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federal register

Thursday
June 30, 1983

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Coast Guard

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Presidential Documents

Title 3—

The President

Executive Order 12427 of June 27, 1983

President's Advisory Council on Private Sector Initiatives

By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to establish, in accordance with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. App. I), an advisory committee on private sector initiatives, it is hereby ordered as follows:

Section 1. *Establishment.* (a) There is established the President's Advisory Council on Private Sector Initiatives. The Council shall be composed of not more than 39 members, to be appointed or designated by the President. The members shall be selected as follows:

(1) Nine members from the public sector, consisting of the Secretaries of Agriculture, Commerce, Housing and Urban Development, Health and Human Services, Labor, Education, and Transportation, the Director of ACTION, and the White House Deputy Chief of Staff.

(2) Thirty members from private life.

(b) The President shall designate a Chairman and Vice Chairman from among the members of the Council. The Special Assistant to the President for Private Sector Initiatives shall serve as Secretary to the Council.

Sec. 2. *Functions.* (a) The Council shall advise the President, through the White House Office of Private Sector Initiatives, with respect to the objectives and conduct of private sector initiative policies, including methods of increasing public awareness of the importance of public/private partnerships; removing barriers to development of effective social service programs which are administered by private organizations; and strengthening the professional resources of the private social service sector.

(b) The Council shall seek the advice, ideas and recommendations of the White House Office of Private Sector Initiatives and such other government offices as the President may deem appropriate in order to fulfill its responsibilities under this Order.

(c) In performance of its advisory responsibilities, the Council shall report to the President from time to time as requested.

Sec. 3. *Administration.* (a) The heads of Executive agencies shall, to the extent permitted by law, provide the Council such information with respect to private sector initiative issues as it may require for purposes of carrying out its functions.

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

(c) The White House Office shall, to the extent permitted by law and subject to the availability of funds, provide the Council with such administrative services, facilities, staff, and other support services as may be necessary for the effective performance of its functions.

Sec. 4. *General.* The Council shall terminate two years from the date of this Order, unless sooner extended.

Ronald Reagan

THE WHITE HOUSE,
June 27, 1983.

[FR Doc. 83-17795
Filed 6-28-83; 2:42 pm]
Billing code 3195-01-M

Editorial Note: The President's announcements of June 24 and June 28, 1983, on the appointment of members to the Council are found in the *Weekly Compilation of Presidential Documents* (vol. 19, nos. 25 and 26). For his remarks on private sector initiatives at a luncheon for the members on June 28, see issue number 26.

Presidential Documents

Executive Order 12428 of June 28, 1983

President's Commission on Industrial Competitiveness

By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to establish, in accordance with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. App. I), an advisory committee on industrial competitiveness, it is hereby ordered as follows:

Section 1. *Establishment.* (a) There is established the President's Commission on Industrial Competitiveness. The Commission shall be composed of no more than twenty-five members appointed or designated by the President. These members shall have particular knowledge and expertise concerning the technological factors affecting the ability of United States firms to meet international competition at home and abroad. Members appointed from the private sector shall represent elements of industry, commerce, and labor most affected by high technology, or academic institutions prominent in the field of high technology.

(b) The President shall designate a Chairman from among the members of the Commission.

Sec. 2. *Functions.* The Commission shall review means of increasing the long-term competitiveness of United States industries at home and abroad, with particular emphasis on high technology, and provide appropriate advice to the President, through the Cabinet Council on Commerce and Trade, and the Department of Commerce.

Sec. 3. *Administration.* (a) The heads of Executive agencies shall, to the extent permitted by law, provide the Commission such information as it may require for purposes of carrying out its functions.

(b) Members of the Commission shall serve without compensation for their work on the Commission. However, members appointed from among private citizens of the United States may be allowed travel expenses, including per diem in lieu of subsistence, to the extent permitted by law and to the extent funds are available therefor.

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

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

(b) The Commission shall terminate on September 30, 1984, unless sooner extended.

Ronald Reagan

THE WHITE HOUSE,
June 28, 1983.

[FR Doc. 83-17841
Filed 6-29-83; 10:27 am]
Billing code 3195-01-M

Editorial Note: The President's announcement of June 28, 1983, on his intention to appoint John A. Young to be a Commission member, and to designate him as Chairman, is printed in the *Weekly Compilation of Presidential Documents* (vol. 19, no. 26).

Presidential Documents

Executive Order 12429 of June 28, 1983

President's Private Sector Survey on Cost Control in the Federal Government

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Federal Advisory Committee Act, as amended (5 U.S.C. App. I), and in order to extend the life of the President's Private Sector Survey on Cost Control in the Federal Government, it is hereby ordered that Section 4(b) of Executive Order No. 12369 of June 30, 1982, as amended, is further amended to read: "The Committee shall terminate on October 30, 1983, unless sooner extended.".

Ronald Reagan

THE WHITE HOUSE,
June 28, 1983.

[FR Doc. 83-17869
Filed 6-29-83; 11:29 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 5071 of June 28, 1983

Import Quotas on Certain Sugars, Sirups, Blends, and Mixtures

By the President of the United States of America

A Proclamation

1. The Secretary of Agriculture has advised me that he has reason to believe that certain sugars, blended sirups, and sugars mixed with other ingredients, described below, and certain other sugars, sirups and mixtures of sugar or sirup with other ingredients are practically certain to be imported into the United States under such conditions and in such quantities as to render or tend to render ineffective, or materially interfere with, the price support operations being conducted by the Department of Agriculture for sugar cane and sugar beets.

2. I agree that there is reason for such belief by the Secretary of Agriculture, and therefore I am requesting the United States International Trade Commission to make an immediate investigation with respect to this matter pursuant to section 22 of the Agricultural Adjustment Act of 1933, as amended (7 U.S.C. 624), and report its findings and recommendations to me as soon as possible.

3. The Secretary of Agriculture has also determined and reported to me with regard to the sugars, blended sirups, and sugars mixed with other ingredients, described below, that a condition exists which requires emergency treatment and that the import quotas hereinafter proclaimed should be imposed without awaiting the report and recommendations of the United States International Trade Commission.

4. On the basis of the information submitted to me, I find and declare that:

(a) The articles described below are practically certain to be imported into the United States under such conditions and in such quantities as to render or tend to render ineffective, or materially interfere with, the price support operations of the Department of Agriculture for sugar cane and sugar beets;

(b) The representative period within the meaning of the first proviso to subsection (b) of section 22 of the Agricultural Adjustment Act of 1933, as amended (7 U.S.C. 624), for imports of the articles described below is the years 1978–81, during which years there were no imports of the described articles; and

(c) The imposition of the import quotas hereinafter proclaimed, without awaiting the recommendations of the United States International Trade Commission with respect to such action, is necessary in order that the entry, or withdrawal from warehouse for consumption, of the articles described below will not materially interfere with the price support operations being conducted by the Department of Agriculture for sugar cane or sugar beets.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, by the authority vested in me by section 22 of the Agricultural Adjustment Act of 1933, as amended, and the Constitution and Statutes of the United States, including Section 301 of Title 3 of the United States Code, do hereby proclaim as follows:

1. Part 3 of the Appendix to the Tariff Schedules of the United States is amended by inserting in numerical sequence the following two items:

Item	Articles	Quota Quantity
958.10	Blended sirups provided for in TSUS item 155.75, containing sugars derived from sugar cane or sugar beets, capable of being further processed or mixed with similar or other ingredients, and not prepared for marketing to the retail consumers in the identical form and package in which imported	None
958.15	Articles containing over 65 percent by dry weight of sugars derived from sugar cane or sugar beets, whether or not mixed with other ingredients, capable of being further processed or mixed with similar or other ingredients, and not prepared for marketing to the retail consumers in the identical form and package in which imported; all the foregoing articles provided for in TSUS items 155.75, 156.45, 183.01, and 183.05, except articles within the scope of other import restrictions provided for in part 3 of the Appendix to the Tariff Schedules of the United States	None

2. Pending Presidential action upon receipt of the report and recommendations of the United States International Trade Commission on this matter, the quotas established by this proclamation shall apply to articles entered, or withdrawn from warehouse for consumption, on or after the effective date of this proclamation. However, these quotas shall not apply to articles entered, or withdrawn from warehouse for consumption, if the articles were (1) exported from the country of origin prior to the effective date of this proclamation, and (2) imported directly into the United States, as determined by the appropriate customs officials, in accordance with the criteria set forth at 19 CFR 10.174, 10.175 (1982).

3. This proclamation shall be effective as of 12:01 a.m. Eastern Daylight Time on the day following the date of its signing.

IN WITNESS WHEREOF, I have hereunto set my hand this 28th day of June, in the year of our Lord nineteen hundred and eighty-three, and of the Independence of the United States of America the two hundred and seventh.

Ronald Reagan

[FR Doc. 83-17870
Filed 6-29-83; 11:30 am]
Billing code 3195-01-M

Editorial Note: A letter from the President to the Chairman of the U.S. International Trade Commission on the import quotas is printed in the *Weekly Compilation of Presidential Documents* (vol. 19, no. 26).

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 AGRICULTURE

Office of the Secretary

7 CFR Part 2

Revision of Delegations of Authority

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule

SUMMARY: This document amends the delegations of authority from the Secretary of Agriculture and general officers of the Department to more accurately reflect the responsibilities of the Human Nutrition Information Service.

EFFECTIVE DATE: June 30, 1983.

FOR FURTHER INFORMATION CONTACT: Robert Siegler, Deputy Assistant General Counsel, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–6035.

SUPPLEMENTARY INFORMATION: This document revises the delegations of authority to the Assistant Secretary for Food and Consumer Services, the Assistant Secretary for Science and Education, the Administrator of the Human Nutrition Information Service, and the Administrator of the Agricultural Research Service to more accurately reflect the responsibilities that are currently being performed by the Human Nutrition Information Service. In addition, the delegations of authority to the Assistant Secretary for Food and Consumer Services and the Administrator of the Human Nutrition Information Service are revised to delegate the authority to enter into contracts, grants, or cooperative agreements to further research programs in the food and agricultural sciences without any regard for competition as authorized in section 1439 of the Agriculture and Food Act of 1981, 7 U.S.C. 3318.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, it is found upon good cause that notice and other public procedures with respect thereto are impractical and contrary to the public interest and good cause is found for making this rule effective less than 30 days after publication in the **Federal Register.**

Further, since this rule relates to internal agency management it is exempt from the provisions of Executive Order 12291. Finally, this action is not a rule as defined by the Regulatory Flexibility Act, and thus is exempt from the provisions of that Act.

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

Accordingly, Part 2, Subtitle A, Title 7, Code of Federal Regulations is amended as follows:

1. The authority citation for Part 2 reads as follows:

Authority: 5 U.S.C. 301 and Reorganization Plan No. 2 of 1953, except as otherwise stated.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, the Under Secretary for Small Community and Rural Development, and Assistant Secretaries

2. Section 2.15 is amended by revising paragraph (b) to read as follows:

§ 2.15 Delegations of authority to the Assistant Secretary for Food and Consumer Services.

* * * * * * *

(b) *Related to human nutrition information.*—(1) Administer a national food and human nutrition research program under the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended. As used herein the term "research" includes:

(i) Research on the nutrient composition of foods and the effects of agricultural practices, handling, food processing, and cooking on the nutrients they contain;

(ii) Surveillance of the nutritional benefits provided to participants in the food programs administered by the Department;

(iii) Research on the factors affecting food preference and habits; and

(iv) The development of techniques and equipment to assist consumers in the home and in institutions in selecting food that supplies a nutritionally adequate diet (7 U.S.C. 3171–3175, 3177).

(2) The authority in paragraph (b)(1) of this section includes the authority to:

(i) Appraise the nutritive content of the U.S. food supply;

(ii) Develop and make available data on the nutrient composition of foods needed by Federal, State, and local agencies administering food and nutrition programs, and the general public, to improve the nutritional quality of diets;

(iii) Develop family food plans at different costs for use as standards by families of different sizes, sex-age composition, and economic levels;

(iv) Develop suitable and safe preparation and management procedures to retain nutritional and eating qualities of food served in homes and institutions;

(v) Develop materials to aid the public in meeting dietary needs, with emphasis on food selection for good nutrition and appropriate cost, and food preparation to avoid waste, maximize nutrient retention, minimize food safety hazards, and conserve energy;

(vi) Develop food plans for use in establishing food stamp benefit levels, and assess the nutritional impact of Federal food programs;

(vii) Coordinate nutrition education research and professional education projects within the Department; and

(viii) Maintain data generated on food composition in a National Nutrient Data Bank.

(3) Conduct, in cooperation with the Department of Health and Human Services, the National Nutrition Monitoring System. Included in this delegation is the authority to:

(i) Design and carry out periodic nationwide food consumption surveys to measure household food consumption;

(ii) Design and carry out a continuous, longitudinal individual intake survey of the United States population and special high-risk groups;

(iii) Design and carry out methodological research studies to

develop improved procedures for collecting household and individual food intake consumption data;

(iv) Analyze data from such surveys to provide a basis for evaluating dietary adequacy; and

(v) Consult with Federal and State agencies, the Congress, universities, and other public and private organizations and the general public regarding household food consumption, individual intake, and dietary adequacy, and implications of the survey on public policy regarding food and nutrition policies.

(4) Assemble and collect food and nutrition education materials, including the results of nutrition research, training methods, procedures, and other materials related to the purpose of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended; maintain such information; and provide for the dissemination of such information and materials on a regular basis to State educational agencies and other interested parties (7 U.S.C. 3126).

(5) Conduct a program of nutrition education research.

(6) Enter into contracts, grants, or cooperative agreements to further research programs in the food and agricultural sciences: *Provided*, That this delegation shall be exercised in accordance with guidelines issued by the Assistant Secretary for Administration or his designee (7 U.S.C. 3318).

* * * * *

3. Section 2.30 is amended by revising paragraph (a)(33) to read as follows:

§ 2.30 Delegations of authority to the Assistant Secretary for Science and Education.

(a) * * *

(33) Administer a national food and human nutrition research and extension program under the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3171–3175, 3177), except as otherwise delegated to the Assistant Secretary for Food and Consumer Services in § 2.15 (b)(1) and (b)(2).

* * * * *

Subpart L—Delegations of Authority by Assistant Secretary for Food and Consumer Services

4. Section 2.92 is revised to read as follows:

§ 2.92 Administrator, Human Nutrition Information Service.

(a) *Delegations.* Pursuant to § 2.15(b), the following delegations of authority are made by the Assistant Secretary for Food and Consumer Services to the Administrator, Human Nutrition Information Service:

(1) Administer a national food and human nutrition research program under the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended. As used herein the term "research" includes:

(i) Research on the nutrient composition of foods and the effects of agricultural practices, handling, food processing, and cooking on the nutrients they contain;

(ii) Surveillance of the nutritional benefits provided to participants in the food programs administered by the Department;

(iii) Research on the factors affecting food preference and habits; and

(iv) The development of techniques and equipment to assist consumers in the home and in institutions in selecting food that supplies a nutritionally adequate diet (7 U.S.C. 3171–3175, 3177).

(2) The authority delegated in paragraph (b)(1) of this section includes the authority to:

(i) Appraise the nutritive content of the U.S. food supply;

(ii) Develop and make available data on the nutrient composition of foods needed by Federal, State, and local agencies administering food and nutrition programs, and the general public, to improve the nutritional quality of diets;

(iii) Develop family food plans at different costs for use as standards by families of different sizes, sex-age composition, and economic levels;

(iv) Develop suitable and safe preparation and management procedures to retain nutritional and eating qualities of food served in homes and institutions;

(v) Develop materials to aid the public in meeting dietary needs, with emphasis on food selection for good nutrition and appropriate cost, and food preparation to avoid waste, maximize nutrient retention, minimize food safety hazards, and conserve energy;

(vi) Develop food plans for use in establishing food stamp benefit levels, and assess the nutritional impact of Federal food programs;

(vii) Coordinate nutrition education research and professional education projects within the Department; and

(viii) Maintain data generated on food composition in a National Nutrient Data Bank.

(3) Conduct, in cooperation with the Department of Health and Human Services, the National Nutrition Monitoring System. Included in this delegation is the authority to:

(i) Design and carry out periodic nationwide food consumption surveys to measure household food consumption;

(ii) Design and carry out a continuous, longitudinal individual intake survey of the United States population and special high-risk groups;

(iii) Design and carry out methodological research studies to develop improved procedures for collecting household and individual food intake consumption data;

(iv) Analyze data from such surveys to provide a basis for evaluating dietary adequacy; and

(v) Consult with Federal and State agencies, the Congress, universities, and other public and private organizations and the general public regarding household food consumption, individual intake, and dietary adequacy, and implications of the survey on public policy regarding food and nutrition policies.

(4) Assemble and collect food and nutrition education materials, including the results of nutrition research, training methods, procedures, and other materials related to the purpose of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended; maintain such information; and provide for the dissemination of such information and materials on a regular basis to State educational agencies and other interested parties (7 U.S.C. 3126).

(5) Conduct a program of nutrition education research.

(6) Enter into contracts, grants, or cooperative agreements to further research programs in the food and agricultural sciences: *Provided*, That this delegation shall be exercised in accordance with guidelines issued by the Assistant Secretary for Administration or his designee (7 U.S.C. 3318).

Subpart N—Delegations of Authority by the Assistant Secretary for Science and Education

5. Section 2.106 is amended by revising paragraph (a)(15) to read as follows:

§ 2.106 Administrator, Agricultural Research Service.

(a) * * *

(15) Administer a national food and human nutrition research program under the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3171–3175, 3177), except as otherwise delegated to the Administrator, Human Nutrition Information Service in § 2.92 (a)(1) and (a)(2).

Dated: June 27, 1983.

For Subpart C

John R. Block,

Secretary of Agriculture.

Dated: June 27, 1983.

For Subpart L

Mary C. Jarratt,

Assistant Secretary for Food and Consumer Services.

Dated: June 27, 1983.

For Subpart N

Orville G. Bentley,

Assistant Secretary for Science and Education.

[FR Doc. 83-17681 Filed 6-29-83; 8:45 am]

BILLING CODE 3410-01-M

Agricultural Marketing Service

7 CFR Part 52

United States Standards for Grades of Frozen Green Beans and Frozen Wax Beans

Correction

In FR Doc. 83-15472, beginning on page 26752, in the issue of Friday, June 10, 1983, make the following corrections:

1. On page 26752, in the second column, in the first paragraph under **"SUPPLEMENTARY INFORMATION:"**, in the seventh line "cost" should read "cost or".

2. Also on page 26752, in the third column, in the third complete paragraph, in the fourth line "AOL's" should read "AQL's".

3. On page 26753, in the second column, in the table of contents "52.2333" should read "52.2323".

4. On page 26754, in the second column, in § 52.2326(d)(2), in the first line, "*Means*" "should read Beans".

5. On page 26756, in **Table XI.**, the headings should read as follows:

	Grade A			Grade B		Grade C
	Total [3]	Fairly good	Poor	Total [4]	Poor	Total [5]

6. Also on page 26756, in **Table XIII.**, the heading should read as follows:

Tolerances					
Grade A		Grade B		Grade C	
Total [3]	Major	Total [3]	Major	Total [5]	Major

7. On page 26757, in the first column, in § 52.2334(a)(1), in the second line "§ 52.1238", should read "§ 52.2328".

BILLING CODE 1505-01-M

7 CFR Part 908

[Valencia Orange Regulation 306]

Valencia Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona Valencia oranges that may be shipped to market during the period July 1–July 7, 1983. Such action is needed to provide for orderly marketing of fresh Valencia oranges for this period due to the marketing situation confronting the orange industry.

EFFECTIVE DATE: July 1, 1983.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, 202–447–5975.

SUPPLEMENTARY INFORMATION:

Findings

This rule has been reviewed under USDA procedures and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. This action is designed to promote orderly marketing of the California-Arizona Valencia orange crop for the benefit of producers and will not substantially affect costs for the directly regulated handlers.

This regulation is issued under the marketing agreement, as amended, and Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendation and information submitted by the Valencia Orange Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the Act.

The action is consistent with the marketing policy for 1982–83. The marketing policy was recommended by the committee following discussion at a public meeting on February 22, 1983. The committee met again publicly on June 28, 1983 at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of Valencia oranges deemed advisable to be handled during the specified weeks. The committee reports the demand for Valencia oranges is steady.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act. Interested persons were given the opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared policy of the Act to make this regulatory provision effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 908

Marketing agreements and orders, California, Arizona, Oranges (Valencia).

PART 908—[AMENDED]

1. § 908.606 is added as follows:

§ 908.606 Valencia orange regulation 306.

The quantities of Valencia oranges grown in California and Arizona which may be handled during the period July 1, 1983 through July 7, 1983, are established as follows:

(a) District 1: 360,000 cartons;

(b) District 2: 390,000 cartons;

(c) District 3: Unlimited cartons.

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

Dated: June 29, 1983.

D. S. Kuryloski,

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

[FR Doc. 83-17873 Filed 6-29-83; 12:13 pm]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Parts 49, 70, 93, and 167

[Docket No. 83-070]

Rules of Practice Governing Proceedings Under Certain Acts

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends Chapter 1 of Title 9 CFR to: (1) State that the "Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary of Agriculture" are applicable to adjudicatory, administrative hearings under certain statutes and regulations administered by the Animal and Plant Health Inspection Service and (2) provide Supplemental Rules of Practice to provide a mechanism for settling cases without the institution of such formal proceedings.

EFFECTIVE DATE: June 30, 1983.

FOR FURTHER INFORMATION CONTACT: Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-5533.

SUPPLEMENTARY INFORMATION: Under the Administrative Regulations of the Department of Agriculture (7 CFR Part 1), any hearing to assess a civil penalty under the following statutory provisions must be conducted in accordance with the "Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary of Agriculture Under Various Statutes" as contained in Subpart H of Part 1, Subtitle A, 7 CFR:

Act of May 29, 1884, commonly known as the Animal Industry Act, Section 7, as amended (21 U.S.C. 117),

Act of August 30, 1890, Section 6, as amended (21 U.S.C. 104),

Act of February 2, 1903, commonly known as the Cattle Contagious Diseases Act of 1903, Section 3, as amended (21 U.S.C. 122),

Act of March 3, 1905, Section 6, as amended (21 U.S.C. 127),

Act of July 2, 1962, Section 6(a), as amended (21 U.S.C. 134e),

Act of May 6, 1970, Section 2, as amended (21 U.S.C. 135a),

Swine Health Protection Act, Sections 5 and 6 (7 U.S.C. 3804, 3805).

Subchapters B, C, D, and K of Chapter 1, Title 9 CFR, contain regulations issued pursuant to these Acts. This document amends Subchapters B, C, E, and K of Chapter 1, Title 9 CFR by adding new Parts to (1) state, for informational purposes, that the Rules of Practice in Subpart H of Part 1, Subtitle A, 7 CFR are applicable to adjudicatory, administrative proceedings under the specified sections of the Acts listed above and (2) provide Supplemental Rules of Practice to provide a mechanism for settling cases without the institution of such formal proceedings.

This rule relates to internal agency management, and, therefore, pursuant to 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect thereto are impracticable and contrary to the public interest, and good cause is found for making this rule effective less than 30 days after publication in the **Federal Register.** Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12291. Finally, this action is not a rule as defined by Pub. L. 96-351, The Regulatory Flexibility Act, and thus is exempt from the provisions of that Act.

List of Subjects in 9 CFR Parts 49, 70, 93 and 167

Administrative practice and procedure.

Accordingly, Chapter 1 of Title 9 CFR, is amended as follows:

1. Subchapter B is amended by adding a new part 49 to read as follows:

PART 49—RULES OF PRACTICE GOVERNING PROCEEDINGS UNDER CERTAIN ACTS

Subpart A—General

Sec.

49.1 Scope and applicability of rules of practice.

Subpart B—Supplemental Rules of Practice

49.10 Stipulations.

Authority: Secs. 3-7, 23 Stat. 32, as amended; Secs. 2 and 3, 32 Stat. 792, as amended; Secs. 1, 3, 4, and 6, 33 Stat. 1264, 1265, as amended; Sec. 11, 58 Stat. 734, as amended; Sec. 2, 65 Stat. 693, as amended; Secs. 3 and 4, 76 Stat. 130; Sec. 6, 76 Stat. 131, as amended; Sec. 11, 76 Stat. 132; 21 U.S.C. 111, 112, 114, 114a, 114a-1, 115, 117, 120, 122, 123, 125-127, 134b, 134c, 134e, 134f; 7 CFR 2.17, 2.51, 371.2(d).

Subpart A—General

§ 49.1 Scope and applicability of rules of practice.

The Uniform Rules of Practice for the Department of Agriculture promulgated in Subpart H of Part 1, Subtitle A, Title 7, Code of Federal Regulations, are the Rules of Practice applicable to adjudicatory, administrative proceedings under the following statutory provisions:

Act of May 29, 1884, commonly known as the Animal Industry Act, Section 7, as amended (21 U.S.C. 117),

Act of February 2, 1903, commonly known as the Cattle Contagious Diseases Act of 1903, Section 3, as amended (21 U.S.C. 122),

Act of March 3, 1905, Section 6, as amended (21 U.S.C. 127),

Act of July 2, 1962, Section 6(a), as amended (21 U.S.C. 134e).

In addition, the Supplemental Rules of Practice set forth in Subpart B of this part shall be applicable to such proceedings.

Subpart B—Supplemental Rules of Practice

§ 49.10 Stipulations.

(a) At any time prior to the issuance of a complaint seeking a civil penalty under any of the Acts listed in § 49.1, the Administrator, in his discretion, may enter into a stipulation with any person in which:

(1) The Administrator or the Administrator's delegate gives notice of an apparent violation of the applicable Act, or the regulations issued thereunder, by such person and affords such person an opportunity for a hearing regarding the matter as provided by such Act;

(2) Such person expressly waives hearing and agrees to pay a specified penalty within a designated time; and

(3) The Administrator agrees to accept the penalty in settlement of the particular matter involved if the penalty is paid within the designated time.

(b) If the penalty is not paid within the time designated in such a stipulation, the amount of the stipulated penalty shall not be relevant in any respect to the penalty which may be assessed after issuance of a complaint.

2. Subchapter C is amended by adding a new Part 70 to read as follows:

PART 70—RULES OF PRACTICE GOVERNING PROCEEDINGS UNDER CERTAIN ACTS

Subpart A—General

Sec.

70.1 Scope and applicability of rules of practice.

Subpart B—Supplemental Rules of Practice

70.10 Stipulations.

Authority: Secs. 4-7, 23 Stat. 32, as amended; Secs. 2, and 3, 32 Stat. 792, as amended; Secs. 1, 3, 4, and 6, 33 Stat. 1264, 1265, as amended; Sec. 11, 58 Stat. 734, as amended; Sec. 2, 65 Stat. 693, as amended; Secs. 3 and 4, 76 Stat. 130, Sec. 6, 76 Stat. 131,

as amended; Sec. 11, 76 Stat. 132; 21 U.S.C. 111, 112, 114a, 114a–1, 115, 117, 120, 122, 123, 125–127, 134b, 134c, 134e, 134f; 7 CFR 2.17, 2.51, 371.2(d).

Subpart A—General

§ 70.1 Scope and applicability of rules of practice.

The Uniform Rules of Practice for the Department of Agriculture promulgated in Subpart H of Part 1, Subtitle A, Title 7, Code of Federal Regulations, are the Rules of Practice applicable to adjudicatory, administrative proceedings under the following statutory provisions:

Act of May 29, 1884, commonly known as the Animal Industry Act, Section 7, as amended (21 U.S.C. 117),

Act of February 2, 1903, commonly known as the Cattle Contagious Diseases Act of 1903, Section 3, as amended (21 U.S.C. 122),

Act of March 3, 1905, Section 6, as amended (21 U.S.C. 127),

Act of July 2, 1962, Section 6(a), as amended (21 U.S.C. 134e).

In addition, the Supplemental Rules of Practice set forth in Subpart B of this part shall be applicable to such proceedings.

Subpart B—Supplemental Rules of Practice

§ 70.10 Stipulations.

(a) At any time prior to the issuance of a complaint seeking a civil penalty under any of the Acts listed in § 70.1, the Administrator, in his discretion, may enter into a stipulation with any person in which:

(1) The Administrator or the Administrator's delegate gives notice of an apparent violation of the Act, or the regulations issued thereunder, by such person and affords such person an opportunity for a hearing regarding the matter as provided by the Act;

(2) Such person expressly waives hearing and agrees to pay a specified penalty within a designated time; and

(3) The Administrator agrees to accept the penalty in settlement of the particular matter involved if the penalty is paid within the designated time.

(b) If the Penalty is not paid within the time designated in such a stipulation, the amount of the stipulated penalty shall not be relevant in any respect to the penalty which may be assessed after issuance of a complaint.

3. Subchapter D is amended by adding a new Part 93 to read as follows:

PART 93—RULES OF PRACTICE GOVERNING PROCEEDINGS UNDER CERTAIN ACTS

Subpart A—General

Sec.

93.1 Scope and applicability of rules of practice.

Subpart B—Supplemental Rules of Practice

93.10 Stipulations.

Authority: Secs. 3, 4, 5, and 7, 23 Stat. 32, as amended; Secs. 6, 26 Stat. 416, as amended; Secs. 7 and 8, 26 Stat. 416; Sec. 10, 26 Stat. 417; Secs. 2 and 3, 32 Stat. 792, as amended; Secs. 3 and 4, 76 Stat. 130; Sec. 6, 76 Stat. 131, as amended; Sec. 11, 76 Stat. 132; Secs. 1 and 2, 84 Stat. 202; 21 U.S.C. 102–105, 111, 112, 114a, 117, 120, 122, 134b, 134c, 134e, 134f, 135, 135a; 7 CFR 2.17, 2.51, 371.2(d).

Subpart A—General

§ 93.1 Scope and applicability of rules of practice.

The Uniform Rules of Practice for the Department of Agriculture promulgated in Subpart H of Part 1, Subtitle A, Title 7, Code of Federal Regulations, are the Rules of Practice applicable to adjudicatory, administrative proceedings under the following statutory provisions:

Act of May 29, 1884, commonly known as the Animal Industry Act, Section 7, as amended (21 U.S.C. 117),

Act of August 30, 1890, Section 6, as amended (21 U.S.C. 104),

Act of February 2, 1903, commonly known as the Cattle Contagious Diseases Act of 1903, Section 3, as amended (21 U.S.C. 122),

Act of July 2, 1962, Section 6(a), as amended (21 U.S.C. 134e),

Act of May 6, 1970, Section 2, as amended (21 U.S.C. 135a).

In addition, the Supplemental Rules of Practice set forth in Subpart B of this part shall be applicable to such proceedings.

Subpart B—Supplemental Rules of Practice

§ 93.10 Stipulations.

(a) At any time prior to the issuance of a complaint seeking a civil penalty under any of the Acts listed in § 93.1, the Administrator, in his discretion, may enter into a stipulation with any person in which:

(1) The Administrator or the Administrator's delegate gives notice of an apparent violation of the applicable Act, or the regulations issued thereunder, by such person and affords such person an opportunity for a hearing regarding the matter as provided by such Act;

(2) Such person expressly waives hearing and agrees to pay a specified penalty within a designated time; and

(3) The Administrator agrees to accept the penalty in settlement of the particular matter involved if the penalty is paid within the designated time.

(b) If the penalty is not paid within the time designated in such a stipulation, the amount of the stipulated penalty shall not be relevant in any respect to the penalty which may be assessed after issuance of a complaint.

4. Subchapter K is amended by adding a new part 167 to read as follows:

PART 167—RULES OF PRACTICE GOVERNING PROCEEDINGS UNDER THE SWINE HEALTH PROTECTION ACT

Subpart A—General

Sec.

167.1 Scope and applicability of rules of practice.

Subpart B—Supplemental Rules of Practice

167.10 Stipulations.

Authority: Sec. 5, 94 Stat. 2230; Sec. 6, 94 Stat. 2231; Sec. 12, 94 Stat. 2233; 7 U.S.C. 3804, 3805, 3811; 7 CFR 2.17, 2.51, 371.2(d).

Subpart A—General

§ 167.1 Scope and applicability of rules of practice.

The Uniform Rules of Practice for the Department of Agriculture promulgated in Subpart H of Part 1, Subtitle A, Title 7, Code of Federal Regulations, are the Rules of Practice applicable to adjudicatory, administrative proceedings under sections 5 and 6 of the Swine Health Protection Act (7 U.S.C. 3804, 3805). In addition, the Supplemental Rules of Practice set forth in Subpart B of this part shall be applicable to such proceedings.

