distributions credited to a margin account to be withdrawn from the account if:

(i) The withdrawal does not create or increase a margin deficiency in the account; or

(ii) The current market value of any securities withdrawn does not exceed 10 percent of the current market value of the security with respect to which they were distributed.

§ 220.5 Margin account exceptions and special provisions.

(a) *Unissued securities* (1) The required margin on a net long or net short commitment in an unissued security is the margin that would be required if the security were an issued margin security, plus any unrealized loss on the commitment or less any unrealized gain.

(2) Margin is not required on a net short commitment in unissued securities when the account contains the related issued securities, nor for any net short or net long position in unissued exempted securities.

(b) *Short Sales.* (1) The required margin for the short sale of a security shall be the amount set forth in § 220.18 (the Supplement).

(2) A short sale "against the box" shall be treated as a long sale for the purpose of computing the equity and the required margin.

(c) *Options.* (1) *Margin or cover for options on exempted debt securities, certificates of deposit, stock indices, or securities exchange traded options on foreign currencies.* The required margin for each transaction involving any short put or short call on an exempted debt security, certificate of deposit, stock index, or foreign currency (if the option is traded on a securities exchange), shall be the amount or positions in lieu of margin set forth in § 220.18 (the Supplement).

(2) *Margin for options on equity securities.* The required margin for each transaction involving any short put or short call on an equity security shall be the amount set forth in § 220.18 (the Supplement), plus any unrealized loss on the commitment or minus any unrealized gain. However, the required margin may not exceed the current market value of the underlying security in the case of a call, or the exercise price in the case of a put.

(3) *Cover or positions in lieu of margin.* No margin is required for an option written on an equity security position when the account holds any of the following:

(i) the underlying security in the case of a short call, or a short position in the underlying security in the case of a short put;

(ii) securities immediately convertible into or exchangeable for the underlying security without the payment of money in the case of a short call, if the right to convert or exchange does not expire on or before the expiration date of the short call;

(iii) an escrow agreement for the underlying security or foreign exhange (in the case of a short call) or cash (in the case of a short put);

(iv) a long call on the same number of shares of the same underlying security if the long call does not expire before the expiration date of the short call, and if the amount (if any), by which the exercise price of the long call exceeds the exercise price of the short call is deposited in the account;

(v) a long put on the same number of shares of the same underlying security if the long put does not expire before the expiration date of the short put, and if the amount (if any), by which the exercise price of the short put exceeds the exercise price of the long put is deposited in the account;

(vi) a warrant to purchase the underlying security, in the case of a short call, if the warrant does not expire on or before the expiration date of the short call, and if the amount (if any), by which the exercise price of the warrant exceeds the exercise price of the short call is deposited in the account. A warrant used in lieu of the required margin under this provision shall contribute no equity to the account.

(4) *Adjustments.* (i) When a short position held in the account serves in lieu of the required margin for a short put, the amount prescribed by paragraph (c)(2) of this section as the amount to be added to the required margin in respect of short sales shall be increased by any unrealized loss on the position.

(ii) When a security held in the account serves in lieu of the required margin for a short call, the security shall be valued at no greater than the exercise prices of the short call.

(5) *Straddles.* When both a short put and a short call are in a margin account on the same number of shares of the same underlying security, the required margin shall be the margin on either the short put or the short call, whichever is greater, plus any unrealized loss on the other option.

(6) *Exclusive designation.* The customer may designate at the time the option order is entered which security position held in the account is to serve in lieu of the required margin, if such service is offered by the creditor; or the customer may have a standing agreement with the creditor as to the method to be used for determining on any given day which security position will be used in lieu of the margin to support an option transaction. Only security held in the account which serves in lieu of the required margin for a short put or a short call shall be unavailable to support any other option transaction in the account.

(d) *Accounts of partners.* If a partner of the creditor has a margin account with the creditor, the creditor shall disregard the partner's financial relations with the firm (as shown in the partner's capital and ordinary drawing accounts) in calculating the margin or equity of the partner's margin account.

(e) *Contribution to joint venture.* If a margin account is the account of a joint venture in which the creditor participates, any interest of the creditor in the joint account in excess of the interest which the creditor would have on the basis of its right to share in the profits shall be treated as an extension of credit to the joint account and shall be margined as such.

(f) *Transfer of accounts.* (1) A margin account that is transferred from one creditor to another may be treated as if it had been maintained by the transferee from the date of its origin, if the transferee accepts, in good faith, a signed statement of the transferor (or, if that is not practicable, of the customer), that any margin call issued under this part has been satisfied.

(2) A margin account that is transferred from one customer to another as part of a transaction, not undertaken to avoid the requirements of this part, may be treated as if it had been maintained for the transferee from the date of its origin, if the creditor accepts in good faith and keeps with the transferee account a signed statement of the transferor describing the circumstances for the transfer.

§ 220.6 Special memorandum account.

(a) A special memorandum account (SMA) may be maintained in conjunction with a margin account. A single entry amount may be used to represent both a credit to the SMA and a debit to the margin account. A transfer between the two accounts may be effected by an increase or reduction in the entry. When computing the equity in a margin account, the single entry amount shall be considered as a debit in the margin account. A payment to the customer or on the customer's behalf or a transfer to any of the customer's other accounts from the SMA reduces the single entry amount.

(b) The SMA may contain the following entries:

(1) dividend and interest payments;

(2) Cash not required by this part, including cash deposited to meet a maintenance margin call or to meet any requirement of a self-regulatory organization that is not imposed by this part;

(3) Proceeds of a sale of securities or cash no longer required on any expired or liquidated security position that may be withdrawn under §220.4(e) of this part; and

(4) Margin excess transferred from the margin account under § 220.4(e)(2) of this part.

§ 220.7 Arbitrage account.

In an arbitrage account a creditor may effect and finance for any customer *bona fide* arbitrage transactions. For the purpose of this section, the term *"bona fide* arbitrage" means:

(1) A purchase or sale of a security in one market together with an offsetting sale or purchase of the same security in a different market at as nearly the same time as practicable for the purpose of taking advantage of a difference in prices in the two markets, or

(2) A purchase of a security which is, without restriction other then the payment of money, exchangeable or convertible within 90 calendar days of the purchase into a second security together with an offsetting sale of the second security at or about the same time, for the purpose of taking advantage of a concurrent disparity in the prices of the two securities.

§ 220.8 Cash account

(a) *Permissible transactions.* In a cash account, a creditor, may:

(1) Buy for or sell to any customer any security if: (i) There are sufficient funds in the accounts; or (ii) the creditor accepts in good faith the customer's agreement that the customer will promptly make full cash payment for the security before selling it and does not contemplate selling it prior to making such payment;

(2) Buy from or sell for any customer any security if: (i) The security is held in the account; or (ii) the creditor accepts in good faith the customer's statement that the security is owned by the customer or the customer's principal, and that it will be promptly deposited in the account;

(3) Issue, endorse, or guarantee an option for any customer if:

(i) In the case of a call option, the underlying security (or a security immediately convertible into the underlying security, without the payment of money) is held in or purchased for the account on the same day, and the option premium is held in the account until cash payment for the underlying or convertible security is received; or

(ii) In the case of a put option, the creditor obtains cash in an amount equal to the exercise price or holds in the account any of the following instruments with a current market value at least equal to the exerecise price and

with one year or less to maturity: securities issued or guaranteed by the United States or its agencies, negotiable bank certificates of deposit, or bankers acceptances issued by banking institutions in the United States and payable in the United States.

(4) Use an escrow agreement in lieu of the cash or underlying security position if:

(i) In the case of a call or a put, the creditor is advised by the customer that the required securities or cash are held by a bank and the creditor independently verifies that an appropriate escrow agreement will be delivered by the bank promptly; or

(ii) In the case of a call issued, endorsed, or guaranteed on the same day the underlying security is purchased in the account and the underlying security is to be delivered to a bank, the creditor verifies that an appropiate escrow agreement will be delivered by the bank promptly.

(b) *Time periods for payment; cancellation or liquidation.* (1) *Full cash payment.* A creditor shall obtain full cash payment for customer purchases within 7 business days of the date:

(i) Any nonexempted security was purchased;

(ii) Any unissued security was made available by the issuer for delivery to purchasers;

(iii) Any "when distributed" security was distributed under a published plan;

(iv) A security owned by the customer has matured or has been redeemed and a new refunding security of the same issuer has been purchased by the customer, provided:

(A) The customer purchased the new security no more than 35 calendar days prior to the date of maturity or redemption of the old security;

(B) The customer is entitled to the proceeds of the redemption; and

(C) The delayed payment does not exceed 103 percent of the proceeds of the old security.

(2) *Delivery against payment.* If a creditor purchases for or sells to a customer a security in a delivery against payment transaction, the creditor shall have up to 35 calendar days to obtain payment if delivery of the security is delayed due to the mechanics of the transaction and is not related to the customer's willingness or ability to pay.

(3) *Shipment of securities, extension.* If any shipment of securities is incidental to consummation of a transaction, a creditor may extend the 7 business day period by the number of days required for shipment, but not by more than 7 business days.

(4) *Cancellation; liquidation; minimum amount.* A creditor shall promptly cancel or otherwise liquidate a transaction or any part of a transaction for which the customer has not made full cash payment within the required time. A creditor may, at its option, disregard any sum due from the customer not exceeding $500.

(c) *90 day freeze.* (1) If a nonexempted security in the account is sold or delivered to another broker or dealer without having been previously paid for in full by the customer, the privilege of delaying payment beyond the trade date shall be withdrawn for 90 calendar days following the date of sale of the security. Cancellation of the transaction other than to correct an error shall constitute a sale.

(2) The 90 day freeze shall not apply if: (i) Within 7 business days of the trade date, full payment is received or any check or draft in payment has cleared and the proceeds from the sale are not withdrawn prior to such payment or check clearance; or (ii) the purchased security was delivered to another broker or dealer for deposit in a cash account which holds sufficient funds to pay for the security. The creditor may rely on a written statement accepted in good faith from the other broker or dealer that sufficient funds are held in the other cash account.

(d) *Extension of time periods; transfers.* (1) Unless a self-regulatory organization or association believes that the creditor is not acting in good faith or that the creditor has not sufficiently determined that exceptional circumstances warrant such action, it may, upon application by the creditor:

(i) Extend any period specified in paragraph (b) of this section;

(ii) Authorize transfer to another account of any transaction involving the purchase of a margin or exempted security; or

(iii) Grant a waiver from the 90 day freeze.

(2) Applications shall be filed and acted upon prior to the end of the 7 day period or the expiration of any subsequent extension. However, an application filed from firms having no direct electronic access to the exchange or association may be accepted as timely filed if it is postmarked no later than midnight of the last day of the 7 day period or any subsequent extension.

§ 220.9 Nonsecurities credit account.

(a) In a nonsecurities credit account a creditor may:

(1) Effect and carry transactions in commodities;

(2) Effect and carry transactions in foreign exchange;

(3) Extend and maintain secured or unsecured nonpurpose credit, subject to the requirements of paragraph (b) of this section.

(b) Every extension of credit, except as provided in paragraphs (a) (1) and (2) of this section, shall be deemed to be purpose credit unless, prior to extending the credit, the creditor accepts in good faith from the customer a written statement that it is not purpose credit. The statement shall conform to the requirements established by the Board. To accept the customer's statement in good faith, the creditor shall be aware of the circumstances surrounding the extension of credit and shall be satisfied that the statement is truthful.

§ 220.10 Omnibus account.

(a) In an omnibus account, a creditor may effect and finance transactions for a broker or dealer who is registered with the SEC under section 15 of the Act and who gives the creditor written notice that:

(1) all securities will be for the account of customers of the broker or dealer; and

(2) any short sales effected will be short sales made on behalf of the customers of the broker or dealer other than partners.

(b) The written notice required by paragraph (a) shall conform to any SEC rule on the hypothecation of customers' securities by brokers or dealers.

§ 220.11 Broker-dealer credit account.

(a) *Permissible transactions.* In a broker-dealer credit account, a creditor may:

(1) Purchase any security from or sell any security to another creditor under a good faith agreement to promptly deliver the security against full payment of the purchase price.

(2) Effect or finance transactions of any of its owners if the creditor is a clearing and servicing broker or dealer owned jointly or individually by other creditors.

(3) Extend and maintain credit to any partner or stockholder of the creditor for the purpose of making a capital contribution to, or purchasing stock of, the creditor, affiliated corporation or another creditor.

(4) Extend and maintain, with the approval of the appropriate examining authority:

(i) Credit to meet the emergency needs of any creditor; or

(ii) Subordinated credit to another creditor for capital purposes, if the other creditor:

(A) Is an affiliated corporation; or

(B) Will not use the proceeds of the loan to increase the amount of dealing in securities for the account of the creditor,

its firm or corporation or an affiliated corporation.

(b) For purposes of paragraphs (a) (3) and (4) of this section "affiliated corporation" means a corporation all the common stock of which is owned directly or indirectly by the firm or general partners and employees of the firm, or by the corporation or holders of the controlling stock and employees of the corporation and the affiliation has been approved by the creditor's examining authority.

§ 220.12 Market functions account.

(a) *Requirements.* In a market functions account, a creditor may effect or finance the transactions of market participants in accordance with the following provisions. A separate record shall be kept for the transactions specified for each category described in paragraphs (b) through (f) of this section. Any position in a separate record shall not be used to meet the requirements of any other category.

(b) *Specialists.* (1) *Applicability.* A creditor may clear or finance specialist transactions for any specialist, or any specialist joint account, in which all participants, or all participants other than the creditor, are registered as specialists on a national securities exchange that requires regular reports on the use of specialist credit from the registered specialists.

(2) *Permitted offset positions.* A specialist in options may establish, on a share-for-share basis, a long or short position in the securities underlying the options in which the specialist makes a market, and a specialist in securities other than options may purchase or write options overlying the securities in which the specialist makes a market, if the account holds the following permitted offset positions:

(i) A short option position which is "in or at the money" and is not offset by a long or short option position for an equal or greater number of shares of the same underlying security which is "in the money";

(ii) A long option position which is "in or at the money" and is not offset by a long or short option position for an equal or greater number of shares of the same underlying security which is "in the money";

(iii) A short option position against which an exercise notice was tendered;

(iv) A long option position which was exercised;

(v) A net long position in a security (other than an option) in which the specialist makes a market; or

(vi) A net short position in a security (other than an option) in which the specialist makes a market.

(3) *Required Margin.* The required margin for a specialist's transactions shall be:

(i) Good faith margin for any long or short position in a security in which the specialist makes a market;

(ii) Good faith margin for any wholly-owned margin security or exempted security;

(iii) The margin prescribed by section 220.18 (the Supplement) when a security purchased or sold short in the account does not qualify as a specialist or permitted offset position.

(4) *Additional margin; restriction on "free-riding."* (i) Except as required by paragraph (b)(6) of this section, the creditor shall issue a margin call on any day when additional margin is required as a result of specialist transactions. The creditor may allow the specialist a maximum of 7 business days to satisfy a margin call.

(ii) If a specialist fails to satisfy a margin call within the period specified in this paragraph (and the creditor is required to liquidate securities to satisfy the call), the creditor shall be prohibited for a 15 calendar day period from extending any further credit to the specialist to finance transactions in nonspecialty securities.

(iii) The restriction on "free-riding" shall not apply to:

(A) Any specialist on a national securities exchange that has an SEC-approved rule on "free-riding" by specialists; or (B) the acquisition or liquidation of a permitted offset position.

(5) *Deficit status.* On any day when a specialist's separate record would liquidate to a deficit, the creditor shall not extend any further specialist credit in the account and shall issue a margin call at least as large as the deficit. If the call is not met by noon of the following business day, the creditor shall liquidate positions in the specialist's account.

(6) *Withdrawals.* Withdrawals may be permitted to the extent that the equity exceeds the margin requirements specified in paragraph (b)(4) of this section.

(c) *Underwritings and distributions.* A creditor may effect or finance for any dealer or group of dealers transactions for the purpose of facilitating the underwriting or distribution of all or a part of an issue of securities with a good faith margin.

(d) *OTC Marketmakers and Third Marketmakers.* (1) A creditor may clear or finance with a good faith margin, marketmaking transactions for an OTC marketmaker or a third marketmaker who:

(i) Is in compliance with any applicable SEC rule, including minimum net capital rules;

(ii) Regularly submits *bona fide* competitive bid and offer quotations to a recognized inter-dealer quotation system;

(iii) Is ready, willing, and able to effect transactions in reasonable amounts with other brokers and dealers at the quoted prices; and

(iv) Has a reasonable average rate of inventory turnover.

(2) If the credit extended to a marketmaker ceases to be for the purpose of marketmaking, or the dealer ceases to be a marketmaker for an issue of securities for which credit was extended, the credit shall be subject to the margin specified in section 220.18 (the Supplement).

(e) *Odd-lot dealers.* A creditor may clear and finance odd-lot transactions for any creditor who is registered as an odd-lot dealer on a national securities exchange with a good faith margin.

§ 220.13 Arranging for loans by others.

A creditor may not arrange for the extension or maintenance of credit to or for any customer by any person upon terms and conditions other than those upon which the creditor may itself extend or maintain credit under the provisions of this part, except that this limitation shall not apply to credit arranged for a customer which does not violate Parts 207 and 221 of this Chapter and results solely from:

(a) Investment banking services, provided by the creditor to the customer, including, but not limited to, underwritings, private placements, and advice and other services in connection with exchange offers, mergers or acquisitions, except for underwritings that involve the public distribution of an equity security with installment or other deferred payment provisions; or

(b) The sale of nonmargin securities (including securities with installment or other deferred payment provisions) if the sale is exempted from the registration requirements of the Securities Act of 1933 under section 4(2) or section 4(6) of the Act.

§ 220.14 Clearance of Securities.

(a) *Credit for clearance of securities.* The provisions of this part shall not apply to the extension or maintenance of any credit that is not for more than one day if it is incidental to the clearance of transactions in securities directly between members of a national securities exchange or association or through any clearing agency registered with the SEC.

(b) *Deposit of securities with options clearing agency.* The provisions of this part shall not apply to the deposit of securities with an options clearing agency for the purpose of meeting its deposit requirements if:

(1) The clearing agency issues options on securities;

(2) The clearing agency is registered with the SEC;

(3) The deposit consists of any underlying securities for classes of option contracts outstanding at the time of the deposit; and

(4) The deposit complies with the rules of the clearing agency which have been approved by the SEC.

§ 220.15 Borrowing by Creditors.

(a) *Restrictions on borrowing.* A creditor may not borrow in the ordinary course of business as a broker or dealer using as collateral any registered nonexempted security, except:

(1) From or through a member bank of the Federal Reserve System; or

(2) From any nonmember bank that has filed with the Board an agreement as prescribed in paragraph (b) of this section, which agreement is still in effect; or

(3) From another creditor if the loan is permissible under this part.

(b) *Agreements of nonmember banks.* (1) A nonmember bank shall file an agreement that conforms to the requirements of section 8(a) of the Act (See Form F.R. T–2) if:

(i) Its principal place of business is in a territory or insular possession of the United States; or

(ii) It has an office or agency in the United States and its principal place of business is outside the United States.

(2) Any other nonmember bank shall file an agreement that conforms to the requirements of section 8(a) of the Act (See From F.R. T–1).

(3) Any nonmember bank may terminate its agreement if it obtains the written consent of the Board.

§ 220.16 Borrowing and Lending Securities.

Without regard to the other provisions of this part, a creditor may borrow or lend securities for the purpose of making delivery of the securities in the case of short sales, failure to receive securities required to be delivered, or other similar situations. Each borrowing shall be secured by a deposit of one or more of the following: cash, securities issued or guaranteed by the United States or its agencies, negotiable bank certificates of deposit and bankers acceptances issued by banking institutions in the United States and payable in the United States, or irrevocable letters of credit issued by a bank insured by the Federal Deposit Insurance Corporation or a foreign bank that has filed an agreement with the Board on Form F.R. T–2. Such deposit made with the lender of the securities shall have at all times a value at least equal to 100 percent of the market value of the securities borrowed, computed as of the close of the preceding business day.

§ 220.17 Requirements for list of OTC margin stocks.

(a) *Requirements for inclusion on the list.* Except as provided in paragraph (d) of this section, OTC margin stock shall meet the following requirements:

(1) Four or more dealers stand willing to, and do in fact, make a market in such stock and regularly submit bona fide bids and offers to an automated quotations system for their own accounts;

(2) The minimum average bid price of such stock, as determined by the Board, is at least $5 per share.

(3) The stock is registered under section 12 of the Act, or is an American Depository Receipt (ADR) of a foreign issuer whose securities are registered under section 12 of the Act, or is a stock of a foreign issuer required to file reports under section 15(d) of the Act;

(4) Daily quotations for both bid and asked prices for the stock are continuously available to the general public;

(5) The stock has been publicly traded for at least six months;

(6) The issuer has at least $4 million of capital, surplus, and undivided profits;

(7) There are 400,000 or more shares of such stock outstanding in addition to shares held beneficially by officers, directors or beneficial owners of more than 10 percent of the stock;

(8) There are 1,200 or more holders of record, as defined in SEC Rule 12g5–1 (17 CFR 240.12g5–1), of the stock who are not officers, directors or beneficial owners of 10 percent or more of the stock, or the average daily trading volume of such stock as determined by the Board, is at least 500 shares; and

(9) The issuer has been in existence for at least three years.

(b) *Requirements for continued inclusion on the list.* Except as provided in paragraph (d) of this section, OTC margin stock shall meet the following requirements:

(1) Three or more dealers stand willing to, and do in fact, make a market in such stock and regularly submit bona fide bids and offers to an automated quotations system for their own accounts;

(2) The minimum average bid price of such stocks, as determined by the Board, is at least $2 per share;

(3) The stock is registered as specified in paragraph (a)(3) of this section;

(4) Daily quotations for both bid and asked prices for the stock are continuously available to the general public;

(5) The issuer has at least $1 million of capital, surplus, and undivided profits;

(6) There are 300,000 or more shares of such stock outstanding in addition to shares held beneficially by officers, directors, or beneficial owners of more than 10 percent of the stock; and

(7) There continue to be 800 or more holders of record, as defined in SEC Rule 12g5–1 (17 CFR 240.12g5–1), of the stock who are not officers, directors, or beneficial owners of 10 percent or more of the stock, or the average daily trading volume of such stock, as determined by the Board, is at least 300 shares.

(c) *Removal from the list.* The Board shall periodically remove from the list any stock that:

(1) Ceases to exist or of which the issuer ceases to exist, or

(2) No longer substantially meets the provisions of paragraph (b) of this section or § 220.2(s).

(d) *Discretionary authority of Board.* Without regard to the other paragraphs of this section, the Board may add to, or omit or remove from the OTC margin stock list, any equity security, if in the judgment of the Board, such action is necessary or appropriate in the public interest.

(e) *Unlawful Representations.* It shall be unlawful for any creditor to make, or cause to be made, any representation to the effect that the inclusion of a security on the list of OTC margin stocks is evidence that the Board or the SEC has in any way passed upon the merits of, or given approval to, such security or any transactions therein. Any statement in an advertisement or other similar communication containing a reference to the Board in connection with the list or stocks on that list shall be an unlawful representation.

§ 220.18 Supplement to Regulation T.

Margin Requirements

The required margin for each security position held in a margin account shall be as follows:

(a) *Margin security except for (b) below:* 50 percent of the current market value of the security.

(b) *Exempted security, registered non-*

convertible debt security or OTC margin bond: the margin required by the creditor in good faith.

(c) *Short put or short call on an equity security:* 30 percent of the current market value of the underlying security, but not less than $250, adjusted or waived in accordance with section 220.5(c).

(d) *Short sale of nonexempted security:* 150 percent of the current market value of the security or 100 percent of the current market value if a security exchangeable or convertible within 90 calendar days without restriction other than the payment of money into the security sold short is held in the account.

(e) *Short sale of an exempted security:* 100 percent of the current market value of the security plus the margin required by the creditor in good faith.

(f) *Nonmargin, nonexempted security or a long position in any option:* 100 percent of the current market value.

(g) *Short put or short call on an exempted debt security or certificate of deposit:* (1) The amount or other position specified by the rules of the national securities exchange on which the option is traded, provided that all such rules have been approved or amended by the SEC; or

(2) In the case of an over-the-counter option on an exempted debt security that the SEC has not determined to be an exempted security, an amount or other position which the creditor in good faith deems to be equivalent to the margin or cover on comparable exchange-traded options.

(h) *Short put or short call (securities exchange traded) on foreign currency:* The amount, other option position, or foreign currency position specified by the rules of the national securities exchange on which the option is traded, provided that all such rules have been approved or amended by the SEC.

(i) *Short put or short call on a stock index:* The amount or other security positions specified by the rules of the national securities exchange on which the option is traded, provided that all such rules have been approved or amended by the SEC.

By order of the Board of Governors of the Federal Reserve System, May 16, 1983.

William W. Wiles,

Secretary of the Board.

[FR Doc. 83-13708 Filed 5-23-83; 8:45 am]

BILLING CODE 6210-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 101

[Rev. 2-Amdt. 28]

Delegation of Authority To Conduct Program Activities in Field Offices

Correction

In FR Doc. 83-11775 beginning on page 19872 in the issue of Tuesday, May 3, 1983 make the following correction in the **SUMMARY**, paragraph two, line one, "not" should read "now"

BILLING CODE 1505-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 5

Amendments to Commission Standards of Conduct

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: This amends the Commission's Standards of Conduct to authorize certain Commission officials to require employees below Grade GS-13 to file statements of employment and financial interests under the conditions set forth in Office of Personnel Management (OPM) regulations.

DATE: Effective May 24, 1983.

FOR FURTHER INFORMATION CONTACT: Jerome A. Tintle, Office of General Counsel, Federal Trade Commission, Washington, D.C. 20580, (202) 523-3487.

SUPPLEMENTARY INFORMATION: OPM regulations provide that agencies shall require statements of employment and financial interests from, among others, employees classified below GS-13 who are in positions which otherwise meet the criteria of 5 CFR 735.403 (b) or (c); the provision applies when the requirement for submitting statements has been specifically justified in writing to OPM as essential to protect the integrity of the Government and to avoid employee involvement in possible conflicts of interest. 5 CFR 735.403(d). The Commission amends 16 CFR 5.32(j) to conform to this OPM requirement.

Since the amendments relate solely to matters involving agency management and personnel, they are not subject to the notice and comment requirements of the Administrative Procedure Act. 5 U.S.C. 553(a)(2). For the same reason, the requirements of the Regulatory Flexibility Act do not apply. 5 U.S.C. 601(2) (Supp. V 1981).

List of Subjects in 16 CFR Part 5

Administrative practice and procedure, Conflict of interests.

PART 5—[AMENDED]

Accordingly, paragraph (j) of 16 CFR 5.32 is revised to read as follows:

§ 5.32 Statements of employment and financial interests under Executive Order 11222.

* * * * *

(j) The Executive Director, the General Counsel, or a Bureau Director may require any of the following employees under his or her supervision, in addition to those specified in paragraphs (c)—(i) of this section, to file statements pursuant to this section and to submit the statements to him or her:

(1) An employee classified at GS-13 or above, or at a comparable pay level under another authority, whose position meets the criteria established by the Office of Personnel Management in 5 CFR 735.403; and

(2) An employee classified below GS-13, or at a comparable pay level under another authority, who is in a position which otherwise meets the criteria of 5 CFR 735.403 and whose requirement to file statements has been specifically justified in writing by his or her supervising official to the Office of Personnel Management as essential to protect the integrity of the Government and to avoid the employee's involvement in possible conflicts of interest. The names of employees designated to file statements pursuant to this paragraph shall be reported to the General Counsel.

* * * * *

(Sec. 6(g), 38 Stat. 721 (15 U.S.C. 46(g)); 80 Stat. 383, as amended; 81 Stat. 54 (5 U.S.C. 552); 92 Stat. 1824, as amended; EO 11222 of May 8, 1965, (30 FR 6469; 3 CFR 1964-1965 Comp. p. 306); 5 CFR 734.103; 5 CFR 735.104).

By direction of the Commission, dated May 9, 1983.

Emily H. Rock,

Secretary.

[FR Doc. 83-13723 Filed 5-23-83; 8:45 am]

BILLING CODE 6750-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 211

[Release No. SAB-52]

Staff Accounting Bulletin No. 52

AGENCY: Securities and Exchange Commission.

ACTION: Publication of Staff Accounting Bulletin.

SUMMARY: This staff accounting bulletin expresses the staff's views regarding

accounting for terminations of overfunded defined benefit pension plans.

DATE: May 16, 1983.

FOR FURTHER INFORMATION CONTACT: Lawrence S. Jones, Office of the Chief Accountant (202/272–2158); or Howard P. Hodges, Jr., Division of Corporation Finance (202/272–2553), Securities and Exchange Commission, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The statements in Staff Accounting Bulletins are not rules or interpretations of the Commission nor are they published as bearing the Commission's official approval. They represent interpretations and practices followed by the Division of Corporation Finance and the Office of the Chief Accountant in administering the disclosure requirements of the Federal securities laws.

List of Subjects in 17 CFR Part 211

Accounting, Reporting and recordkeeping requirements, Securities.

George A. Fitzsimmons,
Secretary.

PART 211—[AMENDED]

Accordingly, Part. 211 of title 17 of the Code of Federal Regulations is amended by adding Staff Accounting Bulletin No. 52 to the table found in Subpart B.

Staff Accounting Bulletin No. 52

The staff herein adds Section I to Topic 5 of the Staff Accounting Bulletin Series. This section discusses the staff's position on the recognition of gains on termination of overfunded denied benefit pension plans.

Topic 5: Miscellaneous Accounting

* * * * *

I. Terminations of Defined Benefit Pension Plans

Facts: Company A terminates its defined benefit pension plan and replaces it with a defined contribution plan. Pension plan assets in excess of requirements for benefits accumulated under the terminated plan are returned to the company.

Question 1: May the company recognize a gain upon termination of its pension plan and recovery of the excess plan assets?

Interpretive Response: The staff will not object to the recognition of a gain on termination of a company's pension plan if all obligations under the terminated plan are fully funded and the substituted employee benefit arrangements are not linked to the prior plan. The staff does not believe gain recognition is appropriate, however, when benefit provisions under the new plan are based on such factors as past employee service or guaranteed minimum benefits because the substituted plan would in substance be a continuation of the termination plan.

Question 2: Assuming gain recognition is appropriate, how should the gain be presented in the company's income statement?

Interpretive Response: The staff believes that the termination of a pension plan meets the criteria for classification as an extraordinary item under Accounting Principles Board Opinion No. 30. Terminations of pension plans are of an unusual nature and not expected to recur as a consequence of customary and continuing business activities. A company's expectation that it would terminate several pension plans over a few years, for example, through negotiations with employee unions, would not affect the staff's position.

Gains or losses from pension plan terminations which arise in connection with decisions to dispose of a segment of the business or close a plant should be reported in the same manner as the costs related to the discontinued operations or plant closing.

[FR Doc. 83–13755 Filed 5–23–83; 8:45 am]
BILLING CODE 8010–01–M

17 CFR Part 241

[Release No. 34–19756]

Interpretations of Rule 16b–3

AGENCY: Securities and Exchange Commission.

ACTION: Publication of interpretations.

SUMMARY: The Commission is setting forth its views on certain interpretive questions arising with respect to Rule 16b–3 as the result of a recent judicial decision. Rule 16b–3 provides an exemption from the short-swing profit recovery provisions of section 16(b) of the Securities Exchange Act of 1934, for certain securities transactions occurring under employee benefit plans not considered within the purpose of section 16(b).

FOR FURTHER INFORMATION CONTACT: William E. Toomey, Office of Chief Counsel, Division of Corporation Finance, Securities and Exchange Commission, Washington, D.C. 20549, (202) 272–2573.

SUPPLEMENTARY INFORMATION: In *Colema Realty Corp.* v. *R. D. Bibow, et al.*,[1] a United States District Court recently held that an amendment to an existing stock option plan permitting the delivery of already owned stock in payment for the exercise of a stock option conferred material benefits on option holders and must be approved by shareholders in order for the plan to retain the exemption provided by Rule 16b–3 [17 CFR 240.16b–3] under the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. 78a et seq.]. This decision is in conflict with an earlier Commission position on the same issue, and thus has raised substantial questions for issuers attempting to maintain stock option plans in accordance with Rule 16b–3. The Commission wishes to make known its views on certain of these questions for the guidance of those concerned with compliance with the rule.

I. Background

Rule 16b–3[2] was adopted by the Commission to provide an exemption from the short-swing profit recovery provisions of Section 16(b) of the Exchange Act [3] for securities transactions under employee benefit plans not considered within the purposes of Section 16(b). One of the conditions of the rule is that certain types of amendments to a plan must receive the approval of shareholders, including any amendment which would materially increase the benefits accruing to participants under the plan.[4]

In 1979, the Internal Revenue Service ruled that an employee could deliver already owned stock in payment for the exercise of a stock option without recognizing any taxable gain on the unrealized appreciation of the delivered shares. The tax advantages of this ruling, however, were generally thought to be unavailable to employees who were also officers or directors of a company and subject to Section 16(b) of the Exchange Act, since the stock-for-stock exercise appeared to involve the simultaneous purchase and sale of an equity security subject to the short-swing profit recovery provisions of Section 16(b).

The Commission received a number of requests for exemptive relief from the possible application of Section 16(b) to this new compensation technique. In April 1980, the Commission proposed

[1] *Colema Realty Corp.* v. *R. D. Bibow, et al.*, No. H–82–430 (D.Conn. Feb. 9, 1983).

[2] Rule 16b–3 is discussed in some detail in Section IV. C. of Release No. 34–18114 (September 23, 1981) [46 FR 46147] (October 1, 1981).

[3] Section 16(b) provides in part that any profit realized by an insider as a result of a purchase and sale or sale and purchase of an equity security of his company, made within a six-month period, shall inure to the company.

[4] Rule 16b–3(a)(2)(ii)(A).

the amendment of Rule 16b–3 to exempt from Section 16(b) the mechanical transactions of exchange necessary to exercise an option through the delivery of already owned stock.[5] In the release proposing the change, the Commission noted that without such an exemption, the legitimate use of certain types of employee compensation plans would be largely frustrated, and that the safeguards inherent in Rule 16b–3 made the opportunities for abuse slight. The Commission also expressed the view that, under the proposal, an amendment to an existing stock option plan allowing the delivery of already owned stock upon exercise of an option would not be a material amendment to the plan requiring stockholder approval, since it would not result in any additional remuneration for directors and officers not already contemplated by the plan.

The release proposing the amendment for comment specifically requested comment with respect to the Commission's view on the materiality of an implementing plan amendment and the need for shareholder approval thereof. The release adopting the proposed amendments stated that virtually all public comment had been favorable, and that every commentator who had addressed the issue of materiality of plan amendments had agreed with the Commission's opinion that such amendments did not materially increase participants' benefits and therefore did not necessitate shareholder approval under Rule 16b–3.[6] Accordingly, the Commission reaffirmed its view that amendments to existing stock option plans permitting the stock-for-stock exercise of options need not be submitted to shareholders for approval under Rule 16b–3.

II. The Colema Decision

The *Colema* case, in brief, involved a shareholder derivative suit alleging that the delivery of already owned stock as payment for an option exercise, and the exercise of that option through a multiple series of exchanges of shares, resulted in short-swing profits for officers that should be returned to the company. The defendants contended, among other things, that the exchange transactions were specifically exempted from Section 16(b) liability by the new, stock-for-stock amendments to Rule 16b–3. The District Court disagreed, indicating that amendments to stock option plans permitting the use of the stock delivery technique conferred material benefits upon plan participants, and thus required shareholder approval in accordance with Rule 16b–3. In *Colema*, shareholder approval had not been obtained, and the court held that the exemption provided by Rule 16b–3 was not available to the defendants. The court took notice of the Commission's contrary position on the materiality of such amendments for purposes of the rule, but did not find it controlling. The court did find, however, that the defendants had acted in good faith reliance on Commission rules and regulations, and so were immune from liability under Section 23(a) of the Exchange Act.[7]

III. The Commission's Views

The Commission continues to believe that its determination not to require shareholder approval of plan amendments designed to implement stock-for-stock exercise of options was based on cogent reasons, among them the fact that officer and director participants do not receive any additional remuneration by virtue of such arrangements. While rulemaking action with respect to the issue raised by *Colema* is not being considered at this time, this issue will be included in the Commission's review of its rules under Section 16 which it anticipates conducting later this year. Until such review is completed, the Commission will take the position that stockholder approval is required under Rule 16b–3 of plan amendments allowing the delivery of stock to exercise options.

The Commission recognizes that issuers with unapproved stock delivery amendments are faced with the problem of devising a method to eliminate liability under Section 16(b) during the interim period between the date of the *Colema* decision (February 9, 1983) and the date stockholder approval of the amendments is obtained. In the Commission's view, the exemption provided by Rule 16b–3 would be preserved if issuers submit the stock delivery amendments for stockholder approval as soon as practicable (usually at the next meeting of security holders, whether annual or special) and make all transactions occurring under such amendments after the *Colema* decision contingent on stockholder approval of the amendments and ratification of the interim transactions.[8] Accordingly, if such approval and ratification are not forthcoming, the transactions would be rescinded.

The Commission believes it is appropriate to address two other issues indirectly raised by the *Colema* decision. The first is whether the Rule 16b–3 exemption is lost for all transactions under a plan which contains a stock delivery amendment that has not been approved by stockholders.[9] The Commission does not believe such a result is required by the rule or consonant with its intent where stockholder approval of such an amendment was not solicited because of reliance upon the Commission's position on the matter. In the Commission's view, it would be inappropriate to subject plan participants to liability for transactions unrelated to stock delivery amendments under the above circumstances.

The second issue is whether the *Colema* decision affects the availability of Rule 16b–3 for the so-called "pyramiding" of shares. The *Colema* case involved pyramiding, which is a technique under which an optionee requests the issuer to automatically apply the shares received upon the exercise of a portion of a stock option to satisfy the exercise price for additional portions of the option. The effect of pyramiding is to allow a participant to deliver a relatively small number of shares in satisfaction of the exercise price of even the largest option. The Commission believes that the use of pyramiding is within the meaning of Rule 16b–3, so long as the technique yields an optionee no more than the appreciation or "spread" inherent in the very exercise of the option. This position, of course, is based on the assumption that shareholder approval will be obtained, after appropriate disclosure of the pyramiding technique, and that all other applicable conditions of the rule will be satisfied.

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[5] Release No. 34–16770 (April 30, 1980) [45 FR 29853].

[6] Release No. 34–17060 (August 21, 1980) [45 FR 57389].

[7] Section 23(a) provides in pertinent part that liabilities imposed by the Exchange Act shall not apply to any act done or omitted in good faith in conformity with a rule, regulation or order of the Commission. It is unclear, however, to what extent reliance may be placed on Section 23(a) for transactions under unapproved stock delivery amendments occurring after February 9, 1983, the date of the court's decision.

[8] There also would appear to be other measures that similarly would preserve the Rule 16b–3 exemption until stockholder approval could be obtained. For example, an issuer may retain the stock delivery provisions but limit their use to persons who are not officers or directors. This measure is based on the principle, articulated in Release No. 34–13659 (June 2, 1977) [42 FR 33283] (June 30, 1977), that a plan which is bifurcated in its treatment of insiders and non-insiders will be in compliance with Rule 16b–3, so long as the transactions with insiders comply with the applicable requirements of the rule.

[9] Of course, if the stock delivery amendment is rescinded until such time as it is approved by stockholders, there clearly would be no issue regarding the availability of Rule 16b–3 for transactions under the plan occurring after the rescission.

List of Subjects in 17 CFR Part 241

Insider trading, Reporting requirements, Securities.

Text of Amendment

In accordance with the foregoing, Title 17, Chapter II, of the Code of Federal Regulations is amended as follows:

PART 241—INTERPRETIVE RELEASES RELATING TO THE SECURITIES EXCHANGE ACT OF 1934 AND GENERAL RULES AND REGULATIONS THEREUNDER [AMENDED]

* * * * *

1. By adding this Release No. 34–19756 (May 11, 1983) to the list of interpretive releases.

By the Commission.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-13836 Filed 5-23-83; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM79-76-163 (Colorado-31); Order No. 300]

High-Cost Gas Produced From Tight Formations; Final Rule

Issued: May 19, 1983.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determined that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This final order adopts the recommendation of the Colorado Oil and Gas Conservation Commission that a portion of the Mesaverde Formation, located in Rio Blanco County, Colorado be designated as a tight formation under § 271.703(d).

EFFECTIVE DATE: This rule is effective June 20, 1983.

FOR FURTHER INFORMATION CONTACT: Jane M. Oliver, (202) 357–357–8316 or Victor Zabel, (202) 357–8616.

SUPPLEMENTARY INFORMATION:

The Commission hereby amends § 271.703(d) of its regulations to include a portion of the Mesaverde Formation as located in Rio Blanco County, Colorado, as a designated tight formation eligible for incentive pricing under § 271.703. The amendment was proposed in a Notice of Proposed Rulemaking by the Director, Office of Pipeline and Producer Regulation, issued January 17, 1983 (48 FR 2778, January 21, 1983),[1] based on a recommendation by the Colorado Oil and Gas Conservation Commission (Colorado) in accordance with § 271.703, that a portion of the Mesaverde Formation be designated as a tight formation.

Evidence submitted by Colorado supports the assertion that the recommended portion of the Mesaverde Formation meets the guidelines contained in § 271.703(c)(2).[2] The Commission adopts the Colorado recommendation.

This amendment shall become effective June 20, 1983.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

(Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432; Administrative Procedure Act, 5 U.S.C. 553)

In consideration of the foregoing, Part 271 of Subchapter H, Chapter I, Code of Federal Regulations, is amended as set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 271—[AMENDED]

Section 271.703 is revised by adding paragraph (d)(127) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.*

* * * * *

(127) *Mesaverde Formation in Colorado.* RM79–76–163 (Colorado–31).

(i) *Delineation of formation.* The Mesaverde Formation is located in Rio Blanco County, Colorado, in Township 2 South, Range 96 West, Section 31 S½, S½, NW¼, Section 32 S½, S½, Section 33 SW¼, SW¼; Township 2 South, Range 97 West, Section 4 W½, W½, Sections 5, 8, 9, 16, 17, 20, 21, 22, All, Section 23 W½, Section 25 SW¼, Section 26 W½, SE¼, Sections 27, 28, 29, 31 through 36, All; Township 3 South, Range 97 West, Sections 3 through 7, All; all 6th P.M.

(ii) *Depth.* The average depth to the top of the Mesaverde Formation is approximately 7,790 feet. The producing interval is approximately 4,800 feet in thickness and begins at the base of the Ohio Creek Conglomerate and extends to the top of the Marine Mancos Shale.

[FR Doc. 83-13882 Filed 5-23-83; 8:45 am]

BILLING CODE 6717-01-M

[1] Comments were invited on the proposed rule and no comments were received. No party requested a hearing and no hearing was held.

[2] The Department of the Interior, Minerals Management Service, concurs with Colorado's recommendation.

18 CFR Part 271

[Docket No. RM79-76-180 (New Mexico—20); Order No. 301]

High-Cost Gas Produced From Tight Formations; Final Rule

Issued: May 19, 1983.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determined that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This final order adopts the recommendation of the New Mexico Energy and Minerals Department, Oil Conservation Division that the Abo-Wolfcamp Formation be designated as a tight formation under § 271.703(d).

EFFECTIVE DATE: This rule is effective June 20, 1983.

FOR FURTHER INFORMATION CONTACT: Craig Ellis, (202) 357–8511, or Victor Zabel, (202) 357–8616.

SUPPLEMENTARY INFORMATION:

The Commission hereby amends § 271.703(d) of its regulations to include the Abo-Wolfcamp Formation, underlying Chaves and Eddy Counties, New Mexico, as a designated tight

formation eligible for incentive pricing under § 271.703. The amendment was proposed in a Notice of Proposed Rulemaking by the Director, Office of Pipeline and Producer Regulation, issued February 4, 1983, 48 FR 5953 (February 9, 1983)[1] based on a recommendation by the State of New Mexico Energy and Minerals Department, Oil Conservation Division (New Mexico) in accordance with § 271.703, that the Abo-Wolfcamp Formation be designated as a tight formation.

Evidence submitted by New Mexico supports the assertion that the Abo-Wolfcamp Formation meets the guidelines contained in § 271.703(c)(2). The Commission adopts the New Mexico recommendation.

This amendment shall become effective June 20, 1983.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

(Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432; Administrative Procedure Act, 5 U.S.C. 553)

In consideration of the foregoing, Part 271 of Subchapter H, Chapter I, Code of Federal Regulations, is amended as set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 271—[AMENDED]

Section 271.703 is amended by adding paragraph (d)(126) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.*

* * * * *

(126) *Abo-Wolfcamp Formation in New Mexico.* RM79–76–180 (New Mexico–20).

(i) *Delineation of formation.* The Abo-Wolfcamp Formation is located in Chaves County, New Mexico, in Township 15 South, Ranges 23, 24, and 25 East, All Sections; Townships 19 and 20 South, Range 20 East, All Sections; in Eddy County, New Mexico in Township 16 South, Ranges 23, 24, and 25 East, All Sections; Township 16 South, Range 26 East, Sections 4 through 9, 16 through 21, and 28 through 33; Township 17 South, Ranges 21, 23, and 24 East, All Sections; Township 17 South, Range 25 East, Sections 1 through 12, 16 through 21, and 30 and 31; Township 18 South, Ranges 21, 23, and 24 East, All Sections; Township 18 South, Range 25 East, Sections 6 and 7, 18 and 19, and 30 and 31; Township 19 South, Ranges 21 and 23 East, All Sections; Township 19 South, Range 24 East, Sections 1 through 20, and 29 through 32; Township 20 South, Ranges 21 and 23 East, All Sections; and Township 20 South, Range 24 East, Sections 5 through 8, NMPM

(ii) *Depth.* The average depth to the top of the Abo-Wolfcamp Formation is 3,615 feet. The top and base of the Abo-Wolfcamp Formation are found at 4,722 feet and 5,122 feet, respectively, as measured on the Induction-Electrical Log of the Yates Petroleum Corporation State DF well No. 1.

[FR Doc. 83-13804 Filed 5-23-83; 8:45 am]

BILLING CODE 6717-01-M

[1] Comments were invited on the proposed rule and none were received. No requests for a public hearing were received by the Commission in this docket.

18 CFR Part 271

[Docket No. RM79–76–159 (Texas—29); Order No. 299]

High-Cost Gas Produced From Tight Formations; Final Rule

Issued: May 19, 1983.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determined that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This final order adopts the recommendation of the Railroad Commission of Texas that the Vicksburg Formation in the Portilla (9000') Field be designated as a tight formation under § 271.703(d).

EFFECTIVE DATE: This rule is effective June 20, 1983.

FOR FURTHER INFORMATION CONTACT: Steven Ross, (202) 357–8571, or Walter W. Lawson, (202) 357–8556.

SUPPLEMENTARY INFORMATION:

The Commission hereby amends § 271.703(d) of its regulations to include the Vicksburg Formation in the Portilla (9000') Field, in San Patricio County, Texas, as a designated tight formation eligible for incentive pricing under § 271.703. The amendment was proposed in a Notice of Proposed Rulemaking by the Director, Office of Pipeline and Producer Regulation, issued December 16, 1982, 47 FR 57057 (December 22, 1982)[1] based on a recommendation by the Railroad Commission of Texas (Texas), in accordance with § 271.703, that the Vicksbury Formation in Portilla (9000') Field, be designated as a tight formation.

Evidence submitted by Texas supports the assertion that the Vicksburg Formation in the Portilla (9000') Field meets the guidelines contained in § 271.703(c)(2). The Commission adopts the Texas recommendation.

This amendment shall become effective June 20, 1983.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

(Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432; Administrative Procedure Act, 5 U.S.C. 553).

In consideration of the foregoing, Part 271 of Subchapter H, Chapter I, *Code of Federal Regulations*, is amended as set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 271—[AMENDED]

Section 271.703 is amended by adding subparagraph (d) (128) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.*

* * * * *

(128) *Vicksburg Formation in the Portilla (9000') Field in Texas.* RM79–76 (Texas—29).

(i) *Delineation of formation.* The Vicksburg Formation in the Portilla (9000') Field is located in the northern portion of San Patricio County, Texas, Railroad Commission District 4, approximately six miles northeast of Sinton, Texas, and underlies 15,000 acres of land bounded by the Chiltipin Creek to the south, U.S. Highway 77 to the west, and the Aransas River to the north. The eastern boundary is a line extending from the Chiltipin Creek on the south to the Aransas River on the north and approximately bisecting the

[1] Comment and requests for a public hearing were invited and none were received by the Commission in this docket.

following surveys: Isaac Clover A–89, N.J. Devenny A–105, and Ralph Ellis Hrs. A–115.

(ii) *Depth.* The depth to the top of the Vicksburg Formation in the Portilla (9000') Field varies between 8,600 feet and 9,000 feet and the formation extends to depths in excess of 11,000 feet.

[FR Doc. 83–13883 Filed 5–23–83; 8:45 am]
BILLING CODE 6717–01–M

18 CFR Part 271

[Docket No. RM79–76 (Colorado—17)]

High-Cost Gas Produced from Tight Formations; Correction

Issued May 5, 1983.

AGENCY: Federal Energy Regulatory Commission DOE.

ACTION: Final rule; Correction.

SUMMARY: This document corrects a final rule that concerned high-cost gas produced from tight formations, Docket No. RM 79–76 (Colorado—17). The final rule appeared in the **Federal Register** on January 29, 1982 (47 FR 4248), and contained an incorrect depth description.

FOR FURTHER INFORMATION CONTACT: Steven Ross, Office of General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, D.C. 20426.

The following restates the depth description in FR Doc. 82–2362, appearing on page 4248. On page 4248, § 271.703(d)(64)(ii) should read as follows:

* * * * *

(ii) *Depth.* The Mesaverde Formation is defined as that formation encountered between the base of the Wasatch Formation (Tertiary) and the top of the Mancos shale. The average depth to the top of the Mesaverde Formation is 4,475 feet.

* * * * *

Kenneth F. Plumb,
Secretary.

[FR Doc. 83–13891 Filed 5–23–83; 8:45 am]
BILLING CODE 6717–01–M

18 CFR Part 271

[Docket No. RM79–76–120 (Oklahoma—2)]

High-Cost Gas Produced from Tight Formation Oklahoma; Final Rule

May 5, 1983.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final Rule; correction.

SUMMARY: This document corrects a final rule that concerned high-cost gas produced from tight formations, Docket No. RM79–76–120 (Oklahoma—2). The final rule appeared in the **Federal Register** on February 1, 1983 (48 FR 4461), and designated an incorrect paragraph number under § 271.703(d) of the Commission's regulations (18 CFR 271.703(d)).

FOR FURTHER INFORMATION CONTACT: Jane M. Oliver, Office of General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357–8316.

The following restates, and corrects the paragraph number in FR Doc. 83–2638, appearing on page 4462. On page 4462, the paragraph allocated for the designation of the "Cleveland Sand of the Kansas City Group" in Oklahoma as a tight formation should read as follows:

PART 271—[AMENDED]

Section 271.703 is amended by adding paragraph (d)(116) to read as follows:

§ 271.703 tight formations.

* * * * *

(d) *Designated Tight formations.*

* * * * *

(116) *"Cleveland Sand" of the "Kansas City Group" in Oklahoma.* RM79–76–120 (Oklahoma—2).

* * * * *

Kenneth F. Plumb,
Secretary.

[FR Doc. 83–13891 Filed 5–23–83; 8:45 am]
BILLING CODE 6717–01–M

18 CFR Part 271

[Docket No. RM79–76 (Texas—11 Addition); Order No. 208]

High-Cost Gas Produced From Tight Formations; Correction

Issued: February 22, 1982

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; correction.

SUMMARY: This document corrects the subparagraph number assigned to the designated tight formation, the Wilcox Formation in Texas, Docket No. RM79–76 (Texas—11) and (Texas—11 Addition) as it was issued by the Commission in Order No. 208 and appeared in the **Federal Register** on February 12, 1982 at 47 FR 6425.

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, Office of General Counsel, 825 N. Capitol Street, N.E., Washington, D.C. 20426, (202) 357–8511.

SUPPLEMENTARY INFORMATION: A correction is made in FR Doc. No. 82–3973, as it appears in the center column of page 6425 in the issue of February 12, 1982, so that in the revision of § 271.703, the reference is to paragraph (d)(63) instead of (d)(58), as it appears both in the sentence announcing the revision of the regulation and in the regulation itself appearing in that column.

Kenneth F. Plumb,
Secretary.

[FR Doc. 83–13829 Filed 5–23–83; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Regulations No. 16]

Supplemental Security Income for the Aged, Blind, and Disabled; Subpart K—Income

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: These regulations implement section 101(a)(2)(B) of Pub. L. 96–222 and section 202 of Pub. L. 96–265 which amend section 1612(a)(1) of the Social Security Act. The regulations provide that certain payments received due to the earned income tax credit provisions of section 43 of the Internal Revenue Code will be included in the definition of earned income. These regulations provide further that payment for services performed in a sheltered workshop or work activities center also constitutes earned income.

EFFECTIVE DATE: These regulations are effective May 24, 1983. The statutes which these rules implement establish that all sheltered workshop payments are to be treated as earned income beginning October 1, 1980, and earned income tax credit payments are to be treated as earned income beginning January 1, 1980.

FOR FURTHER INFORMATION CONTACT: Rita Hauth, Legal Assistant, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 594–7112.

SUPPLEMENTARY INFORMATION: We are revising our recodified regulations on income under the Supplemental Security Income program, Part 416 of the Code of Federal Regulations. The recodified regulations, Subpart K of Part 416, were published October 3, 1980 (45 FR 65541).

The notice of proposed rulemaking (NPRM) which proposed amending Subpart K to include the rules described in these final regulations was published January 19, 1981 (46 FR 4949). Only one comment has been received since publication of the NPRM. A State Department of Public Welfare praised the clarity and simplicity of the rules.

These regulations are necessary because of legislation. The effect of the legislation is significant because the amount of income individuals have is a factor in determining eligibility for SSI and the amount of benefits payable. The law and regulations classify income as either earned or unearned income and provide greater exclusions from earned income than from unearned income. Thus, a beneficiary who receives a given amount of earned income can receive a higher benefit than another who receives a like amount of unearned income.

Sections 416.1110 and 416.1111 of the regulations are amended to include two changes in the definition of earned income because of the enactment of Pub. L. 96–222 and Pub. L. 96–265. The amended § 416.1110 describes the new types of earned income and § 416.1111 tells how we count that income to determine the amount of benefits payable.

Pub. L. 96–222, section 101(a)(2)(B), added a new type of earned income for SSI purposes—payments received due to the earned income credit provisions of section 43 of the Internal Revenue Code of 1954 as Federal income tax refunds or as advance payments of these credits made by employers under section 3507 of the same code. These payments are earned income as of January 1, 1980. The retroactive effective date of this law (Pub. L. 96–222 was enacted April 1, 1980) fills the gap that occurred because section 105(f) of the prior statute, Pub. L. 95–600, excluded these payments from income for SSI purposes only until December 31, 1979. If the new statute had not been enacted, SSA would have counted the earned income credit payments as unearned income after the exclusions expired. Individuals who received payments of earned income tax credits in 1980 or later would have received lower SSI benefits since unearned income is subject to lesser exclusions than earned income.

Earned income tax credits are available to people who meet certain conditions of family composition and amount of income. The credit payments can be received in a lump sum subsequent to the filing of an income tax return as an addition to any regular income tax refund due the individual. As an alternative, they may be advanced to individuals by employers over a period of employment during the tax year under procedures established by the Internal Revenue Service. If the advance payments turn out to be incorrect because the employer advanced more than was due, SSA adjusts benefits to make up for the resulting SSI underpayment at the time the correct amount is established. The new statute states that the adjustment will be made in benefits payable to the individual. SSA will carry out this provision under the rules in Subpart E of the Regulations (20 CFR, Part 416). These rules provide that an SSI underpayment will be made to the underpaid individual or, if the individual is deceased, to his or her eligible spouse.

Pub. L. 96–265, section 202, states that beginning October 1, 1980, payment for services performed in a sheltered workshop or work activities center constitutes earned income. Since all payments for these services are not earned income, there is no need to distinguish between sheltered workshops or work activities centers and other employers. Prior to Pub. L. 96–265, these payments were either earned income or unearned income depending on whether the individual's effort constituted employment or therapy. Thus, if two beneficiaries received payments in the same workshop, one may have been receiving earned income as an employee and the other unearned income because he or she was in a rehabilitative training program. The second beneficiary received a lower SSI benefit because unearned income is subject to fewer exclusions. Beneficiaries and agencies that serve the handicapped found the different treatment hard to understand and considered it unfair. SSA was obliged to develop cases to determine whether the income received in a sheltered workshop or work activities center was earned or unearned. The new law and regulations advantage beneficiaries as well as end these administrative problems.

We have made minor editorial changes in the regulations as they were published with the Notice of Proposed Rulemaking and have deleted the effective dates that were included in § 416.1110. The effective dates have been deleted because they had only temporary value.

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. SSA estimates that the provision of Pub. L. 96–222 that provides that earned income tax credit payments are earned income will result in $4 million in program savings each year and administrative costs will be negligible. SSA estimates that the provision of Pub. L. 96–265 that provides that sheltered workshop payments are earned income will come to $2 million per year in program costs and will create no additional administrative costs. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act of 1980—These regulations impose no additional reporting and recordkeeping requirement requiring OMB clearance. SSA has clearance for form SSA–8150 (OMB No. 0960–0128) on which beneficiaries are to report income.

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 primarily affect individuals with some impact on States. 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, Social Security Administration, Supplemental Security Income (SSI).

Dated: January 19, 1983.

John A. Svahn,

Commissioner of Social Security.

Approved: April 26, 1983.

Margaret M. Heckler,

Secretary of Health and Human Services.

Part 416 of Title 20 of the Code of Federal Regulations is amended as follows:

PART 416—[AMENDED]

1. The authority citation for Subpart K of Part 416 is revised to read as follows:

Authority: Secs. 1102, 1601, 1602, 1611, 1612, 1613, 1614 and 1631 of the Social Security Act as amended; Sec. 211 of Pub. L. 93–66; 49 Stat. 647, as amended, 86 Stat. 1465, 1466, 1468, 1470, 1471, 1473, 1475, 87 Stat. 154; 42 U.S.C. 1302, 1381, 1381a, 1382, 1382a, 1382b, 1383c and 1383. Sec. 202 of Pub. L. 96–265, 94 Stat. 449; 42 U.S.C. 1382c.

2. Section 416.1110 is amended by revising the material preceding paragraph (a) and by adding new paragraphs (c) and (d) to read as follows:

§ 416.1110 What is earned income.

Earned income may be in cash or in kind and consists of the following types of payments:

* * * * *

(c) *Refunds of Federal income taxes and advance payments by employers made in accordance with the earned income credit provisions of the Internal Revenue Code.* Refunds on account of earned income credits are payments made to you under the provisions of section 43 of the Internal Revenue Code of 1954, as amended. These "refunds" may be greater than taxes you have paid. You may receive earned income tax credit payments along with any other Federal income tax refund you receive because of overpayment of your income tax. (Federal income tax refunds made on the basis of taxes you have already paid are not income to you as stated in § 416.1103(d).) Advance payments of earned income tax credits are made by your employer under the provisions of section 3507 of the same code. You can receive earned income tax credit payments only if you meet certain requirements of family composition and income limits.

(d) *Payments for services performed in a sheltered workshop or work activities center.* Payments for services performed in a sheltered workshop or work activities center are what you receive for participating in a program designed to help you become self-supporting.

3. Section 416.1111 is being revised by redesignating paragraph (c) as paragraph (e) and adding new paragraphs (c) and (d) to read as follows:

§ 416.1111 How we count earned income.

* * * * *

(c) *Refunds of Federal income taxes and advance payments by employers made under the earned income credit provisions of the Internal Revenue Code.* We count payments advanced by your employer and refunds of Federal income taxes made under the earned income credit provisions of the Internal Revenue Code of 1954 in the quarters in which you receive them. You receive refunds in a single quarter if they are paid as a result of the filing of your income tax return and as an addition to the refund of taxes withheld by your employer. You receive payments advanced by your employer along with your wages spread over the period of your employment. If we do not pay you the correct amount of benefits (that is, we withheld too much from your benefits) because your employer has advanced you more than was actually due, SSA will make up the difference in benefits when the correct amount of your earned income credits is determined by the Internal Revenue Service (see § 416.542 for the rules on underpayments). If your employer advanced less than you were actually due we will count the additional amount in the quarter in which you receive it from Internal Revenue Service.

(d) *Payments for services in a sheltered workshop or activities center.* We count payments you receive for service performed in a sheltered workshop or work activities center when you receive them or when they are set aside for your use. We determine the amount of the payments for each calendar quarter.

* * * * *

[FR Doc. 83-13694 Filed 5-23-83; 8:45 am]

BILLING CODE 4190-11-M

Food and Drug Administration

21 CFR Part 81

[Docket No. 76N-0366]

Provisional Listing of D&C Yellow No. 10 for Use in Drugs and Cosmetics; Postponement of Closing Date

Correction

In FR Doc. 83-11284 beginning on page 19366 in the issue of Friday, April 29, 1983, make the following correction:

On page 19367, first column, second line, "Title XI" should have read "Title II".

BILLING CODE 1505-01-M

21 CFR Part 172

[Docket No. 81F-0031]

Food Additives Permitted for Direct Addition to Food for Human Consumption; Anoxomer; Correction

AGENCY: Food and Drug Administration.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting the docket number in the heading of the final rule that amended the food additive regulation providing for the safe use of anoxomer, an antioxidant, in food for human consumption.

FOR FURTHER INFORMATION CONTACT: Agnes Black, Federal Register Writer (HFC-11), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2994.

SUPPLEMENTARY INFORMATION: In FR Doc. 83-11192, appearing at page 18798 in the **Federal Register** of Tuesday, April 26, 1983, the second line in the heading is changed from "[Docket No. 80F-0031]" to "[Docket No. 81F-0031]."

Dated: May 17, 1983.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 83-13711 Filed 5-23-83; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 178

[Docket No. 81F-0210]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

Correction

In FR Doc. 83-3973 beginning on page 6704 in the issue of Tuesday, February 15, 1983, make the following correction:

On page 6705, first column, § 178.1010, eighth line of paragraph (b)(24), "alyl" should have read "alkyl".

BILLING CODE 1505-01-M

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs Not Subject to Certification; Trimethoprim and Sulfadiazine Sterile Suspension

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Syntex Agribusiness, Inc., providing for the safe and effective use of a combination antibacterial drug for treating dogs.

EFFECTIVE DATE: May 24, 1983.

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

SUPPLEMENTARY INFORMATION: Syntex Agribusiness, Inc., 3401 Hillview Ave., Palo Alto, CA 94304, filed NADA 132-486 providing for subcutaneous use of Di-Trim 24% Injection (a sterile suspension containing 40 milligrams (mg) of trimethoprim and 200 mg of sulfadiazine per milliliter) for the treatment of bacterial infections of dogs. The product is indicated where control of bacterial infections is required during treatment of acute urinary tract infections, acute bacterial complications of distemper, acute respiratory tract infections, acute alimentary tract infections, wound infections and

abscesses, and acute septicemia due to *Streptococcus zooepidemicus*. The NADA is approved and the regulations are amended to reflect the approval.

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

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

List of Subjects in 21 CFR Part 522

Animal drugs, Injectable.

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

§ 522.2610 [Amended]

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), § 522.2610 *Trimethoprim and sulfadiazine sterile suspension* is amended in paragraph (a)(2) by adding before the number "017220" the phrase "000033 and".

Effective date: May 24, 1983.

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

Dated: May 13, 1983.

Lester M. Crawford,

Director, Bureau of Veterinary Medicine.

[FR Doc. 83-13862 Filed 5-23-83; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR PART 610

[Docket No. 81N-0116]

Hepatitis Requirements; Amendment of Restrictions on Use as Injectable Biological Products

AGENCY: Food and Drug Administration.

ACTION: Final Rule.

SUMMARY: The Food and Drug Administration (FDA) is amending restrictions on the collection and use of blood, plasma, or serum that has been shown to be reactive for hepatitis B surface antigen (HBsAg). Current regulations do not permit use of reactive blood, plasma, or serum in the manufacture of injectable biological products. The agency is amending the regulations to permit the collection and use of blood, plasma, or serum reactive for HBsAg for further manufacture into hepatitis B vaccine.

EFFECTIVE DATE: May 24, 1983.

FOR FURTHER INFORMATION CONTACT: Joseph Wilczek, National Center for Drugs and Biologics (HFN–813), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20205, 301–443–1306.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 7, 1981 (46 FR 35121), FDA proposed to amend §§ 610.40 and 610.41 of the biologics regulations (21 CFR 610.40 and 610.41) to permit the collection and use of blood, plasma, or serum reactive for HBsAg for further manufacture into hepatitis B vaccine. Data submitted to the agency demonstrate that blood, plasma, or serum that is reactive for HBsAg can be used effectively to produce an inactivated vaccine against hepatitis B. In November 1981, the Commissioner of Food and Drugs announced the approval of the first licensed hepatitis B vaccine to combat hepatitis B infections, a major public health problem in the United States.

Interested persons were given until September 8, 1981, to submit written comments regarding this proposal. Five letters, some containing a number of comments, were received on the proposal, and one letter fully endorsed the proposal. A summary of the comments and the agency's responses are as follows:

1. Two comments objected to the continuation of the requirements contained in § 610.40(d) (1)(v) and (2)(iv) that the Office of Biologics be notified in writing of each shipment of hepatitis reactive source blood, plasma, or serum.

The agency advises that any amendment of the shipment reporting requirements is beyond the scope of this final rulemaking. However, the agency believes that the comment has merit and is exploring the possibility of deleting hepatitis shipment reporting requirements. Accordingly, FDA is rejecting the comment at this time.

2. One comment stated that the proposed regulations appeared to be at variance with an agency guideline, issued in April 1981 and revised in August 1981, for plasmapheresing HBsAg reactive donors. The guideline provides that hepatitis reactive source blood, plasma, or serum, can be labeled "Collected from a donor known to be reactive for hepatitis B surface antigen. This plasma is presumed to be infectious". This cautionary labeling statement permits a source supplier to assume that source material collected from a known positive donor is reactive for hepatitis B without first having to perform confirmatory hepatitis testing. In the proposed rule, however, FDA proposed to require that labeling on such source material or final product state that the source blood, plasma, or serum, was reactive when tested for HBsAg and may transmit viral hepatitis. The proposed cautionary labeling statement indicates that confirmatory hepatitis testing was performed on source material and it was found to be reactive.

FDA agrees with the comment's observation regarding a conflict between the guideline and the proposal. FDA believes that the labeling alternative set forth in the April 1981 guideline provides adequate notice to handlers and users of the plasma that the plasma may be infectious. Therefore, in the final rule, the agency is allowing use of an alternative cautionary labeling statement equivalent to that found in the guideline. The agency is also amending § 610.40(d) (1)(v) and (2)(iv) of the biologics regulations to make clear that, if properly labeled, shipments of such plasma may be made without prior testing for HBsAg. Section 610.40 of the final rule has been amended in paragraph (d) (1)(v) and (2)(iv) by adding the sentence "Such shipments shall not be subject to the requirements of paragraph (b)(3) of this section".

3. One comment stated that the current regulations permit donors with past histories of being reactive for HBsAg and currently with anti-HBs antibodies to serve as a source of hepatitis B immune globulin, an injectable product. The comment noted that the proposed rule would permit use of these donors only for the preparation of in vitro diagnostic products and not for the preparation of hepatitis B immune globulin.

The agency acknowledges that it inadvertently proposed to change the requirements of the regulation as described by the comment. Therefore, the agency is amending § 610.41 of the final rule to permit donors with anti-HBs antibodies to serve as a source for hepatitis B immune globulin.

4. One comment stated that proposed § 610.41 does not clearly allow persons with a prior history of clinical viral

hepatitis and persisting HBsAg infection to serve as a source of HBsAg for hepatitis B vaccine production or preparation of diagnostic products.

The agency intended that the proposed rule permit collection of blood or plasma from such donors provided that adequate donor protection and personnel safety procedures are followed, e.g., the agency guideline of August 1981 for plasmapheresing HBsAg reactive donors. For clarification, in the final rule, the agency is amending § 610.41 to state "A person known to have previously tested positive for hepatitis B surface antigen, testing positive, or both, * * *" rather than "A person testing positive or known to have previously tested positive * * *."

5. One comment stated that the proposed rule does not provide for the use of large quantities of blood, plasma, or serum reactive for HBsAg for research and development of other new vaccines or similar products either in the United States or in other countries. The comment suggested that hepatitis B reactive source material should be available for interstate and international shipments for the manufacture of unlicensed vaccines for preclinical and clinical trials.

The agency agrees with this comment. Accordingly, in the final rule, the agency is removing the word "licensed" from the phrase "licensed hepatitis B vaccine" in proposed §§ 610.40 (d)(1) and 610.41. This revision will permit shipment of hepatitis B source material to manufacturers who are not yet licensed or are awaiting licensure, and who intend to manufacture biological products derived from hepatitis B reactive source material.

6. One comment asked whether recipients of hepatitis B vaccine may serve as a source of blood donations for hepatitis B immune globulin within 6 months of vaccination. Current Source Plasma (Human) regulations in § 640.63(c)(13) permit collection of plasma containing antibody to hepatitis B antigen within such a time period.

The agency advises that prospective blood donors who have been immunized with the hepatitis B vaccine potentially could become blood donors for hepatitis B immune globulin within 6 months of vaccination. The recipients of an inactivated hepatitis B vaccine are not precluded from donating blood as a consequence of the vaccination procedure.

Accordingly, FDA is amending restrictions on the collection and use of blood, plasma, or serum that has been shown or is presumed to be reactive to HBsAg to permit the use of such products in the manufacture of hepatitis B vaccine. Further, FDA is making minor clarifying changes in the regulation.

The agency has determined pursuant to 21 CFR 25.24(d)(10) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Paperwork Reduction Act of 1980

Section 610.40 (d) (1) and (2) of this final rule contains information collection requirements that were submitted for review and approval to the Office of Management and Budget (OMB), as required by section 3507 of the Paperwork Reduction Act of 1980. The requirements were approved and assigned OMB control number 0910–0136. In this final rule, FDA is continuing these approved information collection requirements, but is providing more flexible requirements for certain blood products that are reactive for hepatitis B surface antigen to allow use of such products for further manufacture into hepatitis B vaccine.

The agency has examined the economic impact of this final rule in accordance with Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96–354). The agency concludes that this rule will not result in any increase in the cost of biological products being regulated, and that it may serve to decrease the production cost of hepatitis B vaccine by increasing the availability of source material for its manufacture. There were no public comments on the proposed rule in response to the initial regulatory flexibility analysis. The agency believes that the final rule will not have a significant impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act. The final rule removes restrictions placed on the collection and use of blood, plasma, or serum reactive for HBsAg so that a potential life-saving vaccine may be manufactured. The agency certifies that a final regulatory flexibility analysis is not warranted.

List of Subjects in 21 CFR Part 610

Biologics, Labeling.

Therefore, under the Public Health Service Act (sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 610 is amended as follows:

PART 610—GENERAL BIOLOGICAL PRODUCTS STANDARDS

1. By revising paragraph (d) and adding paragraph (f) of § 610.40 to read as follows:

§ 610.40 Test for hepatitis B surface antigen.

* * * * *

(d) *Restrictions on use.* Blood, plasma, or serum that is reactive when tested for hepatitis B surface antigen or that was collected from a donor known to be reactive for hepatitis B surface antigen shall not be used in manufacturing biological products except as provided in paragraph (d) (1) and (2) of this section.

(1) *Injectable biological products and licensed in vitro diagnostic biological products.* Blood, plasma, or serum that is reactive when tested for hepatitis B surface antigen or that was collected from a donor known to be reactive for hepatitis B surface antigen may be used in manufacturing hepatitis B vaccine and licensed in vitro diagnostic biological products if all of the following conditions are met:

(i) The final product cannot be prepared from blood, plasma, or serum that is nonreactive when tested for hepatitis B surface antigen, due either to the nature or to the scarcity of the final product.

(ii) The label of the source blood, plasma, or serum conspicuously states either that it is reactive when tested for hepatitis B surface antigen and it may transmit viral hepatitis; or that the source blood, plasma, or serum was collected from a donor known to be reactive for hepatitis B surface antigen and it may transmit viral hepatitis, although confirmatory hepatitis testing has not been done.

(iii) The package label of the licensed in vitro diagnostic biological product prepared from such blood, plasma, or serum states conspicuously that either the product was prepared from source material that was reactive when tested for hepatitis B surface antigen and it may transmit viral hepatitis; or that the source material was collected from a donor known to be reactive for hepatitis B surface antigen and it may transmit viral hepatitis, although confirmatory hepatitis testing has not been done.

(iv) The package label of the licensed injectable biological product prepared from such blood, plasma, or serum states that the product has been inactivated.

(v) The Director, Office of Biologics (HFN–800), National Center for Drugs and Biologics, Food and Drug

Administration, 8800 Rockville Pike, Bethesda MD 20205, is notified in writing at the time of the shipment, or in the case of repetitive shipments, or April 1 and October 1 of each year, of each shipment of source blood, plasma, or serum for manufacture into hepatitis B vaccine or into a licensed in vitro diagnostic biological product. Such shipments shall not be subject to the requirements of paragraph (b)(3) of this section. Each notification shall identify the kind and amount of source material shipped, the name and address of the consignee, the date of shipment, and the manner in which the source material is labeled.

(2) *Unlicensed in vitro diagnostic biological products.* Blood, plasma, or serum that is reactive when tested for hepatitis B surface antigen or that was collected from a donor known to be reactive for hepatitis B surface antigen may be used in manufacturing unlicensed in vitro diagnostic biological products including clinical chemistry control reagents if all of the following conditions are met:

(i) The final product cannot be prepared from blood, plasma, or serum that is nonreactive when tested for hepatitis B surface antigen, due either to the nature or to the scarcity of the final product.

(ii) The label of the source blood, plasma, or serum states conspicuously that either it is reactive when tested for hepatitis B surface antigen and it may transmit viral hepatitis; or that the source blood, plasma, or serum was collected from a donor known to be reactive for hepatitis B surface antigen and it may transmit viral hepatitis, although confirmatory hepatitis testing has not been done.

(iii) The manufacturer of the source blood, plasma, or serum obtains written assurance from the manufacturer(s) of the final unlicensed product that package labels of all unlicensed products will conspicuously state, as required by § 809.10(a)(4) of this chapter, that the product was prepared from blood, plasma, or serum that was reactive when tested for hepatitis B surface antigen and it may transmit viral hepatitis; or that the source material was collected from a donor known to be reactive for hepatitis B surface antigen and it may transmit viral hepatitis, although confirmatory hepatitis testing has not been done.

(iv) At the time of shipment, the Director, Office of Biologics (HFN–800), National Center for Drugs and Biologics, Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20205, is notified in writing of each shipment of source blood, plasma, or serum signifying the kind and the amount of source material shipped, the name and address of the consignee, the date of shipment, and the manner in which such source material was labeled. Such shipments shall not be subject to the requirements of paragraph (b)(3) of this section.

* * * * *

(f) The information collection requirements in paragraph (d) of this section were approved by the Office of Management and Budget and assigned OMB control number 0910–0136.

2. By revising § 610.41 to read as follows:

§ 610.41 History of hepatitis B surface antigen.

A person known to have previously tested positive for hepatitis B surface antigen, testing positive, or both, may not serve as a donor of human blood, plasma, or serum, except that under § 640.75 of this chapter, such a donor may serve as a source of hepatitis B surface antigen for the manufacture of hepatitis B vaccine or the preparation of a diagnostic product for laboratory tests, or a person known to have previously tested positive for hepatitis B surface antigen may serve as a source of antibody to hepatitis B surface antigen for the preparation of a biological product or a diagnostic product for laboratory tests.

Effective date. This regulation is effective May 24, 1983.

(Sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262))

Dated: May 9, 1983.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 83-13863 Filed 5-23-83; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Ch. I

[FHWA Docket No. 83-4, Notice No. 7]

Truck Size Policy Statement; Cancellation of Certain Interim Truck Route Designations in the State of Connecticut

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Modification of policy statement.

SUMMARY: On April 5, 1983 (48 FR 14844), the FHWA made an interim designation of certain Federal-aid primary system highways in each State that must be made available to certain size trucks for the period from April 6 through October 3, 1983. By this notice the FHWA is canceling the interim designation of those primary system highways in the State of Connecticut that had not been designated by that State. The agency will address the interim designation for qualifying primary system highways in Connecticut in a separate proceeding, which will be instituted in the near future.

EFFECTIVE DATE: The modifications are effective May 24, 1983.

FOR FURTHER INFORMATION CONTACT: Mr. Sheldon G. Strickland, Office of Highway Planning, (202) 426–0153, or Mr. David C. Oliver, Office of the Chief Counsel, (202) 426–0825, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are 7:30 a.m. to 4:00 p.m. ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: On April 5, 1983 (48 FR 14844), the FHWA published a notice of policy statement that designated, on an interim basis, qualifying Federal-aid primary system (FAP) routes available to certain size vehicles pursuant to sections 411 and 416 of the Surface Transportation Assistance Act of 1982 (STAA) (Pub. L. 97–424, 96 Stat. 2097), as amended by Pub. L. 98–17. On the same date, the Governor of the State of Connecticut signed into law Connecticut Substitute Bill 6018 (SB 6018). SB 6018 purports to prohibit the operation of certain vehicles authorized by the STAA on public highways in Connecticut. The terms of the Connecticut statute directly conflict with the STAA.

The Federal Government expects to commence litigation against the State of Connecticut in order to enjoin those provisions of SB 6018 that directly conflict with Federal law. In order to clarify the issues in that litigation, FHWA is cancelling the interim designation of all FAP routes added by FHWA in the April 5 notice beyond those previously proposed for designation by the State of Connecticut. The issue of an interim designation primary system in Connecticut will be addressed in a rulemaking proceeding that will be instituted in the near future. At that time, the State and other interested parties will be able to submit comments on FHWA proposals for interim designations.

We wish to emphasize that, pursuant to the clear language of the STAA, the entire Interstate System in Connecticut remains open to the trucks authorized by the STAA. In addition, so that the

public is aware of which highways will be open to these vehicles, we are setting out, in an Appendix to this notice, the FAP highways in Connecticut on which the trucks may operate.

Issued on May 20, 1983.

R. A. Barnhart,

Federal Highway Administrator.

Appendix—State Proposed Other Qualifying Highways Connecticut

Posted route No.	From	To
CT-2	Columbus Blvd. Hartford.	Jct. I-290 Norwich.
CT-8	I-95 Bridgeport	Jct. I-84 Waterbury.
CT-9	I-95 Old Saybrook	Jct. I-91 Cromwell.
CT-20	Jct. CT 401 (Bradley International Airport, Windsor Locks.	I-91 Windsor.
CT-52[1]	I-95 East Lyme	Massachusetts St. Line, Thompson.
CT-401	Jct. CT 20 Windsor Locks	Bradley International Airport Access Rd. Windsor Locks.

[1] CT 52 was approved as I-290 on April 18, 1983.

[FR Doc. 83-14013 Filed 5-23-83; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 888

[Docket No. R-83-1074]

Section 8—Fair Market Rents for New Construction and Substantial Rehabilitation—All Market Areas

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

ACTION: Notice of effective date.

SUMMARY: This document announces the effective date for the interim rule published in the **Federal Register** on April 15, 1983 (48 FR 16424) which amends the Section 8 Fair Market Rents applicable to New Construction and Substantial Rehabilitation for all market areas, in compliance with the requirements of Section 8(c)(1) of the U.S. Housing Act of 1937. The rule provided for a 30-day public comment period from the date of publication, and the effective date provision of the rule stated that, after the comment due date of May 16, 1983, a notice of the effective date of the rule would be published in the **Federal Register.**

On the basis of its consideration of the comments received during the public comment period, HUD has determined not to make any changes at this time in the Fair Market Rents published on April 15, 1983. Accordingly, all of the Fair Market Rents contained in Schedule A, as published in the **Federal Register** on April 15, 1983, will become effective as provided under "Effective Date", below.

However, HUD will continue carefully to evaluate all comments received, whether during or after expiration of the public comment period, to determine whether any further revision of the Fair Market Rent schedules should be made. If this evaluation indicates a need to make any further revision of the Fair Market Rent schedules for particular market areas, HUD will publish a revision of those schedules at a future date.

EFFECTIVE DATE: The effective date for the interim rule published April 15, 1983, at 48 FR 16424, is May 19, 1983. (For application of the Fair Market Rents in the interim rule in cases where the owner's application for Section 202/Section 8 assistance or owner's proposal for other Section 8 new construction or substantial rehabilitation assistance is accepted for processing by HUD (by FmHA in the case of assistance under Part 884; by the State Agency in the case of assistance under Part 883) prior to the effective date of this Rule, see Note 2 to Schedule A in the interim rule.)

FOR FURTHER INFORMATION CONTACT: Linda Cheatham, Director, Technical Support Division, Department of Housing and Urban Development, Room 6138, 451 Seventh Street, SW., Washington, D.C. 20410. Telephone: (202) 426-7113. This is not a toll-free number.

Dated: May 19, 1983.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 83-13880 Filed 5-23-83; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF JUSTICE

Parole Commission

Paroling, Recommitting, and Supervising Federal Prisoners

28 CFR Part 2

AGENCY: Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: To remove redundancy in its regulations the U.S. Parole Commission is editorially simplifying its rules.

DATE: June 6, 1983.

FOR FURTHER INFORMATION CONTACT: Toby Slawsky, Office of the General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, MD. 20815. Tel. (301) 492-5959.

SUPPLEMENTARY INFORMATION: The Parole Commission is simplifying its rules at 28 CFR 2.13(d), Initial Hearing: Procedure. The generic language of this provision is redundant with 28 CFR 2.18.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

PART 2—[AMENDED]

Accordingly, pursuant to the provisions of 18 U.S.C. 4203(a)(1) and 4206(a)(6), 28 CFR 2.13 is amended by revising paragraph (d) as follows:

§ 2.13 Initial hearing; procedure.

* * * * *

(d) In accordance with 18 U.S.C. 4206, the reasons for establishment of a release date shall include a guidelines evaluation statement containing the prisoner's offense severity rating and salient factor score (including the points credited on each item of such score) as described in § 2.20, as well as the specific factors and information relied upon for any decision outside the range indicated by the guidelines.

* * * * *

I certify that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Dated: May 5, 1983.

Benjamin F. Baer,

Chairman, Parole Commission.

[FR Doc. 83-13767 Filed 5-23-83; 8:45 am]

BILLING CODE 7035-01-M

28 CFR Part 2

Paroling, Recommitting, and Supervising Federal Prisoners

AGENCY: Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: Because of administrative costs the Commission is simplifying its current procedures concerning a prisoner's refusal to sign a parole certificate.

EFFECTIVE DATE: July 4, 1983.

FOR FURTHER INFORMATION CONTACT: Toby Slawsky, Office of the General Counsel, U.S. Parole Commission, 5550

Friendship Blvd., Chevy Chase, MD. 20815, Tel. (301) 492–5959.

SUPPLEMENTARY INFORMATION: The Commission is amending its rules at 28 CFR 2.40, Conditions of Release, by removing the requirement that a prisoner be given a special interview on the next docket when he refuses to sign a parole certificate. This change is intended to simplify Commission procedures and reduce costs. The Commission has found that the consequences of a prisoner's refusal to sign a parole certificate (i.e., waiver of parole) can be adequately explained to the prisoner by institutional staff and documented. A prisoner can, of course, reapply for parole at any time in accordance with 28 CFR 2.11.

List of Subjects in 28 CFR Part 2

Administrative practice and procedures, Prisoners, Probation and parole.

PART 2—[AMENDED]

Accordingly pursuant to 18 U.S.C. 4203(a)(1) and 4204(a)(6), 28 CFR 2.40 is amended by revising paragraph (h) as follows:

§ 2.40 Conditions of release.

* * * * *

(h) A prisoner who, having been granted a parole date, subsequently refuses to sign the parole certificate, or any other consent form necessary to fulfill the conditions of parole, shall be deemed to have withdrawn the application for parole as of the date of refusal to sign. To be again considered for parole, the prisoner must reapply for parole consideration. With respect to prisoners who are required to be released to supervision through good time reductions (pursuant to 18 U.S.C Sections 4161 and 4164), the conditions of parole set forth in this rule, and any other special conditions ordered by the Commission, shall be in full force and effect upon the established release date regardless of any refusal by the releasee to sign the parole certificate.

* * * * *

I certify that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Dated: May 5, 1983.

Benjamin F. Baer,

Chairman, Parole Commission.

[FR Doc. 83-13771 Filed 5-23-83; 8:45 am]

BILLING CODE 7035-01-M

Office of the Attorney General

28 CFR Part 45

[Order No. 1013-83]

Delegation of Authority With Respect to Review of Financial Disclosure Reports

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This rule amends Department of Justice Standards of Conduct regulations to provide for the Deputy Attorney General to review financial disclosure reports filed by the Associate Attorney General, the Solicitor General, and the Director of the Federal Bureau of Investigation. The Attorney General retains responsibility for reviewing financial disclosure reports filed by the Deputy Attorney General.

EFFECTIVE DATE: May 16, 1983.

FOR FURTHER INFORMATION CONTACT: Beth Nolan, Attorney-Adviser, Office of Legal Counsel, Department of Justice, Washington, D.C. 20530. Tel: (202) 633–3711.

SUPPLEMENTARY INFORMATION: This action is not a rule within the meaning of Executive Order No. 12291 or the Regulatory Flexibility Act, 6 U.S.C 601 *et seq.*

List of Subjects in 28 CFR Part 45

Conflicts of interests.

PART 45—[AMENDED]

Accordingly, by the authority vested in me by 28 U.S.C. 509 and 510; 5 U.S.C. 301; and the Ethics in Government Act of 1978, 92 Stat. 1824, § 45.735–27(d)(1) (ii) and (iii) of Title 28, Code of Federal Regulations, is revised to read as follows:

§ 45.735–27 Public financial disclosure requirements.

* * * * *

(d) * * *

(1) * * *

(ii) The Attorney General shall review reports filed by the Deputy Attorney General;

(iii) The Deputy Attorney General shall review reports filed by the Associate Attorney General, Solicitor General, Director of the Federal Bureau of Investigation, and the head of each division under his supervision;

* * * * *

Dated: May 16, 1983.

William French Smith,

Attorney General.

[FR Doc. 83-13908 Filed 5-23-83; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1912 and 1912a

Advisory Committees; Notice of Meetings, and Quorum Requirements

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

ACTION: Final rule.

SUMMARY: This document changes the notice requirements for OSHA advisory committee meetings from 7 to 15 days in order to conform to the applicable Federal law. In order to improve these regulations and to establish better organization and management in the use of the National Advisory Committee on Occupational Safety and Health (NACOSH) the quorum requirement is changed to be a simple majority.

EFFECTIVE DATE: May 24, 1983.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, Occupational Safety and Health Administration, Room N–3637, United States Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210. Telephone: (202) 523–8148.

SUPPLEMENTARY INFORMATION: In October 1973, OSHA regulations with regard to advisory committees were promulgated. 29 CFR Part 1912, entitled "Advisory Committees on Standards," was promulgated on October 11, 1973 (38 FR 28035); and Part 1912a, entitled "National Advisory Committee on Occupational Safety and Health," was promulgated on October 18, 1973 (38 FR 28934). This document amends Parts 1912 and 1912a with respect to the provisions concerning notices of meetings. Additionally, Part 1912a is amended with regard to the quorum requirements.

Notice of Meetings

Section 1912.27 currently requires that public notice of any advisory committee meeting be given "at least seven (7) days in advance of the meeting." Section 1912a.7 has a similar seven day notice requirement. Since this notice must be published in the **Federal Register** these minimum tme periods should conform to the Federal Register Act (FRA) (44 U.S.C. Chapter 15). Section 1508 of the FRA requires a minimum of 15 days notice under normal circumstances. OSHA has generally provided the 15 days' notice required by the FRA. In order to conform these OSHA regulations to applicable federal law and to OSHA's practice, this

amendment changes the seven day notice periods to 15 day notice periods.

Quorum requirements for NACOSH

Under current NACOSH regulations a quorum is a majority of the members of the committee, provided that a member representing management, labor, and the public are included in the majority (§ 1912a.6(a)). While the need for a majority of the members to constitute a quorum is common, the additional requirements are not. In the preamble to the **Federal Register** document adopting the NACOSH regulations, no reason was given for adopting such a quorum rule. Section 7(a) of the Act, which establishes NACOSH, sets forth the representational make-up of the committee but is silent with regard to a quorum. Similarly, section 5(b)(2) of the Federal Advisory Committee Act (FACA) requires a fair balance in the representational composition of advisory committees, but does not address any special procedures or requirements related to a quorum.

This quorum requirement, for NACOSH meetings, has created a difficult and unnecessary scheduling burden on OSHA. Since there are only two members each of the management and the labor groups in NACOSH, and at least one of each group must be in attendance to satisfy current quorum requirements, it is often very difficult to accommodate members' schedules and to set dates for NACOSH meetings. And once meetings are set, unforeseen changes in plans of even one member (if he is the only labor or management representative who was to attend) can defeat the quorum. This in turn creates problems for other committee members and the public.

Additionally, these issues were discussed at length at the December 2, 1982, meeting of NACOSH. By a vote of seven to two with one abstention, the committee after deliberation recommended amending the quorum requirement to be a simple majority (Transcript at 89). In light of the above, OSHA finds that the quorum requirements of § 1912a.6(a) for NACOSH present an unnecessary burden of scheduling meetings that could work to impede the orderly functioning of the committee and could prevent it from performing its important statutory function. A simple majority quorum will promote the orderly functioning of the Committee by reducing scheduling burdens placed on OSHA by the current representational requirements of the quorum. Nothing in this amendment will prevent any member's or group's full participation in Committee meetings. Achieving a balanced point of view in Committee recommendations is assured by the representational composition of the Committee and the protections of § 1912a.5 which assures that all views—majority, dissenting, and individual—will be included in any report by NACOSH, and assures that any committee member may submit his own views directly to the Secretary.

A similar quorum requirement for the Advisory Committee for Construction Safety and Health (the only existing § 7(b) committee) has not created scheduling difficulties since each representational group has five members on the committee. Hence no changes in these quorum regulations are warranted at this time.

OSHA, in accordance with Executive Order 12291 (46 CFR 13193), hereby states that this rulemaking does not constitute a "major rule" since its effect will not meet any of the definitional elements in section 1(b) of the Executive Order.

Notice of proposed rulemaking, public rulemaking procedures, and delay in effective date are not required for these amendments to Parts 1912 and 1912a since they relate solely to agency management and procedure.

Authority

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

List of Subjects in 29 CFR Parts 1912 and 1912a

Advisory committees, Occupational safety and health.

Accordingly, pursuant to sections 7 and 8(g) of the Occupational Safety and Health Act of 1970 (84 Stat. 1597, 1599, 29 U.S.C. 656, 657), 5 U.S.C. 553, and App. I, and Secretary of Labor's Order No. 8–76 (41 FR 25059), Parts 1912 and 1912a of Title 29, Code of Federal Regulations, are hereby amended as set forth below.

Signed at Washington, D.C. this 19 day of May, 1983.

Thorne G. Auchter,

Assistant Secretary of Labor.

PARTS 1912 AND 1912a—[AMENDED]

Parts 1912 and 1912a of Title 29 CFR are amended by revising §§ 1912.27, 1912a.6(a) and 1912a.7 to read as follows:

§ 1912.27 Notice of meetings.

Public notice of any meeting of an advisory committee shall be given by the officer or employee calling the meeting at least fifteen (15) days in advance of the meeting; except when it is impractical to do so, or in an emergency situation, in which event shorter advance notice may be given to the extent that any advance notice is practical. It shall, however, be a general policy to publish notices as far in advance of the meeting as circumstances will permit. Such notice shall be given by publication in the **Federal Register.** In addition, notice may be given by such other means as press releases.

§ 1912a.6 Quorum.

(a) A majority of the members of the Committee shall constitute a quorum.

* * * * *

§ 1912a.7 Notice of meetings.

Public notice of any meeting of the Committee shall be given by the person calling the meeting in accordance with § 1912a.4 or at his direction at least fifteen (15) days in advance of the meeting; except when it is impractical to do so, or in an emergency situation, in which event shorter advance notice may be given. Such notice shall be given by publication in the **Federal Register** as much in advance of the meeting as circumstances will permit. In addition, notice may be given by such other means as press releases.

[FR Doc. 83-13935 Filed 5-23-83; 8:45 am]

BILLING CODE 4510-26-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Removal of Certain Conditions on the Approval of the Ohio Permanent Regulatory Program and Approval of Amendments to the Regulatory Program and Abandoned Mine Land Reclamation Plan Under the Surface Mining Control and Reclamation Act of 1977

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

ACTION: Final rule.

SUMMARY: This document amends 30 CFR Part 935 by: 1) removing certain conditions and modifying the deadline for Ohio to meet other conditions on the approval of the Ohio program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA); 2) approving additional amendments to the Ohio

regulatory program and abandoned mine land reclamation (AML) plan; 3) adding two new conditions of approval concerning appeal rights and bond release requirements. Ohio received conditional approval of its permanent regulatory program and approval of its AML plan effective August 16, 1982.

EFFECTIVE DATE: The actions in this notice are effective May 24, 1983.

FOR FURTHER INFORMATION CONTACT: Ms. Nina Rose Hatfield, Field Office Director, Columbus Field Office, Office of Surface Mining, Room 202, 2242 South Hamilton Road, Columbus, Ohio 43227; Telephone: (614) 866-0578.

SUPPLEMENTARY INFORMATION:

I. Background

The Ohio program was approved effective August 16, 1982, by notice published in the August 10, 1982, **Federal Register** (47 FR 34688). The approval was conditioned on the correction of 28 minor deficiencies contained in 11 conditions—(a), (b), (c), (d), (e), (f)(1)—(f)(10), (g), (h)(1)—(h)(3), (i)(1)—(i)(3), (j), and (k)(1)—(k)(5). In accepting the Secretary's conditional approval, Ohio agreed to correct deficiencies (a), (b), (c), (h)(1), and (k)(1) by August 8, 1983, deficiency (e) by September 16, 1982, and the remaining deficiencies by February 8, 1983. Information pertinent to the general background, revisions, modifications, and amendments to the Ohio program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program can be found in the August 10, 1982 **Federal Register**.

Ohio did submit to OSM on September 16, 1982, a revised program regulation satisfying condition (e). The Secretary approved the revised regulation and removed condition (e) on January 17, 1983 (48 FR 1957).

On February 1, 1983, Ohio requested an extension of the deadline for the State to meet conditions (k)(3), (k)(4), and (k)(5). These conditions were due February 8, 1983. On February 28, 1983, OSM published notice that it was considering modifying the deadline for Ohio to meet those parts of condition (k), and requesting public comment. The comment period closed March 15, 1983 and no comments were received. Accordingly, the Secretary is extending the deadline by which Ohio must meet conditions (k)(3), (k)(4), and (k)(5) to August 8, 1983.

II. Submission of Amendments

On January 6, 1983, Ohio submitted materials to OSM intended to: satisfy conditions (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k)(1) and (k)(2); amend the approved State program; and amend the approved Abandoned Mine Land Reclamation Plan. The materials submitted included two legislative bills (Amended Substitute Senate Bills 240 and 323) to amend the Ohio Revised Code (ORC); numerous regulation changes to the Ohio Administrative Code (OAC), and two policy statements from the Division of Reclamation.

On January 21, 1983, OSM published notice in the **Federal Register** announcing receipt of these provisions and inviting public comments (48 FR 2800).

On May 18, 1983, the Administrator of the Environmental Protection Agency transmitted written concurrence on the amendments to the Ohio program which were submitted January 6, 1983.

III. Secretary's Findings

Conditions of Approval

1. *Condition (a).* Condition (a) required the State to enact legislation amending the Ohio Revised Code (ORC) section 1513.01(G)(2) to eliminate the phrase "but not to include public roadways." As discussed in Finding 1.2 of the Secretary's approval (47 FR 34688), the State's definition of "coal mining operations" included this phrase, making it inconsistent with section 701(28)(b) of SMCRA.

The proposed program amendment in Am. Sub. SB 240 does not remove the phrase. Instead, language was added to qualify which public roadways are excluded. The amendment would exclude public roadways, "unless the roadway has been constructed for access to or haulage of coal from a coal mining and reclamation operation or unless public access to the roadway has been denied or restricted."

OSM has clarified the issue of when a road will be excluded from being considered a part of the affected area of a mine, in final rules published August 2, 1982 (47 FR 33430) and April 5, 1983 (48 FR 14814). For a public road to be excluded from the affected area of a mine, it must meet three criteria:

(1) The road has been designated as a public road pursuant to the laws of the jurisdiction in which it is located;

(2) The road is maintained with public funds, and constructed, in a manner similar to other public roads of the same classification within the jurisdiction in which it is located; and

(3) There is substantial (more than incidental) public use of the road.

The amended Ohio definition of "operation" does not include these criteria. Therefore, the amended Ohio language does not sufficiently prescribe which roads are public roads.

The Secretary finds that condition (a) has not been satisfied. However, because Ohio submitted material which it, in good faith, believed to be adequate to satisfy this condition, the Secretary has decided to allow the State until August 8, 1983 (the date originally set for this condition) to submit revised provisions. Such provisions could be an adoption of the criteria now set under the Federal definition or an assurance that such criteria will be utilized. On April 8, 1983, the State was advised of the need to further amend the Ohio Revised Code or otherwise amend its program to meet this condition. By letter dated April 27, 1983, the State agreed to do so by August 8, 1983. In the interim, Ohio has agreed to apply the above mentioned criteria to determine when a road may be excluded from being considered part of the affected area of a coal mining operation as defined in ORC 1513.01(G).

2. *Condition (b).* Condition (b) required the State to enact legislation or provide an opinion from the Ohio Attorney General limiting the effect of Section 5 of ORC Chapter 1513 to Federal courts with jurisdiction in the State. As discussed in Finding 1.12, the State provision would nullify the effect of SMCRA or the Federal regulations if a Federal court in a jurisdiction outside Ohio were to overturn a provision of the Federal Act or regulations.

In response to this condition, Am. Sub. SB 323 has repealed Section 5 and amended Section 4 to limit the effect of Section 4 to Federal courts with jurisdiction in Ohio. The Secretary finds that the amendment satisfies condition (b).

3. *Condition (c).* Condition (c) required the State to amend the Ohio Code and promulgate regulations to require work be performed by registered professional engineers in instances required by SMCRA and the Federal regulations. SMCRA requires that qualified registered professional engineers or, in some instances, professional geologists, design and certify certain cross-section maps or plans for a permit application. These requirements are found in SMCRA sections 507(b)(14), 515(b)(10)(B), 515(b)(22)(H), and 515(c)(3)(B)(vii). (See Finding 1.5, 47 FR 34690). Am. Sub. SB 240 amends ORC Chapter 1513 in several ways relating to this condition.

The proposed changes to ORC Chapter 1513 are as follows:

(1) In ORC section (1513.07(B)(2)(n)(i), the words "registered surveyor" have

been deleted. The Secretary finds this change is consistent with SMCRA.

(2) In ORC section 1513.16(B)(3)(b)(vii), the words "registered surveyor" have been deleted. The Secretary finds this change is consistent with SMCRA.

(3) In ORC section 1513.07(B)(2)(n)(i), the following language was added, "Registered Surveyors shall be allowed to perform all plans, maps, and certifications under this chapter as they are authorized under ORC Chapter 4733 of the Ohio Revised Code". ORC Chapter 4733 provides for the registration of professional engineers and surveyors in Ohio. The Secretary finds this amendment would allow registered surveyors to perform duties which SMCRA requires be done by registered professional engineers, and allows surveyors to certify work which SMCRA provides only engineers or geologists certify. Therefore, the Secretary cannot approve this amendment.

The Secretary further notes that ORC section 1513.16(A)(10)(b)(ii) has not been amended to remove the authorization for registered surveyors to perform duties which SMCRA requires be performed by registered professional engineers, nor has the Ohio Administrative Code been amended as required by condition (c).

The Secretary approves the amendments deleting "registered surveyor" from ORC section 1513.07(B)(2)(n)(i) and 1513.16(B)(3)(b)(vii). The proposed amendment to ORC section 1513.07(B)(2)(n)(i), referencing ORC Chapter 4733, concerning registered surveyors, is disapproved. The Secretary finds that condition (c) has not been satisfied. However, because Ohio submitted material which it, in good faith, believed to be adequate to satisfy this condition, the Secretary has decided to allow the State until August 8, 1983 (the date originally set for this condition) to submit revised provisions. On April 8, 1983, the State was advised of the need to further amend the Ohio Revised Code and otherwise amend its program to meet this condition. By letter dated April 27, 1983, the State agreed to do so by August 8, 1983. In the interim, the State has agreed as a matter of policy to require that registered professional engineers certify work performed by registered surveyors in all cases where the Federal Act and regulations require such work to be done by registered professional engineers.

4. *Condition (d).* Condition (d) required the State to amend its rules to require the modification of existing structures under the circumstances specified in 30 CFR 701.11(d)(iii). Ohio has amended its rule 1501:13–1–01(E)(2) by substituting the word "shall" for the word "may", so that the rule now requires that an existing structure must be modified. The Secretary finds that the amendment satisfies condition (d) and is approving it.

5. *Condition (f)(1).* Condition (f)(1) required the State to amend its regulations to add a provision for regulating the disposal of coal waste in excess spoil fills, consistent with 30 CFR 816.71(k). Ohio has added rule OAC 1501:13–9–07(H) which provides that coal wastes shall not be disposed of in head-of-hollow or valley fills and may be disposed of in other excess spoil fills if certain requirements are met. The Secretary finds that the regulation is no less effective than 30 CFR 816.71(k) and thus satisfies condition (f)(1).

6. *Condition (f)(2).* Condition (f)(2) required the State to delete the portion of its rule allowing an exemption from contemporaneous reclamation where required by the "method of mining". Ohio has amended its rule OAC 1501:13–9–13(B) to delete the phrase "or where required by the method of mining." The Secretary finds that the revised rule satisfies condition (f)(2).

7. *Condition (f)(3).* Condition (f)(3) required the State to amend its rule OAC 1501:13–9–14(C)(4) to delete the provision allowing areas affected by underground mining operations that have become stabilized over the long term to be retained in their existing configuration. Ohio has deleted this provision and the Secretary finds that condition (f)(3) is statisfied.

8. *Condition (f)(4).* Condition (f)(4) required the State to promulgate regulations requiring resoiling as contemporaneously as practicable with mining. Ohio has added rule OAC 1501:13–9–13(A). The Secretary finds it is no less effective than 30 CFR 816.100, and thus satifies condition (f)(4).

9. *Condition (f)(5).* Condition (f)(5) required the State to promulgate regulations requiring notification to the Division of Reclamation of slides that may have a potential adverse effect on public property, health, safety, or the environment. Ohio has amended its rule OAC 1501:13–9–12(B) to require notification and to require compliance with any remedial measures. The Secretary finds the amended rule is no less effective than 30 CFR 816.99(b) and thus satisfies condition (f)(5).

10. *Condition (f)(6).* Condition (f)(6) required the State to promulgate regulations providing public notice of underground mining schedules consistent with 30 CFR 817.122. Ohio has amended its rule OAC 1501:13–12–02(B) to require such public notice. The Secretary finds that the amended rule satisfies condition (f)(6).

11. *Condition (f)(7).* Condition (f)(7) required the State to promulgate regulations requiring establishing the beginning of the period for extended responsibility under the performance bond requirements consistent with 30 CFR 816.116(b)(1) and to delete or limit the examples of normal management practices and minor regrading. Ohio has amended its rule OAC 1501:13–9–15(E)(5) to delete the two examples of normal management practices and minor regrading, and the Secretary finds that this part of condition (f)(7) has been satisfied. However, condition (f)(7) also required the State to establish the beginning of the period for extended responsibility consistent with the Federal rule. The Federal rule provides that the period begins at the last time of augmented seeding, fertilizing, irrigation or other work necessary to ensure successful revegetation, whereas the Ohio rule provides that the period begins "at the last time of *substantially* augmented seeding.* * *." Ohio has not deleted or defined the word "substantially" to enable the Secretary to conclude that the rule is consistent with Section 515(b)(20) of SMCRA and no less effective than the Federal rule. Therefore, the Secretary finds that condition (f)(7) has not been fully satisfied. The Secretary is amending condition (f)(7) to reflect that part of the condition has been satisfied. Because Ohio submitted material which it, in good faith, believed to be adequate to satisfy this condition, the Secretary has decided to allow the State until August 8, 1983, to submit revised provisions. The State was advised of the need to further amend its rules and by letter of April 27, 1983, agreed to do so by August 8, 1983. In the interim, the State has agreed to satisfy the terms of this condition as a matter of policy.

12. *Condition (f)(8).* Condition (f)(8) required the State to promulgate regulations amending its rule OAC 1501:13–9–09 to require inspection of coal waste banks consistent with 30 CFR 816.82. Ohio has added paragraph (I) to 1501:13–09–9, to require such inspections. The Secretary finds that the amended rule is no less effective than 30 CFR 816.82 and therefore condition (f)(8) is satisfied.

13. *Condition (f)(9).* Condition (f)(9) required the State to promulgate regulations amending OAC 1501:13–9–04(G)(18) to delete authority to grant a variance from applicable Federal and State effluent limitations at the time for

removal of sediment ponds. Ohio has deleted the authority to grant such a variance. The Secretary finds the amended rule no less effective than 30 CFR 816.46(u) and therefore condition (f)(9) is satisfied.

14. *Condition (f)(10).* Condition (f)(10) required the State to amend its regulations to require subsidence control plans to include consideration of damage to streams, water, and associated structures, consistent with 30 CFR 817.126(a). Ohio has added subparagraph (D)(4) to OAC 1501:13–12–02, which provides for such consideration. The Secretary finds that the amended regulation is no less effective than 30 CFR 817.126(a) and satisfied condition (f)(10).

15. *Condition (g).* Condition (g) required the State to amend its regulations to delete the provision in OAC 1501:13–8–01(C), exempting persons who conduct coal exploration from complying with performance standards. Ohio has deleted paragraph (C) and (D) from OAC 1501:13–8–01. The Secretary thus finds that condition (g) is satisfied.

16. *Condition (h)(1).* Condition (h)(1) required the State to amend its program to revise the bonding system to provide assurance of more timely reclamation at the site of all operations upon which bond has been forfeited.

Ohio has enacted Senate Bill 323 which amends ORC Section 1513.08(A) to create the reclamation supplemental forfeiture special account (previously called the reclamation special account) and allow the Auditor of State to transfer $1 million annually (instead of the previous limit of $500,000) to replace funds spent from the account.

However, condition (h)(1) required revision to the current bonding system to provide assurance of more timely reclamation at the site of all operations upon which bond has been forfeited. Increasing the available amount of money to be annually transferred is a step toward more timely reclamation on sites upon which bond has been forfeited; however, this in itself is not an *assurance* of more timely reclamation of these sites. Ohio will have to provide assurance through an analysis of the revised bonding system to show that the system can achieve the objectives and purpose of the bonding program pursuant to SMCRA section 509(c), and ensure reclamation as contemporaneously as practicable without unreasonable delay of the postmining land use pursuant to SMCRA section 515(b)(2) and (b)(16).

The proposed amendment is approved, but the Secretary finds that it does not satisfy condition (h)(1), in that Ohio fails to provide assurance of more timely reclamation of sites upon which bond has been forfeited. However, because Ohio submitted material to satisfy this condition which the State, in good faith, believed to be adequate, the Secretary has decided to allow the State until August 8, 1983 (the date originally set for this condition) to submit new assurances. On April 8, 1983, the State was advised of the need to further amend its program to satisfy this condition. By letter dated April 27, 1983, the State agreed to do so by August 8, 1983.

17. *Condition (h)(2).* Condition (h)(2) required the State to promulgate regulations consistent with 30 CFR 800.11(b)(2), ensuring that bonds shall be filed at least 30 days prior to commencement of mining on the next incremental areas.

Ohio has added, at OAC 1501:13–7–01(B)[(6)(b), a requirement that bonds be filed 30 days prior to commencement of mining on the next incremental area. The Secretary finds that the amended regulation is no less effective than 30 CFR 800.11(b)(2) and therefore condition (h)(2) is satisfied.

18. *Condition (h)(3).* Condition (h)(3) required the State to promulgate regulations consistent with 30 CFR 806.12(e)(6)(iii) assuring that an operator will not be allowed to operate without bond coverage beyond a reasonable period in order to replace coverage.

Ohio has amended OAC 1501:13–7–03(B)(5)[g] to remove the discretion to suspend the permit when the operator is without bond coverage. The amended rule now provides that the Chief "*shall* suspend all or any part of the permit until bond coverage is replaced."

The Secretary finds the amended rule is no less effective than 30 CFR 806.12(e)(6)[iii) and therefore condition (h)(3) is satisfied.

19. *Condition (i)(1).* Condition (i)(1) required the State to submit a statement of policy indicating that Ohio will develop and implement procedures for data coordination and exchange with State and Federal agencies.

Ohio has submitted a statement of policy by the Chief of the Division of Reclamation addressing data coordination and exchange as required by condition (i)(1). This condition referred to the requirements in 30 CFR 795.4, responsibilities under the Small Operator Assistance Program (SOAP). Since this condition was placed on Ohio's program, 30 CFR 795.4 has been revised and numbered 30 CFR 795.9(d), and now requires the program administrator to "develop procedures for interstate coordination and exchange of data." The Secretary finds that Ohio's policy statement of December 28, 1982, meets the requirements found in 30 CFR 795.9(d) and therefore satisfies conditions (i)(1).

20. *Condition (i)(2).* Condition (i)(2) required the State to submit promulgated regulations requiring additional information to be submitted by SOAP applicants including: (i) The anticipated termination date of the operation, (ii) a statement of coal seam thickness, and (iii) the legal right of entry.

Ohio has amended OAC 1501:13–6–03(E) to require the applicant to provide the information in (i)[2) (i), (ii), and (iii). The Secretary finds that amended OAC 1501:13–6–03(E) (7), (10)(b), and (11) are no less effective than the Federal regulations and therefore condition (i)(2) is satisfied.

21. *Condition (i)(3).* Condition (i)(3) required the State to submit promulgated regulations requiring small operators to submit a permit application within one year of receiving approved SOAP reports.

Ohio has amended OAC 1501:13–6–03(J)(1)(b) to require small operators to submit a permit application within one year of receiving approved SOAP reports. The Secretary finds that amended OAC 1501:13–6–03[J) is no less effective than 30 CFR 795.12 and therefore condition (i)(3) is satisfied.

22. *Condition (j).* Condition (j) required the State of submit a statement of policy that costs to small operators for test borings, corings, and observation wells will be paid using funds other than SOAP operational funds provided by OSM.

Ohio has submitted a policy statement that no costs to small operators for test borings, corings, and observation wells will be paid from SOAP operational grant funds provided by OSM. The Secretary finds that the policy statement is acceptable and satisfies condition (j). The Secretary notes that since this condition was placed in Ohio's program, 30 CFR 795.9 has been revised to provide that observation well drilling costs may now be paid on a case-by-case basis by operational grant funds, so that Ohio may wish to revise its policy statement in accordance with revised Federal rule.

23. *Condition (k)(1).* Condition (k)(1) required the State to enact legislation and promulgate regulations to require the pre-payment of a civil penalty in order to contest either the amount or the fact of the violation.

Am. Sub. SB 240 revises ORC section 1513.02(F) (2) and (3) to eliminate the formal hearing by the Chief so that the first opportunity for formal review of an

assessment is before the Reclamation Board of Review.

ORC section 1513.02(F)(3), as amended, requires that, at the time the petition for review of the proposed assessment is filed with the Secretary of the Reclamation Board of Review, the person shall forward the amount of the penalty to the Secretary of the Board. In addition, this amendment provides for an informal assessment conference to review the amount of the penalty. The conference is to be presided over by the Chief or his appointee, excluding the inspector that issued the notice of violation or order. The proposed penalty need not be paid prior to this informal conference.

The Secretary finds that the amendments to ORC section 1513.02(F) are consistent with SMCRA section 518(c) and 30 CFR 845.18 and are approved. The amendments satisfy condition (k)(1).

24. *Condition (k)(2).* Condition (k)(2) required the State to promulgate regulations eliminating the opportunity for a *de novo* hearing or providing safeguards against abuses to the record developed at the initial hearing in an administrative appeal to the Reclamation Board of Review.

Ohio has submitted Senate Bill 240 which amends ORC section 1513.02 and sections 1513.13 to eliminate and appeal to the Chief of the Division of Reclamation on notices, orders, and decisions. The first level of review is now the Reclamation Board of Review. Thus, the opportunity for *de novo* review has been eliminated, because the only administrative hearing is now before the Board. The Secretary approves the amendment and finds that condition (k)(2) is satisfied.

Other Regulatory Program Amendments

Ohio submitted Amended Substitute Senate Bills 240 and 323 (hereinafter referred to as Am. Sub. SB 240 or 323) which amend the Ohio Revised Code (ORC). The amendments and the Secretary's findings are discussed below.

1. *ORC Section 127.16(D)(8).* Am. Sub. SB 323 allows the Chief of the Division of Relcamation to contract reclamation work with an operator mining adjacent land. This applies to State funded projects or bond forfeitures from permits issued before and during the interim program. It does not impact upon the permanent program requirements of SMCRA. Consequently, the amendment is approved.

2. *ORC Section 1513.02(A)(4): Determination of the Probable Hydrologic Consequences and State Funding for S.O.A.P.* Am. Sub. SB 323 amends this section to clarify that an applicant must request the Chief to make a determination of the probable hydrologic consequences. The present language states that the Chief shall perform the hydrologic study.

Section 507(b)(11) of SMCRA requires that the permit application contain a determination of the probable hydrologic consequences (PHC) of the mining and reclamation operations * * * so that an assessment can be made by the regulatory authority of the probable cumulative impacts of all anticipated mining in the area upon the hydrology of the area. Section 507(b)(15) requires a statement of the results of test borings or core samplings to be submitted. Section 507(c) of SMCRA provides that the PHC is to be performed by a qualified laboratory and the cost is to be borne by the regulatory authority, for an operator whose total annual production will not exceed 100,000 tons.

The change in ORC section 1513.02(A)(4) would require the Chief to "make a determination" of the PHC within 60 days of submission of a permit application. Although section 1513.02 does not contain a specific power to enter into contracts with qualified laboratories for the performance of the PHC, section 1501:13-6-03(G)(2) of the Ohio Administrative Code (OAC) requires the PHC to be made by a qualified lab. Furthermore, section 1501:13-6-03(A)(4)(b) directs the Chief to pay to labs or reimburse eligible applicants for PHC determinations. The Secretary finds this proposed change is not inconsistent with section 507(b)(11) of SMCRA, with the understanding that applications may not be considered complete until they include the data and the PHC determination required by sections 507(b)(11) and 507(b)(15).

In addition, Ohio's Am. Sub. SB 323 deletes a provision authorizing the Chief to transfer up to $500,000 from the unreclaimed land special account to cover the cost of making PHC determinations and performing chemical analyses of test borings or core samplings for small operators who have a total annual production that does not exceed one hundred thousand tons. The Secretary finds this deletion is not inconsistent with section 507(c) of SMCRA, with the understanding that Federal funds may be used only to perform work for eligible operators under section 507(c), and may not be used for any other purpose.

3. *ORC Section 1513.02(A)(5): Authority to use up to $1 Million.* Am. Sub. SB 323 amends ORC section 1513.02(A) by adding subparagraph (5), which will allow the Chief to transfer up to $1 million annually from the coal mining and administration and reserve special account created in ORC section 1513.181 to the Reclamation Supplemental Forfeiture Special Account created in ORC section 1513.08.

In light of the number of present and potential reclamation defaults and bond forfeitures, the Secretary conditioned his approval of the Ohio permanent program, as stated in 30 CFR 935.11(h)(1), on Ohio amending its program to revise the current bonding system to provide assurance of more timely reclamation at the site of operations on which bond has been forfeited. While raising the amount available annually will reduce the reclamation backlog, the State must still demonstrate to the Secretary that the $1 million amount transferred annually into the Reclamation Supplemental Forfeiture Special Account provides the assurance of more timely reclamation on all forfeited operations.

The change from $500,000 to $1 million is not in conflict with SMCRA, but in itself does not satisfy condition 30 CFR 935.11(h)(1). The condition will not be removed until the State demonstrates the effect of the changed amount. (See also discussion on condition (h)(1)).

4. *ORC Section 1513.07(B)(2) (d) and (e): Permits.* Am Sub. SB 323 amends ORC section 1513.07(B)(2)(d) by requiring the applicant to provide a list of persons responsible for ensuring compliance with the requirements of the surface mining chapter. ORC section 1513.07(B)(2)(e), as amended by Am. Sub. SB 323, expands the provision to be more specific, wherein the applicant, owners, and managers must state whether they were ever owners or managers of another business entity that has had a permit suspended, revoked, or forfeited. This amendment is consistent with the requirements of SMCRA section 507(b) (4) and (5) and is approved.

5. *ORC Section 1513.07(B)(2)(q): Permits.* Am. Sub. SB 323 amends ORC section 1513.07(B)(2)(q) to include the requirement for liability insurance which had been covered under repealed ORC section 1513.06 (annual license requirements). The language of ORC section 1513.07(B)(2)(q) also includes notification of lapses in insurance policy, and allows the Chief to suspend permits until proper coverage is obtained. This amendment is consistent with SMCRA section 507(f) and is approved.

6. *ORC Section 1513.07(E): Permits.* ORC section 1513.07(E) has been amended by Am. Sub. SB 323 to: require a statement in the permit application

that any civil penalties owed to the state for a violation and not subject to an appeal have been paid; require the Chief to deny a permit if he finds that persons in control of the company have ever forfeited a coal mining bond anywhere in the United States or materially failed to comply with ORC Chapter 1513; and provide that the Chief may deny a permit if persons in control of the company have had a permit suspended or revoked in the United States.

The amendments to ORC section 1513.07(E)(3) are consistent with SCMRA section 510 and are approved.

7. *ORC Section 1513.08(A): Bonds.* Am. Sub. SB 323 amends ORC section 1513.08(A) to provide that the bond shall cover areas of land affected by mining within, or immediately adjacent to, the permit area. This change will allow bond to be applied to any areas which may be affected outside the permit area, which was not previously allowed, with the result that surety companies claimed that they were not responsible for areas affected outside the permit during forfeiture proceedings. This amendment, which was not in response to a condition placed on the Ohio program, is found to be in accordance with SMCRA, and is, therefore, approved.

8. *ORC Section 1513.17: Need for permit.* Am. Sub. SB 323 adds the word "knowingly" to the violations listed in ORC section 1513.17(B), (C), and (D), and requires that strict criminal liability can be imposed. This change results in penalties no less stringent than those in SMCRA section 518(e) and is approved.

9. *ORC Section 1513.18: State special revenue fund.* Am. Sub. SB 323 amends section 1513.18 so that the Chief is authorized to contract with landowners, operators mining under valid permits, or contractors hired by the surety to complete reclamation without advertising for bid. This allows the Chief to contract for bond forfeiture work with anyone, including the operator who defaulted if the defaulted operator is the contractor hired by the surety. The provision is not inconsistent with SMCRA, and the amendment is approved.

10. *ORC Section 1513.27: Reclaiming damage to adjacent property. Section 1513.28: Reclamation grants, criteria contracts with applicants, Section 1513.32: Agreements.* Am. Sub. SB 323 amended ORC sections 1513.27, 1513.28, and 1513.32 regarding the administrative operation of the State "unreclaimed lands special account" which receives no Federal funding. As this account is entirely State-funded and separate from the approved abandoned mine land reclamation program for the State of Ohio, these proposed changes are amendments which are not inconsistent with SMCRA.

11. *ORC Section 1513.99: Penalties.* Am. Sub. SB 323 amends ORC section 1513.99, to incorporate ORC sections 1513.17(B), (C), (D) and (E) into the penalty section. These provisions are as follows:

(1) ORC section 1513.17(B)—mining without a permit;

(2) ORC section 1513.17(C)—knowingly violate a permit condition or exceed the limits of a permit;

(3) ORC section 1513.17(D)—knowingly fail to comply with a Chief's Order;

(4) ORC section 1513.17(E)—knowingly violate a requirement of ORC Chapter 1513 not specifically mentioned in the section.

This amendment was made in conjunction with the amendment to sections 1513.17(B), (C), (D), and (E). The amendment provides penalties that are no less stringent than the requirements of SMCRA section 518 and is approved.

12. *ORC Section 1513.02(A)(5): Authority to issue rules.* Am. Sub. SB 240 adds ORC section 1513.02(A)(5) which authorizes the Chief to receive, administer, and expend moneys from Federal agencies to implement the program. The amendment is not inconsistent with SMCRA and is approved.

13. *ORC Section 1513.02(D) (1) and (2): Authority to issue rules.* Am. Sub. SB 240 amends ORC section 1513.02(D) (1) and (2) to authorize the Reclamation Board of Review to modify, vacate, or terminate a cessation order. This authority is consistent with the requirements of SMCRA section 525(b) and is approved.

The amendment to ORC section 1513.02(D)(2) allows the State, by reference, to have the same requirements on abatement periods as 30 CFR Part 843. This is consistent with the Federal regulations, and is approved.

14. *ORC Section 1513.02 (I) and (J): Hearing Officers.* Am. Sub. SB 240 amends ORC section 1513.02 (I) and (J) by removing requirements to submit violation information required in ORC section 1513.06 (repealed) and eliminating the requirement for the Chief to appoint hearing officers. Both changes were due to other changes in Am. Sub. SB 240 and are not inconsistent with SMCRA, so they are approved.

15. *ORC Section 1513.05: Reclamation Board of Review.* Am. Sub. SB 240 amends ORC section 1513.05 by requiring the Reclamation Board of Review to appoint hearing officers and to adopt rules governing procedure of appeals. These amendments are not inconsistent with SMCRA and are approved.

16. *ORC Section 1513.06: Licenses.* Am. Sub. SB 240 repeals ORC section 1513.06, which required a license to conduct a coal mining and reclamation operation. All information required by this section is now required in a permit application. This amendment is not inconsistent with SMCRA and is approved.

17. *ORC Section 1513.07: Permits.*

(1) ORC section 1513.07(A)(1) is amended by Am. Sub. SB 240, in that a permit fee will not be collected for areas covered by an interim program permit if the same areas are contained in an application for a permanent program permit. Section 507(a) of SMCRA requires that an application fee may be less than but not exceed the actual or anticipated costs of reviewing, administering, and enforcing such permit. The Ohio amendment is not inconsistent with SMCRA section 507(a) and is approved.

(2) ORC section 1513.07(B)(2)(n)(i) is amended by Am. Sub. SB 240 to delete, "or potentiometric surface; and the anticipated final configuration of the water table or potentiometric surface." Since this language is more extensive than the requirements of Section 507(b)(14) of SMCRA, the Secretary finds this section of the Ohio Revised Code remains consistent with the requirements of SMCRA.

(3) ORC section 1513.07(B)(2)(q) is amended by Am. Sub. SB 240 to require the business phone number of the applicant. This amendment is approved.

(4) ORC section 1513.07(B)(6) is amended by Am. Sub. SB 240 to remove the requirement to include a copy of the license with the application for a permit. (See findings under ORC section 1513.06.) The amendment is approved.

(5) ORC section 1513.07(B) is amended by Am. Sub. SB 240 to remove the reference to a license application. (See findings under ORC section 1513.06.) The amendment is approved.

(6) ORC section 1513.07(E)(3) is amended by Am. Sub. SB 240 to require that the State regulatory authority (SRA) provide applicants with a listing for the past three years of all notices of violations of Chapter 1513 of the Revised Code. Section 510(e) of SMCRA requires the applicant to file such a listing with the application. The Secretary finds that it is not inconsistent with SMCRA to have the SRA furnish a listing of violations of Chapter 1513. It should be noted that the applicant would still be responsible for furnishing a listing of violations from other agencies as required by the approved

State program. The amendment is approved.

(7) ORC section 1513.07(I) (3), (4) and (5) is amended by Am. Sub. SB 240 to change the appeal procedure on the Chief's decision on a permit application. The appeal will be heard by the Reclamation Board of Review instead of the Chief or his representative. See finding under ORC section 1513.13 (A), (B), and (C). The amendment is not inconsistent with SMCRA section 525 and is approved.

(8) Am. Sub. SB 240 amends ORC section 1513.07(J) by removing the reference to an annual license. This amendment is not inconsistent with SMCRA and is approved.

18. *ORC Section 1513.074: Adjacent area permit.* Am. Sub. SB 240 adds ORC section 1513.074 to classify a permit application adjacent to existing permits as an adjacent area permit application and to allow the applicant to incorporate by reference current information contained in the application for the original permit.

Section 511(a)(3) of SMCRA requires that any extension to the permit area, if not an incidental boundary revision, must be made by application for another permit. ORC section 1513.074 meets this requirement by assuring that the operator supplements information available for public inspection with additional information and makes the application subject to the standards for new applications.

The Secretary finds that this amendment is consistent with SMCRA section 511(a)(3) and is approved.