Subpart B—Supplemental Rules of Practice

§ 167.10 Stipulations.

(a) At any time prior to the issuance of a complaint seeking a civil penalty under the Act, the Administrator, in his discretion, may enter into a stipulation with any person in which:

(1) The Administrator or the Administrator's delegate gives notice of an apparent violation of the Act, or the regulations issued thereunder, by such person and affords such person an opportunity for a hearing regarding the matter as provided by the Act;

(2) Such person expressly waives hearing and agrees to a specified order which may include an agreement to pay a specified penalty within a designated time; and

(3) The Administrator agrees to accept the order in settlement of the particular matter conditioned upon timely payment

of the penalty if the order includes an agreement to pay a penalty.

(b) If the order includes an agreement to pay a penalty and the penalty is not paid within the time designated in such a stipulation, the amount of the penalty shall not be relevant in any respect to the penalty which may be assessed after issuance of a complaint.

Done at Washington, D.C., this 27th day of June, 1983.

K. R. Hook,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 83-17667 Filed 6-29-83; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 83-AWA-2]

Correction to Alteration of Santa Barbara, CA, and Control 1176 Additional Control Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: An error was noted in the description of Additional Control Area 1176 as published in the **Federal Register** on June 6, 1983 (48 FR 25169) and this action corrects that error.

EFFECTIVE DATE: August 4, 1983.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Regulations and Obstructions Branch (AAT-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

History

In FR Doc. 83-14995 published in the **Federal Register** on June 6, 1983, amended the description of the Santa Barbara, CA, and Control 1176 Additional Control Areas. An error was noted in the description of Control 1176. The description was technically correct; however, where the amendment was placed in the current text, it actually deleted that portion of airspace, where our intention was to add to that portion of airspace, and this action corrects that mistake.

List of Subjects in 14 CFR Part 71

Additional control areas.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me, FR Document 83-14995, as published in the **Federal Register** on June 6, 1983 (48 FR 25169) is corrected to read as follows:

Control 1176 [Amended]

After the words "Oakland Oceanic CTA/FIR boundary", insert the words "and that airspace extending upward from 1,200 feet MSL bounded by a line beginning at lat. 34°24'00"N., long. 120°30'00"W.; to lat. 34°08'45"N., long. 120°30'00"W.; to lat. 34°03'59"N., long. 120°33'09"W.; to lat. 34°19'36"N., long. 120°45'34"W.; to point of beginning."

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

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

Issued in Washington, D.C., on June 20,1983.

B. Keith Potts,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 83-17668 Filed 6-29-83; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 83-ASO-24]

Alteration of Control Zone; Raleigh, N.C.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment alters the Raleigh, North Carolina, control zone by revising the coordinates of Raleigh-Durham Airport, reducing the size of three control zone arrival extensions and redesignating radials upon which the arrival extensions are predicated. The geographical coordinates of the airport are improperly listed and this action will correct the deficiency. The control zone arrival extensions are larger than required and will be reduced in both length and width. The extensions will be realigned one degree to coincide with the instrument approach procedures serving the airport.

DATES: Effective date: 0901 G.m.t., September 29, 1983. Comments must be received on or before August 29, 1983.

ADDRESSES: Send comments on the rule in triplicate to: Federal Aviation Administration, Manager, Airspace and Procedures Branch, ASO-530, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763-7646.

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

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is in the form of a final rule, which involves technical corrections to the description of the control zone and a reduction in size and realignment of arrival extensions and was not preceded by notice and public procedure, comments are invited on the rule. When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulation. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the rule that might suggest the need to modify the rule.

The Rule

The purpose of this amendment to § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to alter the Raleigh, North Carolina, control zone by revising the geographical coordinates of the airport and realigning and reducing the size of arrival extensions. This action will raise the floor of controlled airspace in areas northeast, southeast, and southwest of

the airport from the surface to 700 feet. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Advisory Circular AC 70-3A dated January 3, 1983. Under the circumstances presented, the FAA concludes that there is a need to alter the control zone by listing the proper coordinates of the airport and realigning and reducing the size of arrival extensions so that they are not in excess of needs. As these changes relieve a burden on the public, I find that notice or public procedure under 5 U.S.C. 533(b) is unnecessary.

List of Subjects in 14 CFR Part 71

Aviation safety, Airspace, Control zone.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Raleigh, North Carolina, control zone under § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) (as amended) is further amended, effective 0901 G.m.t., September 29, 1983, to read as follows:

Raleigh, NC [Revised]

Within a 5-mile radius of Raleigh-Durham Airport (Lat. 35°52'19"N., Long. 78°47'07"W.); within 3 miles each side of Raleigh VORTAC 034°, 128° and 231° radials, extending from the 5-mile radius zone to 8.5 miles northeast, southeast and southwest of the VORTAC.

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

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

Issued in East Point, Georgia, on June 21, 1983.

George R. LaCaille,

Acting Director, Southern Region.

[FR Doc. 83-17688 Filed 6-29-83; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 373 and 399

[Docket No. 30617-110]

Exports of Spectrum Analyzers: No Special Licensing Procedures Available

AGENCY: Office of Export Administration, International Trade Administration, Commerce.

ACTION: Temporary suspension of interim rule.

SUMMARY: This rule temporarily suspends an interim rule (48 FR 25174, June 6, 1983) regarding the unavailability of special licensing procedures for exports of spectrum analyzers. This suspension will provide exporters an orderly transition from special licenses to shipments under individual validated licenses. The text of the Export Administration Regulations affected by the June 6 rule is reinstated and is effective until August 29, 1983. On August 29, 1983, the temporarily suspended June 6 rule will take effect.

Exporters should be aware of the following special considerations, which apply only to those exports that had formerly been allowed under special license procedures but will require individual validated licenses after August 29, 1983. Exporters should apply as soon as possible for individual validated licenses or reexport authorizations for spectrum analyzers that will not be shipped from either the U.S. special license holder or the foreign approved consignee within the 60-day period. International Import Certificates need not be obtained for applications submitted on or before August 15, 1983, and forms ITA-629 need not be obtained for applications submitted on or before July 29, 1983, but the applicant should furnish any evidence available that will support the applicant's representations (see 375.7(b)). Yugoslav End-Use Certificates and Swiss Blue Import Certificates must be furnished with all applications to export or reexport to those countries.

EFFECTIVE DATES: Effective on June 30, 1983, the interim amendments to Supplement 1 to Part 373 and to Supplement 1 to 399.1 as published at 48 FR 25174 are suspended until August 29, 1983. Also effective on June 30, 1983, the text affected by those amendments is reinstated to read as it did prior to June 6, 1983. The reinstated text expires on August 29, 1983.

FOR FURTHER INFORMATION CONTACT: Archie Andrews, Director, Exporters' Service Staff (Telephone: (202) 377-4811).

Public comments are invited on the suspended interim rule (48 FR 25174, June 6, 1983) regarding the unavailability of special licensing procedures for exports of spectrum analyzers. Those wishing to comment should follow the procedures stated in the June 6 Federal Register Notice.

List of Subjects in 15 CFR Parts 373 and 399

Exports.

PARTS 373 AND 399 [AMENDED]

Accordingly, the Export Administration Regulations (15 CFR Parts 368-399) are amended as follows:

The interim amendments to Supplement No. 1 to Part 373 and Supplement No. 1 to § 399.1, as published at 48 FR 25174, June 6, 1983, involving export controls of ECCN 1529A in the Commodity Control List are suspended until August 29, 1983. The former text of Supplement No. 1 to Part 373 and Supplement No. 1 to § 399.1 affected by the June 6 rule is reinstated on a temporary basis to be effective on June 30, 1983 and to expire on August 29, 1983.

The reinstated text reads as follows:

1. Supplement No. 1 to Part 373

Commodities Excluded From Certain Special License Procedures

* * * * *

1522 only those lasers and laser systems and specially designed components and parts therefor, as follows: machine tools containing or which are designed to contain lasers described on the Commodity Control List under entry No. 1522; single aperture lasers with an output greater than one thousand joules per nanosecond; and tunable diode lasers.

4530 UF_6 mass spectrometers. [Entire entry.]

* * * * *

2. Supplement No. 1 to § 399.1

Commodity Control List

* * * * *

1529A Electronic measuring, calibrating counting, testing, and/or time interval measuring equipment, whether or not incorporating frequency standards.

CONTROLS FOR ECCN 1529A

* * * * *

Special Licenses Available: See Part 373.

* * * * *

(Secs. 13 and 15, Pub. L. 96-72, 93 Stat. 503, 50 U.S.C. app. 2401 *et seq.*; E. O. No. 12214 (45 FR 29783, May 6, 1980)

Dated: June 27, 1983.

John K. Boidock,

Director, Office of Export Administration, International Trade Administration.

[FR Doc. 83-17723 Filed 6-28-83; 11:23 am]

BILLING CODE 3510-25-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 148 and 171

[T.D. 83-145]

Guidelines for Disposition of Violations of 19 U.S.C. 1497

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document sets forth revised guidelines used by the Customs Service and Treasury Department for the disposition of liabilities incurred under section 497, Tariff Act of 1930 (19 U.S.C. 1497), for the failure to declare articles to Customs upon entry into the United States. The document also amends the Customs Regulations to include the guidelines as an appendix and to reflect their issuance. Customs believes it is in the interest of the efficient and effective administration of its enforcement responsibility that the public be aware of the guidelines.

EFFECTIVE DATE: August 1, 1983. The interim guidelines, published as T.D. 82-35 in the **Federal Register** on February 19, 1982 (47 FR 7408), will remain in effect until the effective date of this document.

FOR FURTHER INFORMATION CONTACT: Kathryn C. Peterson, Miscellaneous Penalties Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5746).

SUPPLEMENTARY INFORMATION:

Background

Under the provisions of section 498, Tariff Act of 1930, as amended (19 U.S.C. 1498), and section 148.11, Customs Regulations (19 CFR 148.11), persons arriving in the United States from a foreign place are generally required to declare to Customs officers, at the port of first arrival in the United States, all articles which they are bringing in with them.

As provided by section 497, Tariff Act of 1930 (19 U.S.C. 1497), failure to declare articles subjects the undeclared articles to forfeiture to the Government, and the individual who fails to declare the articles to a personal penalty equal to the value of the undeclared articles.

Ordinarily, the full statutory liability would be imposed only by judicial process. Section 618, Tariff Act of 1930, as amended (19 U.S.C. 1618), provides for an administrative process which permits the person interested in any seized articles, or who has incurred, or is alleged to have incurred, any fine or penalty, to petition for resolution of these liabilities for amounts less than the full statutory liability. This provision authorizes the Secretary of the Treasury to remit or mitigate any fine, penalty, or forfeiture, incurred under customs or navigation laws when he finds that such fine, penalty, or forfeiture was incurred without willful negligence or without any intention on the part of the petitioner to defraud the revenue or to violate the law, or finds the existence of such mitigating circumstances to justify such action. Part 171, Customs Regulations (19 CFR Part 171), contains provisions for the filing of petitions for relief from fines, penalties, and forfeitures incurred for violations of customs and other laws. Section 171.11, Customs Regulations (19 CFR 171.11), requires that petitions for relief be filed with the Customs Service.

The overwhelming majority of violations of section 497 are disposed of administratively pursuant to the provisions of section 618. The various district directors of Customs throughout the United States have been delegated authority by § 171.21, Customs Regulations (19 CFR 171.21), to resolve cases in which the statutory liability does not exceed $25,000, on such terms and conditions as, under the law and in view of the circumstances, they deem appropriate. The Commissioner of Customs exercises jurisdiction over cases between $25,000 and $100,000. The Secretary of the Treasury has retained authority to decide petitions for relief from liabilities arising under section 497 when those liabilities exceed $100,000.

National guidelines were developed for use in mitigating and thereby disposing of violations of sections 497 administratively, in part, because many different Customs officers have authority to act on petitions for relief. Guidelines were issued in 1964, and were revised and reissued in 1974.

The primary objective of the guidelines is to encourage compliance with the entry declaration requirements. They should be sufficiently punitive to deter future violations without being overly harsh, penalties should reflect all of the circumstances surrounding the violation in order to effect substantial justice.

Customs experience with the 1974 guidelines has been that they were too inflexible to serve these objectives. Furthermore, the 1974 guidelines failed to provide adequate guidance for certain categories of violations.

As a result, numerous Customs districts have developed practices of taking amounts less than those specified in the 1974 guidelines, when factors justifying such mitigation were found. Although guidelines are not absolute rules and the Customs field officers acted within their discretionary authority, these actions emphasized the need for attention to uniform guidelines on a national basis.

In response to this situation, projects were commenced at the Department of Treasury and Customs to reexamine the section 497 guidelines. By T.D. 82-35, published in the **Federal Register** on February 19, 1982 (47 FR 7408), interim guidelines developed as a result of these projects were set forth and made effective immediately. However, public comment on the interim guidelines was invited. This document sets forth the final revised section 497 guidelines, which will be an appendix to Part 171, Customs Regulations and sets forth an amendment to section 148.18, Customs Regulations, (19 CFR 148.18).

With respect to dutiable articles, the guidelines are duty-based in that the statutory liability is remitted upon payment of an amount that is a multiple (1 times, 2 times, 3 times, etc.) of the duty that would have been owed on the articles had they been properly delcared. The 1974 guidelines also used a duty-based approach. The new guidelines differ from the 1974 guidelines in that some of the multiples are different, and in that the new guidelines list certain mitigating and aggravating factors which, if applicable, may be used to vary the multiple of the duty.

The new guidelines also state the disposition of the statutory liability with respect to the non-declaration of duty-free articles, a topic which was not addressed in the 1974 guidelines. Violations involving articles entitled to conditional duty-free entry are subject to a duty-based disposition, while violations involving articles absolutely entitled to duty-free entry are subject to disposition based upon a percentage of the domestic value of the articles. Mitigating and aggravating factors may apply to violations involving duty-free articles.

The guidelines also include numerous other rules relating to the disposition of liabilities incurred pursuant to section 497.

The document amends § 148.18 by revising paragraph (b) to reflect these new guidelines, and by removing paragraph (c). Section 148.18(a) is

revised to conform with these amendments. Revised § 148.18(b) states that when an article is not declared as required by subpart B of Part 148, the penalty and forfeiture may be remitted in accordance with these new guidelines. To have present § 148.18(b) and (c) in effect at the same time as the new guidelines could create confusion and uncertainty. Present § 148.18(b) and (c) apply when: (1) An article was not declared as required; (2) the article would have been free of duty and internal revenue tax if it had been properly declared; (3) its importation was not prohibited or restricted; and (4) the failure to declare was not due to willfull negligence or fraudulent intent. "Willful negligence" is not addressed specifically in the new guidelines, and "intent" is addressed only as an aggravating factor, so that present § 148.18(b) and (c) are not totally consonant with the new guidelines. Furthermore, the disposition of certain liabilities is different in present § 148.18(b) and (c) new guidelines. Present § 148.18(b) and (c) provide for the complete remission of the penalty and forfeiture with respect to certain duty-free articles when the requirements of section 148.18(b) were met, while the new guidelines provide for a penalty based upon the domestic value of the articles for absolutely duty-free articles.

We believe that the new guidelines provide for additional deterrence, flexibility, consistency, and guidance.

Discussion of Comments

Numerous comments were received in response to the publication of the interim guidelines.

The fact that the undeclared articles were commercial articles was stated to be an aggravating factor in the interim guidelines. One commenter thought that those failing to declare commercial articles should be held to a higher standard because of the higher degree of knowledge of Customs requirements imputed to those importing articles for commercial purposes. Another thought that commercial violators should be treated more harshly than ordinary, non-commercial violators. Customs agrees with both of these comments and has created a separate category for violations involving commercial articles.

Some commenters observed that there were several places in the interim guidelines where it would be possible, in the case of low-value goods, to have a less severe penalty for a violation where aggravating factors are present, than for a violation where aggravating factors are not present. Customs agrees with these comments, and minimum amounts or a reference to the domestic value have been added to the guidelines to correct this problem.

One commenter correctly pointed out a conflict between the mitigating factors set forth in I.A.2.a. of the interim guidelines and § 148.16(b), Customs Regulations. As a result, that mitigating factor has been deleted from the guidelines.

Two commenters disapprove of considering informant information as an aggravating factor. Customs believes that the fact that a person other than the violator had knowledge of the violation tends to establish specific intent on the part of the violator. However, the language of this aggravating factor has been amended to clearly set forth its purpose.

Two commenters state that the examples given of "extreme lack of cooperation," which is an aggravating factor, are inappropriate. As a result of this comment "rude behavior" has been deleted from this factor, and the language of the factor has been rephrased to emphasize the "lack of respect for law and authority."

One commenter opines that the guidelines should specifically state that aggravating factors may be offset by mitigating factors. Although this was intended in the guidelines, it has been added in the "Other Applicable Rules" section as suggested.

Two commenters suggest referencing in the guidelines an internal Customs directive that the rate of duty to be used in computing the penalty amount is the appropriate rate from Schedules 1–7, Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202), and not the flat rate from Schedule 8, TSUS. This suggestion has been adopted.

One commenter recommended that the guidelines provide for the collection of internal revenue tax, when it is owed. Customs agrees and has added a statement that duty includes any internal revenue tax which would have attached upon importation (see also section 101.1(i), Customs Regulations (19 CFR 101.1(i)), which defines "duties").

One commenter believes that minimum amounts are confusing and may produce inequitable results. Customs believes that minimum amounts are important from the standpoint of providing a meaningful penalty that will deter future violations, and does not think they will create administrative problems. The minimum amounts have been retained and, in some places, added.

One commenter maintains that the guidelines fail to address the situation in which the violator has no knowledge of the declaration requirements. Customs makes every effort to inform a traveler of the declaration requirements. Failure of an individual to read the written material advising him of his responsibility does not excuse a subsequent violation of section 497.

A commenter contends that a traveler who establishes contributory Customs error should be entitled to complete remission of the liability, rather than merely being given the benefit of a mitigating factor. If Customs error is the sole reason for an improper declaration, a liability will not be incurred by the traveler. However, if incorrect advice given by Customs merely contributes to a violation of section 497, the Customs official should have the ability to assess a penalty, and consider the incorrect advice as a mitigating factor.

Three commenters make mention of § 148.18, Customs Regulations. One commenter states that the guidelines should cite § 148.18 and its applicability. Another contends that the guidelines have the effect of amending § 148.18. A third commenter believes that § 148.18 should apply in certain situations covered by the guidelines. As stated previously, § 148.18 is being amended to be consistent with the guidelines and to refer to them.

A commenter disagrees with the use of domestic value as a basis for calculating the penalty when absolutely duty-free articles are involved. He states that in most instances Customs simply doubles the foreign value to arrive at domestic value, and that this may result in a penalty sum exceeding the amount that would have been imposed had the articles been dutiable. Customs is developing instructions for its officers on how to compute domestic value which should resolve any problems in this regard.

Another commenter contends that a flat sum penalty is more equitable for a failure to declare absolutely duty-free articles. Customs disagrees. A percentage of the domestic value is most appropriate for a violation of this type. A percentage of the domestic value relates more equitably to the statutory liability than a flat sum does. A flat sum would encourage the non-declaration of high value duty-free articles (where non-declaration is part of a criminal scheme) because of the low risk.

A commenter states that normal disposition of a first offense should result in a penalty of *up to* three times the duty, rather than three times the duty. Customs believes that this proposal would result in confusion and a lack of uniformity.

A commenter maintains that, if an individual who has cleared customs without discovery of any undeclared

articles returns and declares the articles, the individual should be permitted to pay the duty, rather than a penalty equal to the duty. This determination is subject to the discretion of the Customs officer, with the decision to be made after consideration of all of the facts.

A commenter states that the guidelines focus only on the guilt of the traveler and do not recognize that there may not have been a violation. In the absence of a violation Customs will not assess a penalty. The guidelines are only to be used if it has been determined that there is a violation. If there is no violation, the guidelines have no application.

One commenter states that the interim guidelines are defective in that they do not comply with the requirements of the Administrative Procedure Act (5 U.S.C. 551–559), because there was no notice of proposed rulemaking, no invitation in advance of issuance to submit written data, and no delayed effective date.

The guidelines are not subject to the above-stated requirements of the Administrative Procedure Act inasmuch as notice and public procedures thereon are unnecessary and contrary to the public interest. Customs believes that it was in the public interest for the interim guidelines to become effective when published because they conferred a benefit on the public since they generally provide for lesser penalty amounts than the 1974 guidelines. Furthermore, there was a need for uniformity and immediate guidance in this area. While the guidelines became effective immediately, the public was given an opportunity to comment on them and the comments were thoroughly considered in the formulation of the final guidelines, which will be an appendix to Part 171, Customs Regulations.

Notice and Public Procedure

Matter similar to the subject covered in § 148.18 was published as part of the interim guidelines. As pointed out by one of the commenters, existing § 148.18 is inconsistent with the guidelines. Since public comment was solicited on the guidelines, no purpose would be served by soliciting public comments on an amendment to § 148.18 to conform it to the guidelines. Accordingly, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure are unnecessary.

As stated previously, the guidelines are not subject to the notice and public procedure requirements of the Administrative Procedure Act inasmuch as notice and public procedure thereon are unnecessary and contrary to the public interest.

Executive Order 12291

These amendments do not constitute a "major rule" as defined in section 1(b) of E.O. 12291. Accordingly, a regulatory impact analysis is not required.

Regulatory Flexibility Act

These amendments are not subject to the provisions of Pub. L. 96–354, the Regulatory Flexibility Act (5 U.S.C. 601–612), because publication of a notice of proposed rulemaking is not required by the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), or any other law.

Drafting Information

The principal author of this document was Gerard J. O'Brien, Jr., Regulations Control Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects

19 CFR Part 148

Customs duties and inspection, Imports.

19 CFR Part 171

Customs duties and inspection, Imports, Administrative practice and procedure, Law enforcement, Penalties, Seizures and forfeitures.

Amendments to the Regulations

Parts 148 and 171, Customs Regulations (19 CFR Parts 148, 171), are amended as set forth below.

William von Rabb,

Commissioner of Customs.

Approved: June 14, 1983.

John M. Walker, Jr.,

Assistant Secretary of the Treasury.

PART 148—PERSONAL DECLARATIONS AND EXEMPTIONS

Section 148.18 is revised to read as follows:

§ 148.18 Failure to declare.

(a) *Penalty incurred.* Any article in the baggage of a passenger arriving from a foreign country which is not declared as required by this subpart shall be seized if it is available for seizure at the time the violation is detected, and the personal penalty prescribed by section 497, Tariff Act of 1930 (19 U.S.C. 1497), shall be demanded from the passenger. If the article is not seized, a claim for the personal penalty shall be made against the person who imported the article without declaration. No duty shall be collected, because undeclared articles are treated as smuggled.

(b) *Remission of liability.* When an article not declared as required by this subpart is found in the baggage of a person arriving in the United States, the personal penalty and forfeiture may be mitigated or remitted in accordance with the Guidelines for Disposition of Violations of 19 U.S.C. 1497 in the Appendix to Part 171 of this chapter.

(R.S. 251, as amended, sec. 498, 46 Stat. 728, as amended, sec. 618, 46 Stat. 757, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1498, 1618, 1624))

PART 171—FINES, PENALTIES, AND FORFEITURES

Part 171 is amended by adding the following as Appendix A.

Appendix A—Guidelines for Disposition of Violations of 19 U.S.C. 1497

Liabilities incurred under section 497, Tariff Act of 1930 (19 U.S.C. 1497), shall be mitigated or remitted in accordance with the following guidelines (see also Part 148, Customs Regulations):

I. *Violations Involving Dutiable Articles.* For violations involving articles subject to duty and for which there is no applicable exemption from duty, the following rules apply:

1. *Mitigated Penalty for First Offense.* For violations which are the first offense, where there is knowledge of the declaration requirements, and where the undeclared articles are discovered by the Customs officers, the liabilities shall be remitted upon payment of Three Times the Duty (but not less than $50), or the domestic value, whichever is lower.

2. *Mitigating Factors.* When one or more of the following mitigating factors are present, the deciding officer may, within his discretion, remit the liabilities upon payment of Between One and One-Half and Three Times the Duty or the domestic value, whichever is lower:

a. Communications with the violator are impaired because of language barrier, mental condition, or physical ailment;

b. Violator cooperates with Customs officers after discovery of the violation by providing additional information which facilitates conclusion of the case;

c. Violator is an inexperienced traveler;

d. There is contributory Customs error (for example, violator demonstrates he was given incorrect advice by a Customs officer).

3. *Aggravating Factors.* When one or more of the following aggravating factors are present, the deciding officer may, within his discretion, remit the liabilities upon payment of Between Three and Six Times the Duty (but not less than $100), or the domestic value, whichever is lower:

a. Documentary or other evidence discovered establishes violator's intent;

b. Informant provides information which tends to establish violator's intent and leads to discovery of the violation after the violator has been given an opportunity to properly declare;

c. Violator is an experienced traveler;

d. Undeclared articles are concealed to evade U.S. law;

e. There is behavior, including extreme lack of cooperation, verbal or physical abuse, or attempted escape, which tends to demonstrate a lack of respect for law and authority.

4. *Commercial Articles.* When the undeclared articles are brought in for commercial purposes, the liabilities shall be remitted upon the payment of Six Times the Duty (but not less than $100), or the domestic value, whichever is lower. Mitigating factors may be used to lower this amount to as little as Three Times the Duty; aggravating factors may be used to increase this amount up to Eight Times the Duty.

5. *Extraordinary Mitigating Factor.*

a. When an individual who has been cleared through Customs without discovery of any undeclared article returns to the examination area and declares that article, the deciding officer may, within his discretion, remit the liabilities upon payment of One Times the Duty.

b. An individual who declares articles some time later (hours, days, weeks, etc.) may be treated similarly.

6. *Extraordinary Aggravating Factors.*

a. When the offense is a second or subsequent violation, the deciding officer may, within his discretion, remit the liabilities upon payment of Between Six and Eight Times the Duty (but not less than $250), or the domestic value, whichever is lower.

b. When the offense is a second or subsequent violation, and there are aggravating factors present, generally there shall either be a denial of relief or mitigation to No Less Than Eight Times the Duty or the domestic value, whichever is lower.

c. When there is evidence of an ongoing scheme to defraud the revenue involving multiple entries without declaration of articles subject to declaration, the deciding officer shall act in accordance with the preceding paragraph.

II. *Violations Involving Absolutely or Conditionally Free Articles.* For violations involving articles either entitled to entry free of duty absolutely (classifiable under a duty-free provision in Schedules 1–7, Tariff Schedules of the United States (TSUS); (19 U.S.C. 1202)), or entry free of duty conditionally (entitled to treatment under the Generalized System of Preferences (see §§ 10.171–10.178, Customs Regulations) or Schedule 8, TSUS), the following rules apply:

1. *Mitigated Penalty for First Offense.*

a. For violations which are first offense, and involve articles entitled to the benefit of GSP or Schedule 8, TSUS, the liabilities shall be remitted upon payment of One Times the Duty which would have been due if the articles had not been entitled to the benefit.

b. For violations which are first offense, and involve absolutely duty-free articles, the liabilities shall be remitted upon payment of Between One and Five Percent of the Domestic Value, but not less than $50 (or the domestic value, whichever is less) nor more than $1,000.

2. *Mitigating Factors.* When mitigating factors such as those outlined above are present, the deciding officer may, in his discretion, reduce the mitigated amount to a lower figure.

3. *Aggravating Factors.*

a. When aggravating factors such as those outlined above are present, the deciding officer may, in his discretion, remit the liabilities for conditionally free articles upon the payment of Between One and Two Times the Duty (but not less than $100), or the domestic value, whichever is lower.

b. For absolutely free articles, the deciding officer may remit the liabilities upon payment of Between Five and Ten Percent of the Domestic Value, but not less than $100.

4. *Commercial Merchandise.*

The fact that undeclared duty-free articles are imported for commercial purposes may be considered an aggravating factor under section II.3. of these guidelines.

III. *Other Applicable Rules.*

1. These guidelines provide a framework and procedure by which violations of 19 U.S.C. 1497 are to be analyzed. They are not mandatory in the sense that they must be absolutely applied. Customs officers varying from these guidelines must provide reasons for doing so in the case record.

2. Customs officers shall document mitigating and aggravating factors found in each case in the case file. There must be a basis shown for mitigated amounts.

3. It is intended that mitigating and aggravating factors shall be considered together and used to offset each other where appropriate.

4. The rate of duty to be used in calculating the mitigated penalty shall be the appropriate rate from Schedules 1–7, TSUS, and not the flat rate from Schedule 8, TSUS.

5. "Duty" means Customs duties and any internal revenue taxes which would have attached upon importation (see section 101.1(i), Customs Regulations). Therefore, multiples will also be applied to internal revenue taxes which would have been due.

6. Customs officers may, within their discretion, consider other factors not here delineated as aggravating or mitigating and apply the guidelines accordingly. These additional factors must also be documented in the case file.

7. These guidelines are not authority for admitting into the commerce of the United States articles which are conditionally or absolutely prohibited from entry.

8. The presence of one or more extraordinary aggravating factors, includng but not limited to those set forth in section I.6. of these guidelines, may within the discretion of the deciding officer be a basis for denial of relief.

9. If the violator is being prosecuted criminally, the civil (19 U.S.C. 1497) liability generally is administratively settled only after completion of the prosecution or with the express approval of the appropriate U.S. attorney. Criminal prosecution of the violator, however, is insufficient grounds to delay indefinitely determination of the civil liability. The district director or area director should contact the Regional Counsel of Customs to determine the best course of action to follow with respect to the civil liability. Regional Counsel will consult with the U.S. attorney and the Miscellaneous Penalties Branch at Customs Headquarters. Because of time delay problems, all *seizures* involving criminal prosecutions must be promptly coordinated in this manner, and consideration should be given to immediate referral of the forfeiture action to the U.S. attorney for the institution of a judicial proceeding.

(R.S. 251, as amended, sec. 498, 46 Stat. 728, as amended, sec. 618, 46 Stat. 757, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1498, 1618, 1624))

[FR Doc. 83-17990 Filed 6-29-83; 8:45 am]

BILLING CODE 4820-02-M

Internal Revenue Service

26 CFR Part 5c

[T. D. 7897]

Temporary Income Tax Regulations Under the Economic Recovery Tax Act of 1981; Dividend Reinvestment in Stock of Public Utilities

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to dividend reinvestment by certain individuals in stock of a qualified public utility. The Economic Recovery Tax Act of 1981 enacted new rules governing these reinvestments. The regulations would provide the public with the guidance needed to comply with the law. In addition, the text contained in the temporary regulations set forth in this document serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the proposed rules section of this issue of the **Federal Register.**

EFFECTIVE DATES: The temporary regulations provided by this document are effective for distribution after December 31, 1981, and before January 1, 1986.

FOR FURTHER INFORMATION CONTACT: Michel A. Dazé of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, Attention: CC:LR:T (202–566–3458, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains temporary regulations relating to dividend reinvestment plans for qualified public utilities. Section 321(a) of the Economic Recovery Tax Act of 1981 (95 Stat. 287) added section 305(e) to the Internal Revenue Code of 1954 to provide for rules governing qualified reinvested dividends. Section 305 (e) was amended by section 103(f) of the Technical Corrections Act of 1982 (96 Stat. 2378). The temporary regulations provided by this document will remain in effect until superseded by final regulations on this subject.

General Explanation

The purpose of section 305(e) is to encourage the additional generation of funds to provide capital for the purchase of new equipment. In general, section 305 (e) permits a domestic public utility corporation to establish a plan under which certain shareholders who choose to receive certain dividends in the form of common stock rather than property may elect to exclude from gross income up to $750 of dividends each taxable year ($1,500 in the case of a joint return). Section 305(e) applies to dividends distributed after December 31, 1981, and before January 1, 1986. In the regulations under section 305(e), the term "dividend" has the meaning assigned in section 316.

Qualified Public Utility

As amended, section 305(e)(3) of the Code defines a "qualified public utility" as a domestic corporation which, for a preceding ten year period, placed in service "qualified long-life public utility property" having a cost equal to at least 60 percent of the cost of certain tangible property placed in service during this period. This ten year test will be applied to all present members of an affiliated group. Qualified long-life public utility property is certain tangible property which has a present class life of more than 18 years and is public utility property (within the meaning of section 167(l)(3)(A)).

The Technical Corrections Act replaced the term "public utility recovery property" with the term "qualified long-life utility property" in order to ensure that a utility may have the benefits of section 305(e) even though property it acquired may not qualify as "recovery property" because, for example, of a failure to normalize certain differences between the accelerated cost recovery system and depreciation for ratemaking purposes. The effect of the amendment is consistent with an Internal Revenue Service news release (IR–81–115) issued on September 28, 1981.

Quality Common Stock

Section 305(e)(4)(A)(i) requires that qualified common stock must be designated by the corporation's board of directors as issued for purposes of section 305(e). The temporary regulations make clear that common stock, which has been designated for use in an existing dividend reinvestment plan, but which has not been issued, may be redesignated before the date of distribution so as to be qualified common stock.

Section 305(e)(4)(A)(ii) requires that the number of shares to be issued to a shareholder be determined by reference to a value which is not less than 95 percent and not more than 105 percent of the stock's fair market value during the period immediately before the distribution. Many public utilities, under dividend reinvestment plans existing at the time section 305(e) was enacted, offered the stock at 95 percent of the fair market value determined on the basis of an existing formula. Generally, these formulas will be acceptable under the temporary regulations.

Dividend Reinvestment Plans

Some public utilities had dividend reinvestment plans at the time section 305(e) was enacted. The temporary regulations permit those plans to be amended to comply with the requirements contained in § 5c.305–1(e). One of the requirements is that the utility provide certain information for distributions in calendar years after 1982 regarding the qualified stock distribution to the shareholders. In connection with this requirement, the regulations also cross-reference to section 6042. Section 6042, which requires that certain distributions be reported to the IRS, applies because the treatment of the distributed qualified common stock may result in a dividend at the shareholder level, if for example, the shareholder does not elect under section 305(e)(8) to have section 305(e) apply. See section 6042(b)(3). The temporary regulations also permit the public utility to offer more than one dividend reinvestment plan. The regulations allow the corporation to permit or require the shareholder who elects under a qualified dividend reinvestment plan also to elect to receive stock from a nonqualified plan. An example of simultaneous plans is provided for in the regulation. See § 5c.305–1(e)(5).

Coordination With Tax Reform Act of 1969

Section 305(b) does not apply to certain distributions made before 1991 because of the transitional rules provided for in section 421(b)(2) of the Tax Reform Act of 1969 (83 Stat. 615) and § 1.305–8. However, under section 421(b)(2)(C) of that Act, certain distributions of stock can cause the transitional rules to no longer apply such as, for example, under certain instances, a distribution of common stock with respect to preferred stock. If a corporation is relying on these transitional rules for the treatment of certain distributions and is planning to establish a dividend reinvestment plan which will distribute qualified common stock, the corporation should consider the effect of the distributions of qualified common stock on the continued application of the transitional rules.

Corporate Purchase of Its Own Stock

Generally, stock will be disqualified if the utility repurchased any of its stock

within one year before or after the distribution date. Under section 305(e)(4)(D), regulations may waive disqualification if the corporation establishes that there was a business purpose for the purchase and that such purpose was not inconsistent with the purpose of section 305(e). The temporary regulations provide a nonexclusive list of repurchases that do not affect the status of qualified common stock. A corporation may also request a ruling from the Commissioner concerning the status of a particular repurchase or type of repurchase.

Amount To Be Excluded From Income

The aggregate amount of dividends to which section 305(e) applies for a taxable year is limited to $750 for an individual. The limitation is $1,500 for married individuals filing a joint return regardless of which spouse owns the stock or receives the dividend. Fractional shares are not taken into account for purposes of determining the amount of qualified common stock received.

Earnings and Profits

Under section 305(e)(10), a corporation's earnings and profits are not reduced by reason of a distribution of qualified common stock. Section 305(e)(10) was added for administrative reasons since a utility will not typically know how the distribution was treated at the shareholder level. Thus, the number of shares of qualified common stock distributed on a particular date cannot be redetermined after that date with reference to the distributing corporation's earnings and profits (as determined after that date) and the prohibition on reducing earnings and profits applies even if the shareholder who receives the qualified stock was ineligible, failed to make an election, or exceeded the $750 (or $1,500) limitation. See § 5c.305–1 (e)(3) and (g).

Rules are provided in § 5c.305–1(f)(3) to determine the application of section 305(e) for a corporation's taxable year for which earnings and profits available for distribution are less than the aggregate amount of distribution to which section 301 would apply if section 305(e) did not apply.

Grace Periods

The temporary regulations provide for grace periods to comply with certain procedural requirements. See § 5c.305–1 (j).

Regulatory Flexibility Act and Executive Order 12291

No general notice of proposed rulemaking is required by 5 U.S.C. 553 (b) for temporary regulations. Accordingly, the Regulatory Flexibility Act does not apply and no Regulatory Flexibility Analysis is required for this rule. The Commissioner of Internal Revenue has determined that this temporary rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required.

Drafting Information

The principal author of this temporary regulation is Mary Frances Pearson of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

List of Subjects in 26 CFR Part 5c

Income taxes, Economic Tax Act of 1981.

PART 5c—[AMENDED]

The following new § 5c.305–1 is added to 26 CFR Part 5c:

§ 5c.305–1 Special rules of application for dividend reinvestment in stock of public utilities.

(a) *Scope*—(1) *In general.* This section prescribes temporary regulations under section 305(e) (relating to qualified reinvested dividends). Section 305(e) permits a domestic public utility corporation to establish a plan under which certain individual shareholders who choose to receive certain distributions in the form of common stock rather than property may elect to exclude each taxable year from gross income up to $750 of dividends with respect to such distributions ($1,500 in the case of a joint return).

(2) *Effective date.* Section 305(e) and this section apply to distributions made after December 31, 1981, and before January 1, 1986.

(3) *Dividend.* As used in this section, the term dividend has the meaning assigned in section 316.

(b) *Qualified reinvested dividend*—(1) *In general.* A qualified reinvested dividend is a distribution (to the extent it is a dividend) by a qualified public utility of shares of its qualified common stock to certain individuals with respect to the individual's common or preferred stock if—

(i) The distribution is made pursuant to a plan under which the individual may elect to receive dividends in the form of stock instead of property,

(ii) The individual elects on his or her income tax return to have section 305(e) apply to such shares so as to exclude the dividend from gross income, and

(iii) No disqualifying purchases of common stock under section 305(e) (4) (B) have been made by the issuing corporation or the affiliated group of which it is a member.

(2) *Certain distributions.* A distribution of money by the distributing corporation to a trustee or agent of a dividend reinvestment plan (qualified under paragraph (e) of this section) who is designated as such by the plan will be deemed to be a distribution of qualified common stock on the date of the money distribution if the trustee or agent applies the distributed money to the purchase from the corporation of qualified common stock on behalf of the plan participants.

(c) *Qualified public utility*—(1) *60 percent test.* A qualified public utility is a domestic corporation which, for the 120-month period ending on the day before the beginning of its taxable year in which the qualified distribution is made, placed in service qualified long-life public utility property having a cost equal to at least 60 percent of the aggregate cost of all tangible property placed in service by the corporation during such period. Dispositions of property are not taken into account.

(2) *Tangible property.* For purposes of this section, the term "tangible property" means tangible property described in section 1245(a) (3) (A) or (B).

(3) *Qualified long-life public utility property.* (i) For purposes of this section qualified long-life public utility property is tangible property which—

(A) has a present class life (as defined in section 168(g)(2)) of more than 18 years, and

(B) is public utility property (within the meaning of section 167(l)(3) (A)).

(4) *Section 381 transaction.* Placing in service property by a predecessor corporation whose assets are acquired by a successor corporation in a transaction to which section 381 applies shall be treated as placing in service property by the successor corporation. See section 305(e)(3)(B)(ii).

(5) *New corporation.* If a corporation was not in existence for the entire 120-month period referred to in paragraph (c)(1) of this section, taking into account any periods for which one or more of its predecessors were in existence, then the 60 percent test shall be applied only for the period that corporation (and any of its predecessors) was in existence. See section 305(e)(3)(B)(iii).

(6) *Affiliated group.* (i) All members of an affiliated group are treated under section 305(e)(3)(B)(i) as one corporation

for purposes of the 60 percent test. Thus, in determining whether the distributing corporation meets the 60 percent test, there is aggregated the cost of all qualified long-life public utility property placed in service by any member, as well as the cost of all tangible property placed in service by any member, during the 120-month period ending on the day before the beginning of the distributing corporation's taxable year in which the distribution is made. Membership in the group is determined as of the date which is the first day of the distributing corporation's taxable year in which the distribution is made. Thus, if a corporation which is a member of the group on that date placed property in service before it became a member, then the property will be treated as having been placed in service by a member.

(ii) For purposes of this section, an affiliated group has the meaning assigned in section 1504(a) (determined without regard to section 1504(b)).

(7) *Examples.* The following examples illustrate this paragraph (c).

Example (1). Corporation P is a qualified public utility which uses the calendar year as its taxable year. On March 15, 1982, P makes a distribution of qualified common stock. During the 120-month period beginning on January 1, 1972, and ending December 31,1981, P placed in service and made dispositions of property as follows:

Cost of qualified long-life public utility property	Cost of all tangible property [1]
Placed in service: 500	$1,000
Disposed of: 0	300

[1] Tangible property is defined in paragraph (c)(2) of this section.

Taking into account only the tangible property placed in service and ignoring all dispositions, only 50 percent of the aggregate cost of all tangible property placed in service by P during the 120-month period was qualified long-life public utility property. Thus, the 60 percent test is not met.

Example (2). The facts are the same as in example (1). In addition, on March 15, 1981, P purchased 80 percent of the only class of stock of corporation S-1, which P sold on April 15, 1982. S-1 had acquired 80 percent of the only class of stock of corporation S-2 on January 15, 1977, and sold it on November 15, 1981. Because on January 1, 1982, the date P's taxable year (in which the distribution was made) begins, the members of the group were only P and S-1, and S-2 was not a member on that date, only property placed in service by P and S-1 during the 120-month period is taken into account under the 60 percent test, and property placed in service by S-2 is ignored.

Example (3). The facts are the same as in example (2). In addition, on July 15, 1975, corporation T merged into S-1 in a transaction to which section 381 applies. Property placed in service by T during the period beginning on January 1, 1972, and ending on the date it merged into S-1, is also taken into account in applying the 60 percent test.

(d) *Qualified common stock*—(1) *In general.* Qualified common stock is authorized but unissued common stock (including treasury shares) designated by an affirmative act of the corporation as issued for purposes of this section. The designation must be made after August 12, 1981, and before the date of distribution. A designation after August 12, 1981, includes the reaffirmance of a designation made under a plan in existence on or before that date. For grace period, see paragraph (j)(1) of this section.

(2) *Affirmative act.* For purposes of this section, an affirmative act is a resolution of the corporation's board of directors reflected in its minutes.

(3) *95–105 percent test.* (i) Stock may be qualified common stock only if the number of shares to be issued to a shareholder was determined by reference to a value which is not less than 95 percent and not more than 105 percent of the stock's fair market value during a specified period. See section 305(e)(4)(A)(ii).

(ii) The specified period may be either the day of distribution or one or more consecutive days that national stock exchanges are open for business (not to exceed thirty) ending not earlier than the day preceding the day of distribution. For a period of more than one day, the fair market value is the average of the fair market values determined for each of those days.

(iii) Any reasonable method of valuation, if applied consistently from year to year, may be used to determine the fair market value on a particular date. Reasonable methods include but are not limited to the valuation method prescribed in § 20.2031–2 (estate and gift tax regulations).

(e) *Dividend reinvestment plans*—(1) *In general.* To qualify under section 305(e)(2)(A), a dividend reinvestment plan must—

(i) Be adopted (or in the case of an existing plan be amended) by an affirmative act of the corporation's board of directors after August 12, 1981, and before the date of the particular distribution intended to be a qualified reinvested dividend (unless the grace period in paragraph (j)(2) of this section applies),

(ii) Include the elements required by paragraph (e)(2) of this section, and

(iii) Be administered in accordance with its terms (including required elements).

(2) *Elements of the plan.* A qualified dividend reinvestment plan must include all of the following elements:

(i) Procedures for a shareholder to elect under the plan to receive distributions in the form of qualified common stock instead of property.

(ii) Procedures for determining the number of shares of qualified common stock to be distributed to each shareholder on each distribution date.

(iii) With respect to distribution in calendar years after 1982, procedures for furnishing to each electing shareholder at least annually, on or before January 31 of the year following the calendar year in which the distribution was made, a written statement showing the number of shares of qualified common stock distributed during the calendar year to the shareholder, the date of each distribution, and the fair market value of the stock on the date distributed. The fair market value on the date distributed referred to in the preceding sentence is not necessarily the value used for purposes of the 95–105 percent test under paragraph (d)(3) of this section since, for example, the value used for the 95–105 percent test may be based on a period immediately before the distribution. For additional rules pertaining to information required by the Internal Revenue Service on returns regarding dividends, see section 6042.

(iv) If the plan contains a provision which allows a corporation the power to repurchase its shares in circumstances that would result in a distribution being treated under section 305(e)(4)(B) as other than a qualified reinvested dividend, then the plan should contain a statement setting forth that result if that power is exercised. See paragraph (h) of this section.

(3) *Contingent designation of qualified common stock.* Under the plan, whether a particular share of stock is qualified common stock or other stock must be irrevocably fixed on or before the day the stock is distributed. Thus, for example, the number of shares of qualified common stock distributed on a particular date cannot be redetermined after that date with reference to the distributing corporation's earnings and profits (as determined after that date).

(4) *Simultaneous plans.* Qualification of a dividend reinvestment plan under section 305(e)(2)(A) is not affected by whether the corporation permits or requires the shareholder electing to receive qualified common stock also to elect to receive stock from a nonqualified plan.

(5) *Example.* The following example illustrates this paragraph (e):

Example. Corporation P maintains two dividend reinvestment plans. Plan "A" is qualified under section 305(e) and plan "B" is not qualified. Under plan "A," distribution of qualified common stock may not exceed a ceiling of $750 for an unmarried shareholder and $1,500 for a married shareholder for each calendar year. After the ceiling is reached, a rollover provision applies so that the holder automatically receives distributions of nonqualifying stock from plan "B". The rollover provision does not affect the status of plan "A". If instead of a ceiling of $750/$1,500 the Board of Directors irrevocably fixes a lower ceiling on or before the day the stock is distributed, the status of plan "A" would still not be affected.

(f) *Amount to be excluded from income*—(1) *Limitation.* Under section 305(e)(6)(A), the aggregate amount of dividends to which section 305(e) applies for the taxable year is limited to $750 for an individual. For purposes of this limitation, the amount of distribution of qualified common stock is its fair market value on the date of distribution. If by reason of this limitation a share of stock (without applying this sentence) would be treated as partly within section 305(e) and partly without, then it shall be treated as entirely outside of section 305(e).

(2) *Joint returns.* Married individuals filing a joint return may exclude qualifying dividends totaling $1,500 regardless of which spouse owns the stock or receives the dividends.

(3) *Corporation with insufficient earnings and profits.* If during a taxable year a corporation makes distributions of qualified common stock and without applying section 305(e) to distributions made that year, less than the entire amount of all distributions made during that year to which section 301 would apply are dividends, then—

(i) The amount of distributions made that year (other than qualified common stock) which are dividends is determined as if no stock distributed was qualified common stock.

(ii) Each shareholder receiving qualified common stock must (A) determine with respect to such stock the aggregate amount which would be treated as a dividend if section 305(e) is not applied to that stock, (B) allocate this aggregate amount only to whole shares of common stock for purposes of applying the $750 limitation ($1,500 for a joint return), and (C) apply section 305(e) to such whole shares.

(4) *Example.* For an illustration of paragraph (f)(3) of this section, see example (4) in paragraph (g)(2) of this section.

(g) *No reduction in earnings and profits for distributions of qualified common stock*—(1) *In general.* The earnings and profits of a qualified public utility shall not be reduced by reason of a distribution of any share of its qualified common stock pursuant to a dividend reinvestment plan that qualifies under section 305(e)(3)(A) whether or not—

(i) The distribution would be treated in whole or in part as a dividend if section 305(e) did not apply,

(ii) The shareholder receiving the distribution makes an election under section 305(e)(8) with respect to the share,

(iii) The share is treated as outside section 305(e) by reason of the limitation in section 305(e)(6),

(iv) Disposition of the share is subject to ordinary income treatment under section 305(e)(9), or

(v) The shareholder is ineligible for application of section 305(e) by reason of section 305(e)(11).

(2) *Examples.* The following examples illustrate this paragraph (g).

Example (1). Corporation P is a qualified public utility which uses the calendar year as its taxable year. P has 100 shares of common stock outstanding, its only class of stock. As of January 1, 1982, P's accumulated earnings and profits are zero. P's earnings and profits for 1982 are $6,000. If section 305(e) did not apply, the amount of P's distributions for 1982 to which section 301 would apply would be $4,000. All of P's shareholders elect under section 305(e) to receive distributions of qualified common stock instead of cash under P's dividend reinvestment plan which qualifies under section 305(e)(2)(A). Thus, all of P's distributions for 1982 are distributions of qualified common stock pursuant to the plan. As of January 1, 1983, P has accumulated earnings and profits of $6,000.

Example (2). The facts are the same as in example (1), except that holders of 10 of P's shares who elect to receive qualified common stock do not elect under section 305(e)(8) to exclude the dividend from gross income on their income tax returns. The result is the same as in example (1).

Example (3). The facts are the same as in example (2), except that holders of 25 shares choose not to elect to receive stock under the corporation's qualified dividend reinvestment plan. A cash distribution of $40 is made with respect to each such share which aggregates $1,000 (*i.e.*, $40 × 25 shares). As of January 1, 1983, P's accumulated earnings and profits are $5,000 (*i.e.*, $6,000–$1,000).

Example (4). (a) The facts are the same as in example (1), except that the amount of P's distribution for 1982 is $12,000 (*i.e.*, $120 per share outstanding). Holders of 40 shares receive cash distributions aggregating $4,800 (*i.e.*, $120 × 40 shares) and holders of 60 shares elect to receive qualified common stock having a fair market value aggregating $7,200 (*i.e.*, $120 × 60 shares). Assume further that B owns 10 shares of P common stock.

(b) Of the $4,800 cash received by the 40 shareholders, $2,400 is taxable as dividends (*i.e.*, $4,800 × $6,000/$12,000).

(c) As of January 1, 1983, P has accumulated earnings and profits of $3,600, *i.e.*, $6,000–$2,400.

(d) If section 305(e) is not applied, the amount that would be taxable to B as a dividend would be $60 per share (*i.e.*, $120 × $6,000/$12,000) or $600 for B's 10 shares. Under paragraph (f) (3) of this section, B allocates this $600 amount to 5 whole shares of qualified common stock and elects to apply section 305(e) to exclude from gross income the $600 with respect to these 5 shares. The fair market value of the other 5 shares received by B ($600) is treated as a distribution to which sections 305(b)(1) and 301(c)(2) or (3) apply.

(e) The results in paragraphs (b) and (c) of this example would be the same if B could not or did not elect to apply section 305(e) to the qualified shares B received.

(h) *Certain purchases by corporation of its own stock*—(1) *In general.* If a corporation has purchased or purchases its common stock within a 2-year period beginning 1 year before the date of the distribution and ending 1 year after such date, such distribution shall be treated as not being a qualified reinvested dividend. The purchase by the corporation of its own stock includes stock redemptions or stock purchases in partial or complete liquidation. See section 305(e)(4)(B). For affiliated group rule, see section 305(e)(4)(C).

(2) *Waiver.* (i) Paragraph (h)(1) of this section shall not apply if the distributing corporation establishes a business purpose under paragraph (h)(2)(ii) of this section for the purchase of the stock and such purchase is not inconsistent with the raising of new corporate capital.

(ii) The following purchases of a corporation's own stock will be deemed to be for a business purpose and not inconsistent with raising of new corporate capital:

(A) The purchase of all shares, held by any shareholders who own 10 shares or less, to reduce administrative costs for a public utility whose stock is registered with the Securities and Exchange Commission.

(B) Stock purchased under section 303.

(C) The purchase of its stock held by minority shareholders incident to a merger, consolidation, or other similar fundamental change if such shareholders have rights of dissent and appraisal under local statute.

(D) The purchase of its stock for purposes of contributing or selling it to a pension, profit-sharing, or stock bonus plan that is qualified under section 401 (or purchase by the fiduciary of such a plan) if the stock is registered with the Securities and Exchange Commission or the plan is a tax credit ESOP.

(iii) For other purchases of stock, the distributing corporation, prior to the

filing of the return for the taxable year in which the stock intended to qualify as "qualified common stock" is issued, may request a ruling from the Associate Chief Counsel (Technical). If the return for that year has already been filed, then the request for a determination letter should be directed to the appropriate district office. In both cases it must be established to the satisfaction of the Commissioner that there is a business purpose for the purchase and the purchase is not inconsistent with the raising of new corporate capital. See 26 CFR 601.201 (relating to procedures for requesting a ruling and a determination letter).

(3) *Examples.* The following examples illustrate this paragraph (h).

Example (1). Corporation P is a qualified public utility which purchased shares of its common stock on January 10, 1981. The stock was purchased under section 303. On January 2, 1982, P adopts a dividend reinvestment plan and on January 5, 1982, makes its first distribution under the plan. The purchase by P of its stock on January 10, 1981 does not prevent the distribution made on January 5, 1982, from being treated as a qualified reinvested dividend.

Example (2). The facts are the same as in example (1), except that the purchase was not under section 303. In addition, there were no circumstances to which paragraph (h)(2) of this section applied. P cannot make a distribution before January 11, 1982, that is treated as a qualified reinvested dividend.

(i) [Reserved]

(j) *Grace periods*—(1) *Time to designate stock.* If a designation of common stock is made (whether or not before August 13, 1981) but the designation does not comply with the requirements prescribed in paragraph (d) (1) and (2) of this section, then the corporation may make a proper designation for the same stock (whether before or after the date of distribution) which complies with such requirements on or before September 28, 1983.

(2) *Adoption of plan.* If the corporation adopts a plan (whether or not before August 13, 1981), but the form of adoption or the plan does not comply with the requirements prescribed in paragraph (e) (1) and (2) of this section, then the corporation will be considered to have complied with such requirement as of the date of the original adoption if it readopts the plan in compliance with such requirements on or before the date (whether before or after the date of distribution) that is September 28, 1983.

(3) *Contingent designationof qualified common stock.* The requirements of paragraph (e) (3) of this section do not apply with respect to distributions of common stock made on or before September 28, 1983.

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue it with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

(Approved by the Office of Management and Budget under control number 1545-0110).

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: May 24, 1983.

John E. Chapoton,

Assistant Secretary of the Treasury.

[FR Doc. 83-17704 Filed 6-29-83; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 0

[Order No. 1019-83]

Delegation of Permits, Leases, Easements Authority

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Attorney General is authorized to grant permits, leases, or easements under the provisions of 43 U.S.C. 931c. The Attorney General is authorized to grant an easement for rights-of-way under the provisions of 43 U.S.C. 961. This order delegates the Attorney General's authority under Sections 931c and 961 to the Director of the Bureau of Prisons to the extent that the lands are administered by the Director.

EFFECTIVE DATE: June 19, 1983.

FOR FURTHER INFORMATION CONTACT: Mike Pearlman, Office of General Counsel, Bureau of Prisons, Room 760, 320 1st Street N.W., Washington, D.C. 20534 (202/724-3062).

SUPPLEMENTARY INFORMATION: The above authority was erroneously deleted in the Department of Justice Reorganization Regulations published in the **Federal Register** Tuesday, October 27, 1981 (at 46 FR 52339 et seq.). It is reinserted at this time.

This order pertains to agency management. It is not subject to publication for notice and comment under 5 U.S.C. 553 and is not a rule within the meaning of either the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., or Executive Order No. 12291 ("Federal Regulation").

List of Subjects in 28 CFR Part 0

Government employees, Organization and functions (government agencies).

PART 0—[AMENDED]

Accordingly, by virtue of the authority vested in me by 28 U.S.C. 510 and 5 U.S.C. 301, § 0.96 of Title 28, Code of Federal Regulation is amended by adding paragraph (s) to read as follows:

§ 0.96 Delegations.

* * * * *

(s) Granting permits to states or public agencies for rights-of-way upon lands administered by the Director in accordance with the provisions of sections 931c and 961 of Title 43 of the United States Code.

(43 U.S.C. 931c, 961; 18 U.S.C. 4001, 4041, 4042)

Dated: June 19, 1983.

William French Smith,

Attorney General.

[FR Doc. 83-17707 Filed 6-29-83; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 3

[CGD 83-040]

Disestablishment of Marine Safety Office Minneapolis/St. Paul

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The U.S. Coast Guard is disestablishing the Marine Safety Office (MSO) Minneapolis/St. Paul and establishing a Marine Safety Detachment (MSD) Minneapolis/St. Paul and Marine Safety Detachment Davenport as subunits of Marine Safety Office St. Louis. This reorganization is necessary to increase the overall efficiency, quality and effectiveness of Coast Guard marine safety functions in the region.

EFFECTIVE DATE: June 30, 1983.

FOR FURTHER INFORMATION CONTACT: LCDR D. E. HENRICKSON, Port and Environmental Safety Division (G-WPE-3/16), Room 1611, Coast Guard Headquarters, 2100 Second St., SW., Washington, D.C. 20593 (202-426-2197).

SUPPLEMENTARY INFORMATION: The Coast Guard has conducted an evaluation of the organization of the present marine safety office structure in

the Second Coast Guard District. This evaluation takes into account many factors, including personnel considerations, workload, and commercial activity. Regionalization of the commercial vessel safety examination and documentation functions has removed most of the need for a commercial vessel safety presence at MSO Minneapolis/St. Paul. The remaining commercial vessel safety workload does not warrant a full-time or full-scale marine safety office. This reorganization will improve the use of manpower by redistributing the excess command overhead to satisfy workload shortages elsewhere. The Commandant has concluded that the disestablishment of the Marine Safety Office at Minneapolis/St. Paul and the redesignation of the Minneapolis/St. Paul unit as a Marine Safety Detachment is necessary for improved overall efficiency and effectiveness in carrying out Coast Guard marine safety functions. The existing Marine Safety Detachment at Davenport is retained but parent command responsibilities will be shifted to the Marine Safety Office at St. Louis.

This rule has been evaluated under Executive Order 12291 and DOT Order 2100.5 and has been determined to be non-major and non-significant. This rule reflects a change in agency organization with no economic impact upon the public. Notice of proposed rulemaking and opportunity for public comment are not required by 5 U.S.C. 553, and this rule may be effective less than 30 days after its publication date. Since no economic impact is expected, an economic evaluation has not been conducted. Although this rulemaking is not subject to the Regulatory Flexibility Act (30 Stat. 1164), these regulations will not have a significant impact on a substantial number of small entities.

Drafting Information

The principal persons involved in drafting this document are LCDR D. E. HENRICKSON, Project Manager, Office of the Marine Environment and Systems, and LT Mark HANLON, Project Attorney, Office of Chief Counsel.

List of Subjects in 33 CFR Part 3

Organization and functions (Government agencies).

In consideration of the foregoing, Chapter I of Title 33, Code of Federal Regulations, is amended as follows:

PART 3—COAST GUARD AREAS, DISTRICTS, MARINE INSPECTION ZONES, AND CAPTAIN OF THE PORT ZONES

1. In #3.10–10, by revising paragraph (b) to read as follows:

§ 3.10–10 St. Louis Marine Inspection Zone and Captain of the Port Zone.

* * * * *

(b) The St. Louis Marine Inspection Zone and the St. Louis Captain of the Port Zone are comprised of Wyoming; Colorado; North Dakota; South Dakota; Kansas; Nebraska; in Arkansas: Boone, Marion, Baxter and Fulton Counties; all of Missouri except for Cape Girardeau, Bollinger, Scott, Stoddard, Mississippi, New Madrid, Dunklin and Pemiscot Counties; all of Iowa; that part of Minnesota south of 46° 20′ N. latitude; and west of 90° W. longitude and that part of Illinois north of Union and Johnson Counties and west of Saline, Hamilton, Wayne, Clay, Jasper, Cumberland, Coles, Douglas, Champaign and Ford Counties (south of 41° N. latitude) and that part of Illinois west of 90° W. longitude and north of 41° N. latitude.

§ 3.10–25 [Removed]

2. By removing § 3.10–25.

(14 U.S.C. 633; 80 Stat. 937 (49 U.S.C. 1655(b)(1)); 49 CFR 1.46)

Dated: June 22, 1983.

R. L. Brown,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Environment and Systems.

[FR Doc. 83-17273 Filed 6-29-83; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 26

[CGD 83-036]

Vessel Bridge-to-Bridge Radiotelephone Regulations; Amendment of Note

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This document amends the informational note which follows § 26.04 of the "Vessel Bridge-to-Bridge Radiotelephone Regulations" contained in Title 33, Code of Federal Regulations. This note is being amended to make it consistent with regulations promulgated by the Federal Communications Commission (FCC) in 47 CFR 83.351.

EFFECTIVE DATE: June 30, 1983.

FOR FURTHER INFORMATION CONTACT: LCDR Kent Kirkpatrick, Project Manager, Office of Navigation, Room 1606, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593, (202) 245–0108.

SUPPLEMENTARY INFORMATION: The Vessel Bridge-to-Bridge Radiotelephone Act (33 U.S.C. 1201 et seq.) requires that certain categories of vessels maintain a radiotelephone operable from the navigational bridge or, in the case of a dredge, from the main control station and capable of transmitting and receiving on the frequency or frequencies within the 156–162 Mega-Hertz band using the classes of emissions designated by the Federal Communications Commission for the exchange of navigational information. The FCC designated Channel 13 (156.65 MHz) to be the vessel bridge-to-bridge radiotelephone frequency. The existing note to 33 CFR 26.04 reflects this designation. However, due to congestion on Channel 13 in the lower Mississippi River from Baton Rouge south, the FCC later designated Channel 67 (156.375 MHz) as the vessel bridge-to-bridge radiotelephone frequency in this area. Channel 13 remains the designated frequency for the rest of the country. The note to § 26.04 is being amended to reflect this additional designation.

Drafting Information

The principal persons involved in drafting this document are LCDR Kent Kirkpatrick, Project Manager, Office of Navigation, and Lieutenant Mark Hanlon, Project Attorney, Office of Chief Counsel.

Regulatory Evaluation

This document amends a note provided solely for the information of mariners. There are no economic costs or savings associated with this amendment. Since this document is strictly informational, it does not constitute rulemaking. Therefore, notice and comment are not required by 5 U.S.C. 533. Since rulemaking is not involved, certifications under Executive Order 12291, DOT Order 2100.5, and section 605(b) of the Regulatory Flexibility Act (94 Stat. 1164, 5 U.S.C. 601) are not required.

List of Subjects in 33 CFR Part 26

Communications equipment, Vessels.

PART 26—[AMENDED]

Accordingly, the note immediately following § 26.04 of Title 33 of the Code of Federal Regulations is revised to read as follows:

Note.—The Federal Communications Commission (FCC) has designated the frequency 156.65 MHz (Channel 13) for the use of bridge-to-bridge stations in most of the United States. However, FCC rules designate

the frequency 156.375 MHz (Channel 67) to be used instead of Channel 13 in the following areas, except to facilitate transition from these areas: The Mississippi River from South Pass Lighted Bell Buoy "2" and Southwest Pass Entrance (midchannel) Lighted Whistle Buoy SW to mile 242.4 AHP (Above Head of Passes) near Baton Rouge; and, in addition, over the full lengeh of the Mississippi River-Gulf Outlet Canal from entrance to its junction with the Inner Harbor Navigation Canal, and over the full length of the Inner Harbor Navigation Canal from its junction with the Mississippi River to its entry to Lake Ponchartrain at the New Seabrook vehicular bridge.

(85 Stat. 164; 33 U.S.C. 1201–1208; 49 CFR 1.46(n)(2))

Dated: June 28, 1983.

H. H. Kothe,

Captain, U.S. Coast Guard, Acting Chief, Officer of Navigation.