19. *ORC § 1513.13 (A)(1), (B) and (C): Appeal rights.* (1) The amendment to ORC section 1513.13(B) concerns elimination of the appeal to the Chief and establishes the Reclamation Board of Review to hear appeals. ORC section 1513.13(B)(3) allows a decision from appeal on a bond release to be made within 60 days. SMCRA does not establish a 60-day limit, but the Secretary finds that this is reasonable as long as the bond is not released because of the Board's failure to render a decision within the time period. The amendments to ORC section 1513.13(B) are consistent with SMCRA sections 514, 520, and 525 and are approved.

(2) Am. Sub. SB 240 amends ORC section 1513.13(A)(1) to allow any person to appeal any notice, order, or decision by the Chief by appealing to the Reclamation Board of Review. It eliminates the appeal to the Chief, and requires notice of appeal to be filed within 30 days after a notice, order, or decision is issued, which is a change from "receipt thereof". The amendment gives the Reclamation Board of Review exclusive original jurisdiction to hear and decide such appeals.

The change of time for appeal is inconsistent with SMCRA section 525(a)(1), which provides for appeal within 30 days from receipt of a notice or order. Since a notice, order, or decision may be mailed to an operator or other party, the change is significant in that it shortens the time in which the operator or other party may appeal. Therefore, the Secretary cannot approve this amendment. This deficiency could be corrected by an Attorney General's opinion or a policy statement. The other changes are consistent with SMCRA Section 525 and are approved.

(3) The amendment to ORC section 1513.13(C) eliminates the requirements concerning hearings by the Chief and temporary relief. It provides that the Chairman of the Board may, under conditions he prescribes, grant temporary relief he consider appropriate pending final determination of an appeal if (1) all parties to the appeal have been notified or given an opportunity to be heard, (2) the person requesting relief shows that there is a high likelihood that he will prevail on the merits, and (3) the relief will not adversely affect public health or safety or cause significant imminent environmental harm.

Section 525(c)(1) of SMCRA requires that a hearing be held in the locality of the permit area on the request for temporary relief in which all parties are given an opportunity to be heard. The amendment to ORC section 1513.13(C)(1) does not require that the hearing be in the locality of the permit area. This omission could hamper an operator or other party in their attempt to obtain temporary relief.

The Secretary finds that the amendment to ORC section 1513.13(C)(1) is not consistent with section 525(c)(1) of SMCRA in that it omits a requirement that the temporary relief hearing be held in the locality of the permit area. This deficiency could be corrected by a policy statement or an Attorney General's opinion.

(4) ORC section 1513.13(C), as amended by Am. Sub. SB 240, allows the Chairman of the Reclamation Board of Review to make determinations concerning the granting of temporary relief. The decision of the Chairman on temporary relief cannot, however, be appealed, because an Ohio appellate court has determined that appeals to it are limited to decisions of the Board, *Barack* v. *Call*, Seventh District Court of Appeals, Case No. 83–B–1 (1983). Thus, decisions of the Chairman not to grant temporary relief cannot be reviewed by an appellate court until the Board renders a decision on the merits.

The amendment is not consistent with SMCRA section 526, which provides for a judicial appeal of the decision relating to temporary relief.

Therefore, the Secretary finds that the proposed amendments to ORC 1513.13(A)(1) and 1513.13(C) are not fully consistent with SMCRA and hereby imposes an additional condition of program approval.

On April 8, 1983, the State was advised of the need to amend ORC 1513.13(A)(1) and 1513.13(C) so that these provisions are consistent with SMCRA Sections 525 (a)(1), (c)(1) and 526(c). By letter dated April 27, 1983, the State agreed to so amend its program by August 8, 1983. In the interim, Ohio has agreed as a matter of policy: (1) Not to challenge the time limit on an appeal brought within 30 days of the receipt of a notice, order or decision; (2) that hearings on requests for temporary relief will be held in the locality of the permit area; and (3) that all requests for temporary relief and subsequent decisions will be acted upon by the Reclamation Board of Review.

20. *ORC Section 1513.14: Review of orders by Board of Review and courts.* Am. Sub. SB 240 amends ORC section 1513.14 by removing the provision concerning appeal of decisions by the Chief and vests the exclusive jurisdiction on appeals in the Board of Review. This change is not inconsistent with section 525 of SMCRA.

However, the State must provide for appeal of the Chairman's decision on temporary, relief. See finding concerning ORC 1513.13.

21. *ORC Section 1513.16(F): Reclamation standards.* Am. Sub SB 240 makes the following changes to ORC section 1513.16(F):

(1) ORC section 1513.16(F) is amended to create two actions to be taken on a bond: "reduction" and "release." If only a certain amount of the bond is being reduced, it is a reduction. At the completion of the liability period, the bond is then "released." A bond is reduced upon completion of backfilling and regrading (phase one) and upon the beginning of the liability period (phase two) after resoiling and the establishment of vegetation.

The change from the phrase "bond release" to "bond reduction" for phase one and two release eliminates the requirement that the operator advertise and give public notice to allow for public participation and the right to file written objections concerning those phases. The result is that the Chief could release as much as 85% of the bond without any public notice or opportunity for public comment. This amendment is

in conflict with SMCRA section 519(a), which clearly states that:

* * *the permittee may file a request with the regulatory authority for release of all or part of a performance bond or deposit * * *. The operator shall submit a copy of an advertisement placed at least once a week for four successive weeks in a newspaper of general circulation in the locality of the surface coal mining operation.

The "bond reduction" is still a release of the bond liability of the permittee, so that "bond reductions" are nevertheless "bond releases" as referred to in SMCRA section 519 and must meet the same requirements concerning public notice and the right to file written objections as required by section 519.

The Secretary finds that SMCRA does not allow for bond reductions as provided for by ORC section 1513.16(F), and therefore, conditions his approval of this amendment on a further revision to ORC section 1513.16(F).

On April 8, 1983, the State was advised of the need to amend ORC section 1513.16(F) to meet this condition by revising the ORC to require that all bond reductions must meet the same public participation requirements as bond releases consistent with section 519 of SMCRA. By letter dated April 27, 1983, the State agreed to amend its program by August 8, 1983. In the interim, Ohio agreed not to reduce or release any portion of a bond unless the bond release requirements specified in ORC section 1513.16(F) have been met.

(2) Revised ORC section 1513.16(F) also allows for an informal conference to be held by the Chief, if requested by interested parties, on bond releases. The conference proceedings are to be recorded unless waived by all parties. The revision eliminates the formal hearing by the Chief and directs any appeals from the conference to the Reclamation Board of Review. This is consistent with SMCRA section 519(g) and is approved.

(3) Amended ORC section 1513.16(F) eliminates resoiling as a requirement for approval of the first phase of bond reduction and reduces from 60% to 50% of the total bond to be released upon approval of the first phase of reclamation. Resoiling is now required as part of the second phase of reclamation before reduction. This provision is consistent with SMCRA section 519(c)(1) and (2) and is approved.

(4) The phase two reduction is also limited, in ORC section 1513.16(F), to 35% of the original bond deposited. Limiting the phase two bond release to 35% is not inconsistent with section 519(c) of SMCRA because, although it places an upper limit on the amount of the bond to be released, the Chief must still determine the amount of the bond which would be necessary for a third party to re-establish vegetation. This amendment is consistent with SMCRA and is approved.

22. *ORC Section 1513.16(H): Reclamation standards.* Am. Sub. SB 240 adds section (H) to ORC section 1513.16. This section gives the State the statutory authority for reclamation standards and procedures for bond release for permits issued prior to the effective date of revised Chapter 1513 for the permanent program, September 1, 1981. The standards and procedures had been deleted in that legislation by error, thereby requiring that interim program permits meet permanent bond release and forfeiture criteria. The addition of paragraph (H) reinstates interim program standards in permits issued prior to September 1, 1981. This change is not inconsistent with SMCRA and is approved.

23. *ORC Section 1513.131: Adjudicatory hearings.* Am. Sub. SB 240 amends ORC section 1513.131 to assign the duties of the Reclamation Board of Review to a hearing officer. This amendment is not inconsistent with SMCRA and is approved.

Abandoned Mine Land Reclamation Plan

ORC Section 1513.37: Abandoned mine special account. Am. Sub. SB 323 revises ORC section 1513.37(D)(2) to require the State board on unreclaimed strip mined lands to review all applications for administrative costs, imminent hazards, or emergency projects before the Chief may make application for such funds to the Secretary. This change is not in conflict with SMCRA and is approved, although the Secretary notes that any proposed projects must meet the criteria established in the approved Title IV program for Ohio.

Am. Sub. SB 323 also renumbers paragraph D(4) as D(5), while leaving the wording unchanged. A new paragraph D(4) is inserted to require the review and approval of the State board on unreclaimed strip mined lands of all specific reclamation project proposals prior to any expenditures of funds. This change does not conflict with SMCRA, and is approved, although the Secretary notes that any proposed projects using federal grant funds must meet the criteria established in the approved Title IV program for Ohio.

Am. Sub. SB 323 adds a new paragraph under section (J), which would require all contractors performing reclamation work under this section to pay its workers at the greater of their regular rate of pay or the average wage rate paid in the State for the same or similar location by private companies doing their own reclamation work. This amendment is not inconsistent with SMCRA and is approved.

Non-Substantive Amendments

Ohio has made numerous revisions to the ORC and OAC to make non-substantive, primarily editorial, changes. The Secretary finds the corrections consistent with SMCRA and 30 Chapter VII.

Effect of Secretary's Decision

Section 503 of SMCRA establishes that a State may not exercise jurisdiction under the Act unless the State program is approved by the Secretary. Similarly, the Secretary's regulations at 30 CFR 732.17(a) require that any alteration of an approved State program must be submitted to OSM as a program amendment. Thus, any changes to the program are not enforceable by the State until approved by the Secretary. The Federal regulations at 30 CFR 732.17(g) clearly prohibit any unilateral changes to approved State programs. In his oversight of the State program, the Secretary will recognize only the statutes and regulations approved by him, and will require the enforcement by the State of only such provisions. Therefore, the provisions that the Secretary is approving today will take effect today for purposes of the State program. Those provisions the Secretary has not approved today or has affirmatively disapproved may not be implemented by the State in any manner until such time as the Secretary approves them.

IV. Public Comments

Comments were solicited from Federal agencies pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(10)(i). Of those agencies invited to comment, responses were received from the following: Bureau of Mines, Fish and Wildlife Service, Farmers Home Administration, Mine Safety and Health Administration, Environmental Protection Agency, Soil Conservation Service, and Corps of Engineers. The responses either offered no comments or offered ones directed to aspects of the approved Ohio program not included in the present rulemaking. The disclosure of Federal agency comments is made pursuant to section 503(b)(1) of SMCRA and 30 CFR 732.17(b)(10)(i).

No other comments were received in response to the January 21, 1983 Federal Register.

V. Approval

Accordingly, conditions (b), (d), (f)(1)–(f)(6), (f)(8)–(f)(10), (g), (h)(2)–(h)(3), (i)(1)–(i)(3), (j), (k)(1) and (k)(2) are hereby removed and 30 CFR Part 935 is amended to: (1) Indicate approval of the Ohio regulatory program and AML amendments; (2) modify condition (f)(7); (3) extend the time by which Ohio must satisfy conditions (f)(7), (k)(3), (k)(4), and (k)(5); and (4) impose two new conditions of program approval.

VI. Procedural Matters

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule 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.*). This rule does not impose any new requirements; rather, it ensures that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act.* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 935

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Accordingly, Part 935 of Title 30 is amended as set forth herein.

Dated: May 9, 1983.

Daniel N. Miller Jr.,

Assistant Secretary for Energy and Minerals.

PART 935—OHIO

1. 30 CFR 935.10 is revised to read as follows:

§ 935.10 State regulatory program approval.

The Ohio State regulatory program as submtted on February 29, 1980, and resubmitted on January 22, 1982, is conditionally approved, effective August 16, 1982. Beginning on that date, the Department of Natural Resources shall be deemed the regulatory authority in Ohio for all surface coal mining and reclamation operations on non-Indian and non-Federal lands. Only surface coal mining and reclamation operations on non-Indian and non-Federal lands shall be subject to the provisions of the Ohio permanent regulatory program. Copies of the approved program, as amended, are available at:

(a) Division of Reclamation, Ohio Department of Natural Resources, Fountain Square, Building B, Columbus, Ohio 43224; Telephone: (614) 265–6633.

(b) Office of Surface Mining, Room 5315, 1000 L Street, N.W., Washington, D.C. 20240; Telephone: (202) 343–4728.

2. 30 CFR 935.11 is amended by removing and reserving paragraphs (b), (d), (f)(1) through (f)(6), (f)(8) through (f)(10), (g), (h)(2), (h)(3), (i), (j), (k)(1), and (k)(2).

3. 30 CFR 935.11 is amended by revising paragraph (k)(3), (k)(4), and (k)(5) by substituting "August 8, 1983" for "February 8, 1983" each time it appears.

4. 30 CFR 935.11 is amended by revising paragraph (f)(7) and adding paragraphs (l) and (m) as follows:

§ 935.11 Conditions of State regulatory program approval.

* * * * *

(f) Steps will be taken to terminate the approval found in § 935.10:

* * * * *

(7) Unless Ohio submits to the Secretary by August 8, 1983, copies of promulgated regulations deleting the word "substantially" from OAC 1501:13–9–15(E)(5) to establish the beginning of the period of extended responsibility consistent with 30 CFR 816.116(b)(1).

* * * * *

(l) Steps will be taken to terminate the approval found in § 935.10 unless Ohio submits to the Secretary by August 8, 1983, copies of fully enacted legislation amending ORC sections 1513.13(A)(1) and 1513.13(C) to provide that:

(1) The time for filing a notice of appeal is within 30 days after receipt of a notice, order or decision; (2) a hearing on a request for temporary relief shall be held in the locality of the permit area; and (3) temporary relief decisions by the Chairman of the Reclamation Board of Review are judicially reviewable. Until the condition is satisfied, Ohio has agreed as a matter of policy not to challenge the time limit on an appeal brought within 30 days of the receipt of a notice, order or decision; that hearings on requests for temporary relief will be held in the locality of the permit area; and that all requests for temporary relief and subsequent decisons will be acted upon by the Reclamation Board of Review.

(m) Steps will be taken to terminate the approval found in § 935.10 unless Ohio submits to the Secretary by August 8, 1983, copies of enacted legislation amending ORC section 1513.16(F) to require that all bond reductions must meet the same public participation requirements as bond releases, consistent with Section 519 of SMCRA. Until the condition is satisfied, Ohio has agreed not to reduce or release any portion of a bond unless the bond release requirements specified in ORC section 1513.16(F) have been met.

5. Part 935 is amended by adding a new § 935.15 as follows:

§ 935.15 Approval of regulatory program amendments.

(a) The following amendment was approved effective January 17, 1983: Ohio revised rule OAC 1501:13–1–01, adopted September 16, 1982.

(b) The following amendments were approved effective January 31, 1983: Ohio revised rules OAC 1501:13–1–07, 1501:13–4–03, 1501:13–4–04, and 1501:13–4–05, adopted November 4, 1982.

(c) The following amendments were approved effective May 24, 1983:

(1) Ohio revised code (ORC), as amended by SB 240 and 323, adopted March 18, 1983, with the following exceptions: ORC Sections 1513.01(G)(2), 1513.07(B)(2)(n), 1513.13(A)(1), 1513.13(C), 1513.16(A)(10)(b)(ii) and 1513.16(F).

(2) Ohio revised rules, submitted January 6, 1983.

(3) Ohio policy statements dated December 28, 1982.

6. Part 935 is amended by adding a new § 935.25 as follows:

§ 935.25 Approval of AML plan amendments.

(a) The following amendments were approved effective May 24, 1983:

(1) Ohio revised code (ORC) section 1513.37(D)(2), (D)(4), (D)(5) and (J), adopted March 18, 1983.

(Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*)

[FR Doc. 83-12961 Filed 5-23-83; 8:45 am]

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DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 701

Availability of Department of the Navy Records and Publication of Department of the Navy Documents Affecting the Public

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: This rule sets forth amended regulations pertaining to the Department of the Navy Freedom of Information Act Program. The rule reflects changes in the Secretary of the Navy Instruction 5720.42 series from which it is derived.

EFFECTIVE DATE: May 24, 1983.

FOR FURTHER INFORMATION CONTACT: Mrs. Gwendolyn R. Aitken (Op–09B1P), Office of the Chief of Naval Operations, Washington, DC 20350, Telephone: (202) 694–2004.

SUPPLEMENTARY INFORMATION: Pursuant to the authority cited below, the Department of the Navy amends 32 CFR Part 701, Subparts A, B, C, and D, derived from the Secretary of the Navy Instruction 5720.42 series, which implements within the Department of the Navy the provisions of Department of Defense Directives 5400.7 and 5400.7–R series, Department of Defense Freedom of Information Act Program (32 CFR Part 286) pertaining to action on requests for release of departmental records under the Freedom of Information Act (5 U.S.C. 552). This rule is being published by the Department of the Navy for the guidance and interest of the public in accordance with 5 U.S.C. 552(a)(1). It has been determined that invitation of public comment on these changes to the Department of the Navy's implementing instruction prior to adoption would be impracticable and unnecessary, and it is therefore not required under the public rulemaking provisions of 32 CFR Parts 296 and 701, Subpart E. Interested persons, however, are invited to comment in writing on this amendment. All written comments received will be considered in making subsequent amendments or revisions to 32 CFR Part 701, Subparts A, B, C, and D, or the instruction upon which it is based. Changes may be initiated on the basis of comments received. Written comments should be addressed to Gwendolyn R. Aitken (Op–09B1P), Office of the Chief of Naval Operations, Washington, DC 20350. It has been determined that this final rule is not a "major rule" within the criteria specified in section 1(b) of Executive Order 12291 and does not have substantial impact on the public.

List of Subjects in 32 CFR Part 701

Administrative practice and procedure, Freedom of information, Privacy.

Accordingly, 32 CFR Part 701, Subparts A, B, C, and D are amended. Subparts E, F, and G remain unaffected by this amendment. Subpart C is amended by its removal, and that subpart is reserved for future use. Subparts A, B, C, and D are revised to read as follows:

PART 701—AVAILABILITY OF DEPARTMENT OF THE NAVY RECORDS AND PUBLICATION OF DEPARTMENT OF THE NAVY DOCUMENTS AFFECTING THE PUBLIC

Subpart A—Department of the Navy Freedom of Information Act Program

Sec.
701.1 Purpose.
701.2 Scope and effect.
701.3 Definitions.
701.4 Policy.
701.5 Responsibility and authority for determinations.
701.6 Format and procedures for requesting records.
701.7 Procedures for processing FOIA requests.
701.8 Appeals from denials of requests for records.
701.9 For Official Use Only (FOUO).

Subpart B—Guidelines on Matters Which Are Exempt From Public Disclosure

701.21 General rule.
701.22 Reasonably segregable matters.
701.23 Judicial review.
701.24 Specific exemptions.

Subpart C—[Reserved]

Subpart D—Guidelines for Assessment/ Waiver/Reduction of Fees

701.40 Purpose.
701.41 Fee Assessment.
701.42 Waiver/ reduction of fees.
701.43 Computation of fees.
701.44 Collection of fees.
701.45 Search and duplication fees.

Authority: 5 U.S.C. 552, 32 CFR Part 286.

Subpart A—Department of the Navy Freedom of Information Act Program

§ 701.1 Purpose.

Subparts A, B, and D of this Part 701 implement the Freedom of Information Act (5 U.S.C. 552), and the Department of Defense Directives 5400.7 and 5400.7–R series, Department of Defense Freedom of Information Act Program, (*See* 32 CFR Part 286) and outline the policies and procedures for the disclosure of records, establish mandatory time limits for Freedom of Information Act (FOIA) responses and explain how members of the public may inspect or obtain copies of Department of the Navy records.

§ 701.2 Scope and effect.

(a) *Applicability.* Subparts A, B, and D of this Part 701 apply throughout the Department of the Navy. They govern the disclosure of records to the general public, including military and civilian employees of the government acting as private citizens. Informal requests, requests for information other than naval records, and inquiries for which no record exists are not subject to the technical requirements of these subparts.

(b) *Requests from government officials.* Requests from officials of federal, state, or local governments for Department of the Navy records shall be honored on an expeditious basis whenever possible. For purposes of determining whether record(s) shall be provided, such officials acting in an individual capacity shall be considered the same as any other requester.

(c) *Requests from foreign governments.* Foreign governments seeking information from the Department of the Navy should use established official channels for obtaining information.

(d) *Exclusion of requests.* The following categories of requests are excluded from the scope of Subparts A, B, and D of this Part 701:

(1) Requests from the Congress, which are governed by Secretary of the Navy Instruction 5730.5 series, Procedures for the Handling of Naval Legislative Affairs and Congressional Relations;

(2) Requests from individuals, including Department of the Navy personnel, for records pertaining to themselves and located in "systems of records," which are governed by Secretary of the Navy Instruction 5211.5 series, Personal privacy and rights of individuals regarding records pertaining to themselves (32 CFR Part 701, Subparts F and G);

(3) Requests from the General Accounting Office (GAO) for records in connection with audits, which are governed by Secretary of the Navy Instruction 5741.2 series, Relations with the General Accounting Office, and;

(4) Court orders or subpoenas demanding production of records, discovery, or testimony of witnesses, which are governed by the Manual of the Judge Advocate General (JAGINST 5800.7A), Chapter XIII (32 CFR Part 720).

(e) *Publication and public availability of special classes of records.* The requirements of 5 U.S.C. 552 that certain classes of Department of the Navy

regulatory, rulemaking, and organizational records be published in the **Federal Register** for the guidance of the public and be made available for public inspection and copying, are implemented in 32 CFR Part 701, Subpart E.

(f) *Public affairs regulations.* Subparts A, B, and D of this Part 701 are intended to complement, not restrict, the conduct of Department of the Navy public affairs, media relations, community relations, internal relations functions and practices authorized in Secretary of the Navy Instruction 5720.44 series, Department of the Navy Public Affairs Regulations. Should the practices authorized in that regulation conflict in any respect with any provisions of these Subparts A, B, and D of Part 701, the provisions of these subparts shall be controlling.

(g) *U.S. Navy Regulations.* For the purposes of Article 1116.3, U.S. Navy Regulations (1973) (32 CFR 700.1116(c)), the release of a record to a member of the public under the Freedom of Information Act shall be deemed to have been done in the discharge of official duties. For the purposes of Article 1116.4 (32 CFR 700.1116(c)), the release of a record designated as FOR OFFICIAL USE ONLY to a member of the public upon a request shall be processed in accordance with instructions outlined in § 701.9.

(h) *Other directives.* The following directives, to the extent that they do not conflict with these Subparts A, B, and D of this Part 701, and serve to supplement it, include:

(1) Marine Corps Manual, paragraph 1015 (also, for Headquarters Marine Corps, HQO P5000.12G, Chapter 11)—release on information from the personnel records of members and former members of the Marine Corps.

(2) Federal Personnel Manual, Chapters 293, 294, 297, 335, 339, and 713—release of information from active and inactive civilian personnel records.

(3) Manual of the Medical Department, U.S. Navy NAVMED P–117, Chapter 23, Section III—release of information from active and inactive medical records.

§ 701.3 Definitions.

As used in Subparts A, B, and D of this Part 701 the following terms and meanings apply:

(a) *Administrative appeal.* An appeal made by a requester to the appellate authority (Judge Advocate General or General Counsel) or his/her designee to reverse a decision made by an initial denial authority in which all or part of a requested record was denied or a request for waiver/reduction of fees was denied. A requester may also file an administrative appeal on the basis of nonresponse to an FOIA request within the statutory time limit.

(b) *Agency records.* Information or products of data compilation, regardless of physical form or characteristics, (e.g., written documents, ADP storage media, computer printouts, etc.) made or received by a naval activity in connection with the transaction of public business and preserved by a naval activity as evidence of the organization, policies, functions, decisions, or procedures of the naval activity. The term "agency records" does not include:

(1) Library and museum material made, acquired, and preserved solely for reference or exhibition.

(2) Objects or articles, such as structures, furniture, paintings, sculpture, three-dimensional models, vehicles, equipment, and parts of wrecked aircraft, whatever their historical value, or value as evidence.

(3) Commercially exploitable resources, including but not limited to musical arrangements and compositions, formulae, designs, drawings, maps, and charts, map compilation manuscripts and map research materials, research data, computer programs, and technical data packages that were not created and are not utilized as primary sources of information about organizations, policies, functions, decisions or procedures of the Department of the Navy.

(4) Unaltered publications and processed documents, such as regulations, manuals, maps, charts, and related geographical materials, that are available to the public through an established distribution system with or without charges.

(5) Anything that is an intangible or documentary record, such as an individual's memory or oral communication.

(6) Supervisor's personal notes on his/her employees (which are not required to be prepared or maintained by any naval instruction or regulation), concerning their performance, etc., and used solely as a memory aid in preparing evaluation reports. These notes are not made available to other persons in the agency, are not filed with agency records, and are destroyed after the evaluation period by the individual who prepared them. Among this category of notes are Division Officer's notebooks and Marine Corps Unit Leader's notebooks, etc.

(c) *Appellate authority.* The Judge Advocate General or the General Counsel are the naval officials having jurisdiction over administrative appeals or partial denials of FOIA requests under their cognizance as delineated in § 701.8.

(d) *FOIA request.* A written request for Department of the Navy records made by a member of the public, or an organization, business, etc., that either explicitly or implicitly invokes 5 U.S.C. 552, Department of Defense Directives 5400.7 and 5400.7–R series, Department of Defense Freedom of Information Act Program (*see* 32 CFR Part 286) and/or Subparts A, B, and D of this Part 701. The written request must also contain a reasonable description of the record(s) being sought and contain some statement as to the requester's willingness to pay all fees or those up to a specified amount. A record must exist and be in the possession and control of the Department of the Navy at the time of the request to be considered subject to Subparts A, B, and D of this Part 701. There is no requirement to create or complile a record not already in existence.

(e) *Initial Denial Authority (IDA).* An official who has been granted authority to withhold records, either in whole or in part, which are requested under the FOIA based on one or more of the nine FOIA exemptions. IDA's may also grant requests for reduction/waiver of fees. A list of IDA's are contained in § 701.5.

§ 701.4 Policy.

In accordance with the spirit and intent of 5 U.S.C. 552, Department of Defense Directives 5400.7 and 5400.7–R series, Department of Defense Freedom of Information Act Program (*see* 32 CFR Part 286) the Department of the Navy will make available to any person the maximum information concerning its operations, activities, and administration. The FOIA does not permit agencies to distinguish between U.S. citizens and foreign citizens. A naval record shall be withheld only when it is exempt from disclosure under the FOIA. In the event a requested record is exempt under the FOIA, it may nonetheless be released when it is determined that no governmental interest will be jeopardized by the release of the record. Therefore, subject to the conditions of Subparts A and B of this Part 701 concerning exemptions and the requester's compliance with prescribed minimum requirements, records requested by the public will be made available promptly, fully, and willingly, as a matter of right.

(a) *Requests for Records.* Naval activities receiving written or oral requests from members of the public are responsible for advising the requester of the correct means for obtaining

permission to examine or copy records at appropriate times and at locations where they are held, or for obtaining copies of such records. Minimum requirements are prescribed in § 701.6.

(b) *Time limits.* Each naval activity is responsible for developing procedures for ensuring the expeditious handling and prompt retrieval and review of the requested records. The cognizant official having responsibility for the record(s) has 10 working days (excluding Saturdays, Sundays, and legal holidays) to respond to the requester regarding the FOIA request. The 10 working day time limit commences upon receipt of the request by the cognizant activity. If the cognizant official is unable to meet the statutory time limit of 10 working days, he/she may, in limited instances, seek a time extension (*See* § 701.7).

(c) *Identification of records.* Subject to the provisions of Subparts A, B, and D of this Part 701, requests shall be honored for records which are "reasonably described." A "reasonably described" record provides sufficiently accurate and specific descriptions (i.e., memorandum, title, index citation, subject area, date the record was created, originator, type and location of incident) which enable naval personnel to locate and identify particular records with a reasonable amount of effort. A record must exist and be in the possession and control of the Department of the Navy at the time of the request to be considerd subject to Subparts A, B, and D of this Part 701. Mere possession of a record does not presume departmental control and such records, or identifiable portions thereof, shall be referred to the originating agency or activity for direct response to the requester. There is no obligation to create, compile, or obtain a record not already in existence to satisfy an FOIA request.

(d) *Fee assessment.*—(1) In addition to reasonably describing the record(s), the requester should make a clear statement that he/she is willing and able to pay all fees or those up to a specified amount, or satisfactorily show that he/she is entitled to a waiver/reduction of fees, if the fees for reproduction and/or search of the requested record(s) are expected to exceed the $30 minimum fee waiver threshold. Fees may not be used as a means to discourage requesters from seeking records. Collection of fees is limited to the charges associated with direct document search and duplication efforts. Computer search is based on direct cost of the central processing unit, input-output devices, and memory capacity of the actual computer configuration. Documents shall be furnished without charge or at a reduced rate when the naval activity determines that a waiver or reduction of fees is in the public interest because furnishing the information is considered as primarily benefiting the general public. Minimum fees shall not be charged. *See* 32 CFR Part 701, Subpart D for determining fees.

(2) In order to be as responsive as possible to FOIA requests, while minimizing unwarranted costs to the taxpayer and meeting the 10 working day response time, naval activities shall adhere to the following procedures:

(i) If the requester declares an unwillingness to pay fees and does not substantiate a request for waiver/reduction of fees, and it appears that the direct search and reproduction costs associated with the request shall exceed the automatic fee waiver threshold, the request need not be processed and the requester shall be so informed.

(ii) If the requester declares a willingness to pay fees up to a specified amount and does not substantiate a request for waiver/reduction of fees, then the specified amount or the automatic fee waiver threshold, whichever is greater, shall not be exceeded without the consent of the requester.

(iii) If the requester makes no declaration concerning fees and does not substantiate a request for waiver/reduction of fees, and if it appears that the direct search and reproduction fees to be assessed shall exceed the automatic fee waiver threshold, the request shall not be processed until the requester is advised of anticipated charges and agrees to pay them.

(iv) Activities may require payment of all or a portion of estimated fees before processing extensive or costly requests.

(v) Subsequent requests from persons who have failed to pay fee obligations need not be processed until previous obligations have been met or waived.

(vi) The response to the requester should contain information concerning the fee status of the request. Generally, the information shall reflect one or more of the following conditions:

(A) All fees have been received.

(B) Fees have been waived because they fall below the automatic fee waiver threshold.

(C) A request for waiver has been denied.

(D) Fees have been waived or reduced from a specified amount to another specified amount because the rationale provided in support of a request for waiver has been accepted.

(E) Fees due in a specified amount have not been received.

§ 701.5 Responsibility and authority for determinations.

(a) *Release authorities.* Commanding officers and heads of all Navy and Marine Corps activities (departmental and field) are authorized to furnish copies of records under their cognizance, or to make such records available for examination, upon proper request, subject to the exceptions noted in paragraphs (c) (2) and (3) of this section. Coordination with officials having cognizance over the subject matter of the requested record is advised when there is a question as to its releasability. If it is determined that a requested record should not be released in whole or in part, the release authority should forward the request, a copy of the requested document(s) and his/her recommendations, to the initial denial authority in the chain of command for release determination. For records which are part of record systems governed by the Privacy Act, the record custodian specified in the systems notice published annually by the Chief of Naval Operations is the appropriate authority to respond to an initial request for a record.

(b) *Initial Denial Authorities (IDA's).* The following chief officials, their respective vice commanders, deputies, and those principal assistants specifically designated by the chief official are authorized to deny, as well as grant requests, either in whole or in part, for documents or records; to grant a one 10 working day extension to the time limits for responding to FOIA requests; and to deny requests to waive or reduce FOIA fees, when the information sought relates to matters within their respective areas of responsibility:

(1) For the Navy Department: The Civilian Executive Assistants; the Chief of Naval Operations; the Commandant of the Marine Corps; the Chief of Naval Material; the Chief of Naval Personnel; the Commanders of Naval Systems Commands; the Commanders of the Naval Intelligence Command, Naval Security Group Command, and Naval Telecommunications Command; the Chief, Bureau of Medicine and Surgery; the Auditor General of the Navy; the Naval Inspector General; the Assistant Deputy Chief of Naval Operations (Civilian Personnel/Equal Employment Opportunity); the Chief of Naval Education and Training; the Chief of Naval Reserve; the Chief of Naval Research; the Chief of Naval Development; the Commander, Naval Oceanography Command; the Director, Naval Civilian Personnel Command; the heads of Department of the Navy Staff

Offices, Boards, and Councils; the Assistant Judge Advocate General (Civil Law); and the Assistant Judge Advocate General (Military Law). The Judge Advocate General and his Deputy, and the General Counsel and his Deputies are excluded from this grant of authorization, but the Assistant Judge Advocates General, the Assistants to the General Counsel and the Director, Litigation Office, Office of the General Counsel, are so authorized.

(2) For the shore establishment:

(i) All officers authorized pursuant to Article 22, UCMJ, or designated as empowered in section 0103d, Manual of the Judge Advocate General, to convene general courts martial.

(ii) The Director, Naval Investigative Service, the Assistant Commander (Management and Operations), Naval Legal Service Command, and the Director of Navy Laboratories.

(3) In the operating forces: All officers authorized pursuant to Article 22, UCMJ, or designated as empowered in section 0103d, Manual of the Judge Advocate General, to convene general courts martial.

(c) *Responsibility for acting on requests.*

(1) General rule. Subject to § 701.7(c) when a Department of the Navy official receives a request for a copy of, or permission to examine a record under his/her cognizance, that official is responsible for acting on the request in the time and manner prescribed in Subparts A, B, and D of this Part 701.

(2) If an official receives a request for records that he/she holds, but which were originated by another naval activity, the official shall ordinarily refer the FOIA request and copies of the requested documents to that activity for direct response, after direct coordination and obtaining concurrence from the activity. The naval activity that initially received the request has the responsibility for notifying the requester of the referral. That naval activity shall not, in any case, release or deny such records without prior consultation with the other naval activity.

(3) The following actions shall be taken with regard to requests for:

(i) Classified records.—(A) If a naval activity receives an FOIA request or mandatory declassification review request for information whose existence or nonexistence is itself classifiable under the provisions of Executive Order 12356, the naval activity shall refuse to confirm or deny the existence or nonexistence of the requested information.

(B) If a naval activity receives a request for documents in its custody that were classified by another agency, it shall refer the request and copies of the requested documents to the originating agency for processing, and may, after consultation with the originating agency inform the requester of the referral. Referred records shall only be identified to the extent consistent with security requirements. In cases in which the originating agency determines in writing that a response under paragraph (c)(3)(i)(A) of this section is required, the referring agency shall respond to the requester in accordance with that paragraph.

(C) If a naval activity receives a request which includes classified records originated by another naval activity for which the head of the activity is not the classifying authority in accordance with OPNAV Instruction 5510.1 series, Department of the Navy Information Security Program Regulation, the request and copies of the requested documents shall promptly be readdressed and forwarded to the official having classification authority for the subject matter. The appropriate official will then review and make a determination as to the releasability of the classified portions of the records and so notify the requester within 10 working days after he/she has received the request. The naval activity that initially received the request has the responsibility for notifying the requester of the referral. Referred records shall only be identified to the extent consistent with security requirements.

(ii) NIS reports—a request for a Naval Investigative Service report or any portion thereof shall promptly be readdressed and forwarded to the Director, Naval Investigative Service, for review and release determination. The naval activity that initially received the request has the responsibility for notifying the requester of the referral. Direct liaison with NIS prior to the referral is encouraged.

(iii) JAG Manual investigative reports—a request for a JAG Manual investigative report shall promptly be readdressed and forwarded to OJAG, Code 21, for review and release determination except as provided in section 1331(b)(1) of the Manual of the Judge Advocate General (JAGINST 5800.7A) (§ 720.31(b)(1) of this chapter). The naval activity that initially received the request has the responsibility for notifying the requester of the referral.

(iv) Mishap investigation reports—a request for a mishap investigation report shall promptly be readdressed and forwarded to the Commander, Naval Safety Center, for review and release determination. The naval activity that initially received the request has the responsibility for notifying the requester of the referral.

(v) Naval Audit Service reports—a request for a Naval Audit Service report shall promptly be readdressed and forwarded to the Naval Audit Service Headquarters (Code OPS) for review and release determination. The naval activity that initially received the request has the responsibility for notifying the requester of the referral.

(vi) Technical documents controlled by distribution statements—a request for a technical document to which "Distribution Statement B" is affixed shall promptly be readdressed and forwarded directly to the "controlling DoD office" in accordance with Chief of Naval Material Instruction 5200.29 series, Distribution Statements on Technical Documents, for review and release determination. The naval activity that initially received the request has the responsibility for notifying the requester of the referral. Direct liaison with the cognizant official prior to referral is encouraged.

(vii) Records originated by other government agencies—When a request for records is received which was originated by an agency outside the Department of the Navy, promptly readdress it, forward the request and copies of the requested documents to the cognizant agency having the responsibility for acting on the request and notify the requester of the readdressal. This may be accomplished by sending a copy of the readdressal letter to the requester. The 10 working day time limit commences when the request is received by the cognizant agency. If additional guidance is required, contact the Chief of Naval Operations (OP-09B1P) or the Commandant of the Marine Corps (Code PAP), as appropriate. Direct liaison with the agency having cognizance over the record is encouraged for ensuring the expeditious handling of the request.

(d) *Misdirected requests.* Misdirected/misaddressed requests received for copies of or permission to examine Department of the Navy records shall be promptly readdressed and forwarded directly to the cognizant naval activity having the responsibility for acting on the request. Although the 10 working day time limit does not commence until the request is received by the cognizant official, telephonic liaison is encouraged to alert the official that the request is being referred. The naval activity that initially received the request is responsible for notifying the requester of the readdressal.

(e) *Records on Non-U.S. Government Source.* When a request is received for a

record that was obtained from a non-U.S. Government source, or for a record containing information clearly identified as having been provided by a non-U.S. Government source, the source of the record or information normally shall be notified promptly of the request and afforded reasonable time to present any objections concerning the release unless it is clear that there can be no valid basis for objection. If for example, the record or information was provided with actual or presumptive knowledge of the non-U.S. Government source and that it would be made available to the public upon request, there is no obligation to notify the source. Any objections shall be evaluated. When a substantial issue has been raised, the official may seek additional information from the source of the information and afford the source and requester reasonable opportunities to present their arguments on the legal issues involved prior to making an agency determination. When the source advises it will seek a restraining order or take court action to prevent release of the record or information, the requester shall be notified and action on the request normally shall not be taken until after the outcome of the court action is known.

§ 701.6 Format and procedures for requesting records.

(a) *Minimum requirements.* To qualify as an FOIA request within the technical requirements of Subparts A, B, and D of this Part 701, a request for copies of, or for permission to examine Department of the Navy records must, at a minimum:

(1) Be in writing and indicate expressly, or by clear implication, that it is a request made under 5 U.S.C. 552, Department of Defense Directives 5400.7 and 5400.7–R series, Department of Defense Freedom of Information Act Program (*See* 32 CFR Part 286) or Subparts A, B, and D of this Part 701.

(2) Contain a reasonable description of the particular record(s) requested. For example, provide details of the subject matter, type and location of incident, dates, originator, etc., to enable naval personnel to locate or identify the particular record(s) desired with a reasonable amount of effort; and,

(3) Contain a clear statement that the requester is willing and able to pay all fees or fees up to a specified limit, or provide satisfactory evidence that he/she is entitled to a waiver/reduction of such fees in accordance with 32 CFR Part 701, Subpart D, if the documents to be released are expected to exceed the minimum fee waiver threshold.

Note: Fees totaling $30 or less normally waived (*See* 32 CFR Part 701, Subpart D).

(b) *Treatment of request not meeting minimum requirements.*—(1) Requests which do not conform to the minimum requirements should, if possible, be answered within 10 working days after receipt. Whenever possible, the response should attempt to assist the requester in obtaining the desired records in accordance with the provisions of Subparts A, B, and D of this Part 701. For example, if the requester has not provided a reasonable description of the desired record(s), assist the requester in framing a new request in a way which might facilitate identification of the record(s). If the requester fails to offer to pay fees, furnish the requester with a reasonable estimate of any search and reproduction costs associated with the processing of the request. Activities are encouraged to contact the requester, if practicable, to clarify what he/she is seeking.

(2) If a request fails to qualify for treatment within the technical requirements of Subparts, A, B, and D of this Part 701, but the requested record is available and is releasable in its entirety, the responding official may provide a copy of the record if he/she determines it to be in the best interests of the activity to do so. The application of this provision shall be within the sole and exclusive discretion of the responsible official of the activity concerned and shall not be construed as creating an exception to, or grounds for, waiver of the minimum requirements.

§ 701.7 Procedures for processing FOIA requests.

(a) *Administrative controls.* Upon receipt of a written request for examination or copies of records, the naval activity will immediately ensure that action is taken to control the request and provide for its priority and expeditious handling, and for responding to the requester within the 10 working day limit (excluding Saturdays, Sundays, and legal holidays).

(b) *Time limits for determinations.* Once the request is received by the official having responsibility for acting on it, a response shall be made to the requester within 10 working days (excluding Saturdays, Sundays, and legal holidays), unless an extension of the time limit is needed to complete the processing of the request.

(1) Extension of Time Limits.—(i) Statutory extensions of time limits are only authorized in accordance with the following conditions:

(A) The need to search for and collect records that are located in whole or part at places separate from the activity processing the request;

(B) The need to search for, collect, and examine a substantial number of records responsive to a request; or,

(C) The need to consult with another naval activity or another agency which has a substantial subject-matter interest in the determination of the request.

(ii) When a statutory extension of time is needed, the IDA shall acknowledge the request in writing, within the 10 working day period, decribe the circumstance(s) requiring the delay, and indicate the anticipated date for a substantive response.

(iii) If it appears to be a substantial possibility that the request might be ultimately denied, in whole or in part, the Judge Advocate General (Code 14) or the General Counsel, as appropriate, may be consulted by expeditious means prior to authorizing such extension.

(iv) When it is anticipated that the normal statutory time limits (including the statutory time extension) are insufficient to provide a response, the IDA shall acknowledge the request in writing prior to the expiration of the normal statutory time limits (including the statutory time extension), describe the circumstance(s) requiring the dalay, and indicate the anticipated date for the substantive response. The requester shall be advised that he/she may appeal to the designee of the Secretary of the Navy within 45 days or await a substantive determination by a specified date. It shall be made clear that such an agreement does not prejudice the right of the requester to appeal an adverse substantive determination.

(v) As an alternative to the taking of formal extensions of time as described in paragraphs (b)(1)(i) (A) through (C) of this section, the official having responsibility for the release of requested information may negotiate informal extensions of time with requesters where appropriate, as an alternative to the procedure described in paragraph (b)(1) (i) or (iv) of this section.

(2) [Reserved.]

(c) *Action by officials who are not IDA's.* When the head of the activity responsible for acting on a request is not authorized under § 701.5(b) to deny requests, that official shall, within the applicable time limit, take one of the following actions:

(1) If it has been determined that the requested record is releasable in its entirety and is available, and the fees for search and duplication have either been met or waived, forward a copy of the requested record directly to the requester. However, if search and duplication fees exceed the minimum fee waiver threshold, the requester may

be instructed to forward payment prior to the record(s) being provided.

(2) If it has been determined that the requested record is releasable in its entirety but is not yet available, notify the requester that the request has been approved and that the requested record will be forwarded by a specified date, subject to appropriate directions concerning the payment of fees.

(3) If it has been determined that the request for examination of records is approved, notify the requester of the time and place where the records may be examined, subject to appropriate directions concerning the payment of fees, if any, incurred for searching for the records.

(4) If it has been determined that the request for records has been misaddressed or that the records being sought are held by another naval activity or government agency, promptly readdress it and advise the requester of the action taken.

(5) If it has been determined that the requested record should not be released in whole or in part, forward the request, a copy of the requested record(s), and the recommendation for denial (which briefly states the applicable exemption(s) and whether a governmental interest would be jeopardized by its release) to the next superior in the administrative chain of command authorized under § 701.5(b).

(d) *Action by IDA's.* When an IDA receives a request referred by a subordinate official or receives any other request to which he/she may respond, the IDA shall, within a 10 working day time limit, take one of the following actions:

(1) Execute one of the actions specified in paragraph (c) (1) through (4) of this section or, if appropriate, direct a subordinate to do so.

(2) If the processing of a request cannot be completed within the applicable time limit, explain the reason(s) for the delay to the requester, with notification that he/she may treat this delay as an initial denial with a right to submit an administrative appeal to the designee of the Secretary of the Navy (Judge Advocate General or General Counsel) within 45 days, or that the requester may agree to await a substantive determination by a specified date. It shall be made clear that any such agreement does not prejudice the right of the requester to appeal an adverse substantive determination.

(3) If the IDA determines that the requested record contains information which is not releasable under the FOIA, and the releasable information contained in the record is not reasonably segregable from the nonreleasable information, notify the requester of the determination, the reasons therefor, and the name(s) and title(s) of the person(s) responsible for the denial. Such notification shall also include the specific citation of the exemption(s) upon which the denial is based, a brief discussion that there is a jeopardy to the governmental interest served by invoking the exemption(s), and advisement of the requester's right to appeal to the designee of the Secretary of the Navy (Judge Advocate General or General Counsel) within 45 days. Additionally, if the denial is based, in whole or in part, on a security classification, the notification shall include a summary of the particular provisions of paragraph 5–101 of OPNAV Instruction 5510.1 series, Department of the Navy Information Security Program Regulation, which contains the rationale for the correct classification of the requested record.

(4) If the IDA determines that the requested record contains releasable information that is reasonably segregable from the nonreleasable information, he/she shall:

(i) With respect to the releasable information of the record, take the actions indicated in paragraph (c)(1) through (3) of this section; and,

(ii) With respect to the nonreleasable information of the record, take the action indicated in paragraph (d)(3) of this section.

(5) If the requester relies upon a claimed entitlement to a waiver/reduction of applicable fees, the IDA shall, if he/she determines that the requester's entitlement to such waiver/reduction is not warranted, notify the requester of such determination, the reason(s) therefor, the name(s) and title(s) of the person(s) responsible for the determination, and the right of the requester to appeal the determination to the designee of the Secretary of the Navy (Judge Advocate General or General Counsel), within 45 days. If the requester appeals the denial to waive/reduce fees, the release of the records may be withheld until the fee is paid or the appellate authority grants a waiver/reduction of fees.

(e) *Other reasons.* Other reasons that an FOIA request cannot be acted upon, but which are not considered to be denials are:

(1) The referring official is unable to make a determination as to the releasability of a requested record within the applicable time limit because the record has not been located or obtained.

(2) The information requested is not a record within the meaning of the FOIA and Department of Defense Directives 5400.7 and 5400.7–R series, Department of Defense Freedom of Information Act Program (*See* 32 CFR Part 286).

(3) A record has not been described with sufficient particularity to enable it to be located by conducting a reasonable search.

(4) The requester has failed to comply with procedural requirements concerning time, place, or fees. Note: Officials who are not IDA's may not deny requests for waiver or reduction of search and duplication fees.

(5) The activity has determined through knowledge of its files and a reasonable search effort that it does not hold the requested record.

(f) *Consultation encouraged.* Consultation with officials in other naval activities or other government agencies having a substantial interest in or useful advice concerning the determination of requests under the purview of Subparts A, B, and D of this Part 701 is encouraged wherever practicable, and, in some instances, is required.

(1) Consultation is required with other naval activities or agencies having substantial interest in the subject matter of requested records which may be withheld under the exemptions cited in 32 CFR Part 701, Subpart B.

(2) Consultation with the Office of the Judge Advocate General, the Office of the General Counsel, or the appropriate naval attorney in the field is encouraged concerning the interpretation and application of the technical provisions of Subparts A, B, and D of this Part 701, or where a denial of a request is expected to be appealed or judicially challenged.

(3) Consultation with a public affairs officer or the Chief of Information (OP–007) is encouraged when the requested records are considered newsworthy; a request is received from a news media representative; or, a denial of a request is expected to be publicly challenged. Further, the Chief of Information shall be notified of any release having evident public affairs implications.

(4) In the case of a denial of a request, in whole or in part, under Subparts A, B, and D of this Part 701 or a denial of waiver/reduction of fees, the IDA shall maintain a legible copy of the case file containing all pertinent correspondence and the requested record for prompt forwarding, upon request, to the Judge Advocate General or the General Counsel, in the event of an appeal.

(g) *Mailing lists.* Frequent FOIA requests are received which seek mailing lists of the home addresses and/or duty station addresses of naval personnel.

(1) A request for a mailing list of home addresses is not releasable without the individuals' consent. This is construed to be a clearly unwarranted invasion of the individual' privacy and therefore may be withheld from disclosure under 5 U.S.C. 552(b)(6).

(2) A request for a mailing list for names and duty station addresses may be releasable, however certain facts must be brought to the attention of the requester prior to releasing the list. For example, many existing duty station address listings do not contain sufficient information to enable either the U.S. Postal Service or Navy-operated mail and distribution facilities to ensure delivery. These incomplete addresses would necessitate directory service which is often not available. As a result, such mailings will normally be endorsed as undeliverable and returned to the sender or otherwise disposed of. Further, if during the processing of a mailing list request it is determined that the duty station address is insufficient to effect delivery, the requester should be advised by letter of the potential for nondelivery. Fees associated with the processing of mailing list requests are determined in accordance with 32 CFR Part 701, Subpart D.

§ 701.8 Appeals from denials of requests for records.

(a) *Responsibility and authority.*—(1) Delegation of authority. The Judge Advocate General and the General Counsel are authorized to determine appeals made to the Secretary of the Navy on denials of requests for copies of Department of the Navy records or portions thereof, or refusals to waive or reduce fees, concerning matters which are within their respective areas of cognizance for legal services. This shall include the authority to release or withhold records, or portions thereof, waive fees, and to perform such other acts as may be required of the Secretary of the Navy in connection with the appeals made under 5 U.S.C. 552 and Subparts A, B, and D of this Part 701.

(2) Respective areas of cognizance. As delineated in Secretary of the Navy Instructions 5430.25 and 5430.27 series, the respective areas of cognizance of the Judge Advocate General and the General Counsel for providing legal services for the Department of the Navy are:

(i) Judge Advocate General—In addition to military law, all matters except those falling under the cognizance of the General Counsel.

(ii) General Counsel—

(A) the business and commercial law aspects of matters relating to:

(*1*) The acquisition, custody, management, transportation, taxation, and disposition of real and personal property and the procurement of services, including the fiscal, budgetary, and accounting aspects thereof; excepting, however, tort claims and admiralty claims arising independently of contracts, and matters relating to the naval petroleum reserves;

(*2*) Operations of the Military Sealift Command, excepting tort and admiralty claims arising independently of contracts;

(*3*) The Office of the Comptroller of the Navy;

(*4*) The Naval Data Automation Command;

(*5*) All matters in the fields of patents, inventions, trademarks, copyrights, royalty payments, and similar matters;

(*6*) Procurement aspects of foreign military sales, co-production and cooperative research and development and related agreements, NATO standardization agreements and matters relating to the Arms Exports Control Act.

(*7*) Department of the Navy litigation before the Armed Services Board of Contract Appeals; and,

(B) Civilian personnel law matters pertaining to the employment of present and former Navy civilian employees.

(b) *Addresses for appeals.* Appeals to the Secretary of the Navy under the provisions of 5 U.S.C 552 and Subparts A, B, and D of this Part 701 should be addressed to the appropriate authority as noted above. The appropriate mailing addresses are:

(1) The Judge Advocate General (Code 14), Navy Department, 200 Stovall Street, Alexandria, VA 22332.

(2) The General Counsel, Navy Department, Washington, DC 20360.

(c) *Time and format for filing appeals.* To be effective for the purposes of the provisions of 5 U.S.C. 552 and Subparts A, B, and D of this Part 701, an appeal from an initial denial, in whole or in part, for requested records or a refusal to waive/reduce fees, must be in writing and be received by the appellate authority not more than 45 days following the date of transmittal of the notification of the initial denial. Additionally, such appeal must clearly state that it is an appeal from a denial of a request made under the "Freedom of Information Act" or Subparts A, B, and D of this Part 701, and must attach a copy of the letter denying the request.

(d) *Time limits for determining appeals.*—(1) Normal requirement. A final determination on an appeal to the Secretary of the Navy normally shall be sent to the appellant within 20 working days after the appeal is received in the Office of the Judge Advocate General or the General Counsel.

(2) Extension of time limits. If additional time is needed due to unusual circumstances (*See* § 701.7(b)(1)(i)(A) through (C), the final decision may be delayed for the number of working days (not to exceed 10), that were not utilized as additional time for responding to the initial request. If, however, a determination cannot be made and the requester notified within 20 working days, the appellate authority may acknowledge to the requester, in writing, the date of receipt of the appeal, the circumstances surrounding the delay, and the anticipated date for substantive response. Requesters may be advised that, if the delay exceeds the statutory extension provision or is for reasons other than "unusual circumstances" they may consider their administrative remedies exhausted. Further, requesters should be advised that they may await a substantive response without prejudicing their right to judicial remedy. The appellate authority shall continue to process the case expeditiously whether or not the requester seeks a court order for release of the record(s). A copy of any response provided subsequent to filing of a complaint shall be forwarded to the Department of Justice.

(e) *Action upon receipt.* Upon receipt of an appeal, the Judge Advocate General or the General Counsel shall inform the IDA who shall expeditiously forward the case file with such comments and recommendations as he/she or other interested officials may deem appropriate. The Director of Naval Intelligence (OP-009DX) may be consulted, when appropriate, in appeal cases to resolve inconsistences or disputes involving classified records. All naval activities are directed to provide rapid and responsive assistance, as required, for facilitating correct and timely determinations of appeals. Direct liaison with appropriate officials within the Department of the Navy and other interested federal agencies is authorized at the discretion of the appellate authority, who also shall be responsible for coordinating with appropriate officials of the Departments of Defense and Justice in such manner as may be prescribed by directives of the Secretary of Defense. The Secretary of the Navy or appropriate Civilian Executive Assistants shall be consulted and kept advised of cases having unusual implications, and the Chief of Information shall be consulted and kept advised on cases described in § 701.7(f)(3).

(f) *Notification of final determination.* Upon resolving the issue(s) involved, the appellate authority shall provide the appellant with a written notification of the final determination made on the appeal. If the determination has the effect of granting a request, in whole or part, the appellate authority shall cause the requested records, or the releasable portions thereof, to be made promptly available to the appellant. If the final determination has the effect of denying a request, in whole or part, the notification shall contain the name(s) and title(s) of the individual(s) reponsible for such denial, an advisement of the requester's right to seek judicial review, and the following additional matters, as applicable:

(1) An explanation of the exemption(s) upon which the determinaton is based and the governmental interest that will be jeopardized by its release.

(2) If the determination is based, in whole or part, upon a security classification, a statement be provided that based on a declassification review it is determined that the record meets specified criteria and rational of OPNAV Instruction 5510.1 series, Department of the Navy Information Security Regulation.

§ 701.9 For Official Use Only (FOUO).

(a) *General.*—(1) *For Official Use Only* applies to information, records, and other materials which have not been given a security classification under the criteria of an Executive Order, but which contain information which may be withheld from the public for one or more of the reasons cited in FOIA exemptons 2 throught 9. No other materials shall be considered or marked FOR OFFICIAL USE ONLY (FOUO), as FOUO is not authorized as a form of classification to protect national security interests.

(2) Prior FOUO application. The prior application of FOUO markings is not a conclusive basis for withholding a record requested under the FOIA. When such a record is requested, the information in it shall be evaluated to determine whether, under current circumstances, FOIA exemptions apply in withholding all or part of the record. Information which is "reasonably segregable" and does not fall under an FOIA exemption(s) must be considered for release to the requester. In the event any exemption(s) applies(y), it may nonetheless be released when it is determined that no governmental interest will be jeopardized by its release.

(3) Historical papers. Documents such as notes, working papers, and drafts properly considered to be "records" under the FOIA and retained as historical evidence of Department of the Navy actions enjoy no special status apart from their exemptions under 5 U.S.C. 552.

(4) Unauthorized disclosure. The unauthorized disclosure of FOUO records does not constitute an unauthorized disclosure of Department of the Navy information classified for security purposes. However, appropriate administrative action shall be taken to the extent feasible, and appropriate disciplinary action shall be taken against those responsible. Unauthorized disclosure of FOUO information that is protected by the Privacy Act may also result in criminal and civil sanctions against the responsible person(s). The naval activity that originated the FOUO information shall be informed of its unauthorized disclosure.

(b) [Reserved.]

Subpart B—Guidelines on Matters Which are Exempt From Public Disclosure

§ 701.21 General rule.

No record or portion thereof shall be withheld from disclosure to the public unless it falls within the scope of one or more of the nine FOIA exemptions listed in § 701.24. Notwithstanding that a record falls under one or more FOIA exemptions, the record (or a reasonably segregable portion thereof) is releasable and shall be made available to the requester unless the cognizant official determines that a governmental interest would be jeopardized by its release. In no event, however, shall information be denied because its release might embarrass the Department of the Navy or its military or civilian officials in the performance of their duties.

§ 701.22 Reasonably segregable matters.

If a record contains both releasable and nonreleasable information, the releasable information shall be made available if it is reasonably segregable from the nonreleasable information in the record. Releasable information is "reasonably segregable" if it provides the requester with meaningful and undistorted information after the nonreleasable information is excised and if it can be reasonably assumed that a skillful and knowledgeable person could not reconstruct the nonreleasable information of the record. Further, all information in a record is releasable and shall be made available to a member of the public, unless in the judgment of the official making the determination:

(a) The release of the information would be inconsistent with a statutory requirement or OPNAV Instruction 5510.1 series, Department of the Navy Information Security Program Regulation; or,

(b) The release of the information would jeopardize a governmental interest.

§ 701.23 Judicial review.

All total and partial denials of information are subject to both administrative and judicial appeals. In the event of a judicial review, a U.S. District Court may examine the withheld record or portions thereof in their entirety to determine whether the record or portions thereof are exempt from disclosure. Therefore, extreme care should be taken when claiming an exemption to ensure that a governmental interest does exist for the withholding of the information.

§ 701.24 Specific exemptions.

The following types of matters may be withheld from public disclosure unless otherwise prescribed by law:

(a) *"Exemption 1" Matters (5 U.S.C. 552(b)(1)).* Refers to information which is currently and properly classified under criteria established by Executive Order 12356 and is authorized to remain classified in the interest of national security. The withholding of such information is implemented in the U.S. Navy in OPNAV Instruction 5510.1 series, Department of the Navy Information Security Program Regulation. If a requested record is classified in accordance with the OPNAV Instruction 5510.1 series, the record must be reviewed for the basis of the security classification. The following general rules are applicable:

(1) The request must be referred, with information and recommendations, to an official who is authorized under Sec. 701.5, to deny requests and who has cognizance of the classified matters in the record, if the basis of the classification is:

(i) An approved security classification guide promulgated in accordance with the OPNAV Instruction 5510.1 series;

(ii) Resource document originated by another naval activity or government agency;

(iii) An original classification determination for which there is written justification for classification, and the justification remains valid; or,

(iv) Not readily identifiable, but classification is believed to be warranted on the basis of classification criteria contained in the OPNAV Instruction 5510.1 series.

(2) If the original classifier of a record within his/her classification jurisdiction receives a request for the recorded and,

upon review, determines that there is no basis for continued classification, either in whole or part, the record should be declassified, in whole or in part, and reviewed to determine whether any other FOIA exemptions are applicable to the declassified information, and, if so whether a governmental interest would be jeopardized by its release.

(b) *"Exemption 2" Matters (5 U.S.C 552(b)(2)).* Refers to information containing or constituting rules, regulations, orders, manuals, directives, and instructions relating to the internal personnel rules or practices of the Department of the Navy if their release to the public would substantially hinder the effective performance of a significant function of the Department of the Navy and they do not impose requirements directly on the general public. Examples include:

(1) Operating rules, guidelines and manuals for investigators, inspectors, auditors, or examiners, and certain schedules or methods of operation which would reveal:

(i) Negotiating and bargaining techniques;

(ii) Bargaining limitations and positions;

(iii) Inspection schedules and methods, and

(iv) Audit schedules and methods.

(2) Personnel and other administrative matters, such as examination questions and answers used in training courses or in the determination of the qualifications of candidates for employment, entrance to duty, advancement, or promotion.

(c) *"Exemption 3" Matters (5 U.S.C. 552(b)(3)).* Refers to information which is specifically exempted from disclosure by statute that permits no discretion on the issue, or in accordance with criteria established by that statute for withholding or referring to the particular types of information to be withheld. Such authorization or requirement may be found in the terms of the statute itself or in Executive Orders or regulations authorized by, or in implementation of, a statute. The Privacy Act, 5 U.S.C. 552a, is not considered an applicable statute under 5 U.S.C. 552(b)(3). Examples include:

(1) Public Law 86–36 (50 U.S.C. 402 note)—National Security Agency information.

(2) 35 U.S.C. 181–188—any records containing information relating to inventions that are the subject of patent applications on which Patent Secrecy Orders have been issued.

(3) 42 U.S.C. 2162—Restricted Data and Formerly Restricted Data.

(4) 18 U.S.C. 798—Communication Intelligence.

(5) 50 U.S.C. 402(d)(3) and (g)—Intelligence sources and methods.

(6) 21 U.S.C. 1175—Drug abuse prevention/rehabilitation.

(7) 42 U.S.C. 4582—Alcohol abuse prevention/rehabilitation.

(d) *"Exemption 4" Matters (5 U.S.C. 552(b)(4)).* Refers to trade secrets or commercial or financial information obtained from a person or organization outside the government with the understanding that the information or record will be retained on a privileged or confidential basis in accordance with the customary handling of such records. Records falling under this exemption must contain trade secrets, or commercial or financial records, the disclosure of which is likely to cause substantial harm to the competitive position of the source providing the information; impair the government's ability to obtain necessary information in the future; or, impair some other legitimate government interest. Examples include records that contain:

(1) Commercial or financial information received in confidence in connection with loans, bids, contracts or proposals, as well as other information received in confidence or privileged, such as trade secrets, inventions and discoveries, or other proprietary data.

(2) Statistical data and commercial or financial information concerning contract performance, income, profits, losses, and expenditures, if offered and received in confidence from a contractor or potential contractor.

(3) Personal statements given in the course of inspections, investigations, or audits, where such statements are received in confidence from the individual and retained in confidence because they reveal trade secrets or commercial or financial information normally considered confidential or privileged.

(4) Financial data provided in confidence by private employers in connection with locality wage surveys that are used to fix and adjust pay schedules applicable to the prevailing wage rate employees within the Department of the Navy.

(5) Scientific and manufacturing processes or developments concerning technical or scientific data or other information submitted with an application for a research grant, or with a report while research is in progress.

(e) *"Exemption 5" Matters (5 U.S.C 552(b)(5)).* Refers to internal advice, recommendations, and subjective evaluations, as contrasted with factual matters, that are reflected in records pertaining to the decision-making process of an agency, whether within or among agencies or within or among Department of Defense and the Department of the Navy components, except as provided in paragraph (e)(2) through (5) of this section.

(1) Examples include:

(i) The nonfactual portions of staff papers, to include after-action reports and situation reports containing staff evaluations, advice, opinions, or suggestions.

(ii) Advice, suggestions, or evaluations prepared on behalf of the Department of the Navy by individual consultants or by boards, committees, councils, groups, panels, conferences, commissions, task forces, or other similar groups that are formed for the purpose of obtaining advice and recommendations.

(iii) Those nonfactual portions of evaluations by Department of the Navy personnel of contractors and their products.

(iv) Information of a speculative, tentative, or evaluative nature on such matters as proposed plans to procure, lease, or otherwise acquire and dispose of materials, real estate, facilities, or functions, when such information would provide undue or unfair competitive advantage to private personal interests or would impede legitimate government functions.

(v) Trade secrets or other confidential research development, or commercial information owned by the government, where premature release is likely to affect the government's negotiating position or other commercial interests.

(vi) Records that are exchanged among agency personnel and within and among Department of the Navy, Department of Defense, or other agencies as part of the preparation for anticipated administrative proceeding by an agency or litigation before any federal, state, or military court, as well as records that qualify for the attorney-client privilege.

(vii) Those portions of official reports of inspections, reports of the Inspector Generals, audits, investigations or surveys pertaining to safety, security, or the internal management, administration, or operation of the Department of the Navy, when these records have traditionally been treated by courts as privileged against disclosure in litigation.

(2) If any such intra- or interagency record or reasonably segregable portion of such record would hypothetically be made available through the "discovery process" (i.e., the legal process by which litigants obtain information from each other that is relevant to the issues in a trial or hearing) in the course of litigation with the Department of the

Navy, such record, should not be withheld even though discovery has not been sought in actual litigation. If, however, the information hypothetically would only be made available through the discovery process by special order of the court based on the particular needs of a litigant, balanced against the interests of the Department of the Navy in maintaining its confidentiality, the record or document need not be made available.

(3) Intra- or interagency memoranda or letters that are factual, or those reasonably segregable portions that are factual, are routinely made available through "discovery," and shall be made available to a requester, unless the factual material is otherwise exempt from release, inextricably intertwined with the exempt information, so fragmented as to be uninformative, or so redundant of information already available to the requester as to provide no new substantive information.

(4) A direction or order from a superior to a subordinate, though contained in internal communication, generally cannot be withheld from a requester if it constitutes policy guidance or a decision, as distinguished from a discussion of preliminary matters or a request for information or advice that would compromise the decision-making process.

(5) An internal communication concerning a decision that subsequently has been made a matter of public record must be made available to a requester when the rationale for the decision is expressly adopted or incorporated by reference in the record containing the decision.

(f) *"Exemption 6" Matters (5 U.S.C 552(b)(6)).* Refers to information in personnel and medical files as well as similar personal information in other files, that, if disclosed, to the requester would result in a clearly unwarranted invasion of personal privacy.

(1) Examples of files containing personal information similar to that contained in personnel and medical files include:

(i) Those compiled to evaluate or adjudicate the suitability of candidates for civilian employment or membership in the Armed Forces, and the eligibility of individuals (civilian, military, or contractor employees) for security clearances, or for access to particularly sensitive classified information.

(ii) Files containing reports, records, and other material pertaining to personnel matters in which administrative action, including disciplinary action, may be taken.

(2) This exemption is relevant to a request for information that is intimate to an individual or that possibly could have adverse effects upon that individual or his/her family if disclosed. Section 701.105 lists several examples of nonderogatory information about the official character of a naval member or employee that can routinely be disclosed to a member of the public, without constituting a clearly unwarranted invasion of the personal privacy of the individual concerned. The determination of whether disclosure of other information about an individual would constitute a "clearly unwarranted" invasion of his/her right of personal privacy is a subjective judgment requiring careful weighing of the privacy interest to be protected—including consideration of the nature of the information requested, the degree of its sensitivity from the standpoint of the individual or his/her family, and its potential for being misused to the harm, embarrassment, or inconvenience of the individual or his/her family—against the importance of the requester's expressed or inferred purposes for seeking the information. In no event shall information be denied because its release might embarrass the Department of the Navy or its military or civilian officials in the performance of their duties.

(3) When the only basis for withholding information is protection of the personal privacy of an individual who is the subject of the record, information should not be withheld from that individual or from his/her designated representative. A clearly unwarranted invasion of the personal privacy of others discussed in that record may, however, constitute a basis for deleting reasonably segregable portions of the record even when providing it to the subject of the record. Note: This exemption shall not be used to protect the privacy of a deceased person, since deceased persons do not have a right to privacy. Information, however, may be withheld under this exemption to protect the privacy of the next of kin of the deceased person.

(g) *"Exemption 7" Matters (5 U.S.C. 552(b)(7)).*—(1) Refers to investigative records compiled for the purpose of enforcing civil, criminal, or military law, including the implementation of executive orders, or regulations issued pursuant to law, but only to the extent that their release would:

(i) Interfere with enforcement proceedings (5 U.S.C. 552(b)(7)(A));

(ii) Deprive a person of the right to a fair trial or an impartial adjudication (5 U.S.C. 552(b)(7)(B));

(iii) Constitute an unwarranted invasion of personal privacy of a living person, including surviving family members of an individual identified in such a record (5 U.S.C. 552(b)(7)(C));

(iv) Disclose the identity of a confidential source; disclose confidential information furnished only from a confidential source and obtained by a criminal law enforcement authority in a criminal investigation by an agency conducting a lawful national security intelligence investigation (5 U.S.C. (b)(7)(D));

(v) Disclose investigative techniques and procedures not already in the public domain and requiring protection from public disclosure to ensure their continued effectiveness (5 U.S.C. 552(b)(7)(E)); or,

(vi) Endanger the life or physical safety of law enforcement personnel or their families (5 U.S.C. 552(b)(7)(F)).

(2) Examples include:

(i) Statements of witnesses and other material developed during the course of the investigation and all materials prepared in connection with related government litigation or adjudicative proceedings.

(ii) The identity of firms or individuals being investigated for alleged irregularities involving contracting with the Department of Defense and Navy when no indictment has been obtained nor any civil action filed against them by the United States.

(iii) Information obtained in confidence, expressed or implied, in the course of a criminal investigation by a criminal law enforcement agency or office within the Navy, or a lawful national security intelligence investigation conducted by an authorized agency or office within the Department of the Navy. National security intelligence investigations include background security investigations and those investigations conducted for the purpose of obtaining affirmative or counterintelligence information.

(h) *"Exemption 8" Matters (5 U.S.C. 552(b)(8)).* Refers to information contained in or related to examination, operation, or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions.

(i) *"Exemption 9" Matters (U.S.C. 552(b)(9)).* Refers to geological and geophysical information and data (including maps) concerning wells.

Subpart C—[Reserved]

Subpart D—Guidelines for Assessment/Waiver/Reduction of Fees

§ 701.40 Purpose.

The fees described in this subpart apply to FOIA requests. They reflect direct search and duplication costs, recovery of which are permitted by 5 U.S.C. 552, Department of Defense Directives 5400.7 and 5400.7–R series, Department of Defense Freedom of Information Act Program.

§ 701.41 Fee assessment.

(a) *Minimum fees.* Minimum fees shall not be charged. When direct search and duplication costs for a single FOIA request total $30 or less, fees shall be waived automatically. Naval activities, however, may set aside the automatic fee waiver provision when, on the basis of good evidence, the activity can demonstrate that the waiver of fees is not in the public interest. Multiple requests from a single requester or from those acting on behalf of a single requester in an effort to take advantage of the waiver may create a situation in which a waiver should be denied. The automatic fee waiver is not applicable when the full costs for search and duplication exceed $30. For example, if the search and duplication costs total $45, the fee assessment charged to the requester is $45.

(b) *Decisions to waive or reduce fees.* Decisions to waive or reduce fees that exceed the automatic fee waiver threshold of $30, shall be made on a case-by-case basis. The following circumstances, however, describe the most common instances in which waiver or reduction of fees are most likely to be warranted:

(1) No record is located or all records are denied. However, fee charges are appropriate if the requester insists upon a search and agrees to such fees after being informed that the search is likely to be nonproductive or that the records are all likely to be exempt from release.

(2) A record is voluntarily created to preclude an otherwise burdensome effort to provide voluminous amounts of available records, including additional information not requested.

(3) The records are to be made available in response to a news media requester whose requests are reasonable in scope and frequency. Fee charges are appropriate for news media requesters and may be assessed when:

(i) The charges exceed the fee waiver threshold of $30; and,

(ii) The requester record does not contain information that can be considered as primarily benefiting the general public, or the search for the requested record requires an inordinate amount of naval personnel time, and impacts adversely on the naval activity concerned in accomplishing its primary functional missions.

(iii) When news media requests are broad in scope and are considered unreasonable by the head of the naval activity, a response should be forwarded to the requester, advising that the requester provide greater specificity. An estimate of fee charges may be included in the specificity letter, if practicable, or provided after receiving a reframed request.

(4) The record is for a nonprofit public interest group and the subject of the requested record is known to be of wide public interest, and furnishing the information can be considered as primarily benefiting the general public.

(5) A previous denial is reversed in whole or in part and the search and reproduction costs involved are not substantial.

§ 701.42 Waiver/reduction of fees.

(a) The principal fee waiver policy objectives of the Freedom of Information Act are twofold:

(1) To strengthen the ability of citizens to exercise their rights to understand, and by lawful means establish, support, modify, or terminate national laws, programs, policies of all kinds; and,

(2) To strengthen major aspects of national life in well-recognized areas of public concern where such strengthening will significantly benefit the general public.

(b) A request for a reduction or waiver of fees may be denied when:

(1) There is no definitive evidence to suggest the requested information contains significant potential for benefiting the general public, or releasing the information would not result in any such potential benefits actually being received by the general public; or,

(2) The requester fails to provide indication of his/her expertise on the subject, or the ability to extract and convey potentially beneficial information from the data provided, or the ability to effectually disseminate any extracted information; or,

(3) An inordinate amount of time is required to respond to the request, thus causing an adverse impact on the activity's mission. Cases which involve masses of information or data, (e.g., wide-ranging requests), are examples of cases requiring extraordinary time expenditure.

§ 701.43 Computation of fees.

The fee schedule contained in this subpart is used to compute the search and duplication costs associated with processing a given FOIA requests. Search fees shall be computed based on time actually spent. Neither time-based nor dollar-based minimum charges for search and duplication are authorized.

§ 701.44 Collection of fees.

Collection of fees need not be made in advance of rendering the service unless the costs are expected to exceed the minimum fee waiver threshold and the requester has not indicted a willingness in writing to pay. It frequently is more practical to collect fees at the time of providing the service to the recipient when the requester specifically states that the cost involved shall be acceptable up to a specified limit that covers anticipated costs. Collection of fees in advance is an appropriate requirement when the requester has not agreed in writing to pay the anticipated fee; has not honored previous commitments to pay fees that were owed the naval activity; or, when substantial costs are involved.

§ 701.45 Search and duplication fees.

(a) *Search fees.* The following delineates the fees authorized to be assessed to the requester seeking information concerning the Department of the Navy:

(1) Manual Search

Type	Grade	Hourly rate
Clerical	E9/GS8 and below	$8
Professional	01–06/GS9–GS15	16
Executive	07/GS16,ES1 and above	26

(2) Computer search is based on direct cost of the central processing unit, input/output devices, and memory capacity of the actual computer configuration.

(3) Actual cost of transporting records of personnel to the computer site/location may be included.

(b) *Duplication fees*

Type	Cost per page
Printed material	$.01
Office copy	.10
Microfiche	.25

(c) *Audiovisual documentary material.* Search costs are computed as for any other record. Duplication cost is the actual direct cost of reproducing the

material, including the wage of the person doing the work. Audiovisual materials provided to a requester need not be in reproducible format or quality.

(d) *Other records.* Direct search and duplication costs for any record not described above will be computed in the manner described for audiovisual documentary material.

* * * * *

Dated: May 19, 1983.

F. N. Ottie,

Lieutenant Commander, JAGC, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc 83-13925 Filed 5-23-83; 8:45 am]

BILLING CODE 3810-AE-M

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32 CFR Parts 730 and 770

Administrative Discharges and Related Matters Concerning Separation From the Naval Service—Subpart B—Marine Corps; and Rules Limiting Public Access to Particular Installations—Subpart A—Hunting and Fishing at Marine Corps Base, Quantico, Va.; Miscellaneous Amendments

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending 32 CFR Part 730 by removal of Subpart B thereof, whose publication is not required in that it relates to internal management and personnel rules and practices and does not affect the public. Removal of the subpart will not cancel the underlying source directives upon which it is derived. Additionally, miscellaneous amendments are made to 32 CFR Part 770, Subpart A, to reflect revisions to the underlying directive upon which it is derived.

EFFECTIVE DATE: May 24, 1983.

FOR FURTHER INFORMATION CONTACT: Major G. B. Roberts, USMC, Headquarters Marine Corps (Code JAR), Washington, D.C. 20380. Telephone: (202) 694-1513.

SUPPLEMENTARY INFORMATION: Pursuant to the authority cited below, the Department of the Navy amends 32 CFR Parts 730 and 770. It has been determined that these final rules are not major rules within the criteria specified in section 1(b) of Executive Order 12291 and do not have substantial impact on the public. It has further been determined in accordance with 32 CFR Parts 296 and 701 that publication of these amendments for public comment prior to adoption is impractical, unnecessary, and contrary to the public interest.

List of Subjects

32 CFR Part 730

Administrative practice and procedure, Conscientious objectors, Military personnel.

32 CFR Part 770

Federal buildings and facilities, National defense, Restricted access areas, Security measures.

Accordingly, 32 CFR Chapter VI is amended as follows:

PART 730—[AMENDED]

1. The authority citation for Part 730 reads as follows:

Authority.—Secs. 280, 1162, 1163, 6291–6298, 70A Stat. 14, 89, 391–393, as amended, 76 Stat. 508, 517, sec. 301, 80 Stat. 379; 5 U.S.C. 301; 10 U.S.C. 133, 280, 1162, 1163, 1168, 6291–6298, unless otherwise noted.

§§ 730.50–730.163 [Subpart B, Removed]

2. 32 CFR Part 730 is amended by removing Subpart B, §§ 730.50–730.163.

PART 770—[AMENDED]

3. The authority citation for Part 770 reads as follows:

Authority.—5 U.S.C. 301; 10 U.S.C. 6011; 32 CFR 700.702; 32 CFR 700.714, unless otherwise noted.

4. 32 CFR Part 770 is amended as follows:

a. Section 770.2 is amended by revising paragraph (b)(2), (c), and (d)(2) to read as follows:

§ 770.2 Licenses.

* * * * *

(b) * * *

(2) The privilege cards are effective for the same period as the Virginia hunting and fishing licenses.

(c) All hunters must obtain a Base hunting permit, and a parking permit, if applicable, from the Game Warden for each day of hunting. The hunting permit must be carried by the hunter and the parking permit must be displayed on the left dashboard of parked vehicles. The hunting and parking permits must be returned within one hour after either sunset or the hour hunting is secured on holidays or during special season.

(d) * * *

(2) Attendance at a safety lecture given daily except Sunday during the hunting season given at the Game Checking Station located at the intersection of Russell Road and MCB–1. The lectures commence an hour before sunrise, 0800, and 1200;

* * * * *

b. Section 770.3 is amended by removing the last sentence in paragraph (a) and adding in its place the following sentence which reads: "A Base Fishing Privilege Card is required for all persons aged 16 to 65."

c. Section 770.3 is amended in the last sentence of paragraph (b) by adding ", Building 5–9," between the words "Headquarters" and prior".

d. Section 770.3 is amended in paragraph (c)(2) by removing the word "trout" and adding in its place the word "trot".

e. Section 770.3 is amended in paragraph (c)(3) by removing the semicolon at the end of the sentence and adding a period in its place. After that sentence add the following sentence as follows: "All Large Mouth Bass under this size will be immediately returned to the water;"

f. Section 770.3 is amended by revising paragraph (c)(4) to read as follows:

§ 770.3 Fishing regulations.

* * * * *

(c) * * *

(4) No Striped Bass will be taken, creeled or possessed under the size of twenty (20) inches in length. All Striped Bass under this size will be immediately returned to the water;

* * * * *

g. Section 770.3 is amended in paragraph (c)(5) by removing the remainder of the paragraph after the word "card" in line 4 and adding a period after the word "card". After that sentence add the following language:

* * * * *

(c) * * *

(5) * * * The card may be obtained from the report boxes located in the vicinity of all fishing areas. The creel report must be completed at the conclusion of the day's fishing and returned to any fishing report box.

§ 770.6 [Amended]

h. Section 770.6 is amended in paragraph (b) by removing the remainder of the paragraph after the word "adult" and adding in its place the following language:

* * * * *

(b) * * * [18 years of age or older] while hunting or in a hunting area. The adult is limited to a maximum of two underage hunters, and must stay within sight and voice contact and no more than 100 yards away from the underage hunters.

i. Section 770.6 is amended in paragraph (c) by adding the following language after the last sentence:

* * * * *

(c) * * * Those personnel who are authorized to hunt on Base, desiring to train or exercise dogs other than deer

dogs between 2 September and 28 February, may do so by obtaining clearance to enter training areas at the Range Control Office. This clearance is not permission to hunt, and carrying weapons under these conditions is prohibited.

j. Section 770.6 is amended in paragraph (d) by removing the remainder of the paragraph after the word "sunset" in line 3 and adding a period after the word "sunset". After that sentence add the following sentence which reads: "The hours of sunrise and sunset are posted daily at the Game Checking Station."

§ 770.8 [Amended]

k. Section 770.8 is amended by removing the term "Game Warden's Office" and adding in its place the term "Game Checking Station".

l. Section 770.8 is amended in the last sentence by adding between the words "game" and "killed" a comma and the words "not requiring a tag,".

§ 770.9 [Amended]

m. Section 770.9 is amended by adding the following sentence prior to the first sentence: "Hunters are encouraged to build and use tree blinds for hunting deer."

Dated: May 19, 1983.

F. N. Ottie,

Lieutenant Commander, JAGC, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 83-13883 Filed 5-23-83; 8:45 am]

BILLING CODE 3810-AE-M

Department of the Air Force

32 CFR Part 888h

Separation Documents and General Separation Procedures

AGENCY: Department of the Air Force, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Air Force is amending its Military Personnel regulations by removing Part 888h—Separation Documents and General Separation Procedures, of Chapter VII, Title 32. The source document, Air Force Regulation (AFR) 35-6 has been revised. It is intended for internal guidance and has no applicability to the general public. This action is a result of departmental review in an effort to insure that only regulations which substantially affect the public are maintained in the Air Force portion of the Code of Federal Regulations.

EFFECTIVE DATE: May 24, 1983.

FOR FURTHER INFORMATION CONTACT: Mr. Lopez, HQ Air Force Military Personnel Center, MPCAKP, Randolph AFB, TX 78150, telephone (512) 652-2148.

SUPPLEMENTARY INFORMATION: Accordingly, 32 CFR is amended by removing Part 888h.

List of Subjects in 32 CFR Part 888h

Military personnel, Aliens, Records, Military law.

Authority: 10 U.S.C. 8012.

Winnibel F. Holmes,

Air Force Federal Register Liaison Officer.

[FR Doc. 83-13840 Filed 5-23-83; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF EDUCATION

34 CFR Part 318

Training Personnel For the Education of the Handicapped

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary issues these regulations for the implementation of Part D of the Education of the Handicapped Act (EHA), as amended. The Training Personnel for the Education of the Handicapped program provides financial assistance through grants to State educational agencies, institutions of higher education, and other nonprofit institutions or agencies to increase the quantity and to improve the quality of personnel available to educate handicapped children. The existing regulations were reviewed for regulatory burden reduction. These regulations are issued as a result of that review.

EFFECTIVE DATE: Unless the Congress takes certain adjournments, these regulations will take effect 45 days after publication in the **Federal Register**. If you want to know the effective date of these regulations call or write the Department of Education contact person. At a later date, the Secretary will publish a notice in the **Federal Register** stating the effective date of these regulations.

FOR FURTHER INFORMATION CONTACT: Dr. William R. Peterson, (202) 245-9491.

SUPPLEMENTARY INFORMATION: The Training Personnel for the Education of the Handicapped program was originally established under Pub. L. 89-10 in 1966 and is currently authorized under Part D of the Education of the Handicapped Act, as amended (20 U.S.C. 1431, 1432, and 1434). Proposed amended regulations were published as a notice of proposed rulemaking in the **Federal Register** on November 23, 1982 (47 FR 52948). That notice's preamble fully described the background and major issues.

These final regulations provide, among other things, for the distribution of program funds among the following seven priorities to eligible institutions and agencies: preparation of special educators; preparation of leadership personnel; preparation of related services personnel; State educational agency programming; special projects; specialized training of regular educators; and preparation of trainers of volunteers, including parents.

These final regulations implement the provisions of sections 631, 632, and 634 of Part D of the Education of the Handicapped Act (EHA), and the Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, and 78).

There are differences between the notice of proposed rulemaking and these final regulations. Section 318.10(b)(3) has been changed to clarify that the list of related services personnel who may be trained under this program is illustrative, not exhaustive. Section 318.10(c) has been changed to show that when the Secretary annually selects training priorities, the Secretary may elect not to identify the personnel preparation priority as preservice, inservice, or both. Section 318.43(a) has been changed to permit payment of stipends to part-time students with no reference to length of enrollment. Section 318.44 has been changed to permit payment of stipends to students who join the program at any point during the academic year.

The application notice that established the closing date for transmittal of Fiscal Year 1983 applications, published in the **Federal Register** on November 23, 1982 (47 FR 52743), advised applicants to prepare new applications in accordance with the November 23, 1982 proposed regulations.

Potential applicants were additionally advised that if there were any substantive changes in the final regulations they would be afforded the opportunity to amend or resubmit their applications. The changes in the final regulations are not sufficiently significant to classify as substantive.

The Department of Education received some public comments on the proposed regulations. Following is a summary of those comments and the Secretary's responses:

Section 318.1 General.

Comment. One commenter recommended that the word "educate" in the third line can be replaced by a clause "provide education and related services to" to reflect more closely the program's scope.

Response. No change has been made. In the context of these regulations the term "educate" can be construed broadly to encompass "related services".

Section 318.2 Eligibility.

Comment. One commenter recommended that only State educational agencies be eligible for Federal assistance under the grant program.

Response. No change has been made. The statute specifically authorizes federal assistance for institutions of higher education or other nonprofit institutions or agencies, in addition to State educational agencies (20 U.S.C. 1431, 1432, 1434). Limiting grants to State educational agencies would undesirably reduce competition by limiting the pool of eligible applicants.

Comment. Several commenters recommended that eligibility specification for institutions of higher education be qualified by prescribing regionally accredited institutions of higher education with State approved programs of teacher education.

Response. No change has been made. The statute does not require institutions of higher education to be regionally accredited or to have State approved programs of teacher education. It is anticipated that the majority of applications received from institutions of higher education will be from institutions that have State approved programs of teacher education. Federally mandating such requirements, however, would increase prescriptiveness and decrease flexibility contrary to current burden reduction policies. The proposed added qualifications could cause an otherwise worthy application to be declared unacceptable solely on grounds that the submitting institutions of higher education was not regionally accredited, State approved, or both.

Comment. One commenter recommended the addition of the word "organizations" for the clarity of eligibility to apply for grants in § 312.2(c).

Response. No change has been made. The phrase "nonprofit institutions and agencies" is taken from the statute, is generic, and therefore includes "organizations".

Section 318.4 Definitions.

Comment. Several commenters recommended that a § 318.4(b) be added with definitions for preservice and inservice preparation, training, or both.

Response. No change has been made. Definitions are unnecessary as these terms are in common use.

Section 318.10 Training Priorities.

Comment. One commenter recommended that the criteria, procedures, or both to be used by the Secretary to select priorities be included in this regulation.

Response. No change has been made. The procedures used to establish and implement priorities are included in EDGAR, specifically 34 CFR 75.105, and the restatement of them in this regulation would be redundant. The seven priorities included in these regulations were selected on the basis of program experience in training personnel to educate handicapped children.

Comment. One commenter recommended that § 318.10(a) be amended in the final clause to permit doctoral and post-doctoral preparation of personnel under the related services personnel priority in addition to the leadership personnel and special projects priorities.

Response. No change has been made. Doctoral and post-doctoral preparation of professional personnel under the leadership personnel priority includes training of "other specialists" (§ 318.10(b)(2)); consequently, it encompasses all professional personnel specified in the related services personnel priority (§ 318.10(b)(3)).

Comment. Several commenters recommended that a minimum funding allocation of five to eight percent be made to each of the seven training priorities with Secretarial discretion for the remaining 44 to 65 percent

Response. No change has been made. The specification of a fixed minimum percentage for each training priority would undesirably limit the discretion of the Secretary to make awards congruent with the selection criteria for award of a grant (§ 318.30).

Comment. Several commenters recommended that "quality indicators" for imaginative and innovative criteria for the special projects training priority be defined.

Response. No change has been made. It is unnecessary to define these terms. Doing so could undermine the purpose of the criteria.

Comment. Several commenters recommended that institutions of higher education be included as eligible to apply for grants in the State educational agency programming priority (§ 318.10(b)(4)) to promote statewide collaborative personnel preparation efforts.

Response. No change has been made. Where or when unique statewide training is needed to provide comprehensive service to handicapped children, the State educational agency can work collaboratively with other agencies under this priority. While Federal regulations can support that collaboration, it is preferable that the collaboration be initiated by the State educational agency.

Comment. Several commenters recommended that 90% of Federal funding under the specialized training of regular educators training priority be restricted to deans or equivalent administrators at institutions of higher education.

Response. No change has been made. The specification of a fixed percentage of funds for award to any one class of applicants under this training priority would undesirably limit the discretion of the Secretary to make an award congruent with the selection criteria for award of a grant (§ 318.30).

Comment. Several commenters recommended reconsideration of the exclusion of inservice training under five of the seven training priority areas specified in the notice of closing date announcement for transmittal of Fiscal Year 1983 new applications (47 FR 52743, November 23, 1982).

Response. A change has been made. The announcement of Fiscal Year 1983 new applications did exclude inservice training under five of the seven training priorities. However, § 318.10(c) has been changed to make it clear that the Secretary may include or exclude annually any priority from preservice or inservice preparation, or both.

Comment. Two commenters recommended either the addition of an eighth training priority for "bilingual, rural minority populations" or the specification of a minimum percentage of funds for such populations in each of the seven priorities.

Response. No change has been made. The designation of an eighth priority for "bilingual, rural minority populations" or a percentage specification within the seven priorities would tend to isolate such populations and would be overly prescriptive. The selection criteria in §§ 318.30(b)(2)(v) and 318.30(c)(2)(iv) for the evaluation of applications require a clear description of how an applicant will provide equal access and treatment for members of groups who have been traditionally underrepresented and

evidence of encouraging applications for employment from members of such groups.

Comment. One commenter asked if an institution of higher education that does not award doctoral degrees but does award Educational Specialist (Ed.S) degrees may submit an application under the preparation of leadership personnel priority (§ 318.10(b)(2)).

Response. No change has been made. The leadership personnel priority supports only doctoral and post-doctoral preparation. Preparation of personnel for the Education Specialist degree is included under other priorities, including the preparation of special educators.

Comment. One commenter recommended that both vocational educators and career educators be included in both the special educators (§ 318.10(b)(1)) and the related services personnel (§ 318.10(b)(3)) preparation priorities.

Response. No change has been made. Vocational education programs at times must be specifically designed to enable a handicapped student to benefit fully from these programs; consequently, vocational educators are included in the priority for preparation of special educators. Career education is a more generic and less academic term with trainees therefore being trained to provide guidance, career counseling, and other related servies.

Comment. One commenter asked if vocational educators are included under the term "regular classroom teachers" in § 318.10(b)(6).

Response. Vocational educators who are not included in the term "special educators" because they do not work primarily with handicapped children are included in the term "regular classroom teachers" as used in § 318.10(b)(6).

Comment. One commenter recommended that the priority for preparation of trainers of volunteers, including parents (§ 318.10(b)(7)) not be identified as either preservice or inservice preparation.

Response. A change has been made. Section 318.10(c) has been reworded to add a phrase providing for the Secretary to identify *where appropriate* priorities in paragraphs § 318.10(b) (1) to (7) as preservice or inservice preparation, or both.

Comment. One commenter recommended that the specialized training of regular educators priority should be focused on the preparation of regular classroom teachers and not on deans and equivalent administrators.

Response. No change has been made. The quality of education for handicapped children who receive part of their education in regular classes is more efficiently effectuated by training the leaders of regular classroom teachers.

Comment. One commenter recommended that the State educational agency programming priority (§ 318.10(b)(4)) be reworded to specify support groups included under this training priority. The commenter suggested that the support groups include, as a minimum, local educational agencies institutions of higher education, and appropriate parent coalition groups.

Response. No change has been made. Specification of support groups is overly prescriptive and unnecessary.

Comment. One commenter recommended the addition of the clause "speech-language pathologists, audiologists", following "school psychologists" in § 318.10(b)(3) on the ground that "Pub. L. 94–142 regulations include speech-language pathology as both 'special education' and 'related services' ".

Response. A change has been made. The lists of personnel being prepared in the special educators and related services personnel priorities are not exhaustive. In the second sentence of § 318.10(b)(3) which identifies personnel who may be trained under the priority, the phrase "and other related services personnel" has been added at the end of the sentence to clarify the intent of this priority.

Comment. One commenter recommended that § 318.10(c) be deleted on the ground that the Secretary should not have authority to prescribe the mode of training, preservice versus inservice.

Response. No change has been made. Changes in national personnel preparation needs justify permitting the Secretary to allocate scarce Federal resources among the seven training priorities and to specify, as appropriate, preservice, inservice, or both preparation modes. Also, the discretion permitted the Secretary is based on both the wording and intent of the governing statute (20 U.S.C. 1431, 1432, 1434).

Comment. One commenter recommended that the Secretary's authority to select annually priorities for funding be changed to either biennally or triennially to enhance stability and quality of Federally assisted personnel preparation programs.

Response. No change has been made. Changing to a less frequent than annual selection of priorities would unduly restrict the Secretary's flexibility to address changing needs.

Comment. One commenter recommeded that each of the seven training priorities include provisions that require the use of general and child psychiatrists as consultants to provide preparation in rehabilitation and child psychiatry to personnel being trained.

Response. No change has been made. Mandating the employment of particular consultants for every grant awarded would be overly prescriptive. The participation and program content selection criteria, in § 318.30 (g) and (i) respectively, are sufficient interdisciplinary regulatory requirements.

Section 318.30 Selection Criteria

Comment. Two commenters recommended that more specific and concrete steps be prescribed to better assure that applicants will provide equal access and treatment of project participants who are members of traditionally underrepresented groups (§ 318.30(b)(2)(v)) and that applicants shall encourage the recruitment and employment of such persons (§ 318.30(c)(2)(iv)).

Response. No change has been made. Section 318.30(c)(2)(iv) provides adequate information on how the applicant intends to provide equal access and treatment. More detailed Federal specification would be overly prescriptive.

Comment. One commenter recommended that the ten selection criteria be weighted instead of unweighted.

Response. No change has been made. The selection criteria are not weighted because they are all of equal importance given the range of activities that this program supports.

Comment. One commenter recommended that an eleventh selection criterion entitled "Accreditation" be added as § 318.30(k). The commenter's proposed wording includes "[p]riority for awarding preservice grants" to applicants "that have received accreditation from agencies recognized by the Council on Postsecondary Accreditation (COPA) and/or the Department of Education".

Response. No change has been made. Addition of an accreditation selection criterion would unnecessarily increase Federal prescriptiveness and decrease flexibility contrary to the current burden reduction policy. The proposed additional criterion could cause an otherwise worthy application to be rejected solely on grounds that the applicant was not accredited at the time application was submitted.

Section 318.43 Financial assistance: part-time students

Comment. One commenter recommended that the "at least two

days per week" clause in § 318.43(a) be amended to alternatively prescribe an appropriate number of class hours per week for part-time students to be eligible for financial assistance. The commenter's explanation to justify the change is that some training is conducted for several hours once per week that often equals or exceeds the total hours in twice per week training sessions.

Response. A change has been made. That portion of § 318.43(a) which reads "Students enrolled for less than a full calendar year or a full-time academic year but for at least four hours per week may receive a daily stipend" has been amended to read "Students enrolled for less than a full calendar year or a full-time academic year may receive a stipend". This change will allow greater flexibility to the grantee to train part-time students in accordance with State or local circumstances.

Section 318.44 Financial Assistance Adjustments

Comment. One commenter recommended that funds accrued as the result of a financially assisted student's withdrawal or dismissal be permitted to pay partial awards to new students who "join the program at any point during the academic year", in addition to students currently enrolled.

Response. A change has been made. The word "currently" has been deleted. The criteria for student financial assistance stated in §§ 318.41 and 318.43 would not exclude the payment of stipends to students who "join the program at any point during the academic year".

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291.

They are classified as non-major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. These regulations are more flexible and less prescriptive than the existing regulations and it is expected that more small entities will apply to participate in the program.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the absence of comment on this matter and the Department's own review, it has been determined that the regulations in this document do not require information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 318

Education, Education of handicapped, Grant programs—education, Student aid, Teacher.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these proposed amended regulations.

Dated: May 18, 1983.

T. H. Bell,

Secretary of Education.

(Catalog of Federal Domestic Assistance No. 84.029, Handicapped Personnel Preparation Program)

Part 318 of Title 34 of the Code of Federal Regulations is revised as follows:

PART 318—TRAINING PERSONNEL FOR THE EDUCATION OF THE HANDICAPPED

Subpart A—General

Sec.

318.1 Training personnel for the education of handicapped program.
318.2 Who is eligible for a grant under Training Personnel for the Education of Handicapped program?
318.3 What regulations apply to training personnel for the education of handicapped program?
318.4 What definitions apply to the training personnel for the education of the handicapped Program?
318.5–318.9 [Reserved]

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

318.10 What types of training priorities are considered for support by the Secretary under this part?
318.11 How does the Secretary use priorities?
318.12–318.19 [Reserved]

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

318.30 What are the selection criteria used to award a grant?
318.31–318.39 [Reserved]

Subpart E—What Conditions Must Be Met by a Grantee Under the Student Financial Assistance Program?

318.40 Is student financial assistance authorized?
318.41 What are the student financial assistance criteria?
318.42 What amount of assistance is authorized?
318.43 What financial assistance is authorized for part-time students?
318.44 What is required for a financially assisted student who withdraws or is dismissed?
318.45–318.49 [Reserved]

Authority: Secs. 631, 632, 634, Pub. L. 91–230, 84 Stat. 184 (20 U.S.C. 1431, 1432, 1434), unless otherwise noted.

Subpart A—General

§ 318.1 Training Personnel for the Education of Handicapped program.

This program serves to increase the quantity and improve the quality of personnel available to educate handicapped children through the provision of grants to eligible agencies that have or will develop personnel preparation programs.

(20 U.S.C. 1431, 1432, 1434)

§ 318.2 Who is eligible for a grant under the Training Personnel for the Education of Handicapped program?

The following agencies are eligible for assistance under this part—

(a) State educational agencies.

(b) Institutions of higher education.

(c) Other appropriate nonprofit institutions or agencies.

(20 U.S.C. 1431, 1432, 1434)

§ 318.3 What regulations apply to the Training Personnel for the Education of Handicapped program?

The following regulations apply to assistance under the Training Personnel for the Education of the Handicapped program—

(a) The regulations in this Part 318.

(b) The Education Department General Administration Regulations (EDGAR) established in Title 34 of the Code of Federal Regulations in—

(1) Part 74 (Administration of Grants);

(2) Part 75 (Direct Grant Programs);

(3) Part 77 (Definitions); and

(4) Part 78 (Education Appeal Board).

(20 U.S.C. 1431, 1432, 1434; 20 U.S.C. 1221e-3(a)(1))

§ 318.4 What definitions apply to the Training Personnel for the Education of Handicapped program?

Definitions in EDGAR. The following terms used in this part are defined in 34 CFR Part 77:

Applicant.

Application.
Award.
Budget period.
Department.
EDGAR.
Fiscal year.
Grant period.
Local educational agency.
Nonprofit.
Preschool.
Private.
Project.
Public.
Secretary.
State.
State educational agency.

(20 U.S.C. 1431, 1432, 1434; 20 U.S.C. 1221e-3(a)(1))

§§ 318.5—318.9 [Reserved]

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 318.10 What types of training priorities are considered for support by the Secretary under this part?

(a) Projects supported under this part which meet a priority as described in paragraphs (b) and (c) of this section may provide training to degree, non-degree, certified, and non-certified personnel except that doctoral and post-doctoral preparation can be supported only under the priorities described in paragraph (b)(2) and (b)(5) of this section.

(b) The Secretary may select annually one or more of the following priority areas for funding:

(1) *Preparation of special educators.* This priority supports projects designed to provide training for personnel engaged or preparing to engage in employment as special educators of handicapped children ages 0–21 years or as supervisors of such educators. The priority includes the preparation of early childhood specialists, special educators of the handicapped, special administrators and supervisors, speech-language pathologists, audiologists, physical educators, and vocational educators.

(2) *Preparation of leadership personnel.* This priority supports doctoral and post-doctoral preparation of professional personnel to conduct training of teacher trainers, researchers, administrators, and other specialists.

(3) *Preparation of related services personnel.* This priority supports the preparation of individuals who provide developmental, corrective, and other supportive services as may be required to assist a handicapped child to benefit from special education. The priority supports the preparation of paraprofessional personnel, career educators, recreation specialists, health services personnel, school psychologists, social service providers, physical therapists, occupational therapists, and other related services personnel.

(4) *State educational agency programming.* This priority supports projects dealing with unique State-wide training in all of several of the need areas identified by the Comprehensive System of Personnel Development (CSPD) and may include training in management and organizational design which enhance the ability of States to provide comprehensive services to handicapped children. Only State educational agencies are eligible to submit applications under this priority.

(5) *Special projects.* This priority supports the development, evaluation, and distribution of imaginative or innovative approaches to personnel preparation, and includes development of materials to prepare personnel to educate handicapped children.

(6) *Specialized training of regular educators.* This priority supports projects that provide deans or equivalent administrators from institutions of higher education or local educational agency officials the skills necessary to promote development of regular classroom teachers, administrators, and supervisors. The purpose is to provide quality education to handicapped children who receive part of their education in regular classes.

(7) *Preparation of trainers of volunteers, including parents.* This priority supports the preparation of trainers of volunteers, including parents, to assist in the provision of educational services to handicapped students. In addition to the preparation of volunteers and parents by experienced professionals, this priority may support projects which emphasize the training of parents by parents.

(c) The Secretary will select annually priorities authorized to be addressed and also will identify, where appropriate, the priorities that include only preservice or inservice preparation, or both.

(20 U.S.C. 1431, 1432, 1434)

§ 318.11 How does the Secretary use priorities?

(a) The Secretary establishes a separate competition for each priority selected for support in a given year. Activities proposed by eligible applicants which do not address selected annual priorities will not be considered for competition.

(b) If an application contains activities which address both a priority and a non-priority area, the Secretary considers for support only those activities that address a selected priority.

(20 U.S.C. 1431, 1432, 1434)

§§ 318.12–318.19 [Reserved]

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 318.30 What are the selection criteria used to award a grant?

The Secretary uses the criteria in this section to evaluate applications for new awards. The criteria are not weighted.

(a) *Extent of need for the project.* (1) The Secretary reviews each application for information that shows the project meets the needs recognized in Part D of the Act.

(2) In conducting this review, the Secretary looks for information that—

(i) Describes the needs addressed by the project;

(ii) Specifies the personnel needs identified by each State educational agency for each State served under the proposed project;

(iii) Describes how the project relates to personnel needs identified by each State educational agency and any other needs data source; and

(iv) Describes the benefits to be gained by meeting those personnel needs.

(b) *Plan of operation.* (1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(c) *Quality of key personnel.* (1) The Secretary reviews each application for information that shows the quality of the

key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (c)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its non-discriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training in fields related to the objectives of the project, as well as other information that the applicant provides.

(d) *Budget and cost effectiveness.* (1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(e) *Evaluation plan.* (1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. (See 34 CFR § 75.590, *Evaluation by the grantee.*)

(2) The Secretary reviews each application for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(f) *Adequacy of resources.* The Secretary reviews each application for information that shows—

(1) The applicant plans to devote adequate resources to the project;

(2) The facilities that the applicant plans to use are adequate; and

(3) The equipment and supplies that the applicant plans to use are adequate.

(g) *Participation.* The Secretary reviews each application for information on—

(1) The extent to which program philosophy, program objectives, and activities implemented to attain program objectives are related to the educational needs of handicapped children; and

(2) The extent to which the applicant involves students, employing agencies and other concerned individuals in program planning, implementation, and evaluation.

(h) *Evaluation design.* The Secretary reviews each application for information that shows the extent to which the evaluation design and procedures—

(1) Provide for assessment of the effectiveness and efficiency of the use of program resources in the attainment of program objectives; and

(2) Provide for the collection of quantifiable program performance information including—

(i) The number of personnel prepared;

(ii) The number of personnel placed in positions relevant to the education of handicapped children; and

(iii) The type of locations and positions accepted by program graduates.

(3) Describe procedures for assessing the impact of the program. In the case of an application for continuation support, provide evidence of the impact of the program upon other related programs within the institution, upon community programs for the education of handicapped children, and upon improvement of services for handicapped children at the local, State, and/or national level.

(i) *Program content.* The Secretary reviews each application for information that shows—

(1) The extent to which the application includes a delineation of competencies that each program graduate will acquire and how the competencies will be evaluated;

(2) The extent to which substantive content and organization of the program—

(i) Are appropriate for the student's attainment of professional knowledge and competencies that are necessary for the provision of quality educational services for handicapped children; and

(ii) Demonstrate an awareness of relevant methods, procedures, techniques, and instructional media or materials that can be used in the preparation of personnel who serve handicapped children;

(3) The extent to which appropriate practicum facilities are accessible to the applicant and students and are used for observation, participation, practice teaching, laboratory or clinical experience, internship, and other supervised experiences of adequate scope, combination and length.

(j) *Contributions.* The Secretary reviews each application for information that shows—

(1) The amount of fiscal and other effort the applicant will contribute to the program; and

(2) A delineation of the procedures that will be implemented for the increase of this effort over a specified time period in relationship to the amount of Federal funds awarded for the support of the program.

(20 U.S.C. 1431, 1432, 1434)

§§ 318.31-318.39 [Reserved]

Subpart E—What Conditions Must Be Met by a Grantee Under the Student Financial Assistance Program?

§ 318.40 Is student financial assistance authorized?

A grantee may use any portion of a grant awarded under this Part to pay direct financial assistance to students.

(20 U.S.C. 1431, 1432, 1434)

§ 318.41 What are the student financial assistance criteria?

Direct financial assistance may be paid to students only if—

(a) The student is qualified for admission to the program of study;

(b) The student maintains acceptable progress in a course of study;

(c) The student demonstrates need for financial assistance as determined by criteria established by the grantee; and

(d) The student is a citizen or a national of the United States, or is legally in the United States for other than a temporary purpose and intends to become a permanent resident.

(20 U.S.C. 1431, 1432, 1434)

§ 318.42 What amount of assistance is authorized?

Subject to the limitations stated in §§ 318.43 and 318.44, grantees shall disburse financial assistance to students in amounts consistent with established grantee policies for providing financial assistance for various levels of study, and for policies relevant to providing financial assistance to part-time and full-time students.

§ 318.43 What financial assistance is authorized for part-time students?

(a) Students enrolled for less than a full calendar year or a full-time academic year may receive a stipend. Such short-term students are not eligible for allowances for dependents.

(b) Students who are receiving calendar year or full-time academic year assistance at the time of their short-term study are not eligible for financial assistance under this section.

(20 U.S.C. 1431, 1432, 1434)

§ 318.44 What is required for a financially assisted student who withdraws or is dismissed?

A grantee shall make financial adjustments when the student withdraws or is dismissed before the end of the program. In those instances where students withdraw from graduate and undergraduate academic year and short term programs, a grantee may give the remaining funds as a partial award to another student who is enrolled in the program assisted under this part. The Secretary considers the funds made available as a result of a financial adjustment as an overpayment, unless these funds are used as a partial award or are used in ways otherwise consistent with the requirements of this Part.

(20 U.S.C. 1431, 1432, 1434)

§§ 318.45–318.49 [Reserved]

[FR Doc. 83-13795 Filed 5-23-83; 8:45 am]
BILLING CODE 4000-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 431

Medicaid Program; Freedom of Choice; Waivers of and Exceptions to State Plan Requirements

AGENCY: Health Care Financing Administration (HCFA), HHS

ACTION: Final rule.

SUMMARY: These final rules clarify and amend regulations published on October 1, 1981, that implement section 2175 of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35). Those regulations revised several of the requirements regarding a Medicaid beneficiary's right to choose among participating providers of covered items or services.

Based on the comments received on those regulations, we are making changes that provide further direction to States, beneficiaries and providers with regard to freedom of choice requirements while at the same time maintaining State flexibility in administering their Medicaid programs.

We are also amending the October 1, 1981 regulations to implement section 137 of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97–248). That section makes several technical changes to section 2175 of Pub. L. 97–35 with respect to a Medicaid beneficiary's right to choose among participating providers of covered items or services.

EFFECTIVE DATE: These regulations are effective June 22, 1983.

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

SUPPLEMENTARY INFORMATION:

I. Background

We issued interim final regulations with comment period on October 1, 1981 (46 FR 48524) that implemented paragraphs (a), (b), (d), (e), and (f) of section 1915 of the Social Security Act (Act). Under section 1915(a), a State will not be found out of compliance with otherwise applicable requirements solely because it enters into certain arrangements to purchase laboratory services or medical devices through competitive bids or otherwise, or if, under certain circumstances, it restricts for a reasonable period of time a specific beneficiary's choice of providers or the participation of a specific provider. (Previously existing statutory provisions concerning beneficiaries served by prepayment health care organizations and rural health clinics were also transferred to section 1915(a).) Under section 1915(b), the Secretary may waive certain statutory requirements, to the extent the Secretary finds State proposed improvements in the provision of services to be cost-effective and efficient, and consistent with the purposes of the medicaid program. Sections 1915(d), 1915(e), and 1915(f) of the Act govern how waivers granted under section 1915(b) are to be approved, monitored, and terminated.

Sections 1915(a), (b), (d), and (e) were effective with enactment on August 13, 1981. Section 1915(f) was effective 90 days after enactment.

In order to have regulations in place as close as possible to the effective date of the law, we waived proposed rulemaking and published the regulation in interim final form with a comment period allowing for public participation. In general, in developing the regulations, we tried to afford States the greatest possible flexibility and opportunity for innovation in administering their Medicaid programs, consistent with the statutory requirements. We, therefore, minimized Federal prescription of definitions and procedures in implementation of these provisions. It was our intention that the Secretary's waiver authority should not be used to impose restrictions on the States beyond those contained in the statute, or to compel them to meet unnecessary and burdensome regulatory requirements in order to receive or qualify for waivers. Therefore, whenever possible, we permitted each State to determine its own program content and administration, consistent with the law.

Specifically, the interim final rule amended regulations at 42 CFR 431.50 and 431.51 that implement the Statewideness (section 1902(a)(1) of the Act) and free choice (section 1902(a)(23) of the Act) provisions, respectively, and regulations at 42 CFR 440.200 and 440.250 that implement the comparability provision (section 1902(a)(10) of the Act), to reference the appropriate waivers or exceptions applicable under section 1915. A new § 431.54, Exceptions to certain State plan requirements, was added to implement section 1915(a) of the Act concerning exceptions, and a new § 431.55, Waiver of other medicaid requirements, was added to implement section 1915(b) of the Act concerning waivers.

A. Exceptions

With regard to the exceptions allowed under section 1915(a), the regulations provided that a State shall not be deemed to be out of compliance with the requirements of sections 1902(a)(1), (10), and (23) solely by reason of certain allowable exceptions set forth below.

1. *Services on a Prepayment Basis.* If a Medicaid agency contracts on a prepayment basis with an organization that provides services additional to those offered under the State plan, the agency may restrict the provision of the additional services to beneficiaries who live in the area served by the organization and wish to obtain services from it. (§ 431.54(b))

2. *Rural Health Clinics.* The State Medicaid agency may require in its State plan that payment will be made for rural health clinic services only if those services are provided by a rural health clinic. (§ 431.54(c))

3. *Competitive Arrangements.* The Medicaid agency may enter into arrangements to purchase through a competitive bidding process or otherwise, certain laboratory services (including X-ray) and medical devices. The State must submit a report assuring, and the Secretary must find, that adequate services or devices are available to beneficiaries under the arrangements. The State must also assure and the Secretary must find that laboratory services purchased are supplied through hospital or independent laboratories meeting Medicare conditions for coverage. These laboratories can have no more than 75 percent Medicare and Medicaid utilization. (§ 431.54(d))

4. *Lock-in of Beneficiaries Who Overutilize Services.* A Medicaid

agency may lock-in chronic overutilizers of services, as determined in accordance with utilization guidelines established by the State, to a single physician or limited group of providers for a reasonable period of time. The agency must give the beneficiary notice and opportunity for a hearing before implementation of lock-in and must assure that the beneficiary has reasonable access (taking into account geographic location and reasonable travel time) to Medicaid services of adequate quality. (§431.54(e))

5. *Lock-out of Providers Who Abuse the Medicaid Programs.* A Medicaid agency may restrict, for a reasonable period of time, either through suspension or otherwise, the participation of providers in their Medicaid programs. This restriction can be imposed if, after notice and opportunity for hearing, the State determines that the provider, in a significant number or proportion of cases, provided services to beneficiaries when the services were not medically necessary (as determined in accordance with utilization guidelines established by the agency) or of a quality not meeting professionally recognized standards of care. The agency must assure that beneficiaries do not lose reasonable access to services of adequate quality as a result of those restrictions and must give general notice to the public of the restriction, its basis, and its duration. (§431.54(f))

6. *Reporting Requirements.* States must report to HCFA regarding program changes under section 1915(a) no later than the end of the calendar quarter in which a State first implements these changes. (In the case of competitive arrangements discussed in section 3 above, the report must be submitted, and a positive finding made by the Secretary before the arrangements can be implemented.) The report must describe how the program change meets the statutory requirements for an exception. Exceptions for services provided on a prepayment basis or through an RHC will not require a report.

B. Waivers

With respect to waivers under section 1915(b), the regulations authorized the Secretary to waive the requirements of sections 1902 and 1903(m) of the Act to the extent he or she finds proposed improvement in the provision of services under Medicaid to be cost-effective, efficient, and consistent with the objectives of the Medicaid program. (See section C following for recent amendments regarding waiver of the requirements of section 1903 (m).)

1. *Case-management System.* A State may implement a case-management system or a specialty physician services arrangement which restricts the provider from or through whom a beneficiary can obtain primary care services (other than in emergency circumstances) provided that those restrictions do not substantially impair access to services of adequate quality where medically necessary. (See section C following regarding recent amendments with respect to case-management systems.) The agency must assure that a specific person or agency will be responsible for locating, coordinating, and monitoring Medicaid services on behalf of a beneficiary. (§ 431.55(c))

2. *Locality as Central Broker.* A State may allow a locality to act as a central broker in assisting individuals in selecting among competing health care plans. (§431.55(d))

3. *Sharing of Cost Savings.* A State may share with beneficiaries (through the provision of additional services) cost savings resulting from use by the beneficiary of more cost-effective medical care. (§ 431.55(e))

4. *Restriction of Beneficiaries to Selected Cost-effective Providers.* A State may restrict a beneficiary's freedom of choice to a provider or providers who demonstrate effectiveness and efficiency in providing those services; undertake to provide the covered care or medical services needed; and comply with State plan standards for reimbursement, quality, and utilization. States may qualify for these waivers only if:

(a) Their applicable State standards are consistent with access, quality, and efficient and economic provision of covered care and services; and

(b) The restrictions they impose do not discriminate among classes of providers on grounds unrelated to their demonstrated effectiveness and efficiency in providing those services. (§ 431.55(f))

5. *Conditions Applicable to all Section 1915(b) Waivers.* In applying for a waiver, a Medicaid agency must document the cost-effectiveness of the project, the effect on beneficiaries regarding access to quality care, and the projected impact of the program. Waivers approved under section 1915(b) may extend for no more than two years, unless the State requests continuation of the waiver. The Secretary will monitor the implementation of waivers granted to assure that the requirements for those waivers are being met. After notice and opportunity for a hearing, the Secretary must terminate a waiver if the Secretary finds noncompliance has occurred. The agency will then be given a specified date by which it must demonstrate that it meets the applicable requirements of sections 1902 and 1903(m) of the Act. (§ 431.55(b))

C. Tax Equity and Fiscal Responsibility Act of 1982 (TEFBA)

Section 137 of Pub. L. 97-248, enacted on September 3, 1982, made several changes to section 1915 of the Act. It deleted the Secretary's authority under section 1915(b) to waive the requirements contained in section 1903(m) of the Act. However, this change in the Secretary's waiver authority does not apply where a waiver was granted by the Secretary and waivered arrangements were in place before August 10, 1982. This exemption extends only for the period for which the waiver was initially approved.

Section 137 also amended statutory language in section 1915(b)(1) to specify that this section applies specifically to "primary care case-management systems" rather than "case-management systems" and to specify that the Secretary could waive certain requirements of the Act to implement primary care case-management systems or specialty physician service arrangements which restrict the provider from (or through) whom an individual can obtain medical care services (the statute previously used the term "primary care services" instead of "medical care services").

II. Final Regulations

We received comments on our interim final rule from 31 provider organizations and organizations representing beneficiaries, professional amd medical societies, and State and local agencies. Generally the comments can be grouped into two categories: Those that challenged our interim final regulations on procedural grounds with regard to the requirements of the Administrative Procedures Act (APA), Regulatory Flexibility Act (RFA) and Executive Order 12291; and those that, while supportive, had suggestions for ways we might further clarify the regulations.

Based on the comments received and the amendments required by section 137 of Pub. L. 97-248, we are making changes in current regulations as set forth below. (The specific comments received and our responses to these comments are discussed in section IV.

Public Comments

A. General

We are amending regulations located at § 431.51(d) to:

—Require States (in lieu of the State report describing how program changes meet the statutory requirements for an exception) to cerfity to HCFA that statutory safeguards and requirements will be complied with when the State implements a project for competitive bidding, lock-in, or lock-out.

We are amending regulations located at § 431.55(a) and (c) through (f), and adding paragraph (h) (Paragraph (g) was added by the final rule published February 8, 1983, 48 FR 5733, that implements section 131 of TEFRA regarding cost sharing under Medicaid.) to:

—Specify that the requirements of section 1903(m) of the Act may be waived by the Secretary under section 1915(b) of the Act only where a waiver of such requirements was granted by the Secretary and the arrangement was in place before August 10, 1982. Such a waiver may remain in effect only for the period for which it was initially approved.

(Alternative arrangements to section 1903(m) waivers may be available to States that would largely meet their objectives consistent with the law and the intent of Congress. HCFA is prepared to assist States in developing alternative arrangements)

We are amending regulations located at § 431.55(b) to:

—Specify that HCFA will consider only waiver requests submitted by or through the Governor, State cabinet members responsible for State Medicaid agency activities, director of the State Medicaid agency, or someone with the authority to act on behalf of the director (this clarification is a result of several inquiries as to who may submit a waiver); and

—Require that States maintain certain data to assist HCFA in determining whether statutory requirements for waivers are met.

B. Competitive Arrangements

We are amending regulations located at § 431.54(d) to clarify which laboratories are subject to competitive bidding and what categories of services provided in those laboratories qualify for competitive bidding. We are also making a technical correction to paragraph (d)(3) to clarify that services are purchased *from* laboratories rather than *for* laboratories.

C. Lock-in

We are amending regulations located at § 431.54(e) to:

—Clarify that this provision does not apply to emergency services furnished to a beneficiary.

D. Lock-out

We are amending regulations located at § 431.54(f) to:

—Require that a State notify HCFA when it imposes restrictions;

—Specify that an agency may not impose restrictions under this provision which would result in denying beneficiaries access to emergency services (this is consistent with the intent of the statute that beneficiaries have access to necessary services); and

—Clarify what must be taken into account with respect to a beneficiary's access to services of adequate quality (this is a statutory requirement).

E. Case-management System

We are amending regulations located at § 431.55(c) to:

—In accordance with TEFRA, insert "primary care" before "case-management system", replace "primary care services" with "medical care services" and to make conforming changes where necessary;

—Specify that several persons (e.g., a group practice) may perform the primary care case-management function; and

—Distinguish between a primary care case-management system and a specialty physician services arrangement.

F. Locality as Central Broker

We are amending regulations located at § 431.55(d) to:

—Define locality;

—Clarify that a locality may utilize any agency or agent, public or private, profit or nonprofit, on its behalf in carrying out its central broker function; and

—Include the statutory safeguard that beneficiaries have access to services of adequate quality.

G. Sharing of Cost Savings

We are amending regulations located at § 431.55(e) to specify what "additional services" may include.

H. Restriction to Cost-effective Providers

We are amending regulations located at § 431.55(f) to:

—Specify that this provision does not apply to a beneficiary's access to emergency services;

—Define demonstrated effectiveness and efficiency;

—Specify that this provision does not apply to beneficiaries residing at a long-term care facility when a restriction is imposed unless the State arranges for reasonable and adequate beneficiary transfer; and

—Require that standards providers must meet under the waiver be included in a State's waiver request.

We have also redrafted § 431.55(f) for clarity and to conform more consistently with statutory language.

III. Applicability of the Regulations

The limitations permitted by these regulations pertain to the Medicaid program only. Individuals who are eligible under both the Medicare and Medicaid programs will not be subject to these regulations with respect to services provided to the individual under Medicare.

IV. Public Comments

The specific comments received on our interim final rule and our responses are as follows:

1. General

Comment:

Four commenters suggested that we withdraw the interim final rule and replace with an NPRM. The commenters believed that our publication of an interim final rule was inconsistent with the APA in that it abrogated the right of those affected to participate in the rulemaking process. They also believed that waiver of the NPRM was inconsistent with Congressional intent stated in the Conference Report which indicated that regulations should be issued "consistent with hearing and comment requirements". (H.R. Report No. 97-208, p. 964)

Response:

Authority for State action under section 1915 of the Act is based on the statute itself, not the regulations. As stated earlier, sections 1915(a), (b), (d) and (e) were effective with enactment on August 13, 1981. Section 1915(f) which was effective November 11, 1981 specifies that if the Secretary, within 90 days, fails to either deny a waiver request or inform the State that additional information is required, the waiver request is automatically "deemed granted". It is impossible to reconcile an NPRM process with Congress' explicit intent to give the statutory provisions immediate effect.

It is precisely because the statute had immediate effect that it was in the public interest to issue an interim final rule with comment period. Without regulations, States could conceivably have implemented programs without

sufficient regard to statutory requirements. The regulations merely restate the statute with the stipulations that States may not implement programs that impinge on a beneficiary's reasonable access to services of adequate quality or restrict access to emergency services. Without regulations, HCFA could have been inundated with inappropriate waiver requests, many of which would have become effective if HCFA did not have the administrative resources to complete action on the requests within 90 days.

The pertinent section of the Conference Report reads:

> The conferees recognize the Secretary may begin granting waivers under this section shortly after enactment. They intend, however, that regulations be issued as soon as possible, consistent with hearing and comment requirements, so that States will receive guidance concerning the standards for waiver requests the Secretary will apply.

The interim final rule with comment period procedure allows for public participation. Various changes to the interim regulations show not only that public comments were considered, but often were adopted into the regulations. Thus, the interim final rule with comment period served the purpose of the APA as well as Congressional intent for immediate implementation "consistent with hearing and comment requirements".

Comment:

Several commenters believed that HCFA did not give adequate guidance to States either by failing to sufficiently clarify or "flesh out" the legislation or by failing to define specific terms (for example, "cost-effective" and "efficient"). One commenter believed that HCFA, therefore, was declining to exercise any of the prerogatives of a regulator.

Response:

We agree that certain portions of the regulations could be clarified or expanded upon. For instance, we have revised § 431.54(d) on competitive bidding to clarify which laboratories are subject to competitive bidding and have expanded upon the procedures an agency must follow before implementing lock-out. We have also made several other clarifying changes which are set forth in Section II, Final Regulations, and discussed in these comments.

However, in general HCFA has exercised its administrative discretion by determining to regulate less, thereby reducing administrative burdens on the States to the extent possible. We believe that in many cases statutory safeguards are sufficient and require no further expansion. HCFA's policy is to afford States maximum flexibility within statutory constraints. We believe this policy is both proper and reasonable and reflects Congressional intent.

With respect to defining specific terms, differences in State Medicaid programs and varying circumstances within each State often make it impractical to develop a uniform quantifiable definition for all States. We have amended regulations to define certain terms: *cost-effective* means reducing costs or slowing the rate of increase while *efficiency* means maximizing output or outcomes per unit of cost. Other terms which we have defined are discussed in the appropriate sections of these comments.

Comment:

Several commenters believe that limitations on freedom of choice could result in States steering Medicaid patients toward certain providers over others. This limitation on freedom of choice could adversely affect the physician-patient relationship and the physician's right to use certain services.

Response:

It is the intent of Congress and of these regulations to allow States to limit freedom of choice, but States are precluded from restricting freedom of choice if it results in a reduction in the quality of services provided.

Comment:

One commenter suggested that before a State limits access to particular providers under the exception and waiver provisions, the State should publish criteria it uses for selecting such providers and make the criteria subject to public review and comment.

Response:

States must give general notice to the public of the restrictions it imposes under the lock-out provisions of § 431.54(f). Although States may voluntarily submit proposals for public review and comment, nothing in the statute requires that they do so.

Under the waiver provisions, it could contravene States' flexibility, the efficient implementation of the regulations, and Congressional intent to require States to submit proposals for public review and comment.

Comment:

Four commenters suggested that exceptions under § 431.54 be treated as State plan amendments and receive HCFA approval before implementation. One of these commenters suggested the same treatment for waivers under § 431.55 and, further, that HCFA should establish performance standards for evaluating States' proposed exception and waiver requests.

Response:

To require State submissions to be in the form of State plan amendments would be contrary to the intent of the statute since the new section 1915 of the Act is not framed as a State plan requirement. Preprinted State plans have been amended to allow for exceptions and waivers.

With regard to prior approval, had Congress intended HCFA to approve all projects in advance, there would have been no need to distinguish in the statute between the waiver provisions of section 1915(b) and the exception provisions of section 1915(a). All waivers require approval. However, the only affirmative findings required by the exception provisions in section 1915(a) of the Act pertain to competitive bidding processes; the regulations reflect this requirement

Performance standards are not required for the exceptions under § 431.54. Waiver requests under § 431.55 must be evaluated on a State-by-State basis, bearing in mind special circumstances that may apply in each State. In general, HCFA's standards require that waiver requests hold out promise of being more cost-effective, do not impair beneficiary access to services, and are not contrary to statutory intent. HCFA is developing general standards for issuance as administrative guidelines under § 431.55(f), to be used by States in assessing their waiver proposals.