[FR Doc. 83-17711 Filed 6-29-83; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 100

[CGD 09-83-11]

Special Local Regulations; 1983 Hydro Grand Prix

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the 1983 Hydro Grand Prix. This event will be held on 12–14 August 1983 from 11:00 a.m. (e.d.t.) until 7:00 p.m. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATES: These regulations become effective on 12 August 1983 and terminate on 14 August 1983.

FOR FURTHER INFORMATION CONTACT: MSTC Bruce Graham, Office of Search and Rescue, Ninth Coast Guard District, 1240 E 9th St., Cleveland, OH 44199, (216) 522–4420.

SUPPLEMENTARY INFORMATION: A notice of proposed rule making has not been published for these regulations. Following normal rule making procedures is unnecessary as per 5 U.S.C. 553(b)(3)(B). This has been an annual event for many years and no negative comments have been received concerning the holding of the event in the past.

Drafting Information: The drafters of this regulation are MSTC Bruce Graham, project officer, Office of Search and Rescue and LCDR A. R. Butler, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations: The Hydro Grand Prix will be conducted on the Niagara River, Tonawanda Channel, on 12–14 August 1983. This event will have an estimated 100–150 hydroplanes which could pose hazards to navigation in the area. Vessels desiring to transport the regulated area may do so only with prior approval of the Patrol Commander (U.S. Coast Guard Group Buffalo, NY).

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

PART 100—[AMENDED]

Regulations: In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended by adding a temporary § 100.35–0911 to read as follows:

§ 100.35–0911 Niagara River, Tonawanda Channel, New York, N.Y.

(a) *Regulated Area.* That portion of the east branch of the Niagara River, Tonawanda Channel, from the overhead cable, 1300 yards northeast of the South Grand Island Bridge, to an east-west line through Tonawanda Channel Buoy (LLP 29).

(b) *Special Local Regulations.*

(1) The above area will be restricted to vessel navigation or anchorage from 11:00 a.m. (e.d.t.) until 7:00 p.m. each day on 12–14 August 1983.

(2) The patrol of that portion of Niagara River will be under the direction of a designated Coast Guard Patrol Commander who is empowered to forbid and control movement of vessels in the area before, during, and after the events for such time as he finds it necessary for the safe and orderly conduct of the events.

(3) A succession of sharp, short signals by whistle or horn from vessels patrolling the areas under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels signaled shall stop and shall comply with the orders of the Patrol Vessel; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(4) This § 100.35–0911 will become effective at 11:00 a.m. (e.d.t.) to 7:00 p.m. on 12 August, and 14 August 1983.

(46 U.S.C. 454; 49 U.S.C. 1655(b); 49 CFR 1.46(b); and 33 CFR 100.35)

Dated: June 7, 1983.

Henry H. Bell,

RADM, Ninth Coast Guard District Coast Guard.

[FR Doc. 83-17682 Filed 6-29-83; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 166

[CGD 81-80A]

Shipping Safety Fairways, Amendments

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is issuing regulations to restructure and revise the rules in 33 CFR Part 166 which describe shipping safety fairways and fairway anchorages, under authority of the Ports and Waterways Safety Act (33 U.S.C. 1223(c)). These rules were originally adopted from the Army Corps of Engineers. This revision establishes definitions and reorganizes the existing rules to allow fairway description for coastal areas other than the Gulf of Mexico to be published logically in the same Part of the regulations. The rules which are being reorganized do not permit offshore structures within designated fairways, and allow structures in fairway anchorages only if they are two miles apart.

EFFECTIVE DATE: This regulation is effective August 1, 1983.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Young, Project Manager, Short Range Aids to Navigation Division, Office of Navigation (G–NSR–3), room 1606, U.S. Coast Guard Headquarters, 2100 Second St., S.W., Washington, D.C. 20593. Mr. Young can be reached at (202) 245–0108.

SUPPLEMENTARY INFORMATION: The regulations in this final rule were published as part of a notice of proposed rulemaking (NPRM) on August 9, 1982 (47 FR 34432). Interested persons were given until October 8, 1982, to submit comments. The NPRM proposed regulations to govern fairways and fairway anchorages, as well as designations of specific fairways and anchorages. This document establishes the governing regulations. The designation of specific fairways and anchorages will be handled in a subsequent document.

Drafting Information: The principal persons involved in drafting this rulemaking are: Mr. Christopher Young, Project Manager, Office of Navigation, and Lieutenant Mark Hanlon, Project Attorney, Office of Chief Counsel.

Background and Discussion of Rules

In 1978, the Ports and Waterways Safety Act (PWSA) was amended to authorize the Coast Guard to establish shipping safety fairways (Pub. L. 95–474; 92 Stat. 1473; 33 U.S.C. 1223(c)). Prior to this amendment fairways were

established by the Corps of Engineers. Although the Coast Guard now designates the fairways, the authority to issue permits for structures remains with the Corps of Engineers.

A shipping safety fairway is an area or corridor of a waterway where the right of navigation is paramount over other uses, and where no fixed structures are permitted. A fixed structure in a fairway would be considered an obstruction to navigation, and the Corps of Engineers will not issue a permit for the construction of a structure therein. The fairways exist to ensure that an obstruction-free corridor is available during development and production of offshore resources. Although fairways are indicated on navigation charts, the use of fairways by vessels is voluntary.

The authority to create a fairway may be exercised by the Coast Guard only after a study into potential traffic density and use conflicts has been conducted to determine the need for designated safe access routes for vessels proceeding to and from U.S. ports. The study for this rulemaking was initiated by a notice in the Federal Register in April 1979 (44 FR 22543, modified in 45 FR 4027). The study results for the ports along the Gulf of Mexico were published on October 8, 1981 (46 FR 49989).

The study concluded that new vessel traffic fairways are necessary at the mouth of the Mermentau River and at Southwest Pass, and that fairway anchorages are needed at Sabine Bank and Calacasieu Pass. Before these findings could be proposed for rulemaking, it was necessary that Gulf fairways already established by the Corps of Engineers be adopted by the Coast Guard. This was accomplished by a final rule published in the Federal Register on May 13, 1982 (47 FR 20580). That action adopted the Corps of Engineers' regulations with no substantive changes and the former regulations found at 33 CFR 209.135 are now contained in 33 CFR Part 166. This document reorganizes 33 CFR Part 166 but does not affect the description of fairways or anchorages which were adopted from the Corps of Engineers.

On December 14, 1982, the Corps of Engineers published a final rule in the Federal Register which deleted those sections of 33 CFR 209.135 which had been transferred to the Coast Guard (47 FR 55916). Appropriately, that final rule retained 33 CFR 209.135 (b) "*Permits*", although the substance of that paragraph will also be contained in the new section 33 CFR 166.200(b) and (c). This apparent redundancy is due to the nature of Coast Guard and Corps of Engineers parallel responsibilities. Section 209.1359(b) establishes conditions under which a Corps of Engineers' nationwide permit for a structure is issued. The Corps of Engineers' permitting rules are located in 33 CFR 330.5(a)(8) as published on July 22, 1982 (47 FR 31794). Many of these rules affect offshore operations which straddle the boundary line of a fairway. The Coast Guard must include some of the same rules in its regulations as a means of defining the activities which are or are not permitted within fairways and anchorages. In the present action the Coast Guard is reorganizing its rules to clarify the intent and scope of specific regulations.

As explained in the NPRM, this rulemaking revises 33 CFR Part 166, §§ 166.100 and 166.200. The rulemaking establishes a formal definition of a "shipping safety fairway" as an area in which fixed structures will not be permitted, but in which temporary anchor cables to structures outside a fairway may be allowed under certain conditions. A definition is also established for a "fairway anchorage" as an anchorage area associated with a fairway in which structures will only be permitted within certain spacing limitations. These definitions, and a statement of purpose, are included in Subpart A, §§ 166.100 and 166.105. Spacing limitations on structures in Gulf of Mexico fairway anchorages currently found in § 166.200(b)(3) are transferred to Subpart B, § 166.200(c).

To clarify the regulations governing fairways under PWSA, the existing regulations, as transferred from the Corps of Engineers, are amended to add § 166.105 to define the terms "shipping safety fairway" and "fairway anchorage". These definitions will apply to all fairways described in Part 166 and those to be proposed in the future.

Revisions also restructure § 166.200(a) and (b) to describe conditions under which temporary anchor cables attached to structures outside a fairway are allowed in the Gulf of Mexico fairways. This is virtually identical to the rules adopted by the Corps of Engineers as final rules in 46 FR 11659 (February 10, 1981) and transferred to the Coast Guard in 47 FR 20580 (May 13, 1982),. except that the Corps of Engineers has retained those rules affecting structures immediately adjacent to a fairway (47 FR 55916). The new structure of the rules clearly indicates that these rules only apply to fairways in the Gulf of Mexico.

One procedural change proposed in the NPRM would have allowed the 120-day limit on a temporary anchor cable to be extended by the Commander, Eighth Coast Guard District, rather than the Corps of Engineers. However, in its notice on December 14, 1982 (47 FR 55916), the Corps of Engineers retained subparagraph 33 CFR 209.135(b)(1) which authorized the district engineer to extend the temporary anchor cable. Therefore, the Coast Guard will not make a change at this time. Coast Guard rule 33 CFR 166.200(b)(1) will recognize the Corps of Engineers as the point of decision on an extension and will cross-reference to the Corps' rule.

In a future rulemaking action, new fairways may be proposed for other coastal areas, and new sections would be added to Part 166 (i.e., § 166.300). These new sections may include specific conditions on the use of fairways as applicable to a particular area.

Discussion of Comments

Comments on the NPRM published on August 9, 1982, were received from eight sources. However, only one comment, from CONOCO, Inc., concerned the portion of the proposal which is now being issued as a final rule. The other comments either supported the entire proposal or made specific observations regarding the location of pipelines or leased offshore tracts in the area of the proposed new fairways and fairway anchorages. These comments are currently under evaluation by the Commander, Eighth Coast Guard District in New Orleans. If it is determined that a conflict with an existing offshore operation would frustrate the proposed fairways' purpose of navigation safety, the proposal will be revised and submitted for further public comment by means of a supplemental NPRM. In any case, the comments will all be discussed in detail at the time the proposed fairway descriptions are promulgated as final rules.

The letter from CONOCO commented in particular on § 166.200(c) "Special Conditions for Fairway Anchorages in the Gulf of Mexico" which requires that the center of any structure in a fairway anchorage be not less than two nautical miles from the center of "any existing structure". CONOCO contends that "this requirement is beyond the scope of authority vested in USCG by the Ports and Waterways Safety Act since it can impact upon existing leases outside the proposed fairway anchorage." CONOCO suggests that the rule be drafted to the effect that a structure to be erected shall not be less than two miles from the center of any existing structure "within the same fairway anchorage" to ensure that property interests on existing leased areas

outside the fairway anchorages are not reduced.

The Coast Guard does not agree that it is exceeding its scope of authority by promulgating the rule as it was proposed, and believes a change in the wording as CONOCO suggests could interfere with the intent of the anchorages in the Gulf of Mexico.

When these rulse were originally adopted from the Corps of Engineers, the Coast Guard intended to continue the Corps' overall regulatory scheme, which included the definition of anchorages. The Coast Guard does not feel that Congress, by delegating authority for designating fairways to the Coast Guard while leaving permits for structures with the Corps of Engineers, intended to reduce the significance of a fairway or its anchorage. The Corps of Engineers should have the flexibility to maintain the integrity of a Coast Guard-designated anchorage on a case by case basis as it reviews applications for structures in the vicinity. By adopting the rule as it was inherited from the Corps of Engineers, the Coast Guard intends to ensure that structures in fairway anchorage areas are spaced widely enough apart so that vessels can be guaranteed an area for safe anchoring. This may require that a new structure proposed in an anchorage not be permitted within two miles of an existing structure immediately outside of the anchorage boundary, even though it may not be near a structure already within the anchorge. It does not necessarily mean that a proposed structure *outside* the anchorage boundary must be two miles from a structure existing within the anchorage, unless the circumstances of the case indicate that increased spacing is desirable. Decisions for structures outside of fairway anchorages are made by the Corps of Engineers and, since the Corps of Engineers retained the same wording for its spacing requirement in 47 FR 55916 (33 CFR 209.135(c)), the Coast Guard does not feel compelled to alter the anchorage definition at this time.

Regulatory Analysis

These regulations were reviewed in accordance with the "Policies and Procedures for Simplification, Analysis and Review of Regulations" (DOT Order 2100.5 of 22 May 1980) and were determined to be non-significant. The regulations were also found to be non-major under the criteria established in Executive Order 12291. These regulations merely reorganize and clarify existing rules and do not establish any new regulations. Since the cost is expected to be minimal, no further evaluation has been prepared. Since only minimal costs are imposed by these regulations, it is hereby certified pursuant to Section 605(b) of the Regulatory Flexibility Act (94 Stat. 1164; Pub. L. 96–354) that this action will not have a significant economic impact upon a substantial number of small entities.

List of Subjects in 33 CFR Part 166

Marine safety, Shipping safety fairways, Anchorage areas.

In consideration of the foregoing, Part 166 of Title 33 of the Code of Federal Regulations is amended to read as follows:

PART 166—SHIPPING SAFETY FAIRWAYS

1. The authority citation for Part 166 reads as follows:

Authority: Sec. 4(c), Pub. L. 94–474; 92 Stat. 1473 (33 U.S.C. 123); 49 CFR 1.46(n)(4).

2. Subpart A heading and §§ 166.100, 166.105, and 166.110 are added to read as follows:

Subpart A—General

§ 166.100 Purpose.

The purpose of these regulations is to establish and designate shipping safety fairways and fairway anchorages to provide unobstructed approaches for vessels using U.S. ports.

§ 166.105 Definitions.

(a) "Shipping safety fairway" or "fairway" means a lane or corridor in which no artificial island or fixed structure, whether temporary or permanent, will be permitted. Temporary underwater obstacles may be permitted under certain conditions described for specific areas in Subpart B. Aids to navigation approved by the U.S. Coast Guard may be established in a fairway.

(b) "Fairway anchorage" means an anchorage area contiguous to and associated with a fairway, in which fixed structures may be permitted within certain spacing limitations, as described for specific areas in Subpart B.

§ 166.110 Modification of areas.

Fairways and fairway anchorages are subject to modification in accordance with 33 U.S.C. 1223(c); 92 Stat. 1473.

3. Subpart B heading is added as follows:

Subpart B—Designations of Fairways and Fairway Anchorages

* * * * *

4. In § 166.200, paragraphs (b) and (c) are revised as follows:

§ 166.200 Areas in the Gulf of Mexico.

* * * * *

(b) *Special Conditions for Fairways in the Gulf of Mexico.* Temporary anchors and attendant cables or chains attached to floating or semisubmersible drilling rigs outside a fairway may be placed within a fairway described in this section for the Gulf of Mexico, provide the following conditions are met:

(1) Anchors installed within fairways to stablize semisubmersible drilling rigs shall be allowed to remain 120 days. This period may be extended by the Army Corps of Engineers, as provided by 33 CFR 209.135(b).

(2) Drilling rigs must be outside of any fairway boundary to whatever distance is necessary to ensure that the minimum depth of water over an anchor line within a fairway is 125 feet.

(3) No anchor buoys or floats or related rigging will be allowed on the surface of the water or to a depth of at least 125 feet from the surface, within a fairway.

(4) Aids to Navigation or danger markings must be installed as required by 33 CFR Subchapter C.

(c) *Special Conditions for Fairway Anchorages in the Gulf of Mexico.* Structures may be placed within an area designated as a fairway anchorage, but the number of structures will be limited by spacing as follows:

(1) The center of a structure to be erected shall not be less than two (2) nautical miles from the center of any existing structure.

(2) In a drilling or production complex, associated structures connected by walkways shall be considered one structure for purposes of spacing, and shall be as close together as practicable having due consideration for the safety factors involved.

(3) A vessel fixed in place by moorings and used in conjunction with the associated structures of a drilling or production complex, shall be considered an attendant vessel and the extent of the complex shall include the vessel and its moorings.

(4) When a drilling or production complex extends more than five hundred (500) yards from the center, a new structure shall not be erected closer than two (2) nautical miles from the outer limit of the complex.

(5) An underwater completion installation in an anchorage area shall be considered a structure and shall be marked with a lighted buoy approved by the United States Coast Guard under 33 CFR Part 66.01.

(d) Designated Areas.

* * * * *

Dated: April 18, 1983.

R. A. Bauman,

Rear Admiral, Coast Guard Chief, Office of Navigation.

[FR Doc. 83-17685 Filed 6-29-83; 8:45 am]

BILLING CODE 4910-14-M

POSTAL SERVICE

39 CFR Parts 221, 222, 223, 224 and 226

Miscellaneous Organizational Changes

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: These amendments make a number of changes to the published organizational regulations of the Postal Service to reflect rearrangements and additions of various offices, duties, and functions.

EFFECTIVE DATE: July 1, 1983.

FOR FURTHER INFORMATION CONTACT: Paul J. Kemp, (202) 245-4638.

SUPPLEMENTARY INFORMATION: The principal changes made are to reflect the establishment of the Research and Management Systems Group in revised § 224.5 and certain rearrangements and additions of offices and functions in the Finance Group, § 224.3(b). In addition, the lengthy statement of postal data center functions in § 226 is simplified and condensed to conform with the treatment of this subject in the Administrative Support Manual. Finally, a number of other minor technical and conforming changes are made to the organizational regulations.

Accordingly, the Postal Service adopts the following amendments to 39 CFR:

List of Subjects in 39 CFR Parts 221, 222, 223, 224 and 226

Organization and functions (Government agencies), Authority delegations (Government agencies), Postal Service.

PART 221—GENERAL PRINCIPLES OF ORGANIZATION

1. In § 221.5, remove paragraphs (d)(1)(viii); redesignate paragraphs (d)(1)(ix)–(xiii) as (d)(1)(viii)–(xii); and revise paragraphs (a), (b), and (d)(1)(vii) as follows:

§ 221.5 Groups and departments.

(a) Postal Service Headquarters is divided into five major units. These units consist of five Groups: Administration, Employee and Labor Relations, Finance, Operations, and Research and Management Systems Each of the Groups is headed by a Senior Assistant Postmaster General (SAPMG). The SAPMGs for Employee and Labor Relations, and Finance report directly to the Postmaster General. The SAPMGs for Administration, Operations, and Research and Management Systems report directly to the Deputy Postmaster General. The five SAPMGs are responsible for the following activities within their assigned areas:

* * * * *

(b) These groups are in turn divided into departments or offices headed by either Assistant Postmasters General (APMGs) or Directors. The heads of these departments and offices report to and are responsible for assisting the SAPMGs in carrying out their assigned activities.

* * * * *

(d)(1) * * *

(vii) The Senior Assistant Postmaster General, Research and Management Systems Group;

§ 221.7 [Amended]

2. In § 221.7 strike out "Executive Assistant for Information Resource Management,"; strike out "the Controller and the Treasurer (who report to the Assistant Postmaster General, Finance Department)" and insert in lieu thereof "the Treasurer (who reports to the SAPMG, Finance Group".

PART 222—DELEGATIONS OF AUTHORITY

§ 222.1 [Amended]

3. In § 222.1 strike out in paragraph (e) "the Executive Assistant for Information Resource Management;"; strike out in paragraph (f) "or the Executive Assistant for Information Resource Management (EAIRM)" and the words "or the EAIRM" wherever they appear.

PART 223—RELATIONSHIPS AND CHANNELS OF COMMUNICATION

§ 223.2 [Amended]

4. In § 223.2 strike out in paragraph (a)(2) "Executive Assistant for Information Resource Management" and insert in lieu thereof "Information Resource Management Department".

PART 224—GROUPS AND DEPARTMENTS

5. In § 224.3 strike out in paragraph (a)(2) "management information"; remove paragraphs (b)(1) (i) and (ii); redesignate paragraphs (b)(1)(iii)–(vi) as paragraphs (b)(1)(i)–(iv); revise paragraphs (b) and (b)(1); and add new paragraph (b)(5) to read as follows:

§ 224.3 Finance group.

(a) * * *

(2) [Amended].

(b) The Finance Group consists of two departments, each headed by an Assistant Postmaster General, and the Office of Management Services, the Office of the Treasurer, and the Records Officer.

(1) *Controller Department.* The Controller Department is headed by an Assistant Postmaster General. It is divided into four Divisions: Budget, Accounting, Payroll Systems, and Economic and Cost Benefits. The Department is responsible for:

(i) [Redesignated].

(ii) [Redesignated].

(iii) [Redesignated].

(iv) [Redesignated].

* * * * *

(5) *Office of the Treasurer.* The Treasurer is responsible for Postal Service liquidity.

6. In § 224.4 add new paragraph (b)(3)(vi) as follows:

§ 224.4 Operations group.

* * * * *

(b) * * *

(3) * * *

(vi) Operating the Postal Laboratory conducting application engineering programs.

7. Remove § 224.6; redesignate §§ 224.7–224.13 as §§ 224.6–224.12; and revise § 224.5 to read as follows:

§ 224.5 Research and Management Systems Group.

(a) The Research and Management Systems Group is headed by the Senior Assistant Postmaster General, Research and Management Systems Group, who reports to the Deputy Postmaster General. The Group is divided into two Departments and one Office whose heads report to the SAPMG, Research and Management Systems Group.

(b) Information Resource Management Department. The Information Research Management Department is headed by an APMG and is responsible for:

(1) Formulating and administering information policy within the Postal Service;

(2) Providing guidance to the USPS in utilizing information technologies as key resources;

(3) Developing strategies to improve the level of information management systems that will reduce or avoid USPS operating costs, increase productivity, and increase flexibility of information systems;

(4) Applying technology and deploying resources to achieve information resource strategies;

(5) Directing and maintaining the Postal Service information plan;

(6) Implementing the business systems plan;

(7) Directing the information systems planning, design, and development process; the USPS information quality assurance process; and support of telecommunications services;

(8) Planning and administering all IRM organization, employee, contracting, facility, and funding resources necessary to accomplish the IRM functions;

(9) Providing data processing support services for the USPS, including advice on acquisition and development of data processing equipment;

(10) Establishing appropriate policy and procedures with regard to computer-based information systems;

(11) Planning, developing policies, and managing a national point-to-point data communications system satisfying USPS requirements;

(12) Reviewing and approving USPS requirements for telephone switchboards (PBX), radio systems, intercommunication and sound equipment, low speed data transmission systems (teletype and facsimile), and data transmission lines;

(13) Operating Postal Data Centers (PDC), Automated Data Processing Centers (ADPC);

(14) Providing payroll processing and distribution services, accounting services, and funds disbursement services under policy direction of the Controller Department;

(15) Providing computer programming and information systems analysis service;

(16) Providing functional guidance to the regional Management Information Branches;

(17) Maintaining liaison with professional groups concerned with ADP technology, teleprocessing statistics, and operations research.

(c) Office of Data Management. The Office of Data Management is responsible for:

(1) The USPS data policy;

(2) Planning for efficient utilization of USPS data resources;

(3) Directing the creation of the systems architectural and administering the utilization of data classes within the architecture;

(4) Establishing and administering the procedure for data access and storage;

(5) Managing the use of data base management technologies and techniques on all USPS computers; and

(6) Directing the USPS forms and directives control functions.

(d) Office of Planning and Development. The Office of Planning and Development is responsible for:

(1) Developing all management information planning, and providing strategic information on trends which may affect Postal Service information needs;

(2) Developing and implementing the information systems plan;

(3) Defining the USPS Business Systems Planning Report (BSP), controlling the information requirements systems development, and coordinating the acquistion of resources required for implementation;

(4) Directing and administering the USPS Office Automation Program.

(e) Technology Resource Department. The Technology Resource Department is headed by an APMG and is responsible for:

(1) Supporting the technology planning process.

(2) Developing and maintaining long range technology development planning.

(3) Managing system and technology studies undertaken to increase future postal productivity.

(4) Managing advanced research activities in emerging technologies which may have applicability to postal systems.

(5) Transferring developed technology to the Engineering and Technical Support Department for implementation.

(f) Office of Special Projects. The Office of Special Projects is headed by a Director and is responsible for the management of specific projects with the Research and Management Systems Group.

8. Revise part 226 to read as follows:

PART 226—POSTAL DATA CENTERS

§ 226.1 Postal Data Centers.

Postal Data Centers, headed by directors, who report to the Director, Office of Data Processing, are responsible for:

(a) Accounting, accounts payable, payroll, money order disbursing, claims and loss settlement, and other financial services;

(b) Systems analysis, computer programming, and other systems development activities;

(c) Data preparation, data processing, teleprocessing, and other computer services.

(39 U.S.C. 401)

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

[FR Doc. 83-17686 Filed 6-29-83; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 1

[SWH-FRL 2391-2]

State and Local Assistance; Correction

AGENCY: Environmental Protection Agency.

ACTION: Change to rule-related document.

SUMMARY: The purpose of this notice is to change the rule-related document published on February 7, 1983 [48 FR 5684]. That notice established policies and procedures for financial assistance to States for the purposes of section 3012 of the Resource Conservation and Recovery Act (RCRA). This change extends the deadline for submission by the States of a final application for assistance until [twenty one (21) calendar days after publication].

The procedures for review and approval of applications for funds as outlined in the February 7, 1983, notice called for initial review by Regional Administrators, followed by formal submission to, and approval by, the Administrator. The notice contained general information concerning submission of applications and stated that the Environmental Protection Agency (EPA) had prepared guidance to provide additional information to States concerning allowable activities. That guidance, which provided more specific information on application preparation, review and approval, was to have been distributed concurrent with the February 7, 1983, notice. However, it was delayed in distribution because the Agency was in the process of changing the procedures; delegating the authority to approve cooperative agreements under RCRA section 3012 to the Regional Administrators. That authority was delegated on May 18, 1983.

The delay in providing specific guidance to the States has caused a number of States to miss the May 9, 1983, deadline for submission of final applications that was established in the February 7, 1983, notice. Because this delay was out of the control of the States, EPA, by this notice, is extending the deadline until July 21, 1983 to afford the States sufficient time to incorporate the information contained in the guidance into their final applications.

EFFECTIVE DATE: This notice is effective on June 30, 1983.

FOR FURTHER INFORMATION CONTACT: Lucy Sibold, Hazardous Site Control Division, Office of Emergency and Remedial Response, (WH-548E).

Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20450, (202–382–7999).

Dated: June 24, 1983.

Lee M. Thomas,

Acting Assistant Administrator for Solid Waste and Emergency Response.

[FR Doc. 83–17879 Filed 6–29–83; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Parts 124, 261, 264, 265, 270 and 271

[SW-FRL 2391-2]

Hazardous Waste Management System: Permit Program; Requirements for Authorization of State Programs; Procedures for Decisionmaking; Identification and Listing of Hazardous Waste; Standards for Owners and Operators of Hazardous Waste Storage, Treatment, and Disposal Facilities; Interim Status Standards for Owners and Operators of Hazardous Waste Storage, Treatment, and Disposal Facilities; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: On April 1, 1983, the Environmental Protection Agency published regulations which, in part, reorganized the presentation of permitting and state program requirements of the Hazardous Waste Management Program under the Resource Conservation and Recovery Act (RCRA). (48 FR 14146 *et seq.*) The April 1 rulemaking was intended to make the regulations easier to understand and use by physically deconsolidating the Agency's Consolidated Permit Regulations. In today's action, EPA amends those regulations to correct minor typographical errors, incorrect cross-references and similar technical errors. This rule makes *no substantive changes* to the CRA permitting or state program requirements and is effective immediately.

EFFECTIVE DATE: June 30, 1983.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline toll-free at (800) 424–9346 or at (202) 382–3000.

SUPPLEMENTARY INFORMATION: On April 1, 1983, EPA promulgated final rules to deconsolidate the Agency's May 19, 1980 Consolidated Permit Regulations which governed five separate permit programs. The April 1st regulations deconsolidated the basic permit requirements for administration of permit programs (40 CFR Part 122); the requirements for authorization of State programs (40 CFR Part 123); and EPA procedures for issuing, modifying, revoking and reissuing, or terminating permits (40 CFR Part 124). The provisions in these regulations addressing the Hazardous Waste Management (HWM) permit program and State authorization under Subtitle C of the Resource Conservation and Recovery Act (RCRA) were part of this deconsolidation effort, and the RCRA requirements formerly found in 40 CFR Parts 122 and 123 are now separately addressed in new Parts 270 and 271, respectively. The permitting procedures for all the programs (including RCRA) are still addressed together in 40 CFR Part 124.

The preamble to the deconsolidated permit regulations requested public comments to aid EPA in correcting typographical errors, incorrect cross-references and similar technical errors (e.g., the unintentional deletion or omission of regulatory provisions). Today's amendments address those public comments. The amendments also re-insert regulation changes which were promulgated after the publication of the original Consolidated Permit Regulations (on May 19, 1980) but were inadvertently omitted in the April 1, 1983 publication. Conforming amendments are also made to certain provisions of Parts 261, 264 and 265 which cross-reference the deconsolidated permit regulations.

Dated: June 24, 1983.

Lee M. Thomas,

Acting Associate Administrator for Solid Waste and Emergency Reponse.

Parts 270, 271, 124, 261, 264, and 265 of Title 40 of the Code of Federal Regulations are amended as follows:

PART 270—[AMENDED]

1. The authority citation for Part 270 reads as follows:

Authority: Secs. 1006, 2002, 3005, 3007 and 7004, Solid Waste Disposal Act, as amended by the Resource Conservation Act of 1976, as amended [RCRA] [42 U.S.C. 6905, 6912, 6925, 6927 and 6974].

2. 40 CFR 270.1 is amended by correcting paragraph (a)(1) to read as follows:

§ 270.1 Purpose and scope of these regulations.

(a) *Coverage.* (1) These permit regulations establish provisions for the Hazardous Waste Permit Program under Subtitle C of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (RCRA), (Pub. L. 94–580, as amended by Pub. L. 95–609 and by Pub. L. 96–482; 42 U.S.C. 6091 et seq.). They apply to EPA and to approved States to the extent provided in Part 271.

* * * * *

§ 270.2 [Corrected]

3. The definition of "spill" in § 270.2 is removed.

4. Section 270.5 is amended by correcting paragraphs (a)(1)(iii)(C), (a)(2)(v)(C), and (b)(2) and removing paragraph (a)(3) as follows:

§ 270.5 Noncompliance and program reporting by the Director.

* * * * *

(a) * * *

(1) * * *

(iii) * * *

(C) The date(s) and a brief description of the action(s) taken by the Director to ensure compliance.

* * * * *

(2) * * *

(v) * * *

(C) When the Director determines significant permit non-compliance or other significant event has occurred such as a fire or explosion or migration of fluids into a USDW.

(vi) * * *

(b) * * *

(2) In addition to the annual noncompliance report, the Director shall prepare a "program report" which contains information (in a manner and form prescribed by the Administrator) on generators and transporters and the permit status of regulated facilities. The Director shall also include, on a biennial basis, summary information on the quantities and types of hazardous wastes generated, transported, treated, stored and disposed during the preceding odd-numbered year. This summary information shall be reported in a manner and form prescribed by the Administrator and shall be reported according to EPA characteristics and lists of hazardous wastes at 40 CFR Part 261.

* * * * *

5. Section 270.6 is amended by revising paragraph (a) to read as follows:

§ 270.6 References.

(a) When used in Part 270 of this Chapter, the following publications are incorporated by reference:

"Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846 (First Edition, 1980, as updated by Revisions A (August, 1980), B (July, 1981), and C (February, 1982) or (Second Edition,

1982). The first edition of SW-846 is no longer in print. Revisions A and B are available from EPA, Office of Solid Waste, (WH-565-B), 401 M Street, SW., Washington, D.C. 20460. Revision C is available from NTIS, 5285 Port Royal Road, Springfield, Virginia 22161. The second edition of SW-846 includes material from the first edition and Revisions A, B, and C in a reorganized format. It is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 783-3238, on a subscription basis, and future updates will automatically be mailed to the subscriber.

* * * * *

§ 270.10 [Corrected]

6. Section 270.10, General Application Requirements, is corrected by adding the phrase "and in §§ 270.70-73" after the phrase "in this section" in the seventh line of paragraph (a). The first line of paragraph (e)(3) is amended by changing the word "Administration" to read "Administrator". Paragraph (f)(3) introductory text is amended by changing the tenth line of the paragraph to read "a finally effective RCRA permit, if prior".