Comment:

One commenter objected to the reports required for competitive bidding arrangements and lock-in and lock-out projects. In connection with reporting, one commenter believed that the same 90-day period that applies to consideration of waiver requests should also apply to consideration of the report required for competitive bidding under § 431.54(d).

Response:

We, too, are concerned with the burden of reporting requirements. Therefore, we have amended regulations to require only that a State certify to HCFA that statutory requirements and safeguards are met. States will no longer be required to describe in a detailed report to HCFA specifically how program changes meet the statutory requirements for exceptions. See *Section*

VI. Clearance of Reporting Requirements regarding the Office of Management and Budget's clearance of reporting requirements contained in § 431.51. Under final regulations a State's certification, in the case of competitive bidding, will suffice for the Secretary's positive finding that statutory requirements are met unless we determine otherwise, at a later date, through the State assessment process. Therefore, in this context we believe the 90-day approval period suggested by the commenter is no longer material.

Comment:

Two commenters were concerned that long-term care facilities will experience great financial difficulty as a result of the regulations and may revert to less-than-adequate care situations. They believe that with minimal supervision by the Federal government, States will limit beneficiary's freedom of choice and direct beneficiaries to the least costly providers. Consequently, the commenters believe that the regulations will impair the ability of long-term care providers to offer quality services.

Response:

The intent of Congress was that provision of services be made more cost-effective while quality and beneficiary access to services are maintained. HCFA will not approve waiver rquests that do not assure reasonable access to quality services.

Additionally, HCFA regional offices are charged with monitoring the implementation of waiver projects. Failure to continue to comply with the requirements for a waiver will result in termination of the waiver. These waivers may be approved only for a period of two years. If there are serious problems with a waiver project, HCFA can refuse to extend it beyond two years.

Comment:

Some commenters believed that an agency, in establishing the fees it will pay for Medicaid services and setting reasonable standards relating to the qualifications of providers and utilization review guidelines, should develop those fees, standards, and guidelines in conjunction with providers. One commenter suggested that States provide HCFA their utilization guidelines for purposes of lock-out.

Response:

The language relating to fees and standards in § 431.51(c)(1) and (2) was taken verbatim from freedom of choice regulations previously located at §431.51(d). HCFA does not intend to attach additional requirements to pre-existing regulatory language. However, as in the past, States are free to work with providers in developing standards.

With regard to utilization guidelines, the statute gives States authority to develop guidelines unilaterally. We expect that State agencies would consult with local medical societies in developing these guidelines, but the regulations will not require it. With respect to States providing HCFA their utilization guidelines, the statute is designed so that States may implement programs without first obtaining approval from HCFA.

2. Competitive Bidding

Comment:

Two commenters objected to classifying X-ray procedures as a laboratory service under the competitive bidding process. They believe that HCFA has exceeded the intent of Pub. L. 97–35, since there is no mention of X-rays as a laboratory service in the statute.

Response:

The statute refers to section 1905(a)(3) of the Act, which specifies "other laboratory and X-ray services." Laboratory and X-ray services are closely related, in that both are designed to produce findings used in evaluating the state of a person's health. This close relationship is demonstrated in both the statute (section 1905(a)(3)) and the regulations at 42 CFR 440.30, in that "other laboratory and X-ray" comprises a single phrase preceding "services" (as opposed to, for instance, "other laboratory services or X-ray services"). Therefore, we believe it is the intent of Congress to allow competitive bidding among both laboratory and X-ray facilities, as a means of increasing efficiency and reducing costs.

Comment:

Two commenters believed that HCFA has not faithfully represented the intent of Congress, in that it has not made reference to Congressional intent that monopolies be avoided under the competitive bidding arrangements. Also one commenter believed that due to the unique nature of certain prosthetic devices, competitive bidding would be inappropriate.

One commenter questioned whether competitive bidding arrangements are limited solely to laboratory services and medical devices.

Response:

Congressional language (H.R. Report No. 97–158, Vol. II, pp. 300–301) reads: "* * * it is the Committee's expectation that States making arrangements with providers of laboratory services under the legislation would generally not make such arrangements with only one provider of such services in any large health care delivery area * * *. If a State does determine that restriction of providers is appropriate, the Committee emphasizes that the test of availability of quality services should be stringently enforced." (Emphasis added)

The Committee language does not preclude arrangements with a single provider. If circumstances warrant, a State may use a single provider. The determining criterion is availability of quality services.

We agree that successful arrangements for competitive bidding for prosthetic devices could pose special problems for the States; for example, we expect that only rarely would a State find it feasible to engage in competitive bidding for certain orthopedic devices such as artificial limbs which must be custom-made and custom-fitted. Moreover, Congress gave States flexibility to exercise judgment in applying this provision. States are under no obligation to implement competitive bidding arrangements. Presumably, a State will not engage in competitive bidding arrangements which are less cost-effective and efficient than current arrangements.

Competitive bidding is limited to laboratory and X-ray services and medical devices. However, as indicated in H.R. Report No. 97–208, pp. 963–964, competitive bidding for drugs is permissible under the waiver provisions of § 431.55(f).

Comment:

One commenter requested clarification as to which laboratories are subject to competitive bidding. Further, interstate laboratories winning a competitive bid to serve beneficiaries across State lines must meet standards set forth under the Clinical Laboratory Improvement Act of 1967 (Pub. L. 90–174), and, therefore, should be approved by the Center for Disease Control or the College of American Pathologists (CAP). This should be stated in the regulations.

Response:

We have clarified regulations to state that laboratories able to engage in competitive bidding are independent laboratories, hospital laboratories (in- or out-patient) That provide services to non-hospital patients, and physician

laboratories that process at least 100 specimens during any calendar year from other physicians' patients. Hospital and physician laboratories may only participate in competitive bidding with regard to the outside referrals accepted.

With regard to interstate laboratories, in 1979 HCFA assumed the licensing function previously performed by the Center for Disease Control. The regulations will specify that, in order to participate in competitive bidding, laboratories requiring an interstate license must be licensed by HCFA or receive an exemption from the licensing requirement by the College of American Pathologists.

Comment:

One commenter suggested that care be taken in reviewing "waiver requests" for competitive bidding arrangements to assure that States select only qualified and proximate laboratories for Medicaid beneficiaries.

Response:

Competitive bidding arrangements do not fall under the waiver provisions of section 1915(b). However, HCFA is requiring under these final regulations that States certify that safeguards and requirements will be complied with when implementing a project under section 1915(a). Among these is the assurance that adequate services are available to beneficiaries under competitive arrangements. Therefore, to the extent that proximity of laboratories affects the availability of services in competitive arrangements, this would be a consideration. We believe this sufficiently addresses the commenter's concerns.

3. Lock-in of Beneficiaries

Comment:

One commenter believed that it is important to know how States will identify chronic overutilization and exactly how "overutilization" will be defined. Another commenter stated that patients who have varied and complex medical problems may be identified and penalized based on the primary diagnosis rather than on a complete medical review. Utilization review guidelines have yet to be developed that cover a patient's appropriateness of care based on varied and complex medical problems..

Response:

The statute gives each State the authority to set its own utilization guidelines. As a matter of Federal policy, States will not be required to divulge their tolerance rules or detection procedures. However, any lock-in arrangement must ensure beneficiary access to all necessary medical care.

Comments:

Some commenters suggested that a "reasonable period of time" for lock-in should be limited to 12 months. After a lock-in period, a State should review a beneficiary's utilization and reinstitute a lock-in if necessary.

One commenter also suggested that if a State restricts beneficiaries to specific providers, the State should make provision to pay other providers who provide emergency services to the beneficiary, or services where the beneficiary conceals information regarding his or her assignment to a particular provider or providers.

Response:

It is the intent of Congress to afford States greater flexibility in the operation of their Medicaid program. Therefore, with regard to a reasonable length of time for a lock-in, we believe that time frames should be determined by the State.

With respect to the provision of emergency services, we have amended regulations to require beneficiary access to emergency services; therefore, States must reimburse for these services. In other than these circumstances, we would expect that States would reimburse providers upon a showing that services were furnished in good faith (the provider did not have reason to know that there was a restriction in place) when beneficiary action was in appropriate or improper.

Comment:

One commenter suggested that the regulations should state that the Secretary encourages States to waive, during the start-up period, State regulations that may impede the development of cost-effective lock-in programs.

Response:

We recognize that lock-in provisions may, in certain instances, conflict with existing State regulations. In such cases, the State must decide whether it can or will waive other regulations in order to implement a lock-in program.

Comment:

Two commenters believe that regulations should specify that the hearing processes under lock-in (and lock-out) need not be completed before restrictions are imposed. Action may be taken after the affected party has been notified of relevant findings and given a chance to respond.

Response:

Under the statute, States are charged with the responsibility for establishing adequate notice and hearings processes. Therefore, we do not believe it appropriate to contravene States' flexibility with regard to the hearings process.

4. Lock-out of Providers

Comment:

One commenter believes that lock-out should apply to both institutional and non-institutional providers. Three other commenters requested that we clarify how the lock-out provision applies to an institutional provider.

Four commenters believe that the regulations should specify that lock-out provisions apply to physicians and practitioners, but not to institutional providers since the latter are judged under an established certification process based on Federal conditions of participation and associated State licensure requirements, enforcement, and due process provisions.

Response:

There is no indication in either the statute or legislative history that Congress intended to exclude institutional providers from the lock-out provisions. Therefore, the provision will apply to both institutional and non-institutional providers.

We note, however, that the lock-out provisions apply only in those situations where a provider has furnished services at a frequency or amount that is not medically necessary or of a quality that does not meet professionally recognized standards of health care. These regulations do not apply to other circumstances warranting adverse action. Additionally, the statute protects beneficiaries by prohibiting a lock-out which would deprive them of reasonable access to services.

Comment:

One commenter suggested that we provide lock-out guideline criteria to the States and establish criteria to evaluate effects on beneficiary access. One other commenter requested specific regulatory guidance on how to ensure reasonable access.

Response:

We recently published regulations on the suspension of health care professionals which include additional guidance to be used by States in arriving at appropriate provider sanctions. (48 FR 3742, January 8, 1983)

We will evaluate effects on beneficiary access via procedures contained in HCFA's *State Assessment Guide.* With regard to a regulatory definition of reasonable access, we believe that because of the infinite number of combinations of facts and circumstances, reasonable access is best determined only on a case-by-case basis.

Comment:

One commenter stated that the statute did not require that a general notice be given to the public regarding the basis and duration of a lock-out and, therefore, our regulations should not require it. One other commenter believed that this requirement could result in legal action against the State due to damage to a provider's reputation.

Response:

Although section 1915(a)(2)(B) does not require a general notice, HCFA believes it is necessary to keep the public informed concerning provider restrictions. Further, in all program restrictions HCFA imposes, we provide public notice (e.g., the newspaper notice required under 42 CFR 420.102(b)(4)). HCFA does not believe that States will be subject to legal action as a result of the notification since it will not be issued until after the provider is given an opportunity to rebut State allegations.

Comment:

One commenter was concerned that regulations provide adequate protection for providers that are suspended from program participation, including adequate notices, hearings, and appeals.

Response:

As indicated above, under the statute, States are charged with the responsibility for establishing adequate notice and hearing processes. However, we have amended regulations to require that States notify HCFA when it imposes a restriction.

5. Waiver Provisions—General

Comment:

Four commenters suggested that States be required to give general notice to the public of specific waiver requests, allow for public review of State proposals, and submit to HCFA a summary of public comments along with each waiver request. They believe also that States should be required to make public the basis for selecting or limiting providers and establish a reasonable and timely opportunity for appealing State decisions. One commenter suggested that waiver requests under consideration be published by HCFA in the **Federal Register** for comment.

Response:

We do not believe that the suggested restrictions would be helpful. Congress intended to streamline the waiver process and to enhance rather than restrict State flexibility. However, we believe that as a practical matter, States will adopt procedures for making information regarding selection of providers available to the public. Publication by HCFA of a **Federal Register** notice of each waiver request would delay waiver implementation and could prevent compliance with the 90-day statutory deadline for approving or disapproving a waiver request.

Comment:

One commenter believes that we should impose additional reporting requirements on States and that HCFA should retain State survey and certification capacity at current levels.

Response:

Legislative intent was to grant flexibility to the States, not place new reporting requirements upon them. However, HCFA will continue to monitor how States implement their projects under these regulations. HCFA will monitor the implementation of waivers through its State assessment procedures or other review procedures. We have also amended regulations to require that States maintain certain data to assist HCFA in determining whether statutory requirements for waivers are met.

Comment:

Several commenters stated that waivers should not reduce the quality of care or beneficiary access to that care.

One commenter also suggested that the provision for HCFA to monitor the implementation of waivers should include a procedure for the general public to petition HCFA for a compliance review. The public should be notified and given the opportunity to participate in noncompliance hearings.

Response:

We agree that quality health care must be maintained. Therefore, our regulations require that a State must ensure continued beneficiary access to quality health care. Waivers will not be approved where there is insufficient provider participation to assure reasonable access. However, in developing their selection process, States must take a cost effective approach in selecting providers of care without hampering beneficiary access to quality services. As stated previously, HCFA will monitor approved waivers through methods including its State assessment procedures.

HCFA is always open to considering information from the public with respect to compliance with program requirements and we do not believe a separate special process need be established for this purpose in connection with waivers.

6. Case-management

Comment:

One commenter stated that the initiation of a case-management program could result in short-term increases in expenditures (e.g., "start-up money"). The commenter believed that regulations should specify that an initial increase in expenditures is acceptable given the long-term potential for savings.

Response:

Savings over the entire period of the waiver will be considered by HCFA in reviewing waiver proposals. However, we do not believe it is necessary to amend the regulations for this purpose.

Comment:

Two commenters suggested that the agency, in assigning a specific person or agency to act as a case manager, must ensure that the case manager has the necessary medical expertise for monitoring health-related services.

One commenter believes that regulations should include qualifications or certification requirements for case managers.

Response:

We are revising the requirement that a single person or agency act as the case manager to specify also that several persons may act as a case manager. This is because we do not want to preclude those situations where it may be more appropriate to have more than one manager; for example, in a group practice where several members may assume this responsibility at various times. We believe that selection of a case manager is a matter for the State to decide based on its own assessment as to what qualifications are needed. We do not believe that the legislation contemplated specific prescribed certification standards for case managers.

Comment:

One commenter believes that terms such as "provider" and "specialty physician services" should be defined. This commenter urges that regulations

prohibit discrimination among types of health providers for purposes of case-management. It also urged a provision whereby a patient may reject a State-selected provider, since decisions concerning health care must reside with the patient. The patient should have the right to terminate an unsatisfactory or unproductive patient-practitioner relationship.

Response:

A change to section 1915(b)(1) of the Act brought about by Pub. L. 97-248 revises "case-management system" to "primary care case-management system". In general, terms used in § 431.55(c) on primary care case-management arrangements are fairly common, non-technical terms. Consequently, we believe it is unnecessary to define them within the regulation itself.

We do agree, however, that the distinction between "primary care case-management system" and "specialty physician services arrangements" should be clarified in the regulations. Under a primary care case-management system, a case manager is responsible for locating, coordinating, and monitoring primary care or primary care and other medical care and rehabilitative services on behalf of a beneficiary. The specialty physician services arrangement differs from a case-management system in that it allows States to restrict beneficiaries to providers of specialty physician services for those specialty services regardless of whether such restriction is part of a case-management system. The regulations have been expanded to reflect this distinction.

Congress intended that case-management selection be a State prerogative. Therefore, it would be inappropriate to prohibit discrimination among types of providers, since the objective of a case-management system is to limit beneficiary access to specified primary care providers. Similarly, it would be inappropriate to allow a beneficiary to reject a State-selected provider, since such a stipulation could prevent the implementation of a case-management system, which inherently places restrictions on a beneficiary's freedom of choice.

7. Locality as Central Broker

Comment:

Several commenters believe that clarification of regulations was necessary in the following areas:

a. Two commenters requested that "locality" be defined.

b. One commenter believes that the regulations should require that all health care plans be considered on a fair and equitable basis.

c. One commenter suggested that the regulations should state that the central broker concept be limited to public or non-profit groups.

d. Two commenters stated that the regulations should describe what criteria the Secretary will apply in judging applications for this waiver, e.g., specify minimum benefits that must be offered by competing health care plans.

Response:

We have taken the following action:

a. We have amended the regulations to define "locality" as any defined jurisdiction, e.g., district, town, city, borough, county, parish, or State.

b. We believe the States are in the best position to determine the basis for evaluating alternative plans.

c. We have amended the regulations to specify that public or non-profit groups may act on a locality's behalf in carrying out its central broker function. However, we will not require that localities be limited to these groups.

d. We are not specifying the minimum benefits that must be offered by competing health care plans. However, States are responsible for ensuring that their State plan obligations are met irrespective of whether competing plans partially or totally supplant the current Medicaid program.

Comment:

One commenter stated that there are no controls upon a locality's ability to "coerce" individuals to select prepaid plans. States should be required to develop training, certification, and monitoring procedures to ensure fair performance by central brokers.

Response:

The purpose for using a locality as a central broker is to inform beneficiaries so that they can choose from among available plans. It is not intended that States use this waiver to "coerce" beneficiaries. We believe that States are in the best position to determine the procedures necessary to ensure fair performance by central brokers.

8. Restriction to Selected Cost-efficient Providers

Comment:

One commenter had the following suggestions:

(1) Regulations should contain requirements that States specify their standards for allowing providers to participate under the waiver.

(2) Regulations should be expanded to establish criteria for assuring that adequate access to services is provided.

(3) States should not be allowed to impose bed quotas.

Response:

We agree with the commenter and have amended the regulations to require that States specify, in their waiver requests, their standards with regard to provider participation.

With regard to establishing specific criteria for assuring adequate access, it is the intent of Congress to afford States greater flexibility in the operation of their Medicaid programs. Since circumstances vary in each State, HCFA would perpetuate current inefficiency by determining standard criteria to fit differing State circumstances. It is up to the States to demonstrate that reasonable access to care is protected. Waivers that do not show that access to services will be maintained will not be approved.

HCFA will not approve waiver requests that seek to restrict all provider agreements to a specified percentage or number of otherwise Medicaid certified beds.

Comment:

One commenter suggested that where State and Federal law requires hospitals to participate in Medicaid, a State should provide a hearing and appeal mechanism for settling disputes that arise over reimbursement, quality, and utilization standards. The commenter is concerned that the State may set arbitrary and unfair standards.

Response:

As a practical matter, it would appear to be inconsistent for a State which requires participation of qualifying hospitals to seek a waiver which would have the effect of excluding those same hospitals from participation. The commenter did not provide examples of State laws that require participation, or what impact those laws would have in a waiver situation. The providers, as well as the beneficiaries, are protected from the application of arbitrary standards. HCFA in granting a waiver, reviews the proposed State standards to assure that they are consistent with the purposes of title XIX, as well as with access, quality, efficiency, and economic provisions of covered care and services, and that they do not discriminate among classes of providers on grounds unrelated to their demonstrated effectiveness and efficiency in providing those services. Therefore, we believe that no change in regulations is necessary.

Comment:

One commenter believes that the regulations should contain criteria HCFA will use in determining whether a waiver will be "consistent with access, quality, and efficient and economic provisions of * * * services" and "not discriminate among classes of providers on grounds unrelated to their demonstrated effectiveness and efficiency".

Response:

Because of differing circumstances in the various States, we believe specific, quantifiable standards are not appropriate. We intend to issue general standards as administrative guidelines for use by States in determining whether their proposals are acceptable.

As stated earlier in the preamble, in general, HCFA's standards require that waiver requests hold out promise of being more cost-effective, do not impair beneficiary access to services and are not contrary to statutory intent. HCFA will rely on these principles in evaluating waiver requests, and administrative guidelines issued by HCFA will also reflect these principles.

Comment:

Two commenters were opposed to States having the right to bar qualified providers from the program despite their compliance with all rules and regulations and willingness to accept the Medicaid rate as payment in full. They believed that the regulations do not manifest Congressional intent in this regard and want appropriate clarification.

Response:

The mere fact that a provider complies with all rules and regulations and is willing to accept the Medicaid rate in full does not guarantee that the provider is cost-efficient and efficient since reimbursement and utilization rates vary from provider to provider. It is the intent of Congress to allow States to conserve Medicaid funds by selecting providers that offer quality services in a most cost-effective and efficient manner. States may select among classes of providers. Restrictions must be based solely on cost-effectiveness and efficiency considerations as long as access to quality services is maintained.

Comment:

One commenter requested that the phrases "classes of providers" and "demonstrated effectiveness and efficiency" should be clarified.

Response:

We have not clarified the term "classes of providers" in the regulation because we do not believe that a definition fully encompassing the kinds of discrimination meant to be prohibited can be drafted. States may not discriminate among classes of providers on any basis unrelated to their demonstrated effectiveness and efficiency. Examples of classes could include distinctions based on the nature of the provider's ownership (e.g. non-profit vs. for profit) or professional qualifications (e.g. physicians vs. physical therapists) or numerous other factors.

The regulations have been changed to clarify that the term "demonstrated effectiveness and efficiency" refers to reducing costs or slowing the rate of increase and maximizing outputs or outcomes per unit of cost.

Comment:

One commenter believed in general that economic concerns of the States may override their concern for the beneficiary, especially with regard to protecting residents of long-term facilities. The commenter thought that States would engage in mass transfers of patients out of these facilities despite absence of appropriate beds for these patients.

Another commenter suggested that the regulations should state that Medicaid would continue to pay for, and would not transfer, beneficiaries in long-term care facilities that are restricted from program participation under these regulations. Resident transfers should be done only in accordance with a specific and detailed relocation plan.

Response:

States must show that beneficiaries continue to have access to services of adequate quality. This will be one determining criterion in evaluating waiver requests. If States are unable to assure reasonable access to services, a waiver request will not be approved. With regard to mass transfers, we have amended regulations so that they do not apply to beneficiaries residing in a long-term care facility when a restriction is imposed unless the State arranges for reasonable and adequate beneficiary transfer. In order to minimize disruption to beneficiaries we would expect States, under this requirement, to provide beneficiaries and their families with sufficient advance notice to allow them to prepare for the transfer. However, the regulations will not require a specific and detailed relocation plan.

Comment:

One commenter indicated that the regulations should explicitly exclude emergency services from any freedom of choice restrictions as the statute requires.

Response:

We agree and have amended the regulations accordingly.

V. Impact analysis

Executive Order 12291

We have determined that neither the interim final nor the final regulations which clarify and amend the interim regulations, will result in an annual economic impact of $100 million or meet any of the other threshold criteria of section 1(b) of the Order.

Several commenters believed that a regulatory impact analysis was required because the impact would be greater than $100 million. Upon review of 50 waiver requests and the approval of 22 waivers, we have determined that the annual cumulative economic effect of individual State actions, may exceed $100 million. For example, one regional office estimates that one State's request to procure hospital services for its Medicaid recipients, could result in State savings of $140 million in fiscal 1984. The other approved waivers are estimated to produce smaller savings. However, there is potential for States' actions to result in an impact exceeding the $100 million threshold.

However, as noted in the October 1, 1981 regulation, the actions States may take under section 1915 do not result from the provisions of these regulations, but on the provisions of section 1915 itself. Therefore, the economic impact generated by State decisions result from the Omnibus Budget Reconciliation Act of 1981 and not these regulations, and a regulatory impact analysis is not required.

Regulatory Flexibility Act

The Secretary certifies under 5 U.S.C. 605(b), enacted by the Regulatory Flexibility Act (Pub. L. 96-354), that neither the interim final regulations nor these final regulations, which would clarify and amend the interim regulations, will result in a significant impact on a substantial number of small entities.

The primary impact of these interim final and final regulations is on the States, which are not "small entities" within the meaning of the Act. However, several commenters did suggest that many providers would be significantly impacted, but no specific evidence was

provided supporting their contention. And as discussed in the Executive Order analysis, any such impact on providers would be the result of the statute and not these regulations. Section 2175 of the Omnibus Reconciliation Budget Act of 1981 (Pub. L. 97-35), was expressly designed to allow States to place restrictions on the beneficiary's free choice of medical providers. As stated in the preamble, the interim final and the final regulations merely implement the intent of Congress. We would encourage States that are developing section 1915 waiver requests to consider their effect on small entities and to analyze alternative choices. We believe that States are best qualified to determine whether a given adverse effect on small entities is appropriate in view of the benefits offered by a waiver request that is consistent with the provisions of these regulations.

Further, in view of the provisions of section 1915, while a State may consider the effect on small entities before submitting a request, we may not consider this effect in reviewing the request. Accordingly, a regulatory flexibility analysis is not required.

VI. Clearance of Reporting Requirements

In the preamble to the interim final rule published October 1, 1981, a statement was made that the reporting requirements contained in §§ 431.51, and 431.55 of the regulations would not be effective until the Office of Management and Budget (OMB) approved the reporting. OMB has completed its review of the reporting requirements contained in § 431.51. Under OMB No. 0938-0193, OMB has approved this section of the regulations only as a certification. A certification would not be considered to have any reporting burden. Regulation § 431.51(d) under this rule meets this OMB requirement.

With respect to § 431.55, again, under section 3507 of the Paperwork Reduction Act, reporting/recordkeeping would not be required until OMB approval has been obtained. This will also apply with respect to the reporting/recordkeeping contained in § 431.54(f)(3). We will notify States of the effective date of the reporting/recordkeeping requirements when approval has been obtained.

VII. List of Subjects in 42 CFR Part 431

Administrative practice and procedure, Contracts (Agreements), Fair hearings, Federal financial participation, Grant-in-Aid program—health, Health facilities, Health maintenance organizations (HMO), Indians, Information (Disclosure), Medicaid, Mental health centers, Prepaid health plans, Privacy, Quality control, Reporting and recordkeeping requirement.

PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

The authority citation for Part 431 reads as follows:

Authority: Sec. 1102 of the Social Security Act, (42 U.S.C. 1302), unless otherwise noted.

42 CFR Part 431, Subpart B is amended as set forth below:

Subpart B—Administrative Requirements: General Program Services

1. Section 431.51 is amended by revising paragraphs (c)(3) and (d) to read as follows:

§ 431.51 Free choice of providers.

* * * * *

(c) *Limitations on applicability.* Paragraph (b) of this section does not prohibit the agency from—* * *

(3) Restricting recipients' free choice of providers in accordance with one or more of the exceptions provided for under § 431.54, or under a waiver as provided for under § 431.55.

(d) *Certification requirement.* If a State implements a project under one of the exceptions allowed under § 431.54 (d), (e) or (f), it must certify to HCFA that the statutory safeguards and requirements for an exception under section 1915(a) of the Act are met. The certification must be submitted by the end of the quarter in which the State implements the project, except that the certification must be submitted prior to instituting the project in the case of an exception under § 431.54(d), for which the Secretary must make certain findings before the project may be initiated.

2. Section 431.54 is amended by revising paragraphs (d), (e), and (f) to read as follows:

§ 431.54 Exceptions to certain State plan requirements.

* * * * *

(d) *Competitive bidding or other arrangements.* The Medicaid agency may enter into arrangements to purchase medical devices or laboratory and X-ray tests (as defined in § 440.30) through a competitive bidding process or otherwise, if the State assures in the certification required under § 431.51(d), and the Secretary finds, that adequate services or devices are available to recipients under the arrangements. In addition, the State must certify and the Secretary must find that:

(1) Laboratory services purchased under such arrangements are provided through independent laboratories, hospital laboratories (in-or-outpatient) that provide services for non-hospital patients, and physician laboratories that process at least 100 specimens during any calendar year from other physicians. These laboratories must meet the requirements of Part 405, Subpart J or Part 405, Subpart M of this chapter. Laboratories requiring an interstate license under 42 CFR Part 74 must be licensed by HCFA or receive an exemption from the licensing requirement by the College of American Pathologists. (Hospital and physician laboratories may participate in competitive bidding only with regard to services to non-hospital patients and other physicians' patients, respectively.)

(2) Any laboratory from which a State purchases services under this section has no more than 75 percent of its charges based on services to beneficiaries or recipients of Medicaid or Medicare.

(e) *Lock-in of recipients who over-utilize Medicaid services.* If a Medicaid agency finds that a recipient has utilized Medicaid services or items at a frequency or amount that is not medically necessary, as determined in accordance with utilization guidelines established by the State, the agency may restrict that recipient for a reasonable period of time to obtain Medicaid services or items from designated providers only. The agency may impose these restrictions provided that:

(1) The agency gives the recipient notice and opportunity for a hearing (in accordance with procedures established by the agency) before such restrictions are imposed.

(2) The agency assures that the recipient has reasonable access (taking into account geographic location and reasonable travel time) to Medicaid services of adequate quality.

(3) The restrictions will not apply to emergency services furnished to the recipient.

(f) *Lock-out of providers.* If a Medicaid agency finds that a provider of items or services under the State plan has abused the Medicaid program, the agency may restrict the provider, through suspension or otherwise, from participating in the Medicaid program for a reasonable period of time. The agency may impose these restrictions subject to the following limitations:

(1) Before imposing any restriction, the agency gives the provider notice and

opportunity for a hearing, in accordance with procedures established by the agency.

(2) The agency must find, before restricting a provider, that in a significant number or proportion of cases, the provider has:

(i) Provided Medicaid items or services at a frequency or amount not medically necessary, as determined in accordance with utilization guidelines established by the agency; or

(ii) Provided Medicaid items or services of a quality that does not meet professionally recognized standards of health care.

(3) The agency must—

(i) Notify HCFA when it imposes a restriction; and

(ii) Give a general notice to the public of the restriction and its duration.

(4) The agency may not impose restrictions which would result in denying recipients reasonable access (taking into account geographic location and reasonable travel time) to Medicaid services of adequate quality, including emergency services.

3. Section 431.55 is revised to read as follows:

§ 431.55 Waiver of other Medicaid requirements.

(a) Basis and purpose. This section implements section 1915(b) of the Act, as added by section 2175 of Pub. L. 97–35 and as amended by section 137 of Pub. L. 97–248, which authorizes the Secretary to waive the requirements of sections 1902 and 1903(m) (as permitted under paragraph (h) of this section) of the Act to the extent he or she finds proposed improvements in the provision of services under Medicaid to be cost-effective, efficient, and consistent with the objectives of the Medicaid program. This section also implements sections 1915 (d), (e), and (f) of the Act, which govern how such waivers are to be approved, continued, monitored, and terminated. Additionally, paragraph (g) of this section implements section 1916(a)(3) and (b)(3) of the Act, which authorizes the Secretary to waive the requirement in those sections that cost-sharing amounts be nominal.

(b) *General requirements.*

(1) HCFA will consider only waiver requests submitted to HCFA by or through the Governor, State cabinet members responsible for State Medicaid agency activities, director of the State Medicaid agency, or by someone with the authority to submit waiver requests on behalf of the director.

(2) In applying for a waiver to implement an approvable project under paragraphs (c), (d), (e), or (f) of this section, a Medicaid agency must document in the waiver request and maintain data regarding:

(i) The cost-effectiveness of the project;

(ii) The effect on recipients regarding access to care and quality of services; and

(iii) The projected impact of the program.

(3) No waiver under this section may be granted for a period longer than 2 years, unless the agency requests a continuation of the waiver.

(4) HCFA will monitor the implementation of waivers granted under this section to assure that requirements for such waivers are being met.

(i) Where monitoring demonstrates evidence that the agency is not in compliance with the requirements for a waiver under this section, the agency shall be given notice and opportunity for a hearing.

(ii) If, after a hearing, HCFA finds an agency to be out of compliance with the requirements of a waiver, that waiver shall be terminated, and the agency shall be given a specified date by which it must demonstrate that it meets the applicable requirements of sections 1902 and 1903(m) of the Act.

(c) *Case-management system.* Waivers of appropriate requirements of sections 1902 and 1903(m) (as permitted under paragraph (h) of this section) of the Act may be authorized for a State to implement a primary care case-management system or specialty physician services arrangements which restricts the provider from or through whom a recipient can obtain medical care services (other than in emergency circumstances) provided that those restrictions do not substantially impair access to such services of adequate quality where medically necessary.

(1) Under a primary care case-management system the agency assures that a specific person or persons or agency will be responsible for locating, coordinating, and monitoring all primary care or primary care and other medical care and rehabilitative services on behalf of a recipient.

(2) A specialty physician services arrangement allows States to restrict recipients of specialty services to designated providers of such services, even in the absence of a primary care case-management system.

(d) *Locality as central broker.* Waivers of appropriate requirements of sections 1902 and 1903(m) (as permitted under paragraph (h) of this section) of the Act may be authorized for a State to allow a locality to act as a central broker in assisting individuals (eligible for medical assistance under this title) in selecting among competing health care plans.

States must ensure that access to medically necessary services of adequate quality is not substantially impaired.

(1) A locality is any defined jurisdiction, e.g., district, town, city, borough, county, parish, or State.

(2) A locality may utilize any agency or agent, public or private, profit or nonprofit, to act on its behalf in carrying out its central broker function.

(e) *Sharing of cost savings.* Waivers of appropriate requirements of section 1902 and 1903(m) (as permitted under paragraph (h) of this section) of the Act may be authorized for a State to share (through provision of additional services) with recipients of medical assistance under the State plan cost savings resulting from use by the recipient of more cost-effective medical care.

Additional services include those offered by plans selected by recipients, as well as those offered expressly by a State as an inducement for recipients to participate in a primary care case-management system, a "competing health care plan", or other arrangements that result in more cost effective medical care.

(f) Restriction of freedom of choice. Waiver of appropriate requirements of sections 1902 and 1903(m) (as permitted under paragraph (h) of this section) of the Act may be authorized for States to restrict recipients to obtaining services from (or through) qualified providers or practitioners that meet, accept, and comply with the State reimbursement, quality and utilization standards specified in the State's waiver request.

(1) An agency may qualify for such a waiver only if——

(i) Its applicable State standards are consistent with access, quality and efficient and economic provisions of covered care and services;

(ii) The restrictions it imposes do not discriminate among classes of providers on grounds unrelated to their demonstrated effectiveness and efficiency in providing those services; and

(iii) The restrictions it imposes do not apply in emergency circumstances.

(2) Demonstrated effectiveness and efficiency refers to reducing costs or slowing the rate of increase and maximizing outputs or outcomes per unit of cost.

(3) The provisions of this section do not apply to recipients residing at a long-term care facility when a restriction is imposed unless the State arranges for

reasonable and adequate recipient transfer.

(g) *Cost sharing requirement.* Beginning October 1, 1982, under sections 1916(a)(3) and (b)(3), the Secretary may permit by waiver, copayments of up to double the nominal amount, as described in § 447.54, to be imposed on nonemergency services furnished in a hospital emergency room.

(1) Nonemergency services are those services that do not meet the definition of emergency services at § 447.53(b)(4).

(2) In order for a waiver to be approved under this provision, the State must establish to the satisfaction of HCFA, that alternative sources of nonemergency, outpatient services are available and accessible to eligible individuals.

(3) Although, in accordance with paragraph (b)(2) of this section, a waiver will generally be granted for a 2 year duration, HCFA will re-evaluate approved waivers if the State increases the nominal copayment amounts in effect when the waiver was approved.

(h) *Section 1903(m) waivers.* Appropriate requirements under section 1903(m) of the Act are waived only where a waiver of those requirements was granted by the Secretary and the arrangements were in place before August 10, 1982. Such a waiver may remain in effect only for the period for which it was initially approved.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program)

Dated: March 15, 1983.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: April 26, 1983.

Margaret M. Heckler,

Secretary.

[FR Doc. 83-13733 Filed 5-23-83; 8:45 am]

BILLING CODE 4120-03-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6386

[NEV-058307]

Nevada; Partial Revocation of Public Land Order 3035

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order partially revokes PLO No. 3035 which withdrew land for a Bureau of Mines Administrative Site in Boulder City, Nevada. The surface and mineral estate of the .606 acre involved are now in private ownership. The remaining 17.481 acres of the site will remain withdrawn.

EFFECTIVE DATE: June 21, 1983.

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

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

1. PLO No. 3035, dated April 15, 1963, which withdrew land for use by the Bureau of Mines as an administrative site, is hereby revoked insofar as it affects the following described land:

Mount Diablo Meridian, Nevada

T. 23 S., R. 64 E.,
Sec. 8, lots 30, 31, 32 and 33, Block 10 as shown on the Plat of Boulder City, Nevada, dated July 15, 1959 (X300460, Sheet 9 and 20), on file at City Hall, Boulder City, Clark County, Nevada; except the north approximately 5 feet of lot 30 as shown on the unrecorded Record of Survey, prepared on September 14, 1976, by Elmer S. Radig, Registered land Surveyor, Nevada Certificate No. 2878) 581 Avenue "C," Boulder City.

The area described aggregates approximately .606 acre within the city limits of Boulder City in Clark County, Nevada.

The above described land, including all minerals, is now in private ownership.

Inquiries concerning the land should be addressed to Chief, Division of Operations, Nevada State Office, Branch of Lands and Minerals Operations, 300 Booth Street, P.O. Box 12000, Reno, Nevada 89520.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

May 16, 1983.

[FR Doc. 83-13907 Filed 5-23-83; 8:45 am]

BILLING CODE 4310-84-M

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43 CFR Public Land Order 6387

[C-1269]

Colorado; Revocation of Public Land Order 5029; Partial Revocation of Executive Order 5327 and Public Land Order 4522

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes Public Land Order 5029 in its entirety and partially revokes Executive Order 5327 and Public Land Order 4522 as to 1,066,680 acres of public and national forest lands withdrawn for oil shale classification purposes. This order will restore approximately 508,640 acres to operation of the public land laws, including mining and mineral leasing, and 258,040 acres to such forms of disposition as may by law be made of national forest lands. The remaining 300,000 acres are privately owned and will not be affected by this action.

EFFECTIVE DATE: June 21, 1983.

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

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

1. Public Land Order 5029, dated March 11, 1970, is hereby revoked in its entirety; Executive Order 5237, dated April 15, 1930, as amended, and Public Land Order 4522, dated September 13, 1968, are hereby revoked as far as they affect the following described lands:

Sixth Principal Meridian

T. 2 N., R. 95 W.,
Secs. 2 thru 11, 14 thru 23, 27 thru 33.
T. 3 N., R. 95 W.,
Secs. 7, 17 thru 20, 28 thru 34.
T. 12 N., R. 95 W.,
Secs. 13 thru 24.
T. 2 N., R. 96 W.,
Secs. 1 thru 14, 24, 25, 36.
T. 3 N., R. 96 W.,
Secs. 1 thru 4, 10 thru 15, 22 thru 28, 31 thru 36.
T. 4 N., R. 96 W.,
Secs. 7 thru 9, 14 thru 23, 25 thru 30, 32 thru 36.
T. 5 N., R. 96 W.,
Secs. 31 thru 33.
T. 8 N., R. 96 W.,
Secs. 3 thru 10, 15 thru 21, 29 thru 31.
T. 9 N., R. 96 W.,
Secs. 6, 7, 18, 19, 30.
T. 10 N., R. 96 W.,
Secs. 5 thru 8, 17 thru 20, 30, 31.
T. 11 N., R. 96 W.,
Secs. 5 thru 8, 17 thru 20, 29 thru 32.
T.12 N., R. 96 W.,
Secs. 13 thru 24, 31.
T. 2 N., R. 97 W.,
Secs. 1 and 12.
T. 3 N., R. 97 W.,
Secs. 36.
T. 4 N., R. 97 W.,
Secs. 11 and 12.
T. 5 N., R. 97 W.,
Secs. 36.
T. 8 N., R. 97 W.,
Secs. 1 thru 30, 33 thru 36.
T. 9 N., R. 97 W.,
Secs. 1 thru 36.
T. 10 N., R. 97 W.,
Secs. 1 thru 36.
T. 11 N., R. 97 W.,
Secs. 1 thru 3, 5 thru 36.
T. 12 N., R. 97 W.,

Secs. 13 thru 24, 29 thru 31, 34 thru 36.
T. 8 N., R. 98 W.,
Secs. 1 thru 27.
T. 9 N., R. 98 W.,
Secs. 1 thru 36.
T. 10 N., R. 98 W.,
Secs. 1 thru 36.
T. 11 N., R. 98 W.,
Secs. 1 thru 36.
T. 12 N., R. 98 W.,
Secs. 13 thru 36.
T. 8 N., R. 99 W.,
Secs. 1 and 12.
T. 9 N., R. 99 W.,
Secs. 1 thru 29, 33 thru 36.
T. 10 N., R. 99 W.,
Secs. 1 thru 36.
T. 11 N., R. 99 W.,
Secs. 1 thru 5, 7 thru 17, 20 thru 36.
T. 12 N., R. 99 W.,
Secs. 13 thru 17, 20 thru 29, 32 thru 36.
T. 9 N., R. 100 W.,
Secs. 1 thru 5, 9 thru 15, 24.
T. 10 N., R. 100 W.,
Secs. 1 thru 4, 12, 13, 21 thru 28, 32 thru 36.
T. 11 N., R. 100 W.,
Secs. 25, 26, 34 thru 36.
T. 12 N., R. 102 W.,
Secs. 13 thru 25.
T. 1 N., R. 103 W.,
Secs. 3 Thru 10, 15 thru 20, 29 thru 32.
T. 2 N., R. 103 W.,
Secs. 29 thru 33.
T. 1 N., R. 104 W.,
Secs. 1 thru 3, 10 thru 15, 22 thru 27, 34 thru 36.
T. 2 N., R 104 W.,
Secs. 10, 11, 13, 14, 15, 22 thru 27, 34 thru 36.
T. 10 S., R. 93 W.,
Secs. 4, 5, 7 thru 10.
T. 7 S., R 94 W.,
Secs. 14 and 15.
T. 10 S., R. 94 W.,
Sec. 28.
T. 7 S., R. 95 W.,
Secs. 22 thru 27, 33 thru 36.
T. 8 S., R. 95W.,
Secs. 4, 5, 8, 9, 16 thru 21.
T. 10 S., R. 95W.,
Sec. 36.
T. 11 S., R. 95 W.,
Secs. 5 and 6.
T. 8 S., R. 96 W.,
Secs. 12 and 13.
T. 11 S., R. 96 W.,
Secs. 1, 10, 15;
Sec. 16, W½, SE¼;
Secs. 18, 19, 21.
T. 11 S., R. 97 W.,
Secs. 10 thru 16, 20 thru 29, 32 thru 36.
T. 1 S., R. 103 W.,
Secs. 6, 7, 18, 19, 30 thru 32.
T. 1 S., R. 104 W.,
Secs. 1 thru 3, 10 thru 15, 22 thru 27, 34 thru 36.
T. 2 S., R. 104 W.,
Secs. 22, 23, 26, 27, 34, 35.
T. 3 S., R. 104 W.,
Secs. 2, 3, 26, 35.

Approximately 508,640 acres of public land.

2. Executive Order 5327 and Public Land Order 4522 are hereby revoked insofar as they affect the following described national forest land:

Sixth Principal Meridian

T. 8 S., R. 96 W.,
Secs. 24 thru 36.
T. 11 S., R. 96 W.,
Secs. 11 thru 14;
Sec. 16, NE¼.

Approximately 11,040 acres of national forest land.

3. Executive Order 5327 is hereby revoked insofar as it affects the following described national forest land:

Sixth Principal Meridian

T. 10 S., R. 92 W.,
Secs. 18 thru 20, 29 thru 33.
T. 11 S., R. 92 W.,
Secs. 3 thru 10, 15 thru 22, 28 thru 33.
T. 12 S., R. 92 W.,
Secs. 3 thru 6, 10.
T. 7 S., R. 93 W.,
Secs. 30, 31.
T. 8 S., R. 93 W.,
Secs. 6 thru 9, 15 thru 22, 27 thru 30.
T. 10 S., R. 93 W.,
Secs. 13 thru 36..
T. 11 S., R. 93 W.,
Secs. 1 thru 36.
T. 12 S., R. 93 W.,
Secs. 1 thru 6, 8 thru 11, 13 thru 17, 20 thru 24.
T. 7 S., R. 94 W.,
Secs. 19 thru 36.
T. 8 S., R. 94 W.,
Secs. 1 thru 30.
T. 10 S., R. 94 W.,
Secs. 23 thru 27, 31 thru 36.
T. 11 S., R. 94 W.,
Secs. 1 thru 36.
T. 12 S., R. 94 W.,
Secs. 1 thru 11, 16.
T. 8 S., R. 95 W.,
Secs. 1 thru 3, 10 thru 15, 22 thru 35.
T. 9 S., R. 95 W.,
Secs. 4 thru 6.
T. 11 S., R. 95 W.,
Secs. 1 thru 4, 7 thru 36.
T. 12 S., R. 95 W.,
Secs. 1 thru 22, 28 thru 31.
T. 9 S., R. 96 W.,
Secs. 11 thru 15.
T. 11 S., R. 96 W.,
Secs. 22 thru 36.
T. 12 S., R. 96 W.,
Secs. 1 thru 27, 33 thru 36.
T. 12 S., R. 97 W.,
Secs. 1 thru 4, 9 thru 16, 22 thru 24.

Approximately 247,000 acres of national forest land.

4. At 10 a.m. on June 21, 1983, the land described in paragraph one shall be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All applications received at or prior to 10 a.m. on June 21, 1983, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

5. At 10 a.m. on June 21, 1983, the land described in paragraph one shall be open to location under the United States mining laws. Appropriation of lands under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. Section 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a rights of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

6. At 10 a.m. on June 21, 1983, the land described in paragraph three shall be open to nonmetalliferous mineral location and entry under the United States mining laws, subject to valid existing rights, and the requirements of applicable regulations. The land has been and remains open to metalliferous mineral location under the United States mining laws and to applications and offers under the mineral leasing laws.

7. At 10 a.m. on June 21, 1983, the land described in paragraphs 1 and 2 shall be open to applications and offers for sodium leasing under the mineral leasing laws. The land has been and remains open to leasing for minerals other than sodium.

8. The land described in paragraph 3, which was withdrawn by Executive Order 5327 only, remains open to all mineral leasing, including sodium leasing.

9. At 10 a.m. on June 21, 1983, the land described in paragraphs 2 and 3 will be open to such forms of surface appropriation as may by law be made of national forest land.

10. Approximately 300,000 acres are privately owned and will not be affected by this action.

Inquiries concerning these lands should be directed to the State Director, Bureau of Land Management, 1037 - 20th Street, Denver, Colorado 80202.

Garrey E. Carruthers,
Assistant Secretary of the Interior.
May 16, 1983.
[FR Doc. 83-13804 Filed 5-23-83; 8:45 am]
BILLING CODE 4310-84-M

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43 CFR Public Land Order 6388

[W-29044]

Wyoming; Partial Revocation of Reclamation Project Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes four orders as they affect 21,519 acres of public lands withdrawn for the Eden Reclamation Project. This action constitutes record clearing only as lands are within an oil shale withdrawal and, as such, will remain closed to surface entry and mining. The lands have been and remain open to mineral leasing, except for oil shale.

EFFECTIVE DATE: June 21, 1983.

FOR FURTHER INFORMATION CONTACT: W. Scott Gilmer, Wyoming State Office, 307–772–2540.

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

1. The Secretarial Orders of July 18, 1940, and April 14, 1941, and the Commissoners' Orders of January 24, 1952, and August 19, 1954, which withdraw lands for the Eden Reclamation Project are hereby revoked insofar as they affect the following described land:

Sixth Principal Meridian, Wyoming

T. 24 N., R. 105 W.,
Sec. 6, lots 1 to 6, inclusive, E½SW¼, SE¼;
Sec. 7, lots 1 to 4, inclusive, E½SW¼, E½;
Sec. 18, lots 1 to 4, inclusive, E½W½, E½;
Sec. 19, lots 1 to 4, inclusive, E½W½, E½;
Sec. 30, lots 1 to 4, inclusive, E½W¼, E½;
Sec. 31, lots 1 to 4, inclusive, E½W¼, E½;
T. 25 N., R. 105 W.,
Sec. 4, lots 1 to 4, inclusive, S½NE¼, SE¼;
Sec. 14, SW¼;
Sec. 23, W½;
Sec. 33, E½, E½NW¼, SW¼NW¼, SW¼.
T. 26 N., R. 105 W.,
Sec. 22, S½NE¼, SW¼SW¼, E½SW¼, SE¼;
Sec. 28, E½;
Sec. 33, E½, E½NW¼, SW¼NW¼, SW¼;
T. 27 N., R. 105 W.,
Sec. 19, lot 8, SE¼SW¼;
Sec. 30, lots 1, 2, 4, E½W½;
Sec. 31, lots 1, 2, E½NW¼, E½.
T. 23 N., R. 106 W.,
Sec. 1, lots 1 to 4, inclusive, S½N½, S½ (All);
Sec. 2, lots 1 to 4, inclusive, S½N½, S½ (All);
Sec. 5, lots 1 to 4, inclusive, S½N½, S½ (All);
Sec. 8, All;
Sec. 9, All;
Sec. 10, All.
T. 25 N., R. 106 W.,
Sec. 4, lot 4, SW¼NW¼;
Sec. 5, lots 1 to 4, inclusive, S½N½, S½ (All);
Sec. 8, W½NE¼, NW¼, W½SW¼;
Sec. 16, W½NW¼;
Sec. 17, All;
Sec. 20, NE¼NE¼, W½NE¼, NW¼, W½SW¼.
T. 26 N., R. 106 W.,
Sec. 3, lot 4, SW¼NW¼, W½SW¼;
Sec. 10, W½NW¼, S½;
Sec. 14, All;
Sec. 22, SE¼;
Sec. 27, N½NE¼, NW¼, W½SW¼;
Sec. 33, N½, N½SW¼, SW¼SW¼;
Sec. 34, NW¼NW¼.
T. 27 N., R. 106 W.,
Sec. 7, lot 1, 2, 5, 7, E½NW¼, E½;
Sec. 8, S½;
Sec. 17, NE¼, N½NW¼, SW¼SW¼;
Sec. 18, lots 1 to 4 inclusive, NE¼NE¼, E½W½, SE¼;
Sec. 19, lots 1 to 4 inclusive, E½W½, E½ (All);
Sec. 20, W½NW¼, SW¼;
Sec. 22, SW¼, W½SE¼, NE¼SE¼;
Sec. 23, S½;
Sec. 24, SW¼, W½SE¼, S½SE¼SE¼, NE¼SE¼;
Sec. 25, N½NW¼;
Sec. 26, N½N½;
Sec. 29, W½E½;
Sec. 30, lots 1 to 4 inclusive, E½W½, E½ (All);
Sec. 31, lots 1 and 2, NE¼, E½NW¼;
Sec. 32, NE¼.
T. 24 N., R. 107 W.,
Sec. 2, lot 2, W½SE¼;
Sec. 11, W½NE¼;
Sec. 27, N½.
T. 27 N., R. 107 W.,
Sec. 12, lots 1, 2, 3, W½NE¼;
Sec. 13, E½;
Sec. 25, E½.

The area described contains 21,519.37 acres in Sublette and Sweetwater Counties, Wyoming.

2. The lands described above will remain closed to operation of the surface land laws, and the United States mining laws since they lie within an overlapping oil shale withdrawal. The lands have been and will remain open to applications and offers under the mineral leasing laws, except for oil shale.

The Bureau of Land Management will assume administrative jurisdiction of the lands and will recognize all rights-of-way, and easements previously granted by the Bureau of Reclamation.

Inquiries concerning the lands should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 1828, Cheyenne, Wyoming 82001.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

[FR Doc. 83-13903 Filed 5-23-83; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 6389

[U-31071]

Utah; Partial Revocation of Reclamation Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes a Secretarial Order as to 785,850.04 acres of land withdrawn for the Glen Canyon Unit, Colorado River Storage Project, Utah. A total of 207,483.94 acres will be restored to surface entry. This portion has been and will remain open to mining and mineral leasing. The remaining 578,366.10 acres will continue to be withdrawn for the Glen Canyon National Recreation Area.

EFFECTIVE DATE: June 21, 1983.

FOR FURTHER INFORMATION CONTACT: Ken Latimer, Utah State Office, 801–524–4245.

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

1. The Secretarial Order of June 11, 1954, is hereby revoked as it pertains to the following lands:

Salt Lake Meridian

Glen Canyon National Recreation Area

T. 43 S., R. 3 E.
Sec. 1, All;
Secs. 7–21, incl.;
Sec. 22, NE¼, W½, N½SE¼, SW¼SE¼;
Sec. 23, E½, NW¼, N½SW¼, SE¼SW¼;
Sec. 24, E½, N½NW¼, SE¼NW¼;
Sec. 25, NE¼SE¼;
Sec. 26, NE¼NW¼;
Sec. 27, NW¼NE¼, N½NW¼;
Sec. 28, N½N½, SW¼SW¼;
Sec. 29, NE¼NE¼, W½E½, W½, SE¼SE¼;
Sec. 30, All;
Sec. 33, W½NE¼, SE¼NE¼, NW¼, S½;
Sec. 34, SW¼NE¼, S½NW¼, SW¼, NW¼SE¼, S½SE¼;
Sec. 35, SW¼SW¼.
T. 44 S., R. 3 E.
Sec. 1, SW¼SW¼;
Secs. 3–5, 7–11, incl.;
Sec. 12, Lots 1, 2, 4.
T. 42 S., R. 4 E.
Secs. 25–29, incl.;
Sec. 33, NE¼, W½, N½SE¼, SW¼SE¼;
Sec. 34, N½, N½S½, S½SE¼;
Sec. 35, All.
T. 43 S., R. 4 E.
Sec. 1, All;
Sec. 3, Lots 1, 2, SE¼NE¼, E½SE¼;
Sec. 4, Lots 3, 4, S½NW¼, SW¼, W½SE¼;
Secs. 5–7, incl.;
Sec. 8, NE¼, W½, N½SE¼, SW¼SE¼;
Sec. 9, NW¼, N½SW¼, N½SE¼;
Sec. 11, NE¼, SE¼SW¼, N½SE¼, SW¼SE¼;
Sec. 12, E½, NW¼, NW¼SW¼;
Sec. 13, E½, SE¼NW¼, E½SW¼.
Secs. 17–21, incl.;
Sec. 22, SW¼, S½SE¼;
Sec. 24, E½E½;
Sec. 27, W½;
Sec. 28, All;
Sec. 29, E½, NW¼, NE¼SW¼;
Sec. 30, Lots 1–3, NE¼, E½W½;

Sec. 33, N½N½;
Sec. 34, NW¼NW¼.
T. 41 S., R. 5 E.
Secs. 32–36, incl.
T. 42 S., R. 5 E.
Sec. 1, Lots 1–4, S½N½, N½S½, SE¼SW¼, SW¼SE¼;
Sec. 2, Lots 1–4, S½N½, N½S½, SE¼SW¼, S½SE¼;
Sec. 3, Lots 1–4, S½N¼, N½S½, S½SW¼, SW¼SE¼;
Secs. 4, 5, 9;
Sec. 10, W½E½, W½;
Sec. 11, NW¼NE¼;
Sec. 12, E½NE¼, NW¼NE¼, NE¼NW¼;
Sec. 13, S½NW¼, SW¼, SW¼SE¼;
Sec. 14, SE¼NE¼, W½NW¼, SE¼NW¼, S½;
Secs. 15, 22, 23;
Sec. 24, W½NE¼, NW¼, S½;
Sec. 25, W½NE¼, NW¼, S½;
Secs. 26, 27, 34–36, incl.
T. 43 S., R. 5 E.
Sec. 1, Lots 3, 4, S½NW¼, NE¼SW¼;
Sec. 3, Lots 3, 4, S½NW¼, SW¼;
Secs. 4–8, incl.;
Sec. 9, NE¼NE¼, W½E½, W½, SE¼SE¼;
Sec. 10, N½NW¼;
Secs. 17, 18;
Sec. 19, Lots 1–4, W½NE¼, E½NW¼;
Sec. 20, N½NE¼, SE¼NE¼, NE¼NW¼, NE¼SE¼;
Sec. 21, NE¼NE¼, W½E½, W½;
Sec. 27, S½;
Sec. 28, SE¼NE¼, W½E½, E½W½, NW¼NW¼, SW¼SW¼, E½SE¼;
Sec. 33, All;
Sec. 34, NE¼, W½, N½SE¼;
Sec. 35, N½NW¼, SW¼NW¼.
T. 44 S., R. 5 E.
Sec. 3, N½NW¼, SW¼NW¼;
Sec. 4, N½;
Sec. 5, N½N½, SE¼NE¼, NE¼SE¼.
T. 41 S., R. 6 E.
Secs. 27, 28;
Sec. 29, E½, E½W½, NW¼NW¼;
Sec. 30, Lots 1–4, N½NE¼, SW¼NE¼, E½W½;
T. 41 S., R. 6 E.
Sec. 31, Lots 1–4, E½W½;
Sec. 32, E½, E½W½;
Secs. 33–36, incl.
T. 42 S., R. 6 E.
Sec. 1, Lots 1–4, S½N½, N½SW¼, NW¼SE¼;
Sec. 2, 3;
Sec. 4, Lots 1–4, S½N½, SW¼, NE¼SE¼, W½SE¼;
Sec. 5, Lots 1–3, S½NE¼, SE¼;
Sec. 6, Lots 3–7, SE¼NW¼;
Sec. 7, Lot 1, NE¼SE¼;
Sec. 8, NE¼NE¼, W½E½, E½W½, W½NW¼, NW¼SW¼;
Sec. 9, NW¼NE¼, N½NW¼;
Sec. 10, NE¼, S½;
Sec. 11, All;
Sec. 12, SW¼NW¼;
Sec. 13, SW¼NW¼; SW¼, SW¼SE¼;
Secs. 14, 15;
Sec. 17, NE¼NW¼;
Sec. 19, Lot 3;
Sec. 21, S½SE¼;
Secs. 22–24, incl.;
Sec. 25, N½, N½S½, SE¼SE¼;
Sec. 26, All;
Sec. 27, E½, N½SW¼, SE¼SW¼;
Sec. 30, SW¼SE¼;
Sec. 31, Lots 1–4, NE¼SW¼;
Sec. 34, N½NE¼;
Sec. 35, E½, E½NW¼, NW¼NW¼;
Sec. 36, SW¼SW¼.
T. 43 S., R. 6 E.
Sec. 1, W½W½, SE¼SW¼, SW¼SE¼;
Sec. 11, E½E½, NW¼NE¼;
Sec. 12, W½NW¼, NW¼SW¼.
T. 41 S., R. 7 E.
Sec. 31, Lots 1–4, E½W½, E½SE¼, NE¼;
Secs. 32–36, incl.
T. 42 S., R. 7 E.
Secs. 1–4, incl.;
Sec. 5, Lots 1–4, S½N½, N½S½, SE¼SW¼, S½SE¼;
Sec. 6, Lots 1, 4, SE¼NE¼;
Sec. 8, E½, NE¼NW¼, S½NW¼, NE¼SW¼;
Sec. 9, NE¼NE¼, W½W½;
Secs. 10–13, incl.;
Sec. 14, NE¼, NE¼NW¼, W½NW¼, NW¼SW¼, E½SE¼;
Sec. 15, NE¼, E½NW¼, NE¼SW¼, NE¼SE¼;
Sec. 16, W½W½;
Sec. 17, E½, SE¼NW¼;
Sec. 21, W½NW¼;
Sec. 23, E½, E½SW¼;
Sec. 24, All;
Sec. 25, NE¼NE¼, W½W½, SE¼SW¼;
Sec. 26, N½, N½S½, SE¼SE¼;
Sec. 27, E½E½, E½SW¼, W½SE¼;
Sec. 30, Lots 2–4, SE¼NW¼, E½SW¼, W½SE¼;
Sec. 31, Lot 1, W½NE¼, E½NW¼, NE¼SW¼;
Sec. 33, NE¼SE¼;
Sec. 34, N½NE¼, NE¼NW¼, S½N½, N½S½, S½SW¼, SW¼SE¼.
T. 39 S., R. 8 E.
Secs. 1, 2, 11;
Sec. 12, N½NE¼, W½;
Sec. 13, W½NE¼, W½;
Secs. 14, 23–26, 35, 36, incl.
T. 40 S., R. 8 E.
Sec. 1, 2, 8–12, incl.
Sec. 13, NE¼NE¼, W½E½, W½, SE¼SE¼;
Secs. 14–16, 17, Part of S½NE¼ and S½; 21, E½E½; 22–28, 27, N½, NE¼SW¼, SE¼; Sec. 28, NE¼NE¼; 35, 36, incl.
T. 41 S., R. 8 E.
Secs. 1, 2, 11–14, 21–28, 31–36, incl.
T. 42 S., R. 8 E.
Sec. 1–18, incl.;
Sec. 19, Lots 1–4, NE¼, E½NW¼, NE¼SW¼, N½SE¼SE¼SE¼;
Sec. 20, N½, W½SW¼, E½SE¼;
Sec. 21, All;
Sec. 22, N½, N½S½, S½SW¼, SW¼SE¼;
Sec. 23, N½, N½S½, SE¼SW¼, S½SE¼;
Sec. 24, N½, N½S½, S½SE¼;
Sec. 25, N½NE¼, SW¼NE¼;
Sec. 26, E½NE¼, NW¼NE¼, NE¼NW¼;
Sec. 27, NW¼NE¼, NE¼NW¼, W½W½, SE¼SW¼;
Sec. 28, E½E½, W½NW¼, NW¼SW¼;
Sec. 29, E½;
Sec. 30, Lot 1;
Sec. 32, NE¼, NE¼NW¼, N½SE¼;
Sec. 34, NE¼NW¼.
T. 41 S., R. 8½ E.
All of Township.
T. 42 S., R. 8½ E.
Secs. 1, 2, 11, 12;
Sec. 13, NE¼, NE¼SE¼;
Sec. 14, 23;
Sec. 24, W½W½;
Sec. 25, N½NW¼.
T. 37 S., R. 9 E.
Sec. 1–3, 10–15, 22–27, 34–36, incl.
T. 38 S., R. 9 E.
Sec. 1–3, 10–15, incl.;
T. 39 S., R. 9 E.
Sec. 6, All;
Sec. 7, Lots 1, 2, E½, E½W½;
Sec. 18, NE¼, E½SE¼;
Sec. 19, Lots 1–4, SE¼NW¼, E½SW¼;
Sec. 20, NE¼, NW¼NW¼, NE¼SE¼;
Sec. 21, N½, N½S½, SE¼SW¼, S½SE¼;
Sec. 28, E½, E½W½;
Sec. 29, SW¼NW¼, W½SW¼;
Sec. 30, Lots 1–4, E½W½, S½NE¼, SE¼;
Sec. 31, All;
Sec. 32, NW¼NW¼, S½NW¼, SW¼, W½SE¼;
Sec. 34, E½, E½W½, W½NW¼;
Sec. 35, 36.
T. 40 S., R. 9 E.
Secs. 1–3, incl.;
Sec. 4, Lot 1, SE¼NE¼, E½SE¼;
Sec. 5, Lots 3, 4;
Sec. 6, Lots 1–7, SW¼NE¼, SE¼NW¼, E½SW¼, W½SE¼, SE¼SE¼;
Sec. 7, All;
Sec. 8, SW¼NW¼, N½SW¼;
Sec. 9, NE¼NE¼;
Sec. 10, N½N½, S½SE¼;
Sec. 11, All
Sec. 12, NW¼NE¼, W½;
Sec. 13, W½, W½SE¼;
Sec. 14, E½, N½NW¼;
Sec. 15, NE¼, NE¼SE¼;
Sec. 16, W½NW¼;
Sec. 17, E½NE¼, SW¼NE¼, SE¼NW¼, SW¼;
Sec. 18, Lots 3, 4, E½SW¼, SE¼;
Sec. 19, Lots 1–4, W½NE¼, E½W½, SE¼;
Sec. 20, SE¼NE¼, S½;
Sec. 21, S½NE¼, NW¼, NE¼SW¼, W½SW¼;
Sec. 22, SE¼SW¼;
Sec. 23, N½NE¼, SE¼NE¼;
Sec. 24, All;
Sec. 27, SE¼NE¼, W½E½, W½, NE¼SE¼;
Sec. 28, S½NE¼, NE¼SW¼, S½SW¼, SE¼;
Sec. 29, NW¼NE¼, W½;
Secs. 30–33, incl.;
Sec. 34, NW¼NE¼, NW¼, W½SW¼, SE¼SE¼;
Sec. 35, SE¼NW¼, SW¼, S½SE¼;
Sec. 36, SE¼NW¼, NE¼SW¼, S½SW¼.
T. 40½ S., R. 9 E.
Sec. 26, Lots 3, 4, SW¼;
Secs. 27–34 incl.;
Sec. 35, NW¼, NE¼SW¼, W½SW¼.
T. 41 S., R. 9 E.
Sec. 1, S½S½, NE¼SE¼;
Sec. 3, Lot 4, SW¼NW¼, W½SW¼;
Secs. 4–7, incl.;
Sec. 8, N½, N½S½, SW¼SW¼;
Sec. 9, N½, W½SW¼;
Sec. 10, NW¼;
Sec. 11, SE¼SE¼;
Sec. 12, E½NE¼;
Sec. 13, S½NE¼, W½, SE¼;
Sec. 14, E½E½, SE¼SW¼, SW¼SE¼;

Sec. 16, S½N½, N½S½, S½SW¼, SW¼SE¼;
Sec. 17, NW¼NW¼, S½N½, S½;
Sec. 18, All;
Sec. 19, Lots 1–4, NE¼, E½NW¼, E½SW¼, N½SE¼, SW¼SE¼;
Sec. 20, N½NE¼;
Sec. 21, W½E½, E½W½, W½NW¼, NW¼SW¼, NE¼SE¼;
Sec. 23, N½, E½SW¼, N½SE¼;
Sec. 24, All;
Sec. 25, E½NE¼, SE¼;
Sec. 26, NE¼NW¼;
Sec. 28, W½NE¼, E½NW¼;
Sec. 29, SW¼;
Sec. 30, Lots 1–4, NW¼NE¼, S½NE¼, E½NW¼; NE¼SW¼, N½SE¼, SE¼SE¼,
Sec. 31, Lots 1–4, NE¼NE¼, E½SW¼, SW¼SE¼;
Sec. 32, W½NW¼;
Sec. 36, N½NE¼, SE¼NE¼, NE¼SE¼.

T. 42 S., R. 9 E.
Sec. 6, Lots 1, 2, 3, 4, 5, 6, 7, SW¼NE¼, SE¼NW¼, NE¼SW¼; W½SE¼.

T. 38 S., R. 9½ E.
Secs. 6, 7, 18.

T. 39 S., R. 9½ E.
Secs. 31, All.

T. 37 S., R. 10 E.
Secs. 1–3, 10, incl.;
Sec. 11, NE¼, W½W½, NE¼SE¼;
Sec. 12, N½ N½S½, SE¼SW¼ S¼SE¼;
Sec. 13, E½, E½W½;
Sec. 14, W½NW¼, NW¼SW¼;
Sec. 15, NE¼, N½NW¼, N½SE¼;
Sec. 16–20, incl.;
Sec. 21, W½;
Sec. 24, N½NE¼, NE¼NW¼;
Sec. 27, W½, W½SE¼;
Sec. 28–32, incl.;
Sec. 33, N½, SW¼, W½SE¼, NE¼SE¼;
Sec. 34, S½NE¼, NW¼, N½SW¼, SE¼SW¼, SE¼.

T. 38 S., R. 10 E.
Sec. 3, Lots 1–3, SE¼NE¼;
Sec. 4, Lots 2–4, SW¼NE¼, S½NW¼, NW¼SE¼;
Sec. 5, Lots 1–4, S½NE¼, SE¼NW¼;
Sec. 6, Lots 3–7, SE¼NW¼, E½SW¼, W½SE¼, SE¼SE¼;
Sec. 7, All;
Sec. 8, NW¼NW¼, S½NW¼, S½;
Sec. 15, SW¼SW¼;
Sec. 17–21, incl.;
Sec. 22, SE¼NE¼, W½NW¼, S½;
Sec. 23, SW¼NW¼, NW¼SW¼;
Sec. 25, SW¼SW¼;
Sec. 26, NE¼NE¼, W½E½, W½, SE¼SE¼;
Sec. 27–35.

T. 38½ S., R. 10 E.
Secs. 26–28, 33–36, incl.

T. 39 S., R. 10 E.
Sec. 1–4, 9–11, incl.;
Sec. 12, NE¼NE¼, W½NE¼, NW¼, NE¼SW¼, W½SW¼;
Sec. 13, W½W½, SE¼SW¼;
Secs. 14–15, 19–23, incl.;
Sec. 24, SW¼SW¼;
Sec. 25, SW¼, S½SE¼;
Sec. 26, W½NE¼, SE¼NE¼, NW¼, S½;
Secs. 27–30, incl.;
Sec. 31, Lots 1, 2, NE¼, NE¼NW¼, N½SE¼;
Secs. 32–34, incl.;
Sec. 35, W½NE¼, W½, SE¼.

T. 40 S., R. 10 E.
Sec. 1, SE¼SE¼;
Sec. 2, Lots 3, 4, SW¼NE¼, S½NW¼, NE¼SW¼, W½SW¼;
Sec. 3, All;
Sec. 5, Lots 1–4, S½N½, E½SE¼;
Sec. 5, Lots 1–4;
Sec. 8, E½SW¼, NW¼SE¼, S½SE¼;
Sec. 12, NE¼SW¼, W½SW¼;
Sec. 13, W½W½, E½SW¼, NE¼SE¼, W½SE¼;
Sec. 14, S½NE¼, E½NW¼, NE¼SW¼, SE¼;
Sec. 15, S½SW¼, SW¼SE¼;
Sec. 16, W½;
Sec. 17, E½, NE¼NW¼;
Sec. 20, E½;
Sec. 21, W½, S½SE¼;
Sec. 22, All;
Sec. 23, N½NE¼, S½N½, S½;
Sec. 24, W½E½, W½;
Sec. 25, NW¼NE¼, S½NE¼, W½, SE¼;
Secs. 26–30, incl.;
Sec. 31, Lot 1, E½, NE¼NW¼, SE¼SW¼;
Secs. 32–36, incl.

T. 41 S., R. 10 E.
Secs. 1–5, incl.;
Sec. 6, Lots 1–4, 6, 7, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 7, Lots 1–3, NE¼, E½NW¼, E½SW¼, SE¼;
Secs. 8–17, incl.;
Sec. 18, Lots 2–4, NE¼, E½NW¼, E½SW¼, SE¼;
Secs. 19–24, incl.;
Sec. 25, N½, N½S½, S½SE¼;
Sec. 26, N½, N½S½, S½SW¼, SW¼SE¼;
Sec. 27, N½, NW¼SE¼, E½SE¼;
Secs. 28–30, incl.;
Sec. 32, NE¼, E½NW¼;
Sec. 33, N½N½, SW¼NW¼;
Sec. 36, NE¼.

T. 27 S., R. 11 E.
Sec. 12, NE¼, N½SE¼, SW¼SE¼;
Sec. 13, W½E½, E½SE¼;
Sec. 15, S½;
Sec. 16, S½;
Sec. 18, W½;
Sec. 19, N½NW¼;
Sec. 21, W½E½, W½, E½SE¼;
Sec. 22, E½E½, W½NE¼, NE¼NW¼;
Sec. 23, S½;
Sec. 24, W½E½, SW¼;
Sec. 25, NE¼NE¼, W½E½, W½;
Sec. 26, E½E½, W½NE¼, NW¼NW¼;
Sec. 27, SW¼NW¼, NW¼SW¼, S½SW¼;
Secs. 28, 29;
Sec. 30, E½E½;
Sec. 31, E½E½;
Sec. 32, 33;
Sec. 34, W½, SE¼;
Sec. 35, NE¼NE¼, SW¼SW¼;
Sec. 36, W½NW¼.

T. 38 S., R. 11 E.
Sec. 1, SW¼SE¼;
Sec. 2, Lot 4, SW¼NE¼, S½NW¼, SW¼;
Secs. 3, 4;
Sec. 5, Lots 1–4, S½N½, SE¼;
Sec. 8, NE¼, NE¼NW¼, NE¼SE¼;
Sec. 9, All;
Sec. 10, N½, SW¼;
Sec. 12, E½, SE¼NW¼, SW¼;
Sec. 13, NE¼, E½NW¼, NE¼SE¼;
Sec. 15, SW¼NE¼, W½, NW¼SE¼;
Sec. 16, N½N½, SE¼NE¼, SW¼NW¼, NE¼SE¼;
Sec. 22, N½NW¼;
Sec. 25, SW¼NE¼, S½;
Sec. 26, SE¼SW¼, S½SE¼;
Sec. 32, SE¼SW¼, NE¼SE¼, S½SE¼;
Sec. 33, NW¼NE¼, NE¼NW¼, S½N½, S½;
Sec. 34, NE¼NE¼, S½N½, S½;
Sec. 35, 36.

T. 38½ S., R. 11 E.
Sec. 25, Lots 1–4, S½S½;
Secs. 26–29, incl.;
Sec. 33, NE¼, N½NW¼, NE¼SE¼;
Sec. 34, N½NE¼, NW¼, W½SW¼;
Sec. 35, N½NE¼, NW¼;
Sec. 36, N½, N½S½, SE¼SW¼, S½SE¼;

T. 39 S., R. 11 E.
Sec. 1, N½NE¼, SE¼NE¼, NW¼SW¼, S½SW¼;
Sec. 2, S½NE¼, S½SW¼, SE¼;
Sec. 3, SE¼SW¼, SW¼SE¼, E½SE¼;
Sec. 5, S½N½, N½S½, S½SW¼, SW¼SE¼;
Sec. 6, Lots 2–7, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 7, Lot 1, N½NE¼, NE¼NW¼;
Sec. 8, W½NE¼, NW¼, NE¼SW¼;
Sec. 9, NE¼NE¼, S½NE¼, SE¼;
Secs. 10, 11;
Sec. 12, N½NW¼, S½N½, S½;
Secs. 13–15, incl.;
Sec. 16, N½NE¼, S½N½, S½;
Sec. 17, S½;
Sec. 18, SW¼NE¼, E½NW¼, NE¼SW¼, SE¼;
Sec. 20, N½N½, SE¼NE¼, E½SE¼;
Secs. 21, 28;
Sec. 29, SE¼;
Sec. 30, E½NW¼, SW¼NW¼, N½SW¼, SW¼SW¼;
Sec. 32, E½, E½W½;
Sec. 33, All.

T. 40 S., R. 11 E.
Sec. 4, Lots 1–4, S½NE¼, SE¼NW¼, E½SW¼, SW¼SW¼, SE¼;
Sec. 5, Lot 1, SW¼, S½SE¼;
Sec. 6, Lots 6, 7, E½SW¼, SE¼;
Sec. 7, Lot 1, NE¼, E½NW¼, NE¼SW¼, N½SE¼, SE¼SE¼;
Secs. 8, 9, 16;
Sec. 17, N½, N½S½, S½SE¼;
Sec. 18, NE¼NE¼;
Sec. 20, E½NE¼, S½;
Secs. 21–26, incl.;
Sec. 27, E½, E½W½, W½NW¼;
Sec. 28, N½, SW¼, NW¼SE¼;
Sec. 29, All;
Sec. 30, Lots 2–4, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 31, All;
Sec. 32, N½, SW¼, W½SE¼;
Sec. 34, E½E½, NW¼NE¼, NE¼NW¼;
Sec. 35, N½, N½S½;
Sec. 36, N½, N½S½, SE¼SW¼, S½SE¼.

T. 41 S., R. 11 E.
Sec. 1, Lots 1–4, S½N½, NE¼SW¼, N½SE¼;
Sec. 5, Lot 5, S½SW¼;
Sec. 6, Lots 1–7, S½NE¼, SE¼NW¼, E½SW¼, SE¼.
Sec. 7, All;
Sec. 8, SE¼NE¼, W½NE¼, W½, SE¼;
Sec. 9, S½NW¼, S½;
Sec. 10, NW¼SW¼, S½SW¼, SW¼SE¼;

Sec. 15, NE¼NW¼, W½W½;
Secs. 17–21, incl.;
Sec. 22, W½;
Sec. 27, NW¼NW¼;
Sec. 28, N½;
Sec. 29, NE¼, N½NW¼;
Sec. 30, Lots 1–3, N½NE¼, NE¼NW¼.

T. 35½ S., R. 12 E.
Secs. 25, 26, 36.

T. 36 S., R. 12 E.
Secs. 1, 12, 13;
Sec. 14, N½, N½S½, SW¼SW¼, SE¼SE¼;
Sec. 15, All;
Sec. 21, N½, W½SW¼, E½SE¼;
Sec. 22, N½, N½SW¼, SW¼SW¼, NW¼SE¼;
Sec. 23, NE¼NE¼, NW¼NW¼;
Sec. 24, NW¼NE¼, N½NW¼, SE¼NW¼, NE¼SW¼;
Sec. 25, S½;
Sec. 26, NW¼NE¼, S½NE¼, SE¼;
Sec. 28, W½NW¼, SW¼, NW¼SE¼, S½SE¼;
Sec. 29, S½;
Sec. 31, S½;
Sec. 32, N½N½, SW¼NW¼, W½SW¼, SE¼SW¼;
Sec. 33, N½N½, S½NW¼;
Sec. 34, N½NW¼;
Sec. 35, E½, NE¼SW¼, S½SW¼;
Sec. 36, All.

T. 37 S., R. 12 E.
Sec. 2, Lots 1, 2, S½NE¼, SE¼;
Sec. 3, Lots 1, 2;
Sec. 4, SE¼SE¼;
Sec. 5, W½;
Sec. 6, Lots 1–5, S½NE¼, SE¼NW¼, NE¼SW¼, SE¼;
Sec. 7, E½;
Sec. 8, W½;
Sec. 9, E½NE¼;
Sec. 10, S½NE¼, NW¼, N½SW¼;
Sec. 11, N½, N½S½, S½SE¼;
Secs. 12, 13;
Sec. 14, E½, S½NW¼, SW¼;
Sec. 15, SE¼NE¼, S½;
Sec. 16, SE¼;
Sec. 17, N½NW¼;
Sec. 18, NE¼, NW¼SE¼;
Sec. 20, S½NE¼;
Sec. 21, N½, NE¼SE¼;
Secs. 22–26, incl.;
Sec. 27, E½, E½W½, W½SW¼;
Sec. 28, S½;
Sec. 29, S½NE¼, SW¼NW¼, S½;
Sec. 30, E½, SE¼SW¼;
Sec. 31, NE¼, NE¼NW¼;
Sec. 32, E½, E½W½, W½NW¼, NW¼SW¼;
Secs. 33–36, incl.

T. 38 S., R. 12 E.
Secs. 1–4, incl.;
Sec. 5, Lots 1, 2, 3, S½NE¼, S½NW¼, S½;
Sec. 6, Lots 3–7, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 7, Lots 1–3, E½, E½W½;
Secs. 8–14, incl.;
Sec. 15, N½, NE¼SW¼, W½SW¼, NW¼SE¼;
Sec. 16, E½, E½W½, W½NW¼, NW¼SW¼;
Sec. 17, NE¼, E½NW¼, N½S½;
Sec. 18, NE¼NW¼;
Sec. 19, Lots 1–4, SW¼NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 20, E½SE¼;
Sec. 21, S½S½;
Sec. 22, S½NE¼, NE¼SE¼;
Sec. 23, E½, E½W½, W½NW¼, NW¼SW¼;
Secs. 24, 25;
Sec. 25, All;
Sec. 26, E½, E½W½, SW¼NW¼, W½SW¼;
Sec. 27, NW¼NE¼, N½NW¼, S½N½, S½;
Secs. 28–31, incl.

T. 39 S., R. 12 E.
Secs. 6, 7, 18.

T. 40 S., R. 12 E.
Sec. 36, All.

T. 41 S., R. 12 E.
Sec. 1, Lots 2–4, SW¼NE¼, S½NW¼, SW¼, W½SE¼;
Sec. 3, All;
Sec. 6, Lots 1–6, S½NE¼, SE¼NW¼, NE¼SW¼, SE¼;
Sec. 7, E½E½;
Sec. 8–10, incl;
Sec. 11, NE¼, W½;
Sec. 12, W½NE¼, E½NW¼, NW¼NW¼;
Sec. 14, SW¼NE¼, NW¼;
Sec. 15, N½;
Sec. 17, NE¼, N½NW¼;
Sec. 18, NE¼NE¼.

T. 33 S., R. 13 E.
Secs. 22–27, incl.;
Sec. 34, All;
Sec. 35, NE¼NE¼, W½W½, SW¼SE¼, SE¼SW¼;
Sec. 36, NE¼, N½NW¼, SE¼NE¼, N½SE¼, SE¼SE¼.

T. 34 S., R. 13 E.
Sec. 1, SW¼NW¼, W½SW¼, SE¼SW¼, SW¼SE¼;
Secs. 2, 3, 10–12, incl.;
Sec. 13, W½NE¼, NW¼, NE¼SW¼, W½SW¼;
Sec. 14–16, incl.;

T. 34 S., R. 13 E.
Sec. 17, N½, N½S½, SW¼SW¼, SE¼SE¼;
Secs. 18, 19;
Sec. 20, W½NW¼, SW¼, W½SE¼, SE¼SE¼;
Sec. 21, NE¼;
Sec. 22, NE¼, N½SE¼;
Sec. 23, N½, N½S½, S½SE¼;
Sec. 26, NW¼NE¼;
Sec. 27, W½SW¼;
Sec. 28, NW¼NW¼, S½N½, S½;
Secs. 29–31, incl.;
Sec. 32, N½N½S½, S½SW¼, SW¼SE¼;
Sec. 33, W½NE¼, NW¼, N½SW¼.

T. 35 S., R. 13 E.
Sec. 3, SW¼SW¼;
Sec. 4, S½S¼;
Secs. 5–8, incl.;
Sec. 9, N½, N½S½, S½SW¼;
Sec. 10, W½NW¼, NW¼SW¼;
Sec. 14, SW¼, N½SE¼, SW¼SE¼;
Sec. 15, SE¼NE¼, S½;
Sec. 16, S½;
Sec. 17, W½NE¼, NW¼, S½;
Secs. 18–22, incl.;
Sec. 23, W½NE¼, NW¼, N½SW¼, NW¼SE¼;
Sec. 24, SE¼SE¼;
Sec. 25, NE¼NE¼;
Sec. 27, NE¼NE¼, W½NE¼, W½;
Secs. 28–33, incl.;
Sec. 34, NW¼.

T. 35½ S., R. 13 E.
Sec. 25, S½S½;
Sec. 26, NW¼SE¼, S½S½;
Sec. 28, NW¼NE¼, N½NW¼, SE¼NW¼;
Sec. 29, N½N½, SW¼NE¼, SE¼NW¼;
Sec. 30, Lots 1–4, NE¼NE¼, SE¼SE¼;
Sec. 31, Lots 1–4, E½E½;
Sec. 32, SW¼NW¼, S½;
Sec. 34, NE¼NE¼;
Secs. 35, 36.

T. 36 S., R. 13 E.
Sec. 1, All;
Sec. 2, Lots 1–4, SE¼SW¼, S½SE¼;
Sec. 3, Lots 1–4;
Sec. 5, Lots 2–4, SW¼SE¼, S½SW¼;
Secs. 6, 7;
Sec. 8, W½;
Sec. 10, SW¼, W½SE¼, SE¼SE¼;
Sec. 11, E½, E½W½, NW¼NW¼, SW¼SW¼;
Secs. 12, 14;
Sec. 15, N½N½, SE¼SE¼;
Sec. 16, NE¼NE¼;
Sec. 18, W½NW¼;
Sec. 19, SE¼NE¼, SE¼;
Sec. 20, NW¼SW¼, S½SW¼, SW¼SE¼;
Sec. 21, E½SE¼;
Secs. 22, 23, 27–29, incl.;
Sec. 30, Lots 2–4, E½, E½W½.

T. 40 S., R. 13 E.
Secs. 13, 24;
Sec. 25, NW¼, N½SW¼;
Secs. 26, 27;
Sec. 28, E½, N½NW¼;
Sec. 29, 31;
Sec. 32, N½NE¼, SW¼NE¼, NW¼, NE¼SW¼, W½SW¼, NW¼SE¼;
Sec. 33, NE¼, N½SE¼;
Sec. 34, N½N½, SW¼NW¼;
Sec. 35, E½NW¼, NW¼NW¼.

T. 31 S., R. 14 E.
Secs. 4–7, incl.;
Sec. 8, N½, N½S½, SE¼SE¼;
Sec. 9, All;
Sec. 16, E½, E½W½;
Sec. 17, S½NW¼, SW¼, W½SE¼;
Secs. 18, 19;
Sec. 20, W½;
Sec. 21, E½, E½W½, SW¼NW¼, NW¼SW¼;
Sec. 28, E½, SE¼NW¼, SW¼SW¼, E½SW¼;
Sec. 29, NE¼NW¼, W½W½;
Secs. 30, 31;
Sec. 32, E½E½, W½NW¼;
Secs. 33, All.

T. 32½ S., R. 14 E.
Secs. 26, 27;
Sec. 28, Lots 1, 2, S½NE¼, SE¼;
Sec. 29, Lots 3, 4, S½NW¼, S½;
Secs. 30, 31;
Sec. 32, W½E½, W½, NE¼SE¼;
Sec. 33, E½E½;
Secs. 34, 35.

T. 33 S., R. 14 E.
Secs. 1, 2;
Sec. 3, Lots 1–4, S½NE¼, SE¼;
Sec. 4, Lot 1, SW¼NW¼, SW¼, SW¼, SE¼;
Sec. 5, Lots 2–4, S½N½, S½;
Secs. 6, 7;
Sec. 8, NE¼, W½, N½SE¼, SW¼SE¼;
Sec. 9, N½NW¼, NE¼SE¼;
Sec. 10, E½, SW¼;
Secs. 11–15, incl.;

Sec. 16, S½NE¼, SE¼;
Sec. 17, NW¼NE¼, W½;
Secs. 18, 19;
Sec. 20, NW¼, N½SW¼;
Sec. 21, NE¼;
Sec. 22, N½;
Sec. 23, N½;
Sec. 24, NE¼, E½NW¼, NW¼NW¼;
Secs. 25–27;
Sec. 28, S½NE¼, E½SW¼, SE¼;
Sec. 33, E½, E½NW¼, SW¼NW¼, SW¼;
Secs. 34–36.

T. 34 S., R. 14 E.
Secs. 2–4;
Sec. 5, E½SE¼;
Sec. 7, SE¼NE¼, E½SE¼;
Sec. 8, N½, W½SW¼;
Secs. 9–11, 14, 15, incl.;
Sec. 16, N½N½, SE¼NE¼, SE¼SW¼, SE¼;
Sec. 17, NW¼NW¼;
Sec. 18, NE¼NE¼;
Sec. 21, NE¼, E½W½, NE¼SE¼, W½SE¼;
Sec. 22, E½, NW¼, NW¼SW¼;
Secs. 23, 26;
Sec. 27, E½, E½SW¼;
Sec. 28, NW¼NE¼, NW¼;
Sec. 29, S½NE¼;
Sec. 31, SE¼;
Sec. 32, S½;
Sec. 33, SW¼NE¼, S½NW¼, S½;
Sec. 35, All.

T. 35 S., R. 14 E.
Secs. 4, 5;
Sec. 6, Lots 1, 2, SE¼NE¼, SE¼SW¼, NE¼SE¼, S½SE¼;
Sec. 7, Lots 2–4, E½, E½W½;
Secs. 8, 9, 16, 17;
Sec. 18, Lot 1, NE¼, NE¼NW¼;
Sec. 19, NE¼NE¼, S½NE¼;
Secs. 20, 21, 28, 29;
Sec. 31, Lots 1–4, E½SW¼, SW¼SE¼;
Sec. 32, E½, E½NW¼, NW¼ NW¼, SE¼SW¼;
Sec. 33, All.

T. 36 S., R. 14 E.
Secs. 5–8, incl.

T. 40 S., R. 14 E.
Sec. 13, NE¼, W½;
Sec. 14, 15, 17, 18;
Sec. 19, Lots 1, 2, N½NE¼, NE¼NW¼;
Sec. 20, N½N½, SE¼NE¼;
Sec. 21, N½, N½S½, SE¼SE¼;
Sec. 22, NE¼, W½, W½SE¼;
Sec. 23, NW¼NW¼.

T. 32½ S., R. 15 E.
Secs. 25–27, 34–36, incl.

T. 33 S., R. 15 E.
Secs. 1–18, incl.;
Sec. 19, N½;
Sec. 20, N½, N½SE¼, SE¼SE¼;
Sec. 21, NE¼NW¼, W½W½, SE¼SE¼;
Sec. 22, S½;
Sec. 23, N½N½, S½S½;
Sec. 24, N½N½, SE¼NE¼, S½SW¼;
Secs. 25–27, incl.;
Sec. 28, NE¼, E½SE¼;
Sec. 29, E½E½, SW¼NW¼, W½SW¼;
Secs. 30, 31;
Sec. 32, W½NW¼, SW¼, S½SE¼;
Sec. 33, NE¼NE¼, S½S½;
Secs. 34–36, incl.

T. 40 S., R. 15 E.
Sec. 11, All;
Sec. 12, Lots 1, 2, N½, SW¼, N½SE¼;
Sec. 13, NW¼NW¼;
Sec. 14, NE¼, W½, N½SE¼, SW¼SE¼;
Secs. 15, 17;
Sec. 18, Lots 1, 2, 3, E½, E½W½;
Sec. 19, NE¼, NE¼SE¼;
Sec. 20, NE¼, W½, N½SE¼;
Sec. 21, N½N½, SW¼NW¼;
Sec. 22, N½N½;
Sec. 23, N½NW¼.

T. 31 S., R. 16 E.
Secs. 12, 13, 24, 25, 36.

T. 32 S., R. 16 E.
Secs. 1–9, incl.;
Sec. 10, N½, N½S½, S½SW¼;
Sec. 11, N½;
Sec. 12, NE¼, N½NW¼;
Sec. 13, W½NE¼, NW¼, S½;
Sec. 14, E½, E½NW¼, SW¼;
Sec. 15, NW¼, N½SW¼, SW¼SW¼;
Secs. 16–20, incl.;
Sec. 21, W½, NW¼NE¼;
Sec. 22, E½NE¼, SW¼NE¼, S½SW¼, SE¼;
Secs. 23–27, incl.;
Sec. 28, E½E½, W½NW¼, NE¼NW¼;
Sec. 29, N½, SW¼, N½SE¼, SW¼SE¼;
Sec. 30, All;
Sec. 31, Lots 1–4, NE¼, E½NW¼, NE¼SW¼;
Sec. 32, NW¼NW¼, SE¼SW¼, SE¼;
Sec. 33, E½, NE¼NW¼, S½NW¼, SW¼;
Secs. 34–36, incl.

T. 33 S., R. 16 E.
Sec. 6, S½NE¼, N½SE¼, SE¼SE¼;
Sec. 7, NE¼NE¼, SW¼NW¼, NW¼SW¼, S½SW¼;
Sec. 8, All;
Sec. 17, NE¼, E½NW¼, SW¼NW¼;
Sec. 18, W½W½, E½SE¼;
Sec. 19, E½NE¼, S½SW¼;
Sec. 20, E½SW¼, NW¼SW¼, SE¼;
Sec. 29, E½, E½NW¼, SW¼;
Sec. 30, Lots 1–4, W½NE¼, E½NW¼, E½SW¼, SE¼;
Secs. 31, 32.

T. 40 S., R. 16 E.
Sec. 7, Lots 1–4, 6, 8, 10, NE¼, E½NW¼; NE¼SW¼, N½SE¼;
Sec. 8, Lots 1, 3, 5, 7, N½, N½S½;
Sec. 9, Lots 1–3, 6, N½, N½SW¼;
Secs. 10–15, incl.;
Sec. 16, Lots 1, 5, 8, 9, 10, NE¼SE¼;
Sec. 21, Lot 1;
Sec. 22, Lots 1, 2, 4, 8, NE¼NE¼;
Sec. 23, Lots 1–3, 7, 8, N½N½, S½NE¼, SE¼NW¼, NE¼SE¼;
Sec. 24, All;
Sec. 25, Lots 1, 3–5, 10, NE¼, NE¼NW¼, N½SE¼, SE¼SE¼;
Sec. 26, Lot 1;
Sec. 36, Lots 1, 4, 5, 8.

T. 31 S., R. 17 E.
Secs. 19, 20;
Sec. 21, W½E½, W½, SE¼SE¼;
Secs. 25, 26;
Sec. 27, E½;
Sec. 28, N½, N½S½, SW¼SW¼;
Secs. 29–31, incl.;
Sec. 32, NE¼NE¼, W½NE¼, W½, NW¼SE¼;
Sec. 33, S½NE¼, E½SW¼, SE¼;
Secs. 34–36, incl.

T. 32 S., R. 17 E.
Secs. 2–4, incl.;
Sec. 5, Lots 3, 4, SW¼NW¼, W½SW¼, SE¼SE¼;
Secs. 6, 7;
Sec. 8, NE¼NE¼, W½W½;
Sec. 9, N½, NW¼SW¼, E½SW¼, SE¼;
Secs. 10, 11, 14, 15;
Sec. 16, E½, E½W½, SW¼NW¼, W½SW¼;
Sec. 17, SE¼NE¼, SE¼SW¼, SE¼;
Sec. 18, N½NE¼, NE¼NW¼, S½SW¼;
Secs. 19, 20.

T. 40 S., R. 17 E.
Secs. 19, 29, 30;
Sec. 31, Lots 1–16;
Sec. 33, E½E½, E½NW¼NE¼, SW¼NW¼NE¼, SW¼NE¼, S½NE¼ NW¼, S½SW¼NW¼, SE¼NE¼, SW¼, E½SE¼.

T. 41 S., R. 17 E.
Secs. 2, 3;
Sec. 4, Lots 1–3, N½, N½S½, SE¼SE¼;
Sec. 5, Lots 1, N½, SW¼, N½SE¼, SW¼SE¼;
Sec. 6, Lots 1–7;
Sec. 7, Lot 1;
Sec. 8, Lots 1–3;
Sec. 9, Lots 1–4, E½SE¼;
Secs. 10–13, incl.;
Sec. 14, Lots 1–7;
Sec. 15, Lots 1–7, NW¼, N½SW¼;
Sec. 16, Lots 1–3;
Sec. 23, Lots 1–7;
Sec. 24, Lots 1–8, W½NW¼;
Sec. 25, Lot 1.

T. 41 S., R. 18 E.
Secs. 4–6, 9, 16, 20, 21, 28;
Sec. 29, Lots 1–3, E½, N½NW¼, SE¼NW¼;
Sec. 31, Lot 1;
Sec. 32, Lots 1–5, E½;
Sec. 33, Lots 1–3, N½, NW¼SW¼, E½SE¼.

Public Land

T. 43 S., R. 3 E.
Secs. 3–5, incl.;
Sec. 6, Lots 1–7, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 31, All.

T. 44 S., R. 3 E.
Sec. 6, All.

T. 42 S., R. 4 E.
Secs. 19–24, incl.;
Secs. 30, 31.

T. 41 S., R. 5 E.
Secs. 19–31, incl.

T. 42 S., R. 5 E.
Secs. 6–8, 16–26.

T. 41 S., R. 7 E.
Secs. 19, 20, 23;
Sec. 24, N½, SW¼;
Secs. 25–27, 29, 30.

T. 40 S., R. 8 E.
Secs. 3–7, incl.;
Sec. 17, Part of S½NE¼ and S½;
Secs. 18–20, incl.;
Sec. 21, W½E½, W½;
Sec. 27, NW¼SW¼, S½SW¼;
Sec. 28, W½NE¼, SE¼NE¼, W½, SE¼;
Secs. 29–34, incl.

T. 41 S., R. 8 E.
Secs. 3–10, 15–20, 29–30.

T. 36 S., R. 10 E.
Secs. 19–21, 28–33, incl.

T. 37 S., R. 10 E.
Secs. 4–9, incl.

T. 37 S., R. 11 E.
Secs. 1–11, incl.;

Sec. 12, W½;
Sec. 13, W½;
Sec. 14, All;
Sec. 15, N½;
Sec. 16, N½;
Sec. 17, All;
Sec. 18, E½;
Sec. 19, E½;
Sec. 20, All;
Sec. 23, N½;
Sec. 24, NW¼.
T. 35½ S., R. 12 E.
Secs. 27, 34, 35.
T. 36 S., R. 12 E.
Secs. 2–11, 16–20, incl.;
Sec. 29, N½;
Sec. 30, All;
Sec. 31, N½.
T. 38 S., R. 12 E.
Sec. 32–36, incl.
T. 39 S., R. 12 E.
Secs. 4, 5, 8, 9, 16, 17.
T. 40 S., R. 12 E.
Secs. 22–27, 34, incl.;
Sec. 35, W½.
T. 41 S., R. 12 E.
Sec. 4, N½;
Sec. 5, NE¼.
T. 31 S., R. 13 E.
Secs. 1, 12, 13, 22–27, 34–36, incl.
T. 32 S., R. 13 E.
Secs. 1, 12, 13, 24, 25, 36.
T. 33 S., R. 13 E.
Secs. 1–3, 10–15, incl.
T. 34 S., R. 13 E.
Secs. 4–9, incl.
T. 36 S., R. 13 E.
Secs. 13, 24–26, 31–36, incl.
T. 40 S., R. 13 E.
Secs. 1–12, 14–19, incl.;
Sec. 20, N½, SW¼;
Sec. 21, N½;
Sec. 22, N½;
Sec. 23, N½;
Sec. 30, All.
T. 31 S., R. 14 E.
Secs. 4–9, 16–21, 28–33, incl.
T. 32 S., R. 14 E.
Secs. 1–3, 10–15, 22–27, 34–36, incl.
T. 32 S., R. 14 E.
Secs. 1–3, 10–15, 22–27, 34–36, incl.
T. 40 S., R. 13 E.,
Secs. 11, 12, 14–25, and 30.
T. 32½ S., R. 14 E.
Secs. 25, 36.
T. 34 S., R. 14 E.
Secs. 1, 12, 13, 24–26, incl.
T. 35 S., R. 14 E.
Secs. 3, 10, 15, 22, 27, 34.
T. 36 S., R. 14 E.
Secs. 4, 9, 16–18, incl.
T. 40 S., R. 14 E.
Secs. 1, 3–12, incl.
T. 34 S., R. 15 E.
Secs. 5–8, 17–20, incl.
T. 40 S., R. 15 E.
Secs. 1, 3–10, incl.
T. 33 S., R. 16 E.
Sec. 4, All;
Sec. 5, E½;
Secs. 9, 16;
Sec. 17, S½;
Sec. 20, N½;
Secs. 1, 3–6, incl.
T. 32 S., R. 17 E.
Secs. 21, 28, 33.
T. 40 S., R. 16 E.
Secs. 1, 12, 13, 21–24, incl.
T. 40 S., R. 17 E.
Secs. 20, 21, 28.
T. 41 S., R. 17 E.
Sec. 1, All.
T. 41 S., R. 18 E.
Secs. 7, 8, 17, 18;
Sec. 19, Lots 1–4, NE¼, E½NW¼, E½SW¼, SE¼;
Sec. 30, Lots 1–4.
T. 29½ S., R. 19 E.
Sec. 36, Lots 1, 2, S½NE¼, SE¼.
T. 30 S., R. 19 E.
Sec. 1, NE¼.

The areas described aggregate 785,850.04 acres in Garfield, Kane, and San Juan Counties.

2. At 10 a.m. on June 21, 1983, 207,483.94 acres of public lands located outside on the Glen Canyon National Recreation Area shall be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable laws. The lands have been and will remain open to mineral leasing and mining location. All valid applications received at or prior to 10 a.m. on June 21, 1983, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. The above described lands lying within the Glen Canyon National Recreation Area remain segregated from operation of the public land laws generally, including the United States Mining laws, and are open to such leasing as may be allowed under the Act of October 27, 1972. Therefore, this revocation will have no effect on these lands except to clear the records.

Inquiries concerning the lands should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, 136, East South Temple, University Club Building, Salt Lake City, Utah 84111.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

May 16, 1983.

FR Doc. 83-13902 Filed 5-23-83; 8:45 am]

BILLING CODE 4310-84

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

National Flood Insurance Program; Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations will be used in calculating flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

DATES: The effective dates for these modified base flood elevations are indicated on the following table and amend the Flood Insurance Rate Map(s) (FIRM) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed on the following table.

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

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of modified flood elevations for each community listed. These modified elevations have been published in newpaper(s) of local circulation and ninety (90) days have elapsed since that publication. The Associate Director, State and Local Programs and Support has resolved any appeals resulting from this notification.

Numerous changes made in the base (100-year) flood elevations on the Flood Insurance Rate Maps (FIRM) for each community make it administratively infeasible to publish in this notice all of the changes contained on the maps. However, this rule includes the address of the Chief Executive Officer of the community, where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234) and are in accordance with the National Flood Insurance Act of 1968, as amended (Title XIII of the Housing and Urban Development Act of 1968, (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR Part 65.

For rating purposes, the revised community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or

show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State or regional entities.

These modified base flood elevations shall be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer coverage on existing buildings and their contents.

The changes in the base flood elevations are in accordance with 44 CFR 65.4.

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modified flood insurance rate map	New community No.
Tennessee:					
Shelby	Collierville, city of, docket No. 6450.	*The Collierville Herald* Sept. 23, 1982 and Oct. 28, 1982.	Hon. Herman W. Cox, Mayor, City of Collierville, City Hall, 101 Walnut Street, Collierville, Tenn. 38017.	Oct. 1, 1982	4702638
Washington and Carter	City of Johnson City, docket No. 6385.	*Johnson City Press Chronicle*, Aug. 20, 1982, Aug. 27, 1982.	Hon. John Love, Mayor of Johnson City, 1006 S. Roan St., P.O. Box 941, Johnson City, TN 37601.	June 1, 1983	475432B
Sevier	City of Sevierville, docket No. 6405.	*The Sevier County News-Record*, Sept. 10, 1982 and Sept. 17 1982.	Mr. Russel Treadway, City Administrator, city of Sevierville, 448 Park Road, Sevierville, TN 37862.	July 5, 1983	475444B
Missouri: Unincorporated areas	Buchanan County, docket No. 6429.	*St. Joseph Gazette and News Press*, Oct. 19, 1982 and Oct. 26, 1982.	Hon. Gerald Vanover, presiding judge, Buchanan, County, County Courthouse, Fifth and Jules, St. Joseph, MO 64501.	Aug. 1, 1983	290040B
Tennessee: Hamilton County	(C) East Ridge, docket No. 6422.	*Chattanooga News Free Press*, Oct. 15, 1982 and Oct. 22, 1982.	Hon. J. David, Mays, Jr., City Administrator, city of East Ridge, 1501 Tombras Ave., East Ridge, TN 37412.	....do	475424D
Missouri: Franklin and St. Louis Counties.	Pacific, City of docket No. 6447.	*Meramec Valley Transcript*, Oct. 27, 1982, Nov. 3, 1982.	Hon. Kenneth Quennoz, Sr., Mayor, City of Pacific, 221 South First Street, Pacific, MO 63063.	Aug. 15, 1983	2901348
South Carolina: Richland County.	Columbia, city of, docket No. 6451.	*The Columbia Record*, Nov. 5, 1982 and Nov. 12, 1982.	Hon. Kirkman Finley, Mayor, City of Columbia, P.O. Box 147, Columbia, SC 29217.	Sept. 1, 1983	450172C

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, Flood plains.

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

Issued: May 5, 1983.

Dave McLoughlin,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 83-13631 Filed 5-23-83; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 65

National Flood Insurance Program; Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations will be used in calculating flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

DATES: The effective dates for these modified base flood elevations are indicated on the following table and amend the Flood Insurance Rate Map(s) (FIRM) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed on the following table.

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

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of modified flood elevations for each community listed. These modified elevations have been published in newspaper(s) of local circulation and ninety (90) days have elapsed since that publication The Associate Director, State and Local Programs and Support has resolved any appeals resulting from this notification.

Numerous changes made in the base (100-year) flood elevations on the Flood Insurance Rate Maps (FIRM) for each community make it administratively infeasible to publish in this notice all of the changes contained on the maps. However, this rule includes the address of the Chief Executive Officer of the community, where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234) and are in accordance with the National Flood Insurance Act of 1968, as amended (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR Part 65).

For rating purposes, the revised community number is shown and must be used for all new policies and renewals.

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

These modified elevations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum

that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State or regional entities.

These modified base flood elevations shall be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

The changes in the base flood elevations are in accordance with 44 CFR 65.4.

State	County	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modified flood insurance rate map	New community No.
Arkansas	Jackson	City of Diaz, (FEMA Docket No. 6425).	*Newport Independent*, Oct. 12 and Oct. 19, 1982.	Hon. Blount Hohn, Mayor, City of Diaz, P.O. Box 136, Diaz, AR 72043.	Aug. 1, 1983	050100C.
Oklahoma	Caddo	City of Anadarko, (FEMA Docket No. 6438).	*The Anadarko Daily News*, Oct. 21 and Oct. 28, 1982.	Hon. Edward Otey, Mayor, City of Anadarko, 501 West Virginia, P.O. Box 647, Anadarko, OK 73005.	do	400018C.
Oklahoma	Delaware	City of Grove, (FEMA Docket No. 6426).	*The Grove Sun*, Oct. 20 and Oct. 27, 1982.	Hon. Huber Logue, Mayor, City of Grove, P.O. Box 1268, Grove, OK 74344.	do	400385C.
Texas	Coryell	City of Copperas Cove, (FEMA Docket No. 6407).	*Copperas Cove Leader-Press*, Sept. 16 and Sept. 23, 1982.	Hon. Kenneth J. Ambler, Mayor, City of Copperas Cove, Copperas Cove, TX 76552.	do	480155D.
Texas	Hays and Caldwell	City of San Marcos (Docket No. FEMA-6428).	*Daily Record*, Oct. 20 and Oct. 27, 1982.	Hon. Emmie Craddock, Mayor of San Marcos, 630 East Hopkins, San Marcos, TX 78666.	Sept. 1, 1983	485505C.
Texas	Wichita	City of Wichita Falls (Docket No. FEMA-6415).	*Wichita Falls Times*, Sept. 15 and Sept. 22, 1982.	Hon. Gary D. Cook, Mayor of Wichita Falls, 1300 Seventh Street, P.O. Box 1431, Wichita Falls, TX 76307.	do	480662C.
Kentucky	Jefferson	City of Louisville (Docket No. FEMA-6450).	*The Louisville Times*, Oct. 15, 1982 and Oct. 22, 1982.	Hon. Harvey I. Sloane, Mayor, City of Louisville, City Hall, 601 West Jefferson, Louisville, KY 40202.	Oct. 22, 1982	210122C.
Missouri	Cass	(C) Belton (Docket No. FEMA-6423).	The Star Herald, Oct. 14, 1982 and Oct. 21, 1982.	Hon. Gary Mallory, Mayor, City of Belton, P.O. Box 230, Belton, MO 64012.	Aug. 1, 1983	290062 0003C.

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

Issued: May 5, 1983.

Dave McLoughlin,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 83-13632 Filed 5-23-83; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 65

[Docket No. FEMA-6520]

Identification and Mapping of Special Flood Hazard Areas; Changes in Special Flood Hazard Areas Under the National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Interim rule.

SUMMARY: This rule lists those communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) elevations for new buildings and their contents and for second layer insurance on existing buildings and their contents.

DATES: These modified elevations are currently in effect and amend the Flood Insurance Rate Map (FIRM) in effect prior to this determination.

From the date of the second publication of notice of these changes in a prominent local newspaper, any person has ninety (90) days in which he can request through the community that the Associate Director, State and Local Programs and Support reconsider the changes. These modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base (100-year) flood elevation determinations are available for inspection at the office of the Chief Executive Officer of the community, listed in the fifth column of the table. Send comments to that address also.

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

SUPPLEMENTARY INFORMATION: The numerous changes made in the base (100-year) flood elevations on the Flood Insurance Rate Map(s) make it administratively infeasible to publish in this notice all of the modified base (100-year) flood elevations contained on the map. However, this rule includes the address of the Chief Executive Officer of the community where the modified base (100-year) flood elevation determinations are available for inspection.

Any request for reconsideration must be based on knowledge of changed conditions, or new scientific or technical data.

These modifications are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234) and are in accordance with the National Flood Insurance Act of 1968, as amended, (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR Part 65.4.

For rating purposes, the revised community number is listed and must be used for all new policies and renewals.

These base (100-year) flood elevations are the basis for the flood plain

management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These elevations, together with the flood plain management measures required by § 60.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time, enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities.

The changes in the base (100-year) flood elevations are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, Flood plains.

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Oklahoma: Tulsa and Osage	City of Tulsa	*Tulsa Daily Business Journal and Legal Record*, May 9, 1983 and May 16, 1983.	Hon. James M. Inhofe, Mayor of Tulsa, City Hall, 200 Civic Center, Tulsa, OK 74103.	May 2, 1983, Letter of Map Revision.	405381E.
Texas: Tarrant	Bedford, city	*Mid-Cities Daily News*, Jan. 10, 1983 and, Jan. 17, 1983.	Hon. L. Don Dodson, Mayor of Bedford, 2000 Forest Ridge Drive, Bedford, TX 76021.	Dec. 15, 1982, Letter of Map Revision.	480585A.

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

Issued: May 5, 1983.

Dave McLoughlin,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 83-13830 Filed 5-23-83; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 67

National Flood Insurance Program; Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are finalized for the communities listed below.

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

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

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Dr. Brian R. Mrazik, Acting Chief, Engineering Branch, National Flood Insurance Program, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287–0230.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the **Federal Register** for each community listed.

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

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

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been prepared. It does not involve any collection of information for purposes of the Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base (100-year) flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. No appeal was made during the 90-day period and the proposed base flood elevations have not been changed.

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)
Alabama	City of Union Springs, Bullock County (FEMA-6470)	Conecuh River—Old	Just upstream of U.S. Highway 29/State Highway 15	*464
			Approximately 220 feet downstream of confluence of tributary No. 3.	*467
			Approximately 330 feet upstram of U.S. Highway 82/State Highway 6.	*477
		Tributary No. 1	Approximately 250 fet upstream of confluence with Conecuh River—Old Town Creek.	*465
		Tributary No. 2	Just upstream of South Rooney Street	*470
		Tributary No. 3	Just upstream of Southern Railway	*479
		Slaughter Creek	Approximately 70 feet upstream of confluence of Slaughter Creek tributary No. 1.	*359
		Slaughter Creek Tributary 1	Approximately 100 feet upstream of confluence with Slaughter Creek.	*359
Maps available for inspection at City Administrator's Office, City Hall, 303 North Prairie Street, Union Springs, Alabama 36089.				
Florida	Unincorporated areas of Franklin County (FEMA-6431).	Apalachicola River	Just upstream of Apalachicola Northern Railroad	*11
		Ochlockonee River	Just upstream of the confluence of the Ochlockonee River and Crooked River.	*13
		Apalachicola Bay/East Bay	Intersection of State Highway 384 and Apalachicola Northern Railroad.	*10
		St. Georges Sound	Intersection of U.S. Highways 98, 319 (State Highway 30) and State Highway 379.	*12
			Intersection of Alternate State Highway 90 and U.S. Highways 98, 319 (State Highway 30).	*12
			Intersection of U.S. Highways 98, 319 (State Highway 30) and State Road 91A.	*14
			Intersection of U.S. Highways 98, 319 (State Highway 30) and State Highway 376.	*14
		Gulf of Mexico	Just downstream of State Highway 377 (U.S. Highway 319) (Ochlockonee Bay).	*13
			Intersection of Alligator Point Road and Gulf Shore Boulevard.	*14
			Intersection of U.S. Highway 98 (State Highway 30) and Interstate Highway 370.	*14
Maps available for inspection at Office of the Franklin County Commissioners, Franklin County Courthouse, Highway 98, Apalachicola, Florida 32320.				
Florida	Longboat Key (town), Manatee and Sarasota Counties, FEMA-6401.	Gulf of Mexico	Intersection of Gulf of Mexico Drive and Cedar Street	*10
			Intersection of Gulf of Mexico Drive and Bay View Drive.	*10
			Intersection of Gulf of Mexico Drive and Edlee Lane	*10
			Intersection of Harbor Road and Old Compass Road	*10
			Intersection of Companion Way and Gulf of Mexico Drive.	*10
			Intersection of Gulf of Mexico Drive and Sutton Place	*11
			Intersection of Buttonwood Drive and Gulf of Mexico Drive.	*11
			Intersection of Gulf of Mexico Drive and Shell Ridge Drive.	*11
			Intersection of Bogey Lane and Bowsprit Lane	*11
			Intersection of Hoffman Lane and Gulf of Mexico Drive	*11
Maps are available at City Hall, 501 Bay Isle Road, Longboat Key, Florida.				
Idaho	Albion (city), Cassia (county), FEMA-6470	College Creek	5 feet downstream from center of Main Street	*4,719
			At the intersection of Market Street and West Street	#2
		Marsh Creek	60 feet downstream from center of Main Street	*4,714
Maps available for inspection at City Hall, Albion, Idaho.				
Idaho	Cassia County (unincorporated areas), FEMA-6470	Marsh Creek near Declo	10 feet upstream from center of 4th West Street	*4,198
		Marsh Creek near Albion	95 feet upstream from center of North Street	*4,664
		College Creek	Center of State Highway 77,600 feet southwest along highway from its intersection with Bowldein Alley	*4,735
		Land Creek	50 feet downstream from center of State Highway 77	*4,732
Maps available for inspection at Civil Defense Office, 129 E. 14th Street, Burley, Idaho.				
Idaho	Declo (city), Cassia County FEMA-6470	Marsh Creek	At the intersection of stream and Clark Street	*4,203
Maps available for inspection at City Hall, Declo, Idaho.				
Idaho	Lapwai (city), Nez Perce County, FEMA-6449	Lapwai	300 feet east from the intersection of Main Street and 2nd Street East.	*949
		Lapwai Creek upper overflow	At the intersection of Alder Avenue and First Street West.	*961
Maps available for inspection at City Hall, Main Street, Lapwai, Idaho.				
Illinois	(V) Eldred, Greene County (Docket No. FEMA-6442)	Hurricane Creek	About 0.5 mile downstream of Bluff Street	*443
			About 320 feet upstream of Bluff Street	*452
Maps available for inspection at the Eldred Post Office, Eldred, Illinois.				
Illinois	(V) Florence, Pike County (Docket No. FEMA-6442)	Illinois River	About 0.92 mile downstream of U.S. Route 36 (at downstream corporate limits).	*444
			About 0.14 mile upstream of U.S. Route 36 (at upstream corporate limits).	*445
Maps available for inspection at the Florence Village Hall, R.R. #1, Pittsfield, Illinois.				

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Illinois	(V) Hardin, Calhoun County (Docket No. FEMA-6442)	Illinois River	Within corporate limit	*440
Maps available for inspection at the Village Hall, Main and Water Streets, Hardin, Illinois.				
Illinois	(V) Kampsville, Calhoun County (Docket No. FEMA-6442).	Illinois River	Within the corporate limits	*441
Maps available for inspection at the Village Hall, Kampsville, Illinois.				
Illinois	(V) Valley City, Pike County (Docket No. FEMA-6442)	Illinois River	Just downstream of Norfolk and Western Railway (at downstream corporate limit).	*445
			About 0.48 mile upstream of Norfolk and Western Railway (at upstream corporate limit).	*446
Maps available for inspection at the Village Hall, Route 2, Griggsville, Illinois.				
Indiana	(T) Alton, Crawford County (Docket No. FEMA-6442)	Ohio River	About 0.68 mile downstream of confluence of Little Blue River.	*423
			At confluence of Little Blue River	*424
Maps available for inspection at Town Hall, Rural 1, Leavenworth, Indiana.				
Indiana	(Uninc.) Hamilton County (Docket No. FEMA-6449)	White River	About 1 mile downstream of dam near East 211th Street.	*771
			Just downstream of State Highway 13	*803
		Duck Creek	At confluence with White River	*783
			Just downstream of County Line Road	*823
		Bear Creek	At confluence with Duck Creek	*788
			Just upstream of East 266th Street	*821
			About 300 feet downstream of County Line Road	*846
		Stony Creek	About 0.38 mile downstream of State Highway 38	*771
			Just downstream of East 166th Street	*781
Maps available for inspection at the Hamilton County Courthouse, Noblesville, Indiana.				
Indiana	(T) Jonesboro, Grant County (Docket No. FEMA-6442).	Mississinewa River	About 1,000 feet downstream of State Route 22	*819
			About 1.37 miles upstream of State Route 22	*825
Maps available for inspection at the Town Hall, 210 North Water, Jonesboro, Indiana.				
Indiana	(T) Leavenworth, Crawford County (Docket No. FEMA-6449).	Ohio River	Within the community	*431
Maps available for inspection at the Town Hall, Leavenworth, Indiana.				
Indiana	(T) Middlebury, Elkhart County (Docket No. FEMA-6470).	Little Elkhart River	About 1 mile downstream of State Route 13	*808
			About 0.95 mile downstream of State Route 13	*813
			About 0.87 mile upstream of County Road 16	*825
Maps available for inspection at the Town Hall, Middlebury, Indiana.				
Indiana	(C) Napanee, Elkhart and Kosciusko Counties (Docket No. FEMA-6470).	Berlin Court ditch	About 1,400 feet downstream of County Road 7	*850
			About 400 feet upstream of County Road 3	*859
Maps available for inspection at the City Hall—Municipal Center, 300 West Lincoln, Nappanee, Indiana				
Iowa	(C) Elk Run Heights Black Haw County (Docket No. FEMA-6356.	Elk Run Creek	About 300 feet downstream of Lafayette Road	*838
			About 0.26 mile upstream of South Elk Run Road	*846
Maps available for inspection at the City Hall, 5042 Lafayette, Elk Run Heights, Iowa.				
Kansas	(C) Ellis, Ellis County (Docket No. FEMA-6442)	Big Creek tributary No. 2	About 950 feet upstream of Dorrance Street	*2,123
		Big Creek tributary No. 3	Within corporate limits	*2,112
		Big Creek	About 1,750 feet downstream of Ellis Dam	*2,111
			About 700 feet upstream of West 11th Street (near Baughman Street).	*2,129
Maps available for inspection at City Hall, P.O. Box 27, Ellis, Kansas.				
Kansas	(Uninc.) Harvey County (Docket No. FEMA-6470)	Little Arkansas River	At downstream county boundary	*1,374
			At confluence of Kisiwa Creek	*1,385
			Just upstream of Atchison, Topeka, and Santa Fe Railway.	*1,392
			Just downstream of U.S. Route 50	*1,398
		Sand Creek	At confluence with Little Arkansas River	*1,375
			Just upstream of County Road 584	*1,368
			Just upstream of County Road 580	*1,396
			Just upstream of County Road 817	*1,406
			Just downstream of West First Street	*1,420
			About 600 feet downstream of Missouri Pacific Railroad.	*1,425
			Just upstream of County Road 564	*1,440
			About 2,100 feet downstream of County Road 560	*1,451
		Mud Creek	At confluence with Sand Creek	*1,398
			Just upstream of Atchison, Topeka and Santa Fe Railway.	*1,416
			Just upstream of U.S. Route 50	*1,420
			Just upstream of West First Street	*1,431

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Just upstream of County Road 568	*1,440
			Just downstream of old U.S. Route 81	*1,454
		State Creek	At confluence with Sand Creek	*1,415
			At City of Newton corporate limits	*1,417
		Emma Creek-West Emma Creek	At confluence with Little Arkansas River	*1,378
			Just upstream of County Road 580	*1,389
			Just upstream of Atchison, Topeka and Santa Fe Railway.	*1,403
			Just downstream of County Road 570	*1,410
		East Emma Creek	At confluence with Emma Creek	*1,397
			Just upstream of Atchison, Topeka and Santa Fe Railway.	*1,403
			Just downstream of County Road 570	*1,416
		Middle Emma Creek	Just upstream of Interstate 35	*1,456
			Just upstream of County Road 556	*1,461
			About 6,100 feet upstream of County Road 556	*1,468
		Middle Emma Creek tributary No. 1.	At confluence with Middle Emma Creek	*1,457
			About 1,000 feet upstream of confluence with Middle Emma Creek.	*1,461
			Just downstream of County Road 556	*1,473
		Middle Emma Creek tributary No. 3.	At confluence with Middle Emma Creek	*1,462
			About 5,900 feet upstream of confluence with Middle Emma Creek.	*1,478
		Halstead Slaugh	Just upstream of County Road 803	*1,389
			Just upstream of Sixth Street	*1,393
			About 0.06 mile upstream of Atchison, Topeka and Santa Fe Railway.	*1,396
		Shallowflooding from sedgwick Ditch.	At county boundary	*1,377
			About 0.58 miles upstream of Seventh Street	*1,381
			About 1.1 miles upstream of Seventh Street	*1,386

Maps available for inspection at the Harvey County Courthouse, Newton, Kansas.

Massachusetts	Adams, town Berkshire County (Docket No. FEMA-6442).	Dry Brook	Confluence with south branch Hoosic River	*847
			Leonard Street (upstream side)	*867
			Approximately 900' upstream of Leonard Street	*887
		Fisk Brook	Confluence with south branch Hoosic River	*817
			Upstream of dam	*860
			Confluene of Pecks Brook	*930
			West Road (downstream side)	*979
		Hoxie Brook	Forest Park Avenue (upstream side)	*830
			Gilead Street (upstream side)	*870
			Approximately 200' upstream of West Road	*906
		Miller Brook	Confluence with Tophet Brook	*778
			Richmond Lane (upstream side)	*820
			Hoosac Street (upstream side)	*932
			East Road (downstream side)	*974
		Pecks Brook	Confluence with Fisk Brook	*930
			Fisk Street (downstream side)	*969
		South branch Hoosic River	Downstream corporate limits	*721
			Confluence of Cheesbro Brook	*724
			Lime Street (upstream side)	*742
			Cook Street (upstream side)	*767
			Hoosac Street (upstream side)	*780
			Park Street (upstream side)	*795
			Downstream crossing of Commercial Street (upstream side).	*818
			Upstream crossing of Commercial Street (upstream side).	*852
			Grove Street (upstream side)	*873
			Upstream corporate limits	*928
		Southwick Brook	Confluence with south branch Hoosic River	*743
			Judson Street (upstream side)	*797
			Approximately 150' upstream of Eact Road	*855
		Tophet Brook	Confluence with south branch Hoosic river	*769
			North Summer Street (upstream side)	*790
			East Street (downstream side)	*1,008
		Tributary No 4	Confluence with south branch Hoosic River	*739
			Columbia Street (upstream side)	*754
			Burt Street (upstream side)	*760
			Approximately 200' upstream of Friend Street	*784
		Tributary No. 5	Confluence with south branch Hoosic River	*743
			Downstream crossing of Powers Street (upstream side).	*775
			Upstream crossing of Powers Street (upstream side)	*884
			East Road (downstream side)	*894
		Tributary No. 6	Confluence with south branch Hoosic River	*892
			Approximately 300' upstream of Grove Street	*965
			West Road (downstream side)	*1,093

Maps available for inspection at the Office of the Planning Board, Town Hall, 65 Park Street, Adams, Massachusetts.

Massachusetts	Middleborough, town, Plymouth County (Docket No. FEMA-6449).	Nemasket River	At Murdock Street	*25
			U.S. Route 44 downstream	*27
			East Main Street upstream	*35
			Downstream Wareham Street	*47

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			East Grove Street upstream	*54
			Downstream Assawompset Pond Dam	*55
Minnesota	(Uninc.) Polk County (Docket No. FEMA-6449)	Red River of the North	At northern county boundary	*813
			Just downstream of County Highway 9	*842
		Red Lake River	About 4.2 miles downstream of County Highway 58	*832
			About 5.4 miles upstream of County Highway 58	*833
			About 8.8 miles downstream of U.S. Highway 75	*848
			About 1.6 miles downstream of U.S. Highway 75	*858
			About 9.6 miles upstream of U.S. Highway 75	*876
		Burhham Creek	About 1.6 miles downstream of County Highway 217	*856
			Just upstream of County Highway 14	*872
			Just downstream of State Highway 9	*892
		Burham Creek tributary	Confluence with Burnham Creek	*858
			Just upstream of County Highway 217	*862
			Just upstream of unamed county highway (about 1.2 miles downstream of County Highway 45.	*869
			Just downstream of County Highway 14	*877
		Judicial	Confluence with Burnham Creek	*878
			Just upstream of County Highway 45	*880
			Just downstream of State Highway 9	*888
		Snake River	About 2,000 feet upstream of County Highway 104	*835
			About 1,200 feet upstream of Burlington Northern Railroad.	*857
			About 100 feet upstream of Second Street (in city of Warren).	*858
		Shallow flooding	Within section 19 T. 154 N., R. 49 W.	*816
			Within sections 20, 21 T. 154 N., R. 49 W.	*817
			Within sections 29, 30, 31, 32 T. 154 N., R. 49 W. and sections 35 and 36 T. 154 N., R. 50 W.	*818
			Within sections 28 and 33 T. 154 N., R. 49 W.	*819
			Within sections 11, 14, 27, and 34, T. 154 N., R. 49., and 4 and 8, T. 153 N., R. 49 W.	*820
			Within sections 23 and 26 T. 154 N., R. 49 W., and 9, T. 153 N., R. 49 W.	*821
			Within sections 17 and 18, T. 153 N., R. 49 W.	*822
			Within sections 12 and 13, T. 154 N., R. 49 W., and 3, 10, 16, 19, and 20, T. 153 N., R. 49 W.	*823
			Within sections 15, T. 153 N., R. 49 W., and 21, T. 153 N., R. 49 W.	*824
			Within sections 35, T. 154 N., R. 49 W., and 2, 11, 14, and 29, T. 153 N., R. 49 W.	*825
			Within sections 24, T. 154 N., R. 49 W; 22, 26, and 33, T. 153 N., R. 49 W., and 18 and 19, T. 154 N., R. 48 W.	*826
			Within sections 25, T. 154 N., R. 49 W., and 23, 27, and 34, T. 153 N., R. 49 W.	*827
			Within sections 30 T. 154 N., R. 48 W.	*828
			Within sections 36, T. 154 N., R. 49 W., 1, 12, 13, 26, and 35 T. 153N., R. 49 W., and 8 and 17, T. 154 N., R. 48 W.	*829
			Within sections 24 T. 153 N., R. 49 W., and 20, T. 154 N., R. 48 W.	*831
			Within sections 25, T. 153 N., R. 49 W., and 31, T. 154, R. 48 W.	*832
			Within sections 6, T. 153 N., R. 48, W., and 36, T. 153 N., R. 49 W.	*833
			Within sections 28, 29, and 32, T. 154 N., R. 48 W., and 7 and 18, T. 153 N. , R. 48 W.	*834
			Within sections 19, 30, and 31, T. 153 N., R. 48 W.	*835
			Within sections 16 and 21, T. 154 N., R. 48 W.	*836
			Within sections 33, T. 154 N., R. 48 W., and 5, T. 153 N., R. 48 W.	*837
			Within section 32 T. 153 N., R. 48 W.	*838
			Within section 8 T. 153 N., R. 48 W.	*839
			Within sections 15 and 22, T. 154 N., R. 48 W., and 28, and 29 T. 153 N., R. 48 W.	*840
			Within sections 27 and 34, T. 154 N., R. 48 W., and 4, 17, and 20 T. 153 N., R. 48 W.	*841
			Within section 9, T. 153 N., R. 48 W.	*842
			Within sections 3, and 16, T. 153 N., R. 48 W.	*843
			Within sections 35, T. 154 N., R. 48 W., and 10 and 21, T. 153 N., R. 48 W.	*844
			Within sections 14, 23 and 26, T. 154 N., R. 48 W., and 2, 11, 15, 22, 27, and 34, T. 153 N., R. 48 W.	*846
			Within sections 14, 23, 26, and 35, T. 153 N., R. 48 W.	*848
			Within section 25, T. 154 N., R. 48 W.	*849
			Within sections 13 and 36, T. 154 N., R. 48 W. and 1, 12, and 13, T. 153 N., R. 48 W.	*850
			Within sections 24, T. 154 N., R. 48 W., and 24, T. 153 N., R. 48 W.	*851
			Within sections 31, T. 154 N., R. 48 W., and 6 30, T. 153 N., R. 47 W., and 25, T. 153 N., R. 48 W.	*852
			Within section 19, T. 153 N., R. 47 W.	*853
			Within sections 36, T. 153 N., R. 48 W., and 31, T. 153 N., R. 47 W.	*854
			Within sections 18, 19, and 30, T. 154 N., R. 47 W.; 7, 18, and 30, T. 153 N., R. 47 W., and 25, T. 153 N., R. 48 W.	*856
			Within section 8, T. 153 N., R. 47 W.	*859

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Within sections 32, T. 154 N., R. 47 W., 4, 5, 17, 20, and 29, T. 153 N., R. 47 W.	*860
			Within sections 29, T. 154 N., R. 47 W., and 32, T. 153 N., R. 47 W.	*861
			Within sections 9, 28, and 33, T. 153 N., R. 47 W.	*866
			Within sections 16 and 21 T. 153 N., R. 47 W.	*867
			Within section 34, T. 153 N., R. 47 W.	*870
			Within section 27, T. 153 N., R. 47 W.	*871
			Within section 22, T. 153 N., R. 47 W.	*872
Maps available for inspection at County Assessor's Office, 600 North Broadway, Crookston, Minnesota.				
Montana	Missoula County, unincorporated areas, FEMA-5813	Bitterroot River	100 feet upstream of intersection of river and McClay Bridge.	*3,110
			Intersection of river and U.S. Highways 93 and 12	*3,127
			200 feet south on Trudy Lane from the intersection with Leo Hanson Road.	*3,178
		Blackfoot River	Intersection of river and Chicago, Milwaukee, St. Paul & Pacific Railroad.	*3,271
			100 feet upstream of intersection of river and Marco Flat Bridge.	*3,288
		Clark Fork	50 feet upstream of intersection of Clark Fork and Harper Bridge Road.	*3,056
			150 feet north on Big Flat Road from the intersection with Virginia Drive.	*3,074
			Intersection of Clark Fork with Russell Street Bridge	*3,166
			100 feet upstream of intersection of Clark Fork and Montana Power Co. dam at Milltown.	*3,265
		Clearwater River	100 feet downstream of intersection of river and Placid Lake Road.	*3,923
			50 feet upstream of intersection of river and Riverview Road.	*3,997
		Lolo Creek	50 feet downstream of intersection of Creek and Burlington Northern Railroad.	*3,171
			Intersection of creek and Mormon Creek Road	*3,308
		Rattlesnake Creek	Intersection of creek and Lolo Street	*3,300
			Intersection of creek and Rattlesnake Creek Road	*3,555
			Intersection of Missoula and Lolo Street	#1
		Pattee Creek	At the upstream corporate limits of the city of Missoula.	*3,348
		Shallow sheet flow	Intersection of Cloverdale and 23d Avenue near South Hills.	#2
Maps available for inspection at Missoula County Courthouse, 200 W. Broadway, Missoula, Montana.				
New Jersey	Lumberton (township), Burlington County, FEMA-6449	South branch Rancocas Creek	Center of intersection of Main and Church Streets	*11
		Southwest branch Rancocas Creek.	150 feet upstream from center of Stacy Haines Road	*13
		Masons Creek	100 feet upstream from center of Airport Runway	*39
		Little Creek	50 feet upstream from center of Eayrestown Road	*17
		Bobbys Run	50 feet upstream from center of Lumberton Newbolds Corner Road.	*11
		Tributary to south branch	150 feet upstream from center of Crispin Road	*19
Maps available for inspection at Municipal Building, Newbolds Corner Road, Lumberton, New Jersey.				
New Jersey	Medford (township), Burlington County, FEMA-6470	Southwest branch Rancocas Creek.	60 feet upstream from center of South Main Street	*33
		Sharps Run	50 feet upstream from center of Jennings Road	*40
		Barton Run	50 feet upstream from center Tuckerton Road	*44
		Tributary No. 1 to Barton Run	200 feet upstream from confluence with Barton Run	*42
		Haynes Creek	50 feet upstream from center of Elm Drive	*41
		Ballinger Run	50 feet upstream from center of Ramblewood Lane	*47
		Tributary to Ballinger Run	50 feet upstream from center of South Lakeside Drive East.	*49
		Blue Lake Run	100 feet upstream from center of Berlin Road	*50
		Mimosa Laka Run	50 feet upstream from center of Shanty Dam Drive	*68
		Little Creek	150 feet upstream from center of Church Road	*24
		Skeet Run	25 feet upstream from center of Chairville Road	*34
Maps available for inspection at Office of the Township Planners, 19 N. Main Street, Medford, New Jersey.				
New York	Head-of-Harbor, Suffolk County (Docket No. FEMA-6449).	Stony Brook Harbor	Shoreline at Shep Jones Lane extended	*14
			Shoreline west of intersection of Hithesbrook Road and Habor Road.	*11
			Shorline southwest of Thompson Alley extended	*14
Maps available for inspection by contracting the Village Clerk, M.B. L'Hommedieu, at (516) 584-5550.				
New York	Lexington, town, Greene County (Docket No. FEMA-6449).	Schoharie Creek	Aproximately 4,100 feet upstream Van Road	*1,382
			Van Road (upstream)	*1,367
			State Route 42 (upstream)	*1,335
			Confluence of West Kill	*1,317
			Approximately 5,100 feet upstream Mosquito Point Road.	*1,300
			Mosquito Point Road (upstream)	*1,280
			Approximately 5,600 feet upstream corporate limits	*1,250
			Downstream corporate limits	*1,226

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at the Municipal Building, Lexington, New York.				
New York	Middleport, village, Niagra County (Docket No. FEMA-6449).	Johnson Creek	Approximately 400' downstream of downstream corporate limits.	*478
			Upstream of Church Street	*515
			Upstream of corporate limits	*544
		Tributary J-1	At Kelly Street	*526
			Upstream corporate limits	*527
Maps available for inspection at the Village Hall, 24 Main Street, Middleport, New York.				
New York	Poquott, village, Suffolk County (Docket No. FEMA-6449).	Port Jefferson Harbor	Entire shoreline within community	*14
		Setauket Harbor	Shoreline north of Shore Road	*11
Maps available for inspection at the residence of the Village Clerk, Joseph Newfield, Three Harrison Avenue, Poquott, New York.				
New York	Silver Creek, village, Chautauqua County (Docket No. FEMA-6449).	Lake Erie	Entire shoreline within community	*579
		Silver Creek	Confluence with Lake Erie	*579
			Upstream of Central Avenue (U.S. Route 20)	*591
			Upstream corporate limits	*607
		Walnut Creek	Confluence with Silver Creek	*579
			Upstream of Main Street	*597
			Upstream corporate limits	*607
Maps available for inspection at the Village Hall, 172 Central Avenue, Silver Creek, New York.				
Ohio	(V) Aberdeen, Brown County (Docket No. FEMA-6449).	Ohio River	At confluence of Big Threemile Creek	*515
			About 1,000 feet upstream of U.S. Route 62	*516
Maps available for inspection at the Mayor's Office, Village Hall, Aberdeen, Ohio.				
Ohio	(V) Addyston, Hamilton County (Docket No. FEMA-6449).	Ohio River	Within corporate limits	*493
		Muddy Creek	Within corporate limits	*493
Maps available for inspection at Mayor's Office, 235 Main Street, Addyston, Ohio.				
Ohio	(V) Cheshire, Gallia County (Docket No. FEMA-6470)	Ohio River	Within the community	*574
Maps available for inspection at the Village Hall, Cheshire, Ohio.				
Ohio	(C) Gahanna, Franklin County (Docket No. FEMA-6442).	Big Walnut Creek	About 0.7 mile downstream of Hamilton Road	*783
			Just downstream of Morse Road	*809
		McKenna Creek	About 0.13 mile upstream of mouth	*799
			Just downstream of Cherry Bottom Road	*808
			Just downstream of Hamilton Road	*887
		Sycamore Creek	At mouth	*793
			Just upstream of Granville Street	*799
			Just downstream of Larry Lane	*810
		Rock Fork Creek	At mouth	*793
			Just upstream of Granville Street	*799
			About 0.65 mile upstream of Hamilton Road	*822
Maps available for inspection at the Department of Public Service, 200 South Hamilton Road, Gahanna, Ohio				
Ohio	(Uninc.) Medina County (Docket No. FEMA-6442)	West branch Rocky River	At northern county boundary	*784
			About 250 feet upstream of Columbia Road	*820
			About 1.4 miles upstream of Fenn Road	*902
			Just upstream of State Route 18	*918
			Just downstream of Interstate 71	*941
		Mallet Creek	At mouth	*831
			Just downstream of New Lester Dam	*939
			Just upstream of New Lester Dam	*943
			Just downstream of State Route 18	*956
		East branch Black River	Just upstream of Smith Road	*834
			About 3.4 miles upstream of Smith Road	*842
			About 1,800 feet upstream of State Route 162	*851
			Just upstream of dam about 1,200 feet upstream of Old Mill Road.	*858
			At confluence of West Fork and East Fork	*877
		West Fork	About 200 feet upstream of Norfolk & Western Railway.	*885
			At confluence of Clear Creek	*904
		East Fork	About 300 feet upstream of U.S. Route 42 and 224 west of State Route 83.	*886
			About 0.5 mile downstream of U.S. Route 42 and 224 east of State Route 83.	*925
			About 150 feet upstream of Kennard Road	*969
			Just downstream of Coon Club road	*1,035
		Wolf Creek	Just upstream of Medina Line Road	*1,013
			Just upstream of Ridge Road	*1,033
			About 100 feet downstream of Sharon-Copley Road	*1,042
		River Styx	Just upstream of Eastern Road	*961
			Just upstream of Greenwich Road	*972
			About 100 feet upstream of Wadsworth Road	*993
		Tommy Run	At southern county boundary	*1,031
			Just downstream of dam	*1,047
			Just upstream of dam	*1,054
			Just downstream of Seville Road	*1,145

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Chippewa Creek	At southern county boundary	*974
			Just upstream of Mill Road	*982
			Just upstream of Interstate 76	*990
			About 0.6 mile upstream of Kennard Road	*995
		The inlet	Just upstream of Chippewa Road	*995
			Just downstream of Wedgewood Road	*998
		Hubbard Creek	About 1.03 miles downstream of Greenwich Road	*994
			About 100 feet downstream of Interstate 76	*1,032
			Killbuck Creek About 400 feet downstream of Conrail	*948
			About 1,100 feet upstream of confluence with Camel Creek.	*954
		Camel Creek	At mouth	*954
			Just upstream of Norfolk & Western Railway	*957
			About 200 feet upstream of Chessie System	*961
			Just downstream of Interstate 71	*972
Maps available for inspection at the County Engineer's Center, Medina County Administration Building, 144 North Broadway, Medina, Ohio.				
Ohio	(C) Portsmouth, Scioto County (Docket No. FEMA-6470).	Ohio River	About 0.8 mile downstream of U.S. Route 23	*536
			About 0.7 mile upstream of the Chessie System	*538
Maps available for inspection at the Engineer's Office, 728 Second Street, Portsmouth, Ohio.				
Ohio	(V) Racine, Meigs County (Docket No. FEMA-6470)	Ohio River	About 1 mile upstream of confluence of Wolf Run	*582
			About 1.6 miles upstream of confluence of Wolf Run	*583
Maps available for inspection at the Mayor's Office, Village Hall, Third Street, Racine, Ohio.				
Pennsylvania	Johnstown, city, Cambria County (Docket No. FEMA-6401)	Conemaugh River	Downstream corporate limits	*1,154
			Coopersdale Bridge (upstream)	*1,159
			Fourth Avenue (upstream)	*1,164
			Confluence of Little Conemaugh River and Stonycreek River.	*1,167
		Little Conemaugh River	Confluence with Conemaugh River and Stonycreek River.	*1,167
			Chessie System (first crossing)	*1,171
			Swank Court (upstream)	*1,182
			Upstream corporate limits	*1,212
		Stonycreek River	Confluence with Conemaugh River and Little Conemaugh River.	*1,167
			Haynes Street	*1,173
			Horner Street	*1,179
			Upstream corporate limits	*1,198
		St. Clair Run	Confluence with Conemaugh River	*1,158
			D Street (upstream)	*1,166
			Bachus Avenue	*1,181
			Fairfield Avenue (upstream)	*1,211
			Upstream corporate limits	*1,257
		Elk Run	Shallow flooding affecting community	#1
Maps available for inspection at the City Hall, Room 106, Johnstown, Pennsylvania.				
Utah	Salt Lake City (city), Salt Lake County, FEMA-6431	Jordan River	100 feet downstream of the intersection of Redwood Road and Jordan River.	*4,215
			50 feet downstream of the intersection of 21st South Street and Jordan River.	*4,229
		Red Butte Creek	Intersection of 11th East Street and Red Butte Creek	*4,371
			60 feet upstream of the intersection of Fort Douglas entrance road and Red Butte Creek.	*4,869
		Emigration Creek	110 feet upstream of the intersection of 13th East Street (State Highway 161) and Emigration Creek.	*4,412
			80 feet downstream of the intersection of Foothill Drive (U.S. Highway 40 and State Highway 186) and Emigration Creek.	*4,682
Maps available for inspection at Planning and Zoning Department, City-County Building, 4th South and State Street, Salt Lake City, Utah.				
Vermont	Plainfield, town Washington County (Docket No. FEMA-6431).	Winooski River	Downstream corporate limits	*681
			Upstream U.S. Route 2	*685
			Downstream of village corporate limits	*704
			Approximately 1,300' downstream of Plainfield Dam	*721
Maps available for inspection at the Town Hall, Plainfield, Vermont.				
Vermont	Plainfield, village, Washington County (Docket No. FEMA-6431).	Winooski River	Downstream corporate limits	*704
			Downstream of Plainfield Dam	*732
			Upstream corporate limits	*751
Maps available for inspection at the Village Hall, Plainfield, Vermont.				
Wisconsin	(C) Delafield, Waukesha County (Docket No. FEMA-6442).	Bark River	About 150 feet downstream of Delafield Pond Dam	*877
			About 300 feet upstream of Delafield Pond Dam	*885
			Just upstream of Genessee Street	*890
			About 200 feet downstream of Nagawicka Road	*895
			About 200 feet upstream of Nagawicka Road	*899
			At upstream corporate limits	*902
		Nagawicka Lake	Shoreline	*921
Maps available for inspection at the City Clerk's Office, City Hall, 500 Genessee Street, Delafield, Wisconsin.				

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Wisconsin	(V) New Glarus, Green County (Docket No. FEMA-6449).	Little Sugar River	About 0.25 mile downstream of Sugar River Trail (downstream corporate limits).	*858
			About 0.5 mile upstream of State Highway 69 (upstream corporate limits).	*868
		Ledger School Branch	Just upstream of State Highway 39 and 69	*855
			About 1 mile upstream of Second Street	*876
Maps available for inspection at Village Hall, 807 Third Street, New Glarus, Wisconsin.				
Wisconsin	(V) Pardeeville, Columbia County (Docket No. FEMA-6449).	Fox River	At downsteam of corporate limits	*789
			Just downstream of Park Lake Dam	*798
			Just upstream of Park Lake Dam	*808
Maps available for inspection at Village Hall, 124 Lake Street, Pardeeville, Wisconsin.				
Wisconsin	(C) Portage, Columbia County (Docket No. FEMA-6449).	Wisconsin River	About 1.74 miles downstream of divergence with Portage Canal.	*789
			About 300 feet upstream of State Highway 78	*795
		Fox River	About 2,400 feet downstream of the confluence of Portage Canal.	*784
			Just downstream of Chicago, Milwaukee, St. Paul & Pacific Railroad.	*789
		Interbasin flow area	An area north of Portage levee, southeast of Portage Canal.	*789
Maps available for inspection at the City Engineers' Office, City Hall, 210 Brooks, Portage, Wisconsin.				
Wisconsin	(Uninc.) Rock County (Docket No. FEMA-6000)	Rock River	At Beloit's upstream corporate limits	*749
			Approximately 0.35 mile upstream of Eau Claire Road	*757
			Janesville corporate limits, approximately 1.21 miles upstream of confluence of Fisher Creek.	*761
			Just upstream of U.S. Highway 14	*778
			At upstream county boundary	*784
		Yahara River	At confluence with Rock River	*781
			Just downstrema of Fulton Dam	*787
			Just upstream of Fulton Dam	*794
			Just downstream of Caledonia Road	*798
			Just downstream of Stebbinsville Dam	*805
			Just upstream of Stebbinsville Dam	*814
		Sugar River	At downstream county boundary	*743
			Just upstream of Nelson Road	*755
			Just upstream of Beloit-Newark Road	*761
			Just downstream of County Highway T, at upstream county boundary.	*764
		Raccoon Creek	At downstream county boundary	*741
			Just upstream of Lawrence Avenue	*752
			Just upstream of Mill Pond Dam	*759
			Just downstream of State Highway 81	*772
		Unnamed tributary No. 1 to Raccoon Creek.	At confluence with Raccoon Creek	*761
			Just upstream of State Highway 81	*772
			Just upstream of Beloit-Newark Road	*804
		Unnamed tributary No. 2 to Raccoon Creek.	At confluence with unnamed tributary No. 1 to Raccoon Creek.	*762
			Just upstream of State Highway 81	*774
			Just upstream of County Highway H	*787
			Just downstream of Beloit-Newark Road	*826
		Otter Creek	Just upstream of county line road	*783
			Just downstream of State Highway 26	*821
			Just downstream of Klug Road	*835
			Just upstream of Klug Road	*840
			Just downstream of Bowers Road	*859
		Marsh Creek	Confluence with Rock River	*777
			About 150 feet upstream of County Highway E	*785
			Approximately 125 feet downstream of Chicago & North Western railroad.	*787
			Just upstream of Chicago & North Western railroad	*793
			Approximately 140 feet downstream of Burdick Road	*839
			Just upstream of Burdick Road	*843
			Just upstream of Gravel Drive	*860
			Just upstream of Polzin Road	*878
			Just downstream of State Highway 184	*881
		Bass Creek	Mouth at Rock River	*755
			Just upstream of a dam located about 0.22 mile downstream of County Highway D.	*760
			Just upstream of Johnson Road	*772

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Just upstream of Schaffner Road	*791
			Just upstream of old State Highway 11	*804
		Turtle Creek	At city of Beloit corporate limits, located about 0.53 mile downstream of the Chicago, Milwaukee, St. Paul & Pacific Railroad.	*760
			Approximately 100 feet upstream of Milwaukee Road	*774
			Just upstream of Shopiere Road	*796
			Just upstream of Interstate 90	*802
			Just upstream of Sweet Allyn Park Dam	*816
			Just upstream of State Highway 140	*831
			Just upstream of Carvers Rock Road	*840
			About 2.1 miles upstream of Johnson Road	*856
		Unnamed tributary No. 1 to Turtle Creek.	At confluence with Turtle Creek	*821
			Just downstream of Milton-Shopiere Road	*843
			About 150 feet upstream of Elm Drive	*856
		Unnamed tributary No. 2 to Turtle Creek.	At confluence with Turtle Creek	*819
			Just upstream of Chicago & North Western railroad	*853
			Just upstream of State Highway 15	*876
			Just upstream of Buss Road	*898
			Just downstream of County Highway J	*906
		East fork Raccoon Creek	At downstream State Boundary	*748
			Just upstream of Lawrence Avenue	*753
			Just upstream of State Highway 81	*763
			Just downstream of Spring Creek Road	*770
		Unnamed tributary to east fork Racoon Creek.	At confluence with east fork Raccoon Creek	*755
			Just upstream of State Highway 81	*761
			Just upstream of Spring Creek Road	*784
			Just downstream of Beloit-Newark Road	*814
		Spring Brook (near city of Janesville).	About 400 feet upstream of Sharon Road	*778
			About 1,900 feet upstream of Sharon Road	*780
		Spring Brook	City of Beloit corporate limits at Chicago, Milwaukee, St. Paul & Pacific Railroad, located approximately 3,170 feet upstream of Townhall Road.	*827
			Just downstream of second Chicago, Milwaukee, St. Paul & Pacific Railroad bridge at the Beloit corporate limits, about 0.9 mile downstream of Walker Road.	*835
			Just upstream of second Chicago, Milwaukee, St. Paul & Pacific Railroad bridge at the Beloit corporate limits, about 0.9 mile downstream of Walker Road.	*847
			Just upstream of Walker Road	*854
			Approximately 100 feet upstream of Gustafson Road	*884
			Just downstream of Clinton Corners Road	*911
		Blackhawk Creek	About 0.61 mile downstream of U.S. Highway 14	*821
			About 500 feet downstream of U.S. Highway 14	*831
		Allen Creek	About 0.38 mile upstream of State Highway 213	*874
			About 1.73 mile upstream of State Highway 213	*888
			At City of Evansville upstream corporate limits	*910
			About 1.1 miles upstream corporate limits	*921

Maps available for inspection at the Office of the Director of Planning, Rock County Courthouse, 51 South Main Street, Janesville, Wisconsin.

Wisconsin	(Unico.) Walworth County (Docket No. FEMA-6449)	Como Creek	At mouth	*824
			About 300 feet upstream of State Highway 36	*832
			About 100 feet upstream of County Highway NN	*849
			Just downstream of Lake Como Dam	*852
		East branch Nippersink Creek	At mouth	*828
			Just upstream of Powers Lake Road	*835
			About 1.23 miles upstream of Powers Lake Road	*848
		Honey Creek	At county boundary about 0.5 miles downstream of County Highway DD.	*770
			About 2000 feet upstream of Himebauch Road	*796
			About 200 feet upstream of Bell School Road	*802
			Just downstream of dam about 1000 feet downstream of State Highway 20.	*809
			Just upstream of dam about 1000 feet downstream of State Highway 20.	*813
			Just downstream of State Highway 15	*819
			Just upstream of State Highway 15	*824
			Just upstream of County Highway G	*827
			Just upstream of dam near County Highway G	*834
			Just upstream of County Highway N	*843
			About 2100 feet downstream of Pleasant Lake Road	*848
			About 100 feet downstream of Pleasant Lake Road	*862
			Just upstream of dam at Pleasant Lake Road	*874
			Just downstream of Old Highway 12 and 67	*878

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Jackson Creek	Just downstream of Mound Road	*930
			Just upstream of Old Highway 12	*968
			Just downstream of U.S. Highway 12	*977
		North branch Nippersink Creek	About 200 feet upstream of Darling Road near Genoa City corporate limits.	*828
			About 1.8 miles upstream of County Highway H	*838
		Pell Lake tributary	At mouth	*832
			Just upstream of County Highway U	*835
			Just downstream of Daisey Road	*851
			Just upstream of Daisey Road	*855
			Just downstream of Pell Lake Road	*860
		Spring Brook	About 1300 feet downstream of State Highway 89	*819
			About 0.76 mile upstream of State Highway 89	*841
			Just upstream of Island Road	*848
			About 0.7 mile upstream of Island Road	*849
		Sugar Creek	At mouth at Honey Lake	*772
			About 300 feet upstream of Hargraves Road	*810
			About 200 feet upstream of Hodunk Road	*847
			Just downstream of U.S. Highway 12	*860
			Just downstream of Cobbie Road	*893
		Swan Creek	About 1.46 miles downstream of County Highway O	*908
			Just upstream of County Highway O	*919
			Just downstream of Delavan Lake Dam	*924
		Turtle Creek	About 800 feet downstream of County Highway C	*856
			Just upstream of State Highway 11	*874
			About 1.5 miles upstream of Pounder Road	*878
			About 2000 feet downstream of Dam Road	*891
			Just downstream of Turtle Lake Road	*897
		White River	Just downstream of State Highway 11	*768
			About 200 feet upstream of State Highway 36	*774
			About 300 feet downstream of Spring Valley Road	*791
			Just upstream of dam near Spring Valley Road	*799
			Just upstream of Sheridan Springs Road downstream of Como Creek.	*822
			About 500 feet upstream of U.S. Highway 12	*836
		Whitewater Creek	About 1400 feet downstream of Willis Ray Road	*824
			Just upstream of Willis Ray Road	*830
			Just downstream of Moraine Road	*856
		Lake Geneva	Shoreline	*865
		Pell Lake	Shoreline	*860
		Powers Lake	Shoreline	*833
		Turtle Lake	Shoreline	*900
		Comus Lake	Shoreline	*891
		Delavan Lake	Shoreline	*929
		Green Lake, Middle Lake, Mill Lake, Don Jean Bay.	Shoreline	*886
		Lake Como	Shoreline	*852
		Cravath Lake	Shoreline	*815
		Honey Creek Lake	Shoreline	*834
Maps available for inspection at the Walworth County Office of Planning and Zoning, Walworth County Courthouse, Elkhorn, Wisconsin.				
Wisconsin	(Uninc.) Waukesha County (Docket No. FEMA-6442)	Bark River	About 0.5 mile downstream of U.S. Highway 18	*862
			About 500 feet downstream of Mill Road	*873
			Just upstream of Mill Road	*878
			Abut 350 feet upstream of County Highway E	*903
			About 700 feet downstream of County Highway K	*923
			Just downstream of Dorn Road	*939
		Brandy Brook	At mouth	*808
			About 150 feet downstream of County Highway DT	*818
			About 200 feet upstream of County Highway DT	*823
			About 0.64 mile upstream of County Highway DT	*823
		Deer Creek	At mouth	*828
			Just upstream of Brookfield Avenue	*830
		Fox River	About 0.5 mile upstream of southern county boundary	*777
			About 0.47 mile upstream of Sunset Drive	*795
			About 0.61 mile downstream of Bluemound Road	*816
			About 1.7 miles upstream of State Highway 190	*828
		Genessee Creek	At mouth	*787
			About 300 feet upstream of County Highway X (just downstream of dam).	*794
			About 400 feet upstream of County Highway X (just upstream of dam).	*801

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			About 100 feet downstream of Old Vili Road	*839
			Just upstream of the Chicago, Milwaukee, St. Paul and Pacific Railroad.	*897
		Jericho Creek	At mouth	*816
			Just upstream of County Highway X	*925
		Mason Creek	At mouth	*900
			About 200 feet upstream of the Chicago and North Western Railroad.	*902
			About 100 feet upstream of Mapleton Road	*942
		Mukwonago River	At mouth	*783
			About 400 feet downstream of County Highway I	*792
			About 150 feet downstream of Eagle Spring Lake Dam	*817
		Oconomowoc River	Just upstream of Morgan Road	*648
			About 600 feet upstream of Lapham Street	*862
			Just upstream of U.S. Highway 16 (just downstream of dam).	*863
			About 1,200 feet downstream of County Highway K	*875
			Just upstream of Chicago, Milwaukee, St. Paul and Pacific Railroad.	*913
			About 300 feet upstream of Funk Road (just upstream of dike).	*919
			About 100 feet downstream of County Highway F	*924
			Just upstream of County Highway F	*932
		Pebble Brook	At mouth	*784
			About 200 feet upstream of County Highway XX	*797
			Just upstream of Big Bend Road	*820
			Just downstream of County Highway X	*648
		Pebble Creek	At mouth	*793
			Just upstream of State Highway 59	*796
			Just upstream of the Chicago, Milwaukee, St. Paul and Pacific Railroad.	*803
			About 0.74 mile upstream of County Highway TT	*808
		Pewaukee Lake Tributary	At mouth	*855
			About 100 feet upstream of the Chicago, Milwaukee, St. Paul and Pacific Railroad.	*858
			About 1,900 feet upstream of U.S. Highway 16	*866
		West Branch Pewaukee Lake Tributary.	At mouth	*860
			About 1,600 feet upstream of Yench Road	*881
		Pewaukee River	At mouth	*821
			Just upstream of Busse Road	*839
			Just downstream of County Highway SS	*847
			Just upstream of Lisbon Road	*882
		Poplar Creek	About 950 feet downstream of County Highway Y	*824
			Just downstream of County Highway SS	*830
		Sussex Creek	At mouth	*828
			Just upstream of Soo Line Railroad	*837
			Just upstream of County Highway JF	*855
			About 1.1 miles upstream of County Highway K (at Village of Sussex corporate limits).	*893
		Lac LaBelle	Shoreline	*854
		Upper Nemahbin Lake	Shoreline	*872
		Lower Nemahbin lake	Shoreline	*872
		North Lake	shoreline	*900
		Okauchee Lake	shoreline	*875
		Pewaukee Lake	Shoreline	*855
		Upper Phantom Lake	Shoreline	*792
		Lower Phantom Lake	Shoreline	*792

Maps available for inspection at the Waukesha County Park and Planning Commission, 500 Riverview Avenue, Waukesha, Wisconsin.

The base (100-year) flood elevations are finalized in the communities listed below. Elevations at selected location in each community are shown. Appeals of the proposed base flood elevations were received and have been resolved by the Agency.

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Texas	City of Galveston, Galveston County (FEMA-6364)	Galveston Bay	At intersection of Avenue P and 47th Street	*11
		West Bay	At intersection of Shader Road and 103rd Street	*13
			At intersection of Musket Lane and Carthegena Way	*14
		Gulf of Mexico	At intersection of 81st Street and Stewart Boulevard	*11
			Approximately 50 feet north of intersection of Stewart Boulevard and 87th Street.	12
		At intersection of Duncan Way and Vista Boulevard.	*15	
		Approximately 100 feet south of intersection of Seawall Boulevard and 87th Street.	*19	

Maps available for inspection at City Hall, building Inspection Department, 823 Rosenberg Street, Galveston, Texas 77553.

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)

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

Issued: April 25, 1983.

Dave McLoughlin,

Deputy Associate Director, State and Local Program and Support.

[FR Doc. 83-13620 Filed 5-23-83; 8:45 am]

BILLING CODE 6718-03-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1170

[Ex Parte No. MC-161; Sub-No. 1]

Employee Protection—Motor Passenger Carriers

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: This document contains final rules that implement Section 27 of the Bus Regulatory Reform Act of 1982. Section 27 deals with reemployment rights of employees of motor passenger carriers who lose their jobs because of discontinuances or reductions of regular-route bus services. This proceeding was instituted by a notice of proposed rulemaking served on November 19, 1982, and published at 47 FR 53297 (November 24, 1982). The rules adopted establish procedures for determining the eligibility of individual employees for protection under the statute, and for publishing a periodic listing of jobs available with class I motor passenger carriers.

EFFECTIVE DATE: These rules will be effective June 23, 1983.

FOR FURTHER INFORMATION CONTACT: Public Assistance Branch, (202) 275–7863 James L. Brown, (202) 275–7698 Howell I. Sporn, (202) 275–7691.

SUPPLEMENTARY INFORMATION: Section 27 of the Bus Regulatory Reform Act of 1982 ("Bus Act") gives certain preferential rights to those employees of motor passenger carriers who lose their jobs because of discontinuances or reductions in regular-route passenger services in both interstate and intrastate commerce. We proposed rules that would implement this section at 47 FR 53297, November 24, 1982. Section 27 requires a carrier, when it has a position available, to rehire its own laid off employees whose jobs were lost because of a termination or reduction of service authorized by the Bus Act. Section 27 also requires carriers to consider for hiring a person who had worked for any carrier and lost his or her job under the same circumstances. The Commission is required to gather and publish a list of jobs available with class I carriers. The Commission does not, however, have direct enforcement powers under the statute. Commission authority is limited to determining the eligibility of individual employees for protection and publishing a list of available jobs. The rules published on November 24 proposed to implement these responsibilities.

Comments on the proposed rules were filed by American Bus Association [ABA], Greyhound Lines, Inc., the Commission's Office of the Special Counsel, United Transportation Union [UTU], and WMA Interstate Motor Lines, Inc. For the most part, these parties supported the thrust and content of the proposed rules. Each, however, requested clarification of some provisions, and noted areas that needed additional spelling out of rights and obligations. The comments are discussed, in the context of each proposed rule, below.

The applications. We proposed that applications filed under these rules be subject to a $10 filing fee for each individual covered by the application. The Special Counsel and UTU question whether any filing fee is appropriate in these cases. The applicants will be unemployed individuals, to whom any filing fee—no matter how small—can be expected to be a significant economic burden. At the same time, the proposed $10 fee is too low to defray any significant portion of the Commission's processing costs.

We are persuaded that the filing fee should be deleted for these applications. The costs to the Commission of processing applications of this sort will be minimal in comparison with other cases within our jurisdiction. Unemployed individuals should be spared the burden of any minimal processing expenses.

For the same reasons, we will adopt the suggestion of the Special Counsel that applicants not be rquired to sent a copy of the application to any carrier other than the one with whom the applicant was formerly employed. The additional notification of other carriers with whom the individual is seeking employment does not provide enough benefit to balance the burden which would be imposed on the applicant. Other carriers have the duty only to consider eligible individuals for employment—not an obligation to give them priority in hiring—and the individual need only provide the carrier a copy of our certification of eligibility in order to inform the carrier of his or her eligibility. We have also simplified the rules to make it easier for individuals to file their own applications without legal representation.

The Special Counsel also suggested that our rules require that statements submitted in these cases be verified under oath. It argues that, in the absence of a verification requirement, the Commission may find that it is unable to resolve factual controversies where the individual and the carrier present conflicting versions of the circumstances surrounding the termination of the individual's employment. We are not persuaded that the burden which a verification requirement would impose on the individual applicants is warranted in these circumstances. Any potential factual dispute would be no less difficult to resolve simply because the statements had been verified. Accordingly, we will not adopt a verification rquirement. The Special Counsel desires that the Commission undertake special efforts to inform employees of passsenger carriers of their rights under Section 27. We are

considering this suggestion, but note that such an undertaking does not require adoption of procedural rules.

The priority reemployment and consideration rights are, by the terms of the statute, valid only in the occupational specialty of the individual. Greyhound requests that the Commission's certifications of eligibility specify the occupational specialty covered, and ABA suggests that the individual's application be required to identify the occupational specialty.

Although it may develop that there is some ambiguity in the definition of various occupational specialties, we see merit in these suggestions and will incorporate them in the final rules. We do not intend, however, that minor technical discrepancies in the terminologies which might be used to describe an occupational specialty be construed against an individual. Descriptions which have substantially the same meaning are to be considered identical, regardless of the actual wording used.

Hiring from within. Greyhound and ABA question whether "hiring from within" a company is subject to the priority rights of eligible persons. They take the position that when a carrier hires and promotes from within its own employee ranks it is not "hiring additional employees" within the ambit of Section 27 of the Bus Act, and thus the carrier has no duty to consider eligible employees. They note that recall of furloughed employees is not subject to the priority rights, by the explicit terms of the statute. ABA suggests that we incorporate a provision in our regulations to exempt "hiring from within" from coverage of the law.

We agree with this position, but we do not think it necessary or practical to define "hiring additional employees" in the rules. If problems arise in the context of actual cases, we will decide them on a case-by-case basis or, if needed, develop standards or definitions.

Employee qualification. ABA asks whether an individual must remain "qualified" for the job he or she is seeking. It argues that an employer can lawfully require a driver seeking priority reemployment to prove he or she continues to be qualified for the position sought, and suggests the addition of a regulation to that effect. A carrier may, in good faith, require that an individual be currently qualified for a position sought, notwithstanding the priority to which he or she may otherwise be entitled. We do not, however, conclude that it is necessary to incorporate this concept specifically into our procedural rules. Certainly, it is not possible for us to determine the individual's qualifications (particularly for the entire time the determination may be valid). Rather, the carrier's own employment application procedures provide the most appropriate means for the applicant to show his or her conformity with legitimate job qualifications.

Term of eligibility. Several parties ask how long a determination of eligibility for protection is valid. Greyhound suggests a fixed one-year term, subject to a simplified renewal procedure. UTU asserts that an individual should not be required to file a new application each time he or she seeks and is denied reemployment. ABA argues that the priority rights afforded by the statute should terminate once the individual does, in fact, find employment within the individual's occupational specialty.

We conclude that ABA's position on this issue is correct. Once we determine that an individual is eligible for protection, that determination remains effective for as long as it takes for that individual to find reemployment or new employment in his or her occupational specialty (subject to the statutory expiration date of November 18, 1994). It is not intended that the individual file a separate application each time he or she applies for employment with a new carrier; the first determination of eligibility is valid for any number of job applications by that individual with any number of motor passenger carriers. Only when the individual finds reemployment in his or her occupational specialty may the eligibility be considered to be fulfilled and thus at an end. If the individual's new employment is later terminated, the individual could file a new application (if the new employment is with the same carrier and the other criteria for eligibility are again satisfied). In general, once the eligibility has been fulfilled, however, the statutory protection has been satisfied and the eligibility cannot be retained or renewed.

Decision timetable. Both the Special Counsel and UTU ask that our projected timetable for deciding eligibility applications (60 days to issue a decision in unopposed cases; 120 days in contested cases) be shortened. UTU suggests 30 days for an unopposed application and 60 days for a contested application. The Bus Act does not provide deadlines for Comission decisions of eligibility. Nevertheless, we are persuaded that our proposed timetable can be shortened. Accordingly, in the final rules we will provide 30 days for issuing decisions in unopposed cases and 60 days for issuing decisions in contested proceedings.

Selection criteria. UTU suggests that the Commission specify the selection procedure to be used by carriers among job applicants with the same priority eligibility. We find this suggestion to be an inappropriate intrusion into carrier management discretion. Should a pattern of difficulty actually arise in this area that warrants our intervention, we will consider it at that time.

Enforcement power. In our notice of proposed rulemaking, we stated that the statute does not give the Commission direct enforcement power in relation to the priority rights and duties. UTU complains that we are inappropriately trying to avoid enforcement of the statute. UTU argues that the law does not limit the Commission's enforcement power in this area and points to the Commission's power to protect rail employees as an example of a similar enforcement power.

UTU fails to describe the specific enforcement actions it wishes us to take. Clearly, our functions in determining individuals' eligibility are greatly different in scope from those we exercise in connection with railroads. The parallels between the abandonment of rail lines and the discontinuance of regular-route bus services is superficial in this context, because many—if not most—of the bus service reductions which may give rise to priority rights in affected employees will be accomplished by the carriers without the need for a decision by us to authorize such action. More importantly, legal remedies available through the courts provide greater relief for the aggrieved individual than we have the power to fashion, given the confines of our jurisdiction. In the absence of some clear suggestion of a proper and meaningful remedy which we have the power to grant, we are not prepared to undertake further consideration of enforcement powers at this time.

List of available jobs. We proposed that individuals with pending applications for determination of eligibility would receive free copies of the periodical list of available jobs. Special Counsel and UTU suggest that we include all individuals who have been found eligible for protection under the statute; the Special Counsel suggests free copies be sent for six months, while UTU does not indicate any time limitation. We find merit in these suggestions. We will enter a 6 month subscription to the periodical list for each person who has been found eligible for protection by a Commission decision. Upon request, the free six month subscription of an eligible person may be renewed.

Publication schedule. We proposed that the periodical list of available jobs be published on a monthly basis, with the due date for the filing of information by the carriers falling midway between the publication dates. WMA Interstate and ABA raised the concern that a monthly reporting requirement would create an unreasonable paperwork burden. The Special Counsel, on the other hand, argues that the job information which would be contained in a monthly publication would not be timely, since most job opportunities are likely to be filled before the periodical list can be published, no matter how frequently the publication may be scheduled.

Both of these positions have merit, and we will undertake to minimize the burdens of the reporting requirement and make the Commission more responsive to qualified employee needs. We will modify the proposed rules to allow carriers to transmit the job information either orally or in writing. Furthermore, if a carrier does not have any new job opening in a monthly period, it need not transmit a report to the regional office. Reporting will be greatly facilitated by making it a matter between the carrier and the appropriate regional offices of the Commission. The details of the reporting method can be arranged between each carrier and the regional offices so as to be as simple and convenient as possible. The regional offices will transmit the job information to headquarters for preparation of the monthly publication. We stress again that the submission of this information is required only of class I carriers, and creates no burden on smaller carriers.

The Special Counsel advocates that the Commission establish a toll-free telephone number to supply more current job availability information than can be published in the periodical list. We expect that the regional offices which are gathering the job listings will make this information available to interested persons in the regional offices or by telephone. The establishment of a toll-free service would exceed the Commission's available resources at this time. The Commission will monitor the use of the employee protection provisions and propose changes in our rules if they are required.

Energy and Environmental Considerations

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

Regulatory Flexibility Statement

The notice of proposed rulemaking certified that these rules would not have a significant economic impact on small business. No comments have been received concerning regulatory flexibility issues. We affirm our prior conclusions in this regard.

Index

List of Subjects in 49 CFR Part 1170

Employment, Buses.

It is ordered:

Title 49 of the Code of Federal Regulations is amended by the addition of a new Part 1170 in the manner described in the appendix to this decision.

This decision is issued pursuant to 49 U.S.C. 10321, 5 U.S.C. 553, and Pub. L. 97-261, section 27.

Decided: May 13, 1983.

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

Agatha L. Mergenovich,

Secretary.

Appendix

Title 49 of the Code of Federal Regulations is amended by adding a new Part 1170, to read as follows:

PART 1170—RULES GOVERNING EMPLOYEE PROTECTION FOR MOTOR PASSENGER CARRIERS

Subpart A—Determination of Eligibility

Sec.

1170.1 General provisions.
1170.2 Filing an application.
1170.3 Contesting the application.
1170.4 Replies and motions.
1170.5 Commission action.
1170.6 Appeals.
1170.7 Miscellaneous.

Subpart B—Lists of Available Jobs

1170.11 Filing of information.
1170.12 Publication of list.

Authority: 49 U.S.C. 10321, 5 U.S.C. 553, and Pub. L. 97-261 § 27.

Subpart A—Determination of Eligibility

§ 1170.1 General provisions.

Section 27 of the Bus Regulatory Reform Act of 1982 is designed to protect employees of bus companies who lose their jobs because of reduction or discontinuance of regular-route bus service. These rules govern applications under Section 27 by individuals seeking a determination of eligibility for protection. To be eligible for protection in the form of priority in seeking reemployment, the individual must establish that he or she worked for a bus company on or before September 20, 1980, and was fired after September 20, 1982, because of a reduction or discontinuance of regular-route bus operations. Furloughed employees who have a right of recall by their employer are not eligible for this protection.

§ 1170.2 Filing an application.

(a) There is no application form. The application may be in the form of a letter or other written statement, typed or written legibly in dark ink.

(b) The top of the first page of the application, should state: "Bus Employment Protection Application".

(c) The application shall include all the evidence upon which the individual intends to rely. (Note: the former employer has the right to contest the facts which are set forth in the application.) The application must, at least, include the following information:

(1) The name and address of the individual;

(2) The name of the motor passenger carrier by whom the individual was employed (giving the carrier's full name and "MC" number, if known);

(3) The dates on which the individual's employment with that carrier began and terminated;

(4) The reasons for the termination;

(5) The specific discontinuance or reduction of regular-route service which caused the termination of employment;

(6) The occupational specialty of the individual; and

(7) The name(s) and address(es) of the applicant's representative(s) (if any), to whom opposition statements and the Commission's decision should be sent.

(d) A copy of the application must be sent to the carrier by whom the individual was employed. Every effort must be made to ensure that the carrier receives this copy at the same time as the application is filed with the Commission. The application shall state that the copy was sent, and the date and manner in which it was sent.

(e) The original and one copy of the application shall be sent to the Interstate Commerce Commission, Office of the Secretary, Washington, DC 20423. The lower left corner of the envelope should state: "Bus Employment Protection Application:", followed by the full name of the applicant. (If the application is made on behalf of more than one individual, list only the name of the first individual, and indicate the number of others.)

(f) An applicant must notify the Commission promptly of any change in his or her address.

§ 1170.3 Contesting the application.

(a) Any interested party may contest the application by filing a letter or other written statement within 20 days after the application is filed.

(b) A letter or statement contesting an application shall include all the evidence upon which the party contesting the application intends to rely. Evidence must be submitted to show that discontinuance or reduction in service was not a contributing factor causing termination of the applicant's employment, and/or that the applicant or the circumstances are not covered by the statutory criteria.

(c) At the end of the letter or statement, the following must appear:

(1) The name(s) and address(es) of the contesting party or his representative(s) (if any); and

(2) A statement that a copy of the letter or statement has been sent, and the date and means by which it was sent, to the applicant (and to the applicant's representative, if any).

(d) Every effort must be made to ensure that the applicant and/or his representative receives this copy at the same time as the letter or statement is filed with the Commission.

(e) The original and one copy of the letter or statement shall be sent to the Interstate Commerce Commission, Office of the Secretary, Washington, DC 20423. The lower left corner of the envelope, should state: "Bus Employment Protection Opposition:", followed by the full name of the applicant. (If the application was made on behalf of more than one individual, list only the name of the first individual, and indicate the number of others.)

§ 1170.4 Replies and motions.

(a) Applicant may reply to any letter or statement contesting the application within 15 days after the contesting letter or statement is filed. At the end of the reply, applicant must state that a copy of the reply has been sent or delivered to the party contesting the application.

(b) If a party wishes to file a motion relating to any other pleading, the motion must be filed within 15 days after the filing date of the pleading toward which the motion is directed.

§ 1170.5 Commission action.

(a) If no letters or statements are filed contesting the application, service of a decision may be expected within 30 days after the application is filed.

(b) If any interested person files a letter or statement contesting the application, service of a decision may be expected within 60 days after the application is filed.

§ 1170.6 Appeals.

Appeals are governed by 49 CFR 1115.2. Information on appellate procedures can also be obtained from Commission regional and field offices.

§ 1170.7 Miscellaneous.

(a) If an applicant wishes to withdraw an application, of if a person contesting an application wishes to withdraw the opposition, such a request shall be made in writing. The request shall be directed to the Office of the Secretary, Interstate Commerce Commission, Washington, D.C. 20423, and shall identify the full name of the applicant.

(b) When a person wishes to contact another party or serve a pleading on that party, it shall do so through the party's representative (if any).

(c) All pleadings filed with the Commission shall include an original and one copy.

Subpart B—List of Available Jobs

§ 1170.11 Filing of information.

(a) Each carrier having annual gross revenues from operations as a motor common carrier of passengers in excess of $3,000,000 shall supply orally or in writing to any regional office of the Commission, a monthly list of jobs it has available. If a carrier has no new job openings in a monthly reporting period, the carrier is not required to transmit a report.

(b) The list must include a job description and identify the job location and the required skills, for each available position.

(c) The list may also be submitted voluntarily by any other motor common carrier of passengers.

§ 1170.12 Publication of list.

The Commission will publish a comprehensive list of available jobs and related information based on the data supplied each month by the carriers.

(a) Information about the published list and updated information on job vacancies will be available at each Commission field and regional office by telephone or personal visit.

(b) A copy of the published list will be mailed to each individual who has a pending application for determination of eligibility for protection. A copy of the list will also be sent directly to each individual who has been found eligible, for a six month period following the Commission's determination of that individual's eligiblity subject to renewal upon the request of the qualified individual.

(c) Additional copies of the published list will be available by paid subscription.

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Proposed Rules

Federal Register
Vol. 48, No. 101
Tuesday, May 24, 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.

GENERAL ACCOUNTING OFFICE

DEPARTMENT OF JUSTICE

4 CFR Parts 101, 102, 103, 104 and 105

[Order No. 1014-83]

Federal Claims Collection

AGENCIES: General Accounting Office; and Department of Justice.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Federal Claims Collection Standards issued jointly by the Department of Justice and the General Accounting Office to reflect changes to the fundamental claims collection authority made by the Debt Collection Act of 1982 (Pub. L. 97-365), which was enacted on October 25, 1982. The proposed amendment also makes a number of technical changes made necessary because of the recent codification of a number of laws, including the former Federal Claims Collection Act into title 31, U.S.C.

It is therefore necessary to amend the existing Federal Claims Collection Standards in order to reflect the changes made by the Debt Collection Act of 1982, and to offer guidance on the meaning of some ambiguous provisions of the Act.

DATE: Comments must be received by July 25, 1983.

ADDRESS: U.S. General Accounting Office, Office of General Counsel, Associated General Counsel Rollee Efros, Room 7041, 441 G Street, N.W., Washington, D.C. 20548.

FOR FURTHER INFORMATION CONTACT: Chris Farley, Jr., U.S. General Accounting Office, Accounting and Financial Management Division, Claims Group, (202) 275-8145.

SUPPLEMENTARY INFORMATION: Public Law 97-365, the Debt Collection Act of 1982, was enacted on October 25, 1982. As its legislative history indicates, its primary purpose was to enhance the capability of Federal agencies to collect money or property owed to them by persons as a result of their participation in Federal programs or activities. To this end, Federal agencies were given new or broader authorities to collect debts by administrative offset; by offset against the salary of Federal employees; by encouraging the use of credit bureaus; by specifically authorizing agencies to contract for commercial collection services; and to assess interest, processing and handling costs, and penalty charges, under specified conditions. At the same time, the Act provided a number of new procedures and safeguards, designed to assure that alleged debtors will be provided appropriate due process protections if they dispute the merits of the debt or the amount or terms for its collection.

While the primary responsibility for promulgating detailed implementing regulations lies with each individual Federal agency, their regulations must be consistent with the Federal Claims Collection Standards published jointly by the General Accounting Office and the Department of Justice. It is therefore necessary to amend the existing Federal Claims Collection Standards in order to reflect the changes made by the Debt Collection Act of 1982, and to offer guidance on the meaning of some ambiguous provisions of the Act.

While we are not proposing amendments to all of the Standards at this time but only to those necessary to implement Pub. L. 97-365, we shall consider comments received regarding any of the Standards, whether new, amended or unchanged. The principal changes are as follows:

Collection by Administrative Offset

The term "administrative offset" is defined in the Debt Collection Act as "the withholding of money payable by the United States to or held by the United States on behalf of a person to satisfy a debt owed to the United States by that person." While administrative offset has always been a useful debt collection tool for agencies, exercised by virtue of a common law right to offset debts which is reflected in existing regulations, the new act provides specific procedures which must be followed when exercising this right, to ensure due process protections for the debtor. The procedures, however, do not apply when the debtor is a Federal, State, or local government agency since the Act defines the term "person" as excluding such entities. Finally, the Act permits collection of a claim by administrative offset for a period up to 10 years, even though the 6-year statute of limitations for bringing an action on the claim has expired.

All these new procedures are set forth for guidance of the individual Federal agencies who are required by the Act to issue their own regulations, consistent with these Standards, before attempting to collect claims by administrative offset against persons.

Collection of debts by offset against the current salary of Federal employees is beyond the scope of these Standards. Agencies should be aware that regulations dealing with salary offset under 5 U.S.C. 5514(a) must be approved by the Office of Personnel Management. See 5 U.S.C. 5514(b)(1) and Executive Order 11609, 3 U.S.C. 301 note.

Contracting for Collection Services

While § 102.6 closely follows the requirements of the Act, preliminary questions from some agencies indicated a degree of confusion about whether use of commercial collection organizations to collect debts was authorized, in the absence of specific authority in advance in an appropriation act. This section interprets section 13 of the Act as restricting only the use of contingency fee arrangements in collection contracts with such organizations in the absence of authority in an appropriation act. The authority is necessary to exempt the agency from the requirements of 31 U.S.C. 3302, which would otherwise require all receipts collected from debtors to be deposited, without deductions of any kind, in the miscellaneous receipts account of the Treasury.

Limitation on Agency Compromise Authority

The law requires that claims which exceed $20,000 can only be compromised by the Department of Justice. This requirement has been interpreted quite literally for many years by Federal agencies, in a manner that serves no useful purpose under the law. The Department of Justice points out that regardless of the overall amount of the claim, if the debtor has offered a sum in compromise that brings the total

amount still in dispute well below the $20,000 ceiling, referral to the Department of Justice seems completely unnecessary. Section 103.1 reflects this view.

Referrals to Department of Justice or GAO

Section 105.1—In the interest of expediting the collection of claims through litigation, this section makes it clear that prior referral to the General Accounting Office is required only when the claim arose from an audit exception taken by the GAO to an agency expenditure, or when the merits of the claim, the amount owed, or the propriety of accepting a proposed compromise, suspension, or termination of a claim is in doubt.

The existing regulations require referral of uncollectible claims to GAO, unless GAO grants an exception. GAO has liberally authorized exceptions in recent years, and the routine referral of uncollectible claims to GAO has decreased considerably as GAO has worked with the agencies to facilitate direct referrals to the Department of Justice. The proposed regulation recognizes this trend and, with the two exceptions noted, eliminates the requirement for routine referral to GAO. The proposed regulation also instructs agencies to use the "Claims Collection Litigation Report" developed by the Department of Justice and recently distributed to all Federal agencies.

This proposed amendment is not a "major rule" as defined in Executive Order 12291 dated February 17, 1981, because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

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

The Attorney General certifies that this regulation will not have a significant economic impact on a substantial number of small entities, including small business, small organizational units and small governmental jurisdictions.

List of Subjects

4 CFR Part 101

Antitrust, Claims, Fraud, General Accounting Office, Taxes.

4 CFR Part 102

Administrative practice and procedure, Claims, Military personnel, Penalties, Privacy.

4 CFR Part 103

Claims.

4 CFR Part 104

Claims.

4 CFR Part 105

Claims.

Accordingly, we propose to revise 4 CFR Parts 101–105 as follows:

PART 101—SCOPE OF STANDARDS

Sec.

101.1 Prescription of standards.
101.2 Omissions not a defense.
101.3 Fraud, antitrust, and tax claims excluded.
101.4 Compromise, waiver, or disposition under other statutes not precluded.
101.5 Conversion claims.
101.6 Subdivision of claims not authorized.
101.7 Required administrative proceedings.
101.8 Referral of litigation.

Authority: 31 U.S.C. 3711

§ 101.1 Prescription of standards.

The regulations in this chapter, issued jointly by the Comptroller General of the United States and the Attorney General of the United States under 31 U.S.C. 3711(e)(2), prescribe standards for the administrative collection, compromise, termination of agency collection, and the referral to the General Accounting Office, and to the Department of Justice for litigation, of civil claims as defined by 31 U.S.C. 3701(b), by the Federal Government for money or property. Additional guidance is contained in Title 4 of the General Accounting Office Policy and Procedures Manual for Guidance of Federal Agencies. Regulations prescribed by the head of an agency pursuant to 31 U.S.C. 3711(e)(1) will be reviewed by the General Accounting Office as part of its audit of the agency's activities.

§ 101.2 Omissions not a defense.

The standards set forth in this chapter shall apply to the administrative handling of civil claims of the Federal Government for money or property but the failure of an agency to comply with any provision of this chapter shall not be available as a defense to any debtor.

§ 101.3 Fraud, antitrust, and tax claims excluded.

The standards set forth in this chapter do not apply to the handling of any claim as to which there is an indication of fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any other party having an interest in the claim, or to any claim based in whole or in part on conduct in violation of the antitrust laws. Only the Department of Justice has authority to compromise or terminate collection action on such claims. However, matters submitted to the Department of Justice for consideration without compliance with the regulations in this chapter because there is an indication of fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any other party having an interest in the claim, may be returned to the agency forwarding them for further handling in accordance with the regulations in this chapter if it is determined that action based upon the alleged fraud, false claim, or misrepresentation is not warranted. Tax claims, as to which differing exemptions, administrative considerations, enforcement considerations, and statutes apply, are also excluded from the coverage of this chapter.

§ 101.4 Compromise, waiver, or disposition under other statutes not precluded.

Nothing contained in this chapter is intended to preclude agency disposition of any claim under statutes other than subchapter II of chapter 37 of Title 31 of the United States Code, providing for the compromise, termination of collection action, or waiver in whole or in part of such a claim. See, *e.g.*, "The Federal Medical Care Recovery Act," 76 Stat. 593, 42 U.S.C. 2651 *et seq.*, and applicable regulations, 28 CFR 43.1 *et seq.* The standards set forth in this chapter should be followed in the disposition of civil claims by the Federal Government by compromise or termination of collection action (other than by waiver pursuant to statutory authority) under statutes other than subchapter II of chapter 37 of Title 31 of the United States Code, to the extent such other statutes or authorized regulations issued pursuant thereto do not establish standards governing such matters.

§ 101.5 Conversion claims.

The instructions contained in this chapter are directed primarily to the recovery of money on behalf of the Government and the circumstances in which Government claims may be disposed of for less than the full amount claimed. Nothing contained in this chapter is intended, however, to deter an agency from demanding the return of specific property or from demanding, in the alternative, either the return of property or the payment of its value.

§ 101.6 Subdivision of claims not authorized.

Claims may not be subdivided to avoid the monetary ceiling established by 31 U.S.C. 3711(a)(2). A debtor's liability arising from a particular transaction or contract shall be considered a single claim in determining whether the claim is one of less than $20,000, exclusive of interest, penalties, and administrative costs, for purposes of suspension or termination of collection action (§ 104.1 of this chapter), or in determining the applicability of the $20,000 limit with respect to compromise (§ 103.1 of this chapter).

§ 101.7 Required administrative proceedings.

Nothing contained in this chapter is intended to require an agency to omit or foreclose administrative proceedings required by contract or by law.

§ 101.8 Referral for litigation.

As used in this chapter, "referral for litigation" means referral to the Department of Justice for appropriate legal proceedings, unless the agency concerned has statutory authority for handling its own litigation.

PART 102—STANDARDS FOR THE ADMINISTRATIVE COLLECTION OF CLAIMS

Sec.

102.1 Aggressive agency collection action.
102.2 Demand for payment.
102.3 Collection by administrative offset.
102.4 Administrative offset against amounts payable from Civil Service Retirement and Disability Fund and similar funds.
102.5 Use of consumer reporting agencies.
102.6 Contracting for collection services.
102.7 Personal interview with debtor.
102.8 Contact with debtor's employing agency.
102.9 Suspension or revocation of license or eligibility.
102.10 Liquidation of collateral.
102.11 Collection in installments.
102.12 Exploration of compromise.
102.13 Interest, penalties, and administrative costs.
102.14 Analysis of costs.
102.15 Documentation of administrative collection action.
102.16 Automation.
102.17 Prevention of overpayments, delinquencies, and defaults.
102.18 Use and disclosure of mailing addresses.
102.19 Exemptions.
102.20 Additional administrative collection action.

Authority: Subchapter II of chapter 37 of Title 31, United States Code.

§ 102.1 Aggressive agency collection action.

(a) The head of an agency or his designee shall take aggressive action, on a timely basis with effective followup, to collect all claims of the United States for money or property arising out of the activities of, or referred to, his agency in accordance with the standards set forth in this chapter. However, nothing contained in this chapter is intended to require the General Accounting Office or the Department of Justice to duplicate collection actions previously undertaken by any other agency, or to perform collection actions which should have been undertaken by any other agency in accordance with the standards set forth in this chapter.

(b) All agencies are expected to cooperate with one another in their debt collection activities.

§ 102.2 Demand for payment.

(a) Appropriate written demands shall be made upon a debtor of the United States in terms which inform the debtor of the consequences of his failure to cooperate. Three progressively stronger written demands at not more than 30-day intervals will normally be made unless a response to the first or second demand indicates that further demand would be futile and the debtor's response does not require rebuttal. However, in determining the timing of demand letters, agencies should give due regard to the need to act promptly so that ordinarily referrals to the Department of Justice for litigation are made within 6 months of the agency's final determination of the fact and the amount of the debt. Written demand may be waived where necessary to protect the Government's interests (for example, to prevent the statute of limitations, 28 U.S.C. 2415, from expiring).

(b) The initial notification should inform the debtor of (1) the basis for the indebtedness, (2) the applicable requirements for assessing interest, administrative costs, and penalties (§ 102.13), and (3) the date by which payment is to be made, which normally should be not more than 30 days from the date of the initial notification. Apart from this, there is no prescribed format for the demand letters. Agencies should utilize demand letters and demand procedures that will lead to the earliest practicable determination of whether the debt can be resolved administratively or must be referred for legal action. As appropriate to the circumstances, agencies may consider including, either in the initial letter or in subsequent letters, such items as the agency's willingness to discuss alternative methods of payment, policies with respect to use of consumer reporting agencies (§ 102.5) and collection services (§ 102.6), the agency's intentions with respect to referral of the debt to the Department of Justice for litigation and, depending on agency policy and legal requirements, the debtor's entitlement to consideration of waiver.

(c) Agencies should respond promptly to communications from the debtor, and should advise debtors who dispute the debt to furnish available evidence to support their contentions.

(d) If an agency determines, either prior to the initiation of or during the demand cycle, that collection by offset is feasible, then the procedures specified in § 102.3 or § 102.4, as applicable, should be followed.

§ 102.3 Collection by administrative offset.

(a) Collection by administrative offset will be undertaken in accordance with these standards and implementing regulations established by the head of each agency on claims which are liquidated or certain in amount in every instance in which this is feasible and not otherwise prohibited. For purposes of this section, the term "administrative offset" has the meaning provided in 31 U.S.C. 3701(a)(1).

(b) When collecting debts by administrative offset under the authority of 31 U.S.C. 3716, the standards in this paragraph shall apply.

(1) Agencies shall prescribe regulations for the exercise of administrative offset.

(2) At a minimum, agency regulations shall establish procedures for providing a debtor, before the offset is made, with full due process rights prescribed by 31 U.S.C. 3716, including: written notice of the nature and amount of the debt and the agency's intention to collect by offset; opportunity to inspect and copy agency records pertaining to the debt; opportunity to obtain review within the agency of the determination of indebtedness; and opportunity to enter into a written agreement with the agency to repay the debt.

(3) Agencies may not inititate administrative offset to collect a debt under this subsection more than 10 years after the Government's right to collect the debt first accrued, unless facts material to the Government's right to collect the debt were not known and could not reasonably have been known by the official or officials of the Government who were charged with the responsibility to discover and collect such debts.

(4) The procedures set forth in this paragraph do not apply to debts owed by agencies of the United States or by any State or local government, nor do

they apply in any case in which collection of the type of debt involved by administrative offset is explicitly provided for or prohibited by another statute.

(c) When collecting debts by offset under any other statutory authority, agencies shall provide to the debtor such notice and opportunity to be heard as are prescribed in the governing statute or in regulations implementing that statute.

(d) Appropriate use should be made of the cooperative efforts of other agencies in effecting collections by offset, including use of the Army Holdup List.

(e) Collection by offset against a judgment obtained by the debtor against the United States shall be accomplished in accordance with 31 U.S.C. 3728.

(f) Whenever the agency holding the debt is not the agency which is responsible for making the payment against which administrative offset is sought the latter agency shall not initiate the requested administrative offset until it has been provided by the agency holding the debt with an appropriate written certification that the debtor owes a debt (including the amount and basis of the debt and the date on which payment is or was due) and that the provisions of this section have been fully complied with.

§ 102.4 Administrative offset against amounts payable from Civil Service Retirement and Disability Fund, and similar funds.

(a) Unless otherwise prohibited by law, agencies may request that moneys which are due and payable to a debtor from the Civil Service Retirement and Disability Fund, or other similar funds, be administratively offset in reasonable amounts in order to collect debts owed to the United States by that debtor. Such requests shall be made to the appropriate officials of the Office of Personnel Management, or of other administering agencies as appropriate.

(b) When making a request for administrative offset under paragraph (a) of this section, an agency shall include a written certification that:

(1) The debtor owes the United States a debt, including the amount and basis of the debt, and the date on which payment is or was due;

(2) The requesting agency has complied with the applicable statutes, regulations, and procedures of the agency that administers the fund or program against which administrative offset is sought;

(3) The requesting agency has complied with the requirements of § 102.3 of this chapter; and

(4) If the debtor requested waiver or review of the indebtedness, the requesting agency has accorded him a reasonable opportunity for a pre-offset hearing in accordance with this section.

(c) Agencies shall accord the debtor a reasonable opportunity for a pre-offset oral hearing when (1) the debtor requests waiver of the indebtedness and the waiver determination turns on an issue of credibility or veracity, or (2) the debtor requests reconsideration of the debt and the head of the agency or his designee determines that the question of the indebtedness cannot be resolved by review of the documentary evidence, for example, when the validity of the debt turns on an issue of credibility or veracity.

(d) Paragraph (c) of this section does not require pre-offset oral hearings with respect to debt collection systems in which determinations of indebtedness or waiver rarely involve issues of credibility or veracity and where the agency has determined that review of the written record is ordinarily an adequate means to correct prior mistakes. In administering such a system, the agency is not required to sift through all of the requests received in order to accord oral hearings in those few cases which may involve issues of credibility or veracity.

(e) In cases where a pre-offset oral hearing is not required, the agency shall nevertheless accord the debtor a "pre-offset paper hearing," that is, the agency will make its determination on the request for waiver or reconsideration based upon a review of the written record.

(f) This section does not require or authorize the Office of Personnel Management, or other administering agency, to review the merits of the requesting agency's determination with respect to the amount and validity of the debt or the determination to provide or not provide a pre-offset oral hearing.

§ 102.5 Use of consumer reporting agencies.

(a) Agencies shall develop and implement procedures for reporting delinquent debts to consumer reporting agencies. For purposes of this section:

(1) The term "consumer reporting agency" has the meaning provided in 31 U.S.C. 3701(a)(3); and,

(2) A debt is considered delinquent if it has not been paid by the date specified in the agency's initial written notification (§ 102.2), unless satisfactory payment arrangements have been made by that date, or if, at any time thereafter, the debtor fails to satisfy his obligations under a payment agreement with the creditor agency.

(b) In developing procedures under paragraph (a) of this section, agencies must have due regard for compliance with the Privacy Act of 1974, as amended, 5 U.S.C. 552a. However, consumer reporting agencies themselves are not subject to the privacy Act.

(c) Agency procedures developed under paragraph (a) of this section shall be consistent with the requirements of 31 U.S.C. 3711(f).

§ 102.6 Contracting for collection services.

(a) All agencies have authority to contract for collection services, provided that the following conditions are satisfied:

(1) The authority to resolve disputes, compromise claims, terminate collection action, and refer the matter for litigation (§ 105.1) must be retained by the agency;

(2) The contractor shall be subject to the Privacy Act of 1974, as amended, to the extent specified in 5 U.S.C. 552a(m), and to applicable Federal and State laws and regulations pertaining to debt collection practices, such as the Fair Debt Collection Practices Act, 15 U.S.C. 1692; and

(3) The contractor must be required to account strictly for all amounts collected.

(b) If and to the extent provided in advance in appropriation acts, agencies may include, as part of a collection service contract, a provision permitting the contractor to deduct his fee from amounts collected under the contract. The fee may be based on a percentage of the amount collected, consistent with prevailing commercial practice. If an agency has not received advance authority in its appropriation act or other legislation, then, unless otherwise specifically provided by law, it must deposit all amounts recovered under collection service contracts (or by agency employees on behalf of the agency) in the Treasury as miscellaneous receipts, pursuant to 31 U.S.C. 3302, and may pay for collection service contracts only by using available agency appropriations.

§ 102.7 Personal interview with debtor.

Agencies will undertake personal interviews with their debtors when this is feasible, having regard for the amounts involved and the proximity of agency representatives to such debtors.

§ 102.8 Contact with debtor's employing agency.

When a debtor is employed by the Federal Government or is a member of the military establishment or the Coast Guard, and collection by offset cannot be accomplished in accordance with 5

U.S.C. 5514, the employing agency will be contacted for the purpose of arranging with the debtor for payment of the indebtedness by allotment or otherwise in accordance with section 206 of Executive Order 11222 of May 8, 1965, 30 FR 6469.

§ 102.9 Suspension or revocation of license or eligibility.

Agencies seeking the collection of statutory penalties, forfeitures, or debts provided for as an enforcement aid or for compelling compliance will give serious consideration to the suspension or revocation of licenses or other privileges for any inexcusable, prolonged or repeated failure of a debtor to pay such a claim and the debtor will be so advised. Any agency making, guaranteeing, insuring, acquiring, or participating in loans will give serious consideration to suspending or disqualifying any lender, contractor, broker, borrower or other debtor from doing further business with it or engaging in programs sponsored by it if such a debtor fails to pay its debts to the Government within a reasonable time and the debtor will be so advised. The failure of any surety to honor its obligations in accordance with 31 U.S.C. 9305 is to be reported to the Treasury Department at once. Notification that a surety's certificate of authority to do business with the Federal Government has been revoked or forfeited by the Treasury Department will be forwarded by that Department to all interested agencies.

§ 102.10 Liquidation of collateral.

An agency holding security or collateral which may be liquidated and the proceeds applied on debts due it through the exercise of a power of sale in the security instrument or a nonjudicial foreclosure should do so by such procedures if the debtor fails to pay his debt within a reasonable time after demand, unless the cost of disposing of the collateral will be disproportionate to its value or special circumstances require judicial foreclosure. Collection from other sources, including liquidation of security or collateral, is not a prerequisite to requiring payment by a surety or insurance concern unless such action is expressly required by statute or contract.

§ 102.11 Collection in installments.

Claims, with interest in accordance with § 102.13, should be collected in full in one lump sum whenever this is possible. However, if the debtor is financially unable to pay the indebtedness in one lump sum, payment may be accepted in regular installments. The size and frequency of such installment payments should bear a reasonable relation to the size of the debt and the debtor's ability to pay. If possible, the installment payments should be sufficient in size and frequency to liquidate the Government's claim in not more than 3 years. Installment payments of less than $25 per month should be accepted in only the most unusual circumstances. An agency holding an unsecured claim for administrative collection should attempt to obtain an executed confess-judgment note, comparable to the Department of Justice form USA-70a, from a debtor when the total amount of the deferred installments will exceed $750. Such notes may be sought when an unsecured obligation of a lesser amount is involved. Security for deferred payments, other than a confess-judgment note, may be accepted in appropriate cases. An agency may accept installment payments notwithstanding the refusal of a debtor to execute a confess-judgment note or to give other security, at the agency's option.

§ 102.12 Exploration of compromise.

Agencies will attempt to effect compromise (preferably during the course of personal interviews), in accordance with the standards set forth in Part 103 of this chapter in all cases in which it can be ascertained that the debtor's financial ability will not permit payment of the claim in full, or in which the litigative risks or the costs of litigation dictate such action.

§ 102.13 Interest, penalties, and administrative costs.

(a) Except as provided in paragraph (h) of this section, agencies shall assess interest, penalties, and administrative costs on debts being collected under this chapter. Before assessing these charges, an agency must mail or hand-deliver a written notice to the debtor explaining the agency's requirements concerning the charges (§ 102.2).

(b) Interest shall accrue from the date on which notice of the debt and the interest requirements is first mailed or hand-delivered to the debtor (on or after October 25, 1982), using the most current address that is available to the agency. If an agency uses an "advance billing" procedure—that is, if it mails a bill before the debt is actually owned—it can include the required interest notification in the advance billing, but interest may not start to accrue before the debt is actually owed.

(c) The rate of interest assessed shall be the rate of the current value of funds to the United States Treasury (*i.e.*, the Treasury tax and loan account rate), as prescribed and published by the Secretary of the Treasury in the **Federal Register** and the Treasury Fiscal Requirements Manual Bulletins annually or quarterly, in accordance with 31 U.S.C. 3717. An agency may assess a higher rate of interest if it reasonably determines that a higher rate is neccessary to protect the interests of the United States. The rate of interest, as initially assessed, shall remain fixed for the duration of the indebtedness, except that where a debtor has defaulted on a repayment agreement and seeks to enter into a new agreement, the agency may set a new interest rate which reflects the current value of funds to the Treasury at the time the new agreement is executed. Interest should not be assessed on interest, penalties, or administrative costs required by this section. However, if the debtor defaults on a previous repayment agreement, charges which accrued but were not collected under the defaulted agreement shall be added to the principal to be paid under a new repayment agreement.

(d) An agency shall assess against a debtor charges to cover administrative costs incurred as a result of a delinquent debt—that is, the additional costs incurred in processing and handling the debt because it became delinquent. For purposes of this paragraph, the term "delinquent" has the same meaning as provided in § 102.5(a)(2). Calculation of administrative costs should be based upon actual costs incurred or upon cost analyses establishing an average of actual additional costs incurred by the agency in processing and handling claims against other debtors in similar stages of delinquency.

(e) An agency shall assess a penalty charge, not to exceed 6 percent a year, on any portion of a debt that is delinquent, as defined in § 102.5(a)(2), for more than 90 days.

(f) When a debt is paid in partial or installment payments, amounts received by the agency shall be applied first to outstanding penalty and administrative cost charges, second to accrued interest, and third to outstanding principal.

(g) An agency shall waive the collection of interest if the debt is paid within 30 days after the date on which interest began to accrue. An agency may extend this 30-day period, on a case-by-case basis, if it reasonably determines that such action is appropriate. Also, an agency may waive the collection of interest, penalties, and administrative costs assessed under this section under the criteria specified in Part 103 of this chapter relating to the compromise of

claims (without regard to the amount of the debt), or if the agency determines that collection of these charges would be against equity and good conscience or not in the best interests of the United States. Waiver under the first sentence of this paragraph is mandatory. Under the second and third sentences, it may be exercised only in accordance with regulations issued by the agency identifying the standards and appropriate circumstances for waiver.

(h) Interest, penalty, and administrative cost charges under this section shall not apply:

(1) To debts owed by any agency of the United States or of any State or local government;

(2) To debts arising under contracts which were executed prior to, and were in effect on, October 25, 1982; and

(3) To debts where an applicable statue, a regulation required by statute, a loan agreement, or a contract, either prohibits such charges or explicitly fixes the charges that apply to the debts involved.

§ 102.14 Analysis of costs.

Agency collection procedures should provide for periodic comparison of costs incurred and amounts collected. Data on costs and corresponding recovery rates for debts of different types and in various dollar ranges should be used to compare the cost effectiveness of alternative collection techniques, establish guidelines with respect to the points at which costs of further collection efforts are likely to exceed recoveries, assist in evaluating offers in compromise, and establish minimum debt amounts below which collection efforts need not be taken. Cost and recovery data should also be useful in justifying adequate resources for an effective collection program, and in determining appropriate charges for administrative costs under § 102.13(d)

§ 102.15 Documentation of administratvie collection action.

All administrative collection action shall be documented and the bases for compromise, or for termination or suspension of collection action, should be set out in detail. Such documentation shall be retained in the appropriate claims file.

§ 102.16 Automation.

Agencies should automate their debt collection operations to the extent it is cost effective and feasible.

§ 102.17 Prevention of overpayments, delinquencies, and defaults.

Agencies should establish procedures to identify the causes of overpayments, delinquencies, and defaults and the corrective actions needed.

§ 102.18 Use and disclosure of mailing addresses.

(a) When attempting to locate a debtor in order to collect or compromise a debt under this chapter, and agency may send a written request to the Secretary of the Treasury or his designee in order to obtain a debtor's mailing address from the records of the Internal Revenue Service.

(b) An agency may disclose a mailing address obtained under subsection (a) of this section to other agents, including collection service contractors, in order to facilitate the collection or compromise of debts under this chapter, except that a mailing address may be disclosed to a consumer reporting agency only for the limited purpose of obtaining a commercial credit report on the particular taxpayer.

(c) Each agency shall ensure, by appropriate regulations and contract administration, that the agency and its agents, including consumer reporting agencies and collection service contractors, comply with the provisions of 26 U.S.C. 6103(p)(4) and applicable regulations of the Internal Revenue Service.

§ 102.19 Exemptions.

(a) The preceding sections of this Part, to the extent they reflect authority newly granted by Pub. L. 97-365, such as administrative offset (§ 102.3), use of consumer reporting agencies (§ 102.5), contracting for collection services (§ 102.6), and interest, penalties, and administrative costs (§ 102.13), do not apply to claims or debts arising under the Internal Revenue Code of 1954 as amended (26 U.S.C. 1 *et seq.*), the Social Security Act (42 U.S.C. 301 *et seq.*), or the tariff laws of the United States.

(b) This section should not be construed as prohibiting use of these authorities or requirements when collecting debts owed by persons employed by agencies administering the laws cited in the preceding paragraph unless the debt "arose under" those laws.

§ 102.20 Additional administrative collection action.

Nothing contained in this chapter is intended to preclude the utilization of any other administrative remedy which may be available.

PART 103—STANDARDS FOR THE COMPROMISE OF CLAIMS

Sec.

103.1 Scope and application.
103.2 Inability to pay.
103.3 Litigative probabilities.
103.4 Cost of collecting claim.
103.5 Enforcement policy.
103.6 Joint and several liability.
103.7 Settlement for a combination of reasons.
103.8 Further review of compromise offers.
103.9 Restrictions.

Authority: 31 U.S.C. 3711.

§ 103.1 Scope and application.

The standards set fourth in this part apply to the compromise of claims, pursuant to 31 U.S.C. 3711. The head of an agency or his designee may exercise such compromise authority with respect to claims for money or property arising out of the activities of his agency where the difference between the amount offered in settlement by the debtor and the amount owed to the Government, exclusive of interest, penalties, and administrative costs, does not exceed $20,000, prior to the referral of such claims to the General Accounting Office or to the Department of Justice for litigation. The Comptroller General or his designee may exercise such compromise authority with respect to claims referred to the General Accounting Office prior to their further referral for litigation. Only the Comptroller General or his designee may effect the compromise of a claim that arises out of an exception made by the General Accounting Office in the account of an accountable officer, including a claim against the payee, prior to its referral by that Office for litigation.

§ 103.2 Inability to pay.

(a) A claim may be compromised pursuant to this part if the Government cannot collect the full amount because of (1) the debtor's inability to pay the full amount within a reasonable time, or (2) the refusal of the debtor to pay the claim in full and the Government's inability to enforce collection in full within a reasonable time by enforced collection proceedings.

(b) In determining the debtor's inability to pay, the following factors, among others, may be considered:

(1) Age and health of the debtor;

(2) Present and potential income;

(3) Inheritance prospects;

(4) The possibility that assets have been concealed or improperly transferred by the debtor; and

(5) The availability of assets or income which may be realized upon by enforced collection proceedings.

(c) The agency will give consideration to the applicable exemptions available to the debtor under State and Federal law in determining the Government's ability to enforce collection. Uncertainty

as to the price which collateral or other property will bring at forced sale may properly be considered in determining the Government's ability to enforce collection. A compromise effected under this section should be for an amount which bears a reasonable relation to the amount which can be recovered by enforced collection procedures, having regard for the exemptions available to the debtor and the time which collection will take.

(d) Compromises payable in installments are to be discouraged. However, if payment of a compromise by installments is necessary, an agreement for the reinstatement of the prior indebtedness less sums paid thereon and acceleration of the balance due upon default in the payment of any installment should be obtained, together with security in the manner set forth in § 102.11 of this chapter, in every case in which this is possible.

(e) If the agency's files do not contain reasonably up-to-date credit information as a basis for assessing a compromise proposal, such information may be obtained from the individual debtor by obtaining a statement executed under penalty of perjury showing the debtor's assets and liabilities, income and expenses. Forms such as Department of Justice Form DJ 35 may be used for this purpose. Similar data may be obtained from corporate debtors by resort to balance sheets and such additional data as seems required.

§103.3 Litigative probabilities.

A claim may be compromised pursuant to this Part if there is a real doubt concerning the Government's ability to prove its case in court for the full amount claimed either because of the legal issues involved or a *bona fide* dispute as to the facts. The amount accepted in compromise in such cases should fairly reflect the probability of prevailing on the legal question involved, the probabilities with respect to full or partial recovery of a judgment, paying due regard to the availability of witnesses and other evidentiary support for the Government claim, and related pragmatic considerations. Proportionate weight should be given to the probable amount of court costs which may be assessed against the Government if it is unsuccessful in litigation, with regard to the litigative risks involved. See 28 U.S.C. 2412.

§103.4 Cost of collecting claim.

A claim may be compromised pursuant to this Part if the cost of collecting the claim does not justify the enforced collection of the full amount. The amount accepted in compromise in such cases may reflect an appropriate discount for the administrative and litigative costs of collection, paying heed to the the time which it will take to effect collection. Costs of collecting may be a substantial factor in the settlement of small claims. The cost of collecting claims normally will not carry great weight in the settlement of large claims.

§103.5 Enforcement policy.

Statutory penalties, forfeitures, or debts established as an aid to enforcement and to compel compliance may be compromised pursuant to this Part if the agency's enforcement policy in terms of deterrence and securing compliance, both present and future, will be adequately served by acceptance of the sum to be agreed upon. Mere accidental or technical violations may be dealt with less severely than willful and substantial violations.

§103.6 Joint and several liability.

When two or more debtors are jointly and severally liable, collection action will not be withheld against one such debtor until the other or others pay their proportionate shares. The agency should not attempt to allocate the burden of paying such claims as between the debtors but should proceed to liquidate the indebtedness as quickly as possible. Care should be taken that compromise with one such debtor does not release the agency's claim against the remaining debtors. The amount of a compromise with one such debtor shall not be considered a precedent or as morally binding in determining the amount which will be required from other debtors jointly and severally liable on the claim.

§103.7 Settlement for a combination of reasons.

A claim may be compromised for one or for more than one of the reasons authorized in this part.

§103.8 Further review of compromise offers.

If an agency holds a debtor's firm written offer of compromise which is substantial in amount and the agency is uncertain as to whether the offer should be accepted, it may refer the offer, the supporting data, and particulars concerning the claim to the General Accounting Office or to the Department of Justice. The General Accounting Office or the Department of Justice may act upon such an offer or return it to the agency with instructions or advice.

§103.9 Restrictions.

Neither a percentage of a debtor's profits nor stock in a debtor corporation will be accepted in compromise of a claim. In negotiating a compromise with a business concern, consideration should be given to requiring a waiver of the tax-loss-carry-forward and tax-loss-carry-back rights of the debtor.

PART 104—STANDARDS FOR SUSPENDING OR TERMINATING COLLECTION ACTION

Sec.
104.1 Scope and application.
104.2 Suspension of collection activity.
104.3 Termination of collection activity.
104.4 Transfer of claims.

Authority: 31 U.S.C. 3711(a)(3)

§ 104.1 Scope and application.

The standards set forth in this part apply to the suspension or termination of collection action pursuant to 31 U.S.C. 3711(a)(3) on claims which do not exceed $20,000, exclusive of interest, penalties, and administrative costs, after deducting the amount of partial payments or collections, if any. The head of an agency or his designee may suspend or terminate collection action under this part with respect to claims for money or property arising out of activities of his agency prior to the referral of such claims to the General Accounting Office or to the Department of Justice for litigation. The Comptroller General or his designee may exercise such authority with respect to claims referred to the General Accounting Office prior to their further referral for litigation.

§ 104.2 Suspension of collection activity.

(a) Collection action may be suspended temporarily on a claim when the debtor cannot be located after diligent effort and there is reason to believe that future collection action may be sufficiently productive to justify periodic review and action on the claim, having consideration for its size and the amount which may be realized thereon. The following sources may be of assistance in locating missing debtors: Telephone directories; city directories; postmasters; drivers' license records; automobile title and license records; state and local governmental agencies; the Internal Revenue Service (§ 102.18 of this chapter); other Federal agencies; employers, relatives, friends; credit agency skip locate reports, and credit bureaus. Suspension as to a particular debtor should not defer the early liquidation of security for the debt. Every reasonable effort should be made to locate missing debtors sufficiently in advance of the bar of the applicable statute of limitations, such as 28 U.S.C. 2415, to permit the timely filing of suit if such action is warranted. If the missing

debtor has signed a confess-judgment note and is in default, referral of the note for the entry of judgment should not be delayed because of his missing status.

(b) Collection action may also be suspended temporarily on a claim when the debtor owns no substantial equity in reality and is unable to make payments on the Government's claim or effect a compromise thereof at the time but his future prospects justify retention of the claim for periodic review and action, and:

(1) The applicable statute of limitations has been tolled or started running anew, or

(2) Future collection can be effected by offset, notwithstanding the statute of limitations, with due regard to the 10-year limitation prescribed by 31 U.S.C. 3716(c)(1), or

(3) The debtor agrees to pay interest on the amount of the debt on which collection action has been temporarily suspended at the time he has agreed to pay the debt, and such temporary suspension is likely to enhance the debtor's ability to pay the debt in full, with interest, at a later time.

(c) Collection action may also be suspended pending agency action on requests for administrative review or waiver based upon appropriate consideration by the agency head or his designee, on a case-by-case basis, as to whether:

(1) There is a reasonable possibility that waiver will be granted, or that the debt (in whole or in part) will be found not owing from the debtor;

(2) The Government's interests would be protected, if suspension were granted, by reasonable assurance that the debt could be recovered if the debtor does not prevail;

(3) Collection of the debt will cause undue hardship; and

(4) The applicable statutes and regulations would not authorize refund by the agency to the debtor of amounts collected, should the agency act favorably on the debtor's request.

§ 104.3 Termination of collection activity.

The head of an agency or his designee may terminate collection activity and consider the agency's file on the claim closed under the following standards:

(a) *Inability to collect any substantial amount.* Collection action may be terminated on a claim when it becomes clear that the Government cannot collect or enforce collection of any significant sum from the debtor, having due regard for the judicial remedies available to the Government, the debtor's future financial prospects, and the exemptions available to the debtor under State and Federal law. In determining the debtor's inability to pay, the following factors, among others, may be considered: Age and health of the debtor; present and potential income; inheritance prospects; the possibility that assets have been concealed or improperly transferred by the debtor; the availability of assets or income which may be realized by enforced collection proceedings.

(b) *Inability to locate debtor.* Collection action may be terminated on a claim when the debtor cannot be located, there is no security remaining to be liquidated, the applicable statute of limitations has run, and the prospects of collecting by offset, notwithstanding the bar of the statute of limitations, is too remote to justify retention of the claim.

(c) *Cost will exceed recovery.* Collection action may be terminated on a claim when it is likely that the cost of further collection action will exceed the amount recoverable thereby.

(d) *Claim legally without merit.* Collection action should be terminated on a claim whenever it is determined that the claim is legally without merit.

(e) *Claim cannot be substantiated by evidence.* Collection action should be terminated when it is determined that the evidence necessary to prove the claim cannot be produced or the necessary witnesses are unavailable and efforts to induce voluntary payment are unavailing.

§ 104.4 Transfer of claims.

When an agency has doubt as to whether collection action should be suspended or terminated on a claim, it may refer the claim to the General Accounting Office for advice. When a significant enforcement policy is involved in reducing a statutory penalty or forfeiture to judgment, or recovery of a judgment is a prerequisite to the imposition of administrative sanctions, such as the suspension or revocation of a license or the privilege of participating in a Government sponsored program, an agency may refer such a claim for litigation even though termination of collection activity might otherwise be given consideration under § 104.3(a) or (c). Claims on which an agency holds a judgment by assignment or otherwise will be referred to the Department of Justice for further action if renewal of the judgment lien or enforced collection proceedings are justified under the criteria discussed in this Part, unless the agency concerned has statutory authority for handling its own litigation.

PART 105—REFERRALS TO DEPARTMENT OF JUSTICE OR GAO

Sec.

105.1 Prompt referral.
105.2 Current address of debtor.
105.3 Credit data.
105.4 Report of prior collection actions.
105.5 Preservation of evidence.
105.6 Minimum amount of referrals to the Department of Justice.
105.7 Preliminary referrals to GAO.

Authority: 31 U.S.C. 3711.

§ 105.1 Prompt referral.

(a) Except as provided in paragraphs (b) and (c) of this section, claims on which aggressive collection action has been taken in accordance with Part 102 of this chapter and which cannot be compromised, or on which collection action cannot be suspended or terminated, in accordance with Parts 103 and 104 of this chapter, shall be promptly referred to the Department of Justice for litigation. Referrals should be made as early as possible, consistent with aggressive agency collection action and the observance of the regulations contained in this chapter, and in any event, well within the period for bringing a timely suit against the debtor. Ordinarily, referrals should be made within 6 months of the agency's final determination of the fact and the amount of the debt.

(b) Claims arising from audit exceptions taken by the General Accounting Office to payments made by agencies must be referred to the General Accounting Office for review and approval, prior to referral to the Department of Justice for litigation, in accordance with 31 U.S.C. 3702, unless the agency concerned has been granted an exception by the General Accounting Office.

(c) When the merits of the Government's claim, the amount owed on the claim, or the propriety of acceptance of a proposed compromise, suspension, or termination are in doubt, the agency concerned should refer the matter to the General Accounting Office for resolution and instructions prior to proceeding with collection action and/or referral to the Department of Justice for litigation.

(d) The Claims Collection Litigation Report (CCLR), which was officially implemented by the General Accounting Office on January 20, 1983, shall be used to refer all administratively uncollectible claims either to the Department of Justice for litigation and enforced collection or to the General Accounting Office.

§ 105.2 Current address of debtor.

Referrals to the Department of Justice for litigation will be accompanied by the current address of the debtor or the name and address of the agent for a corporation upon whom service may be made. Reasonable and appropriate steps will be taken to locate missing parties in all cases. Referrals to the Department of Justice for the institution of foreclosure or other proceedings, in which the current address of any party is unknown, will be accompanied by a listing of the prior known addresses of such a party and a statement of the steps taken to locate him.

§ 105.3 Credit data.

(a) Claims referred to the Department of Justice for litigation will be accompanied by reasonably current credit data indicating that there is a reasonable prospect of effecting enforced collections from the debtor, having due regard for the exemptions available to the debtor under State and Federal law and the judicial remedies available to the Government.

(b) Such credit data may take the form of: (1) A commercial credit report, (2) an agency investigative report showing the debtor's assets and liabilities and his income and expenses, (3) the individual debtor's own financial statement executed under penalty of perjury reflecting his assets and liabilities and his income and expenses, or (4) an audited balance sheet of a corporate debtor.

(c) Such credit data may be omitted if: (1) A surety bond is available in an amount sufficient to satisfy the claim in full, (2) the forced sale value of the security available for application to the Government's claim is sufficient to satisfy its claim in full, (3) the referring agency wishes to liquidate loan collateral through judicial foreclosure but does not desire a deficiency judgment, (4) the debtor is in bankruptcy or receivership, or (5) the debtor's liability to the Government is fully covered by insurance, in which case the agency will furnish such information as it can develop concerning the identity and address of the insurer and the type and amount of insurance coverage.

§ 105.4 Report of prior collection actions.

A checklist or brief summary of the actions previously taken to collect or compromise a claim will be forwarded with the claim upon its referral to the Department of Justice. If any of the administrative collection actions enumerated in Part 102 of this Chapter have been omitted, the reason for their omission must be given with the referral. The Department of Justice may return or retain claims at it option when there is insufficient justification for th omission of one or more of the administrative collection actions enumerated in Part 102 of this chapter.

§ 105.5 Preservation of evidence.

Care will be taken to preserve all files, records, and exhibits on claims referred or to be referred to the Department of Justice for litigation.

§ 105.6 Minimum amount of referrals to the Department of Justice.

Agencies will not refer claims of less than $600, exclusive of interest, penalties, and administrative costs, for litigation unless: (a) Referral is important to a significant enforcement policy or (b) the debtor has not only the clear ability to pay the claim but the Government can effectively enforce payment, having due regard for the exemptions available to the debtor under State or Federal law and the judicial remedies available to the Government.

§ 105.7 Preliminary referrals to GAO.

Preliminary referrals of claims to the General Accounting Office, as required by § 105.1 (b) and (c), will be in accordance with instructions, including monetary limitations, contained in the General Accounting Office Policy and Procedures Manual for the Guidance of Federal Agencies, and the provisions of § 105.2 through § 105.5.

Dated: May 19, 1983.

Charles A. Bowsher,

Comptroller General of the United States.

Dated: May 20, 1983.

William French Smith,

Attorney General of the United States.

[FR Doc. 83-13977 Filed 5-23-83; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272 and 273

Amdt. 251

Food Stamp Program, Work Registration, Job Search, and Voluntary Quit

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would change the Food Stamp Program's work registration, job search and voluntary quit provisions in accordance with the 1981 Food Stamp Act Amendments and the Food Stamp Act Amendments of 1982. As required by the 1981 Food Stamp Act Amendments, the rule proposes disqualifying participating households whose primary wage earners voluntarily quit their jobs, denying food stamp participation to households containing a member who failed to comply with comparable work registration requirements in the Work Incentive Program or unemployment compensation programs, as well as other changes. As required by the Food Stamp Act Amendments of 1982, the rule lengthens the disqualification period for noncompliance from 60 to 90 days; allows State agencies an option to apply job search requirements at the time of application; and requires the second parent in a household where there is another able-bodied parent subject to work requiremtns to register for work when the youngest child reaches six. The rule also proposes changes in the Program intended to simplify the administration of the work registration and job search procedures and to allow State agencies more flexibility in administering these procedures. In addition, the rule proposes that State welfare agencies advise and monitor work registrants in their search for jobs. This change is intended to give State agencies more flexibility and control in administering the work registration and job search requirements of the Food Stamp Act.

DATES: Comments on the proposed rulemaking must be received on or before July 25, 1983, to be assured of consideration.

ADDRESS: Comments should be submitted to Thomas O'Connor, Supervisor, Policy and Regulations Section, Program Standards Branch, Program Development Division, Family Nutrition Programs, Food and Nutrition Service, USDA, Alexandria, Virginia 22302. All written comments will be open to public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday), at 3101 Park Center Drive, Alexandria, Virginia, Room 708.

FOR FURTHER INFORMATION CONTACT: Questions regarding this proposed rulemaking should be directed to Mr. O'Connor at the above address or by telephone at (703) 756-3429.

SUPPLEMENTARY INFORMATION:

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the reporting or recordkeeping provisions contained in this proposed rule have been approved by the Office of Management and Budget. (OMB approval numbers: 0584-0246.)

Classification

This rule has been reviewed under Executive Order No. 12291 and Secretary's Memorandum No. 1512-1. This action will not result in an annual effect on the economy of $100 million or more or a major increase in costs or prices for consumers, individuals, Federal, State or local governments, or geographical regions. The proposed action will result in an increase in costs to State agencies due to the requirement that they monitor work registrants in their search for jobs. The administration of job search activities was previously done by the Dpartment of Labor (DOL). We estimate that under DOL administration the cost of operating job search in Fiscal Year 1982 would have been $75 million. As this proposed action includes only the requirements and procedures for monitoring job search and as State agencies will assume 50% of the costs, the transfer of this function to State agencies will not result in a major cost shift to State agencies. The proposed action would reduce federal costs by temporarily disqualifying households who fail to comply with particular work requirements, and by limiting the exemptions from work registration. Additionally, this rule will not have significant effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, the Department has determined that this rule is not major.

This action has also been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, 94 Stat. 1164, September 19, 1980). Robert Leard, Acting Administrator of the Food and Nutrition Service, has certified that this rule does not have a significant impact on a substantial number of small entities. This action would disqualify food stamp households who fail to comply with specific additional work requirements and would amend certain work registration procedures and exemptions. State and local welfare agencies will be affected to the extent that they administer the Program. Those most affected will be potential and current participants who are or would be required to register and search for work as a condition of food stamp eligibility.

Work requirements

This rule proposes significant modifications in the area of work registration and job search. To place these changes in context, it is helpful to review the Food Stamp Program's work requirements. The work requirements consist of two separate components. The first, work registration/job search, encompasses the following requirements: (1) Registering for work at time of application and once every twelve months; (2) reporting to and cooperating with the State agency administering the work registration requirements; (3) conducting job search, i.e., contacting a designated number of employers and attending periodic follow-up reviews; (4) accepting and continuing suitable employment; and (5) not voluntarily quitting a job without good cause. These requirements must be complied with by Program applicants and participants not otherwise exempt in order to maintain eligibility for the Program and are the subject of this proposed rule.

The second component of the Food Stamp Program's work requirements is workfare, an optional program for State agencies and political subdivisions which actually places work registrants in assigned jobs. Details of workfare can be found in the **Federal Register** of October 8, 1982.

The Department of Health and Human Services has similar work requirements for the Aid to Families with Dependent Children Program (AFDC). Work registration in the Food Stamp Program is paralleled in AFDC by the Work Incentive Program (WIN). Win participation satisfies the Food Stamp Program work registration requirement. Workfare is paralleled in AFDC by the Community Work Experience Program (CWEP).

State agency operated work registration and job search

Section 6(d) of the Food Stamp Act of 1977, as amended, requires work registrants to "fulfill whatever reasonable reporting and inquiry about employment requirements as are prescribed by the Secretary." In light of State Employment Service Agencies' (SESA's) expertise in interviewing and placing job applicants, the Department had contracted with DOL to have SESA's assist work registrants in carrying out their job search responsibilities. The Department has assumed the full cost of funding SESA administered job search activities. In addition, section 6 required that to the extent SESA's are involved in these activities, the Department should issue regulations on work registration/job search jointly with DOL. Section 160 of the 1982 Food Stamp Amendments (Pub. L. 97-253, 96 Stat. 763, September 28, 1982) removes the requirement for joint issuance of regulations on work registration by the Secretary of Agriculture and the Secretary of Labor. This section also eliminates the requirement that food stamp work registration rules be patterned after those issued for WIN. Given these statutory changes, the Department is proposing to change the way the work registration requirements are administered. The responsibility for carrying out job search activities would continue to be that of food stamp work registrants in conducting these activities. The Department believes this change will be more successful and cost effective in producing jobs for work registrants, and will give State agencies more flexibility and an opportunity to take greater control in registering work eligibles and advising them in finding employment. The deletion of the requirement to issue regulations jointly with DOL facilitates the Department's plans to allow State flexibility in administering work registration and monitoring job search activities, potentially through agencies other than Labor Department supervised SESA's.

The deletion of the requirement that work registration rules be patterned after WIN rules does not alter the need to make food stamp work registration requirements as consistent as possible with WIN requirements. Indeed, consistency with WIN will be increasingly important as certain food stamp work registration/job search functions are assumed by State agencies which are now handling similar functions for their public assistance containing WIN registrants.

This proposed rule would have State agencies advise and monitor work registrants in their job search. The proposal would adopt many of the procedures currently used by the SESA's to administer job search. To understand the rationale for these procedures, it may thus be helpful to refer to the Department's rules on job search published in the January 16, 1981 **Federal Register** (46 FR 4622).

Work registration

Record of registration. Because State agencies would no longer be required to forward work registration forms containing information about registrants to the SESA's the Department believes it is no longer necessary to mandate use of a specific registration form. State agencies should be able to record and keep track of employment related information about registrants by annotating application forms or work sheets, or by utilizing a form of their own design. The applicant may complete work registration records for

other household members. However, the initial record of registration must contain the applicant's signature stating that he or she agrees to explain to the registered members of the household their work requirements and the consequences of failure to comply. The Department believes that the signature of the applicant signifies an acknowleged awareness of the work responsibilities. Because the Food Stamp Act requires a 12 month work registration period the proposal specifies that household members would be registered when an identifiable, signed, work registration form is submitted to the State agency or when the signed registration of these members is otherwise annotated or recorded.

Reregistration for employment. Current rules at 273.7(a) require households who are not exempt by § 273.7(b)(1) to register for employment at the time of application and once every six months after initial registration, as a condition of eligibility. Section 1310 of the 1981 Food Stamp Amendments (Pub. L 97-98, 95 Stat. 1282, Dec. 22, 1981) changes this procedure to require reregistration once every twelve months after initial registration. The proposed rule would implement this legislative provision.

Exemptions from work registration. Current rules at § 273.7(b)(1)(iv) exempt from the work registration requirement a parent or other household member who is responsible for the care of a dependent child under twelve or an incapacitated person. Section 1311 of the 1981 Food Stamp Amendments changes current procedures to exempt only those responsible for the care of either a child under six or an incapacitated person. Current rules at §§ 273-7(b)(1)(v) and 273.22(e)(1) also exempt from work registration and workfare a second parent or caretaker of a child under 18 in a household where another parent is registered for work. Section 159 of the Food Stamp Act Amendments of 1982 repeals this latter exemption for work registrants by requiring a second parent to begin seeking employment when the youngest child becomes six. The legislation did not eliminate this exemption for households subject to workfare requirements. The proposed rule would implement that above legislative changes with regard to work registration and would make the necessary conforming changes to the workfare provision at 273.22(e)(1)(iii) of current regulations.

Job Search

Job search requirements. The proposed rules would require State agencies to inform work registrants that they must perform job search activities continuously instead of in one 8 week job search period as currently required. This change reflects the Department's belief that a registrant's obligation to search for work should not end after a short, concentrated, but unsuccessful job search. The proposed rule would require registrants to contact a number of potential employers each month as determined by the State agency. The number of required contacts should be linked to the immediate employability of the individual and could vary from month to month. State agencies would thus be given the flexibility to intensify the number of required job contacts in the period immediately following registration and, thus, increase the registrant's ability and chances to find employment as quickly as possible. The State agency would have the flexibility to intensify a registrant's job search activities in periods of favorable economic conditions or reduce a registrant's job search activities in periods of unfavorable economic conditions. The Department is anxious to receive comments on this provision.

Current rules require work registrants to be placed in one of three job search categories based on their capabilities and characteristics. The Department is proposing to delete this requirement, and instead, to allow State agencies to establish the guidelines they wish to use in this area. The State agency would thus make a decision on how feasible it is to require intensive job search efforts on the part of each work registrant. The determination should be made on such criteria as distance the registrant lives from the place of employment, the capabilities of the participant, including age and physical condition, and the job market situation in the area. The State agency would thus be able to set up it's own system of categorization on job readiness if it so desires.

State agencies would be given the option of determining how many job contacts a registrant must make in a month based on information collected either at the time of application or at an assessment interview scheduled within 2 weeks of the household's being certified. If the State agency chooses not to schedule assessment interviews, decisions on how many job contacts are required would be made when the household is certified. To preclude unnecessary trips to the food stamp office by exempt participants, State agencies that use a system of assessment interviews would determine exempt status before scheduling an assessment interview. Registrants who are not determined exempt would be informed either at the application interview or by letter of the date of their assessment interview, that attending the interview is a condition for participation in the Food Stamp Program, and that failure to attend the interview without good cause or without first contacting the State agency will cause the State agency to take steps to disqualify the household. The Department believes it is the work registrant's responsibility to contact the State agency if he or she is unable to attend the scheduled interview. The proposed rule thus provides that if the registrant fails to attend the interview without good cause or has not contacted the State agency in advance to reschedule it, the household would be sent a notice of adverse action and would be disqualified at the end of the advance notice period unless the household contacted the State agency prior to this time either to reschedule the interview or to request a fair hearing. The State agency would also enclose along with the notice of adverse action a written explanation of the household's obligation to contact the State agency prior to the expiration of the advance notice period to reschedule the missed interview and of the consequences of failing to do so. The proposed rule would allow for this cure of a missed interview once—if the work registrant missed the second interview, the State agency would send the household a notice of adverse action informing them of the pending disqualification.

The proposal would require State agencies to notify work registrants in writing of their job search responsibilities, procedures to be followed, manner in which job contacts should be reported, and consequences of failure to comply. This notice would be provided at the time of the assessment interview or when the number of assigned job contacts is determined.

The State agency would also be given the option of providing or contracting with State or private employment agencies to provide work registrants with such services as referrals to employment, training opportunities and/or Job Finding Clubs. Job Finding Club activities include instruction on how to prepare for interviews, where to look for jobs and also include actual interviews with employers. Referrals to such services would be considered job contacts for food stamp purposes. The number of required independent job contacts plus State agency referrals could not exceed the numerical limits set forth above.

Follow-up and reassessment activities. The proposal would allow State agencies to schedule periodic

follow-up interviews for such purposes as reviewing job contacts made by the work registrant, reviewing job listings for potential referrals, and assisting the work registrant in establishing his or her future plans for seeking employment. The follow-up interviews could also be used to reassess the number of monthly job contacts required for each work registrant. The proposal does not restrict the frequency with which follow-up interviews are scheduled. It gives State agencies the flexibility to take into account the likelihood of a registrant's job readiness having changed.

Job contact. The proposed rule does not change the definition of job contact. To make a valid job contact, the work registrant must present himself or herself as available for work to a prospective employer who ordinarily employs persons in areas of work that meet the suitability requirements discussed in § 273.7(i) and for which the registrant is reasonably qualified.

Reporting job contacts. The proposal would require work registrants to report their job contacts in writing in a manner prescribed by the State agency. State agencies would be responsible for informing work registrants about the manner in which job contacts should be reported. State agencies would be required to give work registrants a reasonable period of time following the end of each month in which to submit the written report. This reporting requirement is intended to give State agencies flexibility to coordinate the reporting of job contacts with the household's monthly reporting obligations under the Monthly Reporting and Retrospective Budgeting (MRRB) system which State agencies will be implementing in the near future.

Evaluating job contacts. The proposed rule would require State agencies to evaluate work registrants' reported job contacts to determine whether the required number of contacts were completed. Registrants who had good cause for failing to complete the required number of contacts would be excused from completing these contacts. Work registrants who failed to complete the required number of contacts without good cause would not be permitted to make up incomplete contacts. Work registrants would be allowed to make up contacts only if the State agency failed to accept, for reasons such as suitability or manner of contact, job contacts reported by the work registrants. In this case, the State agency would send the registrants a letter explaining which job contacts were disallowed and why the contacts were not accepted. The letter would also inform the registrants that they would be allowed two weeks from the receipt of the letter to make up the disallowed contacts and to report these contacts to the State agency. The State agency would determine how the registrants would report the made up contacts.

Optional job search at time of application. Section 157 of the Food Stamp Act Amendments of 1982 permits State agencies to apply job search requirements at the time households apply for participation in the Program. Previously, the law required able bodied food stamp recipients to engage in job searches. The proposed rules reflect this change and allow State agencies this option. The Department wants to stress that if a State agency opts to require job search at time of application, this requirement must not be allowed to delay the application processing. The Department continues to expect all applicatios to be processed as expeditiously as possible. Each State agency may set up its own system for applicants' reporting of job contacts. Failure to comply with this requirement is discussed later in this preamble.

Contracting with employment agencies. The proposed rule would allow State agencies to contract with public or private employment agencies to administer the job search requirements of this section. State agencies which choose to contract with employment agencies would be responsible for ensuring that the work registration and job search procedures are administered in accordance with food stamp regulations.

Additional Work Requirements

Current rules at § 273.7(e) require work registrants to accept and continue suitable employment to which they are referred by the State Employment Service Agency (SESA). Failure to comply results in disqualification of the registrants' households. Because the proposed job search rules would require many registrants to make their own contacts with employers in addition to following up on any State agency referrals, the proposal makes clear that registrants would be required to accept and continue suitable employment regardless of whether they were referred to the employer or found the job on their own.

Noncompliance/Sanctions

We are retaining current rules at § 273.7(g) which provide that if a household member fails to comply with work registration requirements, including the job search requirements, then the entire household shall be ineligible to participate until the member complies or for 60 days, whichever occurs earlier. In response to 1982 legislation changing the 60 day disqualification period for voluntary quit to 90 days, the Department is proposing several changes in the regulations on disqualification.

The proposed rule applies the 90 day disqualification period to all work registration requirements. While Congress has never legislated the length of the general work registration penalty, the Department has always, in the interest of consistency, applied the same disqualification penalty to all components of the work registration requirements. The proposed rule reflects that premise.

Current rules also specify that the disqualification period shall begin with the first month following the expiration of the adverse notice period, unless a fair hearing is requested. The proposed rules retain this provision with three modifications. One modification is necessitated by Section 157 of the Food Stamp Act Amendments of 1982 which permits State agencies to apply job search requirements at time of application. If a State agency opts to require job search at application and an applicant does not comply, then any failure to comply with this requirement would result in a disqualification of 90 days, calculated from the day of application in those instances where noncompliance is determined before certification. If noncompliance is discovered after certification the disqualification period would run 90 days or 3 months from the first of the month after all normal procedures for taking adverse action have been taken. If the 90 day period would cover months of more or less than 30 days each, the 90 day disqualification period would be 3 calendar months for participating households to coincide with the current monthly issuance procedure.

The second modification in the proposed rule allows a delay of the beginning of the disqualification period not only if a fair hearing is requested but also if, in the case of a missed interview, a rescheduled interview is requested. This allows the household one chance to correct a missed interview.

The third change is language in the proposed rule which specifies that in the event a household leaves the Program before the sanction can be levied, the sanction shall not be imposed until the household returns to the Program. Current rules permit the imposition and continuation of a sanction even when the household leaves the Program. This change is consistent with the optional workfare rules published on October 6,

1982, in the Federal Register at 47 FR 44692. The disqualification process is discussed in greater detail later in this preamble in the section on voluntary quit.

Ending Work Registration/Job Search Noncompliance Disqualification

Current rules at § 273.7(h) provide that eligibility may be reestablished during a disqualification period and the household shall, if otherwise eligible, be permitted to resume participation if the noncomplying member becomes exempt from the work registration requirements or is no longer a member of the household. If the noncomplying individual joins another household during the disqualification period then the household receiving the member shall be subject to disqualification for the remainder of the disqualification period. In addition, eligibility may be reestablished if the noncomplying member "cures" the violation by complying with the provision that he or she violated. For example, an individual who refused to respond to a request for supplemental information regarding employment status or availability for work could cure this noncompliance by responding to the request. The cure provision was intended to encourage noncomplying household members to take corrective action.

The proposed rule would continue to permit the household to reestablish its eligibility during the disqualification period if the noncomplying member becomes exempt from the work registration requirements, but not if the noncompliant member leaves the household. This rule specifically addesses the situation where a household to be sanctioned splits into two or more households. When any household member leaves the household the sanction will follow all the original household members and will begin for all members once the sanction can be levied against any one. Consequently, if one household member leaves the household and the program, the remaining household members would be ineligible to receive benefits for the sanction period. If the household member returns after the sanction has concluded, then that household member would have, in effect, already been sanctioned. If the departing household member has joined another food stamp household, that member would be ineligible to participate for the sanction period. However, that member's income and all of that member's resources would be included in their entirety in determining the new household's benefits. Applying the sanctions in this manner ensures that the whole household, as it existed during the time of noncompliance, is penalized, just as it would have been if the household did not separate. To permit the remaining household member to avoid the penalty by only applying it to the noncomplying members would encourage household breakup. The Department believes this possible consequence was not Congress' intent and should be avoided. As with the voluntary quit disqualification, discussed later in this preamble, the proposed rule permits State agencies to accept applications from such households during the third month of the disqualification period. In these cases, the same application would be used for the denial of the month of application and the determination of eligibility for subsequent months.

Suitable employment

Current rules at § 273.7(i) provide that employment offered within the first 30 days of registration shall be considered unsuitable if it is not in the household member's major field of experience. This provision would be deleted by the proposed rule. We believe that this provision could stand in the way of recipients finding and accepting employment which would otherwise be considered suitable.

The Department would hope that in areas where referrals are made, registrants, when possible, would be referred to available employment opportunities in their major field before they would be referred to opportunities outside of their major field.

Unreasonable distance

Current rules at § 273.7(I)(1)(iv) provide that employment shall be considered unsuitable if the distance from the household member's home to the place of employment is considered unreasonsable. Similarly, the job search rules at 273.7(f)(1)(ii)(C) provide that work registrants shall be classified as exempt from job search activities if they reside an unreasonable distance from potential employers. The two provisions specify that a distance shall be considered unreasonable if daily commuting time exceeds 2 hours. The Department believes that a given hourly limit is not always a valid indicator of an unreasonable distance. Therefore, the proposed rule would delete current provisions which specifically define a distance to be unreasonable if the round trip commuting time exceeds 2 hours. The proposed change gives State agencies the flexibility to consider all relevant factors in determinig whether the distance from a household member's home to places of employment is unreasonable.

Alternate work registration procedures

Section 273.7(k)(1) requires State agencies to request approval from FNS to substitute State or local procedures for work registration for PA households not subject to the WIN registration requirement or for GA households. State agencies may also substitute, with prior FNS approval, work requirements imposed on refugees participating in refugee resettlement programs. The Department believes that a State agency should be permitted to substitute, without prior FNS approval, any State or Federal work procedures for any food stamp work registration requirement. This change will make the work registration requirement more flexible for State agencies and will reduce the administrative approval process at all levels. The Department is including this suggested change in the proposed rule. Although advance approval would no longer be necessary, the alternate procedures could only be substituted if they are comparable to the food stamp work registration requirements and the conditions specified below are met. The registrant's activities must be monitored so that appropriate sanctions would be applied when necessary provided that a household shall not be sanctioned for the failure of a member to comply with an alternate requirement that exceeds the requirements of the food stamp work registration rules. Households which are being sanctioned are entitled to, and must be accorded, the same fair hearing rights as households which are found to have violated the food stamp work registration rules. Finally, all household members who were not exempt by food stamp rules must be subject to these alternative rules.

Failure to comply with a comparable WIN, Unemployment Compensation or alternate work registration procedures requirement

Current rules at § 273.7(k)(2) exempt from work registration household members who are subject to and complying with WIN or Unemployment Compensation work registration requirements. If a household member fails to comply with the WIN or Unemployment Compensation work registration rules, that member loses his or her food stamp work registration exemption and is required to register for work in accordance with food stamp regulations. Unlike a participant who is work registered with the Food Stamp Program, the participant who fails to comply with the work requirements of the alternate program would not be disqualified from food stamp

participation. To correct this unequal treatment of participants, Section 1311 of the 1981 Food Stamp Act Amendments mandates that if a household contains a member who was exempted from the food stamp work registration requirements because he or she was subject to and complying with a work registration requirement under Title IV of the Social Security Act or a State or Federal unemployment compensation program's work registration requirements, and if the member fails to comply with a requirement which is comparable to a food stamp work registration or job search requirement, the household shall be treated as though the member had failed to comply with the corresponding food stamp requirement. The proposed rule would implement this statutory provision and to promote consistency this policy would also be applied to a household member who fails to comply with other alternate work registration procedures (discussed in the preceding section). Thus, if a household member fails to comply with the comparable WIN, Unemployment Compensation or alternate procedures requirement, the entire household would be disqualified from food stamp participation. The proposed rule makes clear, however, that the household would not be disqualified if the noncomplying member was exempt from the food stamp work registration requirements in accordance with one of the provisions of § 273.7(b) other than the exemptions for compliance with WIN, unemployment compensation or alternate procedures work registration or job search requirements. For example, a 17 year old participant would be exempt from the food stamp work registration requirements in accordance with § 273.7(b)(1). However, this individual would not necessarily be exempt form WIN. Thus, if this participant failed to comply with WIN work registration procedures, he or she would not be disqualified from the Food Stamp Program because of this non-compliance. Similary, the household would not be disqualified if a member failed to comply with a work registration requirement which was not comparable to one of the Department's requirements. The requirement would not be comparable if it placed responsibilities on the individual which exceeded those imposed by the food stamp work registration and job search rules. For example, if in accordance with the requirements of this rule a State agency chooses to refer food stamp work registrants to training opportunities, it would not disqualify a participant who failed to comply with the training requirement of the WIN Program. If a member failed to comply with a non-comparable requirements, he or she would have to register for work and fulfill the Food Stamp Program job search requirements if not otherwise exempt.

The proposed rule also provided that households found to have failed to comply with the WIN, unemployment compensation, or alternate procedures requirements and which as a result, are disqualified from particpation in the Food Stamp Program, shall be entitled to the same fair hearing procedures as households who are found to have violated the food stamp work registration rules. The proposal would also require that a State agency representative be available to participate at the hearing if appropriate.

Determining good cause

The Food Stamp Act of 1977, Pub. L. 95–113, September 29, 1977, provided that no household would be eligible for food assistance if it contained a member who refused without good cause to accept a suitable offer of employment. The House Report on the Act explained that the good cause criteria would apply to failure to comply with the other work registration and job search requirements as well. H.R. Rep. No. 95–464, 95th Cong. 1st Sess., 168 (1977). The Department's rules thus contain one set of criteria governing determination of good cause for noncompliance with any of the work registration or job search requirements. Under current rules at §§ 273.7(g) and 273.7(m), households containing members who had good cause for failing to comply with the Department's work registration and job search requirements shall not be disqualified.

Section 1311 of the 1981 Food Stamp Act Amendments adds the requirement that good cause for refusing to accept an offer of suitable employment shall include the lack of adequate child care for children who have reached the age of six but are under the age of twelve. Because of the previously mentioned legislative intent that the good cause criteria apply to other instances of noncompliance, the proposed rule incorporates the 1981 Food Stamp Act Amendments' example of good cause for failure to accept a suitable offer of employment and also applies it to failure to comply with the other work registration and job search requirements.

Voluntary Quit

Application of voluntary quit provisions. There are several proposed changes to the current regulations on voluntary quit resulting from legislative action. Currently, the voluntary quit provisions apply only to applicant households. Section 1311 of the 1981 Food Stamp Amendments mandates that where the head of a participating household voluntarily quits his or her job without good cause the entire household shall be disqualified from participation. The House Report makes it clear that the Department's traditional practice of interpreting "head of household" to mean the household's primary wage earner would apply to the 1981 Food Stamp Amendments provision as well (H.R. Rep. No. 97–106 97th Cong. 1st Sess. 139 (1981)). Thus, under the proposed rule, whenever a household applies or a participating household reports the loss of a source of income, the State agency would be required to determine whether or not the household's primary wage earner voluntarily quit his or her employment without good cause.

Section 158(b) of the 1982 Food Stamp Amendments extends the definition of a voluntary quit without good cause (and the attendant period of ineligibility) to include Federal, State, or local government employees who have been dismissed from their jobs because of participation in a strike against the government entity involved. This proposed rule would extend the voluntary quit provisions to these individuals.

Disqualification due to voluntary quit/ending disqualification. The proposed rule would revise the procedures used to disqualify applicant households whose primary wage earners voluntarily quit their jobs without good cause, and, pursuant to Pub. L. 97–98, the proposal would subject participating households to these disqualification procedures. The procedures for ending the disqualification period also contain several modifications. Under current rules, when a household files an application, the State agency must determine whether the household's primary wage earner voluntarily quit his or her job within the last 60 days. If such a quit is established, the household is denied participation for a period of two months beginning with the month of the quit. Section 158 of the 1982 Food Stamp Amendments increased from 60 to 90 days the disqualification period for recipients and applicants who voluntarily quit their jobs and it deleted the language in the law which specified when the disqualification will begin.

This change permits the Secretary to determine when the 90 day disqualification period will begin for a

household when the head of household voluntarily quits a job. The prior legislative language, which tied the disqualification period to the date of the quit, presented problems if applied to participants because the 60 day penalty period could end before a voluntary quit would be discovered, notice sent and disqualification of the household begun. Congress believes that while tying the start of the disqualification period to the date of the quit should continue for applicants, more flexibility is needed for sanctions for participants to ensure that all noncomplying households will be disqualified for a three calendar month period (S. Rep. No. 97-504, p. 39). The proposed rule thus changes the disqualification period from 60 to 90 days (or 3 calendar months as discussed above) and modifies when the disqualification would begin.

In the case of an applicant who voluntarily quits a job the disqualification period would begin from the date of the quit. The proposal also clarifies the current rule to explain that if the State agency learns that an applicant household lost a source of earned income after the date of application but before the household was certified, it will determine whether a voluntary quit occurred. At the time of application the State agency shall also explain to the applicant the consequences of the household's primary wage earner's voluntarily quitting his or her job without good cause.

In the case of a participant voluntarily quitting, the disqualification period would be 90 days (or three months), beginning the first of the month after all normal procedures for taking adverse action have been followed. For those households which leave the Program before the sanction can be levied, the sanctions shall not be imposed until the household returns to the Program. In the case of participating households, when a loss of income is reported State agencies would be required to determine whether or not a voluntary quit occurred. If a voluntary quit is found, the household must be sent a notice of adverse action within 10 days after the loss of income is reported. The notice would contain the proposed period of disqualification and would specify that the household may reapply at the end of the disqualification period. The household would have at least 10 days after the date the notice was mailed to request a fair hearing. The State agency would not be able to take action to terminate the household's benefits until the time to request a fair hearing expired. The Department believes that this advance notice period is necessary to protect participants' due process rights. If the participating household receives a fair hearing and the State agency is upheld, then the 90 day disqualification period would begin the first of the month after the decision is rendered. As mentioned earlier in this preamble, the 90 day disqualification period mandated by the Act would be converted to 3 calendar months only for participating households if necessary to better coincide with the current procedure of issuing benefits based on monthly periods. The rule makes clear that a participating member will not be considered to have voluntarily quit if, at the time of the quit, he or she was exempt from the work registration provisions.

As mentioned earlier, under current rules the State agency must determine whether a voluntary quit by the primary wage earner has occurred within the last 60 days. This 60 days time period was specified by the Department to provide some time limit within which to make this determination. The 60 days was selected because it was consistent with the legislated 60 day disqualification period. Now that the disqualification period has been changed from 60 to 90 days, the time period within which to determine if a voluntary quit has occurred will also be changed from 60 to 90 days. The proposed rules thus specify that a State agency will determine if the primary wage earner in an applicant household has voluntarily quit his or her job in the last 90 days. If the State agency determines that the primary wage earner in a participant household has voluntarily quit a job at any time during Program participation, the household shall be disqualified.

The proposed rule would also extend the good cause and verification provisions of § 273.7(n)(3) and (n)(4), currently pertaining to the voluntary quit of applicant households, to participating households as well.

Following the end of the disqualification period, a disqualified household would be permitted to resume participation in the Program if it applied again and was determined eligible. The proposed rule would permit a disqualified household to resume participation during the disqualification period if the member who caused the disqualification cures the voluntary quit by returning to the job that he or she quit at the same weekly earnings or by securing any other employment which yields weekly earnings equivalent to the terminated job. The rule would also permit the household to resume participation during the disqualification period if the primary wage earner becomes exempt from the work registration requirements in accordance with one of the exemptions provided in § 273.7(b) other than the exemptions provided in paragraphs (b)(1)(iii) and (b)(1)(vi) of that section. These two paragraphs exempt individuals who are participating in work registration procedures in the WIN and Unemployment Compensation Programs. The Department does not believe that a household should be able to terminate the disqualification merely because its primary wage earner has begun to participate in a work registration system operated by another assistance program. In addition, as described earlier in this preamble, the proposed rule would provide that if a quitting primary wage earner leaves the household, the household continues to be disqualified for the remainder of the disqualification period.

In accordance with current rules at 7 CFR 273.10(a) on application processing, the proposed rule would require State agencies to accept, during the third month of disqualification, applications from households which are ineligible to reestablish eligibility during the disqualification period. In such cases the same application would be used for the denial for the month of application and the determination of eligibility for subsequent months.

Reporting requirements

Currently, information from the work registration form is entered into the Employment Service Automated Reporting System (ESARS) by the SESA. With State agencies assisting and monitoring work registrants' job search activities, information will no longer be entered into the ESARS. The Department believes that it is necessary to collect enough information about the functioning of this proposed work registration system to be able to evaluate the system. Consequently, the Department is proposing some general reporting requirements in this rule. The Department is proposing to require State agencies to maintain information on the number of individuals registered for work, the number of registrants actively engaged in job search, the number of registrants who find jobs, and the number of participants disqualified because of noncompliance with any of the work registration requirements. The specifics on how this information is collected and stored would be left up to each State agency. This information would be submitted annually to FNS Regional Offices.

Miscellaneous—In 273.7(b)(1)(vii), (in current rules viii), a portion of a

sentence dropped in error by prior rulemaking was added. Conforming language in §§ 273.1(b)(2)(v), 273.9(b)(3) and 273.11(c)(1) has been added to indicate that failure to comply with work registration or job search requirements will result in sanctions equal to those for failure to comply with workfare.