§ 270.14 [Corrected]

7. Section 270.14 is corrected by adding the word "where" after the word "However" in the eighth line of the comment in paragraph (b)(11)(iii). Section 270.14(b)(17) is amended by removing the citation "264.147(d)" in the fifteenth line and substituting the citation "264.147(c)". Paragraph (c)(4)(ii) is amended by adding the phrase "of Part 261 of this Chapter" after the word "Appendix VIII" in the second line. Paragraph (c)(8) is amended by adding a "(b)" to the end of the citation "264.94" in the twenty-third line in the paragraph.

§ 270.15 [Corrected]

8. Section 270.15 introductory text is corrected by removing the citation "§ 264.1" in the second line and by substituting the citation § 264.170".

§ 270.16 [Corrected]

9. Section 270.16 introductory text is corrected by removing the citation to "§ 264.1" in the second line and substituting the citation "§ 264.190."

§ 270.19 [Corrected]

10. Section 270.19 is amended by removing paragraph (d)(3).

11. Section 270.20 is amended by redesignating § 270.20(d) (5), (6), (7), and (8) to read as § 270.20 (e), (f), (g), and (h) respectively. The section is further amended by revising the section heading to read as follows:

§ 270.20 Specific Part B information requirements for land treatment facilities.

* * * * *

12. Section 270.21 is corrected by revising the section heading to read as follows:

§ 270.21 Specific Part B information requirements for landfills.

* * * * *

13. Section 270.30 is corrected by revising the last sentence of paragraph (j)(2) to read as follows:

§ 270.30 Conditions applicable to all permits.

* * * * *

(j) * * *

(2) * * * The permittee shall maintain records from all ground-water monitoring wells and associated ground-water surface elevations, for the active life of the facility, and for disposal facilities for the post-closure care period as well.

* * * * *

§ 270.30 [Corrected]

14. Section 270.30(l)(2)(ii)(B) is corrected by removing the citation "(c)(1)" in the third line and substituting the citation "(l)(2)(i)".

15. Section 270.33 is amended by revising paragraph (a)(3) and introductory text of paragraph (b) to read as follows:

§ 270.33 Schedules of compliance.

(a) * * *

(3) *Reporting.* The permit shall be written to require that no later than 14 days following each interim date and the final date of compliance, the permittee shall notify the Director in writing, of its compliance or noncompliance with the interim or final requirements.

(b) *Alternative schedules of compliance.* An RCRA permit applicant or permittee may cease conducting regulated activities (by receiving a terminal volume of hazardous waste and, for treatment and storage HWM facilities, closing pursuant to applicable requirements; and, for disposal HWM facilities, closing and conducting post-closure care pursuant to applicable requirements) rather than continue to operate and meet permit requirements as follows:

* * * * *

16. Section 270.41 is corrected by revising paragraph (a)(5)(iii) to read as follows:

§ 270.41 Major modification or revocation and reissuance of permits.

* * * * *

(a) * * *

(5) * * *

(iii) When the permittee has filed a request under § 264.147(c) for a variance to the level of financial responsibility or when the Director demonstrates under § 264.147(d) that an upward adjustment of the level of financial responsibility is required.

* * * * *

17. Section 270.61 is corrected by revising paragraph (a) to read as follows:

§ 270.61 Emergency permits.

(a) Notwithstanding any other provision of this Part or Part 124, in the event the Director finds an imminent and substantial endangerment to human health or the environment the Director may issue a temporary emergency permit: (1) To a non-permitted facility to allow treatment, storage, or disposal of hazardous waste or (2) to a permitted facility to allow treatment, storage, or disposal of a hazardous waste not covered by an effective permit.

* * * * *

§ 270.64 [Corrected]

18. Section 270.64 is corrected by removing the words "(see § 144.7)" and substituting the words "(see § 144.6)" in the third line.

PART 271—[AMENDED]

19. The authority citation for Part 271 reads as follows:

Authority: Sections 1006, 2002(a) and 3006 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (RCRA) (42 U.S.C. 6905, 6912(a), and 6926).

§ 271.4 [Corrected]

20. Section 271.4 introductory text is corrected by adding an "s" to the word "provision" in the fifth line. This section is further amended by adding the words "or to" after the phrase "hazardous wastes from" in the fifth line of paragraph (a).

21. Sections 271.10 is corrected by revising the "Note" in paragraph (e) to read as follows:

§ 271.10 Requirements for generators of hazardous waste.

* * * * *

(e) * * *

Note.—Such notices shall be mailed to Hazardous Waste Export, Office of International Activities (A-106), U.S.

Environmental Protection Agency, Washington D.C. 20460.

* * * * *

§ 271.14 [Corrected]

22. Section 271.14 is corrected by removing the words "and (f)" in § 271.14(u) and removing the citation "(c)" in § 271.14(v).

§ 271.20 [Corrected]

23. Section 271.20(c) is corrected by removing the citation "§ 271.3" and substituting the citation "§ 271.5" in the fourth line.

§ 271.121 [Corrected]

24. Section 271.121(b) is corrected by adding the word "first" between the words "The" and "phase" in the third line and is further amended by removing the words "(40 CFR Part 26)" and substituting the words "(40 CFR Part 261)" in the ninth line.

§ 271.126 [Corrected]

25. Section 271.126(a) is corrected by removing the "s" from the word "Administrators" in the seventeenth line of the paragraph.

PART 124—[AMENDED]

26. The authority citation for Part 124 reads as follows:

Authority: Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*; Safe Drinking Water Act, 42 U.S.C. 300(f) *et seq.*; Clean Water Act, 33 U.S.C. 1251 *et seq.*; and Clean Air Act, 42 U.S.C. 1857 *et seq.*

27. In Part 124, the section number designation to the section entitled "Definitions" is corrected to read as follows:

§ 124.2 Definitions.

* * * * *

28. Section 124.10 is amended by removing the words "given" and "sections" and substituting the words "give" and "actions" in the first and second lines of paragraph (a)(1), respectively. Section 124.10 is further corrected by adding § 124.10(c)(1)(ix), re-numbering § 124.10(c)(2) as § 124.10(c)(2)(i), and adding § 124.10(c)(2)(ii) as follows:

§ 124.10 Public notice of permit actions and public comment period.

* * * * *

(c) * * *

(1) * * *

* * * * *

(ix)(A) To any unit of local government having jurisdiction over the area where the facility is proposed to be located; and (B) To each State agency having any authority under State law with respect to the construction or operation of such facility.

* * * * *

(2)(i) For major permits and NPDES and 404 general permits, publication of a notice in a daily or weekly newspaper within the area affected by the facility or activity; and for EPA-issued NPDES general permits, in the **Federal Register**;

Note.—The Director is encouraged to provide as much notice as possible of the NPDES of 404 draft general permit to the facilities or activities to be covered by the general permit.

(ii) for all RCRA permits, publication of a notice in a daily or weekly major local newspaper of general circulation and broadcast over local radio stations.

* * * * *

PART 261—[AMENDED]

29. The authority citation for Part 261 reads as follows:

Authority: Secs. 1006, 2002(a), 3001 and 3002 of the Solid Waste Disposal Act, as amended by the Resouce Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6922).

§ 261.4 [Corrected]

30. Section 261.4(d) is amended by removing the words "Parts 262 through 267 or Part 122 or Part 124" and substituting the words "Parts 262 through 267 or Part 270 or Part 124" in the ninth line.

PART 264—[AMENDED]

31. The authority citation for Part 264 reads as follows:

Authority: Secs. 1006, 2002(a), 3004 and 3005 of the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6924, and 6925).

§ 264.18 [Corrected]

32. The "Comment" following § 264.18(b)(2)(iii) is amended by removing the citation "§ 122.12" and substituting the citation "§ 270.3".

§ 264.53 [Corrected]

33. The "Comment" following § 264.53(b) is amended by removing the words "Part 122, Subparts A and B" and substituting the words "Part 270".

§ 264.147 [Corrected]

34. Section 264.147(c) is amended by removing the citation "§ 122.25" and substituting the citation "§ 270.14" in the fifteenth line. Sections 264.147 (c) and (d) are amended by removing the words "under §§ 122.15(a)(7)(iii)" and substituting the words "under §§270.41(a)(5)" in the next to last line of those paragraphs.

§ 264.341 [Corrected]

35. Section 264.341(a) is amended by removing the citations "§ 122.27(b)(2)" and "§ 122.27(b)(3)" and substituting the citations "§ 270.62(b)" and "§ 270.62(c)" in the seventh and eleventh lines, respectively.

PART 265—[AMENDED]

36. The authority citation for Part 265 reads as follows:

Authority: Secs. 1006, 2002(a), 3004, and 3005 of the Solid Waste Disposal Act, as amended (42 U.S.C. 6905, 6908, 6912(a), 6924, and 6925).

§ 265.147 [Corrected]

37. Sections 265.147 (c) and (d) amended by removing the citation "§§ 122.15(A)(7)(iii)" and substituting the citation "§ 270.41(a)(5)" in the thirty-third and fortieth lines of those paragraphs, respectively.

§ 265.430 [Corrected]

38. Section 265.430(b) is amended by removing the citations "§§ 122.32(a)" and "§ 122.32(d)" and substituting the citations "§ 144.6(a)" and "§ 144.6(d)", respectively.

[FR Doc. 83-17508 Filed 6-29-83; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 425

[WH-FRL-2390-8]

Leather Tanning and Finishing Industry Point Source Category Effluent Limitations Guidelines, Prestreatment Standards, and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Correction of final rule; notice of availability and technical amendment.

SUMMARY: EPA is correcting errors that appeared in the limitations and standards for the leather tanning and finishing industry point source category that appeared in the **Federal Register** on November 23, 1982 (47 FR 52848). EPA also is announcing the supporting technical and economic documents through the National Technical Information Service (NTIS). Finally, EPA is announcing a technical amendment of the applicability date for the sulfide pretreatment standard.

FOR FURTHER INFORMATION CONTACT: Donald F. Anderson, Effluent Guidelines Division (WH-552), Environmental Protection Agency, 401 M Street, SW.,

Washington, D.C. 20460, or by calling (202) 382–7189.

SUPPLEMENTARY INFORMATION: This notice is organized as follows:

I. Availability of Documents and Summary of Corrections
II. Technical Amendment

I. Availability of Documents and Summary of Corrections

Copies of the *Development Document for Effluent Limitations Guidelines and Standards for the Leather Tanning and Finishing Point Source Category*, EPA 440/1–82–016, November 1982, and the *Economic Impact Analysis of Effluent Limitations and Standards for the Leather Tanning Industry*, EPA 440/2–82–018, November 1982, are available and may be obtained by contacting the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Va 22161; (703) 487–4600.

Refer to accession number PB83–172593 for the Development Document, and accession number PB83–159228 for the Economic Impact Analysis. The cost is $35.50 for a paper copy or $4.50 for a mircofiche copy of the Development Document, and $17.50 for a paper copy or $4.50 for a microfiche copy of the Economic Impact Analysis.

On November 23, 1982, EPA promulgated effluent limitations guidelines and standards for the leather tanning and finishing industry point source category, 47 FR 52848. This notice contained a number of errors. All of these errors are identified below. Most of the corrections are due to typographical errors. The Agency is correcting these errors. In other cases the Agency inadvertently omitted information. For example, the pretreatment standards for chromium were not applicable to plants discharging to publicly owned treatment works (POTWs) in subcategories 1, 3 and 9 if those plants processed less than a specified number of hides per day in their respective subcategories. The annual production data and the assumed production days underlying the number of hides per day specified were omitted from the notice. Accordingly, EPA is including this data.

In the preamble to the regulation published in the **Federal Register** on November 23, 1982 (47 FR 52848–52878), the following corrections are required:

1. At 47 FR 52848, column 3, line 20; correct "(3) hair save" to read "(3) hair save or pulp".

2. At 47 FR 52849, column 1, line 12, insert "(3.9 million pounds per year, at 260 working days per year)" after "275 hides per day".

3. At 47 FR 52849, column 1, line 13, insert "(5.5 million pounds per year, at 260 working days per year)" after "350 hides per day".

4. At 47 FR 52849, column 1, line 15, insert "(3.7 million pounds per year, at 260 working days per year)" after "3600 splits per day".

5. At 47 FR 52857, column 3, line 46, insert "(3.9 million pounds per year, at 260 working days per year)" after "275 hides per day".

6. At 47 FR 52857, column 3, line 47, insert "(5.5 million pounds per year, at 260 working days per year)" after "350 hides per day".

7. At 47 FR 52857, column 3, line 49, insert "(3.7 million pounds per year, at 260 working days per year)" after "3600 splits per day".

8. At 47 FR 52852, column 1, line 1 of 3rd paragraph; correct "plants' " to read "plant's".

9. At 47 FR 52852, column 1, line 5 of 3rd paragraph; correct "plants' " to read "plant's".

10. At 47 FR 52853, column 1, line 18; correct "flow data was" to read "flow data were".

11. At 47 FR 52853, column 3, line 28; correct "(1) Do" to read "(1) do".

12. At 47 FR 52854, column 1, line 40; correct "95 percent" to read "90 percent".

13. At 47 FR 52854, column 2, line 10; correct "non-water" to read "nonwater".

14. At 47 FR 52854, column 2, line 15; correct "10.5" to read "10.6".

15. At 47 FR 52854, column 2, line 61; correct "BOD" to read "BOD_5".

16. At 47 FR 52855, column 3, line 24; correct "epsom" to read "Epsom".

17. At 47 FR 52855, column 3, line 34; correct "epsom" to read "Epsom".

18. At 47 FR 52859, column 2, line 13; correct "10.5" to read "10.6".

19. At 47 FR 52865 through 52867 were printed out of order; the correct order is 52867, 52866, and 52865.

20. At 47 FR 52866, column 3, line 38; correct "tanning" to read "tannins".

21. At 47 FR 52868, column 1, line 67, correct "rquired" to read "required".

22. At 47 FR 52869, column 1, line 25, correct "intered" to read "entered".

23. At 47 FR 52869, Appendix B(1); correct "Bis(2-Chloroethyl) Ether" to read "Bis(2-Chloromethyl) Ether".

24. The Agency incorrectly listed pollutants in Appendix B of the **Federal Register** Notice. The following adjustments must be made:

a. At 47 FR 52869, Appendix B(1); add: "Antimony", "Arsenic", "Beryllium", "Selenium", and "Thallium" after "2,3,7,8,-Tetrachlorodibenzo-P-Dioxin"

b. At 47 FR 52870, Appendix B(3); delete: "Antimony", "Arsenic", "Beryllium", "Selenium", and "Thallium"

c. At 47 FR 52870, Appendix B(5), delete:

Tetrachloromethane
Hexachlorobenzene
1,1,2-Trichloroethane
Dichlorobromomethane
Isophorone
Chrysene
Antimony
Arsenic
Asbestos
Beryllium
Selenium
Silver
Thallium

d. At 47 FR 52870, Appendix B(5); add:

Acenaphthene
2-Chloronaphthalene
Parachlorometa Cresol
1,3-Dichlorobenzene
Fluroanthene
Butylbenzyl Phthalate
Dimethyl Phthalate
Acenapthylene
Pyrene

These corrections are consistent with the record to this rulemaking.

In the regulation published in the **Federal Register** on November 23, 1982 (47 FR 52848), the following corrections are required:

1. In the authority statement in 47 FR 52871, revise "1337" to read "1317".

2. There is an error in the analytical method for sulfide contained in 40 CFR 425.03(c)(4). Specifically, the equivalence of analytical reagent, ferricyanide, was incorrectly correlated with sodium sulfide rather than sulfide. Therefore, in 40 CFR 425.03(c)(4), correct "1 ml 0.1 N ferricyanide = 0.00390 g. Na_2S" to read "1 ml 0.1 N ferricyanide = 0.00160 g. S^{-2}".

3. An error was found in the calculation of NSPS mass limitations for subcategory no. 1. Therefore, the table for 40 CFR 425.14 should be revised as follows:

Pollutant or pollutant property	NSPS	
	Maximum for any 1 day	Maximum for monthly average
	Kg/kkg (or lb/1,000 lb) of raw material	
BOD$_5$	6.0	2.7
TSS	8.7	4.0
Oil and grease	2.5	1.1
Total chromium	0.16	0.06
pH	(1)	(1)

[1] Within the range 6.0 to 9.0.

4. At 40 CFR 425.15(b), insert the phrase "(3.9 million pounds per year, at 260 working days per year)" after "275 hides/day".

5. At 40 CFR 425.35(b), insert the phrase "(5.4 million pounds per year, at

260 working days per year)" after "350 hides/day".

6. At 40 CFR 425.95(b), insert the phrase "(3.7 million pounds per year, at 260 working days per year)" after "3600 splits/day".

7. At 40 CFR 425.81 (BPT); revise: "Within the range 6.0 to 6.9" to read "Within the range 6.0 to 9.0".

II. Technical Amendment

In the preamble to the effluent limitations guidelines and standards for the leather tanning and finishing industry which were promulgated on November 23, 1982, EPA noted that the reporting requirements of 40 CFR 425.04 (b) and (c) contain information requirements which were under review at the Office of Management and Budget (OMB) (47 FR 52848). The Agency erroneously made the reporting requirements in 40 CFR 425.04(c) applicable from the effective date of the regulation. However, in accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96-511), those provisions are not effective until OMB approval has been obtained. OMB approved these reporting requirements on May 18, 1983.

The Agency is announcing today the approval of these reporting requirements by OMB. In conformance with this approval, the Agency will include the OMB control number in 40 CFR 425.04 and will revise the effective dates of the reporting requirements, using the same intervals represented by the dates published in the **Federal Register** notice at 47 FR 52848. These changes are not substantive in nature. The regulations are revised as follows:

1. 40 CFR 425.04(c)(1) (47 FR 52872) refers to "March 7, 1983". This is revised to read "February 22, 1983".

2. 40 CFR 425.04(c)(2) (47 FR 52872) refers to "June 5, 1983". This is revised to read "May 23, 1983".

3. 40 CFR 425.04(c)(3) (47 FR 52872) refers to "July 5, 1983". This is revised to read "June 22, 1983".

4. At the end of 40 CFR 425.04(c)(5), the following language is added: "(Approved by the Office of Management and Budget under control number 2040-0032)".

Dated: June 22, 1983.

Rebecca W. Hammer,

Acting Assistant Administrator for Water.

[FR Doc. 83-17728 Filed 6-29-83; 8:45 am]

BILLING CODE 6560-50-M

VETERANS ADMINISTRATION

41 CFR Parts 8-4 and 8-75

Consulting and Related Services; and Special and Limited Delegations

AGENCY: Veterans Administration.

ACTION: Final rule.

SUMMARY: This revision amends the Veterans Administration Procurement Regulations by limiting the use of letters of agreement to $500 per letter and to an accumulated total of $2,500 annually to any individual or firm for the purpose of obtaining consulting services. The delegated authority to utilize letters of agreement previously prescribed by the Veterans Administration Procurement Regulations was considered too broad; therefore, restrictions on the use of such agreements are effected by this revision both in terms of prescribed maximum dollar limitations and in clearly specified types of services which may be obtained through the use of letters of agreement.

EFFECTIVE DATE: This rule is effective June 30, 1983.

FOR FURTHER INFORMATION CONTACT: Thomas A. Hamilton, Policy and Interagency Service, Office of Procurement and Supply, 810 Vermont Avenue, NW, Washington, DC 20420, telephone (202) 389-2334.

SUPPLEMENTARY INFORMATION: The Administrator hereby certifies that this final rule, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), this final rule is therefore exempt from the initial and final regulatory flexibility analysis requirements of Section 603 and Section 604. The reason for this certification is because this rule is not likely to result in a major increase in costs to consumers or others, or to have other significant adverse effects.

It is the general policy of the VA to allow time for interested persons to participate in the rulemaking process (38 CFR 1.12). Since this amendment only affects internal procedures, the rulemaking process is considered unnecessary in this instance.

List of Subjects in 41 CFR Parts 8-4 and 8-75

Government procurement, Livestock, Utilities, Veterans Administration, Authority delegations (Government agencies).

Approved: June 24, 1983.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

Part 8-4, Special Types and Methods of Procurement, and Part 8-75, Delegations of Authority are amended as follows:

PART 8-4—[AMENDED]

1. In § 8-4.803-51, paragraphs (a), (b), (c) and (d) are revised and are redesignated as paragraphs (a), (b) and (c); paragraphs (e) and (f) are redesignated as paragraphs (d) and (e). Revised paragraphs (a), (b) and (c) read as follows:

§ 8-4.803-51 Special controls for letters of agreement.

(a) Letters of agreement may be used to procure consulting services and advisory board memberships only by those individuals designated in § 8-75.201-17(a) and individuals delegated authority under the conditions specified in paragraph (b) of that section, and will be limited to a value of $500 per letter and to an accumulated annual total of $2,500 to any individual or firm. Letters of agreement should only be used where normal procurement channels are not feasible and only for obtaining the following services:

(1) Consultant services including peer review of research proposals and advisory board memberships (§ 8-4.802).

(2) Management and professional services (§ 8-4.853).

(3) Instructors and training obtained pursuant to Section 4122, Title 38, United States Code.

(b) The delegated official will perform or have performed for each letter of agreement all those duties and requirements prescribed in this subpart, as modified by paragraphs (c) and (d) of this section. That official will also insure that all reporting requirements are completed for each action.

(c) The department or staff office head will be the highest level approving official for each procurement action which does not exceed $500 in consulting fees (excluding travel, per diem and other travel-related costs) and which does not award more than an accumulated total of $2,500 per year in consulting fees to any individual or firm. (Consulting services anticipated to exceed these dollar limitations will not be obtained through letters of agreement.)

* * * * *

§ 8-4.804 [Amended]

2. In § 8-4.804, paragraph (c) is revised by adding the sentence "Reports Control Symbol 91-4 has been assigned to this report." at the end of paragraph (c).

PART 8-75—[AMENDED]

§ 8-75.201-16 [Amended]

3. In § 8-75.201-16, paragraph (d) is revised by adding the words ", U.S. Government Purchase Order—Invoice—Voucher," after the words "SF 44".

4. Section 8-75.201-17 is revised to read as follows:

§ 8-75.201-17 Letters of agreement.

(a) Authority to execute, award, and administer letters of agreement as prescribed in § 8-4.803-51 is delegated to the following:

(1) General Counsel.

(2) Director, Office of Personnel and Labor Relations.

(3) Chief Medical Director.

(4) Chief Benefits Director.

(5) Chief Memorial Affairs Director.

(6) Director, Office of Procurement and Supply.

(7) Inspector General.

(8) Directors, Regional Medical Education Centers (limited to obtaining instructors and training pursuant to Section 4122, Title 38, United States Code).

(9) Directors, Domiciliary and Medical Centers (limited to obtaining peer review of research (see § 8-4.803-51).

(b) The contracting officers named in paragraphs (a)(1) through (a)(7) of this section may designate one or more subordinates, and authority to execute the same duties and responsibilities is hereby delegated to such subordinates. Such subordinates will be no more than one organizational level below the contracting officers designated in paragraph (a), except that the Chief Medical Director may designate the Regional Directors. All such designations will be in writing, will specifically state the scope and limitations of the designees' contractual authority, and will also specifically prohibit further delegation by the designees. Copies of all designations will be forwarded to the Director, Office of Procurement and Supply (93).

(c) Copies of all letters of agreement issued by the designees identified in paragraphs (a) and (b) will be forwarded to the servicing procuring activity in order that the procurement action may be entered into the Federal Procurement Data System.

(38 U.S.C. 210(c); 40 U.S.C. 486(c))

[FR Doc. 83-17674 Filed 6-29-83; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 421

Medicare Program; Nonrenewal of Carrier Contracts

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule with comment period.

SUMMARY: In this rule, we are revising the wording of current regulations that concern the nonrenewal of a contract between HCFA and a carrier when the contract expires. The regulations now refer to the "termination" of a contract, rather than "nonrenewal," which describes the actual process.

DATES: These regulations are effective upon publication. The regulations are being published in final for reasons described in the Supplementary Information below. However, we will consider any written comments mailed by August 1, 1983, and revise the regulations, if necessary.

ADDRESSES: Please address your comments in writing to: Health Care Financing Administration, Department of Health and Human Services, Attention: BPO-38-FC, P.O. Box 17073, Baltimore, MD 21235.

If you prefer, you may deliver your comments to Room 309-G, Hubert H. Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C., or to Room 132 East High Rise Building, 6325 Security Boulevard, in Baltimore.

In commenting, please refer to file code BPO-38-FC.

Comments will be available for public inspection, beginning approximately 2 weeks from today in Room 309-G of the Department's offices at 200 Independence Avenue, S.W., Washington, D.C., on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (telephone 202-245-7890).

FOR FURTHER INFORMATION CONTACT: Bernard Gelber, 301-594-9700.

SUPPLEMENTARY INFORMATION: Under section 1842 of the Social Security Act (the Act), the Secretary may contract with private agencies or organizations to serve as "carriers" in the administration of supplementary medical insurance (Part B of the Medicare program). The carriers perform the bulk of the claims processing and benefit payment functions.

A beneficiary who receives services under Part B may pay the physician or other supplier of services directly and be reimbursed by the carrier, or the beneficiary may assign the right to payment to the physician or supplier who, in turn, is reimbursed by the carrier. In either case, the carrier determines whether the services provided are covered, whether the services are medically necessary, and whether the charges for the services are reasonable.

Section 1842(b)(4) of the Act requires that a contract with a carrier be for a term of at least one year and allows contracts to be automatically renewed. A contract is automatically renewed unless either party notifies the other party of its intention not to renew the contract before the end of the current term. Specifically, the regulations at 42 CFR 421.204, which implement this statutory provision, provide that the contract continues from term to term unless "either party gives at least 90 days notice of its intention to terminate it at the end of the current term".

In addition, section 1842(b)(4) allows the Secretary to terminate a carrier contract at any time (i.e., during the term of the contract) if the Secretary finds that the carrier has failed substantially to carry out the contract or is carrying out the contract in a manner that is inconsistent with the efficient and effective administration of the supplementary medical insurance program. These provisions are in regulations at 42 CFR 421.205. The Act also requires the Secretary to have in place procedures that provide the carrier with reasonable notice and an opportunity for a hearing before the termination of a contract for cause during the term of the contract. The regulations allow a carrier 20 days to request a hearing after notification of the Secretary's notice of his or her intent to terminate a contract for cause during the term of the contract.

A queston of interpretation has arisen as to whether the statute and regulations require the Secretary to give a carrier an opportunity for a hearing before the Secretary decides not to renew a contract whose term has expired. We believe it is clear from the statute that Congress intended to provide a hearing only in cases where the contract is being terminated for cause during the term of the contract. In that case, the statute and the regulations provide the carrier with an opportunity to rebut the Secretary's findings of a cause sufficient to terminate the contract.

Therefore, we are clarifying the language in § 421.204, Provision for automatic renewal of contracts, to provide that in a contract with an automatic renewal provision, either party may choose not to renew (rather

than to terminate) the contract by notifying the other party of its intention at least 90 days before the end of the term.

Waiver of Proposed Rulemaking

Because the change is intended merely to clarify existing regulations, we believe it is not necessary or in the public interest to publish a notice of proposed rulemaking or to delay the effective date the usual 30 days. To publish in proposed form, and then in final form, such a technical revision, or to delay the effective date, would serve no useful purpose. Moreover, since the rule being amended simply interprets a statutory provision, a notice of proposed rulemaking would be unnecessary in any event. We therefore find good cause to waive notice of proposed rulemaking and the 30-day delay in effective date. We will, however, consider any comments on this rule that are mailed by the date specified above in the "DATES" section and make any further changes that may be necessary.

Executive Order 12291

We have determined that these final regulations are not likely to result in an annual economic effect of $100 million or meet other threshold criteria of section 1(b) of the Order.

As noted above, these final regulations merely replace the words "to terminate" with "not to renew". This change is a clarification and the economic effect is negligible. As this effect is significantly below the $100 million threshold, 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 these final regulations will not result in a significant impact on a substantial number of small entities.

The regulation revision we are making is a clarification: it simply replaces the words "to terminate" with the more accurate phrase "not to renew". This revision in the regulations will not have any impact on carriers. In addition, although there may be some carriers that may be described as small entities, their number is not substantial. Therefore, the revision does not have a significant impact on a substantial number of small entities.

List of Subjects

42 CFR Part 421

Administrative practice and procedure, Contracts (Agreements), Courts, Health care, Health facilities, Health maintenance organizations (HMO), Health professions, Information (Disclosure), Lawyer, Medicare, Professional Standards Review Organization (PSRO), Reporting requirements.

42 CFR Part 421, Subpart C, is amended as set forth below:

PART 421—INTERMEDIARIES AND CARRIERS

Subpart C—Carriers

The authority citation for Subpart C reads as follows:

Authority: Secs. 1102, 1816, 1842, 1861(u), 1871, 1875 of the Social Security Act (42 U.S.C. 1302, 1395, 1395(b), 1395h, 1395u, 1395x(u), 1395hh.

Section 421.204 is revised to read as follows:

§ 421.204 Provision for automatic renewal of contracts.

Contracts under this subpart may contain an automatic renewal provision, continuing the contract from term to term unless either party gives at least 90 days notice of its intention not to renew it at the end of the current term.

(Catalog of Federal Domestic Assistance Program No. 13.774, Medicare-Supplementary Medical Insurance)

Dated: May 9, 1983.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: June 22, 1983.

Margaret M. Heckler,

Secretary.

[FR Doc. 83-17815 Filed 6-29-83; 8:45 am]

BILLING CODE 4120-03-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6389

[U-31071]

Utah; Partial Revocation of Reclamation Withdrawal

Correction

In FR Doc. 83-13902 beginning on page 23225, in the issue of Tuesday, May 24, 1983, make the following corrections.

1. On page 23226, second column, nineteenth line from the bottom of the page should have read "NE¼SW¼, N½SE¼, SE¼SE¼;".

2. On page 23227:

a. In the first column, thirty-third line, insert a comma so that the portion of the line now reading "N½N½" reads "N½, N½".

b. In the second column, seventh line, "Sec. 5" should have read "Sec. 4"; and in the forty-fourth line, "T. 27" should have read "T. 37".

3. On page 23228:

a. In the second column, the last entry in the thirty-fifth line reading "NE¼" should read "NW¼".

b. In the second column, fifty-seventh line, the portion reading: "Sec. 32, N½ N½ * * *" should read "Sec. 32, N½, N½ * * *".

c. In the third column, eighth line from the bottom of the page, delete the comma at the end of the line.

4. On page 23230:

a. In the first column, remove the forty-eighth and forty-ninth lines.

b. In the first column, the third line from the bottom should have read: "Secs. 21, 28, 33".

c. In the first column, the last line should have read: "Secs. 1, 12, 13, 21–24, incl.".

d. In the second column, the second line should read: "Secs. 1, 3–6 incl.".

BILLING CODE 1505-01-M

43 CFR Public Land Order 6402

[CA-3535]

California; Partial Revocation of Reclamation Withdrawals

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order partially revokes one Departmental and four Bureau of Land Management orders which withdrew 3,247.74 acres of land for the Bureau of Reclamation's Central Valley Project in the Trinity-Whiskeytown area, and will simultaneously restore 1,251.29 acres to surface entry and mining. The balance of 1,996.45 acres lies within the Whiskeytown-Shasta-Trinity National Recreation Area and remains withdrawn from operation of the public land laws, including the mining laws. All the lands have been and continue to be open to mineral leasing.

EFFECTIVE DATE: July 23, 1983.

FOR FURTHER INFORMATION CONTACT:

Marie M. Getsman, California State Office, 916-484-4431.

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

1. The Department Order dated November 16, 1932, and Bureau of Land Management Orders dated June 10, 1948, August 10, 1948, February 27, 1952, and March 12, 1956, are hereby revoked insofar as they affect the following described lands:

Mount Diablo Meridian

T. 32 N., R. 5 W.,
Sec. 20, lots 1, 4, 6, and 7.
T. 32 N., R. 6 W.,
Sec. 8, W½, NW¼SE¼, and S½SE¼;
Sec. 15, lots 2 thru 17 (formerly lot 1), and S½SE¼SW¼;
Sec. 18, lots 5 thru 12;
Sec. 22, lots 13 thru 20 and lots 25 thru 104 (formerly described as lot 1, S½ lot 2, and lots 3, 4, 5, and 6);
Sec. 27, lots 15, 16, 21, 22, 25 thru 28, 37 thru 40 (formerly lot 3), and lots 109 thru 116 (formerly S½ lot 7);
Sec. 28, N½NE¼, N½S½NE¼, SW¼SW¼NE¼, W½NW¼SE¼, and S½SE¼, lots 9 thru 12, 21 thru 24, 25 thru 28, 37 thru 40 (formerly lot 1), and lots 13 thru 16, 17 thru 20, 29 thru 32, 33 thru 36 (formerly lot 2).
T. 32 N., R. 7W.,
Sec. 1, lot 5.
T. 33 N., R. 7 W.,
Sec. 19, All;
Sec. 20, S½.
T. 33 N., R. 8 W.,
Sec. 13, N½SW¼, SE¼SW¼ and SE¼.
T. 35 N., R. 8 W.,
Sec. 30, W½NW¼NE¼, lots 1, 2, 3, and 4, NE¼NE¼NE¼ and E½W½;
Sec. 31, lots 1, N½ lot 2, and NE¼NW¼.
T. 35 N., R. 9 W.,
Sec. 36, NE¼NE¼, NW¼, N½N½SW¼ and N½NW¼SE¼.