Implementation

The proposal would require State welfare agencies to implement the provisions of this rulemaking no later than the first of the month 90 days following publication of final regulations. The Department is interested in the earliest possible implementation and believes that this is a reasonable time period within which to expect implementation. The Department is especially interested in receiving comments on this implementation schedule.

List of Subjects

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs—social programs, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food stamps, Fraud, Grant programs—social programs, Penalties, Reporting and recordkeeping requirements, Social security, Students.

Accordingly, it is proposed that 7 CFR Parts 272 and 273 be amended as follows:

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

1. In § 272.1, a new paragraph (g)(63) is added to read as follows:

§ 272.1 General terms and conditions

* * * * *

(g) Implementation * * *

(*63*) Amendment No. 251. State Welfare agencies shall implement the provisions of this amendment no later than the first of the month 90 days following publication of final regulations.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

2. In § 273.1 a new paragraph (v) is added to paragraph (b)(2) to read as follows:

§ 273.1 Household Concept.

* * * * *

(b) *Nonhousehold and excludes household members.* * * *

(2) *Excluded household members.*

* * *

(v) *Work Registration/Job Search Sanctioned.* Individuals against whom a sanction was imposed while they were participating in a household disqualified for failure to comply with work registration or job search requirements, in accordance with § 273.7.

* * * * *

§ 273.7 [Amended]

3. In § 273.7, paragraph (a) is amended by removing the word "six" in the second sentence and inserting in its place the word "twelve". In addition, the third and fourth sentences of paragraph (a) are revised to read as follows:

§ 273.7 Work registration requirements.

(a) *Persons required to register.* * * * Registrants who move out of a project area shall register at their new location. Under the provisions of § 273.1(f)(1), the registration form need not be completed by the member required to register.

* * * * *

4. In § 273.7(b)(1), paragraph (iv) is amended by removing the "12" in the first sentence and the "12th" in the second sentence and substituting in their places "6" and "6th", paragraph (v) is removed and paragraphs (vi) through (ix) are redesignated (v) through (viii) respectively. Newly redesignated paragraph (b)(1)(vii) is amended by adding the words "as determined by averaging such activity over the certification period" before the word "shall" in the last sentence. In addition, paragraph (b)(2)(i) is revised to read as follows:

* * * * *

(b) *Exemptions from work registration.* * * *

(2)(i) Persons losing exemption status due to any changes in circumstances that are subject to the reporting requirements of § 273.12 (such as a loss of employment that also results in a loss of income of more than $25 a month, or departure from the household of the sole dependent child for whom an otherwise nonexempt household member was caring) shall register for employment when the change is reported. If the State agency does not use a work registration form, it shall annotate the change in the member's exemption status. If a work registration form is used, the State agency shall provide the participant with a work registration form when the change it reported. Participants shall be responsible for returning the form to the State agency within 10 calendar days from the date the form was handed to the household member reporting the change in person, or the date the State agency mailed the form. If the household fails to return the form, the State agency shall issue a notice of adverse action stating that the household is being terminated but that the household can avoid termination by returning the form.

* * * * *

5. In § 273.7, paragraph (c) is revised to read as follows:

* * * * *

(c) *State agency responsibilities.*—(1) *Registration procedures.* Upon reaching a determination that an applicant or a member of the applicant's household is required to register, the State agency shall explain to the applicant the work registration and job search requirements, his or her rights and responsibilities, and the consequences of failure to comply. The State agency shall permit the applicant to complete a record or form for each household member required to register for employment in accordance with paragraph (a) of this section. The applicant must sign a form attesting that he or she will inform the work registrants in the household that a record has been completed on their behalf, and that they will describe the work registration and job search requirements and the consequences of failure to comply to those registrants. Household members are considered to have registered when an identifiable work registration form is submitted to the State agency or when the registration of these members is otherwise annotated or recorded by the State agency.

(2) *Other responsibilities.* After the household is certified, the State agency shall be responsible for taking the following actions:

(i) Establishing, and monitoring the job search requirements established in § 273.7(f) of this section.

(ii) Disqualifying work registrants who fail to comply, with good cause, with either the job search requirements established in § 273.7(f) or the additional work requirements established in § 273.7(e).

(iii) Deregistering those work registrants who obtain employment or otherwise become exempt from the work registration requirement subsequent to registration, who are no longer certified for participation in the Program, or who move from the area.

(3) *Reporting requirements.* The State agency shall collect and maintain information on the number of individuals registered for work, the number of registrants actively engaged in job search, the number of registrants who find jobs, and the number of

participants disqualified because of noncompliance with any of the work registration requirements. This information shall be reported annually to FNS Regional Offices.

* * * * *

6. In § 273.7, paragraph (d) is removed and reserved.

7. In § 273.7 paragraph (e)(1) is amended by removing the words "appropriate State employment service office" and inserting, in their place, the words "State agency." Paragraphs (e)(2) and (e)(3) are amended by removing the words "State employment service office" and inserting in their place, the words "State agency." In addition, paragraph (e)(4) and the first sentence of paragraph (e)(5) are revised to read as follows:

* * * * *

(e) *Additional work requirements.*

* * *

(4) Accept a bona fide offer of suitable employment, as defined in paragraph (i) of this section, whether referred by the State agency or located by the registrant; and

(5) Continue suitable employment.

* * *

* * * * *

8. In § 273.7 paragraph (f) is revised to read as follows:

* * * * *

(f) *Job search.* Persons required to register for work shall be subject to the appropriate job search requirements discussed below. The State agency may require Program applicants to conduct job search. Failure to comply with the job search requirements, without good cause, shall result in household disqualification or denial as established in paragraph (g) of this section. A State agency opting to require job search of applicants shall not delay disposition of the application pending proof of compliance with this requirement. For the remainder of section (f) the term "State agency" shall be interpreted as the agency or organization designated by the State agency administering the Food Stamp Program to administer the job search requirements.

(1) *Job search assignment.* (i) Based on the immediate employability of the participant, which may include such factors as his or her age, physical condition, ability or inability to speak English, current enrollment in job training programs, and recent employment history, as well as the distance he or she lives from potential employers and the job market situation in the area, the State agency shall require each work registrant to contact an assigned number of potential employers per month. The State agency may thus intensify the registrants' job search activities at the time(s) it believes the job search would be most effective, taking into account such factors as job market conditions and the registrant's skills and experience. The State agency may reduce the number of required contacts for particular registrants if economic or personal circumstances warrant. The State agency could suspend job search and then resume it later if factory closings or other circumstances made it likely that the job search period for that individual would be most productive at a subsequent time.

(ii) The State agency shall determine the number of job contracts required of work registrants based on information collected at the time of application or it may schedule a subsequent assessment interview after the household is certified to determine the work registrant's job contact assignment. If the State agency chooses to schedule assessment interviews, the interview shall be held and a determination of the number of job search contacts to be required shall be made within two weeks of the date the household is certified. To preclude unnecessary trips to the local food stamp office, those persons who are exempt from job search shall not be required to report to an interview. Accordingly, the determination of exempt status shall be made before an assessment interview is scheduled. To schedule an assessment interview, the State agency shall send the registrant a letter informing the registrant of the date of the interview, that appearance for an interview is a condition of participation in the Food Stamp Program, that failure to attend the interview without good cause or without first contacting the State agency will result in the State agency taking action to disqualify the entire household.

(iii) If the work registrant fails without good cause to appear for the interview or has not contacted the State agency in advance to reschedule the interview, the State agency shall send the household a notice of adverse action. The State agency shall include with the notice of adverse action a written explanation of the household's obligation to contact the State agency prior to the expiration of the advance notice period to reschedule the missed interview and of the consequences of failing to do so. If the work registrant does not contact the State agency to reschedule the interview or to request a fair hearing before the advance notice period expires, the State agency will disqualify the household in accordance with paragraph (g) of this section. The State agency may establish alternative methods for scheduling or rescheduling interviews as long as the registrant is afforded an opportunity to reschedule a missed interview and the timeframes established by this paragraph and by paragraph ii are met. A missed interview shall be rescheduled only once; if the rescheduled interview is missed, the State agency shall send the household a notice of adverse action notifying the household of the disqualification and of their right to a fair hearing.

(iv) The State agency shall provide work registrants with written notification regarding their job search requirements, procedures to be followed, and consequences of failure to comply. Work registrants shall also be informed about the manner in which job contacts must be reported to the State agency in accordance with paragraph (f)(5) of this section. The notification required in this paragraph shall be provided either at the time of the assessment interview or shall be mailed to the household when the job search assignment is determined. This notification shall be provided at the time of application, if the State agency opts to require job search of applicants as well as of recipients.

(2) *Requirements.* (i) The job search requirements are effective for 12 months starting with the month of initial registration or, at the time of application if the State Agency chooses to require job search activities to be conducted by Program applicants. Once an individual is deregistered, any new registration for that individual constitutes a new 12 month timeframe for which new job search assignments would be made. A participant would be reregistered, for example, after losing a work registration exemption or reentering the Food Stamp Program after a period of absence. If the State agency is aware that a registrant has been registered more than once in a 12-month period, it shall consider the registrant's previous job search activity during the 12-month period, and the anticipated impact of additional job search, in determining the registrant's new job search requirements.

(ii) Registrants subject to the job search requirements must take the following actions:

(A) Contact, as required by the State agency, a specified number of prospective employers each month. A referral to an employer, SESA, or a training program as authorized in paragraph (f)(5) of this section, shall be considered a job contract or job contracts for Food Stamp Program purposes, provided the registrant presents himself/herself to the employer, SESA or training program as

described in paragraph (f)(4) of this section.

(B) Report job contacts to the State agency. Job contacts shall be reported in writing to the State agency as specified in paragraph (f)(5) of this section.

(C) Attend follow-up or reassessment interviews which may be scheduled by the State agency in accordance with paragraph (f)(3) of this section.

(3) *Follow-up and reassessment activities.* (i) State agencies may schedule periodic follow up interviews for such purposes as reviewing job contacts made by the work registrant, reviewing job listings for potential referrals, and assisting the work registrant in establishing his or her future plans for seeking employment. State agencies may also schedule interviews to reassess the number of job contacts the work registrant is required to make. The follow-up interviews could also be used to reassess work registrants' job contact assignments.

(ii) To schedule a follow-up interview the State agency shall send the registrant a letter informing the registrant of the date of the interview, that appearance for the interview is a condition of participation in the Food Stamp Program, and that failure to attend the interview without good casue will result in the State agency taking action to disqualify the entire household. If the work registrant fails to appear for the interview without good cause or has not contacted the State agency in advance to reschedule this interview, the State agency shall send the household a notice of adverse action. The State agency shall also include with the notice of adverse action a written explanation of the household's obligation to contact the State agency prior to the expiration of the advance notice period to reschedule the missed interview and the consequences of failing to do so. If the work registrant does not contact the State agency to reschedule the interview or to request a fair hearing before the advance notice period expires, the State agency shall disqualify the household in accordance with paragraph (g) of this section.

(4) *Job contact.* To qualify as a job contact, two conditions must be met. First, the work registrant must present himself or herself to a prospective employer as available for work. Second, the prospective employer must ordinarily employ persons in areas of work that meet the suitability requirements discussed in paragraph (i) of this section and for which the work registrant is reasonably qualified by means of experience, training or ability. Depending upon the position being sought, the job contact requirement may be fulfilled by either a personal visit to the prospective employer or another method of aplication which is considered by the State agency to be generally accepted practice. The work registrant cannot contact the same employer in subsequent weeks unless the initial contact indicated that vacancies in suitable job positions may soon exist.

(5) *Reporting job contacts.* Job contacts shall be reported in writing in a manner prescribed by the State agency. At the time of the assessment interview or at the time the job contact assignment is determined, the work registrant shall be told about the manner of reporting. States agencies may confirm one or more of the reported contacts with the listed employers. The State agency shall give the work registrant a reasonable period of time following the end of each month in which job contacts were required to submit the written report.

(6) Evaluating job contacts. The State agency shall evaluate on a monthly basis the work registrant's monthly job contact report to determine whether the work registrant has completed the assigned number of contacts in the month for which the report was submitted. The work registrant who failed to complete the required number of contacts without good cause shall not be allowed additional time to complete the required contacts unless the State agency fails to accept, for reasons such as suitability or manner of contact, job contact(s) reported by the registrant. In this case, the State agency shall send the registrants a letter explaining which job contacts were disallowed and why these contacts were not accepted. The letter shall also inform the registrants that they would be allowed two weeks from the receipt of this letter to make up the disallowed contacts and to report these contacts to the State agency. The State agency shall provide the registrants with a form on which to report the made up contacts.

(7) Optional State agency referrals. State agencies may provide the work registrant with job market information (such as a list of job market opportunities) and/or referrals to available employment, Job Finding Clubs, and/or training opportunities. However, the number of State agency referrals added to the number of required independent job contacts shall not exceed the limitations set forth in paragraph (f)(2)(A) of this section.

(8) *Contracting with employment agencies.* State agencies may contract with State Employment Security Agencies (SESA's) or other public or private employment agencies to proivde the work registration and job search services required by this section. State agencies which choose to contract with employment agencies shall be responsible for ensuring that the work registration and job search procedures are administered in accordance with the requirements of this section.

* * * * *

9. In § 273.7, paragraph (g) is revised to read as follows:

* * * * *

(g) *Failure to comply.* (1) If a State agency opts to require job search at time of application, and the State agency determines, prior to certification, that a registrant required to job search has not complied, without good cause, then the household's application shall be denied for a period of 90 days beginning with the date of application. The household shall be advised of the reason for the denial and of its right to reapply and/or to request a fair hearing. If the applicant's noncompliance is determined after certification then disqualification shall be calculated as for any other participating household as described in paragraph (g)(2) of this section.

(2) If the State agency determines that a household member has refused or failed without good cause to comply with the requirements of this section, the entire household shall be ineligible to participate for 90 days or 3 calendar months, as provided in this paragraph. The 90 day disqualification period may be converted to a 3 calendar month period only for participating households. Such ineligibility shall continue as outlined in paragraph (h) of this section. Prior to disqualifying the household, the State agency shall be responsible for contacting the work registrant to determine whether good cause existed for the noncompliance, as discussed in paragraph (m) of this section. However, in cases where a work registrant fails to attend a scheduled assessment or follow-up interview without first contacting the State agency, it shall be the household's responsibility to contact the State agency to demonstrate good cause for not being able to attend an interview or to reschedule the missed interview. Within 10 days from the date the State agency determines that a work registrant has failed to comply with the requirements of this section, the State agency shall provide the household with a notice of adverse action, as specified in § 273.13. Such notification shall contain the proposed period of disqualification and shall specify that the household may reapply at the end of the disqualification period. Information shall also be included with the

notification on the procedures and requirements to end the disqualification as contained in paragraph (h) of this section. The disqualification period for participating households shall begin with the first of the month following the expiration of the adverse notice period, unless a fair hearing is requested, or, in the case of a missed first interview, a rescheduled interview is requested. For those households which leave the Program before the sanction can be levied, the sanction shall not be imposed until the household returns to the Program.

(3)(i) Each household has a right to a fair hearing to appeal a denial, or termination of benefits due to a determination of nonexempt status, or a determination of failure to comply with the work registration and job search requirements of this section. The household can appeal such actions as State agency refusal to accept an action as a job search contact, or refusal to make a finding of good cause, if the household believes that a finding that the household has failed to comply has resulted from improper decisions on these matters.

(ii) If the administration of the work program is contacted out, and a fair hearing is scheduled, the State agency shall provide the agency administering the work program sufficient advance notice to either permit the attendance of an agency representative or ensure that an agency representative will be available for questioning over the phone during the hearing. The administering agency shall be available to participate in the hearing through one of these means. The availability of an agency representative for questioning over the phone shall be sufficient, unless the hearing official determines prior to the hearing (after examining the facts of the case and pursuant to a request for such a ruling by the household) that, taking into account the nature of the issues in dispute and the nature and importance of the evidence to be given by the agency representative, fairness requires that the household be given an opportunity to confront the agency representative in person. Such a determination should be necessary in only a very small number of cases. A household shall be allowed to examine the casefile maintained by the agency administering the work program at a reasonable time before the date of the fair hearing, except for confidential information (which may include test results) that the agency determines should be protected from release. Information not released to a household may not be used by the State agency or the agency administering the work program at the fair hearing.

* * * * *

10. In § 273.7, paragraph (h) is revised to read as follows:

* * * * *

(h) *Ending disqualification.* Following the end of the 90 day or 3 month disqualification period for noncompliance with the work registration, job search, or comparable WIN, unemployment compensation, or alternate procedures requirements prescribed under paragraphs (e), (f), and (k)(2) of this section, a household may resume participation if it applies again and is determined eligible. Eligibility may be reestablished during a disqualification period and the household shall (if otherwise eligible) be permitted to resume participation if the member who caused the disqualification becomes exempt from the work requirement in accordance with paragraph (b) of this section or is willing to comply with § 273.7 of these regulation. In these cases, the household shall be permitted to file an application before the end of the disqualification period. Should a household which has been determined to be noncompliant without good cause split into more than one household, the sanction shall follow all the members of the household at the time of the noncompliance. None of those household members shall be eligible to participate in the food stamp program for the length of the sanction beginning at the point when the sanction can be placed against any one of them. If a sanctioned household member joins another food stamp household, that household's eligibility and benefit level shall be determined by treating the sanctioned member's income and resources as specified in paragraph 273.11(c) for treating the income and resources of household members excluded because of disqualification for intentional Program violation or for failure to comply with workfare requirements. If an application for participation in the Program is filed in the third month of disqualification, the State agency shall in accord with § 273.10(a)(3) use the same application for the denial of benefits in the remaining month of disqualification and certification for any subsequent month(s) if all other eligibility criteria are met.

* * * * *

11. In § 273.7, paragraph (i)(2)(iii) is removed and paragraphs (i)(2)(iv) and (i)(2)(v) are redesignated as paragraphs (i)(2)(iii) and (i)(2)(iv) respectively. In addition the second sentence of newly designated paragraph (i)(2)(iii) is removed.

12. In § 273.7, the title of paragraph (k) and the introductory text of paragraph (k)(1) are revised, a title is added to paragraph (k)(1), paragraph (k)(1)(i) is revised, paragraph (k)(1)(iii) is redesignated as (k)(1)(iv), a new paragraph (k)(1)(iii) is added, and paragraph (k)(2) is revised. The revisions and additions read as follows:

* * * * *

(k) *Alternate work registration procedures.* (1) *Requirements for substituting alternate procedures.* State agencies may, in accordance with the provisions of this paragraph, substitute State or local procedures for work registration procedures. Work requirements imposed on refugees participating in refugee resettlement programs, including but not limited to the Indochinese Refugee Assistance Program, may also be substituted. The alternate requirements shall only be substituted however, under the following conditions:

(i) The alternate requirements are not less stringent than food stamp work registration requirements.

* * * * *

(iii) Households who are being disqualified for failure to comply with the alternate requirements are provided the same fair hearing rights as households who are found to have violated the food stamp work registration requirements.

* * * * *

(2) *Failure to comply with a comparable WIN, unemployment compensation or alternate procedures work requirement.* A household containing a member who was exempted from work registration in accordance with paragraph (b)(1)(iii) or (b)(1)(vi) of this section because he or she was registered for work under WIN, unemployment compensation or alternate procedures work requirements and who fails to comply with a WIN, unemployment compensation, or alternate procedures requirement comparable to a food stamp work registration or job search rule shall be treated as though the member had failed to comply with the corresponding food stamp requirement.

(i) If the State agency is informed by the agency administering the comparable work requirement that a household member has refused or failed without good cause to comply with a WIN work registration or an alternate procedures requirement, the State agency shall determine whether the requirement was comparable. Similarly,

if the household reports the loss or denial of unemployment compensation or if the State agency otherwise learns of such loss or denial, the State agency will determine whether the loss or denial was caused by a determination by the administering agency that a household member refused or failed without good cause to comply with an unemployment compensation work registration requirement and, if so, whether the requirement was comparable to a food stamp work registration or job search requirement. The WIN, unemployment compensation, or alternate procedures requirement would not be considered comparable if it placed responsibilities on the household which exceeded those imposed by the food stamp work registration rules.

(ii) If the State agency determines that the requirement was comparable, the entire household shall be disqualified in accordance with the following provisions. The State agency shall provide the household with a notice of adverse action as specified in § 273.13 within 10 days after being informed, by the agency administering the work requirement, of the WIN noncompliance or 10 days after learning of the household member's noncompliance with the unemployment compensation or alternate work registration procedures requirement. The notice shall comply with the requirements of paragraph (g) of this section. A household shall not be disqualified from participation if the noncomplying member meets one of the work registration exemptions provided in § 273.7(b) other than the exemptions provided in paragraphs (b)(1)(iii) and (b)(1)(vi). Household members who fail to comply with a non-comparable WIN, unemployment compensation, or alternate procedures requirement, shall lose their exemption under paragraph (b) of this section and must register for work if required to do so in paragraph (a) of this section.

(iii) If a determination by the agency administering the work requirement that a household member failed to comply with a comparable WIN, unemployment compensation or alternate work registration requirement leads to a denial, or termination of the household's food stamp benefits, the household has a right to a fair hearing in accordance with the provisions of paragraph (g) of this section.

(iv) A disqualified household may resume participation in the program in accordance with paragraph (h) of this section.

* * * * *

13. In § 273.7, paragraph (m) is revised to read as follows:

* * * * *

(m) *Determining good cause.* The State agency shall be responsible for determing good cause in those instances where the work registrant has failed to comply with the work registration, job search, and voluntary quit requirements of this section. In determining whether or not good cause exists, the State agency shall consider the facts and circumstances, including information submitted by the household member involved and the employer. Good cause shall include circumstances beyond the member's control, such as, but not limited to, illness, illness of another household member requiring the presence of the member, a household emergency, the unavailability of transportation, or the lack of adequate child care for children who have reached age six but are under age 12.

* * * * *

14. In § 273.7, the introductory text of paragraph (n), the title of paragraph (n)(1), and paragraph (n)(1)(i) are revised; a title is added to paragraph (n)(1)(ii); paragraph (n)(1)(iii) is revised; paragraph (n)(1)(iv) is removed; paragraph (n)(2) is revised, and new paragraphs (n)(5) and (n)(6) are added. The revisions and additions read as follows:

* * * * *

(n) *Voluntary Quit.* No household whose primary wage earner voluntarily quit his or her most recent job without good cause shall be eligible for participation in the Program as specified below. At the time of application, the State agency shall explain to the applicant the consequences of the household's primary wage earner quitting his or her job without good cause.

(1) *Processing applications and reporting forms.*—(i) *Determining whether a voluntary quit occurred.* When a household files an application for participation, and when a participating household reports the loss of a source of income, the State agency shall determine whether any household member quit his or her job. Quitting a job means quitting employment which involves 20 hours or more per week or which provides weekly earnings equivalent to the Federal minimum wage multiplied by 20 hours. Changes in employment status that result from reducing hours of employment while working for the same employment enterprise or resigning from a job at the demand of the employer will not be considered a voluntary quit for purpose of this subsection. An employee of the Federal government, or of a State or local government who participates in a strike against such government, and is dismissed from his or her job because of participation in the strike shall be considered to have voluntarily quit his or her job without good cause.

(A) In the case of an applicant household, the State agency shall determine whether any currently unemployed (i.e, employed less than 20 hours per week or receiving less than weekly earnings equivalent to the Federal minimum wage multiplied by 20 hours) household member who is required to register for work has voluntarily quit his or her most recent job within the last 90 days. If the State agency learns that a household has lost a source of income after the date of application but before the household is certified, the State agency shall determine whether a voluntary quit occurred.

(B) In the case of a participating household, the State agency shall determine whether any household member voluntarily quit his or her job while participating in the program.

(ii) *Determining whether the voluntary quit was by the household's primary wage earner.* * * *

(iii) *Determining good cause.* Upon a determination that the primary wage earner voluntarily quit employment, the State agency shall determine whether the voluntary quit was with good cause as defined in paragraph (n)(3) of this section.

(2) *Exemption from voluntary quit provisions.* Person who are exempt from the full time work registration provisions as stated in § 273.7(b) shall be exempt from the voluntary quit provisions.

* * * * *

(5) *Disqualification period.* If the State agency determines that the voluntary quit of a household's primary wage earner was not for good cause, the household shall be denied participation in the program as specified below.

(i) If the State agency determines that the primary wage earner of an applicant household voluntarily quit his or her job, within the last 90 days the household's application shall be denied for a period of 90 days beginning with the date of the quit. The household shall be advised of the reason for the denial and of its right to reapply and/or to request a fair hearing.

(ii) If the State agency determines that the primary wage earner of a participating household voluntarily quit his or her job, while participating in the Program, the State agency shall provide the household with a notice of adverse action as specified in § 273.13 within 10

days after the loss of a source of income was reported. Such notification shall contain the proposed period of disqualification and shall specify that the household may reapply at the end of the disqualification period. The disqualification period shall be for three months or 90 days beginning with the first of the month after all normal procedures for taking adverse action have been followed. The 90 day disqualification period may by converted to a three calendar month period only for participating households. For those households which leave the Program before the sanction can be levied the sanction shall not be imposed until the household returns to the Program. Each household has a right to a fair hearing to appeal a reduction or termination of benefits due to a determination that the household's primary wage earner voluntarily quit his or her job without good cause. If the participating household requests a fair hearing and the State agency determination is upheld, the disqualification period shall begin the first of the month after the hearing decision is rendered. Eligibility may be reestablished during the disqualification period, however, in accordance with paragraph (n)(6)(ii) of this section.

(6) *Ending disqualification.* (i) Following the end of the disqualifcation period, a household may begin participation in the program if it applies again and is determined eligible.

(ii) Eligibility may be reestablished during a disqualification period and the household shall (if otherwise eligible) be permitted to resume participation if the member who caused the disqualification returns to the terminated employment at the same wages if still available, secures any other employment which yields earnings per week equivalent to the terminated job, or becomes exempt from the work registration requirement in accordance with one of the exemption provided in § 273.7(b) other than the exemptions provided in paragraphs (B)(1)(ii) and (b)(1)(vi) of that section. Should a household which has been determined to be noncompliant without good cause split into more than one household, the sanction shall follow all the members of the household at the time of the noncompliance. None of those household members shall be eligible to participate in the food stamp program for the length of the sanction beginning at the point when the sanction can be placed against any one of them. If a sanctioned household member joins another food stamp household, that household's eligibility and benefit level shall be determined by treating the sanctioned household member's income and resources in accordance with the procedures in § 273.11(c) for treating the income and resources of excluded household members.

(iii) If an application for participation in the Program is filed in the third month of disqualification, the State agency shall in accordance with § 273.10(a)(3) use the same application for the denial of benefits in the remaining month of disqualification and certification for any subsequent month(s) if all other eligibility criteria are met.

15. In § 273.9, the first sentence of paragraph (b)(3) is revised as follows:

§ 273.9 Income and deductions.

* * * * *

(b) *Definition of income.* * * *

(3) The earned or unearned income of an individual disqualified from the household for intentional Program violation, in accordance with § 273.16, or as a result of a sanction imposed while he/she was participating in a household disqualified for failure to comply with workfare requirements, in accordance with § 273.22, or in a household disqualified for failure to comply with work registration or job search requirements, in accordance with § 273.7, shall continue to be attributed in their entirety to the remaining household members. * * *

* * * * *

16. In § 273.11 the first sentence of paragraph (c) is revised to read as follows:

§ 273.11 Action on households with special circumstances.

* * * * *

(c) *Treatment of income and resources of disqualified members.* Individual household members may be disqualified for failing to comply with work registration, job search or workfare requirements, for fraud, for refusal to obtain or to provide an SSN, or for being an ineligible alien. * * *

* * * * *

17. In § 273.11, paragraph (c)(1) is revised to read as follows:

* * * * *

(c) *Treatment of income and resources of excluded members.* * * *

(1) *Excluded for intentional Program violation disqualification or workfare, work registration or job search sanction.* The eligibility and benefit level of any remaining household members of a household containing individuals excluded because of disqualification for intentional Program violation or due to imposition of a sanction while they were participating in a household disqualified for failure to comply with workfare, work registration or job search requirements shall be determined as follows: * * *

* * * * *

18. In paragraph § 273.22, paragraph (e)(1)(iii) is revised as follows:

§ 273.22 Optional workfare program.

* * * * *

(e) *Household responsibilities.* * * *

(1) *Persons subject to workfare* * * *

(ii) A parent or other caretaker of a child under 18 in a household where there is another able-bodied parent who is subject to the workfare requirements shall be exempt from workfare requirements. If a child has its 18th birthday within a certification period, the parent or caretaker must fulfill the workfare requirement as part of the next scheduled recertification process, unless the parent or caretaker qualifies for another exemption.

* * * * *

(91 Stat. 958 (7 U.S.C. 2011–2029))

(Catalog of Federal Domestic Assistance Programs No. 10.551, Food Stamps)

Dated: May 18, 1983.

Robert E. Leard,

Administrator.

[FR Doc. 83-13848 Filed 5-23-83; 8:45 am]

BILLING CODE 3410-30-M

Agricultural Stabilization and Conservation Service

7 CFR Parts 725 and 726

Flue-Cured Tobacco Acreage Allotment and Marketing Quota Regulations and Burley Tobacco Marketing Quota Regulations

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Proposed rules; extension of comment period.

SUMMARY: On April 22, 1983, proposed rules were published in the **Federal Register** (48 FR 17528 and 48 FR 17532) to implement the provisions of the No Net Cost Tobacco Program Act of 1982 with respect to the sale or forfeiture of burley tobacco quotas and flue-cured tobacco acreage allotments and marketing quotas which are established for farms owned by persons other than individuals. This document extends the comment period period with regard to those proposed rules. Several requests have been made to extend the comment period in order to allow ample time for evaluation of the proposals by those who may be affected.

DATE: Comments must be received on or before June 22, 1983 in order to be assured of consideration.

ADDRESS: Send comments to the Director, Tobacco and Peanuts Division, ASCS, Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013. All written submissions made pursuant to the proposed rules will be made available for public inspection in Room 5750 South Building, USDA, between the hours of 8:15 a.m. and 4:45 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Jack S. Forlines, Agricultural Program Specialist, Tobacco and Peanuts Division, USDA–ASCS, P.O. Box 2415, Washington, D.C. 20013: (202) 382–0200.

SUPPLEMENTARY INFORMATION: The proposed rules published on April 22, 1983 provided that written comments must be submitted on or before May 23, 1983 in order to be assured of consideration. Several requests have been made to extend the comment period in order to allow ample time for evaluation of the proposals by those who may be affected. Therefore, the comment period is being extended an additional 30 days from May 23, 1983.

Signed at Washington, D.C. on May 20, 1983.

Merrill Marxman,

Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 83-14015 Filed 5-20-83; 3:31 pm]

BILLING CODE 3410-05-M

FEDERAL TRADE COMMISSION

16 CFR Part 437

Termination of Proposed Trade Regulation; Rule on Food Advertising

AGENCY: Federal Trade Commission.

ACTION: Termination or rulemaking proceeding.

SUMMARY: The Federal Trade Commission has decided to terminate its rulemaking proceeding concerning food advertising, 39 FR 39842 (November 11, 1974); 40 FR 23686 (May 28, 1975); 41 FR 8980 (March 2, 1976). However, the areas which would have been covered by the proposed rule will continue to be scrutinized by the Commission on a case-by-case basis.

FOR FURTHER INFORMATION CONTACT: Andrew Sacks, Attorney, Division of Advertising Practices, Federal Trade Commission, Washington, D.C. 20580 (202) 724–1524.

SUPPLEMENTARY INFORMATION: On December 17, 1982, the Commission decided to terminate its proposed trade regulation rule on food advertising. The proposed rule would have regulated energy and weight control claims, fatty acid and cholesterol claims, and "natural food" claims. The termination includes all phases of the rulemaking proceeding. However, the areas which would have been covered by the proposed rule will continue to be scrutinized by the Commission on a case-by-case basis.

In addition, the Director of the Bureau of Consumer Protection was instructed to submit a Report to the Commission within six months, recommending an overall strategy to approaching this matter on a case-by-case basis, with an emphasis on potential actions, if warranted, in the fatty acid and cholesterol claims area.

By direction of the Commissions.

Carol M. Thomas,

Secretary.

Separate Statement of Chairman James C. Miller III

In view, it is entirely appropriate for the Commission to scrutinize nutrition claims of the kind the proposed rule would regulate. Consumers can be deceived by misleading nutritional advertising because it is often difficult to evaluate such claims. However, I do not think that a rulemaking proceeding is the appropriate way for the Commission to address this problem. In my view, a rule should be promulgated only when there is evidence that the problems it addresses are so widespread that the benefits of the rule justify the regulatory burdens it would impose. The record does not support the conclusion that the nutritional claims in food advertising fall into this category.

The alternative to a rulemaking proceeding is to deal with the problems that exist on a case-by-case basis, vigorously pursuing individual violations as they are identified. Such an approach is likely to provide more protection for consumers, more quickly, with less risk of offsetting harm to consumers and unjustified burden on businesses.

The advantages of a case-by-case approach are most apparent in considering the staff's proposal which would require advertising discussing the link between diet and heart disease to disclose that the subject is not free from controversy. Certainly, we should act against advertising that overstates the evidence concerning the diet-heart relationship, since consumer injury may result from such advertising. We cannot, however, conclude that all advertising that mentions the relationship overstates it. There is no evidence that consumers are unaware of the controversy, or that they misinterpret the simple statement that many doctors recommend less cholesterol. Moreover, it is doubtful whether consumers will correctly understand the disclosure that some experts disagree. If consumers interpret this disclosure to mean that new evidence casts the hypothesis in greater doubt, our rule would mislead them.

In any case, despite controversy, numerous public health authorities have recommended a prudent diet, with less fat and cholesterol. Even if it turns out that there is no relationship between diet and heart disease, the consequences of mistakenly following the prudent diet appear to be insignificant. On the other hand, if consumers are dissuaded from following such a diet and a relationship to heart disease is substantiated, more people will die. Forcing all ads to mention the controversy could reduce this type of advertising substantially, or make it less effective. In either case, fewer consumers might resort to the prudent diet, to their detriment. Our responsibility to the public requires that we not take this risk. Less advertising about this important problem could injure consumers, not protect them.

Closely related to this concern is the possible chilling effect of requiring advertisers to mention that foods with reduced cholesterol nevertheless contain fat. There is no evidence that consumers misinterpret advertising references to no cholesterol. Moreover, to the extent this rule would discourage references to cholesterol levels, it would deprive consumers of useful information to help them distinguish products that contain both cholesterol and fat from those that are at least low in cholesterol.

The proposed rule would also define "natural" foods as those with no artificial ingredients and only minimal processing. Quite aside from the significant difficulties that would be posed in enforcing this rule, a fundamental problem exists by virtue of the fact that the context in which "natural" is used determines its meaning. It is unlikely that consumers expect the same thing from a natural apple as they do from natural ice cream. The proposed rule assumes, without any evidence, that "natural" means the same thing in every context. We should concentrate our resources on more serious consumer protection problems than addressing whether a claim that "milk is a natural," is deceptive.

The last section of the rule concerns energy and calorie claims. The most significant information this section would provide is that foods that provide energy also contain calories. For those who are interested, this information is readily available on product labels. Those who are not interested now are unlikely to find the same information more useful in advertising.

Finally, we should keep in mind that the proposed rule concerns advertising, *not* labeling. Significant information, such as the specific number of calories in foods advertised as low calorie, is already contained on product labels. Thus, consumers have ready access to much of the information covered in the food rule at the point of sale, where it is of most value to the decision to purchase.

Separate Statement of Commissioner Michael Pertschuk

Two years ago, this Commission approved in principle a modest proposal aimed at food advertising claims which appealed to the public's concern about diet and health. The thrust of the rule was straightforward:

advertisements promoting beneficial health and diet features of food products could not deceptively cover up adverse health and diet facts about those products.

The evidence has not changed in the last two years. The policy considerations have not changed in the last two years. If anything, rising popular and medical concern with diet and health makes action in this area all the more important. I saw no basis for a reconsideration of the decisions we made two years ago. I was, however, willing to consider amendments to meet concerns other Commissioners might have had. Now there is no longer a majority on the Commission to support *any* form or part of a rule, however modified and however modest, and it would be pointless to maintain the facade of an "active" rulemaking proceeding. Therefore, I reluctantly agreed to terminate it.

This abdication invites a free-for-all for deceptive health claims for food—claims which will cynically exploit and distort growing public concern with diet and health. Advertisers will continue to spend fortunes to promote high fat foods as healthful, highly processed foods as natural, and high calorie foods as "dietetic" or as miracle energy tonics. The very fact that these claims continue to proliferate is evidence that they are effective in getting consumers to buy—and often to pay a premium. We do not need lawyers or economists to obscure the plain evidence of our senses.

It may well be a cornerstone of a free market that consumers have an inalienable right to clog up their arteries if they want to do so. But it seems to me that there are two modest proposals that should go along with that freedom. One is that consumers, particularly those looking for healthful alternatives, not be misled by deceptive health claims for food. The other is that consumers should be informed about the risks associated with those choices.

I cannot say I'm entirely surprised to find the Commission abandoning those goals today. While professing general support for the Commission's consumer education program, the Reagan deregulators at the FTC oppose the role of the FTC as a "consumer educator" in the food area. They obstensibly prefer such education to come from voluntary groups like the Network for Better Nutrition, which is a broad coalition of consumers, food manufacturers, and nutritional experts organized to promote better nutrition. Unfortunately, the Reagan administration, including Chairman Miller, withheld critical support for the Network for Better Nutrition and the effort collapsed. Nutrition education is being left to the magic of the marketplace. Coming from an administration that once proposed ketchup as a nutritional vegetable, this policy is hardly surprising.

Preventing deception won't cure the nation's coronary disease epidemic. But the claims that are a part of this record certainly do not help. For all of his concerns about cost, Chairman Miller ignores the costs of not acting. How many millions of dollars will now be spent by consumers under the illusion they are buying the good health that food ads promise but can't deliver?

I do not disagree with Chairman Miller's belief that a regulation should be issued only if there is proof that the proposed rule is needed and that the benefits will exceed the costs. Indeed, the FTC was engaging in exactly such a careful balancing of costs and benefits long before his arrival.

My fundamental disagreement is with the application of this standard. The novel evidentiary standard for rulemaking embraced by the Chairman would require every issue to be independently supported by statistical evidence of nearly scientific purity. In rejecting the food advertising rule, the majority of the Commission indicated that it was not adopting those evidentiary standards. In my view, that is a wise choice, since those standards would likely prevent the Commission, or any decision-maker, from ever having sufficient evidence to do anything.

[FR Doc. 83-13725 Filed 5-23-83; 8:45 am]
BILLING CODE 6750-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM79-76-158 (Texas—28)]

High-Cost Gas Produced From Tight Formation; Correction

May 19, 1983.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This document corrects a notice of proposed rulemaking that concerned high-cost gas produced from tight formations, Docket No. RM79-76-158 (Texas—28). The notice of proposed rulemaking appeared in the **Federal Register** on January 5, 1983 (48 FR 423); and contained an incorrect acreage description.

FOR FURTHER INFORMATION CONTACT: Steven Ross, Office of General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, D.C. 20426, (202) 357-8571.

The following restates and corrects the description of the recommendation as well as the delineation of the formation, in FR DOC. 83-1250, appearing on pages 423 and 424, respectively. On page 423, the first paragraph of the description of the formation should read as follows:

"II. Description of Recommendation

Texas recommends that the Vicksburg (12,000 Boyt Sand) Formation in Hidalgo County, Texas, Railroad Commission District 4, be designated as a tight formation. The recommended area is within a 2.5 mile radius, centered roughly 1670 feet south of the CNG Producing Company Boyt No. 1 well and consisting of approximately 12,000 acres. The center point of this radius is located 18,725 feet south and 1,800 feet east of the northwest corner of the Dyonisio Ramirez Porcion 78, Abstract No. 563, Hidalgo County, Texas."

On page 424, the delineation of the formation should read as follows:

"(154) *Vicksburg (12,000' Boyt Sand) Formation in Texas.* RM79-76-158 (Texas—28).

(i) *Delineation of formation.* The Vicksburg (12,000' Boyt Sand) Formation is located in Hidalgo County, Texas, Railroad Commission District 4. The designated area is within a 2.5 mile radius the center point of which is located 18,725 feet south and 1,800 feet east of the northwest corner of Dyonisio Ramirez Porcion 78, Abstract No. 563."

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-13879 Filed 5-23-83; 8:45 am]
BILLING CODE 6717-01-M

18 CFR Part 271

[Docket No. RM79-76-197 (Colorado-36)]

High-Cost Gas Produced From Tight Formations; Notice of Proposed Rulemaking

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

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

DATE: Comments on the proposed rule are due on July 5, 1983. Public Hearing: No public hearing is scheduled in this

docket as yet. Written requests for a public hearing are due on June 3, 1983.

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

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

SUPPLEMENTARY INFORMATION:

I. Background

On April 22, 1983, the State of Colorado Oil and Gas Conservation Commission (Colorado) submitted to the Commission as recommendation, in accordance with § 271.703 of the Commission's regulations (45 *FR* 56034, August 22, 1980), that the Dakota formation located in Mesa County, Colorado, be designated as a tight formation. Pursuant to § 271.703(c)(4) of the regulations, this Notice of Proposed Rulemaking is hereby issued to determine whether Colorado's recommendation that the Dakota Formation be designated a tight formation should be adopted. The United States Department of the Interior, Bureau of Land Management concurs with Colorado's recommendation. Colorado's recommendation and supporting data are on file with the Commission and are available for public inspection.

II. Description of Recommendation

The Dakota Formation is located 20 miles east of the city of Grand Junction, Colorado, and underlies Township 11 South, Range 95 West, Sections 1 through 36, and Township 11 South Range 96 West, Sections 1 through 36, 6th P.M. The recommended area contains approximately 50,830 acres, of which 87% is federal land and 13% is fee land.

The Dakota Formation is defined as the formation that occurs between the top of the Morrison Formation and the base of the Mancos Shale. The top of the Dakota Formation is found at a depth of 7,300 to 8,900 feet in the recommended area and the average depth to the top of the formation is 8,100 feet. The average thickness of the Dakota Formation is 200 feet and the formation is of Cretaceous age.

III. Discussion of Recommendation

Colorado claims in its submission that evidence gathered through information and testimony presented at a public hearing in Cause No. NG–41 convened by Colorado on this matter demonstrates that:

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

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

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

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

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

IV. Public Comment Procedures

Interested persons may comment on this proposed rulemaking by submitting written data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E. Washington, D.C. 20426, on or before July 5, 1983. Each person submitting a comment should indicate that the comment is being submitted in Docket No. RM79–76–197 (Colorado–36), and should give reasons including supporting data for any recommendations. Comments should include the name, title, mailing address, and telephone number of one person to whom communications concerning the proposal may be addressed. An original and 14 conformed copies should be filed with the Secretary of the Commission. Written comments will be available for public inspection at the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. during business hours.

Any person wishing to present testimony, views, data, or otherwise participate at a public hearing should notify the Commission in writing of the desire to make an oral presentation and therefore request a public hearing. Such request shall specify the amount of time requested at the hearing. Requests should be filed with the Secretary of the Commission no later than June 3, 1983.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

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

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

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

PART 271—[AMENDED]

Section 271.703 is amended by paragraph (d)(177) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.*

* * * * *

(126) through (176) [Reserved]

(177) *Dokota Formation in Colorado.* RM79–76–197 (Colorado-36).

(i) *Delineation of formation.* The Dakota Formation is located in Mesa County, Colorado, in Township 11 South, Range 95 West, Sections 1 through 36, and Township 11 South, Range 96 West, Sections 1 through 36, 6th P.M.

(ii) *Depth.* The average depth to the top of the Dakota Formation is 8,100 feet. The Dakota Formation is defined as that formation which occurs between the top of the Morrison Formation and the base of the Mancos Shale. The Dakota Formation averages 200 feet in thickness.

[FR Doc. 83-13686 Filed 5-23-83; 8:45 am]

BILLING CODE 6717-01-M

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18 CFR Part 271

[Docket No. RM79–76–198 (Colorado-37)]

High-Cost Gas Produced From Tight Formations; Notice of Proposed Rulemaking

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from

tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This Notice of Proposed Rulemaking by the Director of the Office of Pipeline and Producer Regulation contains the recommendation of the State of Colorado that the Morrison Formation be designated as a tight formation under § 271.703(d).

DATE: Comments on the proposed rule are due on July 5, 1983. Public Hearing: No public hearing is scheduled in this docket as yet. Written requests for a public hearing are due on June 3, 1983.

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

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

SUPPLEMENTARY INFORMATION:

I. Background

On April 22, 1983, the State of Colorado Oil and Gas Conservation Commission (Colorado) submitted to the Commission a recommendation, in accordance with § 271.703 of the Commisson's regulations (45 FR 56034, August 22, 1980), that the Morrison Formation located in Mesa and Garfield Counties, Colorado, be designated as a tight formation. Pursuant to § 271.793(c)(4) of the regulations, this Notice of Proposed Rulemaking is hereby issued to determine whether Colorado's recommendation that the Morrison Formation be designated a tight formation should be adopted. The United States Department of the Interior, Bureau of Land Management concurs with Colorado's recommendation. Colorado's recommendation and supporting data are on file with the Commission and are available for public inspection.

II. Description of Recommendation

The Morrison Formation is located northeast of the city of Grand Junction, Colorado, and underlies portions of Townships 7 through 11 South, Ranges 95 through 100 West, 6th P.M. The recommended area contains approximately 581,038 acres, of which 72.2% is federal land, 27.5% is fee land, and 0.3% is state land.

The Morrison Formation is overlain by the Dakota Formation and consists of the upper Brushy Basin Member and the lower Salt Wash Member. The top of the Morrison Formation is found at depths of 6,300 to 9,800 feet in the recommended area and the average depth to the top of the formation is 8,050 feet. The thickness of the Morrison Formation varies from 400 to 600 feet and the formation is of Jurassic age.

III. Discussion of Recommendation

Colorado claims in its submission that evidence gathered through information and testimony presented at a public hearing in Cause No. NG–42 convened by Colorado on this matter demonstrates that:

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

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

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

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

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

IV. Public Comment Procedures

Interested persons may comment on this proposed rulemaking by submitting written data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before July 5, 1983. Each person submitting a comment should indicate that the comment is being submitted in Docket No. RM79–76–198 (Colorado-37), and should give reasons including supporting data for any recommendations. Comments should include the name, title, mailing address, and telephone number of one person to whom communications concerning the proposal may be addressed. An original and 14 conformed copies should be filed with the Secretary of the Commission. Written comments will be available for public inspection at the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C., during business hours.

Any person wishing to present testimony, views, data, or otherwise participate at a public hearing should notify the Commission in writing of the desire to make an oral presentation and therefore request a public hearing. Such request shall specify the amount of time requested at the hearing. Requests should be filed with the Secretary of the Commission no later than June 3, 1983.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

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

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

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

PART 271—[AMENDED]

Section 271.703 is amended by adding paragraph (d)(178) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.*

* * * * *

(126) through (177) [Reserved].

(178) *Morrison Formation in Colorado.* RM79–76–198 (Colorado–37).

(i) *Delineation of formation.* The Morrison Formation is located in Mesa and Garfield Counties, Colorado, in Township 7 South, Ranges 95 through 101 West; Township 8 South, Ranges 95 through 100 West; Township 9 South, Ranges 95 through 99 West; Township 9 South, Range 100 West, Sections 1 through 4, 9 through 16, 22 through 26, and 36; Township 10 South, Ranges 95 through 99 West; Township 11 South, Ranges 95, 96, and 99 West; Township 11 South, Range 98 West, Sections 1 through 24, 27 through 34; and Township 22 South, Range 97 West, Sections 1 through 12, 17 through 20, 6th P.M.

(ii) *Depth.* The average depth to the top of the Morrison Formation is 8,050 feet. The Morrison Formation is overlain by the Dakota Formation and consists of the upper Brushy Basin Member and the lower Salt Wash Member. The Morrison

Formation varies from 400 to 600 feet in thickness.

[FR Doc. 83-13887 Filed 5-23-83; 8:45 am]
BILLING CODE 6717-01-M

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18 CFR Part 271

[Docket No. RM79-76-199 (New Mexico-24)]

High-Cost Gas Produced From Tight Formations; Notice of Proposed Rulemaking

AGENCY: Federal Energy Regulatory Commission, DOE

ACTION: Notice of proposed rulemaking.

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

DATE: Comments on the proposed rule are due on July 5, 1983. Public Hearing: No public hearing is scheduled in this docket as yet. Written requests for a public hearing are due on June 3, 1983.

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

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

SUPPLEMENTARY INFORMATION:

I. Background

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

II. Description of Recommendation

The Morrow Formation is located in southeast New Mexico. The recommended formation includes all of Sections 25 and 36, Townships 23 South, Range 26 East, NMPM and consists of approximately 1,280 acres. The top of the Morrow Formation is found at an average depth of 11,553 feet and has approximately 190 feet of gross thickness.

III. Discussion of Recommendation

New Mexico claims in its submission that evidence gathered through information and testimony presented at a public hearing in Case No. 7784 convened by New Mexico on this matter demonstrates that:

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

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

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

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

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

IV. Public Comment Procedures

Interested persons may comment on this proposed rulemaking by submitting written data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before July 5, 1983. Each person submitting a comment should indicate that the comment is being submitted in Docket No. RM79-76-199 (New Mexico-24), and should give reasons including supporting data for any recommendations. Comments should include the name, title, mailing address, and telephone number of one person to whom communications concerning the proposal may be addressed. An original and 14 conformed copies should be filed with the Secretary of the Commission. Written comments will be available for public inspection at the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C., during business hours.

Any person wishing to present testimony, views, data or otherwise participate at a public hearing should notify the Commission in writing of the desire to make an oral presentation and therefore request a public hearing. Such request shall specify the amount of time requested at the hearing. Requests should be filed with the Secretary of the Commission no later than June 3, 1983.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

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

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

Kenneth A. William,

Director, Office of Pipeline and Producer Regulation.

PART 271—[AMENDED]

Section 271.703 is amended by adding paragraph (d)(180) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.*

* * * * *

(126) through (179) [Reserved].

(180) *Morrow Formation in New Mexico.* RM79-76-199 (New Mexico-24).

(i) *Delineation of formation.* The Morrow Formation is located in Eddy County, New Mexico, in Sections 25 and 36, Township 23 South, Range 26 East, NMPM.

(ii) *Depth.* The type section for the Morrow Formation is found at a depth of approximately 11,458 feet to 11,648 feet on the log from the Jake L. Hamon State V-249 Well No. 1. The average depth to the top of the Morrow Formation is 11,553 feet. Thickness of the Morrow Formation is approximately 190 feet.

[FR Doc. 83-13885 Filed 5-23-83; 8:45 am]
BILLING CODE 6717-01-M

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18 CFR Part 271

[Docket No. RM79-76-191; (Tennessee-1)]

High-Cost Gas Produced from Tight Formations; Notice of Proposed Rulemaking

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

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

DATE: Comments on the proposed rule are due on July 5, 1983. Public Hearing: No public hearing is scheduled in this docket as yet. Written request for a public hearing are due on June 3, 1983.

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

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

SUPPLEMENTARY INFORMATION:

I. Background

On March 21, 1983, the Tennessee State Oil and Gas Board (Tennessee) submitted to the Commission a recommendation, in accordance with § 271.703 of the Commission's regulations (45 FR 56034, August 22, 1980), that the Monteagle Formation located in Morgan, Scott, and portions of Fentress Counties in the north-central part of the state of Tennessee, be designated as a tight formation. Pursuant to § 271.703(c)(4) of the regulations, this Notice of Proposed Rulemaking is hereby issued to determine whether Tennessee's recommendation that the Monteagle Formation in Morgan, Scott, and portions of Fentress Counties, be designated a tight formation should be adopted. Tennessee's recommendations and supporting data are on file with the Commission and are available for public inspection.

II. Description of Recommendation

Tennessee recommends that the Monteagle Formation encountered in Morgan, Scott, and portions of Fentress Counties, located on the Cumberland Plateau of the north-central part of the state of Tennessee, be designated as a tight formation. The designated interval represents a Mississippian age limestone with lesser amounts of dolomite, chert, and shale. The production zones of the Monteagle Formation are restricted to the oolitic sandstones of lenticular and elongate lime sand bodies deposited in a high energy environment.

The Monteagle Formation is overlain by the Hartselle Formation and is underlain by the St. Louis Dolomite Formation, both of Mississippian age. The depth to the top of the Monteagle Formation varies from 750 to 2,050 feet with an average depth of 1,100 feet. The thickness varies from 180 to 250 feet.

III. Discussion of Recommendation

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

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

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

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

Tennessee further asserts that existing federal regulation assure that development of this formation will not adversely affect any fresh water aquifers that are or are expected to be used as a domestic or agricultural water supply.

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

IV. Public Comment Procedures

Interested persons may comment on this proposed rulemaking by submitting written data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before July 5, 1983. Each person submitting a comment should indicate that the comment is being submitted in Docket No. RM79-76-191 (Tennessee-1), and should give reasons, including supporting data, for any recommendations. Comments should include the name, title, mailing address, and telephone number of one person to whom communication concerning the proposal may be addressed. An original and 14 conformed copies should be filed with the Secretary of the Commission. Written comments will be available for public inspection at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C., during business hours.

Any person wishing to present testimony, views, data, or otherwise participate at a public hearing should notify the Commission in writing of a desire to make an oral presentation and therefore request a public hearing. Such request shall specify the amount of time requested at the hearing. Requests should be filed with the Secretary of the Commission no later than June 3, 1983.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

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

Accordingly, the Commission proposes to amend the regulations in Part 271, Subchapter H, Chapter I, Title 18, Code of Federal Regulations, as set

forth below, in the event Tennessee's recommendation is adopted.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

PART 271—[AMENDED]

Section 271.703 is amended by adding paragraph (d)(191) to read as follows:

§ 271.703 Tight formation.

* * * * *

(d) *Designated tight formations.*

* * * * *

(19) *Monteagle Formation in Tennessee.* RM79–76–191 (Tennessee-1).

(i) *Delineation of formation.* The Monteagle Formation is found in Morgan, Scott, and portions of Fentress Counties located in the northcentral part of the state of Tennessee.

(ii) *Depth.* The average depth to the top of the Monteagle Formation is 1,100 feet. The thickness varies from 180 to 250 feet.

[FR Doc. 83-13888 Filed 5-23-83; 8:45 am]

BILLING CODE 6717-01-M

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18 CFR Part 271

[Docket No. RM79-76-195 (Texas-22 Addition IV)]

High-Cost Gas Produced From Tight Formations; Notice of Proposed Rulemaking

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

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

DATE: Comments on the proposed rule are due on July 5, 1983. Public Hearing: No public hearing is scheduled in this docket as yet. Written requests for a public hearing are due on June 3, 1983.

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

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

SUPPLEMENTARY INFORMATION:

I. Background

On April 4, 1983, the Railroad Commission of Texas (Texas) submitted to the Commission a recommendation, in accordance with § 271.703 of the Commission's regulations (45 FR 56034, August 22, 1980), that additional areas of the Strawn-Detrital Formation in the Ozona, S.W. (Strawn) Field in Crockett County, Texas, be designated as a tight formation. On August 24, 1982, the Commission issued Order No. 249 in Docket No. RM79–76–111 (Texas-22), and on April 21, 1983, the Commission issued Order No. 295 in Docket Nos. RM79–76–150 (Texas-22 Addition) and RM79–76–157 (Texas-22 Addition II) in which the Commission designated as tight formations portions of the Strawn-Detrital in the University Block 31 (Strawn-Detrital) Field and the Howards Creek (Penn) Field and portions of the Detrital Formation in the Perner Ranch area. A recommendation is currently under consideration to designate additional areas of the Strawn-Detrital Formation in the University Block 31 (Strawn-Detrital) and Howards Creek (Penn) Fields, in Docket No. RM79–76–169 (Texas-22 Addition III), Notice of Proposed Rulemaking issued March 1, 1983, as a tight formation. Pursuant to § 271.703(c)(4) of the regulations, this Notice of Proposed Rulemaking is hereby issued to determine whether Texas' recommendation that the additional areas of the Strawn-Detrital Formation be added to the previously designated tight formation should be adopted. Texas' recommendation and supporting data are on file with the Commission and are available for public inspection.

II. Description of Recommendation

Texas recommends that the Strawn-Detrital Formation in portion of the Ozona, S.W. (Strawn) Field in Crockett County, Texas, Railroad Commission District 7C, be designated as a tight formation. The recommended area consists of approximately 14,000 acres located 15 miles southwest of Ozona, Texas, and just to the south of the area of the Strawn-Detrital Formation in the University Block 31 Field designated by the Commission as a tight formation by Order No. 249, issued August 24, 1982. Specifically, the recommended area consists of the south halves of Sections 1, 12 and 13, the west halves of Sections 17 and 23, the east half of Section 8, and all of Sections 2, 3, 4, 9, 10, 11, 14, 15, 16 and 21, Block M, GC and S.F. Survey; Sections 4, 5, 6, 11, 12, 13 and the south quarters of Sections 7 and 10, Block S.L., T and S.T.L. Survey; and a portion of Block Z, J. W. Henderson Survey.

The vertical extent of the Strawn-Detrital Formation in Texas' recommendation is defined as the interval from the base of the Canyon Formation (top of Strawn series) to the top of the Simpson Shale (base of the Devonian), which includes the Strawn, Strawn-Detrital and Devonian zones. In the recommended area the average depth to the top of the Strawn series is approximately 8,800 feet.

III. Discussion of Recommendation

Texas claims in its submission that evidence gathered through information and testimony presented at a public hearing in support of this recommendation demonstrates that:

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

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

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

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

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

IV. Public Comment Procedures

Interested persons may comment on this proposed rulemaking by submitting

written data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before July 5, 1983. Each person submitting a comment should indicate that the comment is being submitted in Docket No. RM79-76-195 (Texas-22 Addition IV) and should give reasons including supporting data for any recommendations. Comments should include the name, title, mailing address, and telephone number of one person to whom communications concerning the proposal may be addressed. An original and 14 conformed copies should be filed with the Secretary of the Commission. Written comments will be available for public inspection at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C., during business hours.

Any person wishing to present testimony, views, data, or otherwise participate at a public hearing should notify the Commission in writing of a desire to make an oral presentation and therefore request a public hearing. Such request shall specify the amount of time requested at the hearing. Requests should be filed with the Secretary of the Commission no later than June 3, 1983.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

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

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

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

PART 271—[AMENDED]

Section 271.703(d) is amended by adding paragraph (d)(106)(iii) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.*

* * * * *

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

* * * * *

(iii) *Ozona, S.W. (Strawn) Field.*

(A) *Delineation of Formation.* The Strawn-Detrital Formation in the area of the Ozona, S.W. (Strawn) Field is located in Crockett County, Texas, Railroad Commission District 7C. The designated area consists of the south half of Section 1, Sections 2, 3, 4, the east half of Section 8, Sections 9, 10, 11, the south halves of Sections 12 and 13, Sections 14, 15, 16, the west half of Section 17, Section 21, and the west half of Section 23, Block M, GC and S.F. Survey; Sections 4, 5, 6, the south quarters of Sections 7 and 10, Sections 11, 12, and 13, Block S.L., T and S.T.L. Survey; and a portion of Block Z, J. W. Henderon Survey.

(B) *Depth.* The vertical extent of the Strawn-Detrital Formation in the Ozona, S.W. (Strawn) Field is defined as the interval from the base of the Canyon Formation (top of the Strawn series) to the top of the Simpson Shale (base of the Devonian), which includes the Strawn, Strawn-Detrital and Devonian zones. The average depth to the top of the Strawn series is approximately 8,800 feet.

[FR Doc. 83-13889 Filed 5-23-83; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 158

[Docket No. 83N-0108]

Quick Frozen Brussels Sprouts; Advance Notice of Proposed Rulemaking on the Possible Establishment of a Standard

Correction

In FR Doc. 83-11423 beginning on page 19413 in the issue of Friday, April 29, 1983, make the following corrections:

1. On page 19415, first column, the paragraph designated "2.3.1" should have been designated "2.4.3.1".

2. On page 19416, center column, paragraph 6.3, fifth line, "3.2(o)" should have read "3.2(c)".

3. On page 19417, first column, second full paragraph from the top of the page, fifth line, "556, 577" should have read "556, 557".

BILLING CODE 1505-01-M

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21 CFR Part 158

[Docket No. 83-0105]

Quick Frozen Corn-on-the-Cob; Possible Establishment of a Standard

Correction

In FR Doc. 83-11461 beginning on page 19399 in the issue of Friday, April 29, 1983, make the following corrections:

1. On page 19401, Table I, in the entry for the defect *Column variation (Ears)—Pronounced*, under the defect category *Major*, the number "1" should have read "2".

2. Same table, in the entry for the defect *difference in size outside given range (in standard sample unit)*, under the defect category *Minor*, "2" should have read "1".

BILLING CODE 1505-01-M

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21 CFR Part 158

[Docket No. 83N-0109]

Quick Frozen Green Beans and Quick Frozen Wax Beans; Advance Notice of Proposed Rulemaking on the Possible Establishment of a Standard

Correction

In FR Doc. 83-11429 beginning on page 19409 in the issue of Friday, April 29, 1983, make the following correction:

On page 19413, first column, under paragraph 8.1.1, fifth line, "*FAO/HOW*" should have read "*FAO/WHO*".

BILLING CODE 1505-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[EE-140-82]

Top-Heavy Plans

Correction

In FR Doc. 83-6629 beginning on page 10868 in the issue of Tuesday, March 15, 1983, the telephone number in the "For Further Information Contact" Section should read "202-566-3430."

BILLING CODE 1505-01-M

DEPARTMENT OF EDUCATION

Office of the Secretary

34 CFR Part 31

Salary Offset for Federal Employees Indebted to the United States Under Programs Administered by the Secretary of Education

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes regulations that would establish rules for offsetting a debt against the Federal pay of a current or former Federal employee who is indebted to the United

States under a program administered by the Secretary of Education. These proposed regulations implement debt collection procedures provided for under the Debt Collection Act of 1982.

DATES: Comments must be received on or before June 23, 1983.

ADDRESS: Comments should be addressed to Mr. Jack Reynolds, Student Loan Collection Task Force, Office of Postsecondary Education, 400 Maryland Avenue, S.W., (ROB-3—Room 3661), Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Mr. Jack Reynolds, (202) 755-1467.

SUPPLEMENTARY INFORMATION:

Background

The Debt Collection Act or 1982, Pub. L. 97-365, authorizes the Federal Government to collect debts owed to it by its own current and retired military and civilian employees through the use of a salary offset. In this respect, the law puts the Federal Government in a position similar to that of a private employer, since a private employer may collect a debt owed to it by one of its employees without resort to litigation.

Under the law, when the head of a Federal agency determines that one of the agency's current or retired employees is indebted to the United States, or is notified by the head of another Federal agency that one of the agency's employees is indebted to the United States, the employee's debt may be repaid by offsetting the debt against that employee's pay. The amount of the offset may not exceed 15 percent of the employee's disposable pay. Disposable pay is defined in the law as gross Federal pay minus deductions required by law to be withheld. These deductions include amounts withheld for Federal, State, and local income taxes, Social Security taxes, and Federal retirement programs.

The law also includes safeguards to protect the rights of employees. Thus, at least 30 days before an offset may be initiated, the head of the agency holding the debt must notify the debtor that he or she (1) is indebted to the United States, (2) may inspect and copy Government records relating to the debt, (3) may enter into an agreement with the head of the agency concerning a repayment schedule, and (4) may request a hearing contesting the existence or amount of the debt, or the proposed offset schedule.

The Secretary of Education is proposing regulations to implement the offset provisions of the Debt Collection Act of 1982 with regard to Federal employees who are indebted to the United States under programs administered by the Secretary. In general, Federal employees most frequently become indebted to the United States under programs administered by the Secretary if they are in default on loans made under the Guaranteed Student Loan/PLUS, National Direct Student Loan, Cuban Student Loan or Law Enforcement Education Programs, or have not repaid overpayments on grants received under the Pell Grant or Law Enforcement Education Programs.

The procedures the Secretary is proposing reflect the major purpose of the offset authority, namely, collecting debts owed the United States by current and former Federal employees in a cost-effective and expeditious manner, while allowing the employee an opportunity to be heard regarding the nature and amount of the debt and the decision to offset 15 percent of the employee's disposable pay.

Before initiating an offset proceeding, the Secretary will notify any Federal employee who is indebted to the United States under a program administered by the Secretary of the existence and amount of that indebtedness, and the Secretary's intention to satisfy that indebtedness by offsetting 15 percent of the employee's disposable pay. The Secretary will, however, agree to reconsider his determination regarding the existence or amount of the debt if the employee can convince the Secretary that his initial determination was incorrect. In making his or her argument against being indebted to the United States, the employee may submit documents to the Secretary or raise factual matters not previously submitted or r aised with the Secretary. Moreover, the Secretary may enter into an agreement with the employee to offset a smaller amount from the employee's disposable pay if the employee can convince the Secretary that an offset of 15 percent against his or her disposable pay would produce an extreme financial hardship. In this connection, the employee must submit an alternative offset schedule that would not produce such a hardship. The Secretary will allow an employee 45 days to present his or her arguments and documents with respect to these issues.

If the Secretary agrees, after reviewing the material submitted by the employee, that the employee is not indebted to the United States, or that the alternative offset schedule proposed by the employee is appropriate to satisfy that indebtedness, the Secretary so informs the employee. If the Secretary determines that the employee is indebted to the United States, he will formally notify the employee of his determination and his rationale for that determination, and of his intention to collect the debt by offsetting the amount he originally scheduled, or a modified amount if he believes a modification is appropriate in light of the employee's submissions. The Secretary will, in addition, inform the employee of his or her right to a hearing before a hearing official, who is not under the supervision or control of the Secretary, if the employee wishes to contest the Secretary's determination of the existence or amount of the debt, or the Secretary's determination that the proposed schedule will not produce an extreme financial hardship for that employee.

The Debt Collection Act of 1982 prohibits the Secretary from offsetting the pay of an employee to satisfy that employee's debt until the procedures set forth in the Act are satisfied. Yet, the Act recognizes that any delay in these procedures benefits the employee and injures the United States, sine it requires that the hearing official, if a hearing is requested by the employee, issue his decision as soon as possible, but not later than 60 days after the employee files a petition for a hearing. The rather short deadline dates proposed by the Secretary in the regulations reflect this statutory deadline and that recognition.

Hearings—Existence or Amount of Debt

The Debt Collection Act of 1982 permits an employee to request a hearing on the determination of the agency regarding the existence or amount of debt owed by the employee to the United States. Thus, the hearing is not to determine anew whether the employee is indebted to the United States; it is a hearing on the determination of an agnecy that the employee is indebted to the United States. In this respect, the hearing is in the nature of an appeal of the decision of the agency. Accordingly, the Secretary is proposing an appeal standard if an employee requests a hearing to challenge the Secretary's determination of the existence and amount of the employee's debt.

Under the Secretary's proposed standard, an employee must demonstrate to the hearing official that the Secretary's determination of the existence or amount of the employee's debt was clearly erroneous before the hearing official can overturn the Secretary's determination. In order for the hearing official to find that the Secretary's determination of the existence and amount of the debt was clearly erroneous, the employee must demonstrate that the Secretary's

determination was without legal support. Thus, even if there is legal support for the position of the employee that he is not indebted to the United States, the hearing official may not find that the Secretary's determination was clearly erroneous if there is also support for the position of the Secretary. Moreover, since the hearing official is evaluating whether the Secretary's determination of the existence or amount of the debt was clearly erroneous, the hearing official must base his opinion on the same facts that were available to the Secretary. Therefore, no evidence may be introduced at the hearing that has not already been provided to the Secretary before he made his determination.

In making this finding, the hearing official shall be governed by the statutes and regulations authorizing and implementing the programs giving rise to the debt, and State law, if relevant. In view of the limited scope of the hearing regarding the Secretary's determination of the existence or amount of the debt, the Secretary's expertise regarding the circumstances which give rise to a debt to the United States under programs he administers, and the lack of the expertise by the hearing official in that area, the Secretary has proposed a series of legal principles to guide official in his deliberations on whether the Secretary's determination of the existence and amount of the debt was clearly erroneous. Further, the Secretary anticipates that the hearing official will give great weight to the Secretary's interpretations of the program statutes and regulations.

Hearings—Amount of Offset

The Debt Collection Act also permits the employee to request a hearing regarding the offset schedule established by the head of an agency. The Act, however, estalishes no standards with regard to this review. The Secretary is proposing a standard that he, as well as the hearing official, will follow.

The Secretary believes that it is appropriate in almost all cases, where an employee of the United States is indebted to the United States, to have that employee repay that debt by the Government offsetting 15 percent of his disposable pay. However, the Secretary recognizes that there may be a circumstance where a 15 percent offset against disposable pay would be inappropriate if the offset would produce an extreme financial hardship for the employee. The Secretary believes that an extreme financial hardship is produced only if the offset would prevent the employee from meeting the costs necessarily incurred for essential subsistence expenses of the employee and his family. The Secretary further believes that these essential subsistence costs are costs incurred for medical care, and for food, housing, clothing, and transportation.

The Secretary has defined the family of an employee to include the employee's spouse and dependents. In determining whether an employee will suffer an extreme financial hardship if his pay is offset, the Secretary is proposing to take into account the expenses of the family unit. The Secretary also believes the income and assets of the family unit should also be taken into account when making this determination.

The Secretary acknowledges that the standard he is proposing for demonstrating extreme financial hardship is strict and may be difficult to meet. The Secretary intends this result and expects that very few employees will be able to demonstrate this need. The Secretary believes that a 15 percent offset will not produce a hardship for most employees and further believes that the lifestyle of an employee should be modified, if necessary, to accommodate the repayment of his debt to the United States. The Secretary is also mindful of the fact that if the employee was employed by a private employer, or if a judgment was obtained against the employee by the United States, the remedies permitted to satisfy that debt or judgment would be harsher to the employee than the procedure proposed by the Secretary.

If an employee contends that an offset of 15 percent, or a lesser amount as determined by the Secretary, against his disposable pay would produce an extreme financial hardship, the employee must document that hardship and propose an alternative offset schedule. In order for the Secretary and the hearing official to determine whether an offset would produce an extreme financial hardship for the employee, the employee must provide information concerning his current and future financial situation. The employee satisfies this requirement by providing the information called for in the regulations for the one year period preceding the notice to the employee of the offset, and for a future period which coincides with repayment period proposed by the employee in his or her offset schedule.

Before determining whether the Secretary's proposed offset schedule would produce an extreme financial hardship for the employee, the Secretary and hearing official will: (1) examine the income form all sources of the employee and his spouse and dependents; (2) examine these individual's assets to determine whether the assets could be sold or could serve as collateral for a loan to accommodate the offset; (3) determine whether the employee's essential expenses could be minimized to accommodate the offset; (4) determine whether these individuals could borrow money to accommodate the offset; and (5) take into account exceptional expenses of the employee and his spouse and defendents, and whether such expenses could be avoided or minimized.

Finally, the Secretary does not intend to offset the pay of an employee who, in reality, is not indebted to the United States. Accordingly, in extraordinary circumstances, the Secretary may, after the conclusion of the procedures established in this part, determine that an employee is not indebted to the United States in the amount previously established, based upon conclusive documents producted by the employee after the deadline date established by the regulations.

The Secretary in the part is not establishing rules for offsetting a debt against the pay of a Federal employee to satisfy a judgment obtained by the United States against that employee in a court of the United States. Further, the Secretary in this part is not establishing rules for offsetting the pay of one of his employees who received an overpayment of pay or allowances.

When the Department of Justice and the General Accounting Office issue their final joint regulations implementing the Federal Claims Collection Act as amended by the Debt Collection Act of 1982, the Secretary will revise the Department's salary offset regulations if the Department's regulations are inconsistent with the joint regulations.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291.

They are classified as non-major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Certification Act Certification.

The Secretary certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities.

These regulations do not affect small entities. They affect only individual employees of the United States.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. Written comments and recommendations may be sent to the adddress given at the beginning of this document. All comments submitted on or before the 30th day after publication of this document will be considered before the Secretary issues final regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room 4019–FOB 6, 400 Maryland Avenue, S. W., Washington, D.C. between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

List of Subjects in 34 CFR Part 31

Administrative practice and procedure Debt collection, Governnment employees, Student Aid, Loan Programs—education, Grant programs—education.

Citation of Legal Authority

A citation of statutory or other authority is placed in parentheses on the line following each substantive provision of these proposed regulations.

(Catalog of Federal Domestic Assistance number does not apply.)

Dated May 20, 1983.

T. H. Bell,

Secretary of Education.

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by adding a new part, Part 31, to read as follows:

PART 31—SALARY OFFSET FOR FEDERAL EMPLOYEES WHO ARE INDEBTED TO THE UNITED STATES UNDER PROGRAMS ADMINISTERED BY THE SECRETARY OF EDUCATION

Sec.

31.1 Scope
31.2 Definitions.
31.3 Pay subject to offset.
31.4 Notice of debt—request for records—submission of information.
31.5 Formal notice to employee.
31.6 Request for a hearing-prehearing snbmissions.
31.7 Hearings—time, date, and location.
31.8 Consequence of employee's failure to meet deadline dates.
31.9 Hearing procedures.
31.10 Representation.
31.11 Applicable legal principles.
31.12 Standards for determining extreme financial hardship.

Authority: 5 U.S.C. 5514, as amended by section 5 of Public Law 97–365, 96 Stat. 1751–1752.

§ 31.1 Scope.

(a) If a Federal employee is indebted to the United States under a program administered by the United States Secretary of Education ("the Secretary"), the employee's pay may be offset to satisfy that indebtedness under the procedures set forth in this part.

(b) The Secretary in this part establishes rules for offsetting a debt against the pay of an employee of the United States if that employee—

(1) Is in default and indebted to the United States on a loan made under the Guaranteed Student Loan (GLS)/PLUS Program (20 U.S.C. 1071 *et seq.*);

(2) Is in default and indebted to the United States on a loan made under the National Defense/Direct Student Loan (NDSL) Program (20 U.S.C. 1087aa *et seq.*);

(3) Has not repaid an overpayment on a grant made under the Pell Grant Program (20 U.S.C 1070a);

(4) Has not repaid money owed under the terms of a grant, or is in default on a loan, made under the Law Enforcement Eduation Program (42 U.S.C. 3775);

(5) Is in default and indebted to the United States on a loan made under the Cuban Student Loan Program (22 U.S.C. 2601 *et seq.*); or

(6) Is indebted to the United States under any other program administered by the Secretary.

(c) An offset against pay shall be carried out in accordance with the standards established under the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 951 *et seq.*).

(d) The Secretary in this part is not establishing rules for offsetting a debt against the pay of a Federal employee—

(1) To satisfy a judgment obtained by the United States against that employee in a court of the United States; or

(2) To recover an overpayment of pay or allowances.

(5 U.S.C. 5514)

§ 31.2 Definitions.

As used in this part:

(a) "Agency" means—

(1) An Executive department, military department, Government corporation or independent establishment as defined in 5 U.S.C. 101, 102, 103, or 104, respectively.

(2) The United States Postal Service; or

(3) The Postal Commission.

(b) "Disposable pay" means the amount that remains from an employee's Federal pay after required deductions for Federal, State, and local income taxes; Social Security taxes, including Medicare taxes; and Federal retirement programs.

(c) "Employee" means a current or former—

(1) Civilian employee, as defined in 5 U.S.C. 2105;

(2) Member of the Armed Forces or Reserves of the United States;

(3) Employee of the United States Postal Services; or

(4) Employee of the Postal Rate Commission.

(d) "Offset" means a deduction from the pay of an employee to satify a debt.

(e) "Pay" means basic pay, special pay, incentive pay, retired pay, retainer pay, or, in case of an employee not entitled to basic pay, other authorized pay.

(5 U.S.C. 105, 2105 and 5514(a))

§ 31.3 Pay to offset.

(a) An offset from an employee's pay may not exceed 15 percent of the employee's disposable pay, unless the employee agrees in writing to a larger offset.

(b) An offset from pay shall be made monthly or at officially established pay intervals from the employee's current pay account.

(c) If an employee retires, resigns, or is discharged, or if his or her employment period or period of active duty otherwise ends, an offset may be made from subsequent payments of any nature due the individual.

(5 U.S.C. 5514(a))

§ 31.4 Notice of debt—request for records—submission of information.

(a) Before initiating an offset proceeding, the Secretary notifies an employee that—

(1) The Secretary has determined that the employee is indebted to the United States in a specified amount under a program administered by the Secretary; and

(2) The Secretary intends to satisfy that indebtedness by offsetting 15 percent of the employee's disposable pay unless the employee can demonstrate that this offset schedule would produce an extreme financial hardship under § 31.12.

(b)(1) An employee notified of the Secretary's determination of the existence and amount of the debt, and the offset schedule, may submit a request to the Secretary to—

(i) Send a copy of the records in his possession relating to the debt, not later than 10 days from the date the employee receives the notice;

(ii) Reconsider his determination of the existence or amount of the debt, within the time period specified in paragraph (c) of this section; or

(iii) Reconsider the proposed offset schedule if it would produce an extreme financial hardship for the employee under § 31.12, within the time period in paragraph (c) of this section.

(2) If the employee requests the Secretary to reconsider his determination concerning the existence or amount of the debt, the employee shall submit to the Secretary a statement, with supporting documents, indicating why the employee believes he or she is not so indebted.

(3) If the employee requests the Secretary to reconsider the proposed offset schedule, the employee shall file an alternative proposed offset schedule and a statement, with supporting documents, showing why the Secretary's schedule would produce an extreme financial hardship for the employee under § 31.12. The supporting documents must show, for the employee and his or her spouse and dependents, for the one year period preceding the Secretary's notice and for the repayment period proposed by the employee in his or her offset schedule, their—

(i) Income from all sources,

(ii) Assets,

(iii) Liabilities,

(iv) Number of dependents,

(v) Expenses for food, housing, clothing, and transportation,

(vi) Medical expenses, and

(vii) Exceptional expenses, if any.

(c) An employee, who requests the Secretary to reconsider the existence or amount of the debt, or the Secretary's proposed offset schedule, shall submit his or her statement with supporting documents to the Secretary not later than—

(1) 45 days from the date the employee receives the Secretary's notice, if he or she did not request records; or

(2) 45 days from the date the employee receives the records, if the records were requested.

(d) If the employee submits the appropriate statements and documents in a timely manner, the Secretary reconsiders whether the employee is indebted to the United States, the amount of the indebtedness, or the appropriate offset schedule.

(e) The Secretary notifies the employee, if the Secretary so determines on the basis of the statements and documents provided, that—

(1) The employee is not indebted to the United States; or

(2) The employee's proposed alternative offset schedule is approved.

(f) If, after considering the statement and supporting documents, the Secretary determines that the employee is indebted to the United States, the Secretary sends the employee—

(1) A statement indicating the reasons for the decision regarding the indebtedness, including, if applicable, the reasons for reducing the amount of the indebtedness; and

(2) The notice described in § 31.5.

(g) If, after considering the statement and supporting documents, the Secretary determines that his original offset schedule, or a modification to that schedule, will not impose an extreme financial hardship for the employee under § 31.12, the Secretary sends the employee—

(1) A statement indicating why he concluded that his original or modified offset schedule will not impose an extreme financial hardship under § 31.12; and

(2) The notice described in § 31.5.

(5 U.S.C. 5514(a))

§ 31.5 Formal notice to employee.

At least 30 days before requesting an agency to offset the pay of one of its employees under this part, the Secretary sends the employee a notice informing the employee of—

(a) The nature and amount of the debt the Secretary believes the employee owes the United States under a program administered by the Secretary;

(b) The Secretary's intention to collect the debt by having the employee's employing or payor agency offset 15 percent, or the amount that the Secretary determines under § 31.4, from the employee's disposable pay until the debt is fully repaid;

(c) The employee's opportunity for a hearing regarding—

(1) Whether the Secretary's determination concerning the existence or amount of the debt was clearly erroneous based on information that was available to the Secretary before he issued this notice; and

(2) Whether the Secretary's proposed offset schedule, as described in paragraph (b) of this section, would produce an extreme financial hardship for the employee under § 31.12; and

(d) Applicable hearing procedures and requirements.

(5 U.S.C. 5514(a)(1))

§ 31.6 Request for a hearing—prehearing submissions

(a)(1) An employee must fille a petition for a hearing not later than 15 days from the date the employee receives the notice described in § 31.5 if an employee wants a hearing concerning—

(i) The existence or amount of the debt; or

(ii) The Secretary's proposed offset schedule.

(2) The employee shall also indicate whether he or she wishes the hearing to consist solely of written submissions. However, the employee may, not later than 3 days before the hearing date, request that the hearing consist solely of written submissions if the employee did not originally request that type of hearing.

(b) If an employee timely files a petition for a hearing under paragraph (a) of this section, the Secretary—

(1) Notifies the employee of the time, date, and location of the hearing if the employee does not request a hearing consisting solely of written submissions; and

(2) Provides the employee, if the employee has not received the records under §312.4, and the hearing official with a copy of the records in the Secretary's possession relating to the employee's debt.

(c) Not later than 15 days from the date the employee receives the records described in paragraph (b) of this section, or not later than 25 days from the date the employee receives the notice described in § 31.5 if he or she has received records under §31.4, the employee shall file with the Secretary and the hearing official—

(1) The items listed in paragraph (d) of this section, if the employee contests the Secretary's determination of the existence or amount of the debt; or

(2) The items listed in paragraph (e) of this section, if the employee contests the Secretary's offset schedule.

(d)(1) An employee, contesting the Secretary's determination of the existence or amount of the debt, shall file—

(i) A statement of the reasons why the employee believes that the Secretary's determination of the existence or amount of the debt was clearly erroneous. The statement shall include a recitation of the facts on which the employee relies to support his or her belief and any legal arguments supporting that belief.

(ii) A list of witnesses the employee will call at the hearing and a summary of their anticipated testimony; and

(iii) A copy of the records that the employees intends to introduce at the hearing if they differ from the ones provided by the Secretary.

(2) However, the employee may not—

(i) Raise any issue that he or she has not previously raised with the Secretary concerning the existence or amount of the debt; or

(ii) Introduce any facts or records that he or she has not previously submitted to the Secretary concerning the existence or amount of the debt.

(e) An employee contesting the Secretary's proposed offset schedule shall file with the Secretary—

(1) A proposed alternative offset schedule;

(2) A statement of the reasons why the Secretary's proposed offset against disposable pay will produce an extreme financial hardship under §31.12;

(3) The information required in § 31.4(b)3);

(4) A list of witnesses the employee intends to call at the hearing and a summary of their anticipated testimony; and

(5) A copy of the records that the employee intends to introduce at the hearing if they differ from the ones provided by the Secretary.

(f) As applicable, not later than 15 days from the date the Secretary receives the materials submitted under paragraph (c) of this section, the Secretary provides the employee and the hearing official with—

(1) A statement supporting the Secretary's determination regarding the existence and amount of the debt;

(2) A statement setting forth the reasons why the Secretary's proposed offset schedule does not produce an extreme financial hardship for the employee under §31.12;

(3) A list of witnesses that the Secretary intends to call at the hearing; and

(4) A summary of their anticipated testimony.

(5 U.S.C. 5514(a))

§ 31.7 Hearings—time, date, and location.

(a) If an employee timely files a petition for a hearing under § 31.6, the Secretary selects the time, date, and location for the hearing. The Secretary selects, to the extent feasible, the location that is most convenient for the employee.

(b) For a civilian employee or a former employee, the hearing will be held in Washington, D.C. or in one of the following cities: Boston, Philadelphia, New York, Atlanta, Chicago, Dallas, Kansas City, Denver, San Francisco, or Seattle.

(c) For a current military employee, the Secretary shall select the time, date, and location of the hearing after consultation with the Secretary of Defense.

(d) For a current Coast Guard employee, the Secretary selects the time, date, and location of the hearing after consultation with the Secretary of Transportation.

(5 U.S.C. 5514(a))

§ 31.8 Consequence of employee's failure to meet deadline dates.

(a) An employee waives his or her right to a hearing, and will have his or her disposable pay offset in accordance with the Secretary's offset schedule, if the employee—

(1) Fails to file a petition for a hearing before the deadline date established under § 31.6;

(2) Is scheduled to appear and fails to appear on time at the hearing; or

(3) Fails to file the required submissions under § 31.6 within 5 days after the deadline date established under § 31.6

(b)(1) If the employee files his or her required submissions within 5 days after the deadline date established under § 31.6, and the hearing official finds that the employee has shown good cause for the failure to comply with the established deadline date, the hearing official may find that an employee has not waived his or her right to a hearing.

(2) In making the determination under paragraph (b)(1) of this section, the hearing official shall take into account that the employee was provided 45 days to respond to the Secretary's positions on the same issues under § 31.4.

(5 U.S.C. 5514)

§ 31.9 Hearing procedures.

(a)(1) The hearing is conducted by a hearing official who is not an employee of the United States Department of Education or otherwise under the supervision or control of the Secretary.

(2) A record or transcript of the hearing shall not be made.

(b)(1) The hearing shall not be conducted in accordance with formal rules of evidence with regard to the admissibility of evidence or the use of evidence once admitted.

(2) The hearing official may only permit the introduction of evidence described in the pre-hearing submissions under § 31.6 that are relevant to the issues being considered. However, the employee may introduce other evidence previously provided to the Secretary before he issued the notice set forth in § 31.5, to rebut the evidence of the Secretary.

(3) The hearing official may not require discovery other than that permitted in § 31.6.

(c)(1) At the hearing, the employee and the Secretary may introduce evidence and may call witnesses, consistent with the provisions of paragraph (b) of this section.

(2) Witnesses shall testify under oath.

(3) Witnesses may be cross examined.

(d)(1) At the hearing, the Secretary has the burden of first presenting his evidence on the relevant issues.

(2) The employee then has the burden of presenting his or her evidence regarding these issues.

(3) The Secretary may then offer evidence rebutting the evidence introduced by the employee.

(e)(1)(i) If the Secretary's determination regarding the existence or amount of the debt is contested, the hearing official shall issue a decision in favor of the Secretary's determination, unless the hearing official finds that the employee has demonstrated that the Secretary's determination was clearly erroneous based on information that was available to the Secretary before he issued the notice set forth in § 31.5.

(ii) If the hearing official finds that the Secretary's determination of the amount of the debt was clearly erroneous based on information that was available to the Secretary before he issued the notice set forth in § 31.5, the hearing official shall indicate the amount owned by the employee, if any.

(2)(i) If the Secretary's offset schedule is contested, the hearing official shall uphold the Secretary's offset schedule unless the employee has demonstrated by clear and convincing evidence that the payments called for under the Secretary's schedule will produce an extreme financial hardship for the employee under § 31.12.

(ii) If the hearing official finds that the payments called for under the Secretary's offset schedule will produce an extreme financial hardship for the employee, the hearing official shall establish an offset schedule that will result in the repayment of the debt in the shortest period of time without producing an extreme financial hardship for the employee.

(f) The hearing official shall issue a written opinion stating his or her decision with a rationale supporting that decision as soon as practicable after the hearing.

(g) The Secretary does not offset the debt against the employee's disposable pay during the course of the hearing.

(5 U.S.C. 5514(a))

§ 31.10 Representation.

An employee may represent himself or herself or may be represented by another person, including an attorney, during any portion of any proceedings under this part.

(5 U.S.C. 5514(a))

§ 31.11 Applicable legal principles.

(a) The hearing official may not find that the Secretary's determination of the existence or amount of the employee's debt was clearly erroneous—

(1) If a judgment was obtained against the employee on the dept in a court of competent jurisdiction;

(2) On the basis of Federal, State or local statues of limitations;

(3) On the basis of the quality, or lack of quality, of the education provided by the educational institution the student attended, unless the student is indebted to the United States as a result of being in default on a loan made by that institution and the employee has a legal defense to the repayment of the loan by reason of the lack of quality of the education provided by that institution;

(4) On the basis that the employee is owed a refund by the institution he attended and that refund would eliminate or reduce the debt, unless the employee, not later than the period of time specified §31.4,—

(i) Submitted written confirmation from the institution to the Secretary that the refund is owned, and

(ii) Assigned the refund to the Secretary; or

(5) On the basis of any factual or legal argument that was decided on the merits adverse to the employee in a court of competent jurisdiction.

(b) In determining whether the Secretary's determination of the existence or amount of the employee's debt was clearly erroneous, the hearing official is governed by the relevant Federal statutes and regulations authorizing and implementing the programs giving rise to the debt, and State law, if relevant.

(5 U.S.C. 5514(a))

§ 31.12 Standards for determining extreme financial hardship.

(a)(1) An offset produces an extreme financial hardship for an employee if the offset prevents the employee from meeting the costs necessarily incurred for essential subsistence expenses of the employee and his or her spouse and dependents.

(2) These essential subsistence expenses only include costs incurred for medical care and for food, housing, clothing, and transportation.

(b) In determining whether an offset would prevent the employee from meeting the essential subsistence costs described in paragraph (a) of this section, the Secretary and the hearing official shall consider—

(1) The income from all sources of the employee and his or her spouse and dependents;

(2) The extent to which the assets of the employee and his or her spouse and dependents are available to meet the offset and the essential subsistence expenses;

(3) Whether these essential subsistence costs have been minimized to the greatest extent possible;

(4) The extent to which the employee and his or her spouse and dependents can borrow money to meet the offset and the other essential costs; and

(5) The exstent to which the employee and his or her spouse and dependents have other exceptional expenses that should be taken into account, and whether these expenses have been minimized.

(5 U.S.C. 5514(a))

[FR Doc. 83-14020 Filed 5-23-83; 8:45 am]

BILLING CODE 4000-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPTS-50502/FRL 2306-6; TSH-FRL 2306-6]

Category of Chemical Substances Known as Chlorinated Naphthalenes; Proposed Determination of Significant New Uses

Correction

In FR Doc. 83-12046, beginning on page 20668, in the of edtion Friday, May 6, 1983, make the following changes:

1. On page 20670, in the second column, in the third complete paragraph, in the eighteenth line, "less than" should read "less than 70".

2. On page 20671, in the first column, in the third complete paragraph in the sixth line, "minow" should read "minnow".

3. On page 20673, in the third column, in the first paragraph under *"IV. Other Regulatory Options"*, in the fourth line "6(b)(4)." should read "5(b)(4)."

BILLING CODE 1505-01-M

GENERAL SERVICES ADMINISTRATION

Office of Plans, Programs, and Financial Management

41 CFR Part 101-41

Administrative Offset and Interest Assessment on Delinquent Refunds for Totally Unused Tickets

AGENCY: General Services Administration.

ACTION: Proposed rule.

SUMMARY: The General Services Administration (GSA) proposes to amend the Federal Property Management Regulations to enable Government agencies to collect by administrative offset when carriers fail to make refunds for totally unused passenger tickets in accordance with 41 CFR 101-41.210. The amendment will also permit agencies to assess interest and penalties on delinquent refunds due the Government for totally unused passenger tickets. This amendment is necessary to further improve the efficiency of Government-wide efforts to collect debts owed the United States, as prescribed by the Federal Claims Collection Act of 1966 (31 U.S.C. 3701-3711) as amended by the Debt Collection Act of 1982 (Pub. L. 97-365).

DATE: Written comments must be received by July 25, 1983.

ADDRESS: Comments should be sent to the General Services Administration (BWCP), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: John W. Sandfort, Chief, Regulations, Procedures, and Claims Branch, Office of Transportation Audits (202-786-3014).

SUPPLEMENTARY INFORMATION: The GSA has determined that this proposed rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. The GSA has based all administrative decisions underlying this proposed rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this proposed rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101-41

Air carriers, Accounting, Claims, Freight, Freight forwarders, Government property management, Maritime carriers, Moving of household goods, Passenger services, Railroads, Transportation.

PART 101-41—TRANSPORTATION DOCUMENTATION AND AUDIT

It is proposed to amend 41 CFR Part 101-41 as follows:

Subpart 101-41.2—Passenger Transportation Services Furnished for the Account of the United States

1. Section 101-41.210-4a is added to read as follows:

§ 101-41.210-4a Unused ticket setoff.

SF 1170 claims for totally unused tickets are administratively determined

debts as opposed to overcharges (see § 101–41.506(a)). When past due, they are subject to agency setoff action and the interest and penalty provisions of the Federal Claims Collection Act of 1966 (31 U.S.C. 3701–3711) as amended by the Debt Collection Act of 1982 (Pub. L. 97–365). Claims uncollected after 90 days should be transmitted to the General Services Administration (BWCPG) for further action.

Subpart 101–41.5—Claims by the United States Relating to Transportation Services

2. § 101–41.506 paragraph (a) is revised to read as follows:

§ 101–41.506 Transportation debts administratively determined to be due the United States.

(a) Under the Federal Claims Collection Act of 1966 (31 U.S.C. 3701–3711), the Comptroller General of the United States and the Attorney General have joint responsibility for promulgating standards for the collection, compromise, termination, or suspension of collection action on any debts determined by administrative agencies to be due the United States (see 4 CFR 102). Totally unused tickets, where no ticket coupon has been used and for which an SF 1170 has been issued to the carrier, will be considered an administratively determined debt under this section (§ 101–41.210). Regulations defining agency responsibilities for collecting amounts determined to be due the United States, establishing principles governing agency collection procedures for reporting uncollectible debts to the General Accounting Office (GAO) or the Justice Department are found in 4 CFR Parts 101 through 105 and in Title 4, Debt Claims-General Policies and Procedures of the GAO Policy and Procedures Manual for the Guidance of Federal Agencies.

* * * * *

(31 U.S.C. 3701–3711, Pub. L. 97–365, 31 U.S.C. 3726, and 40 U.S.C. 486(c))

Dated: May 2, 1983.

Raymond A. Fontaine,

Assistant Administrator of General Services.

[FR Doc. 83-13814 Filed 5-23-83; 8:45 am]

BILLING CODE 6820-34-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA 6492]

National Flood Insurance Program; Proposed Flood Elevation Determinations

Correction

In FR Doc. 83–4041 beginning on page 7214 in the issue of Friday, February 18, 1983, make the following correction on page 7223:

In the entry for "Ohio, Clarington, Monroe County", the first entry in the third column which presently reads "*264" should read "*642".

BILLING CODE 1505-01-M

Notices

Federal Register
Vol. 48, No. 101
Tuesday, May 24, 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 COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

The following are notices of the receipt of applications for duty-free entry of scientific instruments published pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897) and the regulations issued pursuant thereto (15 CFR Part 301 as amended by 47 FR 32517).

Interested persons may present their views with respect to the question of whether an instrument or apparatus of equivalent scientific value for the purposes for which the instrument is intended to be used is being manufactured in the United States.

Comments must be filed in accordance with § 301.5(a) (3) and (4) of the regulations. They are to be filed in triplicate with the Director, Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230, within 20 calendar days after the date on which this notice of application is published in the **Federal Register**.

A copy of each application is on file in the Department of Commerce, and may be examined between 8:30 A.M. and 5:00 P.M., Monday through Friday, Room 1523, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Docket No. 83–190. Applicant: University of Miami School of Medicine, Dept. of Ophthalmology, Bascom Palmer Eye Institute, P.O. Box 016880, 900 NW 17 St., Miami, FL 33101. Instrument: Rotating Photo Slit Lamp Model SL–45 w/table plate and table leg Model A1T–5. Manufacturer: Topcon Deutschland GMBH, West Germany. Intended use of instrument: The instrument is intended to be used to study and classify the various types of angle closure glaucoma. Measurements will be made of the anterior chamber depth at various locations, including the curvature and configuration of the lens, iris, peripheral cornea, etc. The purpose is to identify the specific anatomic characteristics that lead to the development of various types of glaucoma in order to be able to predict the individuals that require surgical therapy based on the knowledge of the anatomical configuration of the individual. The effectiveness of surgical and medical therapy on changing the anatomic configuration will also be investigated. Application received by Commissioner of Customs: May 12, 1983.

Docket No. 83–192. Applicant: Northwestern University Medical School, Dept. of Pharmacology, Ward Bldg.; Rm. 12–031, 303 East Chicago Avenue, Chicago, IL 60611. Instrument: 2 (each) Three-dimensional Hydraulic Microdrive and K-type Micromanipulator. Manufacturer: Narashigi Scientific Instruments Laboratory, Japan. Intended use of instrument: The instrument is intended to be used for research in which the long term objectives are to understand the nature of channel gating, ion permeation, and molecular mechanisms by which drugs and blocking ions interact with sodium and potassium channels. To achieve this, recently developed gigaseal patch clamp techniques will be used to permit direct measurement of current through individual channels and the suction pipette technique will be used to allow macroscopic current measurement. Application received by Commissioner of Customs: May 12, 1983.

Docket No. 83–193. Applicant: Northwestern University Medical School, Dept. of Pharmacology, Ward Bldg.; Rm. 12–031, 303 East Chicago Avenue, Chicago, IL 60611. Instrument: 1 (each) Three-dimensional Hydraulic Microdrive and K-type Micromanipulator. Manufacturer: Narashigi Scientific Instruments Laboratory, Japan. Intended use of instrument: The instrument is intended to be used for research in which the long term objectives are to understand the nature of channel gating, ion permeation, and molecular mechanisms by which drugs and blocking ions interact with sodium and potassium channels. To achieve this, recently developed gigaseal patch clamp techniques will be used to permit direct measurement of current through individual channels and the suction pipette technique will be used to allow macroscopic current measurement. Application received by Commissioner of Customs: May 6, 1983.

Docket No. 83–195. Applicant: University of California at Davis, Department of Biological Chemistry, Davis, CA 95616. Instrument: Topical Magnetic Resonance Spectrometer, Model TMR 32/200. Manufacturer: Oxford Research Systems, United Kingdom. Intended use of instrument: The instrument is intended to be used in basic and applied research of tissue metabolism in living animals. The experiments will include a broad range of metabolic studies of heart, brain, kidney, liver, and muscle metabolism in animal models of disease, stroke, and drug toxicity. The objectives of such experimentation is to gain more extensive insights and knowledge of fundamental biochemical events associated with tissue damage in various disease states, the effects of drug therapies treating disease, and the toxic effects of certain drugs on various internal organs. Application received by Commissioner of Customs: May 10, 1983.

Docket No. 83–196. Applicant: NCI–Frederick Cancer Research Facility, P.O. Box B, Frederick, MD 21701. Instrument: 14800–3 Cryokit, including 14860–1 Cryotools (without Dewar Flasks). Manufacturer: LKB Produkter AB, Sweden. Intended use of instrument: The instrument is an accessory to an existing ultramicrotome being used for studies of the macromolecular composition of biological material and the localization of cancer-associated metals in biological material. Application received by Commissioner of Customs: May 10, 1983.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Stanley P. Kramer,

Program Manager, Florence Agreement Program, Statutory Import Programs Staff.

[FR Doc. 83-13923 Filed 5-23-83; 8:45 am]

BILLING CODE 3510-25-M

Applications for Duty-Free Entry of Scientific Instruments

The following are notices of the receipt of applications for duty-free entry of scientific instruments published

pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897) and the regulations issued pursuant thereto (15 CFR Part 301 as amended by 47 FR 32517).

Interested persons may present their views with respect to the question of whether an instrument or apparatus of equivalent scientific value for the purposes for which the instrument is intended to be used is being manufactured in the United States.

Comments must be filed in accordance with Subsections 301.5(a) (3) (4) of the regulations. They are to be filed in triplicate with the Director, Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230, within 20 calendar days after the date on which this notice of application is published in the Federal Register.

A copy of each application is on file in the Department of Commerce, and may be examined between 8:30 A.M. and 5:00 P.M., Monday through Friday, Room 1523, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket No. 83-183. Applicant: Yale University, School of Medicine, 333 Cedar Street, New Haven, CT 06510. Instrument: Electron Microscope, Model JEM 1200EX and Accessories. Manufacturer: JOEL Ltd., Japan. Intended use of instrument: The instrument is intended to be used for studies of the struture of the cells and extracts from experimental slow virus disease (Creutzfeldt-Jakob Disease). Also, the instrument will be used for basic chromosomal structural studies. In addition, it will be used in the training of graduate students requiring fine structural work in their masters, doctoral thesis research and for post-doctoral trainees, mostly on a one to one basis. Application received by Commissioner of Customs: April 28, 1983.

Docket No. 83-50. Applicant: University of Illinois at Urbana-Champaign, Purchasing Division, 506 South Wright Street, 223 Administration Building, Urbana, IL 61801. Instrument: Superconducting Magnet System, 8.5 Tesla, 89 mm RT Bore. Manufacturer: Oxford Instruments, Inc., United Kingdom. Intended use of instrument: The instrument is intended to be used for fourier transform nuclear magnetic resonance analysis of ^{13}C, ^{2}H, ^{11}B, ^{17}O, ^{23}Na, ^{27}Al, ^{29}Si, ^{51}V, ^{55}Mn, and ^{183}W nuclei. The objective of these studies is to more fully understand the structure and function of a variety of biological and geochemical systems. In addition, the article will be used in the course Chem 499, Graduate (Ph. D.) research to provide training in chemical research techniques. Application received by Commissioner of Customs: January 10, 1983.

Docket No. 83-139. Applicant: State University of New York at Buffalo, 202 Crofts Hall, Amherst, NY 14260. Instrument: Fan Test Set, #TE.84. Manufacturer: Experimental Engineering Equipment Ltd., Canada. Intended use of instrument: The instrument is intended to be used for educational purposes in the course Aerodynamics Laboratory (MEA 471). Instrument will be used by students under the supervision of the course instructor, to obtain familiarity and experience with experimental methods in Aerodynamics and Gas Dynamics. The students conduct a series of laboratory experiments which they write up and discuss in laboratory reports which are graded by the instructor. Application received by Commissioner of Customs: May 3, 1983.

Docket No. 83-181. Applicant: Harvard University, The Biological Laboratories, 16 Divinity St., Cambridge, MA 02138. Instrument: Fluorescence Lifetime Instrument (Optical Sub-system). Manufacturer: Photochemical Research Associates, Inc., Canada. Intended use of instrument: The instrument is intended to be used for the study of weak complexes (called exciplexes) formed between simple molecules like acetone and benzene after absorption of ultraviolet light. The decay kinetics of dibromoanthracene fluorescence will be studied in the presence of pair of compounds forming exciplexes. This will involve monitoring the fluorescence of dibromoanthracene by the time-resolved single-photon counting on the nanosecond to microsecond time scale. The fluorescence decay kinetics of the probe reflect the formation and decomposing of the exciplexes present in the solution, which energize the fluorescent probe via energy transfer. Application received by Commissioner of Customs: April 28, 1983.

Docket No. 83-185. Applicant: New York University Medical Center, 550 First Avenue, New York, NY 10016. Instrument: Cryokit, LKB 14800-3 complete with Accessories. Manufacturer: LKB Instruments, Inc., Sweden. Intended use of instrument: The instrument is an accessory to an ultramicrotome which will be used for immunological studies of frozen thin sections of biological materials utilizing labelled antibodies or enzymes. Application received by Commissioner of Customs: April 28, 1983.

Docket No. 83-186. Applicant: Brookhaven National Laboratory, Department of Physics, Bldg., 510B, Upton, NY 11973. Instrument: Toroidal Grazing Incidence Mirror for VUV Monochromator. Manufacturer: Astron, United Kingdom. Intended use of instrument: The instrument is intended to be used in studies of the electronic and geometric structure of molecules adsorbed onto single crystal surfaces using photoemission and surface EXAFS. This knowledge is essential in the understanding of catalytic reactions. Application received by Commissioner of Customs: April 28, 1983.

Docket No. 83-187. Applicant: U.S. Department of Interior, Bureau of Reclamation, P.O. Box 25007, Code D-1523, Denver, CO 80225. Instrument: Fast Atom Bombardment Accessory for Mass Spectrometer. Manufacturer: VG Organic Limited, United Kingdom. Intended use of instrument: The instrument is intended to be used in a number of research programs which require the identification and/or characterization of thermally labile, high molecular weight, organic materials. The research programs are as follows:

(1) Establish the effects that chlorination in an aqueous environment has on the chemical composition of cellulose acetate reverse osmosis membranes and (2) Characterization and identification of changes in the seams joining flexible membrane liners after the seams have been exposed to potential hazardous wastes.

Application received by Commissioner of Customs: May 2, 1983.

Docket No. 83-188. Applicant: Purdue University, FREH Building, W. Lafayette, IN 47907. Instrument: Single Tilting Specimen Cooling Holder, SCH, for JEM 200CX Microscope. Manufacturer: JEOL Ltd., Japan. Intended use of instrument: The instrument is an accessory to an existing electron microscope being used for solid state materials research. Application received by Commissioner of Customs: May 3, 1983.

Docket No. 83-189. Applicant: Temple University School of Medicine, Department of Anatomy, 3400 North Broad Street, Philadelphia, PA 19140. Instrument: Scanning Microdensitometer, Model M85a complete with Accessories. Manufacturer: Vickers Instruments, United Kingdom. Intended use of instrument: The instrument is intended to be used to study the development and function of several cell types in the testis of the normal rat and the implications of diabetes for the reproductive capability of the adult animal. The various experiments to be conducted fall into two general

categories, those involving Sertoli or supportives cells and those centered on the Leydig cells that are responsible for the production of male sex hormone (testoterone). The instrument will also be used for educational purposes in the courses: Advanced Embryology (#502), Light and Electron Microscope Methods (#504), Methods in Cell Biology (#513) and Anatomical Research (#997) to enable to student to gain experience in research problems, planning of experiments, experimental techniques, experimental methologies and analysis of data. Application received by Commissioner of Customs: May 2, 1983.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Stanley P. Kramer,

Program Manager, Florence Agreement Program, Statutory Import Programs Staff.

[FR Doc. 83-13924 Filed 5-23-83; 8:45 am]

BILLING CODE 3510-25-M

[A-428-062]

Animal Glue and Inedible Gelatin From West Germany; Preliminary Results of Administrative Review of Antidumping Finding

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of preliminary results of administrative review of antidumping finding.

SUMMARY: The Department of Commerce has conducted an administrative review of the antidumping finding on animal glue and inedible gelatin from West Germany. The review covers the eight known manufacturers and/or exporters and one third-country reseller of West German animal glue and inedible gelatin to the United States and generally the period December 1, 1980 through November 30, 1981. The review indicates the existence of dumping margins for certain firms during the period.

As a result of the review, the Department has preliminarily determined to assess dumping duties equal to the calculated differences between United States price and foreign market value on each of their sales during their individual periods of review. Where company-supplied information was inadequate or no information was received, we used the best information available. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: May 24, 1983.

FOR FURTHER INFORMATION CONTACT: Linda L. Pasden or Robert J. Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On July 9, 1982, the Department of Commerce ("the Department") published in the **Federal Register** (47 FR 29865-6) the final results of its last administrative review of the antidumping finding on animal glue and inedible gelatin from West Germany (42 FR 64116, December 22, 1977) 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 animal glue and inedible gelatin, of which there are two principal types, hide glue and bone glue. Animal glue is an organic colloid of protein derivation. There is no significant difference between animal glue and inedible gelatin. Animal glues are odorless, dry, hard, hornlike materials. They are used as general purpose adhesives in industries producing abrasives, paper containers, book and magazine bindings, and leather goods. They are also used as sizing agents and as colloids in emulsions and cleaning compounds. Animal glue and inedible gelatin are currently classifiable under items 455.4000 and 455.4200 of the Tariff Schedules of the United States Annotated.

The review covers the eight known manufacturers and/or exporters and one third-country reseller of West German animal glue and inedible gelatin to the United States and generally the period December 1, 1980 through November 30, 1981.

Three firms did not export West German animal glue and inedible gelatin during the review period. The estimated antidumping duty cash deposit rates for these firms will be the most recent information for each firm. Four firms, Ph. Carl Weiss, Marcuse & Company (London) Limited, Nienburger Gelatin, and Deutsche Gelatin-Fabrieken Stoess & Co., failed to respond to our questionnaire or provided inadequate responses. Even though Gould Metall provided an adequate response to our questionnaire, the response did not enable the Department to analyze its marketing practices without an adequate response from its supplier, Deutsche Gelatin-Fabrieken Stoess & Co. For Gould Metall and the four non-responsive firms, we used the best information available to determine the assessment and estimated antidumping duty cash deposit rates. The best information available is the most recent rate for each firm or the fair value rate.

We are not covering in this review Animal Produkten, a firm include in the last review, because it is no longer in business.

United States Price

In calculating United States price the Department used purchase price, as defined in section 772 of the Tariff Act, since all sales were made to unrelated purchasers in the United States prior to importation. Purchase price was based on the CIF, packed price. Where applicable, deductions were made for foreign inland freight, ocean freight, and marine insurance. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market price, as defined in section 773 of the Tariff Act, since sufficient quantities of such or similar merchandise were sold in the home market to provide a basis for comparison. Home market price was based on the ex-factory, packed price with an adjustment for cash discounts. No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist:

Manufacturer/exporter	Time period	Margin (percent)
Chemische Dungerfabriek Rendsburg	12/01/80-11/30/81	[1] 158.00
G. Conradt & Sohn	12/01/80-11/30/81	[1] 67.00
Johannes Martens	12/01/80-11/30/81	[1] 0
Ph. Carl Weiss	12/01/80-11/30/81	16.34
Nienburger Gelatin	01/01/78-11/30/81	158.00
Deutsche Gelatin-Fabrieken Stoess & Co./ Gould Metall	12/01/80-11/30/81	158.00
Fritz Hacker	12/01/80-11/30/81	0
Third-Country Reseller: Marcuse & Company (London) Limited	12/01/80-11/30/81	16.34

[1] No shipments during the period.

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 the administrative review including the results of its analysis of any such comments or hearing. The Department shall determine, and the U.S. Customs Service shall assess, dumping duties on all appropriate entries, with purchase dates during the time periods involved. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Further, as provided for in § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based upon the above margins shall be required on all shipments of West German animal glue and inedible gelatin from these firms entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results. We will not require a cash deposit on future entries for any shipment from a new exporter not covered in this or prior administrative reviews, whose first shipments occurred after November 30, 1981 and who is unrelated to any covered firm. These deposit requirements shall remain in effect until publication of the final results of 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 § 353.53 of the Commerce Regulations (19 CFR 353.53).

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

May 16, 1983.

[FR Doc. 83-13930 Filed 5-23-83; 8:45 am]

BILLING CODE 3510-25-M

Initiation of Antidumping Investigation; Forged Undercarriage Components From Italy

AGENCY: International Trade Administration, Commerce

ACTION: Initiation of Antidumping Investigation

SUMMARY: On the basis of a petition filed with the United States Department of Commerce, we are initiating an antidumping investigation to determine whether forged undercarriage components from Italy are being, or are likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether there is a reasonable indication that imports of forged undercarriage components from Italy are materially injuring, or are threatening to materially injure, a United States industry. The allegations of sales at less than fair value include an allegation that home market sales are being made at less than the cost of production in Italy. If the investigation proceeds normally, the ITC will make its preliminary determination on or before June 13, 1983, and we will make ours on or before October 6, 1983.

EFFECTIVE DATE: May 24, 1983.

FOR FURTHER INFORMATION CONTACT: Andrew Debicki, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 377-5403.

SUPPLEMENTARY INFORMATION:

Petition

On April 29, 1983, we received a petition filed by counsel on behalf of Jernberg Forgings Co., Lindell Drop Forge Co., Portec, Inc., Presrite Corporation, Presrite of Jefferson, Inc., Walco Metal Forming Group and Walker Forge, Inc. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleges that imports from Italy of forged undercarriage components are being, or are likely to be, sold in the United States at less than fair value within the meaning of Section 731 of the Tariff Act of 1930, as amended (19 U.S.C. 1673) (the Act), and that these imports are materially injuring, or are threatening to materially injure, a United States industry.

The allegation of sales at less than fair value is supported by comparisons of United States prices based on published export price lists and discount schedules for sales of merchandise in the United States with published domestic price lists and discount schedules for sales made in Italy. In addition, the allegation of sales at less than fair value is further supported by comparing United States prices with prices for sales to third countries developed by the petitioners.

There is also an allegation of sales at less than the cost of production. The cost of production in Italy was based on petitioners' cost of production adjusted for differences in Italian wage rates and, where necessary, finishing costs.

Initiation of Investigation

Under Section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether a petition sets forth the allegations necessary for initiation of an antidumping investigation, and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on forged undercarriage components and found it meets these requirements.

Therefore, in accordance with section 732 of the Act, we are initiating an antidumping investigation to determine whether forged undercarriage components from Italy are being, or are likely to be, sold in the United States at less than fair value. If the investigation proceeds normally, we will make our preliminary determination by October 6, 1983.

Scope of Investigation

For purposes of this investigation, the term "forged undercarriage components" covers forged components for the undercarriages of crawler-mounted machinery as currently classifiable under items 664.08, 692.34 and 692.35 of the *Tariff Schedules of the United States Annotated (TSUSA).*

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided that the ITC confirms it will not disclose such information either publicly or under an administrative protective order without the written consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by June 13, 1983 whether there is a reasonable indication that imports of forged undercarriage components from Italy are materially injuring, or are threatening to materially injure, a United States industry. If its determination is negative, this investigation will terminate; otherwise, the investigation will continue according to statutory procedures.

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

May 18, 1983.

[FR Doc. 83-13926 Filed 5-23-83; 8:45 am]

BILLING CODE 3510-25-M

Initiation of Countervailing Duty Investigation; Forged Undercarriage Components From Italy

AGENCY: International Trade Administration, Commerce.

ACTION: Initiation of countervailing duty investigation.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether producers, manufacturers, or exporters in Italy of forged undercarriage components, as described in the "Scope of Investigation" section below, receive benefits which constitute subsidies within the meaning of the countervailing duty law. If our investigation proceeds normally, we will make our preliminary determination on or before July 25, 1983.

EFFECTIVE DATE: May 24, 1983.

FOR FURTHER INFORMATION CONTACT: Andrew Debicki, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230, (202) 377–5403.

SUPPLEMENTARY INFORMATION:

Petition

On April 29, 1983, we received a petition from counsel for Jernberg Forgings Co., Lindell Drop Forge Co., Portec, Inc., Presrite Corporation, Presrite of Jefferson, Inc., Walco Metal Forming Group and Walker Forge, Inc., on behalf of the U.S. industry producing forged undercarriage components. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that producers, manufacturers, or exporters in Italy of forged undercarriage components directly or indirectly receive subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act).

Italy is a "country under the Agreement" within the meaning of section 701(b) of the Act. Title VII of the Act, therefore, applies to this investigation, and an injury determination is required.

Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether a petition sets forth the allegations necessary for the initiation of a countervailing duty investigation and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on forged undercarriage components and found it meets these requirements.

Therefore, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Italy of forged undercarriage components, as listed in the "Scope of Investigation" section of this notice, receive subsidies. If our investigation proceeds normally, we will make our preliminary determination by July 25, 1983.

Scope of the Investigation

The products covered by this investigation are forged components for the undercarriages of crawler-mounted machinery. The merchandise is currently classified under item numbers 664.08, 692.34 and 692.35 of the *Tariff Schedules of the United States Annotated* (TSUSA).

Allegation of Subsidies

The petition alleges that producers, manufacturers, or exporters in Italy of forged undercarriage components receive the following benefits that constitute subsidies: government equity infusions inconsistent with commercial considerations, preferential financing through government involvement, excessive rebates of indirect taxes, capital grants under the Industrial Reconstruction and Reconversion Act, preferential export insurance, financing and guarantees, forging quality steel purchased at preferential prices and regional development incentives.

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

May 18, 1983.

[FR Doc. 83-13922 Filed 5-23-83; 8:45 am]

BILLING CODE 3510-25-M

[A-122-036]

Instant Potato Granules From Canada; Final Results of Administrative Review of Antidumping Finding and Revocation in Part

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of final results of administrative review of antidumping finding and revocation in part.

SUMMARY: On September 23, 1982, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on instant potato granules from Canada. The review covered the three known exporters of this merchandise to the United States and generally the period October 1, 1980 through September 30, 1981.

Interested parties were given an opportunity to submit oral or written comments on the preliminary results. At the request of two of the exporters, we held a public hearing on October 25, 1982. After our analysis of the comments received, we have adjusted the margin for one of the firms. The margins in the preliminary results remain unchanged for the two remaining firms.

EFFECTIVE DATE: May 24, 1983.

FOR FURTHER INFORMATION CONTACT: Joseph Fargo or David R. Chapman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: (202) 377–2923.

SUPPLEMENTARY INFORMATION:

Background

On September 12, 1972, the Treasury Department published in the **Federal Register** an antidumping finding with respect to instant potato granules from Canada (T.D. 72–263, 37 FR 18505). On September 23, 1982, the Department of Commerce ("the Department") published in the **Federal Register** (47 FR 42013–14) the preliminary results of its last administrative review of the finding. The Department has now completed that administrative review.

Scope of the Review

Imports covered by the review are shipments of instant potato granules from Canada, currently classifiable under items 140.5000, 140.7000, and 141.8610 through 141.8630 of the Tariff Schedules of the United States Annotated.

The Department knows of three exporters of Canadian instant potato granules to the United States. This review covers all three exporters and the period October 1, 1980 through September 30, 1981. In addition, we have reviewed for one of the three firms, Carnation, Inc., the period October 1, 1981 through the date of publication of the Department's tentative determination to revoke with regard to that firm, November 30, 1981.

Analysis of Comments Received

Interested parties were given an opportunity to submit oral or written comments on our preliminary results. At the request of two respondents the Department held a hearing on October 25, 1982.

Comment 1: One of the exporters, Vauxhall Foods, Ltd., exported only ingredient potato granules to the United States during the period of review. Vauxhall did provide adequate responses for those U.S. sales. Vauxhall argues that ingredient potato granules were a commercial product in 1971–72 (the period of the fair value investigation), were not the subject of the antidumping investigation and therefore are outside the scope of the finding. The Tariff Commission

investigated the market for instant potato granules and not ingredient granules. Instant potato granules are normally packaged in a six-pound tin called a number 10 can. Ingredient granules are packaged in considerably larger packages, for example, 50-pound kraft bags, 420-pound metal drums, or one-ton nylon bags.

Although the basic manufacturing process is similar, there are significant differences between ingredient granules and instant potato granules that would preclude diversion. The products differ in sodium bisulphite content, butylated hydroxyanisole content, sodium acid pyrophosphate, monoglycerides, flavor and texture. In addition, ingredient granules have a maximum reducing sugar level not specified for instant potato granules. All of these differences would eliminate using ingredient granules as a substitute for instant potato granules in instant potato mixes. Even after adding the preservatives, vitamins, skim milk, butter flavor, seasonings, etc., mixes using ingredient granules would still be "an unacceptable (certainly noncompetitive) product in the marketplace." Diversion in the United States of ingredient granules to instant potato granule use also would be prohibitively expensive, requiring establishment of a mixing line in the United States, and would be easily discovered, again because mixing facilities do not now exist. The destination of granules could be monitored by the Commerce Department.

Department's Position: We agree that potato granules used as ingredients in the manufacture of snack foods and other food products were a commercial product during and prior to the period of the fair value investigation. We also agree that a product known as ingredient potato granules was not the subject of the antidumping investigation. However, we disagree that ingredient potato granules are a different product than instant potato granules. The Tariff Commission investigated the market for instant potato granules but considered granules that were to be used in "certain new food items" (undefined, but in our view broader than mashed potatoes) to be instant potato granules. (*See* U.S. Tariff Commission Report AA1921–97, *Instant Potato Granules from Canada*, Determination of Likelihood of Injury, September 7, 1972. The Department has previously recognized that price comparisons need not be conducted on all types of merchandise within the class that is the subject of an investigation. *See* "Final Results of Administrative Review of Antidumping Findings" on large power transformers from France, 47 FR 10268–69 (March 10, 1982).

Vauxhall submitted as Appendix I to its post-hearing brief to the Department its "Specification for Dehydrated Potato Granules" which was also referred to in the Appendix title page as "Specification for instant potato granules." The text of the specification refers to neither instant nor ingredient potato granules. Four types of packaging were offered in the specification: cases containing 24 boxes with 2 pouches per box, cases containing six number 10 cans, polyethylene-lines kraft bags, and epoxy-lines steel drums. Thus, even assuming the specification is for only instant granules, the packaging can be the same (bag or drum) as for ingredient granules.

Appendix II to Vauxhall's post-hearing brief lists certain home market sales of potato granules. The product specification in Appendix II matches Vauxhall's specifications for "instant" granules, in Appendix I, of sodium bisulfite, butylated hydroxyanixole, sodium acid pyrophosphate, and monoglycerides. The uses listed for the Appendix II product are as pyrogy dough, cake and bread mix, and stews and meat filler.

Appendix III to Vauxhall's post-hearing brief is specifically for potato granules to be used in the preparation of snack foods. The individual physical or chemical properties required by the Appendices I and III specifications generally overlap. We believe that the Appendix III specification is merely a variant of the Appendix I specification and therefore of the same class or kind of merchandise.

The potentially overlapping chemical and other physical specifications presented by Vauxhall ostensibly for ingredient or for instant potato granules are of such variety as to make diversion a practical possibility. Vauxhall sells to unrelated customers in the United States. Consequently, the expenses incurred in establishing a mixing line in the United States would be incurred by a customer, not by Vauxhall. We do not agree that diversion would be easily discovered. Monitoring importations of ingredient granules would require the Department to track importations to their destinations and oversee the use to which they are put.

Comment 2: Vauxhall failed to provide adequate responses on all of its home market sales of such or similar merchandise. Vauxhall argues that it has made a good-faith effort to answer the Department's questionnaire. Vauxhall misunderstood or was confused concerning requested information regarding certain home market sales. Vauxhall was prepared to answer the detailed questions if the Department had explained why Vauxhall should respond regarding those sales of "similar" merchandise.

Department's Position: We specifically told Vauxhall the exact information required. Vauxhall responded that we did not need the information because the merchandise was not comparable to the merchandise sold to the United States.

We do not allow respondents to our questionnaires to determine what data they will report to us. We gave Vauxhall an opportunity to supplement its original submission. Vauxhall did not furnish all of the information requested on sales of such or similar merchnadise. There could be no confusion about what the Department required. The Department does not bear the responsibility to explain why it requires each piece of information requested. Therefore, we used in the preliminary results the best information otherwise available, Vauxhall's most recent rate, to establish the assessment and cash deposit rates. We have continued the use of that information in these final results.

Comment 3: Vauxhall argues case and less than truckload (LTL) merchandise sold in the Canadian market is not comparable to the merchandise sold to the United States. The specifications of the cash/LTL sales (citing Appendices I and II) are different than those of full truckload sales in the Canadian market (citing Appendix III) or to the United States. The market for cash/LTL sales in Canada is different than that for the United States sales. The size of the orders and end use differ from sales to the United States and full truckload sales in Canada. If the cash/LTL sales were used, a difference in merchandise adjustment would be necessary based on the difference in the method and cost of production. Finally the cash/LTL sales are not contemporaneous with the United States sales or are for a much smaller quantity.

Department's Position: As described in our response to Comment 1, a comparision of Vauxhall's standard product specification (Appendix I) with the Appendix III specification shows overlap between the two. None of the reasons given by Vauxhall in this comment relieve Vauxhall of the responsibility of reporting all home market sales of such or similar merchandise. The evidence in the appendices concerning end use is contradictory and the size of an order is not dispositive. While the Department does make adjustments for physical

differences in merchandise in accordance with § 353.16 of the Commerce Regulations, Vauxhall has not provided adequate information to make such adjustments. The Department generally may use home market sales made up to 90 days preceding a sale to the United States for comparison with that United States sales. Appendix V, which Vauxhall claims demonstrates that the cash/LTL sales are not contemporaneous with the United States sale, lists sales within such a period.

Comment 4: McCain Foods, Ltd. argues that its submitted questionnaire response should be considered timely filed because of the confusion between the Department and the company as to when the response was due. Even if considered untimely, there were mitigating circumstances which should permit acceptance of the response. Finally, McCain's response was not incomplete. If further information is required, McCain should be allowed to supplement is response.

Department's Position: We have decided that there was sufficient misunderstanding regarding the deadline for the submission of the response to allow us to consider the response as received on time. The response was incomplete; however, because the Department had accepted a comparably incomplete response for the previous review, we have allowed McCain to supplement its response and have used that infomation in completing this review.

Final Results of the Review and Revocation in Part

Based on our analysis of the comments received, we have changed the margin for McCain Foods Inc. The final results of our review for the other two firms are the same as those in our preliminary results:

Manufacturer/exporter	Time period	Margin (percent)
Carnation	10/1/80-11/30/81	[1] 0
Vauxhall	10/1/80-9/30/81	38.5
McCain	10/1/80-9/30/81	2.98

[1] No Shipments during the review period.

Also as a result of the review the Department revokes the antidumping finding on instant potato granules from Canada with respect to such merchandise manufactured and exported to the United States by Carnation. This partial revocation applies to all shipments of this merchandise from Carnation entered, or withdrawn from warehouse, for consumption on or after November 30, 1981, the date of publication of our tentative determination to revoke with regard to Carnation.

The Department shall determine and the U.S. Customs Service shall assess antidumping duties on all appropriate entries from the other two exporters with purchase or export dates during their periods of review. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Further, as provided for in § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based on the above margins shall be required on all shipments of Canadian instant potato granules from the two remaining firms entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. For any shipment from a new exporter not covered in this or prior reviews, whose first shipments occurred after the most recent period reviewed and who is unrelated to any covered firm, a cash deposit shall be required for future entries at the 2.98 percent rate.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review. The Department intends to begin immediately the next administrative review. The Department encourages interested parties to review the public record and submit applications for protective orders, if desired, as early as possible after the Department's receipt of the information during the next administrative review.

This administrative review, revocation in part, and notice are in accordance with sections 751 (a)(1) and (c) of the Tariff Act of 1930 (19 U.S.C. 1675(a)(1),(c)) and §§ 353.53 and 353.54 of the Commerce Regulations (19 CFR 353.53, 353.54).

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

May 13, 1983.

[FR Doc. 83-13827 filed 5-23-83; 8:45 am]

BILLING CODE 3510-25-M

[A-588-058]

Metal-Walled Above Ground Swimming Pools From Japan; Preliminary Results of Administrative Review of Antidumping Finding

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of preliminary results of administrative review of antidumping finding.

SUMMARY: The Department of Commerce has conducted an administrative review of the antidumping finding on metal-walled above ground swimming pools from Japan. The review covers the three known Japanese exporters and one known third-country reseller of Japanese metal-walled above ground swimming pools to the United States and various periods from November 1, 1977 through August 31, 1982. The review indicates the existence of dumping margins in particular periods for certain exporters.

As a result of the review, the Department has preliminarily determined to assess dumping duties for individual exporters equal to the calculated differences between United States price and foreign market value on each of their sales during the periods of review. Where company-supplied information was inadequate, we used the best information available for assessment and estimated antidumping duty cash deposit rate purposes.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: May 24, 1983.

FOR FURTHER INFORMATION CONTACT: Betty H. Laxague or Susan Crawford, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: (202) 377-3601.

SUPPLEMENTARY INFORMATION:

Background

On April 13, 1982, the Department of Commerce ("the Department") published in the **Federal Register** (47 FR 15822) the final results of its last administrative review of the antidumping finding on metal-walled above ground swimming pools from Japan (42 fR 44611, September 7, 1977) 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. The substantive provisions of the Antidumping Act of 1921 ("the 1921 Act") and the appropriate Customs Service regulations apply to all unliquidated entries made prior to January 1, 1980.

Scope of the Review

Imports covered by the review are shipments of metal-walled above ground swimming pools. This merchandise is currently classifiable under item numbers 657.2590 and 774.5595 of the Tariff Schedules of the United States Annotated.

Metal-walled above ground swimming pools exported from third countries which contain walls, frames, and vinyl liners manufactured in Japan are within the scope of the finding.

The review covers the three known Japanese exporters and one known third-country reseller of Japanes metal-walled above ground swimming pools to the United States. The review covers various periods from November 1, 1877 through August 31, 1982. Though covered in the last administrative review, the Kenny firm is not included in the current review as it has gone out of business.

In our last review we deferred eleven third-country resellers because we were uncertain whether they exported Japanese metal-walled above ground swimming pools to the U.S. which were subject to the finding. We have determined that only one third-country reseller, Irwin Toy, Ltd. (Canada) ("Irwin"), exported merchandise subject to the finding to the United States.

Irwin submitted an inadequate response to our questionnaire. Therefore, for this non-responsive firm we used the best information available for assessment purposes. The best information available is the highest rate for responding firms with shipments in each period in which Irwin had shipments.

For the period September 1, 1980 through August 31, 1982, there were no shipments of Japanese metal-walled above ground swimming pools to the United States. The estimated antidumping duty cash deposit rate for each firm will be the most recent information for that firm.

United States Price

In calculating United States price the Department used purchase price, as defined in section 203 of the 1921 Act and section 772 of the Tariff Act. Purchase price was based on the packed, delivered price to unrelated purchasers in the United States, with deductions, where applicable, for U.S. and foreign inland freight, ocean freight, and marine insurance. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used the price to unrelated purchasers in third countries (Australia and France) in accordance with section 773 of the Tariff Act or section 205 of the 1921 Act, since there were no sales in the home market of such or similar merchandise. Where there were insufficient quantities of such or similar mechandise sold to Australia and/or France above the cost of production, we used constructed value as defined in section 773 of the Traiff Act or section 206 of the 1921 Act. Third-country sales prices were based on a packed price to an unrelated party with adjustments, where applicable, for Japanese inland freight, ocean freight, and marine insurance. Further adjustments were made for differences in the merchandise, in accordance with § 353.16 of the Commerce Regulations and § 153.11 of the Customs Regulations. No other adjustments were claimed or allowed.

Constructed values were calculated as the sum of the costs of materials, fabrication, general expenses, profit and the cost of packing. The amount added for general expenses was the statutory minimum of ten percent of the sum of materials and fabrication costs because the statutory minimum was higher than the actual general expenses. The amount added for profit was the statutory minimum of eight percent of the sum of materials, fabrication costs, and general expenses because the actual profit was less than eight percent.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist:

Manufacturer/Exporter	Time period	Margin (percent)
Asahi Chemical Industry Co., Ltd	11/01/77-10/31/78	29.09
	11/01/78-10/31/79	28.87
	11/01/79-08/31/80	20.40
	09/01/80-08/31/82	[1] 20.40
Seiwa Sangyo Co., Ltd	09/01/80-08/31/82	[1] 72.00
Hakuyo Sangyo	09/01/80-08/31/82	[1] 72.00
Irwin Toy, Ltd. (Canada)	04/01/78-10/31/78	29.09
	11/01/78-10/31/79	28.87
	11/01/79-08/31/80	20.40
	09/01/80-08/31/82	[1] 20.40

[1] No shipments during the period.

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 the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the U.S. Customs Service shall assess, dumping duties on all appropriate entries made with purchase dates during the time periods involved. Individual differences between United States price and foreign market value may vary from the percentages stated above.

The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Further, as provided for by section 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based upon the most recent of the above margins shall be required on all shipments of Japanese metal-walled above ground swimming pools from these firms entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results. For any future shipment for a new exporter not covered in this review or prior reviews, whose first shipments occurred after August 31, 1982 and who is unrelated to any reviewed firm, a cash deposit shall be required at the highest rate for responding firms with shipments during the review period, that is 20.40 percent. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (9 U.S.C. 1675(a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

May 13, 1983.

[FR Doc. 83-13928 Filed 5-23-83; 8:45 am]

BILLING CODE 3510-25-M

[A-427-072]

Viscose Rayon Staple Fiber From France; Final Results of Administrative Review of Antidumping Finding

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of final results of administrative review of antidumping finding.

SUMMARY: On September 8, 1981, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on viscose rayon staple fiber from France. The review covered the known exporters, Rhone-Poulenc Textile and Achille Bayart et Cie, and the period March 1, 1980 through February 28, 1981. Interested parties were given an opportunity to submit written or oral comments on these preliminary results. One importer requested a hearing which was held on November 6, 1981. As a result of our analysis of oral and written comments received, we determine that the shipments in question are subject to

this finding and therefore there are no changes in these final results from those presented in the preliminary results of review.

EFFECTIVE DATE: May 24, 1983.

FOR FURTHER INFORMATION CONTACT: Michael R. Cox or John R. Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: (202) 377–5255/5496.

SUPPLEMENTARY INFORMATION:

Background

On March 21, 1979, an antidumping finding with respect to viscose rayon staple fiber from France was published in the **Federal Register** as Treasury Decision 79–88 (44 FR 17157–8). On September 8, 1981, the Department of Commerce ("the Department") published in the **Federal Register** (46 FR 44804–5) the preliminary results of its administrative review of the finding. The Department has now completed that administrative review.

Scope of the Review

The imports covered by the review are shipments of viscose rayon staple fiber, except solution dyed, in noncontinuous form, not carded, not combed and not otherwise processed, wholly of filaments (except laminated filaments and plexiform filaments), currently classifiable under items 309.4320 and 309.4325 of the Tariff Schedules of the United States Annotated.

The review covered the two known exporters of French viscose rayon staple fiber to the United States, Rhone-Poulenc Textile and Achille Bayart et Cie, and the period March 1, 1980 through February 28, 1981.

Analysis of Comments Received

We invited interested parties to submit written comments or request a hearing. One importer, Adolf O. Fuchs ("AOF"), requested a hearing, which was held on November 6, 1981.

Comment 1: AOF argued that its imported viscose rayon staple fiber is white and therefore falls within the "solution dyed" exception to the scope of the finding. The petitioner, the Committee of U.S. Rayon Producers, argued that the exception for solution dyed fiber from the scope of this finding must be interpreted in the context of its origin. Such an interpretation will demonstrate that white was not intended to be a color within the meaning of "solution dyed."

Department's Position: The phrase "except solution dyed" first appeared in the notices of "Discontinuance of Antidumping Investigation" regarding viscose rayon staple fiber from Austria (43 FR 3234–35) and "Withholding of Appraisement" for viscose rayon fiber from Belgium (43 FR 3233–34). In each case, the phrase was explicitly added as a modification of the "class or kind" of merchandise covered in each case. The identical phrase later appeared in the product descriptions of four other antidumping cases concerning viscose rayon staple fiber, initiated on May 5, 1978 (43 FR 19489–92), including viscose rayon staple fiber from France.

On the basis of a review of correspondence between the Treasury Department ("Treasury") and the interested parties in the Austrian viscose rayon staple fiber case, the Department is satisfied that Treasury did not intend white to be a color for purposes of the solution dyed exception in that case. The Department further concludes that Treasury implicitly incorporated this same interpretation of "except solution dyed" into the four later cases when it used precisely the same product description in initiating those cases. Therefore, the Department does not consider white fiber to be solution dyed fiber.

Comment 2: AOF argued that its viscose rayon staple fiber imports were explicitly exempt from this finding because Photine, a chemical brightener, has been added to the imported fiber, thereby making it "solution dyed" fiber. In response, the petitioner argued that the viscose rayon staple fiber imported by AOF is not solution dyed because Photine does not dye white fiber, but merely brightens it.

Department's Position: The Department concludes that the fiber imported by AOF is not "solution dyed" as that term is used in the U.S. industry. Solution dyeing requires the addition of color to the fiber prior to extrusion. Based on our analysis of data submitted by AOF and the petitioner, we find that, while Photine is added prior to extrusion, Photine is an optical brightener that simply makes already white viscose rayon staple fiber whiter, but does not alter viscose rayon staple fiber color. Therefore, the addition of Photine does not place it within the solution dyed exception.

Comment 3: The petitioner also stated that the fiber imported by AOF competes directly with fiber produced by the domestic fiber industry. Exclusion of AOF's fiber from the finding will potentially permit substantial importations of unfairly priced viscose rayon staple fiber.

Department's Position: The Department has determined that the imported viscose rayon staple fiber is within the intended scope of the finding. During an administrative review under section 751 of the Tariff Act, the Department may only clarify the scope of a particular finding. See *Royal Business Machines, Inc. v. United States*, 1 CIT 80, 86–87, 507 F. Supp. 1007, 1013 (1980). The Department can neither add merchandise to the scope of a finding that was previously beyond the scope nor drop merchandise that was previously included.

Comment 4: AOF contended that, prior to the assessment of anidumping duties, notice must be given of the class or kind of merchandise to which the finding will apply.

Department's Position: The Department's notice of final results for its first administrative review was published on April 2, 1981 and covered imports of identical fiber by AOF. This constitutes clear notice of our position at that time. AOF had an opportunity to contest this decision prior to publication of those final results and an opportunity to appeal to the Court of International Trade.

Comment 5: AOF commented that equity requires the Department to weigh the injurious effect of its decision on the opposing interests. The imports by AOF represent a minute segment of the domestic market but a substantial portion of AOF's business.

Department's Position: The Department cannot ignore certain importations simply because of their small relative magnitude. The purpose of the antidumpting finding is to eliminate all sales at less than fair value of the class or kind of merchandise that caused material injury to a domestic industry. The International Trade Commission is charged with responsibility for reviewing questions of continuing injury.

Comment 6: AOF asserted that no margins in fact exist with respect to importations of viscose rayon staple fiber from France during the period of review.

Department's Position: Neither exporter has provided an adequate response to our questionnaire. Absent adequate response we used the best information available, which in this case is the dumping margin calculated during the fair value investigation.

Comment 7: At the request of the Department AOF submitted comments in an attempt to substantiate its claim that, although the imported flat fibers are specialty fibers, they are not of the class or kind of merchandise intended to be included in the finding, and should be specifically excluded.

Department's Position: Specialty fiber is expressely covered by the antidumping finding. AOF has not demonstrated that the Treasury Department intended to cover only certain types of specialty fiber. Therefore, flat fiber imports are covered by the finding.

Final Results of the Review

Based on our analysis of the comments received, we have made no changes in these final results from those presented in the preliminary results of review. We therefore determine that a weighted-average dumping margin of 24 percent exists for the period of review.

The Department shall determine, and the U.S. Customs Service shall assess, dumping duties of 24 percent on all shipments of viscose rayon staple fiber from France with purchase dates during the period of review. The Department will issue appraisement instructions on both exporters directly to the Customs Service.

Further, as provided by § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based upon the above margin, that is, 24 percent of the entered value, shall be required on all shipments of French viscose rayon staple fiber entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review. The Department intends to begin immediately the next administrative review.

The Department encourages interested parties to review the public record and submit applications for protective orders, if desired, as early as possible during the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1675(a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

May 12, 1983.

[FR Doc. 83-13829 Filed 5-23-83; 8:45 am]

BILLING CODE 3510-25-M

National Oceanic and Atmospheric Administration

Pacific Fishery Management Council's Groundfish Management Team; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

SUMMARY: The Pacific Fishery Management Council was established by Section 302 of the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 et seq., and the Council has established a Groundfish Management Team which will meet to discuss current groundfish management matters; prepare projections of groundfish landings for 1983, and develop a report for presentation to the Council at its June 8–9, 1983, meeting. Time is scheduled for public comment at 3 p.m., on June 1, and members of the public will be permitted to submit oral or written statements regarding these matters.

DATES: June 1, 1983; 9 a.m. to 5 p.m.; June 2, 1983, 8 a.m. to 5 p.m.

ADDRESS: The meeting will take place at the Oregon Department of Fish and Wildlife, Beaver Room, 506 S.W. Mill Street, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Pacific Fishery Management Council, 526 S.W. Mill Street, Portland, Oregon 97201, Telephone: (503) 221–6352.

Dated: May 19, 1983.

Richard B. Stone,

Acting Chief, Operations Coordination Group, National Marine Fisheries Service.

[FR Doc. 83-13832 Filed 5-23-83; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council's Groundfish Task Force; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

SUMMARY: The Pacific Fishery Management Council was established by Section 302 of the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 et seq., and the Council has established a Groundfish Task Force which will meet to discuss current groundfish management matters; review projections of groundfish landings for 1983, and, if necessary, develop groundfish management options for the remainder of 1983. The results of this meeting will be presented to the Council at its June 8–9, 1983, meeting, in Portland. A public comment period will be scheduled at 3 p.m., on June 3, 1983, and members of the public will be permitted to submit oral or written statements regarding these matters.

DATE: June 3, 9 a.m. to 5 p.m.

ADDRESS: The public meeting will take place at the Oregon Department of Fish and Wildlife, Commission Room, 506 S.W. Mill Street, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Pacific Fishery Management Council, 526 S.W. Mill Street, Portland, Oregon 97201, Telephone: (503) 221–6352.

Dated: May 19, 1983.

Richard B. Stone,

Acting Chief, Operations Coordination Group, National Marine Fisheries Service.

[FR Doc. 83-13833 Filed 5-23-83; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council, Public Meeting With a Partially Closed Session Public Meetings of Its Groundfish Advisory Subpanel and Its Scientific and Statistical Committee

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice of public meeting with a partially closed session.

SUMMARY: This notice sets forth the schedule and proposed agendas of the forthcoming separate public meetings of the Pacific Fishery Management council, its Groundfish Advisory Subpanel, and its Scientific and Statistical Committee (SSC). The Council was established by Section 302 of the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 et seq., and the Council has established a Groundfish Advisory Subpanel and a SSC to assist the Council in carrying out its responsibilities under the Act. All portions of the meetings will be open to the public with the exception of the Council's closed session. The agenda items in the closed session are exempt from public attendance and participation pursuant to Section 302(i)(3) of the Magnuson Act.

DATES: June 7–9, 1983.

ADDRESS: The meetings will take place at the Cosmopolitan Motor Hotel, 1030 N.E. Union, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Pacific Fishery Management Council, 526 S.W. Mill Street, Second Floor, Portland, Oregon 97201, Telephone: (503) 331–6352.

Agendas

Council (open session)—June 8–9, 1983. (9:00 a.m. to 5:00 p.m. on June 8; 8:00 a.m. to 5:00 p.m. on June 9) in the Capri-Del Rio Room. Review the final draft of the Groundfish Plan Amendment which, among other things, would allow joint ventures for Pacific whiting south of 39°N latitude; review projections of groundfish landings for 1983 and, if necessary, adopt proposed groundfish management options for the remainder of 1983; tentatively adopt alternatives for the Salmon Framework Plan Amendment; consider other

matters which may come before the Council by that date; and conduct a public comment period beginning at 4:00 p.m on June 8.

Council (closed session—June 8, 1983. (8:00 a.m. to 9:00 a.m.) in the Capri-del Rio Room. Discussion of the status of fishery negotiations between the U.S. and Canada, litigation and personnel matters. Only those Council members and staff having security clearances will be allowed to attend this session.

Groundfish Advisory Subpanel (open session)—June 7, 1983. (10:00 a.m.—5:00 p.m.) in the Hall of Fame Room. Draft recommendations to the Council on the Groundfish Plan Amendment and groundfish management options for the remainder of 1983, and conduct a public comment period beginning at 3:00 p.m. on June 7.

Scientific and Statistical Committee (open session)—June 7–8, 1983. (10:00 a.m.–5:00 p.m. on June 7; 8:00 a.m. to 5:00 p.m. on June 8) in the Bombay Room. Review final draft of the Groundfish Plan Amendment, groundfish management options for the remainder of 1983, and tentative alternatives for the 1984 Salmon Framework Plan Amendment, discuss other matters that may be referred to the committee by that date, and conduct a public comment period at 3:30 p.m. on June 7.

Dated: May 19, 1983.

Richard B. Stone,

Acting Chief, Operations Coordination Group, National Marine Fisheries Service.

[FR Doc. 83-13934 Filed 5-23-83; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Government-Owned Inventions; Availability for Licensing

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Technical and licensing information on specific inventions may be obtained by writing to: Office of Government Inventions and Patents, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151.

Please cite the number and title of inventions of interest.

George Kudravetz,

Program Manager, Office of Government Inventions and Patents, National Technical Information Service, Department of Commerce.

Department of Agriculture

SN 6-272,842 (4,376,633— Zwitterion Compounds as Catalysts in Easy-Care Finishing

SN 6-455,727 A Method for the Control of Insects

Department of Health and Human Services

SN 6-457,866 Method of Differentiating Kilham Strain Mumps

SN 6-468,950 2,5-Riboadenylate-morpholinoadenylate Nucleotides

SN 6-475,215 Multi-Layer Coil Assembly Mounted Around the Rotary Axis for Prepatory Counter-current Chromatography

SN 6-480,142 Cell Lines Secreting Anti-insulin Anti-Bodies and Test Kits

Department of Interior

SN 6-460,102 Recovery of Metals from Grinding Sludges

SN 6-460,201 Separation of Lithium from Aluminum and Sodium

SN 6-455,187 Universal Ripper Miner

[FR Doc. 83-13892 Filed 5-23-83; 8:45 am]

BILLING CODE 3510-04-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Determinations of Active Military Service and Discharge; Civilian or Contractual Personnel

In accordance with Public Law 95-202, Section 401 (The G.I. Bill Improvement Act of 1977) and under the provisions of DODD 1000.20, Determinations of Active Military Service and Discharge: Civilian or Contractual Personnel, the Secretary of the Air Force, acting in accordance with authority delegated to him by the Secretary of Defense, determined on May 10, 1983, that the service of the members of the groups known as the China Mission, Foreign Economic Administration; and United States Army Signal Corps Enlisted Reserve Corps Trainees World War II not be considered active military service in the Armed Forces of the United States for all laws administered by the Veterans' Administration.

For Further Information Contact: Lt. Colonel Phelps, telephone 692-4751, Office of the Secretary of the Air Force Personnel Council (SAF/MIPC), The Pentagon, Washington, D.C. 20330.

Winnibel F. Holmes,

Air Force Federal Register Liaison Officer.

[FR Doc. 83-13841 Filed 5-23-83; 8:45 am]

BILLING CODE 3910-01-M

Determinations of Active Military Service and Discharge; Civilian or Contractual Personnel

In accordance with Public Law 95-202, Section 401 (The G.I. Bill Improvement Act of 1977) and under the provisions of DODD 1000.20, Determinations of Active Military Service and Discharge: Civilian or Contractual Personnel, the Secretary of the Air Force, acting in accordance with authority delegated to him by the Secretary of Defense, determined on may 10, 1983, that the service of the members of the group known as the Guam Combat Patrol be considered active military service in the Armed Forces of the United States for all laws administered by the Veterans' Administration.

For Further Information Contact: Lt. Colonel Phelps, telephone 692-4751, Office of the Secretary of the Air Force Personnel Council (SAF/MIPC), The Pentagon, Washington, D.C. 20330

Winnibel F. Holmes,

Air Force Federal Register Liaison Officer.

[FR Doc. 83-13842 Filed 5-23-83; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army, Corps of Engineers

Intent To Prepare a Draft Supplement to the Final Environmental Impact Statement (FEIS) "Multipurpose Deepwater Port and Crude Oil Distribution System at Galveston, Tex."

AGENCY: Corps of Engineers, DOD, Galveston District.

ACTION: Notice of intent to prepare a draft supplement to an FEIS.

SUMMARY: 1. *Proposed Action.* The proposed action is to prepare a Draft Supplement to an FEIS in response to the January 20, 1983 decision of the Fifth Circuit Court of Appeals (New Orleans, Louisiana) that determined that, in order for Galveston District to reconsider its decision for five Department of the Army Permits (10400, 13576, 13577, 13578, and 13579), the District must rework the FEIS to correct two deficiencies: lack of a "worst case" oil spill analysis; and failure to adequately discuss the environmental impacts of bulk commodities activities. The Draft

Supplement will address both deficiencies in detail.

2. *Reasonable Alternatives.* Alternatives under consideration include:

a. Reissue the permits.

b. Reissue the permits with special conditions.

c. Deny issuance of the permits.

3. *Scoping Process.*

a. A notice has been prepared and will be circulated to agencies, organizations, and interested individuals inviting views and comments on the types of studies and depth of analyses which are required to address the two deficiencies noted by the Fifth Circuit Court. The Final Scope of Studies for the Draft Supplement will then be determined in consideration of the views submitted by the public and agencies.

b. Significant issues to be analyzed in the Draft Supplement include: frequency, fate and environmental impacts of a "worst case" oil spill; and effects of bulk commodities that may be induced by the project.

c. The Draft Supplement will be coordinated with all required Federal, State, and local agencies, environmental groups, the applicants, and interested individuals.

d. Environmental consultation and review of the project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, Council on Environmental Quality Regulations (40 CFR Parts 1500–1508), and all other applicable laws, regulations and guidelines.

4. *Scoping Meetings.* No future public meeting to discuss the scope of the Draft Supplement has been scheduled.

5. *Estimated Availability Date of Draft Supplement.* The Draft Supplement is expected to be available to the public in Spring 1984.

ADDRESS: Questions about the proposed action and Draft Supplement to the FEIS can be answered by Mr. C. R. Harbaugh, Chief, Environmental Resources Branch, Galveston District, Corps of Engineers, P.O. Box 1229, Galveston, Texas 77553, (409) 766–3044.

Dated: May 16, 1983.

Alan L. Laubscher,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 83-13906 Filed 5-23-83; 8:45 am]

BILLING CODE 3710-GK-M

Department of the Navy

Privacy Act of 1974; Proposed New System of Records

AGENCY: Department of the Navy (U.S. Marine Corps), DOD.

ACTION: Notice of a new system of records.

SUMMARY: The U.S. Marine Corps proposes to add a system of records to its inventory of systems of records subject to the Privacy Act of 1974. The system notice for the new system is set forth below.

DATE: The proposed system notice will be effective without further notice on June 23, 1983.

ADDRESSES: Send any comments to the system manager identified in the system notice.

FOR FURTHER INFORMATION CONTACT: Mrs. B. L. Thompson, Privacy Act Coordinator, Headquarters, U.S. Marine Corps, Washington, D.C. 20380, telephone: 202/694–1452.

SUPPLEMENTARY INFORMATION: The U.S. Marine Corps systems notices for record systems subject to the Privacy Act of 1974, as amended, Title 5 United States Code section 552a have been previously published in the **Federal Register** (46 FR 6639 Jan. 31, 1981).

A new system report as required by 5 U.S.C. 552a(o) was submitted on April 18, 1983.

May 19, 1983.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

MMN00049

SYSTEM NAME:

Manpower Management Information System.

SYSTEM LOCATION:

Marine Corps Base, Camp Lejeune, North Carolina.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Marines who are joined to Base organizations and filling a Table of Organization (T/O) line number; all nonchargeable military personnel who are administratively attached to Base organizations (except students); and wage grade employees assigned to Base and tenant units.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files contain personal identification data such as name, social security number, pay grade, military occupational specialties, dates current tour began and other information extracted from the existing Manpower Management System and Naval Automated Civilian Manpower Information System master records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 10, U.S. Code 5031 and Title 10, U.S. Code 5201.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See the Blanket Routine Uses at the head of the published Marine Corps systems notices in the **Federal Register.**

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on magnetic tape and disk.

RETRIEVABILITY:

Records are accessed by social security number and T/O line number.

SAFEGUARDS:

Building has a 24-hour security watch. Computer terminals and records are located in areas accessible only to authorized personnel that are properly screened, cleared and trained. Use of terminals requires knowledge of passwords. Terminals are physically locked when not being used by authorized personnel.

RETENTION AND DISPOSAL:

Records on magnetic disk are retained from one file recreation to the next generally one month. Magnetic tapes are forwarded to Headquarters, U.S. Marine corps.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Chief of Staff for Manpower, Marine Corps Base, Camp Lejeune, North Carolina 28542. Telephone: (919) 451–2220.

NOTIFICATION PROCEDURES:

Requests from individuals should be addressed to the system manager. Written requests for information should contain the full name and social security number, date and place of birth and signature of the individual concerned. For personal visits, the individual should be able to provide identification bearing picture and signature or sufficient verbal data to ensure that the individual is the subject of inquiry.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the system manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determination by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information in the system is obtained from the Manpower Management System, the Naval Automated Civilian Manpower Information System, the Table of Manpower Requirements, from the individual's commanding officer or supervisor, and from the individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 83-13898 Filed 5-23-83; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary

Privacy Act of 1974; Amendment to a Notice for a System of Records

AGENCY: Office of Inspector General, Office of the Secretary, DoD.

ACTION: Amendment to a notice for a system of records.

SUMMARY: The Office of the Inspector General, Department of Defense, proposed to amend the notice for a system of records. The amendment is set forth below.

DATE: The proposed system notices will be effective without further notice on June 23, 1983.

ADDRESSES: Send any comments to the system manager.

FOR FURTHER INFORMATION CONTACT: Mr. David Stewart, Office of the Assistant Inspector for Administration, Department of Defense, Washington, D.C. 20301. Telephone: 694-0491.

SUPPLEMENTARY INFORMATION: The system notice for system of records: CIS-06, entitled: Investigative Files, appeared in the **Federal Register** on July 15, 1983 at 47 FR 30809 (FR Doc. 82-19152).

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

May 19, 1983.

Changes

CIS-06

- *System name:* Investigative Files.

In *System location,* add: "The Office of the Inspector General, the Department of Defense, the Pentagon, Washington, D.C. 20301, has temporary control over portions of the records in the system."

In *Categories of records in the system,* delete the third paragraph and insert in its place:

* * * * *

"Case control documents which are not included in RO1s but which serve as the basis of investigation or which guide and facilitate investigative activities, including documents providing the data to open, conduct, transfer and close cases, as well as Defense Hot Line Complaints;"

* * * * *

As revised, "System location" and "Categories of records in the system" read as follows:

CIS-06

SYSTEM NAME:

Investigative Files.

SYSTEM LOCATION:

Defense Criminal Investigative Service (DCIS), a component of the Assistant to the Secretary of Defense (Review and Oversight) (ATSD(R&O)), Cameron Station, Alexandria, VA 22314, has primary control over the system.

Regional field offices, resident agencies, and various DCIS headquarters staff elements originate and have temporary control over portions of the records.

The Office of the Inspector General, the Department of Defense, the Pentagon, Washington, DC 20301 has temporary control over portions of the records in the system.

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Official Reports of Investigation (RO1s) including any attachments prepared by DCIS or other DoD federal, state, or local official investigative activities;

DCIS Information Summary Reports (ISRs) which record unsolicited information of criminal nature received by DCIS concerning a person or incident which is of direct interest to other DoD Components or federal agencies;

Case control documents which are not included in the ROIs but which serve as the basis of investigation or which guide and facilitate investigative activities, including documents providing the data to open, direct, conduct, transfer and close cases; as well as Defense Hot Line Complaints;

DCIS file administration and management documents accounting for disclosure, control, and access to a file; and

Grand Jury information not contained in case files, agent notes, fingerprint cards, duplicate files at the local level and other miscellaneous documents supporting the criminal investigation file to include court documents and on occasion reports of administrative proceedings.

* * * * *

[FR Doc. 83-13895 Filed 5-23-83; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Gary Energy Corp.; Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of action taken on Consent Order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announced that it has adopted a Consent Order with Gary Energy Corporation (Gary) as a final order of the Department.

EFFECTIVE DATE: May 24, 1983.

FOR FURTHER INFORMATION CONTACT: Donald A. Muncy, Deputy Chief Counsel, Dallas Office, Economic Regulatory Administration, Department of Energy, 1341 W. Mockingbird, Room 200 E, Dallas, Texas 75247, 214/767-7408.

SUPPLEMENTARY INFORMATION: On March 14, 1983, 48 FR 10731, the ERA published a notice in the **Federal Register** that it had executed a proposed Consent Order with Gary Energy Corporation on February 18, 1983, which would not become effective sooner than 30 days after publication of that notice. Pursuant to 10 CFR 205.199J(c) interested persons were invited to submit comments concerning the terms and conditions of the proposed Consent Order.

The Consent Order with Gary, a refiner and NCL processor with its home office located in Englewood, Colorado, resolves potential liability of Gary, arising out of Gary's compliance with the Mandatory Petroleum Allocation and Price Regulations during the period from January 1, 1983 through January 28, 1981. The Consent Order requires Gary to pay the sum of $600,000 to the administrator of the ERA ultimate disposition by DOE.

Fifteen comments were received. All of the comments addressed the issue of the appropriate disposition of the $600,000 refund. Nine comments asserted that the most suitable distribution of the funds after payment to identified injured customers, could be accomplished through allotment of the

funds to individual state governments for energy conservation programs and other energy-related programs directly benefiting consumers, by pro-rata allotments based on a state's petroleum consumption. Three comments averred that the most equitable distribution of refunds could be accomplished by allotment of funds directly to the individual state governments for energy programs.

Two commentors made claims against the refunds proceeds, but neither of them furnished information on which a determination could be made that they had been injured by any actions of Gary. Rather, each merely asserted that it has been a purchaser of products from Gary.

The remaining comment stated that the proposed Consent Order should be clarified by explaining the relationship between Gary and both Gary Operating Company and a third company, Spruce, and whether activities by these entities fell within the purview of the Consent Order. The comment stressed that failure to clarify the relationship between these firms will make it difficult for purchasers of Gary Operating Company and Spruce to determine if such purchasers qualify for a portion of the proposed refund.

After consideration of the suggestion that the proposed Consent Order be clarified, it was concluded that such clarification is unnecessary for the following reasons. First, as set out in the Consent Order, all alleged violations of Gary Energy Corporation and Gary Operating Company are resolved by the Consent Order, and because of the combination of information of the two entities for compliance auditing purposes, specific allegations and therefore, resolution of them cannot be separated. Secondly, the Consent Order does not address and has no impact on the compliance or noncompliance of Spruce (which is not an affiliate of Gary Energy or Gary Operating) with any regulatory provisions.

With respect to the disposition of the $600,000 Gary has agreed to refund, DOE has not yet determined the appropriate disposition. The suggestions of the commentors will be duly considered in determining the appropriate disposition of funds.

Having considered all coments submitted, DOE has determined that the proposed Consent Order with Gary Energy Corporation should be made final on May 24, 1983.

Issued in Dallas, Texas on 5th day of May, 1983.

Ben L. Lemos,

Director, Dallas Office, Economic Regulatory Administration.

[FR Doc. 83-13899 Filed 5-23-83; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 83-CERT-011]

Kerr Glass Manufacturing Corp.; Application for Certification of the Use of Natural Gas To Displace Fuel Oil

Kerr Glass Manufacturing Corporation (KERR), 501 South Shatto Place, Los Angeles, California 90020, filed an application on April 11, 1983, with the Economic Regulatory Administration (ERA) for certification of an eligible use of natural gas to displace fuel oil at its glass production facility in Dunkirk, Indiana, pursuant to 10 CFR Part 595 (44 FR 47920, August 16, 1979). The application was amended on May 6, 1983, to add an eligible seller; the volumes remain the same. More detailed information is contained in the application on file and available for public inspection at the ERA Natural Gas Division Docket Room, RG-43, Room GA-007, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585, from 8:00 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

In its amended application, KERR indicates that the volume of natural gas for which it requests certification is approximately 5,000 Mcf per day. This volume is estimated to displace the use of approximately 794 barrels of No. 6 fuel oil (1.0-2.0 percent sulfur) per day.

The eligible sellers are SW Pipeline Company, c/o Industrial Gas Services, Inc., 4501 Wadsworth Boulevard, Wheatridge, Colorado 80033; and IGC Energy, Inc., 1630 North Meridian Street, Indianapolis, Indiana 46202. The gas will be transported by Panhandle Eastern Pipeline Company, P.O. Box 1642, Houston, Texas 77001; and by Indiana Gas Company, P.O. Box 1231, Muncie, Indiana 47305, a local distribution Company.

In order to provide the public with as much opportunity to participate in this proceeding as is practicable under the circumstances, we are inviting any person wishing to comment concerning this application to submit comments in writing to the Economic Regulatory Administration, Office of Fuels Programs, Natural Gas Division, RG-43, Room GA-007, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585, Attention: Paula A. Daigneault, within ten (10) calendar days of the date of publication of this notice in the **Federal Register.**

An opportunity to make an oral presentation of data, views, and arguments either against or in support of this application may be requested by any interested person in writing within the ten (10) day comment period. The request should state the person's interest and, if appropriate, why the person is a proper representative of a group or class of persons that has such an interest. The request should include a summary of the proposed oral presentation and a statement as to why an oral presentation is necessary. If ERA determines that an oral presentation is necessary, further notice will be given to KERR and any person filing comments and will be published in the **Federal Register.**

Issued in Washington, D.C., on May 18, 1983.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 83-13900 Filed 5-23-83; 8:45 am]

BILLING CODE 6450-01-M

Proposed Remedial Order to John M. Holland, Jr., et al.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of proposed remedial order to John M. Holland, Jr., Jack Holland & Son, Inc. and P.H.D. Corp., Inc.

SUMMARY: Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA), of the Department of Energy (DOE) gives notice that a Proposed Remedial Order (PRO) was issued on May 4, 1983, to John M. Holland, Jr. whose address is Post Office Box H, Safford, Arizona or 815 Hillsborough Boulevard, Hillsborough, California; Jack Holland & Son, Inc. which is located at 799 Fletcher Lane, Room 204, Hayward, California 94544; and P.H.D. Corp., Inc. which is located at 570 "B" Street, Hayward, California 94541. Any aggrieved person may file a Notice of Objection to the Proposed Remedial Order in accordance with 10 CFR 205.193 on or before the fifteenth day after the publication of this Notice, or on the first federal workday thereafter.

In this Proposed Remedial Order, ERA sets forth proposed findings of fact and conclusions of law concerning sales of crude oil in the western United States, principally in California, Arizona and Nevada, by Jack Holland & Son, Inc. and P.H.D. Corp, Inc. during the period January 1978 through December 1979.

During that period Jack Holland & Son, Inc. and P.H.D. Corp., Inc., and John M. Holland, Jr. as an officer and controlling shareholder of both corporations, are alleged to have overcharged customers of crude oil by $22,177,308.85, in violation of the price rules applicable to resales of crude oil set forth in 10 CFR Part 212, Subpart L.

The Proposed Remedial Order alleges that Jack Holland & Son, Inc. and P.H.D. Corp., Inc.: (1) Sold crude oil at prices in excess of lawful prices in violation of 10 CFR 212.183, (2) failed to certify properly sales of crude oil in violation of 10 CFR 212.131, (3) sold crude oil while failing to perform any service or other function traditionally associated with the resale of crude oil, and (4) circumvented the pricing and certification regulations applicable to crude oil by selling crude oil as "fuel oil," thereby violating 10 CFR 205.202 and 210.62(c), which prohibited activities resulting in the circumvention of DOE regulations.

Request for copies of the Proposed Remedial Order, with confidential information deleted, should be directed to: Raymond G. Gong, Chief Counsel, San Francisco Office, Economic Regulatory Administration, U.S. Department of Energy, 333 Market Street, Sixth Floor, San Francisco, CA 94105.

Aggrieved persons may object to this Proposed Remedial Order by filing a Notice of Objection to the Proposed Remedial Order. This notice must comply with the requirements of 10 CFR 205.193.

To be considered, a Notice of Objections must be filed with: Office of Hearings and Appeals, Department of Energy, 12th & Pennsylvania Avenue NW., Washington, D.C. 20461.

The notice must be filed in duplicate, by 4:30 p.m. e.d.t. on or before the fifteenth day after publication of this Notice, or the first federal workday thereafter. In addition, a copy of the Notice of Objection must, on the same day as filed, be served on John M. Holland, Jr., Jack Holland & Son, Inc., and P.H.D. Corp., Inc. and on each of the following persons pursuant to 10 CFR 205.193(c):

Raymond G. Gong, Chief Counsel, San Francisco Office, Economic Regulatory Administration, U.S. Department of Energy, 333 Market Street, Sixth Floor, San Francisco, CA 94105

Tony Miles, Assistant General Counsel for Administrative Litigation, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585

No data or information which is confidential should be included in any Notice of Objection.

Issued in San Francisco, California on the fourth day of May, 1983.

Raymond G. Gong,

Chief Counsel, Economic Regulatory Administration, San Francisco Office.

[FR Doc. 83-13897 Filed 5-23-83; 8:45 am]

BILLING CODE 6450-01-M

Oil-Tex Petroleum, Inc. and David E. Myres; Amended Proposed Remedial Order

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of an Amended proposed Remedial Order which was issued to Oil-Tex Petroleum, Inc. and David E. Myres, Houston, Texas. This Amended Proposed Remedial Order alleges pricing violations in the amount of $2,477,378.00 plus interest in connection with the resale of crude oil at prices in excess of those permitted by 10 CFR Parts 205, 210, and 212, Subparts J and L during the time period March 1980 through December 1980.

A copy of the Amended Proposed Remedial Order, with confidential information deleted, may be obtained from James F. Murphy, Manager, Crude Reseller Program, Economic Regulatory Administration, Department of Energy, P.O. Box 35228, Dallas, Texas 75235, or by calling (214) 767-7432. Within fifteen (15) days of publication of this notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, Federal Building, Room 3304, 12th & Pennsylvania Ave. NW., Washington, D.C. 20461, in accordance with 10 CFR 205.193

Issued in Dallas, Texas, on the 29th day of April, 1983.

Ben L. Lemos,

Director, Dallas Office, Economic Regulatory Administration.

[FR Doc. 83-13898 Filed 5-23-83; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

[Form AD-R0177]

National Survey of Compensation Paid to Scientists and Engineers Engaged in Research and Development; Inquiry

AGENCY: Office of the Assistant Secretary for Management and Administration, DOE.

ACTION: Request for comments on proposed extension of Form AD-R0177.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980, this notice announces a proposed extension of a form and invites comments on the form. Form AD-R0177, "National Survey of Compensation Paid to Scientists and Engineers Engaged in Research and Development," collects salary information. It is completed on a voluntary basis by employers and employees in research and development. The Department of Energy and survey participants use the published survey data to evaluate compensation of scientists and engineers employed in their respective operations (in case of DOE, contractor-operated government facilities). Nonparticipants may purchase the report on survey data from the National Technical Information Service.

DATE: Written comments must be submitted on or before June 23, 1983.

ADDRESS: Send comments to Cornelius J. Carr at the address listed below.

FOR FURTHER INFORMATION CONTACT: To obtain additional information or copies of the Form AD-R0177, contact Cornelius J. Carr, MA-262.1, Room 4H023, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-9037.

SUPPLEMENTARY INFORMATION:

I. Current Action.

II. Request for Comments.

I. Current Action

DOE proposes extension of the Form AD-R0177, "National Survey of Compensation Paid to Scientists and Engineers in Research and Development." The form is completed by employers and employees in research and development. DOE uses the published summary survey data to evaluate the compensation of scientists and engineers employed in contractor-operated government facilities. Moreover, many private sector research and development institutions use the published survey for the purpose of salary comparison. The survey data will be collected and processed by the Battelle Columbus Laboratories. DOE will publish the survey results and provide copies to survey participants. The form is the same as previously used.

II. Request for Comments

The DOE invites prospective respondents to comment on the planned revisions within 30 days of the publication of this notice. The following general guidelines are provided to assist in the preparation of responses:

(As a potential data provider)

a. Are the instructions and definitions clear and sufficient? If not, what instructions require clarification?

b. Can data be submitted using the definitions included in the instructions?

c. Can the data be submitted in accordance with the response time specified in the instructions?

d. How many hours, including time for preparation and administrative review, will your organization require to complete and submit the form?

e. What is the estimated cost of completing the form, including the direct and indirect costs associated with the data collection? Direct costs should include all one-time and recurring costs, such as development, assembly, equipment, ADP and other administrative costs directly attributable to providing this information.

f. Do you know of other Federal, State or local agencies that collect similar data? (If yes, please identify.)

g. How can the form be improved?

(As a potential user)

a. Do you need data at the levels of detail indicated on the form?

b. For what purposes would you use these data? (Be specific.)

c. How could the form be improved to better meet your specific data needs?

d. Are there alternative sources of data and do you use them? What are their deficiencies?

DOE is also interested in receiving comments from persons as to their views on the need for the collection of this information.

Comments submitted in response to this notice will be included in the request for Office of Management and Budget approval of this data collection and will become a matter of public record.

Issued in Washington, D.C., May 18, 1983.

Yvonne M. Bishop,

Director, Office of Statistical Standards, Energy Information Administration.

[FR Doc. 83-11476 Filed 5-23-83; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. ER83-490-000]

Connecticut Light and Power Co.; Notice of Filing

May 18, 1983.

The filing Company submits the following:

Take notice that on May 2, 1983, the Connecticut Light and Power Company (CL&P) tendered for filing a proposed rate schedule with respect to a Transmission Agreement dated November 1, 1982 between (1) CL&P and Western Massachusetts Electric Company (WMECO, and together with CL&P the NU Companies) and (2) Westfield Gas and Electric Department (WG&E).

CL&P states that the Transmission Agreement provides for transmission services to WG&E for the wheeling of WG&E's purchase from the Massachusetts Municipal Wholesale Electric Company (MMWEC) of a portion of MMWEC's entitlement obtained from Point Lepreau Unit No. 1 (located in New Brunswick, Canada) during the period commencing on the date Point Lepreau Unit No. 1 achieves commercial operation to October 31, 1987.

The transmission charge rate is a monthly rate equal to one-twelfth of the estimated annual average cost of transmission service on the electric transmission system of the NU Companies determined in accordance with Appendix A and Exhibits I, II and III thereto, of the Transmission Agreement. The monthly transmission charge is determined by the product of: (i) The transmission charge rate ($/kW–month), and (ii) the number of kilowatts transmission charge is reduced by 50% to give due recognition for payments made by WG&E to other utility systems also providing related transmission service.

CL&P requests an effective date of February 1, 1983, and therefore requests waiver of the Commission's notice requirements. CL&P states that copies of this rate schedule have been mailed to WMECO, and WG&E.

Any person desiring to be heard or to protest said application 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 210, 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.210, 385.211 and 385.214). All such petitions or protests should be filed on or before May 31, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-13822 Filed 5-23-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ES83-42-000]

Edison Sault Electric Co.; Notice of Application

May 18, 1983.

Take notice that on May 12, 1983, Edison Sault Electric Company (Applicant) filed an application seeking authority pursuant to Section 204 of the Federal Power Act to issue up to $1,250,000 principal amount of short-term debt, with final maturities of not later than December 31, 1984.

Any person desiring to be heard or to make any protest with reference to the said application should on or before May 31, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). The application is on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-13823 Filed 5-23-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP68-179-001]

Florida Gas Transmission Co.; Notice of Informal Conference

May 18, 1983.

On November 12, 1981, Florida Gas Transmission Company (FGT) filed an application with the Federal Energy Regulatory Commission (FERC) pursuant to Section 7(c) of the Natural Gas Act, 15 U.S.C. Section 717f(c), requesting that the certificate issued to it in the above-styled proceeding be amended in order to enable it to replace the current volumetric limitations authorized for that system so as to permit unlimited load growth for its Priorities 1 through 4 customers and to freeze the level of service to its Priorities 5 through 9 customers after providing for some additional growth.

Several protests and petitions to intervene (some supporting and some opposing) FGT's application to amend filed in the instant proceeding have been filed with the Commission. In addition certain customers have recently expressed a current interest in this

proceeding and indicated a strong desire to see it move forward to a final determination.

In view of all these factors an informal conference will be convened on June 1, 1983 at 10:00 a.m. for the purposes of discussing the issues involved in the above-styled proceeding.

This informal conference will be held at the offices of the FERC at 825 North Capitol Street, NE., Washington, D.C. 20426. All interested parties are invited to attend this conference.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-13824 Filed 5-23-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID-1741-001]

James E. Tribble; Notice of Application

May 18, 1983.

The filing individual submits the following:

Take notice that on May 2, 1983, James E. Tribble filed an application pursuant to section 305(b) of the Federal Power Act to hold the following positions:

President and Director, Yankee Atomic Electric Company
Vice President, Vermont Yankee Nuclear Power Corporation
Vice President, Maine Yankee Atomic Power Company

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 Capital Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR Sections 385.211, 385.214). All such motions or protests should be filed on or before June 1, 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 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. 83-13825 Filed 5-23-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-492-000]

Niagara Mohawk Power Corp.; Notice of Tariff Filing

May 18, 1983.

The filing Company submits the following:

Take notice that on May 2, 1983, Niagara Mohawk Power Corporation (Niagara), tendered for filing a proposed rate schedule with respect to a Transmission Agreement dated March 3, 1983 between Niagara and the Power Authority of the State of New York (PASNY).

Niagara states that the Transmission Agreement provides for Niagara to deliver for PASNY over Niagara's transmission system, power and energy of PASNY to PENELEC at the New York-Pennsylvania State Line. Niagara requests an effective date of July 1, 1983.

Niagara states that copies of this rate schedule have been mailed to the Allegheny Electric Cooperative, Inc., PASNY, and PSCNY.

Any person desiring to be heard or to protest said application 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 Procedure (18 CFR Sections 385.211, 385.214). All such motions or protests should be filed on or before May 31, 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 party 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. 83-13826 Filed 5-23-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER33-491-000]

Niagara Mohawk Power Corp.; Notice of Filing

May 18, 1983.

The filing Company submits the following:

Take notice that on May 2, 1983, Niagara Mohawak Power Corporation (Niagara), tendered for filing a proposed rate schedule with respect to a Transmission Agreement dated March 3, 1983 between Niagara and the Power Authority of the State of New York (PASNY).

Niagara states that the Transmission Agreement provides for Niagara to deliver for PASNY over Niagara's transmission system power and energy of PASNY to PENELEC at the New York- Pennyslvania Satate Line. Niagara is requesting an effective date of July 1, 1983.

Niagara states that copies of this rate schedule have been mailed to the Division of Light and Power, City of Cleveland, PASNY, and PSCSNY.

Any person desiring to be heard or to to protest said application 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 Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 31, 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 preceedings. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-13827 Filed 5-23-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP82-116-005 (PGA83-2) and TA83-2-7-003]

Southern Natural Gas Co.; Notice of Proposed Changes in FERC Gas Tariff

May 18, 1983.

Take notice that Southern Natural Gas Company (Southern), on May 18, 1983, tendered for filing proposed changes in its FERC Gas Tariff, Sixth Revised Volume No. 1, to become effective June 1, 1983. The revised tariff amends previous PGA and general rate increase filings on the above-styled proceedings to effect a major rate reduction following settlement conference with its customers, the Commission Staff and other parties. The proposed changes would decrease Southern's rates as a result of the following items.

(1) An amendment to its most recently filed PGA reflecting certain decreases in cost of purchased gas to jurisdictional customers of 294.549¢ of approximately 21.4¢ per Mcf.

(2) A reduction in its general rate increase in Docket No. RP82-116 to reflect reduced costs including a reduction in the cost of equity capital to 13 percent and a reduction in mainline depreciation expense to 3.00 percent.

The rate reductions requested herein are in anticipation of a rate settlement to be entered into by all parties prior to June 1, 1983. Absent such a settlement, Southern reserves the right to restore jurisdictional rates to the current level.

Copies of the filing were served upon all parties to Docket Nos. RP82-116 and

TA83-2-7, the company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said application 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 Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before May 25, 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 preceedings. Any person wishing to become a party must file a petition to intervene.

Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-13828 Filed 5-23-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-496-000]

Cleveland Electric Illuminating Co.; Filing

May 19, 1983.

The filing company submits the following:

Take notice that on May 5, 1983, the Cleveland Electric Illuminating Company (CEI) tendered for filing an executed Service Agreement and Exhibits A and B thereto, providing for transmission by CEI of approximately 40 MW of power from the 345 kv interconnection point on CEI's Juniper-Canton Line with the Ohio Power Company to the City of Cleveland, Ohio (City) in accordance with the terms and conditions of CEI's FERC Transmission Service Tariff.

CEI has requested waiver of the FERC's 60-day notice requirement in order to permit commencement of transmission service on May 1, 1983.

Any person desiring to be heard or to protest said application 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 Procedure (18 CFR 385.211 and 385.214). All such petitions or protests should be filed on or before June 2, 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 application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-13866 Filed 5-23-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-495-000]

Cleveland Electric Illuminating Co.; Filing

May 19, 1983.

The filing company submits the following:

Take notice that on May 5, 1983, the Cleveland Electric Illuminating Company (CEI) tendered for filing an executed Service Agreement and Exhibits A and B thereto, providing for transmission by CEI of approximately 20 MW of power from the 345 kv interconnection point on CEI's Juniper-Canton Line with the Ohio Power Company to the City of Cleveland, Ohio (City) in accordance with the terms and conditions of CEI's FERC Transmission Service Tariff.

CEI has requested waiver of the FERC's 60-day notice requirement in order to permit commencement of transmission service on May 1, 1983.

Any person desiring to be heard or to protest said application 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 Procedure (18 CFR 385.211 and 385.214). All such petitions or protests should be filed on or before June 2, 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 application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-13867 Filed 5-23-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-501-000]

Florida Power Corp.; Filing

May 19, 1983.

The filing Company submits the following:

Take notice that on May 9, 1983, Florida Power Corporation (Florida Power) tendered for filing a Contract for Interchange Service (Contract) between Florida Power and the City of Tallahassee, Florida entered into on May 1, 1983. The Contract provides for the following interchange services: emergency energy, short-term and long-term firm capacity and energy, and economy energy.

Florida Power asks that the sixty (60) day notice requirement be waived so that the Contract, in acordance with its terms, may be permitted to become effective on May 1, 1983.

Florida Power states that copies of this filing have been mailed to the City of Tallahassee and the Florida Public Service 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, 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 June 6, 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. 83-13868 Filed 5-23-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83494-000]

Florida Power Corp; Filing

May 19, 1983.

The filing Company submits the following:

Take notice that on May 5, 1983, Florida Power Corporation (Florida Power) rendered for filing a revision to the daily capacity charge of its scheduled interchange service to Florida Power & Light Company, Tampa Electric Company, the Orlando Utilities Commission, the Sebring Utilities Commission, the Jacksonville Electric Authority, and the Cities of Gainesville, Kissimmee, St. Cloud and Lakeland, Florida under interconnection agreements with each of these utilities. According to Florida Power, the revised charge of $127.29 per MW per day is based on 1982 data and is derived according to the same method shown in

cost support schedules submitted with the inteconnection agreements. According to Florida Power, the present daily capacity charge based on 1981 data is $96.27 per MW per day.

Florida Power requests that the revised daily capacity charge be made effective on May 1, 1983, and request waiver of notice requirement.

According to Florida Power, the filing has been served on each of the above-named utilities and the Florida Public Service 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, 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 June 2, 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. 83-13869 Filed 5-23-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-500-000]

Idaho Power Co.; Compliance Filing

May 19, 1983.

The filing Company submits the following:

Take notice that on May 9, 1983, the Idaho Power Company tendered for filing in compliance with the Federal Energy Regulatory Commission's Order of October 7, 1978, a summary of sales made under the Company's 1st Revised FERC Electric Tariff, Volume No. 1 (Supesedes Original Volume No. 1) during March, 1983, along with cost justification for the rate charged. This filing includes the following supplements:

Utah Power & Light Company—Supplement 17
Montana Power Company—Supplement 15
Sierra Pacific Power Company—Supplement 15

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 June 6, 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. 83-13870 Filed 5-23-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-503-000]

Kansas Power & Light Co.; Filing

May 19, 1983.

The filing Company submits the following:

Take notice that on May 9, 1983, the Kansas Power and Light Company (KPL) tendered for filing Amendment #8 to the General Participation Agreement to Mokan Pool members.

Amendment #8 provides for the addition of City Power & Light Department of the City of Independence, Missouri to the Mokan Power Pool.

KPL states that the following are presently Participants under the General Participation Agreement with the following FPC Rate Schedule Numbers:

Kansas City Power & Light Company—Rate Schedule FPC No. 32
Missouri Public Service Company—Rate Schedule FPC No. 8
The Empire District Electric Company—Rate Schedule FPC No. 73
Kansas Gas and Electric Company—Rate Schedule FPC No. 94
The Kansas Power & Light Company—Rate Schedule FPC No. 7
Central Telephone & Utilities Corporation—Rate Schedule FPC No. 53
St. Joseph Light & Power Company—Rate Schedule FPC No. 17
Midwest Energy, Inc.
Sunflower Electric Cooperative, Inc.
Board of Public Utilities of the City of Kansas City, Kansas

KPL states that all Participants under the General Participation Agreement filed certificates of concurrence to the proposed change with KPL's submittal.

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 June 3, 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. 83-13872 Filed 5-23-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-499-000]

Pacific Gas & Electric Co.; Filing

May 19, 1983.

The filing Company submits the following:

Take notice that on May 9, 1983, Pacific Gas and Electric Company (PG&E) tendered for filing as an initial rate schedule a January 28, 1983 Letter Agreement for interruptible transmission service by PG&E for the Western Area Power Administration (Western).

The agreement provides that PG&E will transmit non-firm energy obtained by Western, from the Colorado River Storage Project, from Midway Substation to Tracy Substation, subject to the availability of transmission capacity in the PG&E system. The transmission rate of 1.0 mill-kWh is a negotiated rate. Energy delivered at Midway shall be reduced by 1.7% to compensate for transmission losses.

PG&E requests an immediate effective date of October 2, 1981, and therefore requests waiver of the 60-day notice requirement.

Copies of the filing were served upon Western and the California Public Utilities Commission.

Any person desiring to be heard or to protest said application 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 Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before June 6, 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 preceedings. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the

Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-13873 Filed 5-23-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-498-000]

Pacific Gas & Electric Co.; Filing

May 19, 1983.

The filing Company submits the following:

Take notice that on May 9, 1983, Pacific Gas and Electric Company (PG&E) tendered for filing a signed letter agreement dated March 28, 1983, amending Article 14(a)(3) of the United States Power Contract No. 14-06-200-2948A (Contract) between the Western Area Power Administration (Western) and PG&E dated July 31, 1967 (Original FPC Volume No. 4).

The letter agreement states that PG&E agrees to support, under the terms of the Contract, a load level of up to 1152 MW.

PG&E requests an effective date of March 1, 1983 as agreed by both parties, and therefore requests waiver of the 60-day notice requirement.

Copies of the filing were served upon Western and the California Public Utilities Commission.

Any person desiring to be heard or to protest said application 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 Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before June 6, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-13874 Filed 5-23-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-502-000]

Public Service Company of Colorado; Filing

May 19, 1983.

The filing Company submits the following:

Take notice that on May 9, 1983, the Public Service Company of Colorado (PSCo) tendered for filing a proposed change in its FERC Electric Service Tariff. PSCo states that the proposed change is a Supplemental Agreement (Supplement) to PSCo's Power Purchase Agreement (Agreement) with the City of Burlington, Colorado (Burlington), dated February 19, 1974, as amended, filed with the Commission under PSCo's FERC Rate Schedule No. 15.

PSCo indicates that the Supplement provides that Burlington may reduce its obligation to accept and pay for its requirements of electric power and energy provided by the Company by the amount of electric power obtained from Western Area Power Administration (WAPA) for peak shaving purposes only. PSCo will act as the scheduling agent for Burlington in scheduling repayment energy to WAPA. PSCo will provide all repayment energy to WAPA for Burlington's account, including any required losses, Mt. Elbert pump back energy, and Burlington will pay PSCo for same at the energy charge in effect for PSCo's deliveries of energy to Burlington.

PSCo requests waiver of the notice requirements as there is no change in rates proposed by this filing.

PSCo states that copies of the filing were served upon all parties to the Agreement and affected state commissions.

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 June 3, 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 the filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-13875 Filed 5-23-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID-1864-001]

Jackson H. Randolph; Application

May 19, 1983.

The filing individual submits the following:

Take notice that on May 13, 1983, Jackson H. Randolph filed an application pursuant to Section 305(b) of the Federal Power Act to hold the following positions:

Director, Vice President—The Cincinnati Gas & Electric Company.

Director, Vice President—The Union Light, Heat and Power Company.

Vice President—Miami Power Corporation.

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 285.211, 385.214). All such motions or protests should be filed on or before June 6, 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. 83-13871 Filed 5-23-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-493-000]

Southern California Edison Company; Filing

May 19, 1983.

The filing Company submits the following:

Take notice that on May 3, 1983, Southern California Edison Company (Edison) tendered for filing a notice of change of rates for transmission service as embodied in Edison's agreements with the following entities:

	Rate Schedules FERC No.
City of Los Angeles	102, 118, 140, 141
San Diego Gas & Electric Co.	139, 151
Pacific Gas & Electric Co.	117, 147
City of Burbank	114, 135
City of Pasadena	115, 158, 137
Western Area Power Administration	120
Arizona Power Pooling Association	93
Arizona Electric Power Cooperative	132, 161
M-S-R Public Power Agency	153
City of Glendale	136, 143
Imperial Irrigation District	138

Edison requests waiver of the Commission's prior notice requirements and an effective date of January 1, 1983, for these rate changes.

Copies of this filing were served upon the Public Utilities Commission of the

State of California and all interested parties.

Any person desiring to be heard or to protest this application 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 Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed in or before June 1, 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 application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-13676 Filed 5-23-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-504-000]

Utah Power & Light Company; Filing

May 19, 1983.

The filing Company submits the following:

Take notice that on May 10, 1983, Utah Power & Light Company (Utah) tendered for filing new service agreements providing for sales under Service Schedules UTAH-1B and UTAH-1C of Volume 2 of Utah FERC Electric Tariff, under which Utah sells and delivers non-firm energy to electric utilities. The new service agreements are with the following purchasers:

Idaho Power Company—(UTAH-1B).
City of Riverside, California—(UTAH-1B and 1C).
Southern California Edison Company—(UTAH-1B and 1C).
Western Area Power Administration—(UTAH-1B).
Arizona Electric Power Cooperative, Inc.—(UTAH-1C).

Utah requests that the UTAH-1B agreements be made effective retroactively on the date of the first delivery or the date of the agreement, whichever is earlier and that the UTAH-1C agreements be made effective retroactively to the date of the agreement. Utah also requests that the notice requirements be waived.

Copies of this filing were served on the potential customers involved, and also on the regulatory commissions of Utah, Idaho, Wyoming, California, and Arizona.

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 June 3, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a 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. 83-13677 Filed 5-23-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-497-000]

Wisconsin Public Service Commission; Filing

May 19, 1983.

The filing Company submits the following:

Take notice that on May 6, 1983, Wisconsin Public Service Commission (WPSC) tendered for filing a Supplement to the "Partial Requirements Service Agreement" with the City of Manitowoc, Wisconsin, FERC, Electric Service Tariff, original Volume I, Appendix "B." This Supplement revises the contract demand quantities for peak load, intermediate load, and base load in accordance with Exhibit 1 of the agreement, Paragraph 6. The Supplement also changes the location of points of delivery of energy designated in Paragraph 2 of said Exhibit 1.

WPSC requests an effective date of May 1, 1983, and therefore requests waiver of the Commission's notice requirements.

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 June 3, 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. 83-13678 Filed 5-23-83; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[SAB-FRL 2368-1]

Science Advisory Board; Environmental Health Committee; Open Meeting

Under Pub. L. 92-463, notice is hereby given that a one-day meeting of the Environmental Health Committee of the Science Advisory Board will be held on June 10, 1983, in Conference Room 3906-3908, Waterside Mall, U.S. Environmental Protection Agency, 401 M Street, Southwest, Washington, D.C. The meeting will start at 9:00 a.m. and adjourn not later than 4:30 p.m.

The principal purpose of the meeting will be: (1) To review and comment on the scientific adequacy of the revised draft of the Carcinogen Assessment of Coke Oven Emissions (Revised May 1983); (2) To continue the Committee's deliberations on EPA's Health Advisory Program for unregulated contaminants in drinking water; and (3) To hear a report on final revisions of the Health Assessment Documents for Acrylonitrile; 1,1,1-Trichloroethane (Methyl Chloroform); and 1,1,2-Trichloro-1,2,2-Trifluoroethane (Chlorofluorocarbon FC-113).

The agenda will also include briefings and informational items of current interest to the members including briefings on (a) The recent published report of the National Research Council on "Risk Assessment in the Federal Government: Managing the Process;" (b) Exposure assessment in EPA's Office of Health and Environmental Assessment; and (c) Exposure assessment in EPA's Office of Air Quality Planning and Standards.

For information on how to how to obtain copies of the revised draft of the Carcinogen Assessment of Coke Oven Emissions and the Health Assessment Documents for Acrylonitrile, 1,1,1-Trichloroethane (Methyl Chloroform) and 1,1,2-Trichloro-1,2,2-Trifluoroethane (Chlorofluorocarbon FC-113) please call or write the Center for Environmental Research Information, 20 West St. Clair Street, Cincinnati, Ohio 45268 (513) 684-7531.

The meeting will be open to the public. Any member of the public wishing to attend, participate, submit a

paper, or wishing further information should contact the Executive Secretary, Environmental Health Committee, Science Advisory Board (A-101), U.S. Environmental Protection Agency, Washington, D.C. 20460 by c.o.b. June 6, 1983. Please ask for Mrs. Patti Howard or Mr. Ernst Linde. The telephone number is (202) 382-2552.

Dated: May 16, 1983.

Terry F. Yosie,

Staff Director, Science Advisory Board.

[FR Doc. 83-13801 Filed 5-23-83; 8:45 am]

BILLING CODE 6560-50-M

[OPP-100004; PH-FRL 2368-8]

Battelle Memorial Institute; Transfer of Data to Contractor

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA plans to transfer information submitted under sections 3 and 6 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) to Battelle Memorial Institute of Columbus, under Contract No. 68-02-3169. Some of the information has been claimed to be confidential business information (CBI). The contractor, Battelle Memorial, has met all the requirements of 40 CFR 2.301(h)(2) and consequently the data wil be transferred for performance of the contract. This action will enable Battelle Memorial to fulfill the obligations of the contract and serves to notify affected persons.

DATE: May 31, 1983.

FOR FURTHER INFORMATION CONTACT: William C. Grosse, Chief, Information Services Branch, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 222, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-2613).

SUPPLEMENTARY INFORMATION: The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) section 10(e) provides that confidential business information (CBI), or business information which is alleged to be confidential, may be disclosed to an authorized contractor when such disclosure is necessary for the performance of the contract. EPA routinely receives such CBI as part of the data that are submitted by pesticide registrants and others as provided for in FIFRA section 3(c)(2). Contractors are authorized to receive such data if the EPA program office managing the contract makes the determinations specified in 40 CFR 2.301(h)(2) as referenced in § 2.307. Such determinations have been made concerning contract 68-02-3169 with Battelle Memorial.

Battelle Memorial's work will require their access to internal scientific reviews prepared by the Toxicology Branch of the Office of Pesticide Programs (OPP) Hazard Evaluation Division. Battelle Memorial must also have access to the data discussed in the reviews. These data consist of chronic feeding studies submitted by pesticide registrants to OPP. Because of the large number of studies involved, Battelle's staff will be evaluating the reviews and data in a selective manner. Not all companies' data will necessarily be reviewed.

Battelle Memorial has been cleared in accordance with the procedures in the EPA FIFRA Confidential Business Information Security Manual to have access to confidential business information. FIFRA subsection 10(f)(1) provides a criminal penalty for wrongful disclosure of confidential information, whether such disclosure is made by an EPA employee or an EPA contractor. Battelle Memorial's contract with EPA specifically prohibits disclosure of confidential business information to any third party in any form without written authorization from EPA, and Battelle Memorial's personnel will be required to sign a nondisclosure agreement before they are permitted access to such information.

Dated: May 16, 1983.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

[FR Doc. 83-13800 Filed 5-23-83; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-140035; BH-FRL 2368-7]

General Accounting Office; Disclosure of Confidential Business Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The General Accounting Office (GAO) has requested access to information submitted to EPA under the Toxic Substances Control Act (TSCA), including confidential business information submitted under sections 4, 5, 6, 7, and 8 of the Act. The GAO states that it will require access to this information to conduct a review of EPA's program to regulate existing chemicals for the Senate Committee on Environment and Public Works.

DATE: This information will be provided to the GAO no sooner than June 6, 1983.

FOR FURTHER INFORMATION CONTACT: Jack P. McCarthy, Director, TSCA Assistance Office (TS-799), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460, Toll Free: (800-424-9065), In Washington, D.C.: (544-1404), Outside the USA: (Operator—202-544-1404).

SUPPLEMENTARY INFORMATION: The GAO, on behalf of the Comptroller General, has informed EPA that it has been asked by the Senate Committee on Environment and Public Works to conduct a review of EPA's program to regulate existing chemicals. Specifically, the Committee has asked the GAO to "undertake a new study of EPA's actions and progress in identifying the hazards associated with the 55,000 existing chemicals that were identified by EPA as of January 1979 and in protecting the public and environment from those existing chemicals that pose an unreasonable risk."

To perform its review, the GAO has requested access to information submitted to EPA under TSCA, including confidential business information submitted under sections 4, 5, 6, 7 and 8 of the Act. Pursuant to 40 CFR 2.209(b), which applies to information submitted under TSCA 40 CFR 2.306(h), EPA must provide access to confidential business information in response to a written request from the Comptroller General. (In this case, the request is from the GAO on behalf of the Comptroller General.) Before providing such information, EPA is required by 40 CFR 2.209(b) to notify the submitters of the information at least ten days in advance of disclosure.

This is a notice under 40 CFR 2.209(b) to all submitters of information under section 4, 5, 6, 7 or 8 of TSCA that EPA will provide the GAO with access to confidential business information no sooner than ten days after publication of this notice in the **Federal Register.**

EPA will identify any information that is subject to a confidentiality claim and will inform the GAO of the provisions of section 14(d) of TSCA which set criminal penalties for wrongful disclosure of confidential business information.

The GAO recognizes the sensitivity of the confidential business information it may review in the course of its study. Prior to access, the GAO personnel performing this work will be briefed on EPA's security procedures as set forth in the TSCA Confidential Business Information Security Manual. These employees will then be given access to information as requested and will be allowed to attend meetings in which such information is discussed. In addition, EPA employees will be authorized to discuss this confidential

business information with the designated GAO personnel.

The GAO intends to have access to confidential business information only on EPA's premises. In addition, it does not intend to include any such information in its report to the Senate Committee. In order to ensure confidentiality, the GAO will ask EPA to review any technical information to be included in the final report to verify that it does not contain confidential business information.

Dated: May 12, 1983.

Don R. Clay,

Acting Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 83-13830 Filed 5-23-83; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 83M-0122]

CILCO™, Inc.; Premarket Approval of 1S and 1P 2-Loop Binkhorst Iridocapsular Intraocular Lenses

Correction

In FR Doc. 83-10964, appearing on page 18897, in the issue of Tuesday, April 26, 1983, in the second column, in the **SUPPLEMENTARY INFORMATION** paragraph, in the twentieth line "viscul" should read "visual"; and in the same column, the ninth line from the bottom, "and" should read "any".

BILLING CODE 1505-01-M

[Docket No. 82N-0381]

Notice to Manufacturers and Importers of Confectionery Containing Alcohol

Correction

In FR Doc. 83-11133, appearing on page 18896, in the issue of Tuesday, April 26, 1983, in the first column, in the second line of the **SUPPLEMENTARY INFORMATION** paragraph, "401(d)(2)" should read "402(d)(2)".

BILLING CODE 1505-01-M

[Docket No. 82N-0061; DESI 9366]

Deanol Acetamidobenzoate; Withdrawal of Approval of New Drug Application

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The commissioner of Food and Drugs denies a request for hearing and withdraws approval of the new drug application for Deaner Tablets, a drug used to treat children with learning and behavior problems. The drug lacks substantial evidence of effectiveness for its labeled indications.

EFFECTIVE DATE: June 23, 1983.

FOR FURTHER INFORMATION CONTACT: David T. Read, National Center for Drugs and Biologics (HFN-8), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3650.

SUPPLEMENTARY INFORMATION: In a notice (DESI 9366) published in the **Federal Register** of May 15, 1970 (35 FR 7616), the Food and Drug Administration (FDA) evaluated reports received from the National Academy of Sciences/National Research Council (NAS/NRC), Drug Efficacy Study Group, and concluded that Deaner Tablets, NDA 11-417, held by Riker Laboratories, Inc., 19901 Nordhoff St., Northridge, CA 91324 (Riker), is possibly effective for its labeled indications. (The NAS/NRC rating system categorized drugs as "effective," "effective but," "probably effective," "possibly effective," or "ineffective.") The notice provided Riker, and any person marketing this drug without approval, 6 months to obtain and submit data providing substantial evidence of effectiveness for the indications evaluated as possibly effective. In response to this notice, Riker submitted four studies on Deaner Tablets.

In a notice (formerly Docket No. FDC-D-566) published in the **Federal Register** of January 8, 1975 (40 FR 1533), the Director of the Bureau of Drugs (predecessor to the National Center for Drugs and Biologics) evaluated these four studies and concluded that they do not constitute substantial evidence of effectiveness. Accordingly, the Director proposed to withdraw approval of the new drug application for Deaner Tablets and offered an opportunity for a hearing.

On February 3, 1975, Riker requested a hearing, and on March 5, 1975, submitted the material on which it relied to justify a hearing. The Director of the National Center for Drugs and Biologics reviewed the material and concluded that summary judgment was appropriate (21 CFR 314.200(g)(3)). Accordingly, on July 19, 1982, the Director provided Riker an opportunity to comment on a proposed order denying a hearing and withdrawing approval of Deaner Tablets. Riker responded to the proposed order on September 14, 1982 by submitting the results of a 1975 study. Riker did not attempt to critique the draft order.

The Commissioner has considered all of the material submitted by Riker and has concluded that there is no genuine and substantial issue of fact requiring a hearing. A full discussion follows.

I. The drug

Deaner Tablets, each containing 25, 100, or 250 milligrams (mg) of deanol (2-dimethylaminoethanol) as the para-acetamidobenzoic acid salt.

II. Recommended Uses

Deaner Tablets is currently labeled as possibly effective for the following indications:

1. Learning problems—learning in deficit of that usually associated with apparent level of intelligence, including I.Q. Reading difficulties. Shortened attention span.

2. Behavior problems—hyperkinetic behavior problem syndrome characterized by distractibility, motor disinhibition, dissociation, and perseveration.

3. Or, as more frequently encountered, hyperkinetic behavior and learning disorders incorporating varying combinations of both of the above. Under-achievers. Reading and speech difficulties. Impaired motor coordination. Hyperactive, impulsive/compulsive behavior, often described as asocial, antisocial, delinquent, stimulus-governed.

III. Data Submitted to Support Claims of Effectiveness

1. Oettinger, L., "A Double-Blind Study of Dimethylaminoethanol (Deaner) and Placebo in Children with Minimal Brain Dysfunction," unpublished, 1971. Riker Number 546-054.

This was a double-blind, parallel study comparing Deaner Tablets to placebo in 46 children between 8 and 14 years of age. These children were referred to this study by their schools, pediatricians, social agencies, parents, and other patients, because of learning and behavior problems. The investigator's criteria for exclusion from this study were overt psychosis, gross neurological abnormalities, primary emotional disorders, or I.Q.'s below 80 (as measured by a standard group or individual intelligence test).

The children were randomly separated into two groups, one receiving Deaner, the other placebo. Each child received five 100-mg tablets of Deaner or look-like placebo tablets every day over a period of 4 weeks. Their responses to treatment were measured by questionnaires answered by parents and school personnel, and a battery of psychological tests administered by the investigator.

The Bureau of Drugs reviewed this study in the notice of January 8, 1975, and found that it failed to demonstrate a significant difference between Deaner and placebo. Riker does not dispute this finding in its hearing request submission and describes the study as merely a "probing clinical experiment." Riker's consultant found no significant treatment effects under the parent questionnaire or the school questionnaire when analyzed by a factor analysis developed before the study. Nor did the consultant find any significant treatment effects under the Draw-A-Man Test, Bender Gestalt, Porteus Maze Test, Wipman Test, Flowers-Costello Test, and Paired Associate Learing Test. Although the consultant did find a "weak suggestion" of drug effect for total symptoms score under the school questionnaire and the continuous performance test, he concluded that, in view of the large number of variables examined and the marginal levels of significance, these results should be accepted with caution. Accordingly, even under Riker's own analysis, this study fails to substantiate Deaner's effectiveness. But even if the study had produced positive results, it fails to meet the standards of an adequate and well-controlled clinical investigation as set forth in 21 CFR 314.111(a)(5)(ii).

First, the investigator did not provide adequate assurance that the subjects selected were suitable for the purposes of this study (21 CFR 314.111(a)(5)(ii)(*a*)(*2*)(*i*)). To assure a suitable population, the investigator is required to provide a method of selection that provides adequate assurance that the subjects have the condition for which the drug is offered, including criteria of diagnosis and appropriate confirmatory laboratory tests. Where such assurances are not provided, there is no rational basis for determining precisely which conditions may be effectively treated with this regimen.

In this study, the investigator failed to provide in its method of selection adequate assurance that the population had learning disabilities (reading difficulties and shortened attention span) and behavior problems (distractibility), motor disinhibition, dissociation, and perservation) as described in Deaner's labeling. Some of the people who referred patients to the study had no professional expertise to identify the symptoms described above. These referrals were not based upon any clear diagnostic criteria relating to the conditions described in Deaner's labeling. Nor did the investigator establish clear diagnostic criteria to select a suitable population from the patients referred. The investigator asserts that children were selected who fit the general critera of minimal brain dysfunction, as outlined in Monograph 3 of the National Institute of Neurological Diseases and Blindness ("Minimal Brain Dysfunction in Children," PHS Pub. No. 1415, 1966). This statement is not helpful because: (1) Even if "minimal brain dysfunction" were equated with the conditions listed in Deaner's labeling, the cited monograph does not provide a method of identifying a child with minimal brain dysfunction, and (2) a substantial number of children in this study were not diagnosed as having minimal brain dysfunction. Because the investigator failed to provide adequate confirmation that the population had the conditions identified in Deaner's labeling, the study is not adequate and well controlled.

In addition, the investigator failed to employ a method of selection that assures the comparability of the treatment and control groups with respect to known pertinent variables such as the severity and duration of the conditions in Deaner's labeling. If variables that can influence the outcome of a study are known, randomized patient assignment is not sufficient to assure comparability between test and control groups; a poststudy comparison of the manner in which known pertinent variables are distributed between the test and control groups is required (21 CFR 314.111(a)(5)(ii)(*a*)(*2*)(*iii*)). The purpose of randomization is to promote, insofar as possible, the equal distribution of unknown variables which may affect treatment outcome. Here, the investigator selected children whose conditions had a variety of etiologies ranging from organic brain disease to severe psychiatric disturbances, some with abnormal neurological conditions and histories of febrile seizures. These children exhibited varying degrees of learning disabilities and behavior problems. Because the treatment and control groups are not demonstrably comparable with respect to etiologies and symptoms, the results of the study are unreliable.

The investigator also failed to employ a method of selection that assures comparability of the treatment and control groups with respect to concomitant medication (21 CFR 314.111(a)(5)(ii)(*a*)(*2*)(*iii*)). Although the medical history included a question on whether the patient was receiving concomitant medication, the investigator failed to record the answer to this question in a substantial number of cases (21 CFR 314.111(a)(5)(ii)(*a*)(*4*)). This omission is particularly critical where as here, there is no indication that patients were cautioned to refrain from using other medication.

2. Duncan, C., "Double-Blind Study of the Effects of Deaner (2-Dimethylaminoethanol) and Placebo on the Attention Span of Children with the Hyperkinetic Syndrome," unpublished, 1971. Riker Number 546-055.

This was a double-blind, parallel study comparing Deaner, placebo, and a no-treatment group over a 4-week period. The investigator selected 43 children between 6 and 14 years of age. These children were referred by a pediatric neurology clinic and local pediatric neurologists. Children with histories of repetitive petit mal or grand mal epileptic seizures or other psychomotor seizures were excluded from the study.

The children were divided into 3 groups: 18 received 500 mg per day of Deaner, 20 received placebo, and 5 received no treatment. None of the children in this study received other medication having a stimulating or soporific effect during the study or during the 2 weeks immediately preceding the study in which the predrug psychological testing was done.

The patients were evaluated on the basis of psychological tests, a neurologist's global rating, a parent symptom report, a teacher symptom report, and clinical electroencephalograms.

The Bureau of Drugs reviewed this study in the notice of January 8, 1975, and found that it failed to demonstrate a significant drug effect. Riker concedes in its hearing request submission that this study, like the Oettinger study, was merely a "probing clinical experiment." Riker's consultant found that the data do not support the hypothesis that Deaner differs from placebo at the dosages employed, except in two instances which he dismissed as "obscure" or "marginal." In fact, the consultant concluded that "no reliable treatment effects were discovered" in this study.

This study, therefore, failed to reveal drug effect. In addition, the study was not adequate and well controlled as required by 21 CFR 314.111(a)(5)(ii). In the notice of January 8, 1975, the Bureau noted several defects in this study that were not disputed by Riker in its hearing request submission.

First, the investigator failed to employ a method of selection that provides adequate assurance that the population was suitable for the purposes of the study (21 CFR 314.111(a)(5)(ii)(*a*)(*2*)(*i*)).

Although the protocol for this study states that subjects would be limited to those presenting the subjective symptoms of distractibility, hypermobility, impulsiveness, short attention span, and learning deficits, no objective diagnostic criteria for the identification of these subjective symptoms are provided. In fact, the patient case reports provide no record of even a subjective determination of the presence of these symptoms. Because diagnostic criteria have not been provided, it is not possible to determine whether the population actually had the conditions described in Deaner's labeling. Second, without diagnostic criteria to quantify the severity and duration of the disease, comparability of the treatment and control groups is not assured (21 CFR 314.111(a)(5)(ii)(*a*)(*2*)(*iii*)). Other criticisms noted by the Bureau in its January 8, 1975 notice, such as conditions of blinding, scheduling of tests, and time of drug administration, were also not addressed by Riker in its hearing request submission (21 CFR 314.111(a)(5)(ii)(*a*) (*3*) and (*4*)). For these reasons the study lacks the essentials of an adequate and well-controlled clinical investigation.

3. Lewis, J. A., and R. Young, "Deanol and Methylphenidate in Minimal Brain Dysfunction," *Clinical Pharmacology and Therapeutics*, 17(5):534–40, 1975. Riker Number 546–056.

This was a double-blind, parallel study comparing the effects of Deaner, Ritalin (methylphenidate), and placebo on 74 children. These children were referred to the study by public school teachers and counselors, pediatricians, and personnel from child development clinics who believed that the children's classroom performance was below potential. The investigators selected children from these referrals who met the following criteria: (1) inappropriate poor school performance as defined by the teacher; (2) acceptance by the parent that the child was having problems in school; (3) between 6 and 12 years of age; (4) full-scale I.Q. on the WISC (Wechsler Intelligence Scale for Children) of 80 or above; (5) absence of diagnosable mental retardation, epilepsy, or other neurological disease; and (6) absence of any diagnosable major psychiatric illness.

The investigators conducted this study over 12 weeks. Twenty-four children received Deaner (250 mg per day for the first 2 weeks, 500 mg per day for the next 10 weeks); 25 children received Ritalin (20 mg per day for the first 2 weeks, 40 mg per day for the next 10 weeks); and 25 children received placebo.

The investigators evaluated the children on the following psychological tests: WISC Verbal, Performance, and Full Scale I.Q.; the visual sequential memory subtest from the Illinois Test of Psycholinguistic Abilities; Bender Gestalt; Goodenough Draw-A-Person test; and a reaction time measurement test. The parents also rated the children's behavior on the Werry-Weiss-Peter Scale.

The investigators found significant differences favoring Deaner over placebo in all measurements except visual sequential memory and the Draw-A-Person test. No significant differences were found between Deaner and Ritalin. (Ritalin is a proven effective regimen for attention deficit disorders, previously referred to as minimal brain dysfunction (35 FR 15771; October 7, 1970).)

In the notice of January 8, 1975, the Bureau of Drugs evaluated this study and found that it was not adequate and well controlled because it failed to provide details about methods of blinding the investigators and analysts (21 CFR 314.111(a)(5)(ii)(*a*) (*3*) and (*4*)). Riker's hearing submission provided an adequate description of the blinding and coding procedures followed in this study. However, the study is not adequate and well controlled for other reasons.

First, the study failed to contain a method of selection that assured that suitable subjects would be selected for the purpose of this study (21 CFR 314.111(a)(5)(ii)(*a*)(*2*)(*i*)). As discussed previously, a study must provide adequate confirmation of the condition for which the drug is offered, including criteria of diagnosis and appropriate confirmatory laboratory tests. Here, the investigators did not provide adequate diagnostic criteria of the condition, but relied upon, in their own words, "relatively loose criteria" on the theory that "they would most closely approximate the population actually being treated by medical practitioners."

The investigators' reliance upon vague and overbroad diagnostic criteria such as "poor school performance" as perceived by the teacher and "acceptance" by the parents that the children were "having school problems" renders the study less than an adequate and well-controlled trial. These diagnostic criteria, which are different from the symptomatology described in Deaner's labeling (i.e., reading difficulties, short attention span, hyperkinetic behavior characterized by distractibility, motor disinhibition, dissociation, and perseveration), and inadequate. Without precise diagnostic criteria characterizing the medical condition to be treated, there can be no precise conclusions reached on the study. "Poor school performance" or "school problems" does not necessarily imply the existence of a problem requiring drug treatment.

Second, the investigators failed to follow a method of selection that assures comparability of the test and control groups in certain pertinent variables (21 CFR 314.111(a)(5)(ii)(*a*)(*2*)(*iii*)). An adequate comparison of drug therapies is possible only when the patient groups studied are substantially identical, or when any differences are accounted for in the analysis. Two of the most important variables in a comparison of treatment groups are the etiology and pathogenesis (i.e., cause and development) of the condition being treated. This is especially important in this study, in which the condition being treated ("poor school performance" and "school problems") could be the result of many different causes. In this instance, the investigators failed to ensure the comparability of the treatment and placebo groups with respect to the cause of the condition or the duration and severity of any learning disability, behavior problem, hyperactivity, neurological "hard" and "soft" signs, and EEG abnormalities.

Finally, the investigators failed to assure the comparability of the treatment and control groups with respect to concomitant medication (21 CFR 314.111(a)(5)(ii)(*a*)(*2*)(*iii*)). Riker's own consultant questions whether children in this study received concomitant medication. Because concomitant medication can significantly influence the results of this study, it is necessary to assure that these groups are comparable in this important variable. Because of the investigators' failure to provide such information, the study cannot be considered adequate and well controlled.

4. Coleman, N., P. Dexheimer, A. DiMascio, W. Redman, and R. Finnerty, "Deanol in the Treatment of Hyperkinetic Children," *Psychosomatics*, 17:69–72, 1976. Riker Number 546–057. This was published after Riker's hearing request submission, and was submitted to FDA under the name of A. DiMascio only.

This was a double-blind, parallel study comparing Deaner and placebo in 50 hyperkinetic children between 6 and 12 years of age. The children in the study were referred by physicians, mental health centers, pupil adjustment counselors, and teachers. The

investigators selected children from this population who exhibited behavior disturbances or symptoms on the Connors' Teacher Rating Scale (a minimum of five disturbances or symptoms, or three at the "very much" level). In addition, the investigators selected only those children who were diagnosed as suffering hyperkinesis of 6 months' duration as confirmed by their parents. The investigators' criteria for excluding children from this study were: (1) Signs (or history) of definite organic brain damage, (2) I.Q. below 80 (as measured by WISC), (3) psychosis, (4) physical contraindications, or (5) under the treatment of other physicians.

The children were randomly separated into two groups, one receiving Deaner, and the other placebo. Deaner was administered at 300 mg per day the first week, 400 mg per day the second week, and 500 mg per day for the remaining 10 weeks of the study. Drug effect was measured by the following tests given at baseline and at the end of the study: (1) WISC; (2) Wide Range Achievement Test (WRAT); (3) Porteus Maze Test; (4) Connors' Teacher Rating Scale; (5) Connors' Parent Rating Scale; and (6) global evaluations by the teacher, parents, and psychiatrist.

The Bureau of Drugs reviewed this study in the notice of January 8, 1975. The Bureau criticized the study because the investigators had selected a method of analyzing the data after the study was completed without an adequate explanation of steps taken to minimize analyst bias. Riker's hearing submission reanalyzed the study using Connors' Rating Scales, an acceptable method.

This study, as now analyzed, fails to establish the effectiveness of Deaner. The investigators found no significant differences between Deaner and placebo groups under the parent and teacher questionnaire using Connors' Rating Scales. Nor did they find any significant differences under any of the achievement tests. The fact that there were no significant differences under these critical paramenters diminishes the value of the psychiatrist's global evaluation, the only parameter which significantly favored Deaner. Accordingly, this study fails to substantiate a claim of effectiveness for Deaner.

Nevertheless, even if the results of this study had favored Deaner more significantly, it is not an adequate and well-controlled clinical investigation within the meaning of 21 CFR 314.111(a)(5)(ii).

Contrary to the investigators' assertion, there is no assurance provided by a method of selection that the test and control groups were comparable in pertinent variables as required by 21 CFR 314.111(a)(5)(ii) (*a*)(*2*)(*iii*). Similar to the investigators in the Lewis study discussed above, the investigators in this study did not ensure that the conditions of the patients admitted to the study were of similar etiology.

Another deficiency of this study is the investigators' failure to explain the methods of observation and recording of results in making the psychiatrist's global evaluation (21 CFR 314.111(a)(5)(ii) (*a*)(*3*)). This is particularly critical to an evaluation of this study because only this parameter revealed a significant result favorable to Deaner. The investigators' failure to explain how the children were assessed in the global evaluations obscures the meaning of this parameter. Contrary to Riker's assertion, this omission was not resolved by the investigators' final report of this study.

E. Other medical data. Riker's hearing request submission also included data on neurological involuntary movements, such as Dopa-induced dyskinesias, tardive dyskinesias, and Huntington's chorea. Riker admits that these data are inconclusive as to whether Deaner is effective treatment for these conditions. Moreover, because these data concern indications not in Deaner's labeling, they are irrelevant to this proceeding.

Riker also submitted an article on the influence of 2-dimethylaminoethanol on the level of acetylcholine in the brains of mice, and two articles on the suppressant effects of two stimulants (neither of which was Deaner) on the growth of hyperactive children. These articles clearly are not related to the effectiveness of Deaner.

Finally, Riker submitted a study entitled "Deanol vs. Placebo in Hyperactive Children," Riker Number 546–058, by James A. Lewis (unpublished). Riker retracted this study after notification from the Bureau that it was not filed in conformance with 21 CFR 314.200(c)(2). It is worth noting, however, that the investigator found no significant differences between Deaner and placebo.

IV. Riker's Response to the Proposed Final Order

On July 23, 1982, the Director of the National Center for Drugs and Biologics served upon Riker a proposed order denying a hearing and withdrawing approval of the new drug application for Deaner Tablets for the reasons noted above (21 CFR 314.200(g)(3)). Riker's response to the proposed final order was a single-page letter and a final report on study 546–058, "Deanol vs. Placebo in Hyperactive Children," by James A. Lewis and Barbara S. Lewis.

Riker does not dispute any of the specific criticisms found in the proposed order, but maintains without explanation that the data were not afforded an adequate and fair medical review. This bare assertion does not raise a genuine and substantial issue of fact which justifies a hearing.

Nor does Riker's untimely resubmission of study 546–058 raise a genuine and substantial issue of fact which would justify a hearing in this matter. The study, as noted in the proposed order, found no significant differences between Deaner and placebo. This finding is not disputed in the study's final report which has not been submitted by Riker. (See page 25.) Consequently, even if the Commissioner were to consider this study as appropriately filed, it fails to reveal any drug effect.

V. Findings

On the basis of the foregoing review of all the evidence submitted, and after providing an opportunity to comment on this order, the Commissioner finds that (1) there is a lack of substantial evidence that Deaner has the effects it purports or is represented to have under the conditions of use, prescribed, recommended, or suggested in its labeling, and (2) Riker has failed to set forth specific facts showing that there is a genuine and substantial issue of fact requiring a hearing.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 505(e), 52 Stat. 1052–1053 as amended (21 U.S.C. 355(e)) and under authority delegated to the Commissioner (21 CFR 5.10) the request for a hearing is denied, and the approval of NDA 11–417 for Deaner Tablets, including all amendments and supplements thereto, is hereby withdrawn. Distribution of this drug product in interstate commerce without an approved new drug application is illegal and subject to regulatory action. This order is effective June 23, 1983.

Dated: May 12, 1983.

Mark Novitch,

Deputy Commissioner of Food and Drugs.

[FR Doc. 83-13710 Filed 5-23-83; 8:45 am]

BILLING CODE 4160-01-M

[Docket Nos. 81N-0391 and 82N-0095; DESI 6514 AND 11935]

Drugs for Human Use; Drug Efficacy Study Implementation; Oral Prescription Drugs Offered for Relief of Symptoms of Cough, Cold, or Allergy; Withdrawal of Approval

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of the new drug application for Omni-Tuss Suspension and those parts of another application that pertain to Pyribenzamine and Ephedrine Tablets. The basis of the withdrawal is that there is a lack of substantial evidence that the fixed-combination drugs are effective in the relief of symptoms that the fixed-combination drugs are effective in the level of symptoms of cough, cold, or allergy.

EFFECTIVE DATE: June 23, 1983.

ADDRESS: Requests for an opinion of the applicability of this notice to a specific product should be identifed with the appropriate docket number and directed to the Division of Drug Labeling Compliance (HFN-310), National Center for Drugs and Biologics, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David T. Read, National Center for Drugs and Biologics (HFN-8), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3650.

SUPPLEMENTARY INFORMATION: In notices published in the **Federal Register** of May 25, 1982 (47 FR 22606 and 22604), the Director of the then Bureau of Drugs revoked the temporary exemption for the two drug products described below which permitted these products to remain on the market beyond the time limit scheduled for the implementation of the Drug Efficacy Study. Those notices also proposed to issue orders withdrawing approval of the new drug applications, or parts thereof, that provide for these drug products. The proposal was based on the lack of substantial evidence of effectiveness that each ingredient in the combination products contributes to the claimed effects or is present in an amount considered to be effective, as required by section 305(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and 21 CFR 314.111(a)(5) and 300.50. The two products are:

1. NDA 12-666: Omni-Tuss Suspension, containing codeine sulfate, phenyltoloxamine dihydrogen sulfate, chloropheniramine maleate, ephedrine sulfate (all as cation exchange resin complexes of sulfonated polystyrene), and guaiacol carbonate; Pennwalt Corp., Pharmaceutical Division, 755 Jefferson Rd., Rochester, NY 14623 (DESI 6514; Docket No. 81N-0391).

2. NDA 5-914: As it pertains to Pyribenzamine and Ephedrine Tablets containing tripelennamine hydrochloride and ephedrine sulfate; Ciba Pharmaceuticals Co., 556 Morris Ave., Summit, NJ 07901 (DESI 11935; Docket No. 82N-0095).

Neither Pennwalt Corp. nor Ciba Pharmaceuticals requested a hearing on the two products listed above. Failure to file an appearance and request a hearing constitutes a waiver of the opportunity for a hearing.

The three other products listed in the two May 25, 1982, notices—Ambenyl Expectorant (47 FR 22604; see also 47 FR 50344), and Tussionex Tablets and Suspension (47 FR 22606—and a product related to Omni-Tuss Suspension called Ru-Tuss Expectorant, manufactured by Boots Pharmaceuticals, Inc., are not affected by this notice. The manufacturers of these products have requested hearings; the products will be the subject of future **Federal Register** notices.

Any drug product that is identical, related, or similar to Omni-Tuss Suspension and Pyribenzamine and Ephedrine Tablets and is not the subject of a pending hearing request or an approved new drug application is covered by the new drug applications reviewed and is subject to this notice (21 CFR 310.6). Any person who wishes to determine whether a specific product is covered by this notice should write to the Division of Drug Labeling Compliance (address given above).

The Director of the National Center for Drug and Biologics, under the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat. 1052-1053 as amended (21 U.S.C. 355)) and under the authority delegated to him (see 21 CFR 5.82 and 47 26913 published in the **Federal Register** of June 22, 1982) finds that, on the basis of new information before him with respect to the products, evaluated together with the evidence available to him when the applications were approved, there is lack of substantial evidence that the two drug products will have the effects they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in their labeling.

Therefore, pursuant to the foregoing finding, approval of those parts of NDA 5-914 that provide for Pyribenzamine and Ephedrine Tablets, and approval of NDA 12-666, and all amendments and supplements thereto, are withdrawn effective June 23, 1983.

Shipment in interstate commerce of the above products, or any identical, related, or similar product that is not the subject of a pending hearing request or an approved new drug application, will then be unlawful.

Dated: May 18, 1983.

Harry M. Meyer, Jr.,

Director, National Center for Drugs and Biologics.

[FR Doc. 83-13857 Filed 5-23-83; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Home Health Services; Section 339 of the Public Health Service Act; Delegation of Authority

Notice is hereby given that the following delegations have been made regarding home health services under section 339 of the Public Health Service Act (42 U.S.C. 255), as amended.

1. Delegation from the Administrator, Health Resources and Services Administration, to the Regional Health Administrators, Regions I-X, with authority to redelegate, of the following authorities under Section 339 of the Public Health Service Act (42 U.S.C. 255) within their respective regions (for projects that are not multiregional or national in scope):

(a) Under section 339(a), to make grants to public and nonprofit private entities and loans to proprietary entities to meet the initial costs of establishing and operating home health programs;

(b) Under section 339(b), to make grants to public and private entities to assist them in developing appropriate training programs for paraprofessionals (including homemaker home health aides) to provide home health services.

2. Delegation from the Administrator, Health Resources and Services Administration, to the Director, Bureau of Health Care Delivery and Assistance, with authority to redelegate, of all the authorities under section 339 of the Public Health Service Act except those authorities specifically delegated to the Regional Health Administrators, excluding the authorities to submit reports to Congress or a Congressional committee and to issue regulations.

Previous delegations and redelegations made to officials within the Public Health Service of authorities under Title III of the Public Health Service Act may continue in effect provided they are consistent with this delegation.

The above delegation was effective on May 12, 1983.

Dated: May 12, 1983.

Robert Graham,

Administrator, Health Resources and Services Administration.

[FR Doc. 83-13865 Filed 5-23-83; 8:45 am]

BILLING CODE 4160-16-M

Public Health Service

National Center For Health Services Research; Assessment of Medical Technology

The Public Health Service (PHS), through the Office of Health Technology Assessment (OHTA), announces that it is coordinating an assessment of what is known of the safety and clinical effectiveness and use (indications) of ambulatory electroence phalographic (EEG) monitoring in the diagnosis of seizure disorders. Specifically, we are interested in: (1) The technical issues concerning the reliability and usefulness of the data gained from 24-hour monitoring while the patient follows usual daily activities and sleep; (2) general indications for use of the procedure; and (3) its diagnostic implications.

For the purposes of this announcement, ambulatory electroencephalographic (EEG) monitoring is defined as long-term (24-hour), continuous brain activity monitoring. The ambulatory EEG monitor uses a portable cassette recorder capable of recording brain rhythms during a patient's routine daily activities and sleep. The recorder stores signals derived from on-head differential preamplifiers. Ambulatory EEGs using cassette tape recorders usually have only four channels available for detecting epileptiform events, except in instances where the fourth channel is used for cardiac monitoring.

The PHS assessment consists of a synthesis of information obtained from appropriate organizations in the private sectors and from PHS agencies and others in the Federal Government. PHS assessments are based on the most current knowledge concerning the safety and clinical effectiveness of a technology. Based on this assessment, a PHS recommendation will be formulated to assist the Health Care Financing Administration (HCFA) in establishing Medicare coverage policy. Any person or group wishing to provide OHTA with information relevant to this assessment should do so in writing no later than September 15, 1983, or within 90 days from the date of publication of this notice.

The information being sought is a review and assessment of past, current, and planned research related to this technology, a bibliography of published controlled clinical trials and other well-designed clinical studies since 1978 and other information related to the characterization of the patient population most likely to benefit, the clincial acceptability, and the effectiveness of this technology. Proprietary information is not being sought, but published commercial information may be submitted.

Written material should be submitted to: Martin N. Erlichman, National Center for Health Services Research, Office of Health Technology Assessment, Park Building, Room 3-10, Stop #2, 5600 Fishers Lane, Rockville, Maryland 20852.

For further information contact Martin Erlichman, Health Science Analyst, at the above address or by telephone (301) 443-4990.

Dated: May 16, 1983.

Harold Margulies,

Director, Office of Health Technology Assessment, National Center for Health Services Research.

[FR Doc. 83-13856 Filed 5-23-83; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Idaho; Modification of District Boundaries, Resource Areas and a Resource Area Headquarters Office

May 16, 1983.

Pursuant to the authority vested in the Secretary of the Interior by the Taylor Grazing Act of June 28, 1934 (48 Stat. 1269) as amended and delegated to the Director, Bureau of Land Management by 235 DM 1.1, the boundaries of the Burley and Idaho Falls Districts are changed.

In conjunction with the boundary change one Resource Area is modified, an office is moved and its name is changed, three Resource Areas are abolished and two Resource Areas are established.

SUMMARY: This notice sets forth a series of administrative boundary and name changes between Bureau of Land Management administrative units in Idaho. Part of the lands involved are managed under Section 3 and part under Section 15 of the Taylor Grazing Act. The jurisdiction transfer will not affect the status or use of the public lands in any way. The changes are confined to the Burley and Idaho Falls Districts.

DATE: The changes in boundaries and unit names become effective on July 1, 1983.

ADDRESSES: Bureau of Land Management District Offices involved are:

Burley District Office, Route 3, Box 1, 200 South Oakley Highway, Burley, Idaho 83318.

Idaho Falls District Office, 940 Lincoln Road, Idaho Falls, Idaho 83401

FOR FURTHER INFORMATION CONTACT: Fred Cook, Public Affairs Office, Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706, (208) 334-1170, FTS 554-1770.

SUPPLEMENTARY INFORMATION: As a part of the merger of the Bureau of Land Management and the Minerals Management Service activities in Idaho, the relocation of personnel in the southern and southeastern part of Idaho to better serve the public and improve the management of resources on public lands was approved by the National Director on February 17, 1983. A summary of these changes is as follows:

1. The boundary between the Idaho Falls and Burley Districts is changed. All of the Public Lands administered by the Burley District in Bannock County and a portion of Caribou County are transferred to the Idaho Falls District. A map of the Idaho Falls District is available at the Idaho Falls District Office, located in Idaho Falls, Idaho.

2. In the Idaho Falls District, the Soda Springs Resource Area is abolished. Established in its place is the Pocatello Resource Area which includes the lands transferred to this district along with the lands that were encompassed by the Soda Springs Resource Area. A map of the new Resource Area is available at the Idaho Falls District Office, located in Idaho Falls.

3. The Bureau of Land Management Resource Area Headquarters Office at Soda Springs, Idaho is to be closed and a new Resource Area Headquarters Office established at Pocatello, Idaho known as the Pocatello Resource Area, Idaho Falls District.

4. The three Resource Areas in the Burley District; Magic RA, Raft River, RA, and Bannock-Oneida RA are abolished. In their place, two Resource Areas are established in the Burley District. They are the Snake River RA and Deep Creek RA. The Snake River RA encompasses the public lands generally found in Twin Falls and Cassia Counties. The Deep Creek RA encompasses the public lands generally found in Oneida County and that portion of Power County lying south of the Snake River. A map of the specific

unit boundaries is available at the Burley District Office located in Burley, Idaho.

5. Management of public lands and resources affected by these changes will continue under the direction of current office heads until July 1, 1983.

Clair M. Whitlock,

State Director.

[FR Doc. 83-13901 Filed 5-23-83; 8:45 am]

BILLING CODE 4310-84-M

Casper District Office, Wyoming; Proposed Coal Exchange

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Environmental Assessment on Proposed Exchange of Coal Leases in Campbell County, Wyoming (I-90 Exchange).

SUMMARY: The Bureau of Land Management proposes to accept portions of coal leases W-0313666 and W-0111833 from Wyodak Resource Development Corporation, in exchange for other Federal coal in the same county. Part of the coal offered for exchange is under Interstate Highway 90. Notice of this exchange proposal is required under 43 CFR 3435.3-5.

FOR FURTHER INFORMATION CONTACT: Charles F. Wilkie, Special Projects Team Leader, Casper District Office, Bureau of Land Management, 951 Rancho Road, Casper, Wyoming 82601, (307) 261-5598.

SUPPLEMENTARY INFORMATION: The Wyodak Resources Development Corporation, a division of Blackhills Power and Light, wants to exchange 16 million tons of coal under its current lease for 20 million tons of Federal coal adjacent to the existing Wyodak mine. The Bureau of Land Management proposes to authorize this exchange. Such an exchange was made possible in 1978 by Pub. L. 95-554, which amended the Minerals Leasing Act of 1920. Bureau of Land Management Environmental Assessment WY-061-3-51 covers this proposal. Copies are available from the Casper District Office on request.

The proposed exchange is in the public interest because the only effect of mining the selected area would be to increase the life of the Wodak mine by 5 years. If the exchange did not take place, 16 million tons of coal would not be produced, approximately 65 jobs would be lost 5 years earlier and approximately 2.4 million dollars in revenue to the county, city and schools would be discontinued in 2014 rather than 2019. Therefore, fewer significant impacts would result from making the exchange than from not making the exchange.

A public hearing will be held on this exchange if requested.

Dated: April 18, 1983.

Robert S. Childs,

Acting District Manager.

[FR Doc. 83-11011 Filed 5-23-83; 8:45 am]

BILLING CODE 4310-84-M

[CA 9299]

Realty Action Exchange, Public Lands in Mono County, California

The following described lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Mount Diablo Meridian, California

T. 5S., R. 33E.,
Sec. 34, SW¼.
Comprising 160.00 acres, more or less.

In exchange for these lands, the Federal government will acquire non-Federal land from the M&A Zack Lifetime Trust described as follows:

Mount Diablo Meridian, California

T. 5S., R. 32E.,
Sec. 23, SE¼SE¼;
Sec. 25, W½NW¼;
Sec. 26, N½NE¼.
Comprising 202.167 acres, more or less.

The purpose of the exchange is to acquire non-Federal lands which contain important wildlife habitat resources needed for the continued survival of the endangered Owens pupfish. The exchange is consistent with the Bureau's planning system. The public interest will be well served by making the exchange.

The selected land containing 160.00 acres will no longer be included under grazing authorization in the Chalfant Valley Allotment (Allotmen No. 6030) once the public land is transferred out of public ownership.

Lands to be transferred from the United States will be subject to the following reservations, terms and conditions:

1. A right-of-way for ditches and canals constructed by the authority of the United States, pursuant to the Act of August 30, 1980 (26 Stat. 391; 43 U.S.C. 945).

2. The reservation to the United States of all minerals in the lands being transferred out of Federal ownership.

3. A prior existing electric transmission line right-of-way granted to California Electric Power Company, its successors and assigns, by right-of-way grant LA 0170777 under authority of the Act of March 4, 1911 (43 U.S.C. 961).

4. A prior existing telephone line right-of-way granted to California Interstate Telephone Company, its successor and assigns, by right-of-way grant LA 0170726 under authority of the Act of March 4, 1911 (43 U.S.C. 961).

In accordance with 43 CFR 2201.1(b), this notice shall segregate the public lands identified herein from further appropriations under all public land laws, including the mining laws. This segregation shall terminate upon issuance of patent or 2 years from the date of this publication, whichever occurs first.

Detailed information concerning the exchange, including the environmental assessment, is available at the Bakersfield District Office, 800 Truxtun Avenue, Room 302, Bakersfield, California 93301.

For a period of 45 days after publication of this notice, interested parties may submit comments to the District Manager, Bakersfield District Office at the above address. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this action will become the final determination.

Glenn A. Carpenter,

Acting District Manager.

[FR Doc. 83-13905 Filed 5-23-83; 8:45 am]

BILLING CODE 4310-84-M

National Park Service

Availability of Plan of Operations and Environmental Analysis for the Purpose of Conducting a Seismic Survey, ARCO Exploration Co., Big Thicket National Preserve, Texas

Notice is hereby given in accordance with § 9.52(b) of Title 36 of the Code of Federal Regulations that the National Park Service has received from ARCO Exploration Company a Plan of Operations for the purpose of conducting a seismic survey in the Big Sandy Unit of Big Thicket National Preserve, Texas.

The Plan of Operations and Environmental Analysis are available for public review and comment for a period of 30 days from the publication date of this notice in the Office of the Superintendent, Big Thicket National Preserve, 8185 Eastex Freeway, Beaumont, Texas; the Jefferson County Courthouse, in Beaumont, Texas; and the Southwest Regional Office, National Park Service, 1100 Old Santa Fe Trail, Santa Fe, New Mexico. Copies of the

documents are available from the Southwest Regional Office, National Park Service, Post Office Box 728, Santa Fe, New Mexico 87501, and will be sent upon request.

Dated: May 12, 1983.

Robert Kerr,

Regional Director, Southwest Region.

[FR Doc. 83-13815 Filed 5-23-83; 8:45 am]

BILLING CODE 4310-70-M

Gulf Islands National Seashore Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Commission Act that a meeting of the Gulf Islands National Seashore Advisory Commission will be held at 1:00 p.m. on June 2, 1983, in the Matador Room of the Sheraton Inn, 224 E. Garden Street, Pensacola, Florida.

The purpose of the Gulf Islands National Seashore Advisory Commission is to consult and advise with the Secretary of the Interior or his designee on matters of planning and development of Gulf Islands National Seashore.

The members of the Advisory Commission are as follows:

Mrs. Courtney Blossman, Chairman (Mississippi)
Ms. Gordon D. Allen (Mississippi)
Mr. Margaret Allen (Mississippi)
Mr. Sherman Barnes (Florida)
Mr. J. Earle Bowden (Florida)
Mr. George Byars (Mississippi)
Mr. Lloyd J. Caillavet (Mississippi)
Mr. Edwin Cake, Jr. (Mississippi)
Mr. Bill Davis (Mississippi)
Mr. Paul Delcambre (Mississippi)
Donald Edwards (Mississippi)
Ms. Betty Gerrity (Florida)
Mr. Lee Hodges (Mississippi)
Mr. R. K. Hollister (Mississippi)
Mrs. M. G. Kennedy (Florida)
Mr. Charles Liberis (Florida)
Ms. Sara Megehee (Mississippi)
Mr. Michael Mitchell (Florida)
Mr. Grady Don Pope (Florida)
Mr. Stuart Reynolds (Florida)
Ms. Diana Rettenhouse (Florida)
Mr. Richard Schmidt (Mississippi)
Mr. Vince Whibbs (Florida)
Ms. Erica Woolley (Florida)

The matter to be discussed at this meeting will be an evaluation report of the seashore's development and operations program.

The meeting will be open to the public; however, facilities and space for accommodating members of the public are limited. Any member of the public may file with the Commission a written statement concerning the matter to be discussed.

Persons wishing further information concerning the meeting or who wish to submit written statements, may contact Franklin D. Pridemore, Superintendent, Gulf Islands National Seashore, P.O. Box 100, Gulf Breeze, Florida 32561, telephone (904) 932-6316. Minutes of the meeting will be available at Park Headquarters for public inspection approximately 4 weeks after the meeting.

Dated: May 16, 1983.

Robert M. Baker,

Regional Director, Southeast Region.

[FR Doc. 83-13816 Filed 5-23-83; 8:45 am]

BILLING CODE 4310-70-M

Land and Water Conservation Fund Grants Manual; Availability

AGENCY: National Park Service, Interior.

ACTION: Notice of availability of Land and Water Conservation Fund Grants Manual.

SUMMARY: The National Park Service announces the availability of the 1983 revised edition of the Land and Water Conservation Fund Grants Manual for sale through the Government Printing Office.

Purchasing Information: Copies of the L&WCF Grants Manual (Document Number: 024-016-81001-5) may be purchased for $45.00 (Domestic) or $56.25 (Foreign) from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. This purchase price covers a three year subscription including up to six amendments. Mail orders should include payment by check or money order. Telephone orders (202-783-3238) may be charged to Master Card or VISA.

FOR FURTHER INFORMATION CONTACT: Cathy-Martin Urbanek, National Park Service, Division of Recreation Grants, U.S. Department of the Interior, Washington, D.C. 20240, (202) 343-3700.

SUPPLEMENTARY INFORMATION: The Land and Water Conservation Fund (L&WCF) Grants Manual sets forth the administrative policies, procedures and guidelines for grants awarded to State and local governments pursuant to the Land and Water Conservation Fund Act of 1965, as amended (Pub. L. 88-578). This Manual is intended to serve as a basic reference for those engaged in the administrative and financial management of L&WCF grants to States, and to achieve uniformity in the administration of the L&WCF program by the States. Copies of this Manual were sent to the State Liaison Officers through National Park Service Regional Directors in April 1983.

(Catalog of Federal Domestic Assistance Number 15.916).

(Land and Water Conservation Fund Act of 1965, Pub. L. 88-578, as amended).

Dated: May 17, 1983.

Russell E. Dickenson,

Director, National Park Service.

[FR Doc. 83-13817 Filed 5-23-83; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before May 13, 1983. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by June 8, 1983.

Carol D. Shull,

Chief of Registration, National Register.

ALABAMA

Talladega County

Talladega, *Boxwood*, 406 E. North St.

CALIFORNIA

Santa Clara County

Saratoga vicinity, *Masson, Paul, Mountain Winery*, Pierce Rd.

CONNECTICUT

Fairfield County

Danbury, *Meeker's Hardware (The Red Block)*, 86-90 White St.

GEORGIA

Floyd County

Rome, *Between the Rivers Historic District*, Roughly bounded by the Etowah and Oostanaula Rivers, and 7th Ave.

INDIANA

Boone County

Zionsville, *Town Hall (Castle Hall)*, 65 E. Cedar St.

KENTUCKY

Bourbon County

Carlisle vicinity, *Sandusky House (Early Stone Buildings of Central Kentucky TR)*, Off U.S. 68

Millersburg vicinity, *Williams, Hubbard, House (Early Stone Buildings of Central Kentucky TR)*, Off KY 32/36

Millersburg, *Miller's House at Ruddels Mills (Early Stone Buildings of Central Kentucky TR)*, SR 1940

Millersburg, *Stephens, Joseph L., House (Early Stone Buildings of Central Kentucky TR)*, SR 1940

N. Middletown vicinity, *Bayless quarters (Early Stone Buildings of Central Kentucky TR)*, KY 13
N. Middletown vicinity, *Harrod, Ephram, House (Early Stone Buildings of Central Kentucky TR)*, Off U.S. 460
N. Middletown vicinity, *Hopkins House (Early Stone Buildings of Central Kentucky TR)*, KY 537
Paris vicinity, *Clay, Dr. Henry, House (Early Stone Buildings of Central Kentucky TR)*, Off KY 227
Paris vicinity, *McLeod Spring House (Early Stone Buildings of Central Kentucky TR)*, SR 1939
Paris vicinity, *Rodgers, Thomas, House (Early Stone Buildings of Central Kentucky TR)*, U.S. 460
Paris vicinity, *Widow McDowell House (Early Stone Buildings of Central Kentucky TR)*, KY 537
Shawhan vicinity, *Cooper's Run Baptist Church (Early Stone Buildings of Central Kentucky TR)*, Off U.S. 27
Shawhan vicinity, *Eales, James, House (Early Stone Buildings of Central Kentucky TR)*, Off Cook Rd.
Shawhan vicinity, *Garrard, James, House (Early Stone Buildings of Central Kentucky TR)*, Peacock Pike
Shawhan vicinity, *Kennedy, Joseph, House (Early Stone Buildings of Central Kentucky TR)*, Off SR 1940
Shawhan vicinity, *Mauck, Rudolph, House (Early Stone Buildings of Central Kentucky TR)*, Off SR 1893
Shawhan vicinity, *Rymill, Elias, House (Early Stone Buildings of Central Kentucky TR)*, Off Brentsville Rd
Shawhan vicinity, *Shipp, Laban, House (Early Stone Buildings of Central Kentucky TR)*, Off SR 1940
Shawhan vicinity, *Spears, Jacob, House (Early Stone Buildings of Central Kentucky TR)*, SR 1876
Shawhan vicinity, *Spears, Jacob, Distillery (Early Stone Buildings of Central Kentucky TR)*, SR 1876
Tyrone vicinity, *Stone House on Steele's Grant (Early Stone Buildings of Central Kentucky TR)*, Off SR 1964

Boyle County

Bryantsville vicinity, *Crow, William, House (Early Stone Buildings of Central Kentucky TR)*, Off KY 52
Bryantsville vicinity, *Barber, John, House (Early Stone Buildings of Central Kentucky TR)*, KY 34
Bryantsville vicinity, *Stone House on Old Stoge Road (Early Stone Buildings of Central Kentucky TR)*, KY 34
Danville vicinity, *Caldwell House (Early Stone Buildings of Central Kentucky TR)*, Off U.S. 150
Danville vicinity, *Harlan, Elijah, House (Early Stone Buildings of Central Kentucky TR)*, U.S. 150
Danville vicinity, *Knox, Abner, Farm (Early Stone Buildings of Central Kentucky TR)*, U.S. 150
Danville vicinity, *Mock, Randolf, Farm (Early Stone Buildings of Central Kentucky TR)*, Off KY 33
Danville, *Crow-Barber House (Old Crow Inn) (Early Stone Buildings of Central Kentucky TR)*, Stanford Rd and Alta Ave.
Junction City vicinity, *Marshall House (Early Stone Buildings of Central Kentucky TR)*, Off KY 34
Perryville vicinity, *Thompson, William, House (Early Stone Buildings of Central Kentucky TR)*, Off U.S. 68

Breckinridge County

Cloverport, *Cloverport Historic District (Cloverport MRA)*, Roughly bounded by 3rd, Main, Chestnut, and Lynn Sts.
Cloverport, *Fisher Homestead (Cloverport MRA)*, U.S. 60
Cloverport, *Oglesby-Conrad House (Cloverport MRA)*, Off U.S. 60
Cloverport, *Skillman House (Cloverport MRA)*, Tile Plant Rd.

Fayette County

Centerville vicinity, *Russel, Robert, House (Early Stone Buildings of Central Kentucky TR)*, Off KY 353
Clintonville vicinity, *Shryack, Frederick, House (Early Stone Buildings of Central Kentucky TR)*, Off KY 859
Ford vicinity, *Pettit's, James, Mill (Early Stone Buildings of Central Kentucky TR)*, KY 418
Lexington vicinity, *Bell, John, House (Early Stone Buildings of Central Kentucky TR)*, SR 1978
Lexington vicinity, *Burrier, John, House (Early Stone Buildings of Central Kentucky TR)*, SR 1966
Lexington vicinity, *McConnell, William, House (Early Stone Buildings of Central Kentucky TR)*, Forbes Rd.
Lexington vicinity, *Payne, Henry, House (Early Stone Buildings of Central Kentucky TR)*, Off U.S. 421
Lexington, *McConnell, James, House (Early Stone Buildings of Central Kentucky TR)*, Old Frankfort Pike
Versailles vicinity, *O'Neal, Lewis, Tavern (Early Stone Buildings of Central Kentucky TR)*, Off U.S. 60

Franklin County

Frankfort vicinity, *Old Stone Tavern (Early Stone Buildings of Central Kentucky TR)*, Scruggs Lane and Old Lustown Pk.
Frankfort vicinity, *Patteson, Charles, House (Early Stone Buildings of Central Kentucky TR)*, SR 1689
Frankfort vicinity, *Todd, Robert, Summer home (Early Stone Buildings of Central Kentucky TR)*, U.S. 421
Midway vicinity, *Haggin Farm (Early Stone Buildings of Central Kentucky TR)*, SR 1685

Garrard County

Bryantsville vicinity, *Leavell, John, Quarters (Spring Gardens) (Early Stone Buildings of Central Kentucky TR)*, Off KY 753
Bryantsville vicinity, *Proctor House (Early Stone Buildings of Central Kentucky TR)*, U.S. 27
Bryantsville vicinity, *Smith, James, Tanyard (Early Stone Buildings of Central Kentucky TR)*, Off U.S. 27
Buckeye vicinity, *Hutcherson, John House (Early Stone Buildings of Central Kentucky TR)*, Off KY 39
Kirksville vicinity, *Wallace, Michael, House (Early Stone Buildings of Central Kentucky TR)*, Broadus Branch Rd.
Lancaster vicinity, *Thomas, Kings, III House (Early Stone Buildings of Central Kentucky TR)*, Off KY 39
Paint Lick vicinity, *Arnold, John, House (Early Stone Buildings of Central Kentucky TR)*, Off 1295

Harrison County

Cynthiana vicinity, *Fraizer, Joel, House (Early Stone Buildings of Central Kentucky TR)*, Off KY 982
Cynthiana vicinity, *Haviland House (Early Stone Buildings of Central Kentucky TR)*, Off U.S. 62
Cynthiana vicinity, *Stone House of Indian Creek (Early Stone Buildings of Central Kentucky TR)*, Off U.S. 62
Shawhan vicinity, *Hinkson, John, House (Early Stone Buildings of Central Kentucky TR)*, Off U.S. 27
Shawhan vicinity, *Lair, John House (Early Stone Buildings of Central Kentucky TR)*, Old Lair Rd.
Shawhan vicinity, *McKee, John, House (Early Stone Buildings of Central Kentucky TR)*, Cook Rd.
Shawhan vicinity, *McMillan, Samuel, House (Early Stone Buildings of Central Kentucky TR)*, Off U.S. 62
Shawhan vicinity, *Shawhan, Joseph, House (Early Stone Buildings of Central Kentucky TR)*, Off U.S. 27
Shawhan vicinity, *Smith House (Early Stone Buildings of Central Kentucky TR)*, Off Old Lair Rd.
Shawhan vicinity, *Williams, John, House (Early Stone Buildings of Central Kentucky TR)*, Off KY 32/36

Jessamine County

Keene vicinity, *Ebenezer Presbyterian Church (Early Stone Buildings of Central Kentucky TR)*, Off SR 1267
Keene vicinity, *January, Ephriam, House (Early Stone Buildings of Central Kentucky TR)*, Off SR 1267
Keene vicinity, *Lancaster, John, House (Early Stone Buildings of Central Kentucky TR)*, KY 169
Keene vicinity, *Steele, Robert, House (Early Stone Buildings of Central Kentucky TR)*, Troy Rd.
Little Hickman vicinity, *Scott House (Early Stone Buildings of Central Kentucky TR)*, U.S. 27
Nicholasville vicinity, *Stone House on West Hickman (Early Stone Buildings of Central Kentucky TR)*, SR 1980
Wilmore vicinity, *Stone House on Brooklyn Hill (Early Stone Buildings of Central Kentucky TR)*, Off U.S. 68

Kenton County

Covington, *Covington Downtown Commercial Historic District*, Roughly bounded by C&O Railroad, Robbins, Greenup and 4th Sts.

Lincoln County

Hustonville, *Huston, Nathan, House (Early Stone Buildings of Central Kentucky TR)*, KY 78
Lancaster, *Hoffman House (Early Stone Buildings of Central Kentucky TR)*, U.S. 27

Madison County

Kirksville vicinity, *Hawkins, Nathan, House (Early Stone Buildings of Central Kentucky TR)*, Curtis Rd.
Little Hickman, *Murphy, Stephen, House (Early Stone Buildings of Central Kentucky TR)*, Off KY 39
Moberly vicinity, *Moberly, John, House (Early Stone Buildings of Central Kentucky TR)*, Bum Bottom Rd.
Richmond vicinity, *Newland, Isaac, House (Early Stone Buildings of Central Kentucky TR)*, Off U.S. 25

Mercer County

Cornishville vicinity, *McAfee, George House (Early Stone Buildings of Central Kentucky TR)*, Off SR 1160
Cornishville vicinity, *McGee, John, House (Early Stone Buildings of Central Kentucky TR)*, Jackson Rd.
Harrodsburg vicinity, *McAfee, James, House (Early Stone Buildings of Central Kentucky TR)*, Talmage Rd
Harrodsburg vicinity, *Shaker Wist Lot Farm (Early Stone Buildings of Central Kentucky TR)*, Off U.S. 68
Harrodsburg vicinity, *Stone Quarters on Burgin Road (Early Stone Buildings of Central Kentucky TR)*, KY 152

Montgomery County

Mt. Sterling vicinity, *Bondurant House (Early Stone Buildings of Central Kentucky TR)*, Off U.S. 60

Nicholas County

Carlisle vicinity, *Riggs, Erasmus, House (Early Stone Buildings of Central Kentucky TR)*, Off KY 13
Carlisle vicinity, *Stone Barn on Brushy Creek (Early Stone Buildings of Central Kentucky TR)*, U.S. 68
Millersburg vicinity, *Thompson, John Henry, House (Early Stone Buildings of Central Kentucky TR)*, Off KY 32/36

Scott County

Centerville vicinity, *Flournoy, Matthew, House (Early Stone Buildings of Central Kentucky TR)*, Off Crombough Pike
Centerville vicinity, *Henry, Matthew, House (Early Stone Buildings of Central Kentucky TR)*, KY 922
Delaplain vicinity, *Briscoe, James, Quarters (Early Stone Buildings of Central Kentucky TR)*, Off U.S. 25
Delaplain vicinity, *Emison, Ash, Quarters (Early Stone Buildings of Central Kentucky TR)*, Off U.S. 25
Delaplain vicinity, *Ward, William, House (Early Stone Buildings of Central Kentucky TR)*, Off I–75
Georgetown vicinity, *Coppage, Rhodin, Spring House (Early Stone Buildings of Central Kentucky TR)*, Off U.S. 25
Georgetown vicinity, *Johnson, James, Quarters (Early Stone Buildings of Central Kentucky TR)*, Off KY 227
Georgetown vicinity, *Suggett, John, House (Elkton) (Early Stone Buildings of Central Kentucky TR)*, U.S. 460
Georgetown vicinity, *Thomsons Mill Warehouse (Early Stone Buildings of Central Kentucky TR)*, Off U.S. 460
Georgetown vicinity, *Whitaker, Charles, House (Early Stone Buildings of Central Kentucky TR)*, Off Old Oxford Rd.
Midway vicinity, *Branham, Richard, House (Early Stone Buildings of Central Kentucky TR)*, Prate Rd.
Midway vicinity, *Patterson, Joseph, Quarters (Early Stone Buildings of Central Kentucky TR)*, Off U.S. 421

Woodford County

Keene vicinity, *Allen, John, House (Early Stone Buildings of Central Kentucky TR)*, Off KY 169
Keene vicinity, *Garrett, William, House (Early Stone Buildings of Central Kentucky TR)*, Off KY 169
Keene vicinity, *Hammon, Ezra, House (Early Stone Buildings of Central Kentucky TR)*, Off KY 33
Midway vicinity, *Alexander Plantation House (Early Stone Buildings of Central Kentucky TR)*, Off Old Frankford Pike
Midway vicinity, *Big Spring Baptist Church (Early Stone Buildings of Central Kentucky TR)*, SR 1685
Midway vicinity, *Stone House at Fisher's Mill (Early Stone Buildings of Central Kentucky TR)*, Off U.S. 421
Midway vicinity, *Stone House on Beale's Run (Early Stone Buildings of Central Kentucky TR)*, Off SR 1685
Salvisa vicinity, *Miller's House at Mortonsville Mill (Early Stone Buildings of Central Kentucky TR)*, SR 1965
Salvisa vicinity, *Stone House on Tanner's Creek (Early Stone Buildings of Central Kentucky TR)*, Carpenter Pike
Salvisa vicinity, *Thomas, Solomon, House (Early Stone Buildings of Central Kentucky TR)*, Craigs Creek Rd.
Tyrone vicinity, *DuPuy, Joel, House (Early Stone Buildings of Central Kentucky TR)*, Griers Creek Rd.
Tyrone vicinity, *Edwards, Thomas, House and Quarters (Early Stone Buildings of Central Kentucky TR)*, SR 1659
Tyrone vicinity, *McCrockin Distillery and Mill (Early Stone Buildings of Central Kentucky TR)*, SR 1659
Tyrone vicinity, *McCrockin, Cyrus, House and Quarters (Early Stone Buildings of Central Kentucky TR)*, Off Steele Rd.
Tyrone vicinity, *Muldrow, Andrew, Quarters (Early Stone Buildings of Central Kentucky TR)*, Griers Creek Rd.
Tyrone vicinity, *Robertson Place (Early Stone Buildings of Central Kentucky TR)*, Clifton and Steele Rds.
Tyrone vicinity, *Stone House on Clifton Pike (Early Stone Buildings of Central Kentucky TR)*, SR 1964
Versailles vicinity, *Hogan Quarters (Early Stone Buildings of Central Kentucky TR)*, Off KY 33
Versailles vicinity, *Humphries Estate Quarters (Early Stone Buildings of Central Kentucky TR)*, SR 1967
Versailles vicinity, *Moore, George F., Place (Early Stone Buildings of Central Kentucky TR)*, Off U.S. 62
Versailles vicinity, *Mt. Pisgah Presbyterian Church (Early Stone Buildings of Central Kentucky TR)*, Off U.S. 60
Versailles vicinity, *W.B. Spring House (Early Stone Buildings of Central Kentucky TR)*, Off U.S. 62
Versailles vicinity, *Wilson, Benjamin, House (Early Stone Buildings of Central Kentucky TR)*, Off U.S. 62

MINNESOTA

Hennepin County

Minneapolis, *Madison School*, 501 E. 15th St.