The area described aggregates 3,247.74 acres in Shasta and Trinity Counties, California.

2. Of the lands described in Paragraph 1, the following lands remain withdrawn from the public lands laws generally, including the United States mining laws pursuant to the Act of November 8, 1965 (79 Stat. 1295) for the Whiskeytown-Shasta-Trinity National Recreation Area. These lands are administered by the National Park Service in accordance with the cited act, and the regulations contained in 43 CFR Part 3560.

Mount Diablo Meridian

T. 32 N., R. 6 W.,
Sec. 8, W½, NW¼SE¼, and S½SE¼;
Sec. 15, lots 2 thru 17 (formerly lot 1), and S½SE¼SW¼;
Sec. 18, lots 5 thru 12;
Sec. 22, lots 13 thru 20 and lots 25 thru 104 (formerly described as lot 1, S½ lot 2, and lots 3, 4, 5, and 6);
Sec. 27, lots 15, 16, 21, 22, 25 thru 28, 37 thru 40 (formerly lot 3), and lots 109 thru 116 (formerly S½ lot 7);
Sec. 28, N½NE¼, N½S½NE¼, SW¼SW¼NE¼, W½NW¼SE¼, and S½SE¼, lots 9 thru 12, 21 thru 24, 25 thru 28, 37 thru 40 (formerly lot 1), and lots 13 thru 16, 17 thru 20, 29 thru 32, 33 thru 36 (formerly lot 2).
T. 32 N., R. 7 W.,
Sec. 1, lot 5.
T. 35 N., R. 8 W.,
Sec. 30, W½NW¼NE¼, lots 1, 2, 3, and 4, NE¼NE¼NE¼, and E½W½;
Sec. 31, lots 1, N½ lot 2, and NE¼NW¼.
T. 35 N., R. 9 W.,
Sec. 36, NE¼NE¼, NW¼, N½N½SW¼ and N½NW¼SE¼.

The area aggregates 1,996.45 acres.

3. Of the lands described in Paragraph 1, the following described public lands shall at 10 a.m. on July 23, 1933, be open to operation of the public land laws generally, subject to valid existing rights, and the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on July 23, 1983, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Mount Diablo Meridian

T. 32 N., R. 5 W.,
Sec. 20, lots 1, 4, 6 and 7.
T. 33 N., R. 8 W.,
Sec. 13, N½SW¼, SE¼SW¼, and SE¼.
T. 33 N., R. 7 W.,
Sec. 19, All;
Sec. 20, S½.

The area described aggregates 1,251.29 acres.

4. The public lands described in paragraph 3 will be open to location under the United States mining laws at 10 a.m. on July 23, 1983. Appropriation of lands under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. Sec. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts. All of the lands described in paragraph 1 have been and continue to be open to applications and offers under the mineral leasing laws.

Inquiries concerning these lands should be addressed to the Bureau of Land Management, Room E-2841, Federal Office Building, 2800 Cottage Way, Sacramento, California 95825.

Dated: June 17, 1983.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

[FR Doc. 83-17667 Filed 6-29-83; 8:45 am]

BILLING CODE 4310-84-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Parts 232 and 282

Uniform Financial Reporting Requirements

AGENCY: Maritime Administration, DOT.

ACTION: Final rule.

SUMMARY: This new 46 CFR Part 232, entitled Uniform Financial Reporting Requirements, supersedes 46 CFR Part 282, Uniform System of Accounts for Maritime Operators, which is revoked. The accounting procedures and reporting requirements that are presently applicable to contractors receiving assistance under Titles V, VI and XI of the Merchant Marine Act, 1936, as amended (Act), are substantially revised and made applicable to all contractors entering into or having agreements with the Maritime Administration/Maritime Subsidy Board under its financial assistance programs.

EFFECTIVE DATE: June 30, 1983.

FOR FURTHER INFORMATION CONTACT: James J. Zok, Director, Office of Financial Management, Maritime Administration, Department of Transportation, Room 4429, 400 Seventh Street, S.W., Washington, D.C. 20590, Telephone: (202) 426-5852.

SUPPLEMENTARY INFORMATION: The new 46 CFR Part 232 clarifies and substantially reduces existing reporting requirements now applicable only to subsidized operators, CDS vessel owners, and recipients of Title XI obligation guarantees, and extends them to all contractors with the agency pursuant to provisions of Titles II, V-VIII, and XI of the Act. It significantly reduces the burden on the industry for specific record keeping and lowers the quantity of data required to be reported to the Maritime Administration. Waivers previously granted to a significant portion of Title XI recipients are rescinded by this rulemaking.

In this regard, the regulation reduces the number of accounts required to be maintained from about 324 to 39. In addition, it reduces the number of pages of financial data from about 102 pages with some 104 separate schedules to 16 pages with 23 separate schedules.

46 CFR Part 232 incorporates the latest applicable pronouncements of the accounting profession issued by the Financial Accounting Standards Board and other professional organizations and publications.

The principal author of this final rulemaking is James J. Zok, Director, Office of Financial Management, Maritime Administration.

Background

A proposed rulemaking was published on pages 36228–36235 of the **Federal Register** on August 19, 1982, Vol. 47, No. 161, and invited comments for 60 days ending October 18, 1982. The comment period was extended by one week, to October 25, 1982, at the request of interested parties. Comments were received from 18 sources including affected companies, professional trade and industry associations, and legal firms and public accounting firms representing several members of the industry.

The agency considered comments and suggestions for specific and general changes in financial reporting requirements received from various industry representatives and organizations. Most were incorporated into the final rulemaking.

The following summarizes the comments, suggestions and actions taken:

Proposed Rulemaking (46 CFR Part 232) Consolidation of Comments by Subject Area and MARAD Response

Comments—Waivers/Applicability of Requirement.

- The requirement that drill rig operators must report is unwarranted and wasteful.
- Those companies previously granted waivers should be permitted to keep their waivers even under the revised reporting.
- The proposed regulation implied that reporting would be by business lines, which is not appropriate for many organizations.
- The proposed regulation's reporting requirements are not suited to the operations of an integrated mining, processing and transportation company.
- A procedure for granting waivers to the reporting requirement should be retained.
- For those companies previously granted waivers, the proposed requirement represents a significant and expensive increase in reporting burden.

MARAD Response

The reporting requirements in the final rule have been substantially reduced from the requirements of the proposed rule. As the result of industry comments and a MARAD internal reevaluation of its financial reporting needs during the comment period, the final rule reporting requirements are only slightly different from the reporting requirements of those presently granted waivers, making their continuation unnecessary and arguments concerning significant new costs invalid. With the latitude permitted in using alternative reporting formats, arguments concerning unsuitability of the reporting requirements to certain company structures such as drilling and integrated mining or processing companies are likewise rejected. Questions concerning the reporting, including some concerning consolidated reporting waivers, will naturally evolve and the final rule provides a contact point for such questions.

Comments—Materiality/Frequency

- The use of a materiality concept for supporting schedules is recommended.
- Schedule 204 should only be required annually.
- Only absolutely essential information should be required.
- The amount of detail required of Title XI recipients should not be as stringent as that required for subsidized operators.
- Salary reporting should be restricted to the five highest paid officers/directors of the agency.

MARAD Response

MARAD recognized that much of the detail required by the proposed rule was superfluous to agency needs. With respect to materiality, the final rule requires that detailed accounts need only be reported if their amount exceeds 5 percent of ending assets. In addition, most schedules, including Schedule 204, are only required annually by the final rule, as opposed to semiannually.

Agency financial analysis and contract monitoring needs require that the retained reporting be required for subsidy and Title XI recipients. Similarly, the salary reporting requirement is tied to existing contractual agreements between MARAD and the contractors.

Comments—Subsidy Payment/ Accounting Policies

- Period accounting requirement in the face of subsidy payments made on a voyage basis of accounting is inconsistent, illogical and requires duplicative accounting records.
- Commenting companies concur with the periodic basis of accounting if subsidy payments are made on a periodic versus voyage basis.

MARAD Response

The logic of the respondents regarding the period versus voyage basis of accounting is irrefutable. Therefore, respondents will be permitted to continue their current method of accounting as long as unqualified opinions are rendered by their CPAs regarding the issue and/or until present subsidy payment and reporting practices adopt a full period and accrual concept.

Comments—Confidentiality of Data

- An addition to the general instructions should be made so that it is generally understood that the financial information provided to MARAD is confidential and will be treated as such.
- Information on employee salaries is an invasion of the employee's privacy—it should not be reported.

MARAD Response

The reporting of salaries is a contractual condition which is accomplished via this reporting requirement. All data received are treated as proprietary and confidential, subject to Freedom of Information Act (FOIA) exemptions. MARAD will notify each contractor of a FOIA request and allow the assertion of a FOIA exemption as is noted in the final rule (§ 232.6, MA–172 (Revised)).

Comments—Effective Date of Regulation

- Given the volume of comments received, the regulation should go out for an additional comment period, though this may be very limited.
- Implementation of the new reporting requirement should be postponed, at least during this current economic recession.
- There is not enough lead time provided to allow for information on the new requirement.

MARAD Response

Due to the desire of many respondents to exercise the option of reporting under the revised rule as soon as possible, MARAD's own data and analysis needs, and the current state of the economy, MARAD considers a delay in implementation to be inappropriate.

Comments—Alternative Formats

- There should be a separate Schedule 213 for drill rigs, and Schedule 301 needs substantial revision to be appropriate for the same group.
- The requirement for comparative financial reports should be reconsidered since prior data are on hand.
- The regulation needs provision for the use of alternative formats.

• On Schedule 213, barges should be reported in groups, not individually.

• The annual citizenship affidavit should be accepted in lieu of Schedules 102 and 103.

MARAD Response

Most suggestions regarding alternative formats were adopted, including the deletion of comparative financial reports except where material changes are made in the companies' methods of accounting during the reporting period. The separate drill rig information has been incorporated into Schedule 213 in lieu of a separate schedule. The use of the citizenship affidavit is not considered responsive to the contractual reporting requirements accomplished through Schedules 102 and 103 because it does not provide the needed information.

Comments—Accounting Procedures and Definitions

• Inactive vessel accouning for income and expenses is inappropriate for inland barge operations.

• The definition of "affiliated company" as used in the proposal is unclear.

• It is unclear whether MARAD requires operators to use the new chart of accounts.

• Reporting of leaseholds surrendered should be modified.

• Schedule 230 (compensating balances) is unnecessary and should be eliminated.

• Generally Accepted Accounting Principles (GAAP) are insufficient to define recognition criteria for revenues and expenses and should be further amplified.

• Estimating subsidy receivables is not appropriate for balance sheet reporting and should be dropped.

• References to Federal income taxes in account definitions should be expanded to include all taxes.

• Adjustments for fluctuations in foreign currency values should be recognized separately.

• Compensating balance schedule requirements are inconsistent with Accounting Research Bulletin #43.

MARAD Response

All of the comments noted above were incorporated into the final rule or clarified as necessary, except we have rejected the assertion that generally accepted accounting principles, as described by the Financial Accounting Standards Board and its predecessor organizations, are insufficient. It is accepted that the issuances of these organizations are the basis of all American accounting and auditing practices. Regarding foreign currency accounting, companies only need to address the issue separately if it accounts for over 5 percent of total revenues or expenses during a reporting period.

E.O. 12291, Statutory Requirement and DOT Procedure

A determination has been made that the new 46 CFR Part 232 meets none of the criteria of a major rule, under Executive Order 12291 (February 17, 1981). Therefore, no separate regulatory impact analysis has been prepared. Almost all of the contractors that are subject to these uniform financial reporting requirements have gross revenues far in excess of the amount that would indentify them as small businesses; moreover, no other organizations, governmental units or other entities will be affected. Therefore, the Maritime Administrator certifies that these reduced reporting requirements will not exert a significant economic impact on a substantial number of small entities so as to require preparation of a regulatory flexibility analysis, pursuant to provisions of the Regulatory Flexibility Act of 1980 (P.L. 96–354). Pursusant to DOT Order 2100.5, this is a significant regulation for which a Regulatory Evaluation has been prepared and will be placed in the rulemaking docket. It will be made available upon written request submitted to the Secretary, Maritime Administration, 400 7th Street, S.W., Washington, D.C. 20590, Telephone (202) 426–5746. This rulemaking amends and simplifies an existing reporting requirement for the collection of information, within the scope of the Paperwork Reduction Act of 1980 (P.L. 96–511), which reporting requirement has been reviewed and approved by the Office of Management and Budget (control number 2133–0005).

List of Subjects in 46 CFR Parts 232 and 282

Maritime operators, Uniform System of Accounts reporting requirements.

PART 282—[REMOVED]

Accordingly, 46 CFR Part 282 is removed and a new 46 CFR Part 232 is added to read as follows:

PART 232—UNIFORM FINANCIAL REPORTING REQUIREMENTS

Sec.

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232.2 General instructions.
232.2(a) Use of Generally Accepted Accounting Principles
(b) Need to Conform Accounting Information
(c) Accrual Accounting
(d) Reconciliation of Financial Reports
(e) Submission of Questions
(f) Effective Date of Regulation
232.3 Chart of accounts.

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232.4 Balance sheet accounts.
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150 Accounts Receivable
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232.5 Income statement accounts.
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960 Interest Expense
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990 Cumulative Effect of Change in Accounting Policy
995 Income or Loss from Extraordinary Items Net of Taxes
232.6 Report filing requirement.

Authority: Sec. 204(b), Merchant Marine Act, 1936, as amended (46 U.S.C. 1114(b)); Pub. Law 97–31 (Aug. 6, 1981); 49 CFR 1.66 (46 FR 47458, September 28, 1981).

§ 232.1 Purpose and applicability.

(a) *Purpose.* The purpose of this regulation is to establish uniform reporting requirements for the preparation of financial reports and submissions of information to the

Maritime Administration. The Maritime Administration will, as necessary, issue clarifying instructions to those subject to these reporting requirements to assist in their interpretation and application. The uniform reporting requirements consist of:

(1) A chart of accounts defined in this regulation.

(2) Standard financial report formats, set forth in Form MA–172 (Revised).

(b) *Applicability.* This regulation is applicable to all contractors submitting required financial reports or other financial information in accordance with agreements entered into under provisions of Titles II, V, VI, VII and XI of the Merchant Marine Act, 1936, as amended, and the Shipping Act, 1916, as amended.

§ 232.2 General instructions.

(a) *Use of generally accepted accounting principles.* All contractors shall conform their accounting policies to generally accepted accounting principles applicable to their segment of the maritime or other appropriate industry, modified, as appropriate to be consistent with accounting policies and principles provided for in this regulation.

(b) *Need to conform accounting information.* All contractors may continue to use their current accounting system, if the system provides a basis for the preparation of reports in the prescribed formats and is consistent with the accounting principles contained in this Part.

(c) *Accrual accounting.* (1) Contractors shall recognize revenue and expense in accordance with accrual principles. In those instances where the contractor incurs expenses, but has not determined actual costs, the contractor shall record reasonable accruals (estimated costs) in the appropriate accounts of the required financial reports.

(2) The contractor shall record estimated accrued expenses and maintain adequate controls to assure the reasonableness of the costs used in the financial reports.

(d) *Reconciliation of financial reports.* When a contractor issues interim or annual certified financial statements following accounting policies different from those established by this Part, the contractor shall clearly set forth the nature and amount of each adjustment necessary to reconcile the published statements filed with the Maritime Administration.

(e) *Submission of questions.* (1) A contractor may submit in writing any question involving the interpretation of any provision of this Part for consideration and decision to the Director, Office of Financial Management, Maritime Administration, Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590. Appeals from such interpretation will be in accordance with the interpretation letter.

(2) A contractor who has a question of financial accounting or reporting procedure pending before the Maritime Administration at the time a financial report is due shall file the report in accordance with established scheduled dates. The contractor shall include in the report a footnote disclosure that adequately describes the question pending, the manner of presentation in the report, and the relative impact on the balance sheet and income statement, respectively.

(f) *Effective date.* This regulation is effective as of the date first published as a final rule in the **Federal Register.** The regulation may be optionally applied to financial reports submitted for semiannual accounting periods ending between the date of publication and June 30, 1983, and becomes mandatory for annual financial reports submitted for accounting periods ending June 30, 1983, and thereafter.

§ 232.3 Chart of accounts.

(a) *Purpose of accounts.* A contractor shall use this chart of accounts as a basis for preparing the financial statements and for other required financial reports required to be submitted to the Maritime Administration.

(b) *Account numbers.* Contractors are not required to use these account numbers or titles for their internal accounting. (Approved by the Office of Management and Budget under control number 2133–0005)

§ 232.4 Balance sheet accounts.

(a) *Accounts defined.* Each account is identified by an account number and an account title, followed by a text describing the accounting information to be included in that account. Where considered necessary, accounting procedures are also included to explain how the contractor shall disclose information for reporting purposes.

(b) *Purpose of balance sheet accounts.* The balance sheet accounts are intended to disclose the financial condition of the contractor as of a given date.

Balance Sheet Accounts

(A) *Asset Accounts.*

(1) 100 Cash.

(i) This account shall include the amount of current funds available on demand in the hands of financial officers or deposited in banks or trust companies, including cash in transit for which agents or others have received credit. Cash appropriated or otherwise restricted for any purpose shall be included in Account 300, "Restricted Funds."

(ii) Compensating balances included in this account shall be disclosed by appropriate footnote.

(2) 120 Marketable Securities.

(i) This account shall include securities and other temporary investments which are available for general purposes of the business. In no case shall securities of the reporting contractor or of an affiliated company be included in this account. Separate subaccounts may be used to account for discounts and premiums on marketable securities.

(ii) For financial reporting, the lower of aggregate cost or market value at the balance sheet date shall be used to value securities included in this account.

(3) 140 Notes Receivable.

(i) This account shall include the amount of all obligations in the form of short-term notes receivable or other evidences (except interest coupons) of money receivable and due on demand or within one year from date of issue.

(ii) Subaccounts shall be used to segregate notes receivable from officers and employees, affiliated companies, officers and employees of affiliated companies, and all others.

(4) 150 Accounts Receivable.

(i) This account shall include trade or traffic receivables and claims receivable from insurance underwriters and other miscellaneous receivables not otherwise provided for in other accounts. Accrued accounts receivable for interest, dividends, rents, royalties, charters and other unmatured receivables of a current nature shall be reported in this account, except those accrued amounts which are required to be deposited to a restricted fund.

(ii) Separate subaccounts shall be used to account for trade or traffic receivables, claims receivables, miscellaneous receivables and for accounts receivable arising from transactions with officers and employees, affiliated companies, officers and employees of affiliated companies.

(iii) This account shall also be used to report construction-differential subsidy (CDS) and operating-differential subsidy (ODS) estimated to have accrued to the contractor and which remain unpaid as of the balance sheet date.

(iv) Separate subaccounts shall be maintained by contract number and, under each contract, identified by year of termination and by category of

subsidy as applicable, e.g., for CDS categories may include design and inspection costs; and for ODS categories may include wages, maintenance and repair, and any other category for which the contractor receives an operating subsidy.

(5) 160 Estimated Allowance for Doubtful Notes and Accounts Receivable.

This account shall be credited at the close of each accounting period for estimated uncollectible notes and accounts.

(6) 170 Other Current Assets.

(i) Inventories, prepaid expenses and other items that are expected to be used or consumed within 12 months of purchase or acquisition shall be reported in this account.

(ii) Acquisition of similar items that will not be used or consumed within one year should be reported as part of account 360, Other Assets.

(iii) For Financial Report purposes, this account shall be used to record the contra entries of accrued deposits in account 300 Restricted Funds.

(7) 300 Restricted Funds.

(i) This account shall include the amount of cash and securities (at cost) deposited to any restricted fund, including but not limited to Title XI Reserve or Restricted Fund, Capital Construction Fund, Construction Reserve Fund, Title XI Escrow Fund, Title XI Construction Fund, Drilling Rig Reserve Fund, Insurance Fund, Debt Retirement Fund, special and guarantee deposits.

(ii) For each fund established, subsidiary accounts shall be used to separately account for cash or securities deposited to the fund. At the close of each accounting period accrual entries shall be made to account for earned but undeposited investment income.

(iii) Compensating balances under an agreement which legally restricts the use of such funds and constitutes support for borrowing arrangements shall be included in this account.

(iv) Deposits required to be made into any Restricted Fund are to be included in the column "Accrued for Deposit"—appearing in Schedule 211. The contra entry for the accrual shall be credited to account 170 Other Current Assets.

(8) 310 Investments.

(i) This account shall include amounts of investment instruments intended to be held more than one year and includes securities of affiliated companies, noncurrent notes receivable and noncurrent accounts receivable, both from affiliates and others, cash value of life insurance policies and other investments. Noncurrent marketable securities shall be carried at the lower of aggregate cost or market value at the balance sheet date.

(ii) Subaccounts shall be maintained to account for the various investments. For noncurrent notes and accounts receivable additional accounts shall be used to readily identify amounts pertaining to affiliated companies.

(iii) For financial reporting purposes, the lower of cost or market value at the close of business on the balance sheet date will be used to value the securities included in the account except as noted below.

(iv) Investments in affiliated companies must be reported using the equity or consolidated basis of accounting as adopted by the Financial Accounting Standards Board.

(9) 330 Property and Equipment.

(i) This account shall include the cost of acquisition or construction and related capitalizable cost, including additions and betterments and all other associated cost necessary to place the respective property and equipment in acceptable condition for its intended use. This account shall also include the capitalized amount of financing leases, computed in accordance with generally accepted accounting principles, as prescribed by the Securities and Exchange Commission and the Financial Accounting Standard Board.

(ii) Subaccounts shall be maintained by type and category of property and equipment such as, but not limited to, the following: (A) floating equipment, including self-propelled vessels for transporting cargo or passengers in U.S. foreign or worldwide foreign commerce, tugs and barges, drilling platforms used in offshore operations, fishing and associated service vessels, service vessels used in conjunction with off-shore drilling platforms and deep-water mining operations, lighters primarily used to transport cargo within port areas and river systems or carried aboard mother vessels—i.e., LASH and SEABEE lighters and barges, other floating equipment ancillary to the operator's primary vessel operations; (B) Containers and flat racks; (C) Chassis and trailer equipment; (D) Terminal property and cargo handling equipment; (E) Other property and equipment; (F) Leaseholds, leasehold improvements and Capital Leases; and (G) Construction work-in-progress (to provide information by project or by type of capitalized asset cost category). For each asset account within account 330 a separate depreciation or amortization accumulation account must be established except for work-in-progress accounts.

(10) 360 Other Assets.

(i) All assets, including deferred charges, not otherwise provided for above, shall be reported in this account. Separate subaccounts shall be maintained for the various types of assets, including notes and accounts receivable which are not due in the normal course of business within one year of the balance sheet date. Each type of asset shall be further segregated to disclose amounts due from officers and employees of the reporting contractor or operator, officers and employees of affiliated companies, affiliated companies themselves, allowance for the trade in of vessels to the Maritime Administration (where the allowance is to be applied by the agency on behalf of the contractor toward progress payments on new construction) and other assets not otherwise accounted for as miscellaneous assets.

(11) 380 Deferred Charges.

(i) This account shall be used to report expenses, the payment for which the contractor has become liable currently, but which will not be charged to income within one year of the balance sheet date.

(ii) Separate subaccounts shall be maintained to identify the different categories of expense included in this account. These subaccounts may include such items as prepaid insurance; the expense of issuing long-term debt and for absorption of discounts on the stated value of the debt instruments; organization expenses; deferred prepayments and other deferred charges.

(iii) Separate subaccounts shall be maintained for amortization of the various deferred charges included in this account.

(12) 390 Goodwill and Other Intangible Assets.

(i) This account shall be used to report the amount of goodwill attributed to the cost of acquiring a business or segment of a business from an unrelated party, as well as the cost of acquiring by purchase, development or other means such intangible assets as patents, copyrights, trade names, operating rights, and similar assets.

(ii) The contractor shall maintain separate subaccounts for the identified intangible assets, including subaccounts to identify their respective amortization.

(B) Liability Accounts.

(1) 400 Notes Payable and Current Portion of Long-Term Debt.

(i) The amount reported for this account shall include the face value of notes, drafts and other evidences of indebtedness issued by the contractor which are payable on demand or within one year of the balance sheet date.

(ii) Separate subaccounts shall be used to identify different groups of creditors, e.g., banks, insurance companies, officers and employees, affiliated companies and all other creditors.

(iii) The amount of capitalized lease liability maturing during the twelve months following the balance sheet date shall also be reported in this account. A record shall be maintained for each lease agreement, with a description of the type of equipment under lease.

(iv) This account shall not include obligations due within one year which the contractor intends to refinance on a long-term basis or which are payable from restricted funds. Long-term refinancing of short-term obligations means replacement with long-term obligations or equity securities or renewal, extension, or replacement with short-term obligations for an uninterrupted period extending beyond one year from the balance sheet date. Such short-term obligations are to be recorded in account 510, Long-term Debt.

(2) 420 Accounts Payable.

(i) The amount reported for this account shall include accounts payable—trade; accounts payable—traffic; pension and welfare funds; accounts payable—Maritime Administration; and other accounts payable.

(ii) Sufficient information shall be maintained to identify individual creditors and the general categories or classification of the liabilities.

(iii) Debts of individual creditors not incurred in the normal course of business shall be identified by group, e.g., officers and employees, affiliated companies, officers and employees of an affiliated company, and other appropriate groupings of creditors not otherwise affiliated in any way with the contractor.

(3) 440 Accrued Liabilities.

(i) This account shall be used to report the amount of accrued taxes, accrued operating expenses and other accrued liabilities arising in the regular course of business.

(ii) Subaccounts shall be maintained for each category of liability.

(4) 450 Other Current Liabilities.

(i) This account shall include all current liabilities for which no other account has been provided.

(ii) Subaccounts shall be maintained to account separately for each class of current liabilities that arise from transactions with officers or employees, affiliated companies and officers or employees of affiliated companies, and must be readily identifiable to facilitate financial reporting requirements.

(5). 470 Advance Payments and Deposits.

(i) this account shall be used to report the balance of collections from customers for services not yet provided by the contractor.

(ii) Sufficient accounting information shall be maintained to readily disclose collections from related parties.

(6) 510 Long-Term Debt.

(i) This account shall be used to report the noncurrent portion of long-term debt, including mortgage notes payable to the Maritime Administration, U.S. Government insured or guaranteed debt obligations issued under Title XI of the Act, and the face amount of bonds, debentures and other long-term debt not provided for in other accounts.

(ii) Subaccounts shall be maintained to disclose unsecured and secured debt by creditor and by secured asset.

(iii) This account shall also include the balance of the long-term portion of capitalized lease liabilities. Reporting shall be by lease agreement and type of asset leased.

(iv) This account shall also include obligations due within one year which are expected to be refinanced on a long-term basis in accordance with the discussion of Account 400.

(v) Separate subaccounts shall be maintained to record the premiums for each class of funded debt (which shall be amortized over the respective lives of the securities by credit to Account 670, Other Revenue).

(7) 530 Other Liabilities.

(i) This account shall be used to report the balance of all other liabilities maturing after one year from the balance sheet date and for which no other account has been specifically provided.

(ii) Subsidiary accounts shall be maintained for each category or type of liability and accounted for by debtor.

(iii) Reporting of balances outstanding shall show separately amounts due to officers and employees, affiliated companies and officers and employees of affiliated companies.

(8) 560 Deferred Credits.

This account shall be used to report the amount of accumulated deferred income taxes, income or credits for which no other account is specifically provided.

(C) Equity Accounts.

(1) 570 Invested Capital.

This account shall be used to report the amount of capital contribution by an individual in a proprietary company, by partners of a partnership, and by stockholders of a corporation for the par or stated value of the capital stock outstanding and additional paid-in capital.

(2) 580 Treasury Stock.

This account shall be used to report the cost to the contractor of its stock that has been reacquired.

(3) 590 Retained Earnings.

(i) This account shall be used to report the balance of restricted and unrestricted retained earnings for an incorporated business entity. Subsidiary accounts shall be used for each class of restricted earnings.

(ii) Partnerships should make appropriate changes of titles to account for partners accounts.

(iii) For purposes of meeting the Maritime Administration's Dividend Policy for Operators Receiving ODS (46 CFR Part 283), accounting information for unrestricted retained earnings shall be made available to show the income or loss taken into retained earnings, dividends and other distributions paid, and the current balance of unrestricted retained earnings available for distribution.

§ 232.5 Income Statement Accounts.

(a) *Accounts Defined*—Each account shall be identified by an account number and an account title followed by a text describing the accounting information to be included in that account.

(b) *Purpose of Income and Expense Accounts*—The income and expense accounts shall show for each reporting period the amount of money the contractor is entitled to receive for services rendered; the income accrued from investments in securities and property; accrued expenses; and income and expense attributable to extraordinary items.

(D) Revenue Accounts.

(1) 600 Vessel Revenue.

(i) This account shall be used to report revenue (including surcharges) from operations. As used here, vessel refers to any asset that qualifies for obligation guarantees pursuant to regulations issued under Title XI of the Act (46 CFR Part 290).

(ii) For contractors who operate vessels in the U.S. foreign commerce with a construction or operating-differential subsidy agreement (CDSA or ODSA), operating revenue attributed to such vessels shall be separately accounted for to report the following: freight-foreign, freight-coastwise and intercoastal; passenger-foreign, passenger-coastwide and intercoastal; charter revenue; and other voyage revenue. Contractors with an ODSA shall further describe freight and passenger revenue—foreign (including surcharges), U.S. foreign commerce revenue outbound and foreign

commerce revenue (transportation between foreign ports). Revenue shall be accounted for to facilitate reporting the source of revenue by trade route or service area.

(iii) All other contractors shall report vessel revenue by category or class, or by operating segment or division if different business segments or operating divisions produce vessel revenue.

(iv) Except as otherwise provided in paragraph (D)(1)(i) of this section, vessel revenue shall be accounted for following generally accepted accounting principles for the segment of the maritime industry of which the contractor is a part and shall be applied consistently between reporting periods.

(2) 640 Operating-Differential Subsidy.

(i) This account shall be used to report the revenue accrued under provisions of the ODSA.

(ii) Subsidiary accounts shall be used to account for the amount of subsidy accrued by expense classifications to include: wages of officers and crew; subsistence of officers and crew; maintenance, repairs and upkeep not compensated by insurance; hull and machinery insurance premiums; protection and indemnity insurance premiums; protection and indemnity insurance; deductible expense attributed to illness or injury of crew members; and other expense categories as may be specified in the ODSA.

(iii) Records shall be maintained by vessel for each trade route or service area in which a vessel subject to an ODSA operates.

(iv) If ODS is accrued at substantially different rates developed by the contractor applicable to any year in which final rates have not been agreed to, the difference between the ODS accruals based on billing rates established by MARAD and the ODS accruals based on the contractor's rates shall be disclosed in appropriate footnotes to the balance sheet and to the income statement.

(3) 650 Other Shipping Operations Revenue.

This account shall be used to report revenue earned from shipping activities other than vessel operations. Examples are revenue from pooling agreements, terminal services provided to others, and cargo handling services performed for others; cargo equipment rentals, and repairs to cargo equipment belonging to others; agency fees, commissions and brokerage fees earned.

(4) 670 Other Revenue.

This account shall be used to report revenue from the following sources: interest bearing securities, dividends from capital stock, gains from the sale of assets not accounted for under the provisions prescribed for account 995, amortization of premium on funded debt, income or loss from subsidiaries, and other revenue not otherwise provided for, including nonshipping operations revenue.

(E) Expense Accounts.

(1) 700 Vessel Operating Expense.

(i) This account shall be used to report expenses of vessel operations of any kind. As used here, vessel has the same meaning as in paragraph (D)(1)(i) of this section.

(ii) For contractors with an ODSA who operate vessels subject to such an agreement in the U.S.-foreign commerce or worldwide foreign commerce, vessel expense shall be recorded by category as follows: salaries and wages of officers and unlicensed crew, including relief crews and others regularly employed aboard the vessel; fringe benefits, such as pension and welfare, vacation payments to unions on behalf of the officers, crew and others, accrued payroll taxes; consumable stores, supplies and equipment, sales taxes, delivery and inspection charges; vessel maintenance and repair expense, including laundry service, inspection services, cost of maintaining expendable equipment and other costs not recoverable from insurance which are integral parts of vessels (including the purchase of permanent equipment and spares required by the classification societies in the United States and its territories and possessions); hull and machinery insurance costs, including premium expense, deductibles and provisions for deductible average losses; protection and indemnity insurance, including premium expense, personal injury and illness deductible average losses and second seamen's insurance premiums; premiums for other marine risk insurance involving the vessel and not properly chargeable to hull and machinery insurance or to protection and indemnity insurance accounts; vessel fuel and incidental costs; charter hire expenses, including time, trip, short-term and long-term bareboat charter hire; and other vessel expenses not properly chargeable to other accounts described herein which are incidental to the operation of vessels.

(iii) For contractors who own or operate vessels not subject to an ODSA, vessel expense shall include all direct costs attributable to the operation of vessels. Such expense shall include such expense classifications as generally in use by the segment of the industry with which the contractor is identified. To the extent applicable, the expense classifications mentioned in the preceding paragraph (ii) shall be used.

(iv) Contractors operating vessels to transport cargo or passengers shall maintain appropriate vessel expense records for the purpose of filing vessel operating reports with the Maritime Administration.

(2) 750 Vessel Port Call Expense.

(i) This account shall be used to report the expenses of a vessel at each port of call. Port call expenses may include: charges for wharfage and dockage of the vessel, pilotage, entry dues and fees, port dues and taxes; anchor dues; canal tolls; launch hire, and tug hire; dispatch and husbanding fees of agents; and other port and terminal expenses.

(ii) Port charges attributable to the vessel's cargo or passengers are not to be reported in this account. Such expenses shall be reported in Account 760, Cargo Handling Expense.

(3) 760 Cargo Handling Expense.

This account shall be used to report all expenses directly attributable to the handling of cargo or passengers for a fee. This account shall include: cost of preparing a vessel to receive cargo; cost of loading and discharging of the vessel's cargo, including stevedoring and equipment and service charges of stevedoring contractors; cost of transporting cargo from the point of delivery into the possession of the contractor to the loading port and from the discharge port to the point of delivery stipulated by the freight agreement if different from the port of discharge; brokerage expense, including commissions paid brokers' agencies for the procurement of passengers or freight; cargo loading plans, demurrage, costs incidental to receiving, delivering and warehousing at freight station facilities; and other charges for cargo services performed by others.

(4) 800 Inactive Vessel Expense.

(i) This account shall be used to report all expenses incurred during and directly incident to inactive periods of vessels.

(ii) Expenses in this account include: wages of officers and crew; contributions to crew fringe benefit plans; accrued payroll taxes; subsistence cost of personnel assigned to inactive vessels; consumables other than subsistence items; vessel maintenance expense; vessel repairs; insurance expense; charter hire cost; wharfage and dockage; port expense; and miscellaneous expenses.

(5) 860 Other Shipping Operations Expense.

This account shall be used to report cost of container leasing, maintenance and repair cost and costs of shipping related activities in which the contractor engages to support vessels, such as

terminal operations, cargo equipment, fleet operations, cargo pooling agreements, container loading and other activities that are not accounted for elsewhere and that are ancillary to the contractor's vessel operations.

(6) 900 General and Administrative Expenses.

(i) This account shall be used to report the administrative and general expenses incurred in the operation of the business.

(ii) This account shall include: compensation of corporate officers, directors, administrative and service employees; fringe benefits of general and administrative personnel; legal fees; accounting and auditing fees; other professional fees; office and storage expense; utilities; communications expense; data processing expense; dues; subscriptions; entertainment; travel expense; insurance expense; maintenance and repair expense for office facilities; fixtures and equipment; fees and commissions paid to managing agents; advertising expense; foreign currency conversion; and other expenses to enhance the operation of the business.

(7) 940 Depreciation and Amortization Expense.

(i) This account shall be maintained by class of assets as accounted for in the property and equipment accounts.

(ii) Subaccounts shall be grouped by classifications such as: vessels; terminals; cargo equipment; office furniture and fixtures; and nonshipping assets.

(8) 950 Other Expense.

This account is to be used to report expenses not chargeable to any other expense account. Such charges may include: amortization of deferred charges; taxes other than income; debt discount and expense; nonshipping operations expense; organization and preoperating expense and other miscellaneous deferred charges; as well as doubtful notes and accounts receivable.

(9) 960 Interest Expense.

(i) This account shall be used to report all interest expense accrued and charged to income during the period.

(ii) Subaccounts shall be maintained by debt source/contract to provide information needed to fulfill reporting disclosure requirements.

(10) 970 Income Taxes.

(i) This account shall be used to report accrued income tax liability for the current year's operation exclusive of extraordinary items, discontinued operations and the cumulative effect of a change in accounting policy.

(ii) Sufficient accounting records shall be maintained to meet income and expense allocation requirements that may exist as a result of a Capital Construction Fund Agreement entered into under 46 CFR Parts 390 and 391, pursuant to provisions of Title VI of the Act.

(11) 990 Cumulative Effect of Change in Accounting Policy.

(i) This account shall be used to report the cumulative effect of a change in accounting policy that requires a different method of accounting for revenue or expense and that produces a significant change either to the current year's net income or to the retained earnings account of the business.

(ii) A footnote shall be added to the income statement explaining the substance of the old and new accounting methods and the reason supporting the change in accounting policy.

(iii) The amount reported in this account shall be net of all taxes.

(12) 995 Income or Loss from Extraordinary Items Net of Taxes.

(i) Amounts representing gain or loss from extraordinary items, as defined by generally accepted accounting principles customarily applied in the industry of which the contractor is a part, shall be reported in this account. Generally, these transactions would be attributed to insurance proceeds from the total loss of a vessel or catastrophic losses to shore-based facilities, as well as from sales of damaged assets scrapped because of a natural catastrophe, and disposal of assets used primarily in a business segment which is being discontinued.

(ii) Sufficient records shall be maintained to fully describe and account for all aspects of each item reported in this account, and when a firm commitment is made to dispose of an operating business segment, a provision for anticipated gain or loss to be realized in the subsequent period from disposal of assets and winding down of operations of the discontinued segment shall be taken into income in the year the contractor makes the decision.

(iii) Amounts in this account must be net of all taxes including Federal income taxes.

§ 232.6 Financial report filing requirement.

(a) Reporting Frequency and Due Dates. The contractor shall file a semiannual financial report and an annual financial report, in the format referred to in § 232.1(a)(2) of this part, which MARAD shall make available to the contractor. This Form MA-172 (Revised) shall be prepared in accordance with generally accepted accounting principles and modified to the extent necessary to comply with this regulation. The annual financial report shall be reconciled to the financial statements audited by independent certified public accountants (CPAs) licensed to practice by a state or other political subdivision of the United States, or licensed public accountants licensed to practice by regulatory authority or other political subdivision of the United States on or before December 31, 1970. Both the annual and semiannual financial reports shall be due within 120 days after the close of the contractor's annual or semiannual accounting period. If certified (CPA) statements are not available when required, company certified statements are to be submitted within the due dates, and the CPA statements shall be submitted as soon as available. The respondent may, in place of any Schedule(s) contained in the Form MA-172, submit (1) a schedule or schedules from its audited financial statements, or, (2) a computer print-out or schedule, consistent with the instructions provided in the MARAD formats.

(b) *Certification.* Annual and semiannual reports shall be certified as shown on the oath contained in the reporting formats prescribed as the MA-172 submission.

(c) *Presumption of confidentiality.* MARAD will initially presume that each part of the financial reports or data submitted as prescribed by this Regulation, other than Schedule 101—Identity of Respondent and Schedules 102 and 103, only with respect to the names and titles of directors and principal officers and employees, is privileged or confidential within the meaning of 5 U.S.C. 552(b)(4). In the event of a subsequent request for any portion of the reports or data under 5 U.S.C. 552, the submitter will be notified of such request and given the opportunity to comment. The contractor shall claim confidentiality at that time by memorandum or letter stating the basis, in detail, for such assertion of exemption, including but not limited to statutory and decisional authorities. Those parts not so claimed by the submitter to be confidential will be disclosed, and those parts so claimed will be subject to initial determination by the Freedom of Information Act Officer.

(Approved by the Office of Management and Budget under control number 2133-0005)

Authority: Sec. 204(b), Merchant Marine Act, 1936, as amended (46 U.S.C. 1114(b)); Section 801, Merchant Marine Act, 1936, as amended (46 U.S.C. 1211); Section 21 of the Shipping Act, 1916, as amended (46 U.S.C. 820); Pub. L. 97-31 (Aug. 6, 1981); 49 CFR 1.66 (46 FR 47458, September 28, 1981).

By order of the Maritime Administrator.

Dated: June 27, 1983.

Georgia P. Stamos,

Secretary, Maritime Administration and Maritime Subsidy Board.

[FR Doc. 83-17708 Filed 6-29-83; 8:45 am]

BILLING CODE 4910-61-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[CC Docket No. 79-318; FCC 83-280]

Public Mobile Radio Services, Use of the bands 825-845 MHz and 870-890 MHz for Cellular Communications Systems; and Amendment of the Commission's Rules Relative to Cellular Communications Systems

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document changes the mobile transceiver scanning direction of the control channel pairs in System A of the Domestic Public Cellular Radio Telecommunications Service, as detailed in OST Bulletin No. 53, in order to facilitate the scanning of more than 21 control channel pairs and also clarifies the ability of a joint industry committee to add special features that do not affect the basic equipment compatibility.

DATES: Effective August 1, 1983.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554

FOR FURTHER INFORMATION CONTACT: John A. Reed, Office of Science and Technology, (202) 653-6288

List of Subjects in 47 CFR Part 22

Cellular radio service

Memorandum Opinion and Order FCC 83-280

In the matter of an inquiry into the use of the bands 825-845 MHz and 870-890 MHz for Cellular Communications Systems; and amendment of Parts 2 and 22 of the Commission's Rules relative to Cellular Communications Systems, CC Docket No. 79-318.

Adopted: June 16, 1983; Released: June 22, 1983.

By the Commission; Commissioner Fogarty not participating.

1. On April 9, 1981 the Commission adopted a Report and Order in CC Docket No. 79-318 (FCC 81-161, released May 4, 1981, 46 FR 27655) which implemented the Domestic Public Cellular Radio Telecommunications Service under Part 22 of the Regulations. Attached to that Order as Appendix D was OST Bulletin No. 53 ("Cellular System Mobile Station—Land Station Compatibility Specification", April 1981). This OST Bulletin described the operational characteristics with which transmitters in the cellular service must comply in order to ensure nation-wide compatibility. Compliance with these operational characteristics regulated as part of the type acceptance requirement on the cellular transmitters (see § 22.120 of the Regulations).

2. Since the adoption of OST Bulletin No. 53, the Commission has been informed that certain changes are needed to these specifications. These changes were first detailed in a letter of February 28, 1983 from Bell Laboratories to the Chairman of the Committee on Cellular Standards (TR-8.17) under the Electronic Industries Association (EIA). Subsequent to this letter, a meeting of the EIA cellular committee was held on March 22, 1983 during which it was unanimously affirmed by the participants that these changes to the cellular specifications were necessary. Finally, the Commission was formally requested by the EIA in a filing of April 7, 1983 to incorporate these changes into OST Bulletin No. 53.

3. The specific changes requested govern the direction in which the mobile station scans the control channels assigned to System A (presently allocated for assignment to non-wireline carriers) of the cellular service (see Subpart K, Part 22 of the Regulations). When this mobile scanning direction was originally designated, it appeared that the control channels would be located at the bottom range of the 825 to 835 MHz and 870 to 880 MHz frequency bands assigned to System A. However, final rule making action assigned these control channels to the upper portion of these frequency bands (834.390 through 834.990 MHz and 879.390 through 879.990 MHz; see § 22.902 of the Rules).

4. While the presently specified channelization and mobile scanning direction should cause no system problems at this time, this scanning direction would preclude any future assignments of more than 21 control channel pairs for System A. System B (presently allocated for assignment to wireline carriers) would not experience this problem as its control channels are located at the lower portion of the assigned frequencies.

5. No decision has been made to allow the assignment of more than 21 control channel pairs per licensed system, yet we do not wish to preclude this as a possible necessary action once the cellular systems begin to expand their operations at some future date. That future expansion would allow the licensees to demonstrate whether additional control channel pairs are acutally needed. The change in mobile scanning direction is a relatively minor change if performed during the production stage of the equipment as it only involves changing the software programming of the logic circuits. Such a change could become rather expensive if attempted after a large number of transmitters had been marketed due to the expense of retrofitting this equipment. Should the cellular market be allowed to fully develop and it can be determined that more than 21 control channel pairs are actually needed, this change may be precluded due to the high expenses involved. Consequently, efficient operation in System A could not be achieved. This would tend to cause competitive and, subsequently, economic problems for the non-wireline carriers as System B licensees would not have this problem.

6. The changes to OST Bulletin No. 53 are shown in the attached Appendix A. Pursuant to Section 553(b)(3)(B) of the Administrative Procedure Act (5 U.S.C. 553), we find that prior notice and comment for this rule change is unnecessary. We believe this rule change in not controversial and that affording prior notice would not result in a significant degree of public comment. As noted above, this change has already been unanimously approved by the EIA cellular committee. Thus, many affected entities have already expressed their support for this change. Additionally, because this equipment alteration is relatively minor and inexpensive, if performed while the equipment is still in the manufacturing stage, this change should invoke little, if any, opposition. Accordingly, we believe that good cause exists for dispensing with prior rule making notice and comment for this action.

7. In addition to the changes to OST Bulletin No. 53 discussed above, two typographical errors in Section 2.6.3.7 of that bulletin have been corrected, as shown in Appendix A. As these corrections do not change the requirements but rather clarify the meaning of the section, prior rulemaking notice is unnecessary.

8. We are also incorporating a further clarifying provision in Part 22 of the regulations. This change, as detailed in Appendix B, would simply state that the joint industry cellular committee operating under the EIA could designate the function of the "reserved" data bits in the wideband data transmissions as long as the cellular equipment remains compatible with the basic service, as detailed in OST Bulletin No. 53, and the resulting cellular service continues to

comply with the commission regulations governing equipment and operation. This clarification will also entail a minor change to OST Bulletin No. 53: Sections 2.6.2.1, 2.6.2.3, 2.6.4.3.1, 2.6.4.3.2, and 2.6.4.4 will be modified such that the statement "any other message . . . ignore message" will be changed to read "any other message . . . ignore message/see § 22.915(d) of the Commission's Rules".

9. This change to Part 22 of the rules and to OST Bulletin No. 53 clarifies existing Commission policy and interpretation of the regulations. No change in the effect of the regulations has been made. Therefore, because this amendment is interpretive in nature, prior rule making notice is not required.

10. In view of the foregoing, we find that the amendments to OST Bulletin No. 53 and to Part 22 of the Rules as described above and in the attached Appendices are in the public interest, convenience and necessity. The authority for these amendments is contained in Sections 4(i), 302, 303(e) and 303(r) of the Communications Act of 1934, as amended. Accordingly, it is ordered, effective August 1, 1983, that OST Bulletin No. 53 and Part 22 of the Rules are amended as set out in the attached Appendices. A revised OST Bulletin No. 53 will be issued after the effective date.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

Section 2.6.1.1.2, Section 2.6.2.1, Section 2.6.3.7, and Section 2.6.3.8 of OST Bulletin No. 53 are revised to read as follows:

2.6.1.1.2 Update Overhead Information

Overhead messages are sent in a group called an overhead message train (see Section 3.7.1.2). The mobile station must use the value given in the NAWC (number of additional words coming) field of the system parameter overhead message in the train to determine that all messages of the train have been received. The END field must be used as a cross-check. For NAWC-counting purposes, inserted control-filler messages (see Section 3.7.1) must not be counted as part of the overhead message train.

If the mobile station receives a BCH-code-correct but unrecognizable overhead message in the train, the mobile station must count that message as part of the train for NAWC-counting purposes, but must not attempt to execute the message.

The mobile station must tune to the strongest dedicated control channel and, within 3 seconds, receive a system parameter message (see Section 3.7.1.2) and update the following numeric information:

- System identification (SID_s). Set the 14 most significant bits of SID_s) to the value of the SID 1 field. Set the least significant bit of SID_s to '1' if the serving-system is enabled; otherwise, set the bit to '0'.
- Number of paging channels (N_s). Set N_s) to 1 plus the value of the N−1 field.
- First paging channel ($FIRSTCHP_s$).Set $FIRSTCHP_s$ according to the following algorithm:

i. If $SID_s = SID_p$, $FIRSTCHP_s = FIRSTCHP_p$ (see Section 2.3.7).

ii. If $SID_s \neq SID_p$ and the serving-system status is enabled, set $FIRSTCHP_s$ to the first dedicated control channel for System A (834.990 MHz/879.990 MHz).

iii. If $SID_s \neq SID_p$ and the serving-system status is disabled, set $FIRSTCHP_s$ to the first dedicated control channel for System B (835.020 MHz/880.020 MHz).

- Last paging channel ($LASTCHP_s$). Set $LASTCHP_s$ according to the following algorithm:

i. If the serving-system status is enabled, $LASTCHP_s = FIRSTCHP_s - N_s + 1$.

ii. If the serving-system status is disabled, $LASTCHP_s = FIRSTCHP_s + N_s - 1$.

If the mobile station is equipped for autonomous registration, the mobile station must:

- Set registration increment ($REGINCR_s$) to its default value of 450.
- Set the first registration ID status to enabled.

The mobile station must then enter the Paging Channel Selection Task (see Section 2.6.1.2).

If the mobile station cannot complete this task on the strongest dedicated control channel, it may tune to the second strongest dedicated control channel and attempt to complete this task within a second 3-second interval. If it cannot complete this task on either of the two strongest control channels, the mobile station may check the serving-system status: If the serving-system status is enabled, it may be disabled; if the serving-system status is disabled, it may be enabled. The mobile station must then enter the Scan Dedicated Control Channels Task (see Section 2.6.1.1.1).

* * * * *

2.6.2.1 Response to Overhead Information

Whenever a mobile station receives an overhead message train (see Section 3.7.1.2), the mobile station must compare SID_s with SID_p. If $SID_s \neq SID_p$, the mobile station must exit the Idle Task and enter the Initialization Task (see Section 2.6.1).

If $SID_s = SID_p$, the mobile station must update the following numeric values using information contained in the system parameter overhead message:

- Serial number bit (S_s). Set S_s to the value in the S field.
- Registration bit (R_s). If the roam status is disabled, set R_s to the value of the REGH field; if the roam status is enabled, set R_s to the value of the REGR field.
- Extended address Bit (E_s). Set E_s to the value in the E field.
- Discontinuous transmission bit (DTX_s). Set DTX_s to the value of the DTX field.
- Number of paging channels (N_s). Set N_s to 1 plus the value of the N−1 field.
- Read-control-filler bit (RCF_s). Set RCF_s to the value of the RCF field.
- Combined paging/access bit (CPA_s). Set CPA_s to the value of the CPA field.
- Number of access channels ($CMAX_s$). Set $CMAX_s$ to 1 plus the value of the CMAX−1 field.
- Determine control channel boundaries for accessing the system ($FIRSTCHA_s$ and $LASTCHA_s$) by using the following algorithm:

I. If the serving-system status is enabled,

a. If $CPA_s = 1$, set $FIRSTCHA_s$ to the first dedicated control channel for System A (834.990 MHz/879.990 MHz).

b. If $CPA_s = 0$, set $FIRSTCHA_s$ to the value of the first dedicated control channel for System A minus N_s.

c. $LASTCHA_s = FIRSTCHA_s - CMAX_s + 1$.

II. If the serving-system status is disabled,

a. If $CPA_s = 1$, set $FIRSTCHA_s$ to the first dedicated control channel for System B (835.020 MHz/880.020 MHz).

b. If $CPA_s = 0$, set $FIRSTCHA_s$ to the value of the first dedicated control channel for System B plus N_s.

c. $LASTCHA_s = FIRSTCHA_s + CMAX_s - 1$.

The mobile station must then respond as indicated to each of the following messages, if received in the overhead message train. The order in which the mobile station must respond to the messages, if two or more are received, is given by their order in the following list:

1. Local Control Messages

If the local control status is enabled (see Section 2.6.1.2.2) the mobile station must respond to the local control messages.

2. New Access Channel Set Message

a. The mobile station must set $FIRSTCHA_s$ to the value of the NEWACC field of the message.

b. The mobile station must set $LASTCHA_s$ according to the following algorithm:

i. If the serving-system status is enabled, $LASTCHA_s = NEWACC_r - CMAX_s + 1$.

ii. If the serving-system status is disabled, $LASTCHA_s = NEWACC_r + CMAX_s - 1$.

3. Registration Increment Message

If the mobile station is equipped for autonomous registration, the mobile station must set $REGINCR_s$ to the value of the REGINCR field in the message.

4. Registration ID Message

If the mobile station is equipped for autonomous registration, the mobile station must perform the following:

a. The mobile station must set $REGID_s$ to the value of the REGID field of the received message and set the first-registration ID status to disabled (see Section 2.6.1.1.2).

b. The mobile station must then attempt to find SID_s among the $SID_{s,p}$ values stored in the registration memory (see Section 2.3.4).

c. If SID_s is found among the $SID_{s,p}$ values stored in the registration memory, the mobile station must perform the following:

i. The mobile station must use the following (or an equivalent) algorithm to review the $NXTREG_{s,p}$ associated with the $SID_{s,p}$ to determine if $REGID_s$ has cycled through zero:

- If $NXTREG_{s,p}$ is greater than or equal to $REGID_s + REGINCR_s + 5$, then $NXTREG_{s,p}$ must be replaced by the greater of 0 and the value $NXTREG_{s,p} - 2^{22}$.
- Otherwise do not change $NXTREG_{s,p}$.

ii. The mobile station must then compare $REGID_s$ with the $NXTREG_{s,p}$ associated with the $SID_{s,p}$.

- If $REGID_s$ is greater than or equal to $NXTREG_{s,p}$ and autonomous registration is enabled, the mobile station must enter the System Access Task with a "registration" indication (see Section 2.6.3).
- If $REGID_s$ is greater than or equal to $NXTREG_{s,p}$ and autonomous registration is not enabled, then set $NXTREG_{s,p}$ equal to $REGID_s$.
- Otherwise, the mobile station must ignore the message and continue to process messages in the overhead message train.

d. If SID_s is not found among the $SID_{s,p}$ values stored in the registration memory, the mobile station must perform the following:

- If autonomous registration is enabled, the mobile station must exit this task and enter the System Access Task with a "registration" indication supplied (see Section 2.6.3).
- Otherwise, the mobile station must ignore the message and continue to process messages in the overhead message train.

5. Rescan Message

The mobile station must immediately exit this task and enter the Initialization Task (see Section 2.6.1).

6. Any Other Message

Ignore message/see Section 22.915(d) of the Commission's Rules.

* * * * *

2.6.3.7 Service Request

The mobile station must continue to send its message to the land station. The information which must be sent is as follows (with the formats given in Section 2.7.1):

- Word A must always be sent.
- If $E_s=1$, or
  $LT_s=1$, or
  the ROAM status in enabled, or
  the ROAM status is disabled and $EX_p=1$, or
  the access is an "order confirmation", or
  the access is a "registration", or
  the mobile station was paged with a two-word mobile station control message,
  Word B must be sent.
- If $S_s=1$, Word C must be sent.
- If the access is an "origination", Word D must be sent.
- If the access is an "origination" and 9 to 16 digits were dialed, Word E must be sent.

When the mobile station has sent its complete message, it must continue to send unmodulated carrier for a nominal duration of 25 ms and then turn off the transmitter.

The next task to be entered depends on the type of access by the mobile station:

- If the access is an order confirmation, the mobile station must enter the Serving-System Determination Task (see Section 2.6.3.12).
- If the access is an origination, the mobile station must enter the Await Message Task (see Section 2.6.3.8).
- If the access is a page response, the mobile station must enter the Await Message Task (see Section 2.6.3.8).
- If the access is a registration request, the mobile station must enter the Await Registration Confirmation Task (see Section 2.6.3.9).

* * * * *

2.6.3.8 Await Message

If this task is not completed within 5 seconds, the mobile station must enter the Serving-System Determination Task (see Section 2.6.3.12).

The mobile station must monitor mobile station control messages (see Section 3.7.1.1). If the mobile station sent Word B as part of the Service Request (see Section 2.6.3.7), then the mobile station must attempt to match $MIN1_p$ and $MIN2_p$ to $MIN1_s$ and $MIN2_s$, respectively; otherwise, the mobile station must attempt to match only $MIN1_p$ to $MIN1_s$.

The mobile station must respond as indicated to any of the following messages if all decoded MIN bits match.

If the access is an origination or page response:

- Initial voice channel designation message: (see Section 3.7.1.1). The mobile station must update the parameters set in the message. If $R_s=1$ and the mobile station is equipped for autonomous registration, the mobile station must enter the Autonomous Registration Update Task (see Section 2.6.3.11), supplying a "success" indication and then enter the Initial Voice Channel Confirmation Task (see Section 2.6.4.2). Otherwise, the mobile station must enter the Initial Channel Confirmation Task.
- Directed-retry message: (see Section 3.7.1.1). If the mobile station is equipped for directed retry, it must respond to the directed-retry message as follows:

If the mobile station encounters the start of a new message before it receives all four words of the directed-retry message, it must exit this task and enter the Serving-System Determination Task (see Section 2.6.3.12).

The mobile station must set the last-try code (LT_s) according to the ORDQ field of the message:

If ORDQ='000', set LT_s to '0'.
If ORDQ='001', set LT_s to '1'.

The mobile station must then clear $CCLIST_s$ and examine each CHANPOS field in Words 3 and 4 of the message. For reach nonzero CHANPOS field, the mobile station must calculate a corresponding channel number according to the following algorithm:

i. If the serving-system status is enabled, subtract CHANPOS from $FIRSTCHA_s+1$.

ii. If the serving-system status is disabled, add CHANPOS to $FIRSTCHA_s-1$.

The mobile station must then determine whether each channel number is within the set allocated to cellular systems, and if so, list the channel number in $CCLIST_s$.

After completing its response to the directed-retry message, the mobile station must examine the access timer. If the access timer has expired, the mobile station must enter the Serving-System Determination Task (see Section 2.6.3.12). If the access timer has not expired, the mobile station must enter the Directed-Retry Task (see Section 2.6.3.14).

If the access is an origination:

- Intercept: The mobile station must enter the Serving-System Determination Task (see Section 2.6.3.12).

If the access is a page response:

- Reorder: The mobile station must enter the Serving-System Determination Task (see Section 2.6.3.12).
- Release: The mobile station must enter the Serving-System Determination Task (see Section 2.6.3.12).

If the access is an origination and the user terminates a call during this task, the termination status must be enabled so that the call can be released on a voice channel (see Section 2.6.4.4) instead of on a control channel.

Appendix B

PART 22—[AMENDED]

Title 47 of the Code of Federal Regulations, Part 22, is amended by adding a new paragraph (d) to § 22.915 to read as follows:

§ 22.915 Cellular system compatibility specification.

* * * * *

(d) Certain special operational features beyond those specified in OST Bulletin No. 53 may be activated by either the base or mobile transmitter, at the option of the local cellular licensee. These features were developed by a joint industry consensus utilizing the "reserved" bits in the wideband data transmissions. The use of these special operational features is permissible as long as the compatibility of the equipment within the cellular radio service, as specified in OST Bulletin No. 53, is not affected and the regulations governing equipment and operation in the cellular service are followed. These special features are detailed in the Electronic Industries Association Interim Standard CIS-3. Prospective manufacturers or system licensees may wish to refer to the latest version of that standard for further information.

[FR Doc. 83-17613 Filed 6-29-83; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 83-31; RM-4239]

Radio Broadcast Services, FM Broadcast Stations in Santa Rosa Beach, Florida; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action assigns Channel 272A to Santa Rosa Beach, Florida, in response to a petition filed by Mark Carter. The assignment could provide for a first FM broadcast station at Santa Rosa Beach.

DATE: Effective: August 16, 1983.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order; Proceeding Terminated

In the matter of amendment of § 73.202(b), table of assignments, FM Broadcast Stations, (Santa Rosa Beach, Florida) MM Docket No. 83-31, RM-4239.

Adopted: May 31, 1983.
Released: June 17, 1983.

By the Chief, Policy and Rules Division.

1. The Commission herein considers the Notice of Proposed Rule Making, 48 FR 5970, published February 9, 1983, proposing a first FM assignment to Santa Rosa Beach, Florida. The Notice was issued in response to a petition filed by Mark Carter ("petitioner"). Supporting comments were filed by the petitioner, restating his interest in the channel.

2. The Notice proposed assigning Channel 257A to Santa Rosa Beach. However, that proposal would be short-spaced to Station WFTW(FM), Fort Walton Beach, Florida (the distance between the cities is 25 miles, whereas the Rules require 65 miles). A staff study indicates that Channel 272A can be assigned instead to Santa Rosa Beach, in compliance with the minimum distance separation requirements, provided the transmitter site is located 4.9 miles southeast of the city. This restriction is necessary to avoid short-spacing to Station WXBM(FM) Channel 274, Milton, Florida.

3. In view of the foregoing and pursuant to the authority contained in Sections 4(i), 5(d)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective August 16, 1983, the FM Table of Assignments, § 73.202(b) of the Rules is amended, with respect to the community listed below:

City	Channel No.
Santa Rosa Beach, Florida	272A

4. It is further ordered, That this proceeding is terminated.

5. For further information concerning this proceeding, contact Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303).

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 83-17600 Filed 6-29-83; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 82-835; RM-4220]

Radio Broadcast Services, FM Broadcast Station in Grand Forks, North Dakota, Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action assigns a third FM channel to Grand Forks, North Dakota, in response to a petition filed by Red River Broadcasters.

DATE: Effective: August 16, 1983.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order; Proceeding Terminated

In the matter of Amendment of § 73.202(b), table of assignments, FM broadcast stations, (Grand Forks, North Dakota); MM Docket No. 82-835, RM-4220.

Adopted: June 2, 1983.
Released: June 17, 1983.

By the Chief; Policy and Rules Division.

1. The Commission herein considers the Notice of Proposed Rule Making, 48 FR 1522, published January 13, 1983, proposing to assign Channel 298 to Grand Forks, North Dakota, as its third FM assignment. The Notice was issued in response to a petition filed by Red River Broadcasters ("petitioner"). Supporting comments were filed by the petitioner, restating its interest in the channel. No oppositions were received.

2. We are satisfied that the public interest would be served by the proposed assignment, which could provide Grand Forks with its third FM service. The channel can be assigned in compliance with the minimum distance separation requirements. Canadian concurrence has been obtained in the assignment of Channel 298 to Grand Forks, North Dakota. A site restriction of 5.7 miles northwest is required.

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(d)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, that effective August 16, 1983, the FM Table of Assignments, § 73.202(b) of the Rules, is amended with respect to the community listed below:

City	Channel No.
Grand Forks, North Dakota	225, 234, and 298.

4. It is further ordered, that this proceeding is terminated.

5. For further information concerning this proceeding, contact Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 83-17599 Filed 6-29-83; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 82-834; RM-4202]

Radio Broadcast Services, TV Broadcast Stations in Dallas, Texas; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns UHF television Channel 58 to Dallas, Texas, as its seventh television assignment in response to a petition filed by Robert C. Tilton.

DATE: Effective: August 16, 1983.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mark N. Lipp, Mass Media Bureau, (202) 634-6530.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Report and Order; Proceeding Terminated

In the matter of Amendment of § 73.606(b), table of assignments, TV broadcast stations, (Dallas, Texas), BC Docket No. 82-834, RM-4202.