Ramsey County

St. Paul, *Lowertown Historic District*, Roughly bounded by Kellogg Blvd., Broadway, 7th and Jackson Sts.

MISSOURI

Clay County

Excelsior Springs, *Hall of Waters*, 201 E. Broadway

Jackson County

Kansas City, *South Side Historic District*, Roughly bounded by 38th, 40th, Walnut, and Baltimore Sts.

NORTH DAKOTA

Grank Forks County

Grand Forks, *DeRemer, Joseph Bell, House*, 625 Belmont Rd.

PENNSYLVANIA

Philadelphia County

Philadelphia, *Harriscon Building (Harrison Stores)*, 1001–1023 Filbert St.

Sullivan County

Lopez vicinity, *Ricketts, Clemuel, Mansion*, Off PA 487

SOUTH CAROLINA

Greenville County

Greenville, *Beattie, Fountain Fox, House (Greenville Woman's Club)*, 1 Beattie Pl. (Proposed Move)

TEXAS

Austin County

Wallis, *Church of the Guardian Angel (Churches with Decorative Interior Painting TR)*, 5614 Demel St.
Wesley, *Wesley Brethren Church (Churches with Decorative Interior Painting TR)*, Off TX 332

Cooke County

Lindsay, *St. Peter's Catholic Church (Churches with Decorative Interior Painting TR)*, Main St.

Fayette County

Ammansville, *St. John the Baptist Catholic Church (Churches with Decorative Interior Painting TR)*, FM 1383
High Hill, *Nativity of Mary, Blessed Virgin Catholic Church (Churches with Decorative Interior Painting TR)*, FM 2672
Praha, *St. Mary's Church of the Assumption (Churches with Decorative Interior Painting TR)*, FM 1295

Galveston County

Galveston, *St. Joseph's Catholic Church (Churches with Decorative Interior Painting TR)*, 2201 Avenue K

Gillespie County

Fredericksburg, *St. Mary's Catholic Church (Churches with Decorative Interior Painting TR)*, 306 W. San Antonio

Harris County

Houston, *All Saints Roman Catholic Church (Houston Heights MRA)*, 201 E. 10th St.
Houston, *Allbach House (Houston Heights MRA)*, 2023 Arlington St.
Houston, *Banta House (Houston Heights MRA)*, 119 E. 20th St.
Houston, *Borgstrom House (Houston Heights MRA)*, 1401 Cortlandt St.
Houston, *Building at 430 Harvard Street (Houston Heights MRA)*, 430 Harvard St.
Houston, *Burge House (Houston Heights MRA)*, 1801 Heights Blvd.
Houston, *Coop, Dr. B.F., House (Houston Heights MRA)*, 1536 Heights Blvd.
Houston, *Countryman House (Houston Heights MRA)*, 402 E. 9th St.
Houston, *Cummings House (Houston Heights MRA)*, 1418 Heights Blvd.
Houston, *Dexter House (Houston Heights MRA)*, 224 W. 17th St.
Houston, *Eaton House (Houston Heights MRA)*, 510 Harvard St.
Houston, *Elkins House (Houston Heights MRA)*, 602 E. 9th St.
Houston, *Ellis, Dr. Billie V., House (Houston Heights MRA)*, 1515 Heights Blvd.
Houston, *Ezzell House (Houston Heights MRA)*, 1236 Rutland St.
Houston, *Gillette House (Houston Heights MRA)*, 301–303 E. 15th St.
Houston, *Hamilton, Alexander, Jr. High School (Houston Heights MRA)*, 139 W. 20th St.
Houston, *Hartley House (Houston Heights MRA)*, 315 W. 17th St.
Houston, *Hawkins House (Houston Heights MRA)*, 1015 Heights Blvd.
Houston, *Heights Boulevard (Houston Heights MRA)*, Heights Boulevard from White Oak Bayou to 20th St.
Houston, *Heights Christian Church (Houston Heights MRA)*, 1703 Heights Blvd.
Houston, *Heights State Bank Building (Houston Heights MRA)*, 3620 Washington St.
Houston, *House at 1111 Heights Boulevard (Houston Heights MRA)*, 1111 Heights Blvd.
Houston, *House at 112 W. 4th Street (Houston Heights MRA)*, 112 W. 4th St.
Houston, *House at 1210 Harvard Street (Houston Heights MRA)*, 1210 Harvard St.
Houston, *House at 1227 Rutland Street (Houston Heights MRA)*, 1227 Rutland St.
Houston, *House at 1230 Oxford Street (Houston Heights MRA)*, 1230 Oxford St.
Houston, *House at 1237 Rutland Street (Houston Heights MRA)*, 1237 Rutland St.
Houston, *House at 1304 Cortlandt Street (Houston Heights MRA)*, 1304 Cortlandt St.
Houston, *House at 1323 Heights Boulevard (Houston Heights MRA)*, 1323 Heights Blvd.
Houston, *House at 1343 Allston Street (Houston Heights MRA)*, 1343 Allston St.
Houston, *House at 1421 Harvard St. (Houston Heights MRA)*, 1421 Harvard St.
Houston, *House at 1421 Heights Boulevard (Houston Heights MRA)*, 1421 Heights Blvd.
Houston, *House at 1421–1423 Waverly Street (Houston Heights MRA)*, 1421–23 Waverly St.
Houston, *House at 1437 Heights Boulevard (Houston Heights MRA)*, 1437 Heights Blvd.
Houston, *House at 1437 Waverly Street (Houston Heights MRA)*, 1437 Waverly St.
Houston, *House at 1443 Allston Street (Houston Heights MRA)*, 1443 Allston St.
Houston, *House at 1509 Allston Street (Houston Heights MRA)*, 1509 Allston St.
Houston, *House at 1515 Allston Street (Houston Heights MRA)*, 1515 Allston St.
Houston, *House at 1515 Harvard Street (Houston Heights MRA)*, 1515 Harvard St.
Houston, *House at 1517 Cortland Street (Houston Heights MRA)*, 1517 Cortland St.
Houston, *House at 1531 Tulane Street (Houston Heights MRA)*, 1531 Tulane St.
Houston, *House at 1537 Tulane Street (Houston Heights MRA)*, 1537 Tulane St.
Houston, *House at 1614 Harvard Street (Houston Heights MRA)*, 1640 Harvard St.
Houston, *House at 201 W. 15th Street (Houston Heights MRA)*, 201 W. 15th St.
Houston, *House at 2035 Rutland Street (Houston Heights MRA)*, 2035 Rutland St.
Houston, *House at 217 E. 5th Street (Houston Heights MRA)*, 217 E. 5th St.
Houston, *House at 2402 Rutland Street (Houston Heights MRA)*, 2402 Rutland St.
Houston, *House at 402 E. 11th Street (Houston Heights MRA)*, 402 E. 11th St.
Houston, *House at 505 W. 18th Street (Houston Heights MRA)*, 505 W. 18th St.
Houston, *House at 532 Harvard Street (Houston Heights MRA)*, 532 Harvard St.
Houston, *House at 828 Heights Boulevard (Houston Heights MRA)*, 828 Heights Blvd.
Houston, *House at 844 Columbia Street (Houston Heights MRA)*, 844 Columbia St.
Houston, *House at 844 Cortlandt Street (Houston Heights MRA)*, 844 Cortlandt St.
Houston, *House at 917 Heights Boulevard (Houston Heights MRA)*, 917 Heights Blvd.
Houston, *Houston Heights Fire Station (Houston Heights MRA)*, Yale and 12th Sts.
Houston, *Houston Heights Waterworks Reservior (Houston Heights MRA)*, W. 20 and Nicolson Sts.
Houston, *Houston Heights Woman's Club (Houston Heights MRA)*, 1848 Harvard St.
Houston, *Houston Public Library (Heights Branch) (Houston Heights MRA)*, 1302 Heights Blvd.
Houston, *Immanuel Lutheran Church (Houston Heights MRA)*, 1448 Cortlandt St.
Houston, *Isbell House (Houston Heights MRA)*, 639 Heights Blvd.
Houston, *Jones House (Houston Heights MRA)*, 1115–1117 Allston St.
Houston, *Kleinhaus House (Houston Heights MRA)*, 803 Yale St.
Houston, *Knittel House (Houston Heights MRA)*, 1801 Ashland St.
Houston, *Kronenberger House (Houston Heights MRA)*, 612 W. 26th St.
Houston, *Lund House (Houston Heights MRA)*, 301 E. 5th St.
Houston, *Mansfield House (Houston Heights MRA)*, 1802 Harvard St.
Houston, *McDonald House (Houston Heights MRA)*, 1801 Ashland St.
Houston, *Meitzen House (Houston Heights MRA)*, 725 Harvard St.
Houston, *Miller House (Houston Heights MRA)*, 1245 Yale St.
Houston, *Milroy House (Houston Heights MRA)*, 1102 Heights Blvd.
Houston, *Milroy-Muller House (Houston Heights MRA)*, 1802 Harvard St.
Houston, *Mulcahy House (Houston Heights MRA)*, 1046 Harvard St.
Houston, *Ogle, Joseph, House (Houston Heights MRA)*, 530 Harvard St.
Houston, *Oriental Textile Mill (Houston Heights MRA)*, 2201 Lawrence St.
Houston, *Otto House (Houston Heights MRA)*, 835 Rutland St.
Houston, *Perry-Swilley House (Houston Heights MRA)*, 1101 Heights Blvd.
Houston, *Reagan, John H., Senior High School (Houston Heights MRA)*, 401 E. 13th St.
Houston, *Renn House (Houston Heights MRA)*, 1007 Heights Blvd.
Houston, *Schauer Filling Station (Houston Heights MRA)*, 1400 Oxford St.
Houston, *Schlesser-Burrows House (Houston Heights MRA)*, 1123 Harvard St.
Houston, *Thornton, Dr. Penn B., House (Houston Heights MRA)*, 1541 Tulane St.
Houston, *Upchurch House (Houston Heights MRA)*, 301 E. 14th St.
Houston, *Ward House (Houston Heights MRA)*, 323 W. 17th St.
Houston, *Webber House (Houston Heights MRA)*, 1011 Heights Blvd.
Houston, *Webber, Samuel H., House (Houston Heights MRA)*, 407 Heights Blvd.
Houston, *Wilkins House (Houston Heights MRA)*, 1541 Ashland St.
Houston, *Williams-Brueder House (Houston Heights MRA)*, 245 W. 18th St.
Houston, *Wilson House (Houston Heights MRA)*, 1206 Cortlandt St.
Houston, *Wimberly House (Houston Heights MRA)*, 703 Harvard St.
Houston, *Woodard House (Houston Heights MRA)*, 740 Rutlant St.
Houston, *Woodward House (Houston Heights MRA)*, 1605 Heights Blvd.

Lamar County

Paris, *First United Methodist Church (Churches with Decorative Interior Painting TR)*, 322 Lamar St.

Lavaca County

Moravia, *Ascension of Our Lord Catholic Church (Churches with Decorative Interior Painting TR)*, FM 957
Shiner, *Sts., Cyril and Methodius Church (Churches with Decorative Interior Painting TR)*, 100 St. Ludmilla'a St.
St. Mary's, *Church of the Immaculate Conception of Blessed (Churches with Decorative Interior Painting TR)*, FM 2672
Sweet Home, *Church of the Blessed Virgin Mary, the Queen of Peace (Churches with Decorative Interior Painting TR)*, FM 340

Potter County

Amarillo, *First Baptist Church (Churches with Decorative Interior Painting TR)*, 218 W. 13th St.

Randall County

Umbarger, *St. Mary's Catholic Church (Churches with Decorative Interior Painting TR)*, Off U.S. 60

Williamson County

Round Rock, *Round Rock Commercial Historic District*, 100 and 200 Blks E. Main St.

UTAH

Tooele County

Ophir, *Ophir Town Hall*, 43 S. Main St.

VERMONT

Chittenden County

Burlington, *City Hall Park Historic District*, Church, College, Main and St. Paul Sts.

[FR Doc. 83-13818 Filed 5-23-83; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

Motor Carriers; Permanent Authority Decisions

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 gounds 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 service 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 authorized.

Please direct status inquiries about the following to Team 1 at (202) 275-7992.

Volume No. OP1-181(N)

Decided: May 16, 1983.

By the Commission, Review Board No. 1, Members Parker, Chandler and Fortier.

MC 44370 (Sub-3), filed May 9, 1983. Applicant: E. M. LERIT, INC., P.O. Box 306, Dunellen, NJ 08812. Representative: Robert B. Pepper, 168 Woodbridge Ave., Highland Park, NJ 08904, (201) 572-5551. Transporting *telephones, telephone supplies and materials, metal products, and scrap*, between Philadelphia, PA, and New York, NY, on the one hand, and, on the other, points in CT, DE, MA, MD, NJ, NY, PA, SC, and VA.

MC 61440 (Sub-227), filed May 9, 1983. Applicant: LEE WAY MOTOR FREIGHT, INC., P.O. Box 12750, Oklahoma City, OK 73157. Representative: T. M. Brown (same address as applicant), (405) 840-5551. 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. M. Huber Corporation, of Edison, NJ.

MC 94201 (Sub-207), filed May 5, 1983. Applicant: BOWMAN TRANSPORTATION, INC., P.O. Box 17744, Atlanta, GA 30316. Representative: Gerald D. Colvin, 601-09 Frank Nelson Bldg., Birmingham, AL 35203, (205) 251-2881. 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 J. C. Penney Company, Inc., of New York, NY.

MC 115730 (Sub-100), filed May 9, 1983. Applicant: THE MICKOW CORP., P.O. Box 1774, Des Moines, IA 50316. Representative: Cecil L. Goettsch, 1100 Des Moines Bldg., Des Moines, IA 50307, (515) 243-4191. Transporting *chemicals and related products*, between points in IL, IN, IA, KS, MN, MO, NE, SD, and WI.

MC 117940 (Sub-380), filed May 9, 1983. Applicant: NATIONWIDE

CARRIERS, INC., P.O. Box 104, Maple Plain, MN 55359. Representative: Allan L. Timmerman, 5300 Highway 12, Maple Plain, MN 55359, (612) 479–1984. 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 Knox Lumber Company, of St. Paul, MN.

MC 127820 (Sub-24), filed May 6, 1983. Applicant: TRANS-SERVICE, INC., 1943 S. Lawn Ext., Coshocton, OH 43812. Representative: James Duval, 220 W. Bridge St., P.O. Box 97, Dublin, OH 43017, (614) 889–2531. 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 General Electric Co., of Fairfield, CT.

MC 138741 (Sub-137), filed May 9, 1983. Applicant: AMERICAN CENTRAL TRANSPORT, INC., 914 East Highway H, Liberty, MO 64068. Representative: Tom B. Kretsinger, Jr., 20 E. Franklin, Liberty, MO 64068, (816) 781–6000. Transporting *general commodities* (except classes A and B explosives and household goods), between those points in the U.S. in and east of ND, SD, NE, CO, OK and TX.

MC 139420 (Sub-51), filed May 6, 1983. Applicant: GLACIER TRANSPORT, INC., P.O. Box 428, Grand Forks, ND 58201. Representative: William J. Gambucci, 525 Lumber Exchange Bldg., Minneapolis, MN 55402, (612) 340–0808. Transporting *general commodities* (except classes A and B explosives, and household goods), between points in the U.S. (except AK and HI).

MC 149021 (Sub-2), filed May 6, 1983. Applicant: HODGE TRUCKING CO., INC., P.O. Box 128, Axton, VA 24054. Representative: Ernest Hodges (same address as applicant). Transporting *textile mill products and food and related products*, between points in Henry County, VA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 149081 (Sub-4), (Republication), Filed March 28, 1983, previously published in the FR on April 14, 1983. Applicant: SUBURBAN TRAILS, INC., 750 Somerset St., New Brunswick, NJ 08901. Representative: Michael J. Marzano, 99 Kinderkamack Rd., Westwood, NJ 07675 (201) 666–5111. Over regular routes, transporting *passengers*, (1) between Trenton, NJ and New Brunswick, NJ, from Trenton, NJ over US Hwy 206 to junction NJ Hwy 27 in the Borough of Princeton, NJ, then over NJ Hwy 27 to New Brunswick, NJ, and return over the same route, (2) between junction US Hwy 1 and Mercer County Hwy 571 in West Windsor Township, NJ and Junction Mercer County Hwy 571 and NJ Hwy 27 in the Borough of Princeton, NJ, from junction US Hwy 1 and Mercer County Hwy 571 over Mercer County Hwy 571 (also Washington Rd) to junction NJ Hwy 27, and return over the same route, (3) between junction NJ Hwy 27 and Finnegan Lane, at or near the South Brunswick Township-Franklin Township, NJ boundary line and junction Finnegan Lane and US Hwy 1 at or near the South Brunswick Township-North Brunswick township, NJ boundary line, over Finnegan Lane, (4) between junction NJ Hwy 33 and Interstate Hwy 95 (also NJ Turnpike) at Interchange No. 8 in East Windsor Township, NJ, and Trenton, NJ, from junction NJ Hwy 33 and Interstate Hwy 95 (also NJ Turnpike) at Interchange No. 8, over Interstate Hwy 95 (also NJ Turnpike) to junction Interstate Hwy 195, then over Interstate Hwy 195 to Trenton, NJ, and return over the same route, (5) between junction Interstate Hwy 195 and South Broad St. in Hamilton Township, NJ and Trenton, NJ, over South Broad St., (6) between junction Middlesex County Hwy 535 and NJ Hwy 32 (also Forsgate Dr) in South Brunswick Township, NJ and East Brunswick, NJ, from junction Middlesex County Hwy 535 and NJ Hwy 32 (also Forsgate Dr) over Middlesex County Hwy 535 to junction NJ Hwy 18 in East Brunswick, then over NJ Hwy 18 to East Brunswick, NJ, and return over the same route, (7) between junction Forsgate Drive and Applegarth Rd in Monroe township, (Middlesex County), NJ and junction NJ Hwy 18 and Interstate Hwy 95 (also NJ Turnpike) in East Brunswick, NJ, from junction Forsgate Drive and Applegarth Rd, over Forsgate Drive to junction East Railroad Ave. in Jamesburg, NJ, then over East Railroad Ave to junction Stockton Ave., then over Stockton Ave to junction Lincoln Ave, then over Lincoln Ave, to junction Helmetta Rd, then over Helmetta Rd to junction Main St. at or near Monroe Township-Helmetta, NJ boundary line, then over Main St to junction Old Bridge-New Brunswick Trunpike in East Brunswick, NJ, then over Old Bridge-New Brunswick Turnpike to junction NJ Hwy 18, then over NJ Hwy 18 to junction Interstate Hwy 95 (also NJ Turnpike) at Interchange No. 9 in East Brunswick, NJ, and return over the same route except operating directly over NJ Hwy 18 to junction Main St in East Brunswick, NJ, (8) between East Brunswick Transportation and Commerce Center is East Brunswick, NJ and juinction Tices Lane and New Jersey Hwy 18 in East Brunswick, NJ, over Tices Lane, (9) between junction NJ Hwy 18 and Interstate Hwy 95 (also NJ Turnpike) in East Brunswick, NJ and East Brunswick Transportation and Commerce Center, in East Brunswick, NJ, from Junction NJ Hwy 18 and Interstate Hwy 95, over NJ Hwy 18 to Junction Old Bridge Turnpike, then over Old Bridge Turnpike to the East Brunswick transportation and Commerce Center (located at the junction of NJ Hwy 18 and Tices Lane), then over Old Bridge Turnpike to junction Tices Lane, then over Tices Lane to East Brunswick Transportation and Commerce Center in East Brunswick, NJ, and return over the same route, ant serving all intermediate points in (1) throught (9) above.

Note.—Applicant intends to tack the authority in this proceding with its existing authority. Applicant seeks to provide regular route service in interstate and intrastate commerce under 49 U.S.C. 10922(c)(2)(b). The purpose of this republication is to clarify the involved terminus and route descriptions.

MC 150621 (Sub-2), filed May 6, 1983. Applicant: TED L. CLARK d.b.a. CLARK TRUCK LINE, P.O. Box 317, Carrington, ND 58421. Representative: Thomas J. Van Osdel, 15 Broadway—Suite 502, Fargo, ND 58102, (701) 235–4487. 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 Log End Industries Inc., of Carrington, ND.

MC 151380 (Sub-3), filed May 6, 1983. Applicant: RICLYN ENTERPRISES, INC., Room 201, Amman Building, Port Everglades, Ft. Lauderdale, FL 33335. Representative: Gerald J. Donovan, 4791 S.W. 82nd Ave., Davie, FL 33328. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between Tampa, FL, on the one hand, and, on the other, points in AL, DE, GA, KY, MA, NJ, NY, NC, OH, PA, SC, TN, VA, and WI, under continuing contract(s) with Strachan Shipping Company, of Tampa, FL.

MC 152681 (Sub-2), filed May 3, 1983. Applicant: FRANK BATY, 2045 Tulare Wy., Upland, CA 91786. Representative: Donald R. Hedrick, P.O. Box 4334, Santa Ana, CA 92702, (714) 667–8107. Transporting *food and related products*, between points in the U.S. (except AK and HI).

MC 156340 (Sub-3), filed May 6, 1983. Applicant: VALLEY GRAIN CO., TRKG., P.O. Box 299, Browns Valley, MN 56219. Representative: Samuel Rubenstein, P.O.

Box 5, Minneapolis, MN 55440. Transporting *chemicals and related products,* and *food and related products,* between points in Salt Lake County, UT, on the one hand, and, on the other, points in IL, IA, MN, NE, ND, SD, and WI.

MC 156680 (Sub-2), filed May 9, 1983. Applicant: HANKINS LUMBER SALES INC., P.O. Box 1051, Grenada, MS 38901. Representative: J. D. Hankins II (same address as applicant), (601) 226–7500. 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 157421 (Sub-3), filed May 9, 1983. Applicant: JESSE ROBERTS, d.b.a. POWER TRANSPORT, East 6607 Broadway, Spokane, WA 99206. Representative: Andrew D. Shafer, 1200 IBM Bldg., Seattle, WA 98101, (206) 624–7373. Transporting *canned foodstuffs,* between points in CA, OR, WA, ID, UT, and NV, under continuing contract(s) with Del Monte Corporation, of San Francisco, CA.

MC 167051, filed May 9, 1983. Applicant: JERRY LEE WILSON AND BEVERLY O. WILSON, A Partnership, d.b.a. HERMITAGE EXPRESS, Rt. 1, Box 82, Brookline, MO 65619. Representative: Jerry Lee Wilson (same address as applicant), (417) 883–1964. Transporting *general commodities* (except class A and B explosives, household goods and commodities in bulk), between points in Dallas, Greene, Hickory, and Polk Counties, MO.

MC 167771, filed May 2, 1983. Applicant: DONCO TRANSPORTATION CO., 1921 N.E. 58th Ave., Des Moines, IA 50313. Representative: Thomas E. Leahy, Jr., 1980 Financial Center, Des Moines, IA 50309, (515) 245–4300 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 General Commodities Brokerage Co., and L & L Insulation and Supply Company, Inc., both of Des Moines, IA, and Webster City Products Co., of Webster City, IA.

MC 167791, filed May 2, 1983. Applicant: ROLLA TRANSPORTATION, INC., Box T, Rolla, MO 65401. Representative: B. W. LaTourette, Jr., 11 South Meramec, Suite 1400, St. Louis, MO 63105, (314) 727–0777. 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 167840, filed May 6, 1983. Applicant: VAN INTERNATIONAL TRANSFER D.C. INC., 7665 Lacordaire Blvd., St. Leonard (Montreal) PQ, Canada H1S 2A7. Representative: J. P. Vermette, 250 Napoleon-Provost St., Repentigny, PQ, Canada J6A 1H5, (514) 353–0550. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between the ports of entry on the international boundary line between the U.S. and Canada, on the one hand, and, on the other, points in AL, AR, CA, CT, FL, GA, IA, IL, IN, KY, KS, LA, MD, MI, MN, MO, MS, NC, NJ, ND, NE, NY, OH, OK, PA, SC, SD, TN, TX, VA, WI, and WV.

MC 167851, filed May 6, 1983. Applicant: JORGE CORREIA TRUCKING CO., 73 Vineyard Ave., Cumberland, RI 02864. Representative: James F. Martin, Jr., 8 W. Morse Road, Bellingham, MA 02019, (617) 966–2093.Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in MA, RI, ME, CT, NY, NJ and PA.

MC 167860, filed May 6, 1983. Applicant: AMERICAN FURNITURE WAREHOUSE CO., 5445 Bannock St., Denver, CO 80216. Representative: Ron Catlin (same address as applicant), (303) 296–1651. Transporting *new furniture and fixtures, and rubber and plastic products,* between points in the U.S. in and west of MN, IA, MO, AR and LA (except AK and HI).

Volume No. OP1–183(N)

Decided: May 17, 1983.

By the Commission, Review Board No. 1, Members Parker, Chandler and Fortier.

FF–691, filed May 5, 1983. Applicant: PAUL ARPIN & SONS STORAGE WAREHOUSES, INC., West Warwick Industrial Park, Box 1302, East Greenwich, RI 02818–0998. Representative: Alan F. Wohlstetter, 1700 K St., NW., Washington, DC 20006, (202) 833–8884. Transporting *used household goods, unaccompanied baggage,* and *used automobiles,* between points in the U.S. (except ND, SD and MT.

MC 67340 (Sub-17), filed April 28, 1983. Applicant: RESORT BUS LINES, INC., 475 Saw Mill River Rd., Yonkers, NY 10702. Representative: Vincent P. Nesci (same address as applicant), (914) 969–3113. Transporting *passengers,* in charter and special operations, between points in the U.S.

Note.—Applicant seeks to provide privately funded charter and special transportation.

MC 117940 (Sub-379), filed May 9, 1983. Applicant: NATIONWIDE CARRIERS, INC., P.O. Box 104, Maple Plain, MN 55359. Representative: Allan L. Timmerman, 5300 Highway 12, Maple Plain, MN 55359, (612) 479–1984. 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 Minnesota Mining and Manufacturing Company (3M), of St. Paul, MN.

MC 143630 (Sub-8), filed May 9, 1983. Applicant: GRIEBEL TRUCKING CO., P.O. Box 243, 20219 Telegraph Road, Marengo, IL 60152. Representative: Abraham A. Diamond, 29 South La Salle St., Chicago, IL 60603, (312) 236–0548. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except AK and HI). Condition: Issuance of a certificate in this proceeding is subject to prior or the coincidental cancellation, at applicant's written request, of its permits in MC–143680 Sub-Nos. 3, 4, 6 and 7, issued November 13, 1978, March 27, 1979, November 20, 1980, and February 11, 1981, respectively.

Note.—The purpose of this application is to convert applicant's existing contract carrier authority in MC–143680 Sub-Nos. 3, 4, 6 and 7 to common carrier authority.

MC 154460 (Sub-8), filed May 9, 1983. Applicant:"Q" CARRIERS, INC., 14086 Rutgers Street, N.E., Prior Lake, MN 55372. Representative: Randall D. Quiring (same address as applicant), (612) 445–7529. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S., under continuing contract(s) with Trans-Consolidated, Inc., of St. Paul, MN.

MC 156121 (Sub-3), filed May 4, 1983. Applicant: KOPH TRUCKING, INC., 18470 Victoria Drive, Goshen, IN 43526. Representative: Theodore Polydoroff, 6810 Fleetwood Rd., McLean, VA 22101, (703) 893–4924. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except HI), under continuing contract(s) with United Freight Dispatch, Inc., of Elkhart, IN.

MC 159401 (Sub-2), filed May 9, 1983. Applicant: JOHNSON DISTRIBUTORSHIP, INC., Route 1, Box 920AA, Flagstaff, AZ 86001. Representative: Phil B. Hammond, 3003 N. Central, Suite 2201, Phoenix, AZ 85012, (602) 266–2224. Transporting

general commodities (except classes A and B explosives, household goods and commodities in bulk), between points in AZ.

MC 164510 (Sub-1), filed May 6, 1983. Applicant: WILLIAM E. PINCKNEY d.b.a. CEDAR MOUNTAIN EXPRESS, 1732 "E" Ave., N.E., Cedar Rapids, IA 52402. Representative: Richard D. Howe, 600 Hubbell Bldg., Des Moines, IA 50309, (515) 244–2329. Transporting *food and related products*, between points in Linn County IA, on the one hand, and, on the other, points in CA, FL, IN, MI, OH, OR and WA.

MC 165800 (Sub-1), filed May 9, 1983. Applicant: NEW CONCEPT TRANSPORTATION, INC., 458 Kleman Rd., Gilbertsville, PA 19525. Representative: Alan Kahn, 1430 L and Title Bldg., Philadelphia, PA 19110, (215) 561–103. Transporting *general commodities* (except classes A and B explosives and commodities in bulk), between points in MA, CT, RI, NY, NJ, PA, MD, DE, VA, NC, SC, GA and DC.

MC 167150, filed May 9, 1983. Applicant: J. R. SIMPLOT COMPANY, P.O. Box 27, One Capitol Center, Boise, ID 83707. Representative: John H. Goslin, P.O. Box 921, Caldwell, ID 83605, (208) 459–6485. Transporting *chemicals and related products*, between points in the U.S. (except AK and HI), under continuing contract(s) with (1) IND/AG Chemicals, of Walnut Creek, CA, (2) Union Chemicals, Div. of Union Oil Company of California, of Los Angeles, CA, (3) Bay Zinc Company, Div. of Bay Chemical Co., of Moxee, WA, and (4) Cenex, of St. Paul, MN.

MC 167801, filed May 4, 1983. Applicant: DYCO PIPE & TUBE, INC., 5315 Oates Road, Houston, TX 77013. Representative: Paul S. Broussard, 501 Crawford, Suite 401, Houston, TX 77002, (713) 227–9735. Transporting *Mercer commodities*, between points in Los Angeles County, CA, on the one hand, and, on the other, points in Harris County, TX, under continuing contract(s) with Baker Packers, a division of Baker International Corporation, Houston, TX.

MC 167830, filed May 5, 1983. Applicant: SOUTHEASTERN MILLS, INC., d.b.a. S.E.M. TRUCKING, P.O. Box 908, Rome, GA 30161. Representative: J. L. Fant, P.O. Box 577, Jonesboro, GA 30237, (404) 477–1525. 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 Castellaw Transportation and Consultants, Inc., of Jonesboro, GA, and Southeastern Mills, Inc., and S. E. M. Baking Company, both of Rome, GA.

MC 167841, filed May 6, 1983. Applicant: SUNSHINE EXPRESS, INC., 6905 N.W. 41st St., Miami, FL 33172. Representative: Gerard J. Donovan, 4791 S.W. 82nd Ave., Davie, FL 33328, (305) 434–7621. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in FL.

MC 167921, filed May 9, 1983. Applicant: BENTON TRUCKING COMPANY, INC., Rt. 1, Box 522, Poplar Tent Rd., Concord, NC 28025. Representative: Terrell Price, 800 Briar Creek Rd., Suite DD504, Charlotte, NC 28205, (704) 372–8212. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in NC, SC, VA, TN and GA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

Please direct status inquiries about the following to Team 2 at (202) 275–7293.

Volume No. OP2–231

Decided: May 16, 1983.

By the Commission, Review Board No. 1, Members Parker, Chandler and Fortier.

MC 52793 (Sub-130), filed April 29, 1983. Applicant: BEKINS VAN LINES CO., 333 South Center St., Hillside, IL 60162. Representative: David A. Gallagher (same address as applicant), 312–547–2184. Transportation *household goods*, between points in the U.S. (except AK and HI), under continuing contract(s) with Lockheed-Georgia Company, of Burbank, CA.

MC 81952 (Sub-2), filed April 27, 1983. Applicant: ADVANCE RELOCATION & STORAGE, INC., 153 Merrick Rd., Freeport, NY 11520. Representative: Robert J. Gallagher, 1000 Connecticut Ave., NW., Suite 1200, Washington, DC 20036, 202–785–0024. Transporting *bowling alley equipment and accessories*, between points in the U.S. (except AK and HI), under continuing contract(s) with AMF Incorporated, of Westbury, NY.

MC 146592 (Sub-4), filed May 9, 1983. Applicant: AVERY TRANSPORT, INC., 11026 Roswell, Pomona, CA 91766. Representative: Earl N. Miles, 3704 Candlewood Dr., Bakersfield, CA 93306, 805–872–1106. Transporting *transportation equipment*, between points in the U.S. (except AK and HI), under continuing contract(s) with Lance Camper Mfg. Corp., of North Hollywood, CA.

MC 141293(Sub-6), filed May 3, 1983. Applicant: J.R.R.W. TRANSPORT, INC., P.O. Box 470, Iowa City, IA 52244. Representative: Kenneth F. Dudley, P.O. Box 279, Ottumwa, IA 52501, 515–682–8154. 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 (a) A. E. Staley Manufacturing Company, of Decatur, IL, (b) Crest Foods Company, Inc., of Ashton, IL, (c) Hall-Roberts' Son, Inc., of Postville, IA, (d) National Oats Co., of Cedar Rapids, IA, and (e) Wholesale Feeds, Inc., of Cedar Rapids, IA.

MC 147093 (Sub-4), filed May 9, 1983. Applicant: B & L TRUCKLINE, INC., Highway 125 South, Middleton, TN 38052. Representative: Dale Woodall, 6077 Primacy Parkway, Suite 209, Memphis, TN 38119, 901–683–5400. 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 153093 (Sub-3), filed April 29, 1983. Applicant: ASSOCIATED MOVING & STORAGE CO., INC., P.O. Box 23053, New Orleans, LA 70183. Representative: Robert J. Gallagher, 1000 Connecticut Ave., NW-Suite 1200, Washington, DC 20036, 202–785–0024. Transporting *household goods*, between points in AL, AZ, AR, CA, CO, CT, DE, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NC, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY, and DC.

MC 153583 (Sub-1), filed May 9, 1983. Applicant: S & F TRUCKING, INC., Route 1, Box 79, Joseph, OR 97846. Representative: Rex L. Smith (Same address as applicant), 503–432–3341. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in AL, AK, AZ, AR, CA, CO, FL, GA, ID, IL, IN, IA, KS, KY, LA, MI, MN, MS, MO, MT, NE, NV, NM, NC, ND, OH, OK, OR, SC, SD, TN, TX, UT, WA, WV, WI, and WY.

MC 155223 (Sub-9), filed May 5, 1983. Applicant: HIGHWAY EXPRESS, INC., P.O. Box 11234, Phoenix, AZ 85061. Representative: Robert Fuller, 13215 E. Penn St.-Suite 310, Whittier, CA 90602, 213–945–3002. Transporting *plastic articles*, between points in the U.S. (except AK and HI), under continuing contract(s) with Inveantive Packaging Corporation, of Englewood, CO.

MC 155223 (Sub-10), filed May 5, 1983. Applicant: HIGHWAY EXPRESS, INC., P.O. Box 11234, Phoenix, AZ 85061. Representative: Robert Fuller, 13215 East Penn St.-Suite 310, Whittier, CA 90602, 213–945–3002. Transporting

electronic automobile parts, wire harnesses, and parts used in the assembly of automobiles, between points in the U.S. (except AK and HI), under continuing contract(s) with Coleman Products, of Nogales, AZ.

MC 158133 (Sub-1), filed May 5, 1983. Applicant: CONTRACT TRANSPORTATION SERVICE, INC., 1711 South 2nd St., Piscataway, NJ 08854. Representative: Robert B. Pepper, 168 Woodbridge Ave., Highland Park, NJ 08904, 201–572–5551. 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 Kaiser Aluminum & Chemical Corporation, of Oakland, CA.

MC 162622, filed May 2, 1983. Applicant: TRADE SHOW SPECIALISTS, INC., Rte. 5, Box 365, Rosie, AR 72571. Representative: R. Connor Wiggins, Jr., 100 N. Main Bldg., Suite 909, Memphis, TN 38103, 901–526–4114. Transporting (1) *such commodities* as are used and displayed in trade shows and exhibitions, and (2) *furniture and fixtures*, between points in the U.S. (except AK and HI).

MC 163443 (Sub-1), filed May 6, 1983. Applicant: G. L. TRUCKING—DIVISION OF G. L. RENTAL & ENGINEERING, INC., R.R. 1, Box 97H, Williston, ND 58801. Representative: Charles E. Johnson, P.O. Box 2056, Bismarck, ND 58502–2056, 701–223–5300. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except HI).

MC 164713 (Sub-1), filed May 5, 1983. Applicant: LEASEWAY DELIVERIES, INC., 85 Stanton St., Rochester, NY 14611. Representative: J. A. Kundtz, 1100 National City Bank Bldg., Cleveland, OH 44114, 216–566–5639. Transporting *such commodities* as are dealt in or used by retail department stores, between points in the U.S., under continuing contract(s) with Meier & Frank, of Portland, OR.

MC 167762, filed May 3, 1983. Applicant: KERRY TRANSPORT, INC., 5395 George St., Saginaw, MI 48603. Representative: John F. Doyle, 7920 S. Webster Rd., P.O. Box 177, Freeland, MI 48623, 517–695–6868. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S., under continuing contract(s) with Dow Chemical Company, of Midland, MI.

MC 167773, filed May 3, 1983. Applicant: WILLIAM L. TAYLOR, d.b.a. TAYLOR & SONS FREIGHT LINES, 10209 Rodgers Rd., Fairfax, VA 22030. Representative: William L. Taylor (same address as applicant), 703–273–1892. Transporting (1) *tractor parts and equipment*, (2) *ship and aircraft parts*, and (3) *steel sheets and steel plate*, between points in Fairfax and Loudon Counties, VA, on the one hand, and, on the other, points in VA, NC, SC, GA, TN, FL, PA, OH, IN, MI, NY, MD, NJ, CT, ME, DE, NH, VT, MA, RI, WV, KY, AL, and DC.

Volume No. OP2–234

Decided: May 12, 1983.

By the Commission, Review Board No. 3, Members Krock, Joyce and Dowell.

MC 161922 (Sub-1), filed May 3, 1983. Applicant: REXLOR TRANSPORT, INC., P.O. Box 13, Upper Sandusky, OH 43351. Representative: Jack L. Schiller, 111–56 76th Dr., Forest Hills, NY 11375, (212) 263–2078. Transporting *general commodities* (except classes A and B explosives, and household goods), between points in IL, IN, KY, MI, and TN, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 165853, filed May 3, 1983. Applicant: MARC MOTORS TRANSPORT, 685 N. Shore Rd., Revere, MA 02151. Representative: Hughan R. H. Smith, 26 Kenwood Pl., Lawrence, MA 01826, (617) 657–8250. Transporting *automobiles*, between points in the U.S. (except AK and HI).

Volume No. OP2–236

Decided: May 17, 1983.

By the Commission, Review Board No. 3, Members Krock, Joyce and Dowell. Member Dowell not participating.

MC 52793 (Sub-131), filed May 9, 1983. Applicant: BEKINS VAN LINES CO., 333 South Center St., Hillside, IL 60162. Representative: David A. Gallagher (same address as applicant), (312) 547–2184. Transporting *household goods*, between points in the U.S. (except AK and HI), under continuing contract(s) with Schlumberger-North America, of Houston, TX.

MC 87113 (Sub-35), filed May 6, 1983. Applicant: WHEATON VAN LINES, INC., 8010 Castleton Rd., Indianapolis, IN 46250. Representative: Alan F. Wohlstetter, 1700 K St., NW., Washington, DC 20006, (202) 833–8884. Transporting *household goods*, between points in the U.S., under continuing contract(s) with The Clorox Company, of Oakland, CA, and its subsidiaries.

MC 116063 (Sub-172), filed May 9, 1983. Applicant: WESTERN-COMMERCIAL TRANSPORT, INC., P.O. Box 270, 2929 W. 5th St., Fort Worth, TX 76101. Representative: W. H. Cole (same address as applicant), (817) 335–4821. Transporting *commodities in bulk*, between points in the U.S. (except AK and HI).

MC 123863 (Sub-1), filed May 9, 1983. Applicant: W. H. SHAFFER, INC., 430 South Dirksen Parkway, Springfield, IL 62703. Representative: Michael T. Shaffer (same address as applicant), (217) 528–7568. Transporting *wrecked and disabled vehicles and replacements for said vehicles*, between points in Sangamon and Logan Counties, IL, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 142132 (Sub-3), filed May 5, 1983. Applicant: T. J. KERVIN, LEASING, INC., P.O. Box 48, Winnfield, LA 71483. Representative: Harry E. Dixon, Jr., P.O. Box 4319, Monroe, LA 71203 (318) 322–5252. Transporting *lumber and wood products and building materials*, between points in Union County, AR, Union and Winn Parish, LA, Tarrant County, TX, Adams County, MS, on the one hand, and, on the other, points in AL, AR, CO, GA, IL, IN, IA, KS, KY, LA, MS, MO, NE, NM, OK, TN, and TX.

MC 151383 (Sub-13), filed May 9, 1983. Applicant: NICKELL TRUCKING CO., 4901 West 51st St., Tulsa, OK 74107. Representative: Fred Rahal, Jr., Ste. 305 Reunion Center, 9 East Fourth St., 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 Babcock & Wilcox Tubular Products Group, Babcock & Wilcox Co., of Beaver Falls, PA.

MC 165773 (Sub-1), filed May 5, 1983. Applicant: GENESIS TRANSPORTATION CO., INC., 2900 Kage Rd., Cape Girardeau, MO 63701. Representative: Kermit J. Meystedt, P.O. Box 291, Cape Girardeau, MO 63701, 314-335–2275. 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 Monsanto Company, of St. Louis, MO.

MC 167873, filed May 9, 1983. Applicant: TATER TOTERS, INC., 19393 S E Kay St., Milwaukie, OR 97222. Representative: Bill L. Watkins (same address as applicant) (503) 656–4098. Transporting *general commodities* (except classes A and B explosives, and household goods), between points in the U.S., under continuing contract(s) with Happy Rock Transportation, Inc., of Milwaukie, OR.

MC 167913, filed May 9, 1983. Applicant: KENNETH CLARK, 2332 South Peck Rd. #120, Whittier, CA

90601. Representative: Kenneth Clark (same address as applicant), 206–533–3814. Transporting *general commodities* (except Classes A and B explosives, and household goods), between points in the U.S., under continuing contract(s) with R & R Truck Brokers, Inc., of Medford, OR.

Please direct status inquiries about the following to Team 3 at (202) 275–5223.

Volume No. OP3–221

Decided: March 28, 1983.

By the Commission, Review Board No. 1, Members Parker, Chandler and Fortier. Member Parker not participating.

MC 128205 (Sub-112), filed March 8, 1983, previously published in the **Federal Register** on April 6, 1983. Applicant: BULKMATIC TRANSPORT COMPANY, a Corporation, 12000 South Doty Ave., Chicago, IL 60628. Representative: E. Stephen Heisley, 1919 Pennsylvania Ave. NW., Washington, DC 20006, (202) 828–5015. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except AK and HI), under continuing contracts with (a) Hammond Lead Products, Inc., of Hammond, IN, (b) Chicago Sweetners, of Hillside, IL, (c) International Multifoods, of Minneapolis, MN, and (d) Morton Salt Division, of Morton Thiokol, Inc., of Chicago, IL.

Note.—This republication adds the supporting shipper, Hammond Lead Products, Inc., of Hammond, IN.

Volume No. OP3–228

Decided: May 12, 1983.

By the Commission, Review Board No. 3, Members Krock, Joyce and Dowell.

MC 139084 (Sub-14), filed April 11, 1983, previously noticed in the **Federal Register** under Volume OP3–194. Applicant: TOTRAN TRANSPORT LTD., Nisku Business Park, POB 4830, South Edmonton, Alberta, Canada T6E 5G7. Representative: Irene Warr, 311 S. State St., Ste. 280, Salt Lake City, UT 84111, (801) 531–1300. Transporting *Mercer commodities* and *machinery*, between points in the U.S. (except HI), on the one hand, and, on the other, ports of entry on the international boundary line between the United States and Canada in ME.

Note.—This republication corrects the territorial exceptions.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83–13850 Filed 5–23–83; 8:45 am]

BILLING CODE 7035–01–M

Motor Carriers; Finance Applications

As indicated by the findings below, the Commission has approved the following applications filed under 49 U.S.C. 10924, 10926, 10931 and 10932.

We find:

Each transaction is exempt from section 11343 of the Interstate Commerce Act, and complies with the Appropriate transfer rules.

This decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

Petitions seeking reconsideration must be filed within 20 days from the date of this publication. Replies must be filed within 20 days after the final date for filing petitions for reconsideration; any interested person may file and serve a reply upon the parties to the proceeding. Petitions which do not comply with the relevant transfer rules at 49 CFR 1181.4 may be rejected.

If petitions for reconsideration are not timely filed, and applicants satisfy the conditions, if any, which have been imposed, the application is granted and they will receive an effective notice. The notice will recite the compliance requirements which must be met before the transferee may commence operations.

Applicants must comply with any conditions set forth in the following decision-notices within 20 days after publication, or within any approved extension period. Otherwise, the decision-notice shall have no further effect.

It is ordered:

The following applications are approved, subject to the conditions stated in the publication, and further subject to the administrative requirements stated in the effective notice to be issued hereafter.

Please direct status inquiries about the following to Team 1, (202) 275–7992.

Volume No. OP1–FC–184

By the Commission, Review Board No. 3, Members Krock, Joyce and Dowell. Member Dowell not participating.

MC–FC–81404. By decision of May 12, 1983, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1181, Review Board Number 3 approved the transfer to PFD TRANSPORTATION SERVICES, INC., Richmond, VA, of Permit No. MC–149230, issued May 28, 1982, to BRAMCO TRANSPORT, INC., Sandston, VA, authorizing the transportation of general commodities, with exceptions between points in the U.S. (except AK and HI), under continuing contract(s) with Brenco, Inc., of Petersburg, VA, The Chesapeake Corporation of Virginia, of West Point, VA, Old Dominion Warehouse and Distribution, of Richmond, VA, Scott Paper Company, of Philadelphia, PA, Richfoods, Inc., of Mechanicsville, VA, and A. H. Robins Co., and its subsidiaries, Miller-Morton Co., Chap Stick and Elkins-Sinn, Inc., all of Richmond, VA. Representative: Paul D. Collins, 7761 Lakeforest Drive, Richmond, VA 23235. (804) 745–0446.

Volume No. OP1–FC–185

By the Commission, Review Board No. 1, Members Parker, Chandler and Fortier.

MC–81443. By decision entered May 17, 1983, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1181, Review Board Number 1 approved the transfer to Federal Armored Transport, Inc., of bronx, NY, of all of the operation rights in Certificates No. MC–148890 Sub 2, issued August 18, 1980, Sub 3, issued May 27, 1981 and Sub 4, issued July 30, 1981, to Sentry Armored Courier Corp., of Bronx, NY, authorizing the transportation of (1) coin and currency, between points in the U.S., under continuing contract(s) with the Federal Reserve Bank, of New York, NY, and (2) shipments weighing 100 pounds or less if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S. Representative: Ronald I. Shapaa, 450 7th Ave., New York, NY, 10123, (212) 239–4610.

Please direct status inquiries about the following to Team 2 at (202) 275–7030.

Volume No. OP2–FC–229

By the Commission, Review Board No. 3, Members Krock, Joyce and Dowell.

MC–FC–81419. By decision of May 16, 1983, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1181, Review Board Number 3 approved the lease for a period of 1 year, to U.S. TRANSPORT, INC., of Alexandria, VA, of all of the operating rights under Certificate No. MC–9722 Sub–No. 2, issued February 24, 1983, to Golden Worldwide Van Service, Inc., of Hohenwald, TN, authorizing the transportation, as a common carrier, over irregular routes, of (1) general commodities (with exceptions), and (2) used household goods incidental to a pack-and-crate service, for or on behalf of the United States Government, between points in the U.S. Representative: Martin R. Martino, 333 So. Glebe Rd., Arlington, VA 22204, (703) 979–1627.

MC–FC–81441. By decision of May 16, 1983, issued under 49 U.S.C. 10926 and the transfer rules of 49 CFR Part 1181, Review Board Number 3 approved the

transfer to transferee MARK W. GEIB, d.b.a. WHITE OAK VALLEY TRUCKING, Manheim, PA, of Permit MC-143653, issued September 12, 1978, to transferor, NORMAN B. GEIB, d.b.a. WHITE OAK VALLEY FARMS, authorizing the transportation of salt, in bags, from White Marsh, MD, to the facilities of Agway, Inc., at Manheim, PA, and minerals, dicalcium phosphate (feed grade), and animal and poultry feed ingredients, in bags, from Baltimore, MD, and East Aurora, NY, to the facilities of Agway, Inc., at Manheim, PA, under continuing contract(s) with Agway, Inc., of Syracuse, NY. Representative: Louis T. Glantz, 1315 South Allen St., State College, PA 16801.

Volume No. OP2-FC-232

By the Commission, Review Board No. 3, Members Krock, Joyce and Dowell.

MC-FC-81401. By decision of May 17, 1983, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1181, Review Board Number 3 approved the transfer to J. McCABE & SON, INC., of Stoneham, MA, of Certificates No. MC-61942 Sub-Nos. 3 and 4, issued June 9, 1981 and May 26, 1982, respectively, to JAMES J. McCABE, JR., d.b.a. J. McCABE AND SON, of Everett, MA, authorizing the transportation, over irregular routes, of (1)(a) household goods, between Somerville, MA and points in MA within 10 miles of Somerville, MA, on the one hand, and, on the other, points in MA, NH, ME, RI, CT, NY, and NJ, and (b) such merchandise as are dealt in by retail home furnishings stores, when transported on delivery instructions of such stores, from Somerville, MA, and points in MA within 10 miles of Somerville, MA, to points in CT and RI; and (2) general commodities (with exceptions), between points in (a) CT, ME, MA, NH, RI, and VT, and (b) between points in CT, FL, ME, MA, NH, NC, RI, and VT, on the one hand, and, on the other, points in AL, DE, FL, GA, IL, IN, MD, NJ, NY, NC, OH, PA, SC, VA, and DC. Representative: Frank J. Weiner, 15 Court Square, Boston, MA 02108, (617) 742-3530.

Please direct status inquiries about the following to Team 3 at (202) 275-5223.

Volume No. OP3-FC-224.

By the Commission, Review Board No. 1, Members Parker, Chandler and Fortier.

MC-FC-81244. By decision of May 16, 1983, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1181, Review Board Number 1 approved the transfer to TOMBRO TRUCKING LIMITED, of Streetsville, Ontario, Canada L5M 2C2, of Permit No. MC-146284 Sub 3, issued February 1, 1983, to JAMES A. GOULD, of Mississauga, Ontario, Canada, authorizing the irregular route transportation of *building material*, between points in the U.S. (except AK and HI), under contract(s) with (1) Domtar, Inc., The Construction Materials Group, of Mississauga, Ontario, Canada, and (2) Claybelt Lumber Limited, of Hearst, Ontario, Canada. Transferee holds authority from the Commission under MC-153656. Representative: William J. Hirsch, 64 Niagara Street, Buffalo, NY 14202, (716) 853-0200.

MC-FC-81388. By decision of May 16, 1983, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1181, Review Board Number 1 approved the transfer to RUSSELL E. BRAWNER, Germantown, WI, of Certificate No. MC-44445, issued August 14, 1968, and Sub 6, issued March 22, 1960, to HAROLD KLEIN CARTAGE, INC., Milwaukee, WI, authorizing the transportation of (1) *meats, meat products and meat byproducts, and articles distributed by meat-packing house* as described in Sections A and C of Appendix I to the report in *Modification of Permits-Packing House Products*, 46 M.C.C. 23, from Milwaukee, WI, to points in Dodge, Jefferson, Kenosha, Milwaukee, Ozaukee, Racine, Walworth, Washington, and Waukesha Counties, WI, and (2) *meats, meat products and meat byproducts, and articles distributed by meat-packing houses*, as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209, and 766, from Milwaukee, WI, to points in Rock, Dane, Sheboygan, Fond du Lac, Green Lake, Marquette, Waushara, Winnebago, Calumet, Manitowoc, Brown, Outagamie, Marathon, and Langlade Counties, WI, and (3) *empty containers* used in transporting the above-specified commodities, from points in the Wisconsin Counties specified above to Milwaukee, WI. RESTRICTION: The authority granted herein shall be subject to the right of the Commission, which is hereby expressly reserved, to impose such terms, conditions or limitations in the future as it may find necessary in order to insure that carrier's operations shall conform to the provisions of section 210 of the Act, and (4) *meats, meat products and meat byproducts and articles distributed by meat-packing house*, as described in Sections A and C of Appendix I in the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except those in bulk, in tank vehicles), from Milwaukee, WI, to points in Sauk, Columbia, and Green Counties, WI, and Lake and McHenry Counties, IL. Representative: William C. Dineen, 710 North Plankinton Avenue, Milwaukee, WI 53203.

Please direct status inquiries about the following to Team 5 at (202) 275-7289

Volume No. OP3-FC-234

By the Commission, Review Board No. 2, Members Carleton, Willams and Ewing. Member Ewing not participating.

MC-FC-81384. By decision of May 12, 1983 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1181, Review Board Number 2 approved the transfer to O & B TRANSPORTATION, INC., of Santa Ana, CA, of Certificate No. MC 156699 Sub 1, issued April 22, 1983, to GARY LEE NELSON, of Ontario, CA, authorizing the transportation of (1) *lumber and wood products*, between points in OR, WA, and ID, on the one hand, and, on the other, points in CA, (2) *foodstuffs*, between points in Orange County, CA, on the one hand, and, on the other, points in NV, WA, and OR, and (3) *furniture and fixtures*, between points in Orange County, CA, on the one hand, and, on the other, points in NV, AZ, OR, and WA. Transferee has authority pending with the Commission in MC 162166. Representative: Donald R. Hedrick, P.O. Box 4334, Santa Ana, CA. 92702.

MC-FC-81435. By decision of May 16, 1983 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1181, Review Board Number 2, approved the transfer to SOUTHERN MARITIME TRANSPORT, INC., of Houston, TX of Certificate No. MC 163308 issued March 25, 1983 to G & T TRUCKING (Asa Willis, Trustee in Bankruptcy), authorizing the transportation of *general commodities* (except classes A and B explosives), between points in the U.S. (except AK and HI). An application for temporary authority has been filed. Representative: J. Phillip Goode, P.O. Box 45, Shreveport, LA 71161.

MC-FC-81454. By decision of May 13, 1983 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1181, Review Board Number 2 approved the transfer to WOOD FABRICATORS TRANSPORTATION of Permit No. MC 144148 issued September 19, 1978 to PATRICK D. BEAVER, d.b.a. P.I.B. TRUCKING, authorizing the transportation of *structural wood and structural wood products*, from North Billerica, MA, to points in the U.S. in and east of WI, IL, KY, TN, and MI (except MA), under continuing

contract(s) with Wood Fabricators, Inc., of N. Billerica, MA. Representative: Andrew E. Snider, Iron Horse Park, N. Billerica, MA.

MC–FC–81460. By decision of May 16, 1983 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1181, Review Board Number 2 approved the transfer to CAST NORTH AMERICA (TRUCKING) LTD., of Montreal, Quebec, Canada, of Certificate Nos. MC–143698 issued November 7, 1977, authorizing the transportation of general commodities (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring the use of special equipment), in ocean containers, between the ports of entry on the United States-Canada boundary line, located at or near Champlain, NY, and High Gate Springs, VT, on the one hand, and, on the other, points in Massachusetts, Rhode Island, Connecticut, Maine, New Hampshire, and Vermont, restricted to the transportation of traffic having a prior or subsequent movement by water through the port of Montreal, Quebec, Canada, MC–143698 Sub 1F issued October 2, 1979, authorizing the transportation of general commodities (except those of unusual value, classes A and B explosives, commodities in bulk, and those requiring special equipment), in intermodal containers, between Chicago, IL, on the one hand, and, on the other, points in Illinois, Indiana, Iowa, Kentucky, Missouri (except points in Andrain, Callaway, and Montgomery Counties) and Wisconsin (except Baileys Harbor, Algoma, Alaska, Rostok, Kewaunee, Two Creeks, Two Rivers, Manitowoc, Newton, Cleveland, Haven, Sheboygan, Port Washington, Wausau, and Milwaukee), restricted to the transportation of traffic having a prior or subsequent movement by water, MC–143698 Sub 2F issued October 20, 1980, authorizing the transportation of general commodities (except those of unusual value, classes A and B explosives, commodities in bulk, and those requiring special equipment), in intermodal containers, between Detroit, MI, on the one hand, and, on the other, points in OH, KY, IN, and MI, restricted against service to those points on and north of U.S. 10 and on and west of Interstate 75 in Michigan, and restricted to the transportation of shipments having a prior or subsequent movement by water, Condition: Tacking is authorized, MC–143698 Sub 3F issued May 1, 1981, authorizing the transportation of general commodities (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring the use of special equipment), in ocean containers, between the ports of entry on the international boundary line between the United States and Canada located at or near Champlain, NY, and High Gate Springs, VT, on the one hand, and, on the other, points in Massachusetts, Rhode Island, Connecticut, Maine, New Hampshire, and Vermont, restricted to the transportation of traffic having a prior or subsequent movement by water through the port of Montreal, Quebec, Canada, and MC–143698 Sub 4 issued February 11, 1983, authorizing the transportation of general commodities (except classes A and B explosives, commodities in bulk, and household goods as defined by the Commission), (a) between points on the International Boundary line between the United States and Canada, on the one hand, and, on the other, points in New York, New Jersey, Pennsylvania, and Maryland, and (b) between points in Tennessee, Nebraska, Kansas, and Minnesota, on the one hand, and, on the other, Chicago, IL and Detroit, MI, to CAST NORTH AMERICA LTD., of Montreal, Quebec, Canada. Representative: Richard H. Streeter, 1729 H Street, NW., Washington, DC 20006.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-13849 Filed 5-23-83; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers: Approved Exemptions

AGENCY: Interstate Commerce Commission.

ACTION: Notices of Approved Exemptions.

SUMMARY: The motor carriers shown below have been granted exemptions pursuant to 49 U.S.C. 11343(e), and the Commission's regulations in Ex Parte No. 400 (Sub-No. 1), *Procedures for Handling Exemptions Filed by Motor Carriers of Property Under 49 U.S.C. 1343*, 367 I.C.C. 113 (1982), 47 FR 53303 (November 24, 1982).

DATES: The exemptions will be effective on June 24, 1983. Petitions for reconsideration must be filed by June 13, 1983. Petitions for stay must be filed by June 3, 1983.

FOR FURTHER INFORMATION CONTACT: Warren C. Wood, (202) 275–7977.

SUPPLEMENTARY INFORMATION: For further information, see the decision(s) served in the proceeding(s) listed below. To purchase a copy of the full decision contact: TS Infosystems, Inc., Room 2227, 12th and Constitution Ave., NW., Washington, D.C. 20423; or call (202) 289–4357 in the DC metropolitan area; or (800) 424–5403 Toll-free outside the DC area.

Decided: May 12, 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 participate.

Agatha L. Mergenovich,

Secretary.

Rowley Interstate Transportation Company, Inc.—Purchase (Portion) Exemption—Sawyer Transport, Inc. (Nathan Yorke, Trustee-in-Bankruptcy)

[No. MC–F–15138]

ADDRESSES: Send pleadings to: (1) Motor Section, Room 2139, Interstate Commerce Commission, Washington, DC 20423; and (2) Petitioner's representative: Carl L. Steiner, 135 South LaSalle St., Chicago, IL 60603.

Pleadings should refer to No. MC–F–15138.

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 Rowley Interstate Transportation Company, Inc. of a portion of the operating rights of Sawyer Transport, Inc. i.e., Certificate No. MC–123407 (paragraph 3) and Certificate No. MC–123407 Sub-Nos. 661, 662, 669, 673, 668X (paragraph 11a, 11b, 14, 18a, 18b, 21, 37, 39a, 39b, 39c, 41, 49, 58, 66, 71, 74a, 74b, 76, 91, 94, 96a, 96b, 96c, 96d, 100, 104, 108, 112, 115, 117a, 117b, 119a, 119b, 121a, 121b, 125, 127, 133, 140a, 140b, 146, 150a, 150b, 156, 170, 173a, 173b, 178a, 178b, 183, 186, 191, 201, 209, 226, 228a, 228b, 232, 235, 242, 247, 249a, 249b, 253a, 253b, 253c, 256a, 256b, 256c, 260, 264, 271, 273, 279, 282a, 282b, 287a, 287b, 287c, 290, 297a, 297b, 297c, 304a, 304b, 304c, 304d, 304e, 304f, 307, 309, 317, 321a, 321b, 321c, 322, 323, 330, 332, 3, 31, 52, 55, 61, 110, 145, 162, 185, 212, 251, 281, 283a, 283b, 286, 12a, 12b, 280, 23, 47, 67a, 67b, 134, 153, 163, 268 and 213), 24, 26, 36, 45, 48, 54, 70, 75, 76, 80, 101, 117, 130, 135, 141, 142, 146, 180, 183, 185, 186, 188, 201, 208, 218, 227, 232, 241, 243, 245, 247, 251, 256, 264, 265, 274, 283, 288, 298, 313, 334, 337, 338, 347, 349, 366, 372, 382, 400, 418, 442, 444, 446, 451, 457, 468, 475, 478, 482, 486, 488, 490, 493, 501, 515, 517, 534, 538, 539, 547, 550, 551, 544, 576, 601F, 604F, 605F, 612F, 616F, 630F, 634F, 635F, 636F, 639F, 642F, 650F, 653F, 65, 105, 110, 122, 220, 287, 325, 371, 424, 480, 536, 540, 543, 546, 29, 535, 56, 95, 131, 132, 275, 305, 326, 508, and 425.

authorizing generally the irregular-route motor common carrier transportation of metal products between points in specified counties, on the one hand, and, on the other, points in the United States.

[FR Doc. 83-13844 Filed 5-23-83; 8:45 am]

BILLING CODE 7035-01-M

[No. 39156 et al.[1]]

Motor Carriers; McDaniel Hauling, Inc.—Petition for Exemption From Tariff Filing Requirements

AGENCY: Interstate Commerce Commission.

ACTION: Notice of provisional exemption.

SUMMARY: The four motor contract carriers named in the footnote below have individually requested exemption from the requirements of 49 U.S.C. 10702, 10761, and 10762. The sought relief is provisionally granted for future as well as existing contracts.

DATES: Comments are due on June 8, 1983. The sought relief will become final 15 days after the close of the comment period unless, in response to timely filed adverse comments, the Commission issues a further decision withdrawing the relief.

ADDRESS: Send an original and 15 copies of comments to: Room 2139, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: Paul W. Schach (202) 275–7885 or Howell I. Sporn (202) 275–7691.

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, D.C. 20423, or call 289–4357 in the D.C. metropolitan area or toll free (800) 424–5403.

Decided: May 16, 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 participate.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-13976 Filed 5-23-83; 8:45 am]

BILLING CODE 7035-01-M

[1] This proceeding embraces No. 39156, McDaniel Hauling, Inc., No. 39157, James B. Degen, No. 39159, Trident Truck Line, Inc., and No. 39160, J. C. Vaughn.

[No. 38999]

Rail Carriers; Conticarriers and Terminals, Division of Continental Grain Co.—Petition for Exemption From Tariff Filing Requirements

AGENCY: Interstate Commerce Commission.

ACTION: Notice of final exemption of existing operations and provisional exemption of future operations.

SUMMARY: The provisional exemption of petitioner's existing operations granted at 48 FR 6902 (February 16, 1983) is made final. Additionally, in accordance with current Commission policy, a provisional exemption of petitioner's future contracts is granted.

DATE: Comments are due on June 8, 1983. The provisional exemption of petitioner's future contracts will become final 15 days after the close of the comment period, unless in response to timely filed adverse comments, the Commission issues a future decision withdrawing this relief.

ADDRESS: Send an original and 15 copies of comments to: No. 38999, Room 2139, Interstate Commerce Commission, Office of Proceedings, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Robin Williams, (202) 275–7697 or Howell I. Sporn, (202) 275–7691

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, 12th and Constitution Ave., NW., Washington, D.C. 20423, or call 289–4357 in the DC metropolitan area or toll free (800) 424–5403.

Decided: May 13, 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. 83-13845 Filed 5-23-83; 8:45 am]

BILLING CODE 7035-01-M

[No. 38959 et al.][1]

Rail Carriers; Johnsrud Transport, Inc.—Petition For Exemption From Tariff Filing Requirements

AGENCY: Interstate Commerce Commission.

ACTION: Notice of final exemption of existing operations and provisional exemption of future operations.

SUMMARY: The provisional exemption of petitioners' existing operations granted at 48 FR 2226 (January 18, 1983) is made final. Additionally, in accordance with current Commission policy, a provisional exemption of petitioners' future contracts is granted.

DATE: Comments are due on June 8, 1983. The provisional exemption of petitioners' future contracts will become final 15 days after the close of the comment period, unless in response to timely filed adverse comments, the Commission issues a further decision withdrawing this relief.

ADDRESS: Send an original and 15 copies of comments to: No. 38959 et al., Room 2139, Interstate Commerce Commission, Office of Proceedings, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Robin Williams (202) 275–7697 or Howell I. Sporn (202) 275–7691.

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, 12th and Constitution Ave., NW., Washington, D.C. 20423, or call 289–4357 in the DC metropolitan area or toll free (800) 424–5403.

Decided: May 13, 1983.

By the Commission, Division 1, Commissioners Andre, Sterrett, and Gradison.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-13846 Filed 5-23-83; 8:45 am]

BILLING CODE 7035-01-M

[1] This proceeding embraces seven petitions for exemption filed by motor contract carriers: No. 38959, Johnsrud Transport, Inc.; No. 38960, Case Heavy Hauling, Inc.; No. 38962, RBC Transportation, Inc.; No. 38963, Oneida-Columbus Express Company; No. 38964, Wegman's Express, Inc.; No. 38978, Harco Trucking Corporation; and No. 38979, Clearfield Transportation Company, Inc.

[Finance Docket No. 30170]

Rail Carriers; Somerset Railroad Corporation—Exemption From 49 U.S.C. 10746

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10505, the Interstate Commerce Commission exempts Somerset Railroad Corporation from the provisions of 49 U.S.C. 10746 for the operation of 15.5 miles of track in New York.

DATES: This exemption shall be effective on June 23, 1983. Petitions for reconsideration of this action must be filed by June 3, 1983 and petitions for stay must be filed by June 13, 1983.

ADDRESS: Send pleadings to: Rail Section, Room 5349, Interstate Commerce Commission, Washington, DC 20423. Petitioner's representative: Allen E. Kintigh, President, Somerset Railroad Corporation, c/o New York State Electric & Gas Corporation, 4500 Vestal Parkway East, Binghamton, NY 13902.

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 17, 1983.

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

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-13843 Filed 5-23-83; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 387 (Sub-932)]

Rail Carriers; Pittsburgh and Lake Erie Railroad Co.; Exemption for Contract Tariff; ICC-PLE-C-0107 (Bituminous Steam Coal)

AGENCY: Interstate Commerce Commission.

ACTION: Notice of provisional exemption.

SUMMARY: A provisional exemption is granted under 49 U.S.C. 10505 from the notice requirements of 49 U.S.C. 10713(e), and the above-noted contract tariff may become effective on one day's notice.[1] This exemption may be revoked if protests are filed.

DATES: Protests are due within 15 days of publication in the **Federal Register.**

ADDRESS: An original and 6 copies should be mailed to: Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Douglas Galloway, (202) 275-7278.

SUPPLEMENTARY INFORMATION: The 30-day notice requirement is not necessary in this instance to carry out the transportation policy of 49 U.S.C. 10101a or to protect shippers from abuse of market power, moreover, the transaction is of limited scope. Therefore, we find that the exemption request meets the requirements of 49 U.S.C. 10505(a) and is granted subject to the following conditions:

This grant neither shall be construed to mean that the Commission has approved the contract for purposes of 49 U.S.C. 10713(e) nor that the Commission is deprived of jurisdiction to institute a proceeding on its own initiative or on complaint, to review this contract and to determine its lawfulness.

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

(49 U.S.C. 10505)

Decided: May 16, 1983.

By the Commission, Review Board Number 2. Members Carleton, Williams, and Ewing.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-13735 Filed 5-23-83; 8:45 am]

BILLING CODE 7035-01-M

[1] Note tariff supplements advancing contract's effective date shall refer to this decision for authority.

DEPARTMENT OF JUSTICE

Agency Forms Under Review

May 20, 1983.

OMB has been sent for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. The list has all the entries grouped into new forms, revisions, or extensions. Each entry contains the following information:

(1) The name and telephone number of the Agency Clearance Officer (from whom a copy of the form and supporting documents is available); (2) The office of the agency issuing this form; (3) The title of the form; (4) The agency form number, if applicable; (5) How often the form must be filled out; (6) who will be required or asked to report; (7) An estimate of the number of responses; (8) An estimate of the total number of hours needed to fill out the form; (9) An indication of whether Section 3504(H) of Pub. L. 96-511 applies; (10) The name and telephone number of the person or office responsible for OMB review.

Copies of the proposed forms and supporting documents may be obtained from the Agency Clearance Officer whose name and telephone number appear under the agency name. Comments and questions about the items on this list should be directed to the reviewer listed at the end of each entry and to the Agency Clearance Officer. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the reviewer and the Agency Clearance Officer of your intent as early as possible.

Agency Clearance Officer Larry E. Miesse—202-633-4312.

New

Bureau of Justice Statistics.

Department of Justice.

D.C. Crime Victimization Survey.

On occasion.

Individuals or households.

To measure the nature and extent of criminal victimization among residents of the District of Columbia, adjacent counties, and employees of congressional agencies on Capitol Hill. The survey is mandated by the Congress: 8,545 respondents; 4,614 hours; not applicable under 3504(h).

David Reed—395-7231.

Larry E. Miesse,

Department Clearance Officer, Systems Policy Staff, Office of Information Technology, Justice Management Division, Department of Justice.

[FR Doc. 83-13891 Filed 5-23-83; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of Pension and Welfare Benefit Programs

Cincinnati Bell Inc. Pension Plan and Trust et al.; Grant of Individual Exemptions

AGENCY: Office of Pension and Welfare Benefit Programs, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the

notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Cincinnati Bell Inc. Pension Plans Trust Located in Cincinnati, Ohio

[Prohibited Transaction Exemption 83–88; Exemption Application No. D–3403]

Exemption

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) shall not apply to:

A. Effective January 1, 1975, the past extensions of credit by the Cincinnati Bell Inc. Pension Plan, and the Cincinnati Bell Inc. Management Pension Plan (the Plans) as a result of the Plans' acquisition of debt obligations of American Telephone and Telegraph Company (AT&T) and its subsidiaries, provided that the transactions have complied with the provisions of section 408(e) of the Act, as if the securities were deemed to be qualifying employer securities as defined in the Act; and

B. Effective this date, the purchases by the Plans of debt and/or equity securities issued by AT&T or any subsidiary as would be permitted under section 408(e) of the Act if AT&T and its subsidiaries were considered to be affiliates of Cincinnati Bell Inc. (the Employer), provided that the Plans' assets involved in such transactions are subject to the investment discretion and control of a fiduciary who is independent of both AT&T and the Employer.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on March 15, 1983, at 48 FR 10953.

For Further Information Contact: Mr. David Stander of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

[Prohibited Transaction Exemption 83–89; Exemption Application No. D–3748]

Joseph M. Wiesenbaugh, Jr., D.D.S. & Associates, P.A. Pension Plan (the Plan) Located in Hagerstown, Maryland

Exemption

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to the past and future borrowing by the Plan of the maximum loan values of life insurance policies held by the Plan on the lives of Plan participants, provided that the terms and conditions of such loans are at least as favorable to the Plan as those it could obtain from an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 1, 1983, at 48 FR 14078.

Effective Date: This exemption is effective August 3, 1982.

For Further Information Contact: Mrs. Miriam Freund, of the Department, telephone (202) 523–8971. (This is not a toll-free number.)

[Prohibited Transaction Exemption 83–90; Exemption Application No. D–3763]

Emjay Corporation Master Profit Sharing Trust and Plan as Adopted by the Warner S. Bump Medical Group, S.C. Profit Sharing Plan and Trust (the Plan) Located in Rhinelander, Wisconsin

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed loan of funds by the Plan to Warner S. Bump Medical Group, S.C., and the Warner S. Bump Medical Building, parties in interest with respect to the Plan, provided that the terms and conditions of the loans are not less favorable to the Plan than those obtainable in similar transactions with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on March 11, 1983, at 48 FR 10498.

For Further Information Contact: Mr. David Stander of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

[Prohibited Transaction Exemption 83–91; Exemption Application No. D–3946]

The Dupps Company Profit Sharing Plan Located in Germantown, Ohio

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed loan of $500,000 by the Plan to Dupps Company, provided that the terms of the transactions are not less favorable to the Plan than those obtainable in an arm's length transaction with an unrelated party at the time of consummation of the transaction.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 1, 1983, at 48 FR 14082.

For Further Information Contact: Alan H. Levitas of the Department, telephone (202) 523–8971. (This is not a toll-free number.)

[Prohibited Transaction Exemption 83–92; Exemption Application No. D–4127]

T. C. Consultant Pension Trust (the Plan) Located in West Orange, New Jersey

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply, effective September 30, 1982, to the contribution to the Plan of 734 shares of American Telephone & Telegraph Company common stock (the Stock) by Theodore Cohn Consultant, Inc. (the Employer), the sponsor of the Plan, provided that the stock was valued at its fair market value as of the date it was contributed to the Plan.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of

proposed exemption published on April 1, 1983, at 48 FR 14085.

Effective Date: This exemption is effective September 30, 1982.

For Further Information Contact: Mr. David Stander of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; not does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 17th day of May, 1983.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 83-13836 Filed 5-23-83; 8:45 am]

BILLING CODE 4510-29-M

Office of the Secretary

[Order 7-83]

Delegation of Authority and Assignment of Responsibilities for Architectural Accessibility in Department of Labor Structures

May 9, 1983.

1. *Purpose.* To delegate authority and assign responsibilities for carrying out Department of Labor (DOL) policies, programs and activities under the Architectural Barriers Act of 1968, as amended, and Section 502 of the Rehabilitation Act of 1973, as amended.

2. *Policy.* It is the policy of DOL to promote accessibility of structures, buildings, and facilities to physically handicapped individuals, and to ensure that buildings controlled by DOL or constructed, leased or acquired with DOL financial assistance fully comply with statutory and regulatory provisions which required the elimination of architectrural, transportation, and communication barriers in covered structures.

3. *Background.* Pursuant to the Acts above, DOL if required to ensure that certain buildings and facilities under its control or funded subject to its standards are accessible to handicapped persons. Through a Memorandum of Agreement (a copy of said memorandum is attached), the Architectural and Transportation Barriers Compliance Board (A&TBCB) permits DOL to institute its own system of compliance which meet the general features and objectives set forth by the A&TBCB as well as the needs of individual agencies. This delegation assigns responsibilities for development and implementation of such a compliance system in DOL.

4. *Delegation of Authority and Assignment of Responsibilities*

a. *The Assistant Secretary for Administration and Management* is hereby delegated authority and assigned responsibilities for:

(1) developing policy, setting standards, and coordinating investigative and enforcement activities of other component offices and administrations of the Department of Labor pursuant to the Acts referred to in Paragraph 1, above, and the Memorandum of Agreement between A&TBCB and DOL.

(2) monitoring, investigating, and enforcing the provisions of the Acts mentioned in Paragraph 1, above, with respect to DOL buildings and facilities, and facilities financed in whole or part by grants or loans which are subject to standards for design, construction or alteration issued by the Department of Labor under the laws authorizing such grants or loans, except for those facilities referred to in Paragraph 4b, below.

b. *The Assistant Secretary for Employment and Training Administration (ETA)* is hereby delegated authority and assigned responsibility, in accordance with the policies and standards established by the Assistant Secretary for Administration and Management, for monitoring, investigating and enforcing the laws referred to in Paragraph 1 above, with respect to buildings and facilities financed in whole or in part by ETA grants or loans and which are subject to standards for design, construction or alteration issued by ETA under the laws authorizing such grant or loan.

c. *DOL Agency Heads* are required to adhere to the policies, standards, and directives established by the Assistant Secretary for Administration and Management in accordance with Paragraph 4a, above.

d. *The Solicitor of Labor* shall have responsibility for providing legal advice and assistance to and representing DOL officials in legal proceedings, as appropriate, with regard to the administration of the Acts referred to in Paragraph 1 above.

5. *Redelegation of Authority.* The authority and responsibility delegated in this Order to the departmental officials identified above may be redelegated.

6. *Effective Date.* This Order is effective immediately.

Raymond J. Donovan,

Secretary of Labor.

Memorandum of Agreement Between the Architectural and Transportation Barriers Compliance Board and the Department of Labor

Whereas the Architectural and Transportation Barriers Compliance Board (ATBCB) is charged with ensuring compliance by the Department of Labor (DOL) in the elimination of architectural, transportation, and communication barriers to physically handicapped persons in structures for which DOL is responsible under the Architectural Barriers Act of 1968, as amended, and section 502 of the Rehabilitation Act of 1973, as amended, in accordance with standards issued pursuant to these Acts and with minimum guidelines determined and issued by the ATBCB; and *Whereas* the DOL seeks to assure continued progress in making these buildings, for which it is responsible, accessible to physically handicapped persons; and *Whereas* the Parties wish

to fully cooperate in achieving these mutual goals;

It is hereby agreed by the Executive Director of the ATBCB and the Secretary of Labor on behalf of the DOL that

(a) The Department of Labor shall:

(1) institute a clearly defined Department-wide system of compliance which meets the general features and objectives as set forth by the ATBCB in the ATBCB Guidance Manual, Federal Agency System Self-Compliance With Accessibility Standards, as well as the needs of the individual agencies;

(2) with regard to covered structures constructed, leased or acquired by recipients of DOL financial assistance, require from each recipient a clear commitment to prevent or eliminate phusical barriers in covered structures in accordance with minimum guidelines of the ATBCB and standards of the General Services Administration;

(3) monitor progress in preventing or removing barriers in covered structures occupied by the Department of Labor or constructed, leased or acquired with DOL financial assistance;

(4) develop a system of tracking and resolving complaints which adheres to the standards and timetables set forth in ATBCB regulations;

(5) require each agency to inventory its covered structures and to obtain information necessary to maintain proper compliance;

(6) survey and inspect selected facilities, by appropriate sampling, to evaluate progress in achieving accessibility to the extent permitted by available resources;

(7) adhere to the bases for waivers and modifications and to the procedures for initiating and resolving waiver applications, as set forth in the statutes and ATBCB regulations and interpretations;

(8) maintain an effective system of communication and information exchange among the separate agencies, and recipients and with the ATBCB to ensure uniformity and effectiveness of the enforcement program (such information exchange shall include but shall not be limited to standards, coverage, waiver policy, and complaint procedure); and

(9) coordinate these activities and recommend periodically whatever changes may be needed;

(b) The Executive Director shall:

(1) refrain from initiating any enforcement proceedings against DOL for alleged noncompliance in relation to any building or facility if the Executive Director has approved a detailed plan for removal of the barriers from that building or facility, and he or she is satisfied that reasonable progress is being made in accordance with the detailed plan. Reasonable progress in a specific case shall be evaluated by comparing the time elapsed since the plan was submitted in relationship to the undone portion of the construction. The Executive Director shall not withhold approval of a plan if he or she determines that:

(a) The plan meets the current applicable Federal accessibility standard and

(b) actual construction for barrier removal is scheduled to start within 3 months after the presentation of the plan to him or her.

(2) provide the DOL and its covered recipients with whatever technical assistance and information are found necessary to meet their compliance obligations;

(3) maintain full cooperation with the DOL in resolving differences in interpretation of ATBCB regulations and guidelines where the DOL has requested clarification or change;

(4) affirm that this Agreement is entered into in order to acknowledge the DOL's program and policies of providing increased accessibility to buildings and facilities; and

(5) provide assistance in developing a training program for DOL staff in operating DOL's self-compliance system.

Both parties state that this Agreement shall be in effect for an indefinite period of time, and may be modified by the mutual consent of both or terminated by either party upon thirty (30) days advance written notice to the other party.

Dated: March 15, 1983.

Approved:

Robert M. Johnson,

Executive Director, Architectural and Transportation Barriers Compliance Board.

Dated: May 9, 1983.

Raymond J. Donovan,

Secretary of Labor.

[FR Doc. 83-13931 Filed 5-23-83; 8:45 am]

BILLING CODE 4510-23-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (83-45)]

NASA Advisory Council, Space Systems and Technology Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Systems and Technology Advisory Committee, Informal Advisory Subcommittee on Space Systems.

DATE AND TIME: June 8, 1983, 9 a.m. to 5 p.m.; June 9, 1983, 9 a.m. to 4 p.m.

ADDRESS: National Aeronautics and Space Administration, Langley Research Center, Building 1219, Room 225, Hampton, Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. Stanley R. Sadin, National Aeronautics and Space Administration, Code RS-5, Washington, DC 20546 (202/755-8557).

SUPPLEMENTARY INFORMATION: This Informal Advisory Subcommittee was formed to make a technical review of the Office of Aeronautics and Space Technology (OAST) Space Systems Technology Program. The Subcommittee, chaired by Mr. Adrain O'Neal, is comprised of 7 members. The meeting will be open to the public up to the seating capacity of the room (approximately 20 persons, including the Subcommittee members and participants).

TYPE OF MEETING: Open

AGENDA:

June 8, 1983

9 a.m.—Review and Comments on the NASA/OAST Long Range Plan and the FY 1985 Plan.

2 p.m.—Review and Comments on OAST High Priority Technology Goals.

5 p.m.—Adjourn.

June 9, 1983

9 a.m.—Critique of Landmark Mission Sets for Planning.

1 p.m.—Summary, Conclusions and Draft Minutes of Meeting.

4 p.m.—Adjourn.

Ann P. Bradley,

Acting Associate Administrator for Management Office of Management.

May 16, 1983.

[FR Doc. 83-13831 Filed 5-23-83; 8:45 am]

BILLING CODE 7510-01-M

[Notice (83-46)]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Informal Task

Force for the Study of the Mission of NASA.

DATE AND TIME: June 9, 1983, 9 a.m. to 4 p.m.

ADDRESS: NASA Headquarters, Room 6004, 400 Maryland Avenue SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Nathaniel B. Cohen, Code LB-4, National Aeronautics and Space Administration, Washington, DC 20546 (202/755-8383).

SUPPLEMENTARY INFORMATION: The NASA Advisory Council Informal Task Force for the Study of the Mission of NASA was established under the NASA Advisory Council to conduct a study of the directions NASA should take in the future (including goals, programmatic objectives, and possible missions) and to report its findings and recommendations to the Council. The Task Force is chaired by Dr. George E. Solomon, and has a total of 14 members.

Visitors will be admitted to the meeting room up to its capacity, which is approximately 60 persons including Task Force members and other participants. Visitors will be requested to sign a visitor's register.

TYPE OF MEETING: Open.

AGENDA:

June 9, 1983
9 a.m.—Introduction.
9:30 a.m.—Status reports by subgroups.
11 a.m.—Task Force Working Session.
4 p.m.—Adjourn.
Dated: May 16, 1983.

Richard L. Daniels,

Director, Management Support Office, Office of Management.

[FR Doc. 83-13832 Filed 5-23-83; 8:45 am]

BILLING CODE 7510-01-M

[Notice (83-47)]

NASA Advisory Council, Space Systems and Technology Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Systems and Technology Advisory Committee, Informal Advisory Subcommittee on Chemical Propulsion Technology.

DATE AND TIME: June 9-10, 1983, 8:30 a.m. to 5:30 p.m. each day.

ADDRESS: National Aeronautics and Space Administration, Lewis Research Center, Administration Building, Room 225, 21000 Brookpark Road, Cleveland, Ohio.

FOR FURTHER INFORMATION CONTACT: Mr. Edward A. Gabris, National Aeronautics and Space Administration, Code RST, Washington, DC 20546 (202/755-2490).

SUPPLEMENTARY INFORMATION: The Informal Advisory Subcommittee on Chemical Propulsion Technology was established to provide guidance and direction to the Chemical Propulsion research and technology programs of NASA's Office of Aeronautics and Space Technology. The Subcommittee, chaired by Dr. Sanders Rosenberg, is comprised of six members. The meeting will be open to the public up to the seating capacity of the room (approximately 30 persons, including the Subcommittee members and participants).

TYPE OF MEETING: Open.

AGENDA:

June 9, 1983
8:30 a.m.—Welcome.
Chairperson's Remarks
Presentation of Agenda.
9:30 a.m.—Orbit Transfer Vehicle Propulsion Program—Propulsion Test-bed New Initiatives.
3:30 p.m.—Space Long-Range Plan—High Priority Technology Goals.
4:00 p.m.—Landmark Missions for Chemical Propulsion.
4:30 p.m.—Subcommittee Discusion of "Center of Excellence" Criteria.
5:30 p.m.—Adjourn.
June 10, 1983
8:30 a.m.—Lewis Research Center—A Center of Excellence in Advance Liquid Chemical Propulsion.
5:30 p.m.—Adjourn.
Dated: May 16, 1983.

Ann P. Bradley,

Acting Associate Administrator for Management, Office of Management.

[FR Doc. 83-13833 Filed 5-23-83; 8:45 am]

BILLING CODE 7510-01-M

[Notice (83-48)]

NASA Advisory Council, Aeronautics Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee, Informal Advisory Subcommittee on General Aviation Technology.

DATE AND TIME: June 15, 1983, 8:30 a.m. to 5 p.m., June 16, 1983, 8:30 a.m. to 5 p.m., June 17, 1983, 8:30 a.m. to 12 noon.

ADDRESS: National Aeronautics and Space Administration, Lewis Research Center, Building 3, Room 215, Cleveland, OH.

FOR FURTHER INFORMATION CONTACT: Mr. Harry W. Johnson, National Aeronautics and Space Administration, Code RJ-2, Washington, D.C. 20546, (202/755-3228).

SUPPLEMENTARY INFORMATION: The Informal Advisory Subcommittee on General Aviation Technology was established to assist the NASA in assessing the adequacy of its aeronautics research and technology program to meet the specific needs of general aviation, including commuter transport aircraft, and to recommend any modifications or augmentations of current and planned activities deemed necessary to increase their value and effectiveness in achieving program objectives. These objectives include advanced technology for increased safety, energy efficiency, utility, environmental compatibility, and economic usefulness. The program is multidisciplinary in scope, encompassing aerodynamics and flight dynamics, propulsion, materials and structures, avionics, controls and human factors. The Subcommittee, chaired by Mr. John W. Olcott, is comprised of eight members. The meeting will be open to the public up to the seating capacity of the room (approximately 50 persons including Subcommittee members and participants).

Type of meeting: Open.

Agenda

June 15, 1983

8:30 a.m.—Opening Remarks and Reports by Chairperson and Executive Secretary.
9 a.m.—Research Center Aeronautics Program Status Reports: NASA Langley Research Center, NASA Lewis Research Center, NASA Ames Research Center.
5 p.m.—Adjourn.

June 16, 1983

8:30 a.m.—Research Center Program Reports Concluded.
10 a.m.—Overview: Long Range Plan and Proposed New Initiatives.
11 a.m.—General Aviation Safety Panel Report and Discussion.
1 p.m.—NASA Lewis Research Center Facilities Tour.
3 p.m.—Discussion of Issues Regarding General Aviation and Commuter Aircraft Technology.
5 p.m.—Adjourn.

June 17, 1983

8:30 a.m.—Discussion of Issues Concluded.

9:30 a.m.—Evaluation of NASA Program by Subcommittee.

10:30 a.m.—Subcommittee Conclusions and Recommendations.

12 Noon—Adjourn.

Dated: May 18, 1983.

Richard L. Daniels,

Director, Management Support Office, Office of Management.

[FR Doc. 83-13834 Filed 5-23-83; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Inter-Arts Advisory Panel; 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 Inter-Arts Advisory Panel (Folk Arts Section) to the National Council on the Arts will be held on June 9-11, 1983, from 9:00 a.m.-5:30 p.m. in Room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, D.C.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. 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) 682-5433.

Dated: May 18, 1983.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 83-13864 Filed 5-23-83; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on Advanced Reactors; Meeting

The ACRS Subcommittee on Advance Reactors will hold a meeting on June 7, 1983, Room 1167, 1717 H Street, NW, Washington, D.C. The Subcommittee will review NRC Research Programs in Advanced Reactors for the ACRS Report to the Commission on the FY 1985-1986 research budget.

In accordance with the procedures outlined in the **Federal Register** on October 1, 1982 (47 FR 43474), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance except for those sessions during which the Subcommittee finds it necessary to discuss such proprietary information. One or more closed sessions may be necessary to discuss information. (Sunshine Act Exemption 4). To the extent practicable, these closed sessions will be held so as to minimize inconvenience to members of the public in attendance.

The agenda for subject meeting shall be as follows: *Tuesday, June 7, 1983—1:00 p.m. until the conclusion of business.*

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding the topics to be discussed.

The Subcommittee will than hear presentations by and hold discussions with representatives of the NRC Staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Mr. Paul Boehnert (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m., EDT.

I have determined, in accordance with Subsection 10(d) of the Federal Advisory Committee Act, that it may be necessary to close portions of this meeting to public attendance to protect proprietary information. The authority for such closure is Exemption (4) to the Sunshine Act, 5 U.S.C. 552b(c)(4).

Dated: May 17, 1983.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 83-13918 Filed 5-23-83; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Qualification Program for Safety-Related Equipment; Meeting

The ACRS Subcommittee on Qualification Program for Safety-Related Equipment will hold a meeting on June 7, 1983, Room 1046, 1717 H Street, NW., Washington, DC. The Subcommittee wil discuss the portion of the NRC Safety Research Budget related to equipment qualification and plant aging.

In accordance with the procedures outlined in the **Federal Register** on October 1, 1982 (47 FR 43474), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance except for those sessions which will be closed to protect proprietary information (Sunshine Act Exemption 4). One or more closed sessions may be necessary to discuss such information. To the extent practicable, these closed sessions will be held so as to minimize inconvenience to members of the public in attendance.

The agenda for subject meeting shall be as follows: *Tuesday, June 7, 1983—8:30 a.m. until the conclusion of business.*

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements

and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Mr. Anthony Cappucci (telephone 202/634–3267) between 8:15 a.m. and 5:00 p.m., EDT.

I have determined, in accordance with Subsection 10(d) of the Federal Advisory Committee Act, that it may be necessary to close portions of this meeting to public attendance to protect proprietary information. The authority for such closure is Exemption (4) to the Sunshine Act, 5 U.S.C. 552b(c)(4).

Dated: May 17, 1983.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 83-13919 Filed 5-23-83; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Regulatory Policy and Procedures; Meeting

The ACRS Subcommittee on Regulatory Policy and Procedures will hold a meeting on June 8, 1983, Room 1167, 1717 H Street, NW, Washington, DC. The Subcommittee will review the matter of the current status of regulatory reform, particularly regarding backfitting requirements.

In accordance with the procedures outlined in the **Federal Register** on October 1, 1982 (47 FR 43474), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only be members of the Subcommittee and its Staff. Persons desiring to make oral statemens should notify the cognizant Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance.

The agenda for subject meeting will be as follows: *Wednesday, June 8, 1983—8:30 a.m. until 12:30 p.m.*

During the initial portion of the meeting, the Subcommittee members may exchange preliminary views regarding matters to be considered during the balance of the meeting. The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff and others regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Mr. Marvin C. Gaske (telephone 202/634–3265) between 8:15 a.m. and 5:00 p.m. edt.

Dated: May 19, 1983.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 83-13920 Filed 5-23-83; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Safety Research Program; Meeting

The ACRS Subcommittee on the Safety Research Program will hold a meeting on June 8, 1983, Room 1046, at 1717 H Street, NW, Washington, DC. The Subcommittee will continue its discussion on the NRC Safety Research Program and Budget for fiscal years 1985 and 1986; it will discuss also a draft ACRS report to the Commission on the related matter. Notice of this meeting was published April 27, 1983.

In accordance with the procedures outlined in the **Federal Register** on October 1, 1982 (47 FR 43474), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows: *Wednesday, June 8, 1983—8:30 a.m. until the conclusion of business.*

During the meeting, the Subcommittee will hear presentations from and hold discussions with the representatives of the Office of Nuclear Regulator Research and research user offices of the NRC with regard to the proposed NRC Safety Research Program and Budget for fiscal years 1985 and 1986. It will discuss also a draft ACRS report to the Commission on the related matter.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Mr. Sam Duraiswamy (telephone 202/634–3267) between 8:15 a.m. and 5:00 p.m., EDT.

Dated: May 17, 1983.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 83-13921 Filed 5-23-83; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Cincinnati Stock Exchange; Application for Unlisted Trading Privileges and of Opportunity for Hearing

May 17, 1983.

In the matter of application of the, Cincinnati Stock Exchange; for unlisted Trading Privileges in Certain Securities; Securities Exchange Act of 1934.

The above named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the common stock of:

Gulf United Corporation Common Stock, $1 Par Value (File No. 7–6652)

This security is listed and registered on one or more other national securities exchange and is reported on the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 8, 1983 written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commision will approve the application if it finds, based upon all the information available to it, that the extension of unlised trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-13855 Filed 5-23-83; 8:45 am]

BILLING CODE 8010-01-M

Philadelphia Stock Exchange, Inc.; Application for Unlisted Trading Privileges and of Opportunity for Hearing

May 17, 1983.

In the matter of application of the Philadelphia Stock Exchange, Inc.; for Unlisted Trading Privileges in Certain Securities; Securities Exchange Act of 1934.

The above named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the common stock of:

Cincinnati Milacron Inc.
Common Stock, $5 Par Value (File No. 7-6651)

This security is listed and registered on one or more other national securities exchange and is reported on the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 8, 1983 written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extension of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-13854 Filed 5-23-83; 8:45 am]

BILLING CODE 8010-01-M

[811-2785; Rel. No. 13248]

Adams Fiduciary Bond Fund; Filing of Application

May 17, 1983.

Notice is hereby given that Adams Fiduciary Bond Fund ("Applicant"), 55 Court Street, Boston, Mass. 02108, registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified management investment company, filed an application on March 25, 1983, for an order of the Commission, pursuant to Section 8(f) of the Act and Rule 8f-1 thereunder, declaring that Applicant has ceased to be an investment company as defined by the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant represents that it was organized under the laws of Massachusetts on October 20, 1977. Applicant states that it filed its Form N-8A on October 20, 1977, and its Form 8B-1 on December 13, 1977. According to the application, as of February 25, 1983, Applicant had 191,913.059 shares of beneficial interest outstanding. Such shares were the single class of Applicant's shares outstanding and had a $47.78 net asset value per share. The application indicates that, as of February 25, 1983, Applicant's aggregate net asset value was $9,169,949.

Applicant represents that its Board of Trustees called a special meeting of Applicant's shareholders held on February 11, 1983, for the purpose of considering and acting on a proposal to adopt a plan of liquidation (the "Plan"). Applicant represents further that the Plan provides for the sale of Applicant's assets and (after provision for the payment of all outstanding obligations, taxes and other liabilities of Applicant, accrued or contingent) the pro rata distribution of Applicant's remaining assets in cash to its shareholders. Applicant indicates that, at the special meeting, its securityholders approved the Plan by a favorable vote of 83.46 percent of the shares outstanding. Applicant states that its portfolio of investments was sold to the highest bidder on February 28, 1983.

Applicant states that, on February 28, 1983, distributions were made pro rata in complete liquidation to Applicant's securityholders, on surrender of their shares, by checks mailed to such securityholders, in the total aggregate amount of $9,169,949. Applicant states further that it had no securityholders at the time of the filing of the application. Applicant states that it is not party to any litigation or administrative proceeding and that it does not intend to engage in business activities other than those necessary for the winding-up of its affairs. Applicant states further that it filed a Certificate of Termination with the Secretary of the Commonwealth of Massachusetts on March 24, 1983.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than June 13, 1983, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for his/her request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. Persons who request a hearing will receive any notices and orders issued in this matter. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-13916 Filed 5-23-83; 8:45 am]

BILLING CODE 8010-01-M

[70-6860; Rel. No. 22942]

AEP Generating Co.; Proposed Issuance of Fixed Rate Notes by Service Company; Interest Rate Hedging Agreement

May 17, 1983.

AEP Generating Company ("AEGCo") 180 East Broad Street Columbus, Ohio 43215, an electric utility subsidiary of American Electric Power Company, Inc., a registered holding company, has filed with this Commission an application-declaration pursuant to Sections 6(a), 7, and 12 of the Public Utility Holding Company Act of 1935 ("Act") and Rules 42(b)(2), 50(b), and 50(a)(2) promulgated thereunder.

In accordance with Commission orders dated March 24, 1982, and February 16, 1983 (HCAR Nos. 22429 and 22857, respectively), AEGCo has entered into a Revolving Credit Agreement for the issuance of up to $450 million of notes through December 31, 1987. Such notes bear interest at AEGCo's option at either a fluctuating rate equal at all times to the prime rate (as defined in the Revolving Credit Agreement), or at a fixed rate per annum equal to ½ of 1% above the applicable London Interbank Offering ("LIBO") Rate until December 31, 1985, and ⅝ of 1% above the LIBO Rate thereafter through December 31, 1987.

The proceeds of AEGCo's revolving credit borrowings, $150 million as of March 31, 1983, together with other available funds, are applied to the construction cost of the Rockport Generating Station. AEGCo is acquiring a 35% undivided ownership interest as

tenant-in-common in the two-unit Rockport plant from Indiana & Michigan Electric Company, AEGCO's associate company.

AEGCo seeks authorization to issue up to $300 million principal amount of unsecured, fixed rate notes to banks from time to time through March 31, 1984, pursuant to a fixed rate term loan agreement ("Term Loan Agreement"). The proceeds of these fixed rate notes will be used to refinance borrowings at fluctuating interest rates under AEGCO's $450 million Revolving Credit Agreement or, in lieu of further borrowings under the Revolving Credit Agreement. An exception from competitive bidding pursuant to subparagraph (a)(2) of Rule 50 is requested.

The fixed rate notes will mature on a date not less than two nor more than ten years from date of issuance. No compensating balances or commitment fees will be required. Each such note will bear interest not greater than 200 basis points over the prime rate, but in no event greater than 14% per annum. The proposed agreement will provide that in the event a note is paid prior to maturity, AEGCo will be required to pay a fee to the lending bank calculated to reimburse the bank for the difference, if any, between the stated loan rate and the bank's opportunity rate calculated on the basis of Treasury obligation rates. AEGCo states that it believes that funds at a fixed rate at or near the applicable prime rate are currently available on loans having maturities of up to, but not exceeding, two years. Rates quoted to AEGCo on loans having longer maturities have generally been in the range of up to 200 basis points higher than the prime rate. AEGCo believes that it will be of long-term benefit to the company and its customers to refund a portion of its outstanding variable rate notes, in whole or in part, with the proceeds of fixed rate notes having longer maturities, even though such long-term notes may bear a fixed rate of interest higher than current short-term rates at the time of such borrowings.

AEGCo also proposes on or before March 31, 1984, to enter, through competitive bidding, into one or more hedging agreements ("interest rate swaps") with banks. The interest rate swaps would involve the contractual exchange of interest payments on up to $300 million principal amount of unsecured variable rate debt of AEGCo under its Revolving Credit Agreement. Under such contracts, AEGCo would agree to make payments of interest at a fixed rate to a bank up to a principal amount of $300 million, in return for the bank's agreement to pay interest to AEGCo on the same principal amount and bearing interest at a variable rate that is a function of the LIBO rate payable by AEGCo under the Revolving Credit Agreement. The aggregate amount of notes outstanding under the revolving credit agreement, with or without any associated interest rate swaps, or under the proposed fixed rate term loan agreement would not exceed $450 million.

Essentially, an interest rate swap would enable AEGCo and a fixed rate borrower to exchange interest payments thus permitting AEGCo to enter into fixed rate obligations despite the limited availability of fixed-rate long term funds from domestic banks and eliminates the need to issue new long-term debt obligations. Because the bank arranging the swap guarantees this stream of interest payments, each party is insulated from the credit risks of the other. Under the hedging agreement, AEGCo would agree to make fixed rate payments, not exceeding a ceiling of 14%, to a bank and the bank agrees to make fluctuating rate interest payments based on AEGCo's LIBO rate borrowings under its Revolving Credit Agreement. The fixed rate obligation would mature not later than December 31, 1987, the maturity date of AEGCo's revolving credit borrowings. Although the typical swap involves hedging a floating rate against a fixed rate Eurobond with seven years maturity, AEGCo's rate will probably be hedged against a certificate of deposit in light of the 1987 maturity date of AEGCo's revolving credit borrowings.

AEGCo also anticipates that the floating rate paid to AEGCo by the bank would not fully cover AEGCo's LIBO Rate obligations under the Revolving Credit Agreement. For example, the bank may agree to pay AEGCo the present LIBO rate and AEGCo would be required to pay any percentage over LIBO payable under the Revolving Credit Agreement. Also, any additional fees, such as a bank's swap arrangement fee, may be paid on a lump sum at commencement or be reflected in the fixed rate payment to the bank. A typical interest rate swap agreement would contain early termination, or unwind provisions, pursuant to which AEGCo may be required to make or would be entitled to receive a settlement payment in the form of liquidated damages in the event of early termination.

The application-declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by June 9, 1983, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant-declarant at the address specified above. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-13910 Filed 5-23-83; 8:45 am]

BILLING CODE 8010-01-M

[811-1960 and 811-2713; Rel. No. 13247]

Alpha Income Fund, Inc. and Alpha Tax-Exempt Bond Fund, Inc.; Filing of Applications

May 17, 1983.

Notice is hereby given that Alpha Income Fund, Inc. ("Income Fund") 2 Piedmont Center, Suite 500, Atlanta, Geogria 30363 and Alpha Tax-Exempt Bond Fund, Inc. ("Bond Fund") (together, "Applicants"), each registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified management investment company, have each filed an application on April 20, 1983, for an order of the Commission pursuant to Section 8(f) of the Act declaring that it has ceased to be an investment company, as defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the complete text of relevant provisions thereof.

Income Fund, a Maryland corporation, and Bond Fund, a Georgia corporation, filed their respective registration statements pursuant to Section 8 of the Act on October 22, 1969 and November 29, 1976. The registration statements of Income Fund and Bond Fund filed under the Securities Act of 1933 were declared effective on July 24, 1970 and January 25, 1976 respectively, and each of the Applicants commenced its initial public

offering immediately following such declaration.

Each Applicant represents that its board of directors by unanimous written consent dated March 17, 1983, following a meeting of such board on January 27, 1983, approved a sale of all its assets and liquidation. According to the applications, in the case of Income Fund such sale was to Fidelity Corporate Bond Fund, Inc., and in the case of Bond Fund it was to Fidelity Municipal Bond Fund, Inc. Each Applicant states that while its corporate existence continues in effect at present, it will file in the near future the necessary documentation to effect its dissolution.

Each Applicant states that the method of distribution to its security holders in connection with winding up its affairs pursuant to its liquidation was to credit to open accounts in the names of such securityholders on the books of the company acquiring its assets the shares of the acquiring company received by Applicant in exchange for its assets on an equivalent net asset value basis. Each such securityholder was credited with the number of shares of the acquiring company corresponding to his percentage ownership of shares of Applicant. The securityholders, according to each Applicant, were credited with such shares of the respective acquiring company on April 15, 1983.

Applicant represents that it has no debts or other outstanding liabilities, and is not a party to any litigation or administrative proceeding. Each Applicant states that within the last 18 months it has not transferred any of its assets to a separate trust, the beneficiaries of which were or are securityholders of Applicant. Finally, each Applicant states that it is not now engaged, and does not propose to engage, in any business activities other than those necessary for the winding up of its affairs.

Section 8(f) of the Act provides, in pertinent part, that whenever the Commission, upon its own motion or upon application, finds that a registered investment company has ceased to be an investment company it shall so declare by order and upon the taking effect of that order the registration of that investment company shall cease to be in effect.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than June 13, 1983, at 5:30 p.m. do so by submitting a written request setting forth the nature of his/her interest, the reasons for his/her request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. Persons who request a hearing will receive any notices and orders issued in this matter. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-13915 Filed 5-23-83; 8:45 am]

BILLING CODE 8010-01-M

[812-5460; Rel. No 13251]

The Bond Fund for Bank Trust Departments; Filing of an Application

May 17, 1983.

Notice is hereby given that The Bond Fund for Bank Trust Departments ("Applicant"), 24 Federal Street, Boston, Massachusetts 02110, registered under the investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on February 17, 1983, and an amendment thereto on April 4, 1983, for an order of the Commission, pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of Section 2(a)(41) of the Act, and Rules 2a-4 and 22c-1 thereunder to the extent necessary to permit Applicant to value its portfolio securities using the amortized cost method of valuation. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and are referred to the Act and the rules thereunder as to the provisions to which the exemption applies.

A Massachusetts business trust consisting of four series, Applicant seeks to value the portfolio securities in its Government Money Market Portfolio ("GMM") and any future money market series on the amortized cost basis. GMM will invest in U.S. Treasury bills, notes and bonds, and other obligations guaranteed by the U.S. Government, its agencies and instrumentalities. Subsequently formed money market series will make investments, including any repurchase agreements, limited to those that GMM may invest in, or other appropriate investments. To the extent that subsequently formed money market series might invest in bank instruments, Applicant represents that such money market series will not invest in the securities of any of its affiliates without obtaining prior Commission approval.

Section 6(c) of the Act permits the Commission, among other things, to grant an exemption by order upon application from any provision or provisions of the Act, or from any rule or regulation thereunder, provided such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by policy and provisions of the Act.

In support of the relief requested, Applicant submits that the amortized cost method of valuation will enable GMM to maintain he constant net asset value per share required by many investors. Applicant represents that its proposed use of a one dollar amortized cost per share would offer GMM's shareholders the convenience of being able to value their investments simply by knowing the number of shares they own. Applicant's trustees have determined in good faith that, absent unusual circumstances, the amortized cost method of valuing securities will reflect the fair value of such securities. Applicant believes that the requested relief is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant expressly agrees that the following conditions may be imposed in any order of the Commission granting the exemption requested:

1. In supervising the operations of GMM and delegating special responsibilities involving portfolio management to Applicant's investment adviser, Applicant's board of trustees undertakes—as a particular responsibility within its overall duty of care owed to its shareholders—to establish procedures reasonably designed, taking into account current market conditions and GMM's investment objectives, to stabilize GMM's net asset value per share, as computed for the purpose of distribution, redemption, and repurchase, at $1.00 per share.

2. Included among the procedures to be adopted by the board of trustees shall be the following:

(a) Review by the board of trustees, as it deems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of the current net asset value per share as

determined by using available market quotations from Applicant's amortized cost price per share, and maintenance of records of such review. To fulfill this condition, Applicant states that it intends to use actual quotations or estimates of market value reflecting current market conditions chosen by the board of trustees in the exercise of its discretion to be appropriate indicators of value, which may include, *inter alia*, (i) quotations or estimates of market value for individual portolio instruments, or (ii) values obtained from yield data relating to classes of instruments published by reputable sources.

(b) In the event such deviation from Applicant's amortized cost price per share exceeds ½ of 1%, a requirement that the board of trustees will promptly consider what action, if any, should be initiated.

(c) Where the board of trustees believes the extent of any deviation from GMM's amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, it shall take such action as it deems appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which action may include: redeeming shares in kind; selling portfolio instruments prior to maturity to realize capital gains or losses or to shorten Applicant's average portfolio maturity; withholding dividends; or utilizing a net asset value per share as determined by using available market quotations.

3. GMM will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable price per share; provided, however, that it will not (a) purchase any instrument with a remaining maturity of greater than one year, or (b) maintain a dollar-weighted average portfolio maturity which exceeds 120 days. In fulfilling this condition, Applicant undertakes that, if the disposition of a portfolio instrument results in a dollar-weighted average portfolio maturity in excess of 120 days, Applicant will invest its available cash in such a manner as to reduce such dollar-weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

4. Applicant will record, maintain, and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in condition 1 above, and Applicant will record, maintain, and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of the board of trustees' considerations and actions taken in connection with the discharge of its responsibilities, as set forth above, to be included in the minutes of the board of trustees' meetings. The documents preserve pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act as though such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

5. Applicant will limit its portfolio investments, including repurchase agreements, to those United States dollar-denominated instruments which its board of directors determines present minimal credit risks and which are of "high quality" as determined by any major rating service, or, in the case of any instruments that are not rated, of comparable quality as determined by the board of trustees.

6. Applicant will include in each quarterly report, as an attachment to Form N–1Q, a statement indicating whether any action pursuant to condition 2(c) was taken during the preceding fiscal quarter, and, if any such action was taken, Applicant will describe the nature and circumstances of such action.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than June 13, 1983, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for his/her request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. Persons who request a hearing will receive any notices and orders issued in this matter. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-13913 Filed 5-23-83; 8:45 am]

BILLING CODE 8010-01-M

[70-6869; Rel. No. 22943]

The Connecticut Light & Power Co.; Proposed Issuance and Sale at Competitive Bidding of First Mortgage Bonds and Preferred Stock With an Adjustable Dividend Rate

May 17, 1983.

The Connecticut Light and Power Company ("CL&P"), Selden Street, Berlin, Connecticut 06037, an electric utility subsidiary of Northeast Utilities, a registered holding company, has filed an application with this Commission pursuant to Section 6(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50 promulgated thereunder.

CL&P proposes to issue and sell during the time period ending March 31, 1984, in one or more issues, (1) up to $180 million principal amount of first and refunding mortgage bonds, and (2) up to 1,600,000 shares ($80 million aggregate par value) of preferred stock, $50 par value. During the same time period, CL&P may also effect other long-term or intermediate-term debt financings in the form of debenture sales in the Eurobond market or term loans coupled with an interest rate swap contract, the authorizations for which were previously granted by this Commission (HCAR No. 22715, November 17, 1982, and HCAR No. 22940, May 17, 1983). The total principal amount of first mortgage bonds to be issued would not exceed $180 million, less the amounts raised with any Eurobond issues and any term loan/interest rate swap contract.

In issuing and selling the preferred stock and the first mortgage bonds, CL&P may employ alternative competitive bidding procedures in accordance with the Commission's delayed or continuous offering and sale procedures under Rule 415 of the Securities Act of 1933 (17 CFR 230.415). Pursuant to Rule 50(a)(5) of the Act, the Commission has issued a statement of policy (HCAR No. 22623, September 2, 1982) authorizing the use of alternative competitive bidding procedrues in lieu of the procedures prescribed by Rule 50(b). CL&P has also stated, however, that market conditions may require that these securities be sold through a negotiated public offering, in which case, CL&P would seek an exception from all competitive bidding requirements.

The bonds will be issued under CL&P's Indenture of Mortgage and Deed of Trust dated May 1, 1921, as supplemented. The bonds will mature in not less than five nor more than thirty years, and the interest rate and price

(which shall be not less than 98% nor more than 100% of the principal amount thereof, exclusive of accrued interest, if any) will be determined by competitive bidding. Terms applicable to each series of bonds will include a prohibition, for a period of not more than five years, against redeeming the bonds, directly or indirectly, with funds borrowed at a lower effective interest cost than the cost of the applicable series. The terms will also provide that no more than one percent in principal amount of a series of bonds shall be redeemed with the use of a sinking fund in any twelve-month period prior to five years from date of issue of a series of bonds.

The number of shares of preferred stock to be issued and sold will be approved and authorized and the special terms thereof will be established by resolutions of CL&P's Board of Directors. CL&P proposes to issue the preferred stock with either a fixed dividend rate (which shall be a multiple of 0.08%) or an adjustable dividend rate. Dividend rates, price to CL&P (which shall not be less than $50 nor more than $51.375 per share), and the underwriters' compensation will be determined by competitive bidding. If the option of an adjustable dividend rate is chosen for any series of preferred stock, the initial dividend rate would be a fixed percentage rate to be set by CL&P. However, for all subsequent dividend payment periods the annual dividend per share would, subject to maximum (not higher than 15 percent per annum) and minimum (not lower than 6 percent per annum) rates that would be fixed by CL&P, be computed at a fixed percentage rate above or below the Applicable Rate (as described below), from time to time in effect, for each subsequent quarterly dividend period. The fixed rate above or below the Applicable Rate would be established by the competitive bidding process.

The Applicable Rate for any dividend period would be the highest of: (i) The Three-month Treasury Bill Rate, (ii) the Ten Year Constant Maturity Rate and (iii) the Twenty Year Constant Maturity Rate for such dividend period. If CL&P determines that for any reason one or more of such rates cannot be determined for any dividend period, then the Applicable Rate for such dividend period would be the higher of whichever of such rates can be so determined. If CL&P determines that none of such rates can be determined for any dividend period, the the Applicable Rate in effect for the preceding dividend period would be continued for such dividend period.

Depending upon market conditions at the time of the offering of the securities, if CL&P determines that preferred stock having a resale price of approximately $25 per share is likely to have a significantly better market reception than the preferred stock having a resale price of approximately $50 per share, CL&P may issue and sell the preferred stock to underwriters for deposit with a Depositary. The underwriters would then receive from the Depositary and deliver to the repurchasers in the subsequent public offering Depositary Receipts evidencing Depositary Preferred Shares, each representing one-half share of preferred stock. Holders of Depositary Preferred Shares would be entitled to withdraw one share of preferred stock for every two Depositary Preferred Shares surrendered to the Depositary. Holders of preferred stock would be entitled to withdraw two Depositary Preferred Shares for every share of preferred stock surrendered to the Depositary. Under certain circumstances, upon notice to the holders of Depositary Preferred Shares, the deposit arrangements could be terminated.

The net proceeds from the sales of the bonds and preferred stock will be used to repay in part short-term borrowings (consisting of bank loans and commercial paper) and construction trust borrowings, which were incurred to finance CL&P's construction program and, in the case of short-term borrowings, for general working capital purposes. CL&P's 1983–1984 construction program (including allowance for funds used during construction but excluding nuclear fuel) is expected to total about $1,059.2 million, of which $526.7 million is expected to be expended in 1983 and $532.5 million is expected to be incurred in 1984.

The application and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Any interested persons wishing to comment or request a hearing should submit their views in writing by June 9, 1983, to the Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant at the address specified above and proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application, as filed or as it may be amended, may be granted.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-13909 Filed 5-23-83; 8:45 am]

BILLING CODE 8010-01-M

[812-5519; Rel. No. 13250]

Heizer Corp.; Filing of Application

May 17, 1983.

Notice is hereby given that Heizer Corporation ("Applicant"), 20 North Wacker Drive, Chicago, Illinois 60606, filed an application on March 25, 1983, for an order, pursuant to Section 61(a)(3)(B) of the Investment Company Act of 1940 ("Act"), approving the issuance of stock options to: (1) Charles L. Palmer, a nonemployee director of Applicant, and to (2) each future nonemployee director of Applicant. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and are referred to the Act and the rules thereunder for further information as to the provisions to which the exemption applies.

A business development company as defined by Section 2(a)(48) of the Act, Applicant seeks long-term capital appreciation. Applicant has historically invested in new and developing companies whose securities have no established public market, and in mature companies—including some that are experiencing financial difficulties. Applicant typically acquires a substantial or controlling interest in its portfolio companies, and furnishes them with significant managerial assistance, particularly in the early stages of their development. Applicant represents that it has no external "investment adviser" within the meaning of the Act, and that its management makes its investment decisions in accordance with policies approved by the board of directors. In addition to overseeing Applicant's management, Applicant's board of directors devotes substantial time and attention to matter relating to its portfolio companies, thus functioning more like the board of an operating company than like the board of a traditional investment company. To attract and retain the highly qualified and motivated personnel needed to assist in the development of Applicant and its portfolio companies, Applicant instituted a stock option plan for its directors.

Applicant's nonemployee directors may purchase shares of Applicant

pursuant to an order of the Commission (Investment Company Act Release No. 12136, January 4, 1982) and Applicant's own limitations. The Commission's order approved Applicant's issuance of options to purchase up to 10,000 shares of Applicant's common stock to each of its nonemployee directors. The Commission approved Applicant's exemptive request on the basis that the stock options' terms, and the manner in which Applicant issued them, appeared, based on representations in the application, to be fair, reasonable, involve no overreaching of shareholders, and complied with all applicable conditions of Section 61(a)(3)(B) of the Act.

Applicant seeks to place Mr. Palmer, and any future nonemployee director, in parity with those nonemployee directors whose stock options have been approved by the Commission. On September 20, 1982, Applicant granted options to Mr. Palmer to purchase up to 10,000 shares of its common stock at a price of $9.875 per share, Applicant's closing price on the American Stock Exchange on that day. On January 25, 1983, Applicant's board of directors concluded that Applicant should grant stock options to all future nonemployee directors comparable to those issued to current nonemployee directors.

Like the stock options earlier approved by the Commission, Applicant contends the options it seeks approval for meet all applicable requirements of Section 61(a)(3)(B) of the Act. Such options will or already: have an exercise price equal to the fair market value of Applicant's voting stock at the date of issuance, as measured by the voting stocks' closing price on a national securities exchange for that day; be issued pursuant to an executive compensation plan approved by Applicant's shareholders; be non-transferable except for disposition by will or intestacy; expire by their terms on the lesser of (1) ten years less one day from the date of issuance, or (2) 90 days after the nonemployee director ceases to be a director of Applicant for any reason except death, in which case the options will not expire for a maximum of one year from the date of death; and vest and become exercisable with respect to ten percent of the shares subject to the option on each of the first nine anniversary dates of the date of issuance, with the final ten percent exercisable sixty days prior to the tenth anniversary of the date of issuance.

Also in accordance with Section 61(a)(3)(B), Applicant represents that it has no investment adviser who receives any compensation described in Section 205(1) of the Investment Advisers Act of 1940, and that it has no profit-sharing plan of the type described by Section 57(n) of the Act. Applicant asserts that as of September 20, 1982, the date it issued the options to Mr. Palmer, the amount of voting securities that would result from the exercise of all then outstanding options issued to its directors, officers, and employees, approximated 7.4% of its outstanding voting stock. Applicant represents that it has issued no warrants, options, or rights to purchase its voting securities other than those issued to its directors, officers, and employees, and thus its stock options easily meet the percentage limitations imposed by Section 61(a)(3)(B)(iv). Applicant recognizes that Section 61(a)(3)(B)(iv) also limits the total number of shares it could issue, pursuant to options, to future nonemployee directors.

Applicant characterizes the options it seeks approval for as identical in all material respects to those already approved by the Commission, with the date of issuance, the exercise price, and the recipient's identity constituting the only significant differences. Applicant believes the stock options it issues to its nonemployee directors have and will continue to provide significant incentive to its directors to remain on its board of directors and to devote their best efforts to Applicant's future success. Applicant asserts that the stock options allow its directors to increase their ownership interest in Applicant, thereby helping to ensure a close identity of their interests with those of Applicant and its shareholders. Applicant represents that savings generated by reduced paperwork, legal expenses, and Applicant management and Commission staff time will benefit Applicant, its stockholders, the Commission, and the public. Applicant submits that the options granted Mr. Palmer and the options to be issued to future nonemployee directors are fair, reasonable, and involve no overreaching of Applicant or its shareholders insofar as the options granted to nonemployee directors represent only a small percentage of Applicant's outstanding shares (even if an option to purchase 10,000 shares were immediately exercisable, instead of over the stated ten-year period, it would represent only .0625 percent of Applicant's voting securities). Finally, Applicant submits that its total compensation program for nonemployee directors, in which stock options function as an integral component, is fair and reasonable.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than June 13, 1983, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for his/her request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. Persons who request a hearing will receive any notices and orders issued in this matter. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-13917 Filed 5-23-83; 8:45 am]

BILLING CODE 8010-01-M

[812-5462; Rel. No. 13249]

Kemper Corp.; Filing of an Application for an Order

May 17, 1983.

Notice is hereby given that Kemper Corporation ("Applicant"), Kemper Center, Long Grove, Illinois 60049, filed an application on February 28, 1983, and amendments thereto on March 3, April 15, and April 20, 1983, for an order of the Commission, pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act"), exempting the purchase of securities issued by Applicant from the provisions of Section 12(d)(3) of the Act and Rule 12d-1 thereunder to the extent requested. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, summarized below, and are referred to the Act and the rules thereunder for further information as to the provisions to which the exemption applies.

A non-operating holding company, Applicant, through its subsidiaries, offers: automobile, property, casualty, and life insurance; reinsurance; and investment services. Lumbermens Mutual Casualty Company ("Lumbermens") owned approximately 52% of applicant's common stock as of December 31, 1982. Applicant's property-casualty insurance business, operated on a regional, national, and international basis, includes automobile,

homeowners, accident, and health insurance, and worker's compensation. Applicant's reinsurance business also operates on an international as well as national basis.

Applicant offers life insurance products through Federal Kemper Life Assurance Company and Kemper Investors Life Insurance Company ("KILICO"). Among other products, KILICO offers variable annuities and universal life insurance through broker-dealers and independent agents. KILICO provides investment management services, as a registered investment adviser, to the KILICO Money Market Separate Account, Total Return Separate Account, and Income Separate Account. KILICO owns Investors Brokerage Services, Inc. ("Investors"), a broker-dealer designed to provide discount brokerage services to Applicant's employees. Applicant represents that Investors now services retail accounts.

Applicant provides investment services through Kemper Financial Services, Inc. ("KFS") and two regional broker-dealers, Blunt Ellis & Loewi Inc. ("BEL") and Prescott, Ball & Turben, Inc. ("PBT"). KFS and its subsidiaries sponsor and distribute money market, stock, and bond mutual funds, tax-exempt unit investment trusts, and life insurance and annuity products. KFS's life insurance subsidiary, KILICO, issues the forementioned life insurance and annuity products. KFS markets most of its products through retail distributors of financial products, although it sells its no-load mutual fund products directly to the public. A registered broker/dealer and investment adviser, KFS manages pension, insurance company, and other institutional investment portfolios. KFS, as of December 31, 1982, managed approximately $19 billion of assets. KFS owns a 50.5 percent interest in Kemper-Murray Johnstone International, Inc., a registered investment adviser providing international investment management services. KFS owns fifty percent of Investors Fiduciary Trust Company, a limited purpose trust company specializing in trust services.

Licensed as a broker-dealer, BEL also acts as an investment banker. Applicant represents that BEL serves as one on the largest distributors of KFS products. Applicant describes BEL as retail-oriented, handling securities transactions primarily for individual clients, with some institutional business. BEL's parent, Loewi Financial Companies, Ltd., merged with and into a wholly-owned subsidiary of Applicant, itself owns subsidiaries that, among other things, act as an investment adviser.

Applicant acquired eighty percent of PBT, another broker-dealer, in 1982. Like BEL, PBT engages in investment banking, but PBT serves more institutional clients that BEL. Applicant represents that PBT trades for its own account in various arbitrage transactions.

Applicant has an option to purchase, from Lumbermens, Bateman Eichler, Hill Richards, Inc. ("BEHR") a broker-dealer and investment banker like BEL and PBT. Applicant claims that none of BEHR's revenues inure directly or indirectly to Applicant. On April 5, 1983, the executive committees of the boards of directors of Lumbermens and Applicant approved, subject to approval of the relief herein requested, the purchase by Applicant of all the outstanding stock of Batehill, Inc. ("Batehill"), BEHR's parent company. Batehill's subsidiaries operate real estate management and equipment leasing businesses. Applicant's other investments include a 21.4 percent interest in the common stock of Gibralter Financial Corporation of California, a savings and loan association holding company that offers discount brokerage services.