Adopted: May 24, 1983.
Released: June 17, 1983.

By the Chief; Policy and Rules Division.

1. The Commission herein considers the Notice of Proposed Rule Making, 48

FR 1523, published January 13, 1983, which invited comments on a proposal to assign UHF television Channel 58 to Dallas, Texas, in response to a petition filed by Robert C. Tilton ("petitioner"). Petitioner filed comments in support of the proposal and reaffirmed his interest in applying for the channel, if assigned. There were no opposing comments.

2. The *Notice* set forth sufficient demographic data in support of a seventh television assignment. We believe that petitioner has adequately demonstrated that the public interest would be served by assigning UHF commercial television Channel 58 to Dallas.

3. Accordingly, pursuant to the authority contained in sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective August 16, 1983, the Television Table of Assignments, § 73.606(b) of the Rules, is amended, with respect to the community listed below:

City	Channel No.
Dallas, Texas	4+, 8, *13+, 27−, 33+, 39, and 58.

4. It is further ordered, that this proceeding is terminated.

5. For further information contact: Mark N. Lipp, Mass Media Bureau, (202) 634–6530.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 83-17601 Filed 6-29-83; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 97

[PR Docket No. 82-726]

Amateur Radio Service; Elimination of Logging Requirements; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects certain typographical errors in the Appendix to the Report and Order regarding elimination of logging requirements in PT Docket No. 82–726, released June 6, 1983 (FCC 83–249), published June 9, 1983 (48 FR 26606). These corrections are necessary in order to clarify the rule sections affected.

FOR FURTHER INFORMATION CONTACT: James D. McGrath, Private Radio Bureau, Washington, D.C. 20554, (202) 632–4964.

Erratum

In the Matter of Elimination of Logging Requirements in the Amateur Radio Service; PR Docket No. 82–726.

Released: June 20, 1983.

On June 6, 1983 (FCC 83–249), the Commission released a Report and Order in the above captioned proceeding. This document corrects certain typographical errors in the Appendix to that Report and Order published June 9, 1983, at 48 FR 26606. Section 97.85(g)(4) is corrected to read: "(4) The maximum transmitter output power which occurs during operation;".

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 83-17579 Filed 6-29-83; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 172, 173 and 175

[Docket No. HM-166Q; and HM-166F; Amdt. Nos. 172-83, 173-167, 175-28]

Exceptions for Small Quantities of Hazardous Materials; and Limited Quantities of Radioactive Materials

AGENCY: Materials Transportation Bureau (MTB), Research and Special Programs Administration, DOT.

ACTION: Final rule.

SUMMARY: This document amends the Hazardous Materials Regulations (HMR) by: (1) Reducing the number of requirements that the HMR impose on the shipment and carriage of certain small quantities of hazardous materials contained in high technology instruments, laboratory chemicals, medical devices, and diagnostic kits; and (2) applying revised requirements to limited quantities of radioactive materials to achieve comparable levels of safety in each mode in a fashion that is consistent with necessary regulatory controls.

The amendments in this document simplify and reduce the number of regulatory requirements placed on the carriage and shipment of small quantities of hazardous materials.

EFFECTIVE DATE: September 30, 1983. Voluntary compliance is authorized 30 days after publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Richard R. Rawl (202) 426–2311 or Marilyn E. Morris (202) 426–2075 Office of Hazardous Materials Regulation, Materials Transportation Bureau, Department of Transportation, Washington, D.C. 20590.

SUPPLEMENTARY INFORMATION: I. *Background.* These amendments are based on proposals made in Notice No. 10 (82–10) Docket HM–166Q and HM–166F (47 FR 51430, November 15, 1982), and Notice No. 81–8, Docket HM–166F (46 FR 61908, December 12, 1981). This consolidation of the separately issued notices into a single final rule is considered desirable since each of the proposals is affected by the other. A discussion of each notice and the comments received in response thereto follows.

A. *Notice No. 81–8, Limited Quantities of Radioactive Materials.* In this notice, MTB proposed adoption of certain rules applicable to the transportation of limited quantity radioactive materials and radioactive devices. That notice proposed changes to eliminate certain regulatory inconsistencies which have existed between shipments transported by aircraft and those transported by the surface modes ever since the HMR were consolidated in 1976. These amendments to the HMR are based on the relatively low hazards associated with limited quantity radioactive materials and radioactive devices when compared with other hazardous materials and implement requirements which will provide an adequate level of safety in transportation.

1. *General.* Response to this Notice of Proposed Rulemaking (NPRM) was received from twenty commenters, of which shippers of radioactive materials in limited quantities and radioactive devices comprised a majority. Comments were received from one carrier (United Parcel Service) and two carrier associations (Air Transport Association and Radiopharmaceutical Shippers and Carriers Conference) having particular interests in the proposed rule because of its potential impact. In addition, comments were received from the University of Chicago, the University of Rochester Medical Center, and the Society of Nuclear Medicine—a specialty medical society of physicians, medical scientists, and technologists engaged in the practice of nuclear medicine. Nearly half the comments received fully support the

rules as proposed. While no commenters took exception to the basic objectives established in the NPRM, there are several areas in which a consensus on how best to achieve the desired results was not reached. A brief discussion of specific comments follows.

2. *Regulations for transportation by aircraft.* The Air Transport Association (ATA) took exception to MTB's proposal in that ATA believes the proposed requirements would be inconsistent with the International Civil Aviation Organization's (ICAO) "Technical Instructions for the Safe Transport of Dangerous Goods by Air". Specifically, ATA feels that if these materials are hazardous, they should be fully regulated and the pilot notified of their presence. If the materials are not hazardous, then ATA feels they should not be regulated. The basic requirements for these materials are identical in the two sets of regulations. MTB recognizes that the DOT rules provide options not allowed by ICAO at this time, but MTB is hopeful that a similar rule might be adopted by ICAO in the future.

3. *Quasi-shipping papers.* Although the proposal to eliminate the detailed hazardous materials shipping paper and certification requirements received strong support from most commenters, some objections were raised regarding the new requirement for communicating the presence of radioactive materials in limited quantities. The objections center on logistics relative to the notice which commenters predict will arise as shippers and carriers seek to comply with the revised rules rather than any possible increase of risks in transportation.

Mallinckrodt, Inc., contends that a provision which permits the notice to be enclosed in the package is such that, for a carrier to be satisfied that the shipment does comply, it will necessitate opening the package. Another commenter, Beckman Instruments, Inc., believes that the presence of such a notice will in many cases result in a refusal, particularly by air carriers, to carry the package. MTB considers neither of these possibilities so serious, however, as to require a change in the rule as proposed. The rule is purposely flexible so that compliance with the requirement for written notification may be achieved by whichever means the shipper determines most appropriate. As common carriers by aircraft do not presently require shippers to identify excepted packages by external markings or hazard warning entries on the air waybill, MTB does not believe they will be so inclined following publication of this rule, except through implementation of the ICAO requirements. Since the ICAO requirement is one option contained in the final rule, this can be worked out by the shippers and carriers involved.

The National Bureau of Standards of the Department of Commerce sees the requirement for an additional written notice on their multipurpose shipping form as being very inconvenient. As an alternative, they propose that the shipper's certification required by § 172.204 also be acceptable. While the commenter's proposal has merit, it could not be effectively implemented without also retaining the descriptions "radioactive material, instruments *and* articles" and "radioactive material, limited quantity, n.o.s." as proper shipping names. With the availability of those proper shipping names, a shipper could then elect to describe its packages in the manner presently required for surface mode shipments. Essentially, this would require the shipper to make a determination of which option is most acceptable; one that involves the simple statement provided in § 173.421–1(a), or another that requires, as a minimum, entries for the proper shipping name, identification number, total quantity, the name of each radionuclide, a description of the physical and chemical form, the activity contained in each package, and the shipper's certification. MTB believes an overwhelming majority of shippers would elect the former method and for that reason has decided not to provide for the suggested alternative which could generate confusion.

Associated with comments received on the proposal to require written notification as to the package contents are counter-proposals from several sources which suggest that limited quantity radioactive materials be subject to package marking requirements presently applicable to all other hazard classes. Presently, there is basic agreement between the U.S. and international regulations in not requiring package markings and MTB still agrees with reasoning which supports not requiring external markings on limited quantity radioactive materials and radioactive instruments and articles. There are no specific precautions that a carrier need take when transporting these materials under normal conditions. If the packages are involved in an accident or are lost, their radioactive nature is communicated by: (1) Marking on the inner packaging (§ 173.421(d)); and (2) the information transmitted on the "notice enclosed in or on the package, included with the packing list or otherwise forwarded with the package" (§ 173.421–1(a)). MTB believes this immediately available information adequately alerts personnel of the hazard which is present in the event of a mishap.

Comments filed on behalf of the Radiopharmaceutical Shippers and Carriers Conference called attention to a redundancy when the description "radioactive material, limited quantity, n.o.s." is used with the required statement "This package meets all requirements of 49 CFR 173.391 *(now § 173.421)* for limited quantity radioactive materials." Those comments infer that redundant information in shipping descriptions is unnecessary and should not be required. MTB agrees that this information can be combined in a single statement and still meet the intended purposes. As a result, the required statement now reads "This package conforms to conditions and limitations specified in 49 CFR 173.421 for Radioactive Material, limited quantity, n.o.s., UN 2910, 49 CFR 173.422 for Radioactive Material, Instruments *and* Articles, UN 2911; or 49 CFR 173.424 for Radioactive material, articles manufactured from natural *or* depleted uranium *or* natural thorium, UN 2909", as appropriate.

4. *Hazard ranking.* The proposal to separate radioactive material in limited quantities from the broad class of radioactive materials appearing in § 173.2 and position it between "corrosive material (solid)" and "irritating materials" was met with widespread approval. However, E.I. du Pont de Nemours and Company (Du Pont) expressed its concern over materials which also meet the definition of a higher order hazard class being subject to specification packaging, marking, labeling, shipping paper, and placarding requirements regardless of the quantity of the other hazardous material present and, therefore, the degree of hazard contained. Du Pont went on to say that compliance with the proposed requirements, if unaltered, would increase its costs by $750,000 annually due to increases in packaging, freight and administrative expenses while providing no commensurate increase in safety. The comments do not contain data which support Du Pont's assertion that transportation-related costs would increase significantly. However, the comments seem to suggest that the extremely small number of incidents involving limited quantity radioactive materials as reported to MTB, could not, in a cost-benefit analysis, justify even a slight percentage increase of those costs. Du Pont's comments on this topic close by

suggesting that any final rule pertaining to the reordering of the precedence of hazards table include an exception for limited quantity radioactive materials meeting the definition of a higher order hazard, in quantities equal to or less than one (1) pint (liquid or solid) and, alternatively, require such materials to be subject to the requirements of § 173.421 as amended by this rulemaking.

Since it is the intent of these amendments to grant regulatory relief to commonly shipped materials which have demonstrated an outstanding history of safe transportation, MTB agrees with Du Pont's recommendation that provisions be made to continue the broad exception from the regulations for limited quantity radioactive materials which also meet the definition of certain other hazard classes. To accomplish this, it was necessary to include radioactive materials in § 173.4 and withdraw the original proposal of reordering radioactive materials in limited quantities as a separate description in § 173.2(a). These materials are now identified as an exception in § 173.2(b)(5). Following those actions, it was then necessary to specify in § 173.421–2 requirements which preserve the previous exceptions from specification packaging, marking, and labeling for limited quantity radioactive materials meeting the definitions of certain other hazard classes, without jeopardizing safety by completely disregarding the other hazard. In § 173.421–2, two instances are considered in which limited quantity radioactive materials that also meet the definition of an additional hazard class may be offered for transportation.

The first instance (§ 173.421–2(a)) pertains to materials in hazard classes other than ORM–A, B, and C and combustible liquids in packagings having a rated capacity of 110 gallons or less. This rule directs shippers to class the material by the non-radioactive material hazard class and to prepare packages for shipment in accordance with provisions applicable to that other class.

Section 173.421–2(b) pertains to materials meeting the definition of an ORM–A, B, or C, and combustible liquids in packagings having a rated capacity of 110 gallons or less. In these instances, if the material is a hazardous waste or hazardous substance *or* if it is to be transported in a mode appropriate to the ORM class, the radioactivity is subrogated to the status of being the subsidiary hazard and the shipper is directed to class the material in the other hazard class. If, however, the material is not a hazardous waste or hazardous substance *and* the material is offered for transportation in a mode to which requirements of the HMR pertaining to the specific material and hazard class do not apply, the shipper is required to class it a radioactive material.

For packages not classed radioactive material, an indication of the presence of radioactive materials is communicated through a requirement that the shipper enter the statement "Limited quantity radioactive material" on the shipping paper in association with the basic description.

5. *"Radiopharmaceuticals" Proper Shipping Name.* The proposal to adopt a shipping description which distinguishes radioactive materials used for medical purposes from those used in power production, industrial radiography, and other non-medical applications drew three comments opposing the entry as compared to eight comments favoring the proposal.

In support of this proposal are a variety of shipper and carrier organizations which claim that the description "radiopharmaceuticals" should benefit the medical community, transportation personnel, emergency response teams, and the radiopharmaceutical industry without increasing the risks to public health and safety in transportation. Such benefits are generally thought by these commenters to be derived from:

(1) A more accurate indication of the risk involved in the transport of and, when necessary, an appropriate response to incidents involving radiopharmaceuticals; (2) more expeditious and less costly shipments of health care products; (3) fewer frustrated shipments; and (4) a more accurate charcterization of the nature of these materials which improves general understanding without loss of awareness of the radioactive hazard involved.

A comment from the University of Rochester Medical Center expressed opposition to the proposed name because it is viewed as being misleading, if the intent of this change is to distinguish between the more hazardous long-lived radioisotopes and the shorter-lived isotopes used in nuclear medicine which are assumed to be less hazardous. The commenter goes on to say that establishing another name for radioactive material would be confusing to transportation workers and would probably not accomplish the intended goal of speedy delivery.

The ATA response to this proposal suggests the new proper shipping name is not consistent with United Nations (UN), International Civil Aviation Organization (ICAO), and International Atomic Energy Agency (IAEA) standards which ATA understands to be an on-going goal of MTB. Accordingly, ATA recommends that MTB first introduce this proper shipping name to the UN and IAEA. In addition, since this proposal appears less restrictive and inconsistent with the ICAO technical instructions ATA objects to its adoption as a final rule.

Finally, comments filed by Du Pont expressed the view that the proposed proper shipping name would not provide for the breadth of relief intended and does not address the underlying cause of carrier delays resulting from frequent compliance checks by Federal, State, and local enforcement personnel. In Du Pont's opinion, the underlying cause is a lack of general understanding of the actual levels of hazards present as described by existing proper shipping names which would be more appropriately addressed by providing immediate advice to emergency response personnel with specific information as to the nature of the hazard present. Du Pont continues by claiming their experience indicates the proposed name would apply to only a limited number of products, and though achieving some desirable benefits, that gain would be negated by the additional burden of dual descriptions for international air transportation of these products due to the resulting dissimilar descriptions currently specified by countries which have adopted the Restricted Articles Regulations of the International Air Transport Association. The comment concludes by requesting that MTB withdraw the proposed addition of the proper shipping name "Radiopharmaceuticals, n.o.s." from its final rulemaking while retaining the existing descriptions.

Most of the comments supporting adoption of the description focused on the perceived benefit of more rapid delivery. It is contended that carrier personnel would be able to expedite the movement of these materials without undue surveillance since these products are associated with human health care.

Considering the controversy arising from this proposal MTB has decided not to adopt it since this Docket is designed to address only those issues which are not controversial and which may be handled in an expeditius manner. With the option available for shippers to voluntarily add additional information to the packages and shipping papers, it is thought best to avoid the proper

shipping name "Radiopharmaceuticals, n.o.s." at this time.

B. *Notice No. 10, Exceptions for Small Quantities of Hazardous Materials.* In this MPRM it was proposed to grant significant relief from the Department's Hazardous Materials Regulations for the transportation of small quantities of flammable liquids, flammable solids, oxidizers, organic peroxides, corrosive materials, Poison B, ORM–A, B and C, and limited quantity radioactive materials which also meet the definition of any of these other hazard classes. The relief proposed was dependent on conformance to newly proposed performance packaging requirements, and specified restrictions. As a result of a petition filed by the Scientific Apparatus Makers Association (SAMA), MTB proposed what it believed to be an acceptable standarized packaging for the shipment of these materials. MTB also believes that DOT exemptions (6971, 7755, 7921, 8116, 8285, 8292, 8423, 8581, and 8658), which presently authorize the use of several different packaging techniques, may be eliminated by the proposed rule.

Codification of the rule originally proposed to be in § 173.3(d) has been changed to *§ 173.4 Exceptions for small quantities.*

These proposals were made on the basis of favorable shipping experience achieved under exemption which demonstrate that certain innovative techniques are both safe and effective. This rulemaking tailors the terms of those specific exemptions cited above into a rule of general applicability.

1. *General.* MTB received 42 comments from industry, trade associations and one Federal agency relative to Notice No. 10. The ATA objects to small quantities of hazardous materials moving in air transport without identification and suggests that incompatible materials might be shipped together. In general, ATA supports the ICAO rules and feels there should be no exception for small quantities.

MTB believes that the approach toward the exception of small quantities of hazardous materials is correct. Furthermore, it is believed that adequate safeguards are in place to prevent the likelihood of incompatible materials from posing an unacceptable risk during air transportation. MTB is currently recommending that ICAO adopt an exception similar to this rule.

Most of the comments support the proposal to standarize the packagings for small quantities of hazardous materials with only a few minor revisions. Basically, comments concern: (1) Raising the quantity limitations (for liquids and solids) per inner receptacle; (2) increasing the LD_{50} value for Poison B materials; and (3) allowing the certification to be placed on the "outside" of the package.

2. *Addition of Materials Belonging to the Combustible Liquid, Flammable Gas and Non-flammable Gas Hazard Classes.* One commenter recommended the inclusion of flammable gases, nonflammable gases, and combustible liquids to the list of authorized materials. MTB has not added these gases because it would be beyond the scope of the NPRM. Combustible liquids, other than those which are hazardous wastes or hazardous substances, in quantities of 110 gallons or less are not subject to the regulations, therefore, the inclusion of this hazard class is unnecessary.

3. *Increased Quantity Limits.* Nearly one-third of the commenters suggested that the quantity limitation per inner receptable as proposed in paragraph (d)(1) (i) and(iii) of § 173.3 be increased from the proposed 25 milliliters for liquids and 25 grams for solids to at least 100 milliliters for liquids and 100 grams for solids (except for poisons) as "these are the quantities requested by customers".

MTB has increased the maximum permissible quantity limitation per inner receptacle to 30 milliliters for liquids and 30 grams for solids. MTB prefers keeping the quantity limit at amounts which it considers reasonable from a safety standpoint and yet adequate to meet the needs of shippers.

Over a third of the commenters suggested that MTB reconsider the quantity limitation for Poison B materials as proposed in paragraph (d)(1)(iii) of § 173.3 and clarify the wordings in the paragraph. Some commenters believe that the LD_{50} should be increased anywhere from 5 times to 1000 times the LD_{50} value. Most of the commenters believe that the more stringent packaging requirements would provide more than adequate safety protection for Poison B materials and, in the event of an inner receptacle failure during transportation, the contents would be taken-up by the absorbent material surrounding it, thereby greatly mitigating the potential for exposure of a harmful quantity.

MTB agrees with the commenters' assertions relative to the high integrity of the packagings, but believes an increase of only 20 times the LD_{50} value to be a more sound approach toward minimizing the risk potential of packages containing Poison B materials. MTB believes that by limiting the maximum quantity per inner receptacle, toxic materials, such as parathion, may be safely transported without posing a significant risk to cargo handlers and emergency response personnel. This paragraph has also been revised for clarification.

4. *Miscellaneous Comments to Proposed § 173.3.* One commenter suggests that the "closure" requirement as proposed in paragraph (d)(3) of § 173.3 should apply to air shipments only. MTB disagrees. The closure requirement was a critical element in MTB's consideration to propose a broad exception for "small quantity" shipments when transported by all modes and would provide an extra margin of safety that supports the adoption of the exceptions.

Two commenters suggested that MTB reword the compression requirements proposed in paragraph (d)(6)(i) of § 173.3 for clarity. MTB has revised this paragraph as a few words were erroneously omitted in the NPRM.

One commenter requested clarification as to whether all five drop tests proposed in paragraph (d)(6)(ii) of § 173.3 must be performed. *All* tests must be conducted to establish the performance of the package. However, the five tests need not be performed on the same package. The paragraph is revised by replacing the word "any" with the word "each".

Two commenters questioned the six-foot drop proposal. MTB believes the six-foot drops are necessary to assure an acceptable level of safety for shipments moving under a broad exception from the communication regulations.

A commenter suggests that the words "or 173.25" as proposed in paragraph (d)(7) of § 173.3 be deleted. MTB agrees, noting that in this instance, the potential hazard would be the violation of § 173.21. The packagings (cushioning material), as proposed, must be capable of absorbing the entire content of the inner receptacle. Section 173.21 effectively forbids the offering of incompatible materials together in the same package or overpack.

Two commenters believe the 65 pound weight limit as proposed in paragraph (d)(8) of § 173.3 is unnecessarily restrictive. MTB disagrees. The same requirement currently exists for materials classed ORM–D which contain many of the basic materials addressed in this rulemaking. The 65 pound gross weight limitation per package contributes to safe handling and limits the aggregate risk presented by an individual package; similar benefits should be achieved with the new packaging without being unnecessarily restrictive to shippers or consignees. In addition, MTB has removed the

reference "29.48 kilograms" from the paragraph. Persons wishing to use the metric units may refer to § 173.26.

Several commenters opposed the requirement of placing the certification "inside" the package as proposed in paragraph (d)(9) of § 173.3 and contend that it should appear on the outside where it may be seen without opening the package. MTB has reconsidered its approach on this issue and has modified the rule.

Paragraph (b) of § 173.4 contains the same date that is specified in § 173.421–1(b)(2). This was done so that both exemptions from the legislative prohibition to transport radioactive materials on passenger-carrying aircraft could be evaluated for renewal at the same time.

5. *Limited Quantities of Radioactive Materials on Passenger-Carrying Aircraft.* See **Federal Register** issued May 2, 1983 (48 FR 19719).

6. *Editorial amendment.* Paragraph (g) of § 172.101 is revised to reflect a reference to § 171.3, 173.3, 173.4 and 173.5 since each contains certain exceptions in addition to those that were referenced in paragraph (g).

II. *Classification of Rule, Reporting Requirements, and Impact on Small Entities. Non-major rule.* MTB has determined that this rule, as promulgated, is not a "major rule" under the terms of Executive Order 12291 and significant under DOT procedures (44 FR 11034). A final regulatory evaluation and environmental assessment is available in the Docket at the address shown above.

Paperwork Reduction Act. Information collection requirements contained in this regulation (§ 173.421–1) have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB control number 2137–0039.

Impact on Small Entities. Based on limited information available concerning size and nature of entities likely to be affected by this amendment, I certify that this amendment will not, as promulgated, have a significant economic impact on a substantial number of small entities. As these revised rules represent a reduction of administrative controls, the economic impact on small entities will be favorable.

III. *Thesaurus of Indexing Terms.* The following list of *Federal Register Thesaurus of Indexing Terms* apply to this rulemaking:

List of Subjects

49 CFR Part 172

Hazardous materials transportation, Labeling, Packaging and containers.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers.

49 CFR Part 175

Air carriers, and Radioactive materials.

In consideration of the foregoing, 49 CFR Parts 172, 173, and 175 are amended as follows:

PART 172—HAZARDOUS MATERIALS TABLES AND HAZARDOUS MATERIALS COMMUNICATIONS REGULATIONS

1. In § 172.101, paragraph (g) is revised, and the Hazardous Materials Table is amended as follows:

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

(g) Column 5 references the applicable packaging section of Part 173 of this subchapter. Exceptions from some of the requirements of this subchapter are noted in column 5(a); others are contained in §§ 171.3, 173.3, 173.4, and 173.5 of this subchapter in addition to those contained in Parts 174, 175, 176, and 177 of this subchapter. References to specific packaging requirements and certain additional exceptions are noted in column 5(b).

* * * * *

§ 172.101 Hazardous materials table.

EAW	Hazardous materials descriptions and proper shipping names	Hazard class	Identification number	Label(s) required (if not excepted)	Packaging:		Maximum net quantity in one package		Water shipments		
					Exceptions	Specific requirements	Passenger carrying aircraft or nuclear	Cargo only aircraft	Cargo vessel	Passenger vessel	Other requirements
(1)	(2)	(3)	(3)(A)	(4)	(5)(a)	(5)(b)	(6)(a)	(6)(b)	(7)(a)	(7)(b)	(7)(c)
	(REVISE)										
	Radioactive material, instruments and articles.	Radioactive material.	UN2911	None	173.421–1 173.422	173.421–1 173.422			1, 2	1, 2	
	Radioactive material, limited quantity, n.o.s.	Radioactive material.	UN2910	None	173.421 173.421–1	173.421 173.421–1			1, 2	1, 2	
	(ADD)										
	Radioactive material, articles, manufactured from natural or depleted uranium or natural thorium.	Radioactive material.	UN2909	None	173.421–1 173.424	173.421–1 173.424			1, 2	1, 2	

2. In § 172.204, paragraph (c)(4) is revised to read as follows:

§ 172.204 Shipper's certification.

* * * * *

(c) * * *

(4) *Radioactive material.* Each person who offers any radioactive material for transportation aboard a passenger-carrying aircraft shall sign (mechanically or manually) a printed certificate stating that the shipment contains radioactive material intended for use in, or incident to, research, or medical diagnosis or treatment.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

3. In § 173.2 paragraph (a)(1) is revised and paragraph (b)(5) is added to read as follows:

§ 173.2 Classification of a material having more than one hazard as defined in this Part.

(a) * * *

(1) Radioactive material (except a limited quantity).

* * * * *

(b) * * *

(5) A limited quantity radioactive material that also meets the definition of another hazard class (see § 173.421–2).

4. Section 173.4 is added to read as follows:

§ 173.4 Exceptions for small quantities.

(a) Small quantities of Flammable liquids, Flammable solids, Oxidizers, Organic peroxides, Corrosive materials, Poison B, and ORM A, B, C, and Radioactive materials that also meet the definition of one or more of these hazard classes are not subject to any other requirements of this subchapter if—

(1) The maximum quantity of material per inner receptacle is limited to:

(i) Thirty (30) milliliters for authorized liquids, other than poisons;

(ii) Thirty (30) grams for authorized solids, other than poisons;

(iii) Twenty (20) times the LD_{50} value (in milligrams) for oral or dermal toxicity (whichever is most restrictive) of any Poison B material according to the criteria specified in § 173.343; for example, a maximum quantity of 800 milligrams is authorized per inner receptacle for a material having an LD_{50} value of 40 milligrams; and

(iv) An activity level not exceeding that specified in §§ 173.421, 173.422, or 173.424, as appropriate, for a package containing a radioactive material;

(2) With the exception of temperature sensing devices, each inner receptacle:

(i) Is not liquid-full at 130°F, and

(ii) Is constructed of plastic having a minimum thickness of no less than 0.008-inch (0.2 millimeters), or earthenware, glass, or metal;

(3) Each inner receptacle with a removable closure has its closure held securely in place with wire, tape, or another positive means;

(4) Unless equivalent cushioning and absorbent material surrounds the inside packaging, each inner receptacle is securely packed in an inside packaging with cushioning and absorbent material that:

(i) Will not react chemically with the material, and

(ii) Is capable of absorbing the entire content (if a liquid) of the receptacle;

(5) The inside packaging is securely packed in a strong outside packaging;

(6) The completed package, as demonstrated by prototype testing, is capable of sustaining:

(i) Each of the following free drops made from a height of 6-feet direct onto a solid unyielding surface without breakage or leakage from any inner receptacle and without a substantial reduction in the effectiveness of the package:

(A) One drop flat on bottom;

(B) One drop flat on top;

(C) One drop flat on the long side;

(D) One drop flat on the short side; and

(E) One drop on a corner at the junction of three intersecting edges; and

(ii) A compressive load in pounds determined by multiplying by two the maximum horizontal cross section of the package (in square inches) in the position in which it would normally be transported without a substantial reduction in effectiveness; the load shall be applied continuously during a period of 24 hours, uniformly against the top and bottom of the package which is in the position in which it is intended to be normally transported.

Note.—Each of the above tests may be performed on a different, but identical, package i.e., all tests need not be performed on the same package.

(7) Placement of the material, or packing it with different materials, in the package does not result in a violation of § 173.21;

(8) The gross weight of the completed package does not exceed 65 pounds;

(9) The shipper certifies conformance with this section by marking the outside of the package with the statement: "This package conforms to conditions and limitations specified in 49 CFR 173.4";

(10) The package is not opened or otherwise altered until it is no longer in commerce; and

(11) The package, unless approved by the Associate Director for HMR, does not contain a material assigned any of the following identification numbers associated with the hazardous materials description in §§ 172.101 or 172.102 of this subchapter:

1092	1831
1131	1873
1259	2031
1380	2032
1397	2495
1419	2626
1422	2813
1432	2845
1433	2924
1491	2925
1504	9191
1749	9193
1798	

(b) In addition to the requirements of this section, a package containing a radioactive material shall conform with the requirements of §§ 173.421(a)–(e), or 173.422(a)–(g), as appropriate. A package containing a radioactive material may not be offered for transportation aboard a passenger-carrying aircraft under provisions of this section after May 2, 1985, unless the material is intended for use in, or incident to, research, or medical diagnosis or treatment.

§ 173.119 [Amended]

5. In § 173.119, the introductory text of paragraphs (a) and (m) is amended by adding "radioactive material" immediately following the comma after the word "oxidizer".

6. In § 173.421, the introductory text is amended by adding the words "shipping paper and certification" immediately following the comma after the words "specification packaging"; paragraph (d) is amended by removing the word "and"; paragraph (e) is amended by removing the period at the end of the sentence and inserting in its place a semicolon followed by the word "and"; and paragraph (f) is added to read as follows:

§ 173.421 Limited quantities of radioactive materials.

* * * * *

(f) The material is otherwise prepared for shipment as specified in § 173.421–1.

7. Section 173.421–1 is added to read as follows:

§ 173.421–1 Additional requirements for limited quantities of radioactive materials and radioactive instruments and articles.

(a) A limited quantity radioactive material or radioactive material instrument or article prepared for shipment under the provisions of §§ 173.421, 173.422, or 173.424 must be certified as being acceptable for transportation by having a notice enclosed in or on the package, included with the packing list, or otherwise forwarded with the package. This notice must include the name of the consignor or consignee and the statement "This package conforms to the conditions and limitations specified in 49 CFR 173.421 for excepted radioactive material, limited quantity, n.o.s., UN2910; 49 CFR 173.422 for excepted radioactive material, instruments *and* articles, UN2911; or 49 CFR 173.424 for excepted radioactive material, articles manufactured from natural *or* depleted uranium *or* natural thorium, UN2909", as appropriate.

(b) A limited quantity radioactive material classed radioactive material and prepared for shipment under provisions of §§ 173.421, 173.422, 173.424 or § 173.421–2 is not subject to the requirements of this subchapter, except for:

(1) Sections 171.15, 171.16, 174.750, 176.710 and 177.861 of this subchapter pertaining to the reporting of incidents and decontamination when transported by a mode other than air; or

(2) Sections 171.15, 171.16, 175.45, and 175.700(b) of this subchapter pertaining to the reporting of incidents and decontamination if transported by aircraft. Beginning May 3, 1985, it is also necessary to comply with requirements

specified in §§ 173.448(f) and 175.700(c) of this subchapter.

(Approved by the Office of Management and Budget under control number 2137–0039)

8. Section 173.421–2 is added to read as follows:

§ 173.421–2 Requirements for multiple hazard limited quantity radioactive materials.

(a) Except as provided in paragraph (b) of this section or in § 173.4 of this subchapter, when a limited quantity radioactive material meets the definition of another hazard class, it shall be:

(1) Classed for the additional hazard;

(2) Packaged to conform with requirements specified in §§ 173.421(a)–(e) or 173.422(a)–(g), as appropriate; and

(3) Offered for transportation in accordance with requirements applicable to the hazard for which it is classed.

(b) When a limited quantity radioactive material meets the definition of an ORM–A, B, or C, or is a combustible liquid