Applicant seeks an order, pursuant to Section 6(c) of the Act, exemping from the provisions of section 12(d)(3) of the Act the purchase or other acquisition solely for investment pruposes by a registered investment company, or any security issued by Applicant, provided that all of the conditions of Rule 12d-1 (or any successor rule) are satisfied but for the requirement that not in excess of fifteen percent of the total gross revenues of Applicant be derived directly, indirectly, or both, from the business of a broker, a dealer, an underwriter, an investment adviser of an investment company, or an investment adviser registered under the Investment Advisers Act of 1940 (hereinafter referred to as "Such Businesses"), and that in lieu thereof a condition be established that not in excess of twenty-five percent of the total gross revenues be derived, directly or indirectly, from such businesses. Applicant has further agreed to the condition that no registered investment company may avail itself of the exemptive order when purchasing securities issued by Applicant if, immediately after such purchase: (1) That investment company and all other registered investment compaanies having the same (or an affiliated) investment adviser own in the aggregate more than 5% of the securities of that class outstanding (in determining the amount of outstanding securities of a class, the registered investment company may rely upon information set forth in applicant's most recent quarterly or annual report, and any current report subsequent thereto, filed with the Commission pursuant to the Securities Exchange Act of 1934, unless such investment company knows or has reason to believe that the information contained therein is inaccurate); or (2) the ergistered investment company has invested more than 10% of the value of its total assets or, if lower, the maximum percentage permitted by its investment policies and restrictions, in any class of securities of Applicant; or (3) where the registered investment company is an open-end company, 10% or more of the gross dollar amount of shares issued by it or by any other open-end registered investment company having the same (or an affiliated) investment adviser within the preceding 24-month period (excluding shares issued upon the reinvestment of dividends) were sold in transactions where BEL, PBT, Investors, or any other registered broker-dealer subsidary of Applicant acted as broker-dealer. The foregoing 24-month period is a rolling period, *i.e.*, the most recent month is substituted for the earliest month as time passes. A change in circumstances subsequent to a purchase that complied with the foregoing condition (such as a decrease in the number of Applicant's shares outstanding, an increase in the value of the investment company's position in applicant relative to its total assets, or sales by Applicant's broker-dealer subsidiaries in excess of the 10% threshold) shall not require any disposition of Applicant's securities, but no further purchases may be made until such condition is again satisfied.

Without the requested relief, Applicant submits that registered investment companies may be precluded from purchasing, or compelled to sell, Applicant's securities, not withstanding that the acquisition or retention of such securities does not present the dangers that Section 12(d)(3) seeks to eliminate. For the year ended December 31, 1982, Applicant derived approximately eleven percent of its gross revenues (restated on an annualized pooling of interest basis to account for the BEL acquisition in May, 1982, and PBT in October, 1982, although Applicant treated both acquisitions as "purchases" for accounting purchases) from Such Businesses. If applicant purchases Batehill, it estimates that approximately 14.5% of its gross revenues would have emanated, based on December 31, 1982,

annualized figures, from Such Businesses.

Applicant anticipates that, because NASDAQ began reporting Applicant's common stock on its national marketing quotation system on February 8, 1983, its increased visibility will attract more equity-oriented investment companies to its stock. Applicant asserts that it has a large institutional following and that, as of December 31, 1982, registered investment companies held approximately 9.4% of its common stock. Applicant believes that many investment companies may begin disposing of its securities if financial reports show Applicant's subsidiary broker-dealers and investment advisers contributing even 31–14% of Applicant's consolidated revenues.

Applicant acknowledges three principal risks cited to justify Section 12(d)(3): (1) the entrepreneurial risks of the investment banking business; (2) the risk that an investment company might invest in a broker-dealer in reciprocity for broker-dealer's sales of the investment company's shares; and (3) the risk that an investment company might direct brokerage to a broker-dealer that it had invested in to enhance the broker-dealer's profitability or to rescue it from financial difficulty. Applicant submits that these risks, in the context of an investment in Applicant, do not warrant the application of Section 12(d)3) to an extent greater than that contemplated by the requested order.

Applicant asserts that it will continue to have a large asset base and a considerable revenue stream not exposed to the entrepreneurial risks of investment banking, in part because the relief it requests would prohibit investment companies from investing in Applicant when Applicant's gross revenes derived from Such Businesses exceeded twenty-five percent of Applicant's total gross revenues. Applicant further states that its total, consolidated gross revenues for the year ended December 31, 1982, approximated $2.1 billion; its net income approximated $93.4 million. For the year ended December 31, 1981, Applicant represents its consolidated gross revenues approximated $2.2 billion and its net income approximated $83 million.

Applicant characterizes the risk that an investment company might invest in Applicant's securities in reciprocity for the sale of that company's shares by Applicant's broker-dealers as remote. Applicant asserts that such an arrangement might constitute a joint transaction in violation of Section 17(d) of the Act. Moreover, as a result of the third provision of the condition imposed as a prerequisite to the contemplated order, nor more than a *de minimis* relationship could exist between an investment company investing in Applicant whose securities were sold by BEL, PBT, Investors, or any other registered broker-dealer subsidiary of Applicant.

Finally, Applicant describes the risk that an investment company might direct brokerage to Applicant's broker-dealers to enhance its profitability or to rescue it from financial difficulty as virtually non-existent. Given the size and variety of Applicant's business on a consolidated basis, Applicant finds it inconceivable that any investment company could have any discernable impact upon its profitability or financial stability simply through directed brokerage commissions.

Section 6(c) of the Act permits the Commission, among other things, to grant an exemption by order upon application from any provision or provisions of the Act, or from any rule or regulation thereunder, provided such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant concludes that the risks that Section 12(d)(3) seeks to eliminate are not present in Applicant or are adequately addressed by Rule 12d–1 as sought to be modified by the application and the conditions Applicant has agreed to. Without the requested relief, Applicant believes the range of securities that an investment company may invest in might needlessly shrink despite the desirability of Applicant's securities. Applicant submits that the relief it requests is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than June 13, 1983, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for his/her request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20504. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. Persons who request a hearing will receive any notices and orders issued in this matter. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-13914 Filed 5-23-83; 8:45 am]

BILLING CODE 8010-01-M

[31-792; Rel. No. 22947]

Transamerica Delaval Inc.; Application To Be Declared Not To Be an Electric Utility Company

May 18, 1983.

Transamerica Delaval Inc. ("Delaval"), 3450 Princeton Pike, Lawrenceville, New Jersey 08648, a Delaware corporation and a wholly-owned subsidiary of Transamerica Corporation, has filed with this Commission an application pursuant to the Public Utility Holding Company Act of 1935 ("Act") requesting an order declaring Delaval not to be an electric utility company under Section 2(a)(3).

Delaval is engaged, through 16 divisions, in the manufacture of precision engineered machinery and components for a variety of industrial markets. Its products include turbines, compressors, valves, pumps, forgings, filters, and diesel engines. Delaval is currently developing and testing a new 12-cylinder prototype engine at its manufacturing facilities in California. The testing process produces electrical energy which, prior to 1982, was wasted in a water rheostat. In February 1982 Delaval entered into a 3-year power sales agreement ("Agreement") with Pacific Gas & Electric Company ("PG&E"). Under the Agreement, PG&E purchases all the energy produced during the testing process, and Delaval repurchases sufficient energy to power its manufacturing plant while testing is underway from PG&E at its established rates for industrial customers.

The prototype engine drives a generator, which produces approximately 8 MW of power that is delivered and sold to PG&E. Delaval's manufacturing facilities consume

approximately 2,000 KW per hour, purchased from PG&E, an amount far less than the 8,000 KW per hour produced during the periods of the testing process. In 1982 Delaval sold to PG&E 11.5 million KWH of electricity for approximately $690,000, and purchased from PG&E approximately 13.2 million KWH. Testing of the 12-cylinder prototype engine is expected to be completed by the end of 1983. At that time Delaval expects to replace that prototype with a 6-cylinder prototype, the testing of which will produce less electric energy for sale to PG&E.

Delaval's revenues of $690,000 from sales of electricity to PG&E constituted approximately 0.18% of its total revenues of $400,000,000 for 1982. Delaval requests an order declaring it not to be an electric utility company pursuant to Section 2(a)(3) of the Act. That section provides that the Commission shall by order declare a company not to be an electric utility company if it finds "such company is primarily engaged in [non-utility business], and by reason of the small amount of electric energy sold by such company it is not necessary in the public interest or for the protection of investors or consumers that such company be considered an electric utility company for purposes of [the Act]."

The application and amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by June 15, 1983, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant at the address specified above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date the application, as filed or as it may be amended, may be granted.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-13911 Filed 5-23-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 13234A (812-4707); Administrative Proceeding File No. 3-6244]

Union-Investment-Gesellschaft m.b.H.; Hearing on Application for an Order Permitting Registration of an Investment Company Organized in West Germany and Granting Exemptions

May 17, 1983.

On December 1, 1982, the Commission issued a notice (Investment Company Act Release No. 12863) of an application filed by Union-Investment-Gesellschaft m.b.H. ("Applicant") c/o Franz M. Oppenheimer, Esq., Leva, Hawes, Symington, Martin & Oppenheimer, 815 Connecticut Avenue, NW., Washington, D.C. 20006, a West German management company, on behalf of Unifonds, a West German mutual fund, for an order of the Commission pursuant to Section 7(d) of the Investment Company Act of 1940 ("Act") permitting registration of Applicant under the Act so that it may sell Unifonds shares in the United States, and pursuant to Section 6(c) of the Act granting exemptions from the following provisions of the Act and various rules adopted thereunder: Sections 10 (a), (b), (f) and (g); 12 (b) and (d)(3); 13; 15; 16; 17 (a), (e), (f), (g) and (j); 18(i); 22 (c), (d), and (e); 30 (a), (c), and (d); 31 (a) and (b); 32; and 34. The notice, which is incorporated herein by reference, gave any interested person until December 27, 1982, to file a request in writing for a hearing on the application accompanied by a statement as to the nature of his interest, the reason for such request, and the issues of fact or law proposed to be controverted.

On December 27, 1982, a request for a hearing was filed with the Commission by the Investment Company Institute ("ICI"), which was supplemented by a letter dated March 4, 1983. Counsel to Applicant on January 31, 1983, filed a letter with the Commission responding to the contentions made by the ICI in its hearing request. The ICI states in its hearing request that it is the national trade association of the American mutual fund industry and it asserts, among other things, that granting the requested approvals and exemptions could be detrimental to both the American investing public and the American mutual fund industry. Specifically, the ICI contends that Applicant has failed to meet the standard of enforceability that must be met to permit its registration under Section 7(d) of the Act. The ICI argues, with respect to Section 7(d) of the Act, that Applicant and Unifonds would fail to comply with what it asserts are among the most important provisions of Rule 7d-1, promulgated under that section, and that such failure would seriously undermine the ability of the Commission or a shareholder of Unifonds to enforce the provisions of the Act against those companies. In addition, the ICI questions the propriety of granting Applicant's specific exemptive requests which have been made pursuant to Section 6(c) of the Act, arguing that such requests do not meet the standards for exemptive relief set forth in Section 6(c).

It appears to the Commission that it is appropriate in the public interest and in the interest of investors that a hearing be held with respect to said application. Accordingly,

It is ordered, pursuant to section 40(a) of the Act, that a hearing on said application under the applicable provisions of the Act and Rules of the Commission thereunder be held at a time and place to be fixed by further order as provided by Rule 6 of the Commission's Rules of Practice (17 CFR 201.6), and that an Administrative Law Judge to be designated by further order preside at said hearing. Any person, other than Applicant, desiring to be heard or otherwise wishing to participate in this proceeding is directed to file with the Secretary of the Commission, on or before June 6, 1983, his application as provided by Rule 9(c) of the Commission's Rules of Practice (17 CFR 201.9(c)), setting forth the nature and extent of his interest in the proceeding and any issues of fact or law which he desires to controvert, or any additional issues which he deems raised by this Notice and Order by said application. A copy of such request shall be served personally or by mail upon Applicant at the address noted above, and proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. Persons filing an application to participate or to be heard will receive notice of the date and place of the hearing, and any adjournments thereof, as well as other actions of the Commission involving the subject matter of this proceeding.

The Division of Investment Management has advised the Commission that it has made an examination of the application, the request for hearing, and the response to such request by counsel to Applicant and that, upon the basis thereof, the following matters and questions are presented for consideration without prejudice to its specifying additional matters and questions upon further examination.

(1) Whether, given the failure and/or inability of Applicant to agree to comply with all of the provisions of Rule 7d–1 under the Act in its offering of Unifonds shares in the United States, the conditions and representations which Applicant has agreed will govern the offering of shares will make it both legally and practically feasible to enforce the provisions of the Act against Applicant;

(2) Whether allowing Applicant to offer shares of Unifonds in the United States in the manner proposed in its application, with the resultant reliance on provisions of West German law to provide protections to investors in this country, which are allegedly substantially equivalent to those contained in those provisions of the Act which Applicant has requested exemption, is consistent with the public interest and the protection of investors;

(3) Whether it is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act to grant Applicant the exemptions it seeks from the various provisions of the Act, and relevant rules and regulations thereunder; and

(4) Whether the formation of a United States corporation is a reasonable alternative to Applicant's proposed operations, and if so, what, if any, advantages or disadvantages would result from that approach.

It is further Ordered that at the aforesaid hearing attention should be given to the foregoing matters.

It is further Ordered that the Division of Investment Management shall be a party to the proceeding.

It is further Ordered that the Secretary of the Commission shall give notice of the aforesaid hearing by mailing a copy of this Notice and Order by certified mail to Applicant at the address noted above and the Investment Company Institute; that notice to all other persons be given by publication of this Notice and Order in the **Federal Register**; that a copy of this Notice and Order shall be published in the "SEC Docket;" and that an announcement of the aforesaid hearing shall be included in the "SEC News Digest."

By the Commission.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-13912 Filed 5-23-83; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 09/09-5271]

Alpha Venture Capital Corporation

Application for a License To Operate as a Small Business Investment Company

An application for a license to operate as a small business investment company under the provisions of Section 301(d) of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 *et. seq.*), has been filed by Alpha Venture Capital Corporation with the Small Business Administration (SBA), pursuant to 13 CFR 107.102(1983).

The officers, directors and stockholders of the Applicant are as follows:

Joaquin A. DeLima, #6 Timberline, Austin, Texas 78746, President/Director, 100%
Franklin K. Busse, 7607 Long Point Drive, Austin, Texas 78731, Vice President/Director, Secretary & General Manager
Adalex A. DeLima, #6 Timberline, Austin, Texas 78746, Director & Treasurer

An Applicant, a Texas Corporation with its principal place of business at 1013 East 38–½ Street, Austin, Texas 78751 will begin operations with private capital of $500,000.

The applicant will conduct its activities principally in the State of Texas.

As a small business investment company under Section 301(d) of the Act, the Applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Small Business Investment Act of 1958, as amended, from time to time, and will provide assistance solely to small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the application include the general business reputation and character of proposed managers, and the probability of successful operation of the applicant under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is hereby given that any person may, not later than 15 days from the date of publication of this Notice, submit written comments to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, N.W., Washington, D.C. 20416.

A copy of this notice will be published in a newspaper of general circulation in Austin, Texas.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: May 19, 1983.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 83-13939 Filed 5-23-83; 8:45 am]

BILLING CODE 8025-01-M

[License No. 10/10-5183]

Eastpac, Inc.; Application for a License To Operate as a Small Business Investment Company

Notice is hereby given that an application has been filed with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1983)), under the name of Eastpac, Inc., for a license to operate as a Section 301(d) small business investment company under the provisions of Section 301(d) of the Small Business Investment Act of 1958, as amended (Act), (15 U.S.C. 661 *et seq.*), and the SBA Rules and Regulations promulgated thereunder.

The officers, directors and 10 or more percent stockholders of the Applicant are as follows:

Charles Ying, 2207 Fairview Avenue, No. 7, Seattle, Washington 98102, President, Treasurer General Manager and Director, 47.62 percent General Manager and Director,
Richard Ying, 2207 Fairview Avenue, No. 7, Seattle, Washington 98102, Secretary and Director, 47.62 percent
Patrick R. McDonald 312 12th Avenue, Huntington, West Virginia 25701, Vice President and Assistant Secretary
David W. Howe, 6356 138th Place, NE., No. 216, Redmond, Washington 98052, Vice President and Director

The Applicant, a Washington corporation, with its principal place of business at 1940 116th Avenue NE., Suite B, Bellevue, Washington 98004 will begin operations with $1,050,000 paid-in capital and paid-in surplus.

The Applicant will conduct its activities principally in the states of Washington, Oregon and California.

As a small business investment company under Section 301(d) the Act, the Applicant has been organized and chartered solely for the purpose of the performing the functions and conducting the activities contemplated under the Small Business Investment Act of 1958, as amended, from time to time, and will provide assistance solely to small

business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the application include the general business reputation and character of proposed managers, and the probability of successfull operation of the applicant under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is hereby given that any person may, not later than 15 days from the date of publication of this Notice, submit written comments to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street NW., Washington, D.C. 20416.

A copy of this notice will be published in a newspaper of general circulation in Bellevue, Washington.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: May 19, 1983.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 83-13940 Filed 5-23-83; 8:45 am]

BILLING CODE 8025-01-M

[License No. 09/09-5272]

Myriad Capital, Inc.; Application for Approval of Conflict of Interest Transaction Between Associates

Notice is hereby given that Myriad Capital, Inc. (Myriad), 8820 South Sepulveda Boulevard, Suite 204, Los Angeles, California 90045, a Federal Licensee under the Small Business Investment Act of 1958, as amended, has filed an application with the Small Business Administration pursuant to § 107.1004 of the Regulations governing small business investment companies (13 CFR 107.1004 (1983)) for approval of a conflict of interest transaction.

Myriad proposes to make a $400,000 investment in the shares of Western Underwriters Insurance Company (WUIC), 11548 South Street, Suite 20, Cerritos, California 90701.

The conflict arises because Chuang-I Lin, President of Myriad, became a director of WUIC on February 12, 1982, to protect Myriad's investment after its board of Directors on February 1, 1982, made a commitment to purchase the shares.

WUIC is a new insurance company in organization. Mr. Lin was required by section 2607.03 of Title X, California Administrative Code, to purchase $200,000 of its common stock. The securities cannot be sold to the public or to Myriad until $3,250,000 is raised and a Certificate of Authority is issued by the California Insurance Commissioner. In the meantime the funds are held in escrow.

Approval is requested for Myriad, after the issuance of the Certificate of Authority, to purchase 4,000 shares of WUIC's Stock from Mr. Lin, at the cost, $200,000, and 4,000 shares from WUIC for $200,000.

Notice is hereby given that any person may, not later than 15 days from the date of publication of this Notice, submit written comments to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416.

A copy of this notice will be published in a newspaper of general circulation in the Los Angeles, California area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: May 18, 1983.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 83-13941 Filed 5-23-83; 8:45 am]

BILLING CODE 8025-01-M

[License No. 05/05-0129]

P.R. Peterson Venture Capital Corp.; License Surrender

Notice is hereby given that P.R. Peterson Venture Capital Corporation, 7301 Washington Avenue, South, Edina, Minnesota 55435 has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). P.R. Peterson Venture Capital Corporation was licensed by the Small Business Administration on September 12, 1978.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender was accepted on March 7, 1983, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: May 18, 1983.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 83-13938 Filed 5-23-83; 8:45 am]

BILLING CODE 8025-01-M

[License No. 04/04-5219]

Venture Group, Inc.; Issuance of License to Operate as a Small Business Investment Company

On September 29, 1982, a notice was published in the **Federal Register** (47 FR 42860), stating that an application had been filed by Venture Group, Inc., 5433 Buffalo Avenue, Jacksonville, Florida 32208, with the Small Business Administration (SBA) for a license to operate as a small business investment company (SBIC), pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1982)).

Interested parties were given until the close of business October 14, 1982, to submit their written comments to SBA. No comments were received.

Notice is hereby given that, pursuant to Section 301(d) of the Small Business Investment Act of 1958, as amended, and after having considered the application and all other information, SBA issued License No. 04/04-5219, on April 25, 1983, to Venture Group, Inc. to operate as an SBIC.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: May 18, 1983.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 83-13937 Filed 5-23-83; 8:45 am]

BILLING CODE 8025-01-M

Sunshine Act Meetings

Federal Register
Vol. 48, No. 101
Tuesday, May 24, 1983

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL COMMUNICATIONS COMMISSION

Closed Commission Meeting, Thursday, May 26, 1983.

May 19, 1983.

The Federal Communications Commission will hold a Closed Meeting on the subjects listed below on Thursday, May 26, 1983, following the Open Meeting which is scheduled to commence at 9:30 A.M., in Room 856, at 1919 M Street, N.W., Washington, D.C.

Agenda, Item No., and Subject

Enforcement—1—Field Investigation of Spanish International Communications Corporation, licensee of five television stations and five translators, Spanish International Network, et al.

Hearing—1—Motion for Stay of Commission Order terminating comparative renewal proceeding for a VHF television station in New York City (Docket Nos. 19991 and 19992).

2—Application for Review of Hearing Designation Order in the North Miami, Florida, comparative FM proceeding (BC Docket Nos. 82-731 through 82-742).

Court remand of the RKO General, Inc., Fidelity Television, Inc. comparative television renewal proceeding (Docket Nos. 16679-16680).

Enforcement Item 1, is closed to the public because it concerns Investigatory Records Matters (See 47 CFR 0.603 (g)).

Hearing Items 1 thru 3, are closed to the public because they concern Adjudicatory Matters (See 47 CFR 0.603 (j)).

The following persons are expected to attend the appropriate portions of this meeting: Commissioners and their Assistants; Managing Director and members of his staff; General Counsel and members of his staff; Chief, Mass Media Bureau and members of his staff; Chief, Office of Public Affairs and members of his staff.

Action by the Commission:

Enforcement Item 1, April 11, 1983. Commissioners Fowler, Chairman; Quello, Fogarty, Jones, Dawson, Rivera and Sharp voting to consider this item in Closed Session.

Hearing Items 1 thru 3, May 18, 1983. Commissioners Fowler, Chairman; Quello, Fogarty, Jones, Dawson, Rivera and Sharp voting to consider this item in Closed Session.

This meeting may be continues the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Maureen Peratino, FCC Public Affairs Office, telephone number (202) 254-7674.

William J. Tricarico,

Secretary, Federal Communications Commission.

[S-733-83 Filed 5-20-83; 10:24 am]

BILLING CODE 6712-01-M

2

FEDERAL COMMUNICATIONS COMMISSION

Open Commission Meeting, Thursday, May 26, 1983.

May 19, 1983.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, May 26, 1983, which is scheduled to commence at 9:30 A.M., in Room 856, at 1919 M Street, N.W., Washington, D.C.

Agenda, Item No., and Subject

General—1—Title: Amendment of Parts 2, 21, 74 and 94 of the Commission's Rules and Regulations in regard to frequency allocation to the Instructional Television Fixed Service, the Multipoint Distribution Service, and the Private Operational Fixed Service (General Docket 80-112).

Amendment of Part 21 of the Commission's Rules to permit the use of alternative procedures in choosing applicants for radio authorizations in the Multipoint Distribution Service (CC Docket No. 80-116).

Application of Channel View, Inc., for an experimental (developmental) station at Salt Lake City, Utah (File No. 8938-ED-MR-82).

Summary: The Commission will consider whether a reallocation of the 2500-2690 MHz band should be made and other related matters.

2—Title: Amendment of Part 74 of the Commission's Rules and Regulations in regard to Instructional Television Fixed Service

Summary: The Commission will consider proposed changes regarding the technical requirements imposed on ITFS licensees and proposed relaxation or elimination of non-technical requirements.

3—Title: *Memorandum Opinion and Order* in the Matter of Various Methods of Transmitting Program Materials to Hotels and Similar Locations and Use of the Business Radio Service for the Transmission of Motion Pictures or Other Program Material to Hotels or Other Similar Points.

Summary: The FCC will consider the issues raised in petitions for reconsideration concerning its May 1981 decision in Docket 19671 which permitted eligibles in the Private Operational-Fixed Microwave Radio Service to distribute their products and services to customers.

Private Radio—1—Title: Amendment of Part 90 of the Rules to allow wildlife tracking telemetry in the Forestry-Conservation Radio Service, PR Docket No. 82-618, RM-4016.

Summary: The FCC will consider whether to adopt a Report and Order which will allow the use of wildlife tracking telemetry in the Forestry-Conservation Radio Service.

2—Title: Amendment of certain Amateur Radio Service Rules (Part 97) by deletion, clarification, relaxation and codification.

Summary: The Commission will consider whether to adopt an Order which would make several minor amendments to Part 97 of the Rules to delete unnecessary rules, clarify rules, revise unnecessarily restrictive rules and codify into the rules certain statutory requirements.

3—Title: Report and Order proposing to eliminate unnecessary reporting and record keeping requirements in the Maritime Services.

Summary: The FCC will consider whether to amend Parts 81 and 83 (Maritime Services) to remove certain reporting and record keeping requirements which appear to impose unnecessary burdens on the maritime public.

4—Title: Amendment of the Amateur Radio Service Rules, Part 97, to eliminate requirements that licensees maintain a detailed log of station operation.

Summary: The Commission will consider whether to adopt an Order amending Part 97 of the Rules to eliminate most record-keeping requirements for licensees of amateur radio stations.

5—Title: Amendment of the Amateur Radio Service Rules, Part 97, to make additional frequencies available to the Radio Amateur Civil Emergency Service (RACES) during declared national emergencies.

Summary: The Commission will consider whether to adopt a Notice of Proposed Rule Making proposing to amend Part 97

of the Rules to make additional frequencies available to the Radio Amateur Civil Emergency Service during declared national emergencies.

Common Carrier—1—Title: In the Matter of Inquiry into Policies to be Followed in the Authorization of Common Carrier Facilities to Meet Caribbean Region Telecommunications Needs During the 1985–1995 Period

Summary: The Commission will consider a Notice of Inquiry to develop policies and guidelines for the construction and use of cable and satellite transmission facilities to meet demands for common carrier services in the Caribbean region for the period 1985–1995.

2—Title: Rules for Establishment and Management of an Exchange Carrier Association (Access Charges)

Summary: The Commission will consider adopting rules concerning the formation and management of an Exchange Carrier Association for access charges.

3—Title: Application of the Western Union Telegraph Company to acquire facilities for the provision of Teletex service within the United States and Germany.

Summary: .The Commission will consider whether to authorize facilities to the Western Union Telegraph Company for the provision of Teletex service within the United States and between the United States and Germany.

4—Title: MTS/WATS Market Structure, CC Docket No. 78–72, Phase IV (Access Monitoring Plan)

Summary: In the Third Report and Order in this proceeding the Commission stated it would monitor the access of the institution of end user access charges. The Commission gave the Common Carrier Bureau 90 days to develop a proposed plan. This item contains the proposed plan.

Audio—1—Title: Application for the involuntary assignment of license of station KPRQ(AM), Murry, Utah, from Murry Broadcasting Company, Inc. to Kirk Merkley, Receiver; (2) a contingent application to assign the license from the Receiver to Tri-Alpha Broadcasting Corporation; (3) license renewal application filed by Murry Broadcasting Company, Inc.; and (4) objections to the applications.

Summary: The Commission will consider the significance of the appointment of a receiver of broadcast assets by a state court where the court's decision is based on the enforcement of a reversionary interest in the station's license.

Video—1—Title: "Request for Issuance of Tax Certificate" (CSR–2258) filed November 29, 1982, by Midessa Television Company, licensee of Station KMID–TV (NBC, Channel 2), Midland, Texas.

Summary: Midessa Television Company, licensee of Station KMID–TV (NBC, Channel 2), Midland, Texas, seeks issuance of a tax certificate for its sale of its interest in Community Cablevision Company d/b/a Community Cable of Odessa.

2—Title: A. Request of RKO General Inc., for temporary waiver of the main studio rule (section 73.1125) for station WOR-TV, channel 9, Secaucus, New Jersey.

B. Motion for stay filed by Multi-State Communications, Inc., of the action of the Commission changing the allocation of channel 9 from New York City to Secaucus, New Jersey.

Summary: The Commission will consider whether a grant of the waiver request and of the motion for stay would serve the public interest.

3—Title: Application for review and request for stay of Bureau action returning as untimely filed the application of Caldwell Television Associates, Ltd. for a new commercial television station in Caldwell, Idaho.

Summary: The Commission will determine whether it properly returned the application as untimely filed.

Policy—1—Title: Amendment of Section 73.37(b) of the Commission's Rules.

Summary: On its own motion the Commission is considering an amendment to this rule governing the acceptance, processing and grant of certain AM applications.

2—Title: Amendment of FM Table of Assignments regarding Helena, Montana (BC Docket No. 80–523).

Summary: The Commission will review a Broadcast Bureau decision which assigned four Class C FM channels to Helena, Montana and will review a petition for stay.

3—Title: Modification of FM Broadcast Station Rules to Increase the Availability of Commercial FM Broadcast Assignments. (BC Docket No. 80–90)

Summary: The Commission will consider changing the technical rules governing the allotment of FM broadcast channels to allow the operation of more stations.

Enforcement—1—Title: Application for Review filed by Decency in Broadcasting, Inc. of the former Broadcast Bureau's (now Mass Media Bureau) action denying its request for action against alleged obscenities and profanities broadcast by Rahall Broadcasting of Indiana, Inc., licensee of Radio Station WFBQ(FM), Indianapolis, Indiana.

Summary: FCC considers an application for Review filed by Decency in Broadcasting, Inc., asking the Commission to reverse the Mass Media Bureau's refusal to take action against Rahall Broadcasting of Indiana, Inc., licensee of Radio Station WFBQ(FM), Indianapolis, Indiana for broadcast of alleged obscene, indecent and profane material in violation of 18 U.S.C. 1464.

2—Title: License application to cover construction permit (BLH–810206 AN) and renewal application (BRH–810803 WT) and apparent operation contrary to the rules and the construction permit.

Summary: The Commission will determine the appropriate action to be taken with respect to WSEZ(FM)'s applications in light of the apparent operation contrary to the terms of the CP and the Rules.

3—Title: Application for Review of Eulogio Cardona y Beltran.

Summary: Mr. Beltran seeks review of Broadcast (now Mass Media) Bureau's ruling of November 9, 1981. The Bureau denied Mr. Beltran's personal attack complaint because he failed to show that he was attacked during discussion on a controversial issue of public importants.

This meeting may be continued the following work day to allow the Commission to compete appropriate action.

Additional information concerning this meeting may be obtained from Maureen Peratino, FCC Public Affairs Office, telephone number (202) 254–7674.

William J. Tricarico,

Secretary, Federal Communications Commission.

[S–733–83 Filed 5–20–83; 10:25 am]

BILLING CODE 6712–01–M

3

FEDERAL HOME LOAN MORTGAGE CORPORATION

DATE AND TIME: May 24, 1983, 3:00 p.m.

PLACE: 1776 G Street, N.W., Washington, D.C., Conference Room 4G.

STATUS: Closed.

CONTACT PERSON FOR MORE INFORMATION: Scott R. Daugherty.

Matters To Be Considered

Closed: Minutes of March 22, 1983, Board of Directors' Meeting Minute Entry
Closed: President's Report
Closed: Financial Report Minute Entry

Date sent to **Federal Register:** May 19, 1983.

[S–734–83 Filed 5–20–83; 12:49 pm]

BILLING CODE 6720–02–M

4

NATIONAL MEDIATION BOARD

TIME AND DATE: 2:00 p.m., Thursday, June 9, 1983.

PLACE: Board Hearing Room 8th Floor, 1425 K Street, N.W., Washington, D.C.

STATUS: Open.

Matters To Be Considered

1. Ratification of Board actions taken by notation voting during the month of May 1983.

2. Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

SUPPLEMENTARY INFORMATION: Copies of the monthly report of the Board's notation voting actions will be available from the Executive Secretary's office following the meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rowland K. Quinn, Jr., Executive Secretary, Tel: (202) 523–5920.

Date of notice: May 18, 1983.

[S–735–83 Filed 5–20–83; 2:34 pm]

BILLING CODE 7550–01–M

5

POSTAL SERVICE (Board of Governors)

Amendment to Notice of a Meeting. "**Federal Register**" citation of previous announcement: 48 FR 22254, May 17, 1983.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: Briefing Session (Closed): 1:00 p.m., Wednesday, June 1, 1983. Meeting (Open) 8:00 a.m., Thursday, June 2, 1983.

CHANGE: Preceding the briefing session on June 1, the Board will hold a meeting for the purpose of continuing the discussion of the Postal Service's possible strategies concerning future postal ratemaking, which was commenced at the Board's January 31, 1983, meeting and continued at its March 7, April 4, and May 2 meetings. The meeting will be closed to public observation, the Board having duly determined to close its discussion in accordance with the provisions of the Sunshine Act.

CONTACT PERSON FOR MORE INFORMATION: David F. Harris, (202) 245–3734.

David F. Harris,

Secretary.

[S–736–83 Filed 5–20–83; 3:06 pm]

BILLING CODE 7710–12–M

federal register

Tuesday
May 24, 1983

Part II

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Backfilling and Grading Requirements

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 816, 817, and 826

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Backfilling and Grading

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

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is issuing final rules relating to the backfilling and grading requirements for surface and underground mining activities. The rules are reorganized, duplication is eliminated, some specific design criteria are removed, and the backfilling and grading performance standards for steep slope mining are combined with the backfilling and grading performance standards for other types of surface coal mining operations. These changes will allow more flexibility in the backfilling and grading procedures.

EFFECTIVE DATE: June 23, 1983.

FOR FURTHER INFORMATION CONTACT: Robert A. Wiles, P.E., Division of Engineering Analysis, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; 202–343–4022.

SUPPLEMENTARY INFORMATION:

I. Background.
II. Discussion of comments and rules adopted.
III. Procedural matters.

I. Background

OSM proposed revisions on June 21, 1982 (47 FR 26760), to the performance standards that govern the backfilling and grading of areas disturbed by surface coal mining operations. The proposed rules were issued to remove some specific design criteria, to eliminate duplication in the previous rules, and to consolidate backfilling and grading standards for steep slope operations with the standards for other operations. These final rules cover the performance standards for backfilling and grading of disturbed areas in surface mining activities and underground mining activities. In addition, the rules include provisions for backfilling and grading in areas involving thin and thick overburden.

The public hearing on the proposed rules scheduled for August 4, 1982, was not held since no one requested to speak at the hearing. However, two public meetings were conducted on the proposed rules, and the records of these meetings are filed in the Administrative Record.

When the rules were proposed on June 21, 1982, it was announced that the public comment period would remain open until further notice (47 FR 26760). A subsequent **Federal Register** notice (47 FR 30266, July 13, 1982) announced that the public comment period would close at 5:00 p.m., August 25, 1982, to coincide with the closing of the public comment period on the draft Supplemental Environmental Impact Statement on the proposed rules and other related proposals. As a result of persons wishing to testify on various aspects of the proposed rules at oversight hearings before the House Committee on Interior and Insular Affairs on September 9–10, 1982, the public comment period was reopened through September 10, 1982, to allow admission of relevant portions of the hearing transcripts into the Administrative Record (47 FR 39201, September 7, 1982).

These final rules implement the environmental protection standards for surface coal mining operations as set forth in the Surface Mining Control and Reclamation Act of 1977 (Act), 30 U.S.C. 1201 *et seq*. The backfilling and grading rules for areas disturbed by surface mining activities are based on Section 515(b)(3) of the Act, and the rules for areas disturbed by underground mining activities are based on Section 516(b) of the Act. The final rules governing surface coal mining operations on steep slopes are based on the performance standards in Section 515(d) of the Act.

Backfilling and grading rules for the permanent regulatory program were promulgated on March 13, 1979 (44 FR 15411). Part 816 of those rules included general requirements for backfilling and grading (§§ 816.101 and 816.102), requirements for covering coal and acid- and toxic-forming materials (§816.103), and requirements for areas with thin and thick overburden (§§ 816.104 and 816.105). Similar requirements for the surface effects of underground mining activities were included in Part 817, except that there were no rules for areas with thin or thick overburden. In the same March 13, 1979, rulemaking, special backfilling and grading rules for steep slope operations were included in 30 CFR Part 826.

The June 21, 1982, notice proposed that §§ 816.101 and 816.103 be conbined with § 816.102 into a section on general requirements for backfilling and grading and that §§ 816.101 and 816.103 be removed. The requirements for areas with thin and thick overburden (§§ 816.104 and 816.105, respectively) that duplicated the general backfilling and grading requirements were proposed to be deleted. The same changes were proposed for Part 817, except that rules for thin and thick overburden are unnecessary for underground mining activities. In the June 21, 1982, rulemaking it was proposed that the special backfilling and grading rules for steep slope operations (Part 826 of the permanent program rules) be moved to Parts 816 and 817 as new §§816.107 and 817.107, respectively.

The final rules generally adopt the provisions of the proposed rules. The final rules include general requirements for backfilling and grading in § 816.102, requirements for areas with thin and thick overburden in §§ 816.104 and 816.105, respectively, and additional provisions for backfilling and grading operations on steep slope areas in § 816.107. In order to simplify the preamble, the following discussion of the rules in §§ 816.102 and 816.107 also applies to §§ 817.102 and 817.107, unless otherwise noted. The sections for thin and thick overburden, §§ 816.104 and 816.105, respectively, apply only to surface mining activities. As discussed below, Part 826, governing mining on steep slopes, is being removed at this time. For additional discussion of the proposed rules, see the preamble to the proposed rules published June 21, 1982 (47 FR 26760).

II. Discussion of Comments and Rules Adopted

A. General Comments

During the comment period, OSM received comments from industry and associations, individuals, environmental groups, and Federal and State agencies. More than 100 comments on the proposed backfilling and grading rules were received and evaluated in preparing the final rules. All of the relevant comments received concerning this final rule are addressed below.

Several general comments that did not address specific aspects of the rules will be addressed before discussing the changes to the proposed rules.

OSM received support for the change to the performance standards in the proposed backfilling and grading rules, but was also criticized for providing too much flexibility to the State regulatory authorities. Several commenters indicated that the move to performance standards and allowing flexibility to the States was needed.

OSM concludes that Congress intended the States to have flexibility in implementing the performance standards. Section 201(c)(9) of the Act requires OSM to assist the States in

developing State programs which meet the standards of the Act "and at the same time, reflect local requirements and local environmental and agricultural conditions * * *." The standards of Section 515(b) of the Act are minimum requirements which the States may add to at their discretion. The emphasis of the rules is on performance standards; the regulatory authority may develop design criteria or other standards that are appropriate to the local program.

One commenter criticized the time and effort required to perform unnecessary and unrealistic studies with no benefit other than to satisfy the rules. However, the commenter did not identify any studies that were characterized as a waste of effort and money. OSM believes that the information required by these backfilling and grading rules is reasonable and necessary for the regulatory authority to determine that the operation is, and will be, in compliance with the Act.

One commenter requested that a technical handbook being developed by OSM to provide state-of-the-art knowledge for backfilling and grading be clearly designated for reference purposes only. This request was made to ensure that the handbook mentioned in the preamble of the proposed rules (47 FR 26762) would not be misconstrued to have the force of rules over a period of time. The commenter continued by stating that updating the handbook would be a major undertaking and that there would be times when the handbook would lack the latest information developed by industry.

The technical handbook being developed by OSM will present only guidelines for the design and construction of the backfilling and grading portion of the reclamation operation and will not have the force of law. OSM is aware that keeping the handbook current will be a major undertaking and that new developments in the industry must be conscientiously followed and incorporated into the handbook.

B. Specific Comments and Discussion of Rules Adopted

Part 816—Permanent Program Performance Standards—Surface Mining Activities

Previous Section 816.101 Backfilling and grading: General requirements

The proposed rules combined some provisions of previous § 816.101 with § 816.102, deleted others because of duplication with proposed § 816.102, and removed some specific design criteria as discussed in the preamble of June 21, 1982 (47 FR 26762).

The proposed backfilling and grading rules removed the timing and distance requirements in previous § 816.101(a) for rough backfilling and grading of contour, open pit, and area strip mining operations. The change was proposed since a detailed timetable for each step in the reclamation plan already is required by 30 CFR 780.18(b)(1), and the specific design criteria would more properly be described in the technical handbook or be set by the regulatory authority on the basis of local conditions.

Most State regulatory authorities supported the deletion of the timing and distance requirements for backfilling and grading since it grants additional flexibility to them. However, some States requested authorization to specify these requirements in their State programs. They believed some criteria are necessary to eliminate constant disputes between the regulatory authority and the operator on what constitutes contemporaneous reclamation. Another State wanted flexibility to set requirements for the timing of backfilling and grading to meet specific conditions within the State, which are needed to maintain contemporaneous and quality reclamation. One State believed that national guidance is appropriate with respect to time periods and suggested setting the times based on mine method and technology. The suggested time periods for backfilling and grading various types of mining operations would fall within the scope of contemporaneous reclamation. It also indicated that any standard should have an "escape" clause. The escape clause would allow the regulatory authority to approve different time periods if the mine conditions or other site-specific conditions made it impossible to meet the established standards.

One commenter believed that the rationale given in the preamble to the proposed rules for deleting the time and distance requirements was insufficient. The commenter felt that the timetable in the previous rule was well explained and should not be changed because one of the chief purposes of the Act is to establish minimum national standards that all operators have to meet. The commenter also stated that specific requirements are necessary as enforcement measures, because under the proposed rules the inspector would be unable to detect violations without review of the permit and that parameters must be established within which compliance can be measured.

OSM agrees that the regulatory authorities should be able to establish schedules that specify contemporaneous reclamation. In a related rulemaking (47 FR 16604, April 16, 1982) concerning concurrent surface and underground mining activities, OSM proposed to amend § 816.100, the provision that governs contemporaneous reclamation. As part of the final rule in that rulemaking, OSM will add language to § 816.100 that will allow the regulatory authority to set time and distance requirements for mining operations that take into account conditions that are unique to their locale. Such standards established by the regulatory authority will be at least as effective as those in the previous rule which allowed the regulatory authority to grant additional time for backfilling and grading when a need was demonstrated by the operator. Under revised § 816.100, the regulatory authority will be able to establish a timetable more in keeping with State needs. OSM does not believe it imposes an undue burden on inspectors to review permits to determine the approved timing for contemporaneous reclamation. However, under the final rule a State will still have the flexibility to establish time periods for backfilling and grading as part of the State program rather than on a permit-by-permit basis.

OSM believes that different State time frames for backfilling will not affect interstate competition, as stated by one commenter. In either area- or contour-mining, an operation will generally have the economic incentive to transport spoil the shortest distance possible and to move the material only one time. In most cases spoil will be moved directly to the final location and backfilling will occur at the same time as mining. Where material must be rehandled, the costs of rehandling and backfilling would be the same regardless of the time frame specified. Thus, the primary consideration, in terms of costs for backfilling, is not the time frame involved, but rather the distance and number of times material must be handled. Under final § 816.100, the time frame chosen by each State will have to be the shortest practicable period between mining and backfilling given the particular conditions in that State. A difference among States before backfilling is completed would not confer any advantage on operators in one State over those in another. Operators in all States are still required to accomplish reclamation contemporaneously with mining. This rule merely acknowledges that "contemporaneous reclamation" is a relative term which must be interpreted

by each State on the basis of the mining conditions in its territory. In fact, costs may be greater for some types of mining if there is a longer distance between the mining area and the backfilling operation because of additional cost in moving the overburden a greater distance.

OSM received no other comments on the requirements that were proposed of deletion from § 816.101. Therefore, § 816.101 will be removed from the final rules for the reasons stated in the preamble to the proposed rules (47 FR 26762 June 21, 1982).

Section 816.102 Backfilling and grading: General requirements

Section 816.102 sets the general provisions for backfilling and grading areas disturbed by surface mining activities. The section requires return to the approximate original contour (AOC) except under certain situations; sets standards for handling and placing spoil and coal processing waste; and establishes general performance standards for exposed coal seams, acid- and toxic-forming materials, cut-and-fill terraces, small depressions, impoundments, and final-graded surfaces. Various changes were made to the proposed rule, consisting of primarily rearranging some of the provisions, adding cross references to some of the provisions, and providing additional clarifying language. Further discussion of these changes is included with the response to comments set forth below.

Section 816.102(a) [Proposed § 816.102(b)]

Final § 816.102(a) establishes the requirements for reclaiming areas disturbed by the mining operation. These provisions were proposed as §§ 816.102 (a) and (b). OSM has reorganized § 816.102 in the final rules to specifically identify the requirements for backfilling and grading the spoil in the disturbed areas in § 816.102(a) as the first paragraph, for the convenience of the user, and has placed the exceptions to the AOC-restoration requirement, included in proposed § 816.102(a)(1)–(a)(3), as the last paragraph in § 816.102. Also, the language in final § 816.102(a) is slightly different from the proposal, due to the reorganization; however, the rephrasing does not change the meaning of the paragraph. Comments were received on each paragraph of proposed § 816.102(b) and these along with the changes to the final rules, are discussed below in sequence.

Final § 816.102(a) introduces the specific requirements by stating that the disturbed areas shall be backfilled and graded. This provision is a combination of the introductory phrase of proposed § 816.102(b) and proposed § 816.102(b)(2) which stated that spoil shall be backfilled and graded. In the final rule, OSM has replaced the word "spoil" with the more inclusive term "disturbed areas" to indicate that there are other areas that may require backfilling and grading in addition to the mined-out area and that materials other than spoil may be used as backfill. A disturbed area is defined in § 701.5 to mean "an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, coal processing waste, underground development waste, or noncoal waste is placed by surface coal mining operations. . . ." With this change, the rules are more in line with the intent of Section 515(b)(3) of the Act.

Final § 816.102(a)(1) states that the disturbed areas must be backfilled and graded to achieve AOC, except as provided in § 816.102(k). Paragraph (k) indicates the circumstances under which the postmining slopes may vary from AOC for certain mining conditions. The requirement to return to AOC was in proposed § 816.102(a), which introduced the exceptions to AOC for certain mining conditions. Because no comments were required on the general requirement to return to AOC, no change has been made in this rule.

Final § 816.102(a)(2) requires that the disturbed areas be backfilled and graded to eliminate all highwalls, spoil piles, and depressions except as provided in Paragraph (h) for small depressions and in Paragraph (k)(3)(iii) for previously mined highwalls. This provision is the same as proposed § 816.102(b)(2)(i) except that a reference for highwall exceptions has been added and the small-depression reference has been reworded in accordance with the reorganization of the section.

One commenter wanted the term "spoil piles" clarified so that it does not mean excess spoil sites. The commenter noted that excess spoil is used for purposes other than backfilling and grading and is disposed of according to the revised excess spoil rules in proposed § 816.71. Another commenter wanted this paragraph changed to reflect the proposed new definition of excess spoil, which excludes spoil that is used to blend spoil from the mined-out area with the surrounding terrain (47 FR 24954, June 8, 1982).

In area mining, the spoil piles referred to in final § 816.102(a)(2) are those formed during the mining operation from shovel or dragline operations. These are the spoil piles that must be backfilled, compacted, and graded according to Section 515(b)(3) of the Act. In other mining methods, spoil piles are comprised of overburden that is disposed of in the pit area after the coal is removed. Such overburden is not considered excess spoil and must be placed according to the provisions of §§ 816.102–816.105.

Excess spoil includes material that is disposed of in a location other than the mined-out area, except for material used to blend spoil with the surrounding terrain in achieving AOC in nonsteep slope areas. Generally, excess spoil includes only that spoil that is not needed to restore AOC. The spoil piles referred to in § 816.102(a)(2) are not considered excess spoil which would be disposed of according to the provisions of § 816.71 because they are necessary to restore AOC. The spoil piles referred to in § 816.102(a)(2) remain in, or are returned to, the area from which the overburden was removed.

One commenter suggested replacing the section reference for small depressions in proposed § 816.102(b)(2)(i) with the language from § 816.102(h) that pertains to small depressions. The commenter offered no explanation for this suggested change.

The depressions which Section 515(b)(3) of the Act requires to be removed are those formed during the mining operation before any backfilling and grading of the spoil has been accomplished. They may be of any size and are not planned as part of the postmining land-use plan. The small depressions allowed to remain by the Act and § 816.102(h) are small depressions used for specific purposes and formed during the reclamation operation. OSM has retained the organization of these two paragraphs as set out in the proposed rule because to combine them would create a long and confusing paragraph.

Under final § 816.102(a)(3), the disturbed areas must be backfilled and graded to achieve a postmining slope that does not exceed either the angle of repose or such lesser slope as is necessary to achieve a minimum long-term static safety factor of 1.3 and to prevent slides. These provisions were taken from proposed § 816.102(b)(2)(ii), which was similar to the final rule except it contained a requirement that the spoil be backfilled and graded to achieve the "most moderate slope possible" after being replaced. Also, it did not include the provision to prevent slides.

A commenter believed that the word "moderate" should be deleted from the sentence "[a]chieve the most moderate slope possible that * * *" because the

interpretation of "moderate" is a matter of relative judgment that does not relate to actual land use. OSM accepts the commenter's assertion that "moderate" is a matter of relative judgment and should not be adopted. After evaluating the comment, OSM has decided that it is not necessary to describe the postmining slope further since the required slope is defined by the AOC of the land. The definition of AOC states that the postmining surface configuration should closely resemble the general surface configuration of the land prior to mining. OSM believes this description of the final slope is sufficient under the Act and that this rule need only set limits based on safety considerations.

One commenter indicated that the 1.3 minimum long-term static safety factor was satisfactory as an indication of spoil stability. However, the commenter believed OSM should recognize the fact that it is not necessary to determine the factor of safety in all designs. It was pointed out that many highway fills are designed on 2*h*:1*v* slope without calculating a factor of safety during design. The commenter concluded by saying that it is not reasonable to require the operator to determine the factor of safety for embankments well above the design requirements.

The rigorousness of the analysis used to determine the safety factor for an individual structure is based to a large degree on the conditions surrounding the structure. For example, the embankment of a high dam is analyzed more rigorously than the fill for a highway embankment. The rule specifies the long-term factor of safety which must be achieved for each backfilled area. It does not specify the level of detail of analysis to be completed for every situation within the permit area. When determining the proper method of analysis for the stability of a postmining slope, the operator and the regulatory authority should consider all the conditions surrounding the structure, with particular attention given to foundation conditions and the presence of ground water.

Another commenter stated that there are local conditions where the undisturbed slope may not have had a 1.3 static safety factor prior to mining. For these situations, the commenter continued, the operator should not be required to have slopes more stable than naturally occurring surrounding slopes and that the operator should be able to document them and then have the regulatory authority approve a lesser factor of safety.

The commenter has described a situation that may be fairly common in steep slope coal mining country. However, OSM believes that the 1.3 safety factor is appropriate to meet the stability requirements of the Act in Sections 515 (b)(3) and (b)(4) and 515(d)(2). The basis for establishing the 1.3 safety factor is discussed in the preamble to the previous rules at 44 FR 15228 (March 13, 1979). OSM believes those reasons are still valid and, therefore, this rule will retain the 1.3 safety factor for the backfilled and graded area.

Final § 816.102(a)(4) states that the disturbed area must be backfilled and graded to minimize erosion and water pollution both on and off the site. This provision is derived from proposed § 816.102(b)(2)(iii), which stated that the spoil must be backfilled and graded to minimize disturbance of the hydrologic balance both on and off the site. The change was made to make the standard more applicable to reclamation operations.

Two commenters stated that the provision to minimize disturbance of the hydrologic balance in proposed Paragraph (b)(2)(iii) was redundant and that it was adequately covered elsewhere in the proposed rules. One commenter suggested using the phrase "prevent slides, erosion and water pollution" in place of the phrase "minimize disturbance of the hydrologic balance". This change, the commenter contended, would make the rules consistent with Section 515(b)(3) of the Act.

OSM agrees that the phrase in proposed § 816.102(b)(2)(iii) repeated the language of § 816.41(a) on minimizing the disturbance to the hydrologic balance and, therefore, does not need repeating. The phrase "prevent slides" has been added to final § 816.102(a)(3) in response to the comment. The remaining segment of the suggested phrase has been added to § 816.102(a)(4), with the substitution of "minimize" for "prevent". Although the commenter believed the latter term would make the rule consistent with Section 515(b)(3) of the Act, the phrase is used in the Act only with respect to the thick-overburden condition (to which proposed § 816.102(b)(2)(iii) would also have applied). OSM believes this performance standard should apply to all backfilling and grading operations in order to ensure that the standards of Section 515 (b)(4) and (b)(21) of the Act are met. Section 515(b)(4) requires all operations to stabilize and protect all surface areas, including the backfilled area, to control erosion and attendant air and water pollution. Section 515(b)(21) requires the operator to protect offsite areas from slides or damage during the operation. To provide the protection cited in the Act, OSM has clarified final § 816.102(a)(4) to require that the disturbed areas be backfilled and graded so that erosion and water pollution will be minimized. The goal of the Act is to minimize these conditions, so that language is used in the final provision.

Final § 816.102(a)(5) states that the disturbed areas shall be backfilled and graded to support the approved postmining land use and is the same as proposed § 816.102(b)(2)(iv). No substantive comments were received concerning this provision.

Section 816.102(b) [Proposed § 816.102(b)(1)]

Final § 816.102(b) states that the spoil, except excess spoil disposed of in accordance with §§ 816.71–816.74, must be returned to the mined-out area. This provision was proposed as § 816.102(b)(1), which stated that the spoil must be retained in the mined-out area unless disposal elsewhere in the permit area is approved. The rule has been changed to specifically identify the section for disposal of excess spoil and to replace the phrase "retained in" with "returned to" in response to comments.

Two commenters wanted the term "mined-out area" defined. One commenter pointed out that the mined-out area for underground mines could be either the mine workings or the surface area overlying them. The commenter further suggested that instead of using the phrase "mined-out area," OSM should require the spoil to be retained in the "area where overburden has been removed."

OSM has decided not to define the phrase "mined-out area" in the final rules. OSM believes the term "mined-out area" is sufficiently descriptive for surface mining activities to mean the area of the mining pit where the coal has been removed. Additional discussion of the meaning of this term in relation to underground mines is included in the preamble to §817.102 covering underground mining activities.

Several commenters wanted to allow disposal of spoil anywhere in the permit area instead of being limited to the mined-out area and suggested deleting the phase requiring approval to dispose of spoil elsewhere in the permit area. They believed the mined-out area was too restrictive and that this limited the flexibility of the operator. They pointed out that spoil from first cuts of surface mines and faceup areas of underground mines cannot be retained in the mined-out area because there is no mined area at that time. The commenters suggested requiring only that the spoil be retained

in a permitted area. They argued this would give the operator flexibility to place the spoil on the downslope in nonsteep slope areas, along the contour, or anywhere else in the permit area in keeping with "common practice." Environmental protection would be ensured, they argued, because any spoil disposal area would have to be permitted.

OSM has not adopted the proposed provisions specifically requiring the regulatory authority to approve the location for disposal of spoil within the permit area which is outside the mined-out area. A specific approval process is unnecessary because the rule prohibits the indiscriminate placement of spoil in the permit area since upon permanent placement it must either be returned to the mined-out area, disposed of as excess spoil, or placed in accordance with § 816.102(d). Also, the reclamation plan prepared in accordance with § 780.18(a)(3), which requires a plan for backfilling, would show the anticipated locations for the disposal of spoil and must be approved by the regulatory authority. The approval process for placement and disposal of spoil is a part of the total process of reviewing and approving a permit application for a surface coal mining operation under 30 CFR Parts 780 and 784 and would be covered by these parts.

The commenters are correct in stating that spoil generated by the first cut of an area mine or during faceup operations of an underground mine may be temporarily placed in the permit area on a surface outside the precise area from which the spoil was removed. Ultimately, however, it must be returned to the area from which it was removed or disposed of as excess spoil. Thus, the phrase "returned to" rather than "retained in" the minded-out area is used in final § 816.102(b).

One commenters advocated adding the language "in accordance with the approved postmining land use in the reclamation plan" after introducing backfilling and grading at the beginning of proposed § 816.102(b)(2). By using this language, the commenter believed the regulatory authority would be able to ensure that the procedures to eliminate highwalls, spoil piles, and depressions were presented to its satisfaction and the operator had an approved set of plans to follow during the reclamation operation. Also, the inspector would then have a set of plans against which to check actual performance.

The final rule has not been changed from the proposed rule because final § 816.102(a)(5) states that the area must be backfilled and graded to support the approved postmining land use. Since mining cannot begin without an approved permit, it is not necessary to add the language suggested by the commenter.

Section 816.102(c) [Proposed § 816.102(b)(3)]

Final § 816.102(c) was proposed as § 816.102(b)(3) and states that spoil and waste materials must be compacted where advisable to ensure stability or to prevent leaching of toxic material. Because of the reorganization of the section and because waste materials may be used for backfilling under § 816.102(e), the term "spoil and waste materials" is added as the subject of the sentence. The term "toxic material" is added as a phrase modifying "leaching," in keeping with the language of Section 515(b)(3) of the Act. No comments were received on this provision.

Section 816.102(d) [Proposed § 816.102(c)]

Final § 816.102(d) allows spoil to be placed on the area outside the mined-out area in nonsteep slope areas in order to restore the AOC by blending the spoil into the surrounding terrain, if the following three requirements are met: (1) All vegetation and organic material must be removed from the area, (2) topsoil must be treated in accordance with § 816.22, and (3) spoil must be backfilled and graded in accordance with § 816.102. OSM has replaced the proposed phrase "active mine working" with the phrase "mined-out area" and has made an editorial change to § 816.102(d) to clarify that the provision provides for requirements for the area outside the mined-out area in nonsteep slope areas.

The comments generally supported the proposal to allow spoil to be placed on the area outside the mined-out area in nonsteep slope areas for blending purposes. One commenter asserted that spoil from the first cuts on area mines should not be treated as excess spoil, but gave no justification for this position. Spoil from the first cut or any other cut may be treated as excess spoil if it is not needed to achieve AOC. One commenter proposed allowing spoil to be placed in draws and valleys where slopes are too steep for safe topsoil removal. The commenter seemed to indicate that rather than removing the topsoil, a topsoil substitute would be used in the area to adequately facilitate quality reclamation. The commenter offered no background information or justification for this procedure.

The provision allowing blending of spoil has been retained in the final rule. OSM does not intend that there be a difference between the treatment of areas used for blending and the areas mined for coal. The environmental protection performance standards in Section 515 of the Act apply to the blended area to the same extent as they do to other disturbed areas. Paragraph (d)(3) states that the blended area must be backfilled and graded in accordance with this section; therefore, the blended area must be reclaimed to the same performance standards as other disturbed areas.

Another commenter advocated adding a fourth requirement in Paragraph (d) to state that the blended areas must meet all the other performance standards of Part 816. Such a provision is unnecessary since § 816.102(d)(3) makes all of the backfilling and grading provisions mandatory and the rest of the provisions of Part 816 will apply where relevant.

One commenter contended it was unclear how the regulatory authority and the mine operator would distinguish between material used for blending and excess overburden [excess spoil]. The commenter asserted that under the previous rules, excess overburden [excess spoil] was any material placed outside the active mine workings. The commenter concluded by saying that OSM should discuss methods of making the distinction in this preamble to the final rules.

As previously discussed, OSM is changing the definition of excess spoil to mean material not required to achieve AOC that is disposed of outside the mined-out area but not including material used in blending under this section. The distinction between the applicability of the excess spoil rules and this rule depends upon whether the material is being used to achieve AOC. If the spoil used for blending the mined-out area into the surrounding terrain is used to achieve AOC, it may be so placed in accordance with § 816.102(d). If it is not used to achieve AOC, it is excess spoil to which the provisions of § 816.71 apply. It is only in nonsteep slope areas that a distinction needs to be made between material used for blending and that placed in an excess spoil fill. In steep slope areas, all spoil disposed of outside the mined-out area requires approval according to the provisions of § 816.71.

One commenter believed that the requirement to remove all vegetative and organic material from the area to be used for blending is too restrictive, especially if the topsoil has already been removed from the area. The commenter believed early successional herbaceous and/or shrubby species

should not be regrubbed but that larger trees should be removed.

The commenter did not explain why the delay between removing topsoil and placing spoil on the area would be long enough to allow reestablishment of vegetation. In fact, allowing such a long time to elapse after topsoil removal could likely cause increased erosion. The provison has not been changed in the final rule and the requirement to remove all vegetation and organic material applies to an area whether it has been grubbed once or not. Clearing, grubbing, and removing the topsoil should be done just prior to placing spoil over the area to prevent erosion and regrowth of vegetation. The preparation and reclamation of areas outside the mined-out area used for placement of spoil should follow the same process as is used in the areas from which the overburden and coal is removed and where spoil is normally placed.

Section 816.102(e) [Proposed §816.102(d)]

Section 816.102(e) allows disposal of coal processing waste and underground development waste in the mined-out area if it is done in accordance with §§ 816.81 and 816.83, except that a long-term static safety factor of 1.3 rather than 1.5 must be achieved. The term "mined-out" is substituted for the word "backfilled" in the final rule to accurately describe the area suitable for disposal of such waste materials. No changes were made to the paragraph as a result of comments.

Section 816.102(d) was supported by industry commenters who believed coal processing waste and underground development waste could be safely placed in the mined-out area without harm to the hydrologic regime. The proposal was opposed by commenters who believed that OSM was allowing waste in the mined-out area without adequate regulation, which might result in numerous and serious problems. One of the commenters continued that by deleting the previous 4-foot-cover requirement, OSM would be seriously deficient in meeting its responsibility to establish minimum national environmental protection performance standards.

OSM does not believe it is necessary to include additional design criteria, such as the previous 4-foot-cover requirement for acid- and toxic-forming materials in this section. That provision was suspended pending rulemaking to allow treatment of those materials as an alternative to covering them (47 FR 67943, November 27, 1979).

Referencing the coal mine waste disposal performance standards of §§ 816.81 and 816.83 provides the necessary environmental protection requirements for placing coal processing waste and underground development waste in the mined-out area. In addition, the provision allowing disposal of waste in the mined-out area does not waive any other applicable requirements, such as those pertaining to the protection of the hydrologic balance and controlling drainage from acid- and toxic-forming materials. Thus, there is no basis for the assertion that the provisions allows for waste disposal without adequate regulation.

One commenter stated that by allowing coal waste in the mined-out area, OSM would be increasing the possibility of acid mine drainage and the release of toxic metals. OSM is aware that there is the possibility of problems caused by the disposal of coal mine waste in mined-out areas. However, this potential is no greater, and may be less than, disposal in any other area. In fact, this method can be the most environmentally desirable approach provided there is enough space and suitable nontoxic overburden to cover both the wastes and any toxic material from the mine. With proper burial and treatment, there should be no long-term problems with placing coal waste in mined-out areas.

Another commenter stated that because of the potential fire hazard in coal processing refuse, it must be placed no less than 10 feet from a coal seam and isolated from the seam with a noncombustible barrier. The commenter continued that if more than one coal seam is exposed in the highwall, the barrier must be the length and height of the highwall. Also the material must have 90-percent Proctor compaction. In addition, the commenter said that because of changes in drainage requirements, waste should be eliminated from fill, but that if it was to be allowed, impermeable material must be used as a barrier to isolate the refuse from the water-drainage areas.

OSM does not believe it is necessary or appropriate to establish specific design criteria, as proposed by the commenter. Incorporation in § 816.102(e) of OSM's revised rules on coal processing waste should alleviate these concerns. A full discussion on the treatment of coal processing waste will be contained in the preamble to the revised coal mine waste disposal rules, §§ 816.81–816.89. Those rules will incorporate the rules of the U.S. Mine Safety and Health Administration, 30 CFR 77.214, which require clay or inert material to be placed between new refuse piles and old refuse piles or exposed coal beds. Also, 30 CFR 77.215 specifies the compaction requirements to minimize air and water infiltration into refuse piles and reduce the possibility of combustion (OSM's proposed rules at 47 FR 26602–26603, June 18, 1982). For contour suface mining situations, it has been recommended that the waste be encapsulated by 3 feet of impermeable material at the base of the cut (U.S. Environmental Protection Agency, 1973, pp. 79–80). According to another article, on fires in coal processing waste, burning refuse has been extinguished by sealing and smothering with 2 feet of compacted clay (U.S. Mining Enforcement and Safety Administration, 1975, p. 7.15). OSM has not been able to locate references that show it is necessary to isolate coal processing waste from a coal seam by a distance of 10 feet, or, for more than one coal seam, that the barrier must be the length and height of the highwall as advocated by the commenter. By adhering to the above-cited rules, coal processing can be successfully disposed of in backfilled areas.

One commenter suggested that if it was allowable to mix the waste throughout the backfilled spoil the results might be better than if the waste was in flat, compacted layers, as long as the hydrologic regime is not significantly changed in the area. Another commenter believed there would be no problem in placing waste materials in mined-out areas as long as the waste is sufficiently covered with 4 or more feet of overburden or topsoil.

The final rules do not prevent coal processing wastes from being mixed with the overburden material if the performance standards are met. This is one factor that could be considered during the design of a backfill area containing coal waste.

A State regulatory authority explained that under its program when waste material is placed in a backfilled area, the area is treated as a waste structure and must be designed to a 1.5 safety factor. It stated that with a 1.3 safety factor, the operator will need to make a greater demonstration of stability and that there will need to be a more stringent review by the regulatory authority.

A State regulatory authority could adopt a 1.5 static safety factor for such situations. However, OSM believes that a 1.3 static safety factor is adequate. The mere characterization of a material as waste does not make it less stable than other materials not so classified. The specific properties of the material, such as water content, particle size, coefficient of friction, and others, must

be accounted for in achieving fill stability. If the required static safety factor can be achieved, it is irrelevant for stability purposes that waste is included in the backfill. In addition, OSM believes that a 1.3 static safety factor provides the necessary level of confidence because, in general, backfilling occurs on solid benches or mining-pit areas for which the foundation characteristics have been reasonably determined. Furthermore, a State has the prerogative of setting more stringent criteria for the disposal of coal waste than the performance standards published by OSM.

One commenter proposed deleting the references in § 816.102(e) to §§ 816.81 and 816.83 and the 1.3 long-term static safety factor and replacing them with a reference to the hydrologic-balance rules. The commenter expressed the need for giving the design professional more latitude. Further, the commenters contended that the rules should address backfilling in such a manner as to prevent detrimental impacts to vegetation and water quality and added that a reference to §§ 816.41 and 816.48 would be more appropriate.

The language of the proposed paragraph has not been changed. OSM believes the reference to the coal mine waste rules is appropriate to ensure the proper disposal of coal waste. Reference to the coal waste rules, moreover, does not waive the general requirements for protection of the hydrologic balance.

Section 816.102(f) [Proposed § 816.102(e)]

Final § 816.102(f) contains the requirements for covering or treating exposed coal seams, acid- and toxic-forming materials, and combustible materials to control the impact on surface and ground water, to prevent sustained combustion, and to minimize adverse effects on plant growth and land use. After evaluating the comments, OSM has made no substantive changes to the proposed rules except to clarify that the "land use" referenced in the proposal is the approved postmining land use.

One commenter supported OSM's proposed deletion of the 4-foot-cover requrement for acid- and toxic-forming materials from the previous rules and replacement with a provision to either treat or bury these materials. The commenter continued that this provides the operator with a heretofore unavailable option for disposing of these materials because some spoils do not require 4 feet of cover and treatment can be more economical and adequate than coverage under such conditions.

Two commenters advocated that OSM retain the minimum 4-foot-cover requirement for acid- and toxic-forming material. They believed that without a design criterion, the term "adequate" in § 816.102(f) would lead to arguments between the regulatory authority and the operators as to how much cover was adequate. Also, they believed the changed requirements would require more effort in the review of the design for the cover. The commenters concluded that the regulatory authority needs to be as certain as possible about adequacy of cover because if the cover fails, the operator may need to redisturb additional areas to borrow materials to cover the toxic materials properly.

OSM is aware of the many potential problems that attend the proper disposal of toxic materials. However, a national standard for cover thickness is not the solution to these problems. Instead, the regulatory authority should set whatever standards, specific or otherwise, which provide the best solution within the State. The problems of interpretation will be avoided by allowing the State regulatory authorities to set and explain standards designed for local conditions. These standards must be based on the national performance standard requiring successful covering or treatment in accordance with the provisions of § 816.102(f).

One commenter indicated that problems such as inadequate rooting depth for plant growth and contamination and damage to the hydrologic balance would be caused by removing the 4-foot-depth requirement. The commenter stated that OSM provided no analysis, data, or technical literature to support the deletion of the requirement. Also, the commenter pointed out that one study (Murray, 1978) recommended that in Appalachia, toxic spoil be covered with 5 feet of soil.

In one respect, this comment actually supports OSM's new rule. The commenter asserts that some areas need 5 feet of cover. In such situations, OSM would not be adequately protecting the environment by specifying only 4 feet as a national standard.

Also, the above-referenced document points out that the characteristics of the cover material may cause burial depth to vary from place to place and region to region. In a study on acid formation from a restored refuse pile, no significant variation in acid production resulted with a cover of 1 foot, 2 feet, or 3 feet of soil (Murray, 1978, p. 321). Since the proper burial depth for acid- and toxic-forming material will vary in different locations, OSM will rely on regulatory authorities to ensure that the performance standard is met. Some considerations for establishing the depth of cover are the approximate rooting depth for the plants, the depth needed to place the refuse below the zone of significant oxidation (Murray, 1978, p. 140), the difficulty of placing the cover material in layers, and the erosion potential of the site. In addition, OSM believes that treatment of acid- and toxic-forming materials or a combination of treatment and cover may, in some situations, be a more effective method of eliminating the problem. Therefore, the final rule allows this as an alternative to covering with nontoxic material.

Section 816.102(g) [Proposed § 816.102(f)]

Cut-and-fill terraces are allowed by final § 816.102(g) where they are compatible with the approved postmining land use and are needed to conserve moisture, ensure stability, and control erosion or where specialized grading, foundation conditions, or roads are required. The proposed rule has been changed as a result of a commenter's suggestion to clarify that the regulatory authority must approve cut-and-fill terraces.

Mixed comments were received on the proposed revision of the cut-and-fill terrace provisions. Commenters supporting revision of the rules cited increased operator discretion in constructing the width of the terraces and no foreseeable impacts from wider terraces as long as the fill material is retained on the solid bench. One of the commenters recommended that the rule state that the regulatory authority must approve the cut-and-fill terraces. Those commenters in opposition to the changes said that the change is no more than an attempt to defeat the AOC requirements and that OSM has established a major loophole in the AOC requirements. The commenters believed that the only way to remedy the problem is to return to the design standards of the previous rule.

Terraces are an acceptable grading technique for achieving the surface configuration after a mining operation. They are specifically authorized by the definition of AOC in Section 701(2) of the Act as long as "the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain * * *." At the suggestion of a commenter, the proposed rule has been changed to show that the regulatory authority may approve cut-and-fill terraces. The final rule clarifies that the

regulatory authority will review the terrace design for meeting the objectives of the approved postmining land use. Regulatory authority approval of cut-and-fill terraces shall prevent potential abuse. Thus, additional design standards are not necessary for proper execution of the provision. Terraces are standard soil-conservation practices for controlling the runoff of water and reducing the soil loss caused by erosion.

For terraces to be most effective in reducing sheet and rill erosion and retaining runoff in areas of inadequate rainfall, the terrace design must follow accepted engineering practices including considering the specific conditions of the site. Terrace design involves selecting the proper spacing and location of the terraces and the design of the channel with adequate capacity to carry the runoff from the land area above the terrace. In determining the physical features of terraces, the operator and the reviewing officials should consider such soil characteristics as infiltration and water-holding capacity, cropping and soil-management practices, and climate, which includes intensity, duration, and distribution of precipitation (Schwab and others, 1966, pp. 224–248). The necessity for site-specific design of terraces was emphasized for surface mining operations in arid and semiarid regions of the western U.S. where terraces are used for erosion control and moisture conservation. Some of the terraces in those regions are designed to retain all of the onsite precipitation. (Verma and Thames, 1978, pp. 401–402).

One commenter remarked that if terraces are wider than 20 feet; which was not allowed in previous rules, it is harder to stablize the backfill. No additional clarification of the statement was given by the commenter. OSM believes that properly designed terraces using accepted engineering practices could enhance the stability of the disturbed area.

Another commenter believed that the qualifiers in the provisions for cut-and-fill terraces set requirements that seem to discourage the use of agricultural terraces. The provision of special concern was that terraces had to be compatible with the approved postmining land use and that their width had to be adequate to ensure the safety, stability, and erosion control of the postmining land-use plan. The commenter wanted the section redrafted to encourage the use of contour and level bench terraces on reclaimed lands to facilitate sediment control and successful revegetation. The commenter suggested using terraces for enhancing the value of reclaimed areas for agricultural lands, but added that agricultural terraces should not be used in lieu of reducing postmining slopes to at least premining slope conditions.

The language in the final rule does not discourage agricultural use of reclaimed land. Terraces are a physical feature that could be compatible with various postmining land uses, including agriculture. They should be identified in the land-use plan and approved by the regulatory authority. An agricultural land use could be approved just as could any other postmining land use.

Section 816.102(h) [Proposed § 816.102(g)]

Final § 816.102(h) states that small depressions may be constructed if they are needed to retain moisture, minimize erosion, create and enhance wildlife habitat, or assist revegetation. The creation and enhancement of wildlife habitat was not included in the proposed rule.

One commenter advocated constructing small depressions to create and enhance wildlife habitat. It was suggested that this new use for small depressions be added to proposed § 816.102(g). OSM has accepted the comment that benefiting wildlife is a reasonable use of small depressions. Section 515(b)(3) of the Act allows small depressions as authorized pursuant to the Act. Section 515(b)(24) of the Act requires fish, wildlife, and related environmental values to be enhanced where practicable. OSM believes small depressions could, in certain cases, be a practicable means of benefiting wildlife and increasing wildlife habitat. The final rule reflects this position.

Another commenter described using depressions as a means of requiring less backfilling in the final cut of an area mine. A depression would be created between the sloped highwall and the last spoil ridge which would be terraced. The depression would undoubtedly collect water during some periods of the year. However, the Act, in section 515(b)(3), does not allow depressions to circumvent the AOC restoration requirements. Also, the depressions described by the commenter would not qualify as small depressions under § 816.102(h). Depressions cannot substitute for fully backfilling the mining pit. Congress intended that depressions that would collect and store water be barred from the surface area unless permanent impoundments are approved (Senate Report 95–128, 95th Congress, 1st Session, 1977, p. 99). Therefore, the depressions described by the commenter are not allowable.

Section 816.102(i) [Proposed § 816.102(h)]

Permanent impoundments on backfilled areas may be approved according to final § 816.102(i) if they meet the requirements of §§ 816.49 and 816.56 and if they are suitable for the approved postmining land use. No changes in the rule resulted from OSM's evaluation of comments; the only change will be to note the proper reference for impoundments, §§ 816.49 and 816.56. A commenter stated that construction of impoundments should be forbidden in overburden which contains high concentrations of sulfur or iron because impoundments in these areas will increase the potential for acid mine drainage. The commenter also stated that OSM has not addressed how this rule will affect the stability of the backfilled and graded spoil. Section 515(b)(8) of the Act provides performance standards for permanent water impoundments. That section requires that water impoundments not degrade the water quality below established water-quality standards. Under § 816.102(i), the water impoundments must be designed and constructed according to the provisions of § 816.49, which considers the quality of water and the stability of the structure as part of the design process. Since properly designed impoundments may be authorized in the approved mining and reclamation plan and permit, there is no need to duplicate those provisions as part of this rulemaking. Properly designed impoundments will not increase the potential for acid mine drainage nor decrease the stability of the backfill. The impoundment should not affect the stability of the backfilled area since the operator must achieve a static safety factor of 1.3 for the backfilled area, and the static safety factor for the impoundment must comply with the requirements of § 816.49. The permit review process will allow the regulatory authority to determine the feasibility of impoundments.

Proposed § 816.102(i)

Proposed § 816.102(i), which stated that overland and shallow ground-water flow from undisturbed areas and flow in ephemeral streams must be controlled by diversions and other water-control measures in accordance with § 816.41(f), has not been adopted. The provision concerning ground-water flow is not included in the final rules because all aspects of backfilling and grading are subject to the hydrologic-balance provisions of §§ 816.41–816.46. It was a redundant provision since it merely

referred the operator to the appropriate section.

A commenter wanted the provision on controlling overland and shallow ground-water flow in proposed § 816.102(i) removed from the final rule because existing § 816.43 would have been removed under proposed OSM rule changes. Section 816.43 was deleted from the proposed hydrology rules published June 25, 1982 (47 FR 27712), but the requirements of that section were to be incorporated in proposed § 816.41(f). Subsequent to publication of those proposed rules, the provisions on controlling overland and shallow ground-water flow are returned to § 816.43 and the reference to them in § 816.102 is not needed.

Section 816.102(j)

Final § 816.102(j) is unchanged from the proposed rule. This section states that preparation of final-graded surfaces must be conducted in a manner that minimizes erosion and provides a surface for replacement of topsoil that will minimize slippage. No comments were received on the provision. For further explanation of this provision, see the preamble to the proposed rule (47 FR 26763, June 21, 1982).

Section 816.102(k) [Proposed § 816.102(a)]

Final § 816.102(k) states that the postmining slope may vary from AOC under certain conditions. These conditions are limited to when the standards for thin overburden in § 816.104 are met (§ 816.102(k)(1)); the standards for thick overburden in § 816.105 are met (§ 816.102(k)(2)); or when approval is obtained for any of the following situations—mountaintop removal in accordance with, a variance from 30 CFR 785.14 AOC requirements (in accordance with § 785.16, or incomplete elimination of highwalls in previously mined areas in accordance with § 816.106 (§§ 816.102(k)(3)(i), (k)(3)(ii), and (k)(3)(iii), respectively). Changes made to the proposed provisions included adding cross references where appropriate and clarifying some of the provisions of the proposed rule. Although the thick-overburden situation has been included as an exception to the AOC-restoration requirement, the exception is allowed only after AOC has been restored.

Proposed § 816.102(a)(3) would have required the postmining slopes to be returned to AOC except when a variance was obtained from the regulatory authority for mountaintop removal, alternative postmining land use or remining. For the final rules, OSM has replaced the word " variance" with "approval" because the word "approval" more accurately describes the action of the regulatory authority during the permitting process with regard to mountaintop removal and incomplete elimination of highwalls. Not requiring a return to AOC for alternative postmining land uses under § 785.16 is a variance process that is referred to as such in final § 816.102(k)(3)(ii).

One commenter believed that proposed § 816.102(a)(3)(ii) was totally inadequate in the treatment of variances from the AOC requirement. The commenter asserted that since there is little opportunity for operators to upgrade land-use classification as would be required by proposed § 816.133(d), the postmining surface contour would have to be restored to AOC and consequently the operator would not be able to realize some environmental improvements on the land surface. The commenter provided examples of such environmental improvements as elimination of steep slopes, reduction of sedimentation, and improvement in grazing and wildlife habitat. At the same time, the commenter felt that a cost savings could be realized through efficient earthwork design. The commenter believed that the rules should not ignore these possibilities and that requiring return to AOC was too great a restriction.

Returning the postmining land surface to AOC is generally required by Section 515(b)(3) of the Act, which is the basis for the backfilling and grading rules. The Act does not allow a general variance from the AOC-restoration requirement. The provisions for obtaining a variance from the requirements to restore the land to AOC, which were proposed in §§ 785.16 and 816.133(d) (47 FR 16152, April 14, 1982), must satisfy the conditions of Section 515(e) of the Act.

Section 785.16 contains the permitting procedures for obtaining a variance from AOC requirements, and proposed § 816.133(d) contains the performance standards for the variance from AOC for an alternative postmining land use. Since final revisions to §§ 785.16 and 816.133(d) are in another rulemaking, there is no need in this preamble for a detailed discussion of variance procedures except for the reference to § 785.16 in § 816.102(k)(3)(ii). It is sufficient to note that in some situations the performance standards in § 816.133(d) would allow many of the improvements cited by the commenter.

A commenter suggested that when the final rules are written, the land-use variance provision of § 816.102(k)(3)(ii) should reference § 816.133(d) as an aid to the reader. OSM has retained the reference to the permit application process in § 785.16 in the final provision of § 816.102(k)(3)(ii). OSM believes § 785.16 is the proper cross reference because that section includes the permit application process for obtaining a variance from AOC for the postmining land use. The phrase "land-use variances" which was proposed to introduce the paragraph has been replaced by "a variance from approximate original contour requirements." This phrase is more in keeping with §§ 785.16 and 816.133(d).

Another commenter asserted that hill-and-depression topography is the result of backfilling and grading the final-cut area of an area mine. The commenter did not relate how the postmining surface contour would be different from the premining surface contour or why such a contour would not necessarily satisfy the AOC-restoration requirement. In response, it is possible for hill-and-depression topography to meet AOC requirements, depending on the premining topography. The regulatory authority would determine during the review and approval process of the permit if the proposed topography would meet AOC requirements.

An exception from the requirement to return to AOC for those situations in which the incomplete elimination of highwalls is allowed in previously mined areas is allowed by § 816.102(k)(3)(iii). A commenter concurred with the variance from AOC for remining of previously mined areas but, without any explanation, did not agree with allowing a variance from elimination of the highwall. Another commenter believed that the rule should include a reference to the rules on remining. OSM agrees with the latter comment, and the final rule will include a reference to § 816.107(e). If proposed § 816.106, as set forth in OSM's "Final Environmental Impact Statement OSM-EIS–1: Supplement" is adopted, appropriate conforming amendents will be adopted.

Previous Section 816.103 Backfilling and grading: Covering coal and acid- and toxic-forming materials

The preamble for the proposed rule discussed moving the requirements for this section to proposed § 816.102(e), and the reasons were outlined at 47 FR 26763–27674 (June 21, 1982). OSM received no comments on this proposal; therefore, § 816.103 will be deleted in the final rule and its essential provisions transferred to final § 816.102(f) as discussed above.

Section 816.104 Backfilling and grading: Thin overburden

Proposed § 816.104 applied to thin-overburden situations where replacement of all spoil and waste materials in the permit area would be insufficient to restore the disturbed area to AOC. In addition, the proposed rule required the operator to "backfill, grade, and compact (where advisable)" those areas of thin overburden using all available spoil and waste materials to attain the lowest practicable grade but not more than the angle of repose and to meet the other requirements of § 816.102. The language of the proposed rule was the same as that of Section 515(b)(3) of the Act. The proposed rule was changed as a result of comments in order to specify more clearly which provisions of § 816.102 an operator must meet in thin-overburden conditions.

One commenter objected to using the term "insufficient" in describing the amount of spoil available to the operator to use in achieving AOC. The commenter believed that the term "insufficient" was unenforceable and provided too much discretion. The commenter asserted that such usage would require that regulatory authority would be required to develop specific guidelines for mining in thin-overburden areas. OSM disagrees with this comment. In a thin-overburden situation the operator must meet all of the performance standards, except for the AOC-restoration requirement. The operator must demonstrate in the permit application that there is insufficient material to return to AOC. With this demonstration, the regulatory authority will have an objective decision to make as to whether there is enough spoil to return to AOC. There are no unreasonable problems of discretion associated with the final rule. The final rule follows the thin-overburden language in the first proviso of section 515(b)(3) of the Act.

Two commentors pointed out some areas of confusion as to which provisions in § 816.102 apply to thin-overburden situations. The commenters were not sure which requirements in § 816.102 would be waived if insufficient spoil was available to the operator. As previously discussed, the only exception to the performance standards of the Act for thin-overburden conditions is the return to AOC provision. The rule that requires all available spoil and waste material be used to attain the lowest practicable grade but not to exceed the angle of repose. All of the provisions in § 816.102 apply to thin overburden except Paragraph (a)(1). The backfiling, grading, and compacting process is the same regardless of the thickness of the overburden above the coal. Therefore, the phrase "backfill, grade, and compact" has not been adopted from proposed § 816.104(a). Section 816.104(b) specifically addresses which backfilling and grading performance standards must be met when the overburden is thin. The final rule will show that the only requirement waived for thin-overburden situations is return to AOC.

In addition, one commenter wanted the rule to state that use of borrow areas is not intended for thin-overburden situations. The commenter indicated this could be accomplished by specifying that only spoil and waste materials generated from the mined-out areas would be used for backfilling and grading in § 816.104(a). Since return to AOC is not mandated, borrow areas are not required in thin-overburden situations to reach AOC.

In summary, the final rule for thin-overburden situations includes the same description of thin overburden as did the proposed rule, the phrase "backfill, grade and compact" has been deleted in § 816.104(a), and § 816.104(b) provides that thin overburden must meet the requirements of §§ 816.102(a)(2)–816.102(j). Except for these changes, the final rule is the same as the proposed rule, which is further explained in the preamble to the proposed rule (47 FR 26764, June 21, 1982).

Section 816.105 Backfilling and grading: Thick overburden

Proposed § 816.105 applied to thick-overburden situations where the volume of the spoil and other waste materials was more than sufficient to restore the disturbed area to AOC. In addition, the proposed rule required the operator to "backfill, grade, and compact (where advisable)" the excess overburden to attain the lowest practicable grade but not more than the angle of repose, meet the other requirements of § 816.102, and dispose of any excess spoil in accordance with §§816.71–816.74. The language of the proposed rule was the same as that of the second proviso of Section 515(b)(3) of the Act. The final rule has been changed as a result of evaluation of comments to specify more clearly the provisions of § 816.102 that an operator must meet for thick-overburden conditions.

One commenter objected to using the term "more than sufficient" to describe the amount of spoil available to the operator for achieving the AOC. The commenter believed it was unenforceable and provided too much discretion to use the term "more than sufficient". This would require the regulatory authority to develop specific guidelines for mining coal in a thick-overburden area, the commenter argued.

Another commenter wanted OSM to emphasize the exclusion of thick-overburden operations from the requirements of proposed § 816.102(a) by requiring that they meet the other requirements of proposed § 816.102(b).

In a thick-overburden situation the operator must meet all of the performance standards of the rules except that the operator, after achieving AOC, may exceed the AOC requirement. The amount of excess overburden is a site-specific condition and easily documented. Therefore, each permit application requesting consideration under this section should be evaluated by the regulatory authority. The final rule follows the thick-overburden language in Section 515(b)(3) of the Act and will retain the proposed description of thick overburden.

As discussed above, the only exception to the Act's performance standards for thick-overburden conditions operation is from the requirement to return to AOC. The Act replaces the AOC standards with a requirement that the operator, after achieving AOC, shall use the additional spoil to attain the lowest practicable grade but not exceeding the angle of repose. Thus, all of the provisions in § 816.102 would apply to thick overburden except Paragraph(a)(1). The backfilling, grading, and compacting process is the same regardless of the amount of overburden removed and backfilled, and therefore, those terms have not been adopted from proposed § 816.105(a). Section 816.105(b) specifically addresses the particular backfilling and grading performance standards which must be met.

One commenter was concerned that there be no prohibition in § 816.105 on disposing of excess spoil before the backfilling is completed to restore AOC. The commenter indicated that the amount of excess spoil is based on design estimates and is often disposed of before the backfilling operation is completed.

Section 816.105(c) refers to the provisions in §§816.71–816.74 for the disposal of excess spoil. Section 816.105(c) does not require excess spoil to be retained until backfilling is completed. Therefore, excess spoil may be disposed of anytime in the mining operation. However, adequate spoil must be available for backfilling to meet the AOC requirements.

In summary, the final rule for thick-overburden situations will include the same description of thick overburden as

the proposed rule; the phrase "backfill, grade, and compact" has been deleted in § 816.105(a), and § 816.105(b) provides that in thick-overburden situations operators must meet the requirements of §§ 816.102(a)(2)–816.102(j). For editorial clarity, the word "use" will be the first word in § 816.105(a). For further explanation of this rule, see the preamble to the proposed rule (47 FR 26764, June 21, 1982).

Section 816.107 Backfilling and grading: Steep slopes

OSM proposed to transfer the requirements of §§ 826.11 and 826.12, the special backfilling and grading requirements for steep slope operations, from Part 826 to form a new § 816.107. The new section contains only the requirements needed for steep slopes and removes the repetition in the rules that was needed when Part 826 was a self-contained part. OSM received no comment on the proposed transfer, and § 816.107 will be adopted as proposed. For a complete explanation of this proposal, the reader is referred to the standards for the proposed rule (47 FR 26764, June 21, 1982).

New § 816.107(a) describes the conditions under which the steep slope rules apply. Section 816.107(b) prohibits placing the following materials on the downslope: spoil, waste materials of any type, debris and abandoned or disabled equipment. The reference to haul-road construction debris in the proposed rule has been changed in the final rule to include all debris, without specifying haul-road debris. Section 816.107(c) provides that land shall not be disturbed above the highwall except with the approval of the regulatory authority. Section 816.107(d) states the conditions under which woody material may be buried in the backfill. After considering the comments received on the steep slope provisions, OSM has decided to adopt the final rules as described above.

One additional consideration has arisen because of the removal of Part 826. Its removal has required the redesignation of § 816.12(b) as § 816.107(e). Section 816.107(e) states that the highwall does not have to be fully eliminated in contour-mining operations in steep slope areas that affect previously mined, unreclaimed lands if it is demonstrated that the volume of all reasonable available spoil is insufficient to completely backfill the highwall. The provision is the same as interim final § 826.12(b) published on November 12, 1982 (47 FR 51316) with appropriate changes in the references to backfilling and grading rules to conform with other changes adopted. For further information and discussion of comments relevant to this provision, see the interim final rule. If the June 25, 1982, proposed remaining rules (47 FR 27734) become final, § 816.107(e) may be incorporated in § 816.106.

Several commenters believed that the provisions in § 816.107(c) on disturbing land above the highwall were not completely consistent with Section 515(d)(3) of the Act. In explaining their rationale, two commenters wanted to replace "shall not" in the proposed rules with "may not" to repeat the exact language of the Act. Another commenter suggested changing the sentence from the negative to the positive by having the sentence read "[l]and above the highwall *may* be disturbed *if* the regulatory authority * * *" instead of "[l]and above the highwall *shall not* be disturbed *unless* the regulatory authority * * *." The commenter continued by stating that this change would allow the flexibility for steep slope mining that Congress intended when it wrote the Act.

Section 515(d)(3) of the Act provides that "[t]he operator may not disturb land above the top of the highwall unless the regulatory authority finds that such disturbance will facilitate compliance with the environmental protection standards applicable to steep slope operations." The phrase "may not" is used in this context to create a condition precedent to allowing disturbance above the highwall. Since such actions are not permitted until the proper finding has been made, OSM used the standard regulatory language for describing mandatory actions. OSM believes that substituting "shall not" for "may not" does not change congressional intent regarding disturbance above the highwall. Also, using a positive or negative sentence structure does not change the flexibility of the provision. The paragraph has not been changed; the operator will not be allowed to disturb land above the highwall unless permission is received from the regulatory authority after the proper finding is made.

It should noted that final § 816.107(c) neither supersedes nor waives the Mine Safety and Health Administration rule at 30 CFR 77.1001 which requires that loose hazardous material be stripped for a safe distance from the top of highwalls to protect miners from falling material hazards.

Two commenters believed that the provisions in § 816.107(d) should apply only to the prohibition of woody materials in the backfill area and not to any mulching provisions. They reasoned that the revegetation rules, §§ 816.111–816.116, would cover the mulching requirements and that the language in § 816.107(d) would be repetitive.

OSM has accepted these comments and revised proposed § 816.107(d) accordingly. Since the revegetation rules separately provide that the regulatory authority may require mulching where deemed necessary, similar language is not needed in § 816.107(d) to clarify that mulch may be used in steep slope areas.

Part 817—Permanent Program Performance Standards—Underground Mining Activities

The changes in proposed §§ 816.101–816.107 will also be made to the corresponding provisions of §§ 817.101–817.107 and will not be discussed any further under this portion of the preamble.

The discussion below refers only to specific comments received and changes made on requirements that pertain specifically to underground mining activities.

Section 817.102 Backfilling and grading: General requirements

The backfilling and grading requirements proposed for the surface effects of underground mining activities were the same as those proposed for surface mining activities, except that the nonapplicable exceptions to the requirement to restore AOC listed in § 816.102 were not proposed for Part 817 and a Paragraph (k) was added to consider the situation of settled, revegetated fills for underground mining activities. The rationale for proposed Paragraphs 817.102(a)–(j) is the same as that for proposed Paragraphs (a)–(j) of § 816.102. For comments which pertain to these sections, the reader is referred to the preamble for Part 816.

In the earlier discussion of § 816.102, it was noted that a commenter pointed out that the mined-out area for underground mines could be either the mine workings or the surface area overlying them. Because of the possible ambiguity, OSM has decided to use the term "mined-out surface area" in reference to underground mining activities. OSM believes the term is appropriate for underground mining activities because OSM's primary concern is the surface impacts incident to an underground coal mine rather than the underground workings. Therefore, these rules concern activities completed on surface areas such as faceup operations for underground coal mine development or other types of surface excavation incident to the underground mining activity.

Section 817.101(l) [Proposed § 817.102(k)]

OSM has added a new § 817.102(l) to provide flexibility for settled fills that have become stabilized and revegetated, as a result of the U.S. District Court remanding the rule requiring return to AOC for underground mines. *In re: Permanent Surface Mining Regulation Litigation*, No. 79–1144 (D.D.C. May 16, 1980) (Slip Op. at 17–18). For additional discussion of the reasons for the new paragraph, see the preamble for the proposed rules (47 FR 26765–26767 June 21, 1982).

Under final § 817.102(l), fills that are sufficiently stable and revegetated to the standards of the Act can remain in place if they meet the following four criteria: That the fill be composed only of spoil or non-acid or non-toxic-forming underground development waste Paragraph (1)(i)); that the spoil not be located so as to be detrimental to the environment, to the health and safety of the public, or to the approved postmining land use (Paragraph (1)(ii)); that the spoil also be stable as demonstrated by geotechnical analysis (Paragraph (1)(iii)); and that the fill be sufficiently vegetated to prevent erosion and contribution of suspended solids to streams from normal runoff (Paragraph (1)(iv)). In addition, the regulatory authority may decide to leave the spoil in place if more environmental harm or injury to the public health and safety would be caused by moving it (Paragraph (2)). Finally, the regulatory authority may require stabilization of the spoil if it does not meet the criteria of Paragraphs (l)(1)(i)–(l)(1)(iv).

Except for minor renumbering and as discussed below, the proposed rule was not changed as a result of consideration of comments received. OSM has added some clarifying language to the rule and also indicated that the spoil or underground development waste shall not be detrimental to the approved postmining land use.

Three commenters suggested alternative regulatory language to implement the District Court order to provide some flexibility for settled fills that have become stabilized and revegetated. *In re: Permanent Surface Mining Regulation Litigation*, No. 79–1144 (D.C.C. May 16, 1980) (Round II). They suggested replacing the term "fill" or its contents in Paragraph (l) with "area."

OSM will retain the proposed language in the final rule. In remanding the rule, the court used the term "fills," not "areas." This is significant since the plaintiffs (commenters here) had argued that stabilized and revegetated "areas" should not be required to be regraded. OSM believes the proper course is to use the term actually used by the court rather than a term that was not used even though it was brought to the attention of the court. Therefore, OSM is of the opinion that the court order was correctly interpreted in the proposed rule. For additional discussion of settled fills, see the preamble to the proposed rule (47 FR 26766, June 21, 1982).

Three commenters also suggested that proposed § 817.102(k)(l), which referred to non-toxic or non-acidic-forming underground development waste and proposed § 817.102(k)(l)(i), which referred to protection of the environment and public health and safety, be deleted from the rule. The rationale for this suggestion is that the court order included all types of fill material and did not exclude fills of toxic or acidic underground development waste from consideration as revegetated and stabilized. The commenters did not explain why proposed § 817.102(k)(l)(i) on protection of the environment and public health and safety should be deleted.

One commenter stated that the rule should not be limited to spoil or non-toxic or non-acidic-forming underground development waste because the court's opinion was not so limited. The court directed OSM to provide "some flexibility for settled fills * * *." The final rule provides such flexibility. The court did not direct OSM to adopt any specific regulatory language. After considering all the comments, past experience, the court's opinion, and all other relevant factors, OSM has determined that only fills composed of spoil or non-acid- and non-toxic-forming underground development waste should be allowed to remain without regrading.

Thus, the limitation has been retained in the final rule. Although the above environmental conditions were not discussed in the court's opinion, OSM believes these provisions are necessary to fully implement the environmental protection performance standards for underground mining. Section 516(b)(9) of the Act provides the authority to limit the possibility of acid and toxic drainage. Section 516(b)(8) of the Act provides the authority to eliminate conditions which constitute a hazard to the health and safety of the public.

Regarding proposed Paragraph (k)(3) (now the last sentence of (1)(2)), one commenter stated that if the spoil is detrimental to the environment or to the public health and safety, then the regulatory authority must require stabilization of the spoil. The proposed language gives the regulatory authority the discretion to require stabilization.

The change suggested by the commenter was not made for the final rule. OSM agrees that generally the spoil should be stabilized to prevent further adverse impacts resulting from the spoil. However, to make stabilization mandatory could, in certain situations, cause degradation of the spoil, which could cause more damage than the present conditions. The term "may" provides the regulatory authority the discretion to provide the best solution to a given situation and still retain the flexibility to specify the requirements for stabilization or relocation of the fill that best meet the site-specific conditions.

The same commenter believed that it was inappropriate in proposed § 816.102(k)(3) to refer to proposed § 817.102(k)(1)(i) on the detrimental aspects of the fill but instead should use the phrase "minimize adverse impacts to the environment and health and safety of the public."

The commenter provided no justification for this suggestion and OSM has not changed the language in the final rule. The language of final § 817.102(l)(1)(ii) that "waste shall not be located so as to be detrimental to the environment, to the health and safety of the public, or to the approved postmining land use" is a clearer and more enforceable performance standard than the suggested language to "minimize adverse impacts." Therefore, OSM has adopted the language as proposed.

Part 826—Special Permanent Program Performance Standards—Operations on Steep Slopes

The proprosed rules indicated that Part 826, which applied to both surface and underground mining activities, would be removed from the rules and the provisions moved to §§816.107 and 817.107. The justification for this action was discussed in the preamble for the proposed rules (47 FR 267565, June 21, 1982) and the reader is referred to that preamble for more information. OSM received no comments on deleting Part 826, and the final rules reflect this change.

Reference Materials

Reference materials (on file in OSM's Administrative Record) used to develop these final rules are as follows:

Murray, F. X., editor, 1978, Where we agree: Report of the National Coal Policy Project, Vol. 2 Westview Press, Inc., Boulder, Colo. 477 pp.

Schwab, G. O., Frevert, R. K., and Edminister, T. W., 1966, Soil and water conservation engineering, Second edition.

The Ferguson Foundation Agricultural Engineering Series. John Wiley and Sons, New York, 683 pp.

U.S. Environmental Protection Agency, 1973, Processes, procedures, and methods to control pollution from mining activities. U.S. Environmental Protection Agency Report EPA–430/9–73–011. 390 pp. (Prepared by Skelly and Loy, Harrisburg, Pa., and Penn Environmental Consultants, Inc. Pittsburgh, Pa.; available from U.S. Department of Commerce, NTIS PB 257–297).

U.S. Mining Enforcement and Safety Administration, 1975, Engineering and design manual—Coal refuse disposal facilities: U.S. Mining Environmental and Safety Administration report. Various pagings. (Prepared by D'Appolonia Consulting Engineers, Inc., Pittsburgh, Pa.)

Verma, T. K., and Thames, J. L., 1978, Grading and shaping for erosion and vegetative establishment in dry regions: Chapter 22 *in* Reclamation of drastically disturbed lands, Scheller, F. W., and Sutton, Paul, Eds., American Society of Agronomy, Inc., Crop Science Society of America, Inc., and Soil Science Society of America, Inc., Madison, Wis., pp. 399–409.

III. Procedural Matters

Executive Order 12291 and Regulatory Flexibility Act

The Department of the Interior (DOI) has examined these proposed 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 will impose minor costs on the coal industry and coal consumers. In addition, the proposed rules emphasize the use of performance standards instead of design criteria, which will allow operators to utilize the most cost-effective means of achieving compliance.

The Department 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 regulatory authority will allow all operators adequate flexibility for regional conditions to be considered in backfilling and grading operations. This flexibility could result in cost savings for small operators in allowing for site-specific backfilling and grading operation design and in availing small operators of the opportunity to employ innovations in the design of backfilling and grading operations.

National Environmental Policy Act

OSM has analyzed the impacts of these final rules in the 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 supplement is available in OSM's Administrative Record in Room 5315, 1100 L Street, N.W., 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, DC 20240. This preamble serves as the record of decision under NEPA. The final rule is different from the draft final rules published in Volume III of the final EIS in that two paragraphs have been reorganized and additional clarifying language has been added to the rule which does not change the findings of the EIS analysis. In addition, one sentence of § 816.107(d) in the final EIS relating to the distribution of woody material has not been included in the final rules. The removal of this sentence has no environmental effect because it would have been duplicative of a provision in the revegetation rules. Finally, until the adoption of §§ 816.106 and 817.106, final §§ 816.107(e) and 817.107(e) will reflect the substance of draft final §§ 816.106 and 817.106, as set forth in the FEIS, regarding contour remining on steep slopes. This was analyzed in the FEIS.

Paperwork Reduction Act

There are no information collection requirements established by these rules requiring approval of the Office of Management and Budget under 44 U.S.C. 3507 *et seq.*

Agency Approval

Section 516(a) of the Act 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 816

Coal mining, Environmental protection, Reporting and recordkeeping requirements, Surface mining.

30 CFR Part 817

Coal mining, Environmental protection, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 826

Coal mining, Environmental protection, Reporting and recordkeeping requirements, Underground mining.

Accordingly, 30 CFR Parts 816, 817, and 826 are amended as set forth herein.

Dated: April 15, 1983.

William P. Pendley,

Acting Assistant Secretary, Energy and Minerals.

PART 816—PERMANENT PROGRAM PERFORMANCE STANDARDS—SURFACE MINING ACTIVITIES

§ 816.101 [Removed]

1. Part 816 is amended by removing § 816.101.

2. Section 816.102 is revised to read as follows:

§ 816.102 Backfilling and grading: General requirements.

(a) Disturbed areas shall be backfilled and graded to—

(1) Achieve the approximate original contour, except as provided in paragraph (k) of this section;

(2) Eliminate all highwalls, spoil piles, and depressions, except as provided in paragraph (h) (small depressions) and in paragraph (k)(3)(iii) (previously mined highwalls) of this section;

(3) Achieve a postmining slope that does not exceed either the angle of repose or such lesser slope as is necessary to achieve a minimum long-term static safety factor of 1.3 and to prevent slides;

(4) Minimize erosion and water pollution both on and off the site; and

(5) Support the approved postmining land use.

(b) Spoil, except excess spoil disposed of in accordance with §§816.71–816.74, shall be returned to the mined-out area.

(c) Spoil and waste materials shall be compacted where advisable to ensure stability or to prevent leaching of toxic materials.

(d) Spoil may be placed on the area outside the mined-out area in nonsteep slope areas to restore the approximate original contour by blending the spoil into the surrounding terrain if the following requirements are met:

(1) All vegetative and organic material shall be removed from the area.

(2) The topsoil on the area shall be removed, segregated, stored, and redistributed in accordance with §816.22.

(3) The spoil shall be backfilled and graded on the area in accordance with the requirements of this section.

(e) Disposal of coal processing waste and underground development waste in the mined-out area shall be in accordance with §§ 816.81 and 816.83, except that a long-term static safety factor of 1.3 shall be achieved.

(f) Exposed coal seams, acid- and toxic-forming materials, and combustible materials exposed, used, or produced during mining shall be adequately covered with nontoxic and noncombustible material, or treated, to control the impact on surface and ground water in accordance with § 816.41, to prevent sustained combustion, and to minimize adverse effects on plant growth and the approved postmining land use.

(g) Cut-and-fill terraces may be allowed by the regulatory authority where—

(1) Needed to conserve soil moisture, ensure stability, and control erosion on final-graded slopes, if the terraces are compatible with the approved postmining land use; or

(2) Specialized grading, foundation conditions, or roads are required for the approved postmining land use, in which case the final grading may include a terrace of adequate width to ensure the safety, stability, and erosion control necessary to implement the postmining land-use plan.

(h) Small depressions may be constructed if they are needed to retain moisture, minimize erosion, create and enhance wildlife habitat, or assist revegetation.

(i) Permanent impoundments may be approved if they meet the requirements of §§ 816.49 and 816.56 and if they are suitable for the approved postmining land use.

(j) Preparation of final-graded surfaces shall be conducted in a manner that minimizes erosion and provides a surface for replacement of topsoil that will minimize slippage.

(k) The postmining slope may vary from the approximate original contour when—

(1) The standards for thin overburden in §816.104 are met;

(2) The standards for thick overburden in §816.105 are met; or

(3) Approval is obtained from the regulatory authority for—

(i) Mountaintop removal operations in accordance with § 785.14 of this chapter;

(ii) A variance from approximate original contour requirements in accordance with § 785.16 of this chapter; or

(iii) Incomplete elimination of highwalls in previously mined areas in accordance with § 816.107(e).

§ 816.103 [Removed]

3. Part 816 is amended by removing § 816.103.

4. Section 816.104 is revised to read as follows:

§ 816.104 Backfilling and grading: Thin overburden.

In surface coal mining which is carried out at the same location over a substantial period of time where the operation transects the coal deposit and where the thickness of the coal deposit relative to the thickness of the overburden is large and where the operator demonstrates that the spoil and other waste materials available from the entire permit area are insufficient, giving due consideration to volumetric expansion, to restore the disturbed area to its approximate original contour, the operator shall, at a minimum—

(a) Use all available spoil and waste materials to attain the lowest practicable grade, but not more than the angle of repose; and

(b) Meet the requirements of §§ 816.102(a)(2)–816.102(j).

5. Section 816.105 is revised to read as follows:

§ 816.105 Backfilling and grading: Thick overburden.

In surface coal mining where the thickness of the overburden is large relative to the thickness of the coal deposit and where the operator demonstrates that the volume of the spoil and other waste materials is more than sufficient to restore the disturbed area to approximate original countour, the operator shall, at a minimum, after restoring to approximate original contour—

(a) Use the spoil and waste materials to attain the lowest practicable grade, but not more than the angle of repose;

(b) Meet the requirements of §§ 816.102(a)(2)–816.102(j); and

(c) Dispose of any excess spoil in accordance with §§ 816.71–816.74.

6. Section 816.107 is added to read as follows:

§ 816.107 Backfilling and grading: Steep slopes.

(a) Surface mining activities on steep slopes shall be conducted so as to meet the requirements of § 816.102, and the requirements of this section except where mining is conducted on flat or gently rolling terrain with an occasional steep slope through which the mining proceeds and leaves a plain or predominantly flat area or where operations are conducted in accordance with Part 824 of this chapter.

(b) The following materials shall not be placed on the downslope:

(1) Spoil.

(2) Waste materials of any type.

(3) Debris, including that from clearing and grubbing.

(4) Abandoned or disabled equipment.

(c) Land above the highwall shall not be disturbed unless the regulatory authority finds that this disturbance will facilitate compliance with the environmental protection standards of this subchapter and the disturbance is limited to that necessary to facilitate compliance.

(d) Woody materials shall not be buried in the backfilled area unless the regulatory authority determines that the proposed method for placing woody material within the backfill will not deteriorate the stable condition of the backfilled area.

(e) The disturbed area shall be backfilled and graded to comply with the provisions of § 816.102 to return the site to the approximate original contour and completely cover the highwall; *Provided, however,* that where contour-mining operations affect previously mined areas that were not reclaimed to the standards of this chapter and the volume of all reasonably available spoil is demonstrated in writing to the regulatory authority to be insufficient to completely backfill the highwall, the highwall shall be eliminated to the maximum extent technically practical in accordance with the following criteria:

(1) The person who conducts the surface coal mining and reclamation operation shall demonstrate to the regulatory authority that the fill, designed by a qualified registered professional engineer, has a minimum static safety factor for the stability of the backfill of at least 1.3.

(2) All spoil generated by the mining operation and other reasonably available spoil shall be used to backfill the area. Reasonably available spoil shall include spoil generated by the mining operation and other spoil located in the permit area that is accessible and available for use and that when rehandled will not cause a hazard to the public safety or significant damage to the environment.

(3) The backfill shall be graded to a slope which is compatible with the approved postmining land use and which provides adequate drainage and long-term stability.

(4) Any remnant of the highwall shall be stable and not pose a hazard to the public health and safety or to the environment.

(5) Spoil placed on the outslope during previous mining operations shall not be disturbed if such disturbances will cause instability of the remaining spoil or otherwise increase the hazard to the public health and safety or to the environment.

PART 817—PERMANENT PROGRAM PERFORMANCE STANDARDS—UNDERGROUND MINING ACTIVITIES

§ 817.101 [Removed]

7. Part 817 is amended by removing § 817.101.

8. Section 817.102 is revised to read as follows:

§ 817.102 Backfilling and grading: General requirements.

(a) Disturbed areas shall be backfilled and graded to—

(1) Achieve the approximate original contour, except as provided in paragraph (k) of this section;

(2) Eliminate all highwalls, spoil piles, and depressions, except as provided in paragraph (h) (small depressions) and in paragraph (k)(2) (previously mined highwalls) of this section;

(3) Achieve a postmining slope that does not exceed either the angle of repose or such lesser slope as is necessary to achieve a minimum long-term static safety factor of 1.3 and to prevent slides;

(4) Minimize erosion and water pollution both on and off the site; and

(5) Support the approved postmining land use.

(b) Spoil, except as provided in paragraph (l) of this section, and except excess spoil disposed of in accordance with §§ 817.71–817.74, shall be returned to the mined-out surface area.

(c) Spoil and waste materials shall be compacted where advisable to ensure stability or to prevent leaching of toxic materials.

(d) Spoil may be placed on the area outside the mined-out surface area in nonsteep slope areas to restore the approximate original contour by blending the spoil into the surrounding terrain if the following requirements are met:

(1) All vegetative and organic materials shall be removed from the area.

(2) The topsoil on the area shall be removed, segregated, stored, and redistributed in accordance with § 817.22.

(3) The spoil shall be backfilled and graded on the area in accordance with the requirements of this section.

(e) Disposal of coal processing waste and underground development waste in the mined-out surface area shall be in accordance with §§ 817.81 and 817.83, except that a long-term static safety factor of 1.3 shall be achieved.

(f) Exposed coal seams, acid- and toxic-forming materials, and combustible materials exposed, used, or produced during mining shall be adequately covered with nontoxic and noncombustible materials, or treated, to control the impact on surface and ground water in accordance with § 817.41, to prevent sustained combustion, and to minimize adverse effects on plant growth and the approved postmining land use.

(g) Cut-and-fill terraces may be allowed by the regulatory authority where—

(1) Needed to conserve soil moisture, ensure stability, and control erosion on final-graded slopes, if the terraces are compatible with the approved postmining land use; or

(2) Specialized grading, foundation conditions, or roads are required for the approved postmining land use, in which case the final grading may include a terrace of adequate width to ensure the safety, stability, and erosion control necessary to implement the postmining land-use plan.

(h) Small depressions may be constructed if they are needed to retain moisture, minimize erosion, create and enhance wildlife habitat, or assist revegetation.

(i) Permanent impoundments may be approved if they meet the requirements of §§ 817.49 and 817.56 and if they are suitable for the approved postmining land use.

(j) Preparation of final-graded surfaces shall be conducted in a manner that minimizes erosion and provides a surface for replacement of topsoil that will minimize slippage.

(k) The postmining slope may vary from the approximate original contour when approval is obtained from the regulatory authority for—

(1) A variance from approximate original contour requirements in accordance with § 785.16 of this chapter; or

(2) Incomplete elimination of highwalls in previously mined areas in accordance with § 817.107(e).

(l) Regarding of settled and revegetated fills to achieve approximate original contour at the conclusion of underground mining activities shall not be required if the conditions of Paragraph (l)(1) or (l)(2) of this section are met.

(1)(i) Settled and revegetated fills shall be composed of spoil or non-acid- or non-toxic-forming underground development waste.

(ii) The spoil or underground development waste shall not be located so as to be detrimental to the environment, to the health and safety of the public, or to the approved postmining land use.

(iii) Stability of the spoil or underground development waste shall be demonstrated through standard geotechnical analysis to be consistent with backfilling and grading requirements for material on the solid bench (1.3 static safety factor) or excess spoil requirements for material not placed on a solid bench (1.5 static safety factor).

(iv) The surface of the spoil or underground development waste shall be vegetated according to § 817.116, and surface runoff shall be controlled in accordance with § 817.43.

(2) If it is determined by the regulatory authority that disturbance of the existing spoil or underground development waste would increase environmental harm or adversely affect the health and safety of the public, the regulatory authority may allow the existing spoil or underground development waste pile to remain in place. The regulatory authority may require stabilization of such spoil or underground development waste in accordance with the requirements of paragraphs (l)(1)(i)–(l)(1)(iv) of this section.

§ 817.103 [Removed]

9. Part 817 is amended by removing § 817.103.

10. Part 817 is amended by adding new § 817.107 to read as follows:

§ 817.107 Backfilling and grading: Steep slopes.

(a) Underground mining activities on steep slopes shall be conducted so as to meet the requirements of § 817.102 and the requirements of this section.

(b) The following materials shall not be placed on the downslope:

(1) Spoil.

(2) Waste materials of any type.

(3) Debris, including that from clearing and grubbing.

(4) Abandoned or disabled equipment.

(c) Land above the highwall shall not be disturbed unless the regulatory authority finds that this disturbance will facilitate compliance with the environmental protection standards of this subchapter and the disturbance is limited to that necessary to facilitate compliance.

(b) Woody materials shall not be buried in the backfilled area unless the regulatory authority determines that the proposed method for placing woody material within the backfill will not deteriorate the stable condition of the backfilled area.

(e) The disturbed area shall be backfilled and graded to comply with the provisions of § 817.102 of this chapter to return the site to the approximate original contour and completely cover the highwall; *Provided,*

however, that where contour-mining operations affect previously mined areas that were not reclaimed to the standards of this chapter and the volume of all reasonably available spoil is demonstrated in writing to the regulatory authority to be insufficient to completely backfill the highwall, the highwall shall be eliminated to the maximum extent technically practical in accordance with the following criteria:

(1) The person who conducts the surface coal mining and reclamation operation shall demonstrate to the regulatory authority that the fill, designed by a qualified registered professional engineer, has a minimum static safety factor for the stability of the backfill of a least 1.3.

(2) All spoil generated by the mining operation and other reasonably available spoil shall be used to backfill the area. Reasonably available spoil shall include spoil generated by the mining operation and other spoil located in the permit area that is accessible and available for use and that when rehandled will not cause a hazard to the public safety or significant damage to the environment.

(3) The backfill shall be graded to a slope which is compatible with the approved postmining land use and which provides adequate drainage and long-term stability.

(4) Any remnant of the highwall shall be stable and not pose a hazard to the public health and safety or to the environment.

(5) Spoil placed on the outslope during previous mining operations shall not be disturbed if such disturbances will cause instability of the remaining spoil or otherwise increase the hazard to the public health and safety or to the environment.

PART 826—SPECIAL PERMANENT PROGRAM PERFORMANCE STANDARDS—OPERATIONS ON STEEP SLOPES [REMOVED]

11. Part 826 is removed.

(Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*)

[FR Doc. 83–13811 Filed 5–23–83; 8:45 am]
BILLING CODE 9310–05–M

federal register

Tuesday
May 24, 1983

Part III

Office of Management and Budget

Budget Rescissions and Deferrals

OFFICE OF MANAGEMENT AND BUDGET

Budget Rescissions and Deferrals

To the Congress of the United States:

In accordance with the Impoundment Control Act of 1974, I herewith report one new deferral of budget authority totaling $2,750,000 and two increases to previously reported deferrals, increasing the amounts deferred by $57,047,000.

The deferrals affect Energy Activities, the Department of Justice, and the Railroad Retirement Board.

The details of each deferral are contained in the attached reports.

Ronald Reagan.

The White House,
May 19, 1983.

BILLING CODE 3110-01-M

CONTENTS OF SPECIAL MESSAGE
(in thousands of dollars)

Deferral #	Item	Budget Authority
	Energy Activities	
	Energy programs	
D83-48A	Energy supply, R&D activities (plant and capital equipment).....	68,052
	Department of Justice	
	Federal Prison System	
D83-35A	Buildings and Facilities.....	67,837
	Other Independent Agencies	
	Railroad Retirement Board	
D83-75	Limitation on administration.....	2,750
	Total, deferrals.....	138,639

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SUMMARY OF SPECIAL MESSAGES
FOR FY 1983
(in thousands of dollars)

	Rescissions	Deferrals
Eighth special message		
New items.....	---	2,750
Change to amounts previously submitted.....	---	57,047
Effects of eighth special message.....	---	59,797
Amounts previously submitted that were changed by this message.....	---	78,842
Total, rescissions and deferrals.....	---	138,639
Amounts previously submitted that were not changed by this message.....	1,554,015 1/	13,375,333
Total amount proposed to date in all special messages.....	1,554,015 1/	13,513,972 2/

1/ This amount includes $23,400,000 in current budget authority for the rural telephone bank that is offset by a corresponding increase in permanent budget authority (R83-20).
2/ All amounts listed represent budget authority except for $15,944,000 of outlays only in one general revenue sharing deferral (D83-168).

BILLING CODE 3110-01-C

Supplementary Report

Report Pursuant to Section 1014(c) of Public Law 93–344.

This report updates Deferral No. D83–48, transmitted to the Congress on February 1, 1983.

The amount currently deferred in the Energy supply R&D—plant and capital equipment account is $68,052,000, a net decrease of $23,055,000 from the $91,107,000 originally reported. Of the funds originally reported, $28,595,000 were subsequently made available for obligation. Then, the account received an additional $5,540,000 through a re-interpretation of the current rate available under the second continuing resolution for FY 1983 (Pub. L. 97–377). These additional funds exceeded amounts required under the current program plan and, accordingly, have been deferred.

BILLING CODE 3110-01-M

Deferral No: D83-48A

DEFERRAL OF BUDGET AUTHORITY

Report Pursuant to Section 1013 of P.L. 93-344

Agency: Energy Activities	New budget authority (P.L. 97-377): $367,262,000 *
Bureau: Energy Programs	Other budgetary resources: 9,680,058 *
Appropriation title & symbol: Energy Supply, R&D Activities (Plant and Capital Equipment) 89X0225 1/	Total budgetary resources: 376,942,058 *
OMB identification code: 89-0224-0-1-271	Amount to be deferred: Part of year: ____ Entire year: 68,052,000 *
Grant program: ☐ Yes ☒ No	Legal authority (in addition to sec. 1013): ☐ Antideficiency Act ☐ Other ____
Type of account or fund: ☐ Annual ☐ Multiple-year ____ (expiration date) ☒ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other ____

Justification: This appropriation provides plant and capital equipment support for research and development of energy technologies.

The FY 1983 level of appropriations for this account in the Act Making Further Continuing Appropriations FY 1983 (P.L. 97-377) is based upon the FY 1982 current rate of operations. The Conference Report directed the Department of Energy to follow the program recommendations of the Appropriation Committees contained in the House and Senate Reports accompanying the 1983 appropriations bills. The Department of Energy has, therefore, prepared a program plan for Energy Supply R&D activities in accordance with this expression of Congressional intent. As a result, use of the entire amount provided under the Continuing Resolution is not expected to be needed in FY 1983. Accordingly, the excess is being deferred.

Estimated Effects: This deferral will not have any identifiable programmatic effects since the funds deferred are in excess of the amount required to satisfy Congressional directives.

Outlay Effects: This deferral will have no effect on FY 1983 outlays.

1/ This account was the subject of a deferral in FY 1982 (D82-104).

* Revised from previous report.

BILLING CODE 3110-01-C

Supplementary Report

Report Pursuant to Section 1014(c) of Public Law 93–344.

This report revises the previous Deferral No. D83–35, transmitted to the Congress on December 16, 1982.

This revised deferral report for the Department of Justice, Federal Prison System, Buildings and facilities increases the amount deferred from $16,330,000 to $67,837,000. This $51,507,000 increase is taken to establish a reserve pending consideration of a reprogramming request and due to unanticipated delays in completing construction projects.

BILLING CODE 3110-01-M

Deferral No: D83-35A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

Agency: Department of Justice	New budget authority (P.L. 97-377; 98-8): $66,667,000*
Bureau: Federal Prison System	Other budgetary resources: 64,710,854*
Appropriation title & symbol: Buildings and Facilities 15X1003 1/	Total budgetary resources: 131,377,854*
	Amount to be deferred: Part of year: ____ Entire year: 67,837,000*
OMB identification code: 15-1003-0-1-753	Legal authority (in addition to sec. 1013): [X] Antideficiency Act
Grant program: [ ] Yes [X] No	[ ] Other ____
Type of account or fund: [ ] Annual [ ] Multiple-year ____ (expiration date) [X] No-year	Type of budget authority: [X] Appropriation [ ] Contract authority [ ] Other ____

Justification:* This appropriation finances planning, acquisition of sites, and construction of new penal and correctional facilities as well as construction, remodeling, and equipping necessary buildings and facilities at existing penal and correctional institutions. Projects are undertaken to reduce overcrowding, close old and antiquated penitentiaries, and provide a safe and humane environment for staff and inmates. Part of the deferral is related to a reprogramming request pending before Congress to permit $43,400,000 of Jobs Bill (P.L. 98-8) funding to be used for new construction projects. Also, due to the time required for planning, design efforts and selection of contractors, it would not be possible to complete those projects, for which funding is deferred, during FY 1983.

Estimated Effects: Would not have a negative impact on the building and facilities program because the deferred amount cannot be efficiently used if made available in FY 1983.

Outlay Effect: This deferral will have no effect on FY 1983 outlays.

* Revised from previous report.
1/ This account was the subject of two deferrals in FY 1982 (D82-178 and D82-192).

Deferral No: DR3-75

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

Agency: Railroad Retirement Board	New budget authority (P.L. 97-377): $46,361,000
Bureau:	Other budgetary resources: 700,000
Appropriation title & symbol: Limitation on administration (6038011)	Total budgetary resources: 47,061,000
	Amount to be deferred: Part of year: 2,750,000
	Entire year:
OMB identification code: 60-8011-0-7-601	Legal authority (in addition to sec. 1013): [X] Antideficiency Act
Grant program: [ ] Yes [X] No	[ ] Other
Type of account or fund: [X] Annual; [ ] Multiple-year (expiration date); [ ] No-year	Type of budget authority: [X] Appropriation; [ ] Contract authority; [ ] Other

Justification: This account funds administrative expenses of the Railroad Retirement Board. The Board sought funds to upgrade and modernize its data processing based on conceptual planning. Detailed planning has not been completed and the Board is reassessing the most appropriate scope and timing of its modernization effort in light of the rail industry pension's serious underfunding. This is a routine deferral taken under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Effects: There will be no effect on the operation of the program as these funds would not be obligated until the normal planning process and associated financial plans have been completed.

Outlay Effect: This deferral will have no effect on FY 1983 outlays.

[FR Doc. 83-14005 Filed 5-23-83; 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
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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 23, 1983

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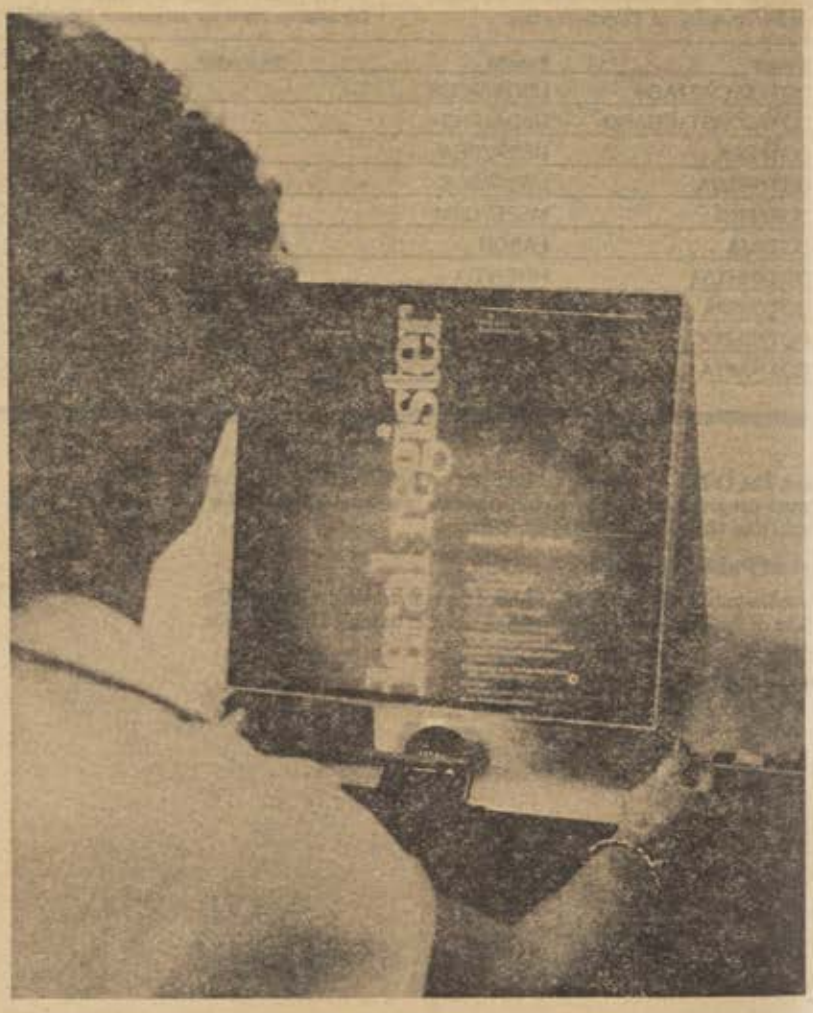

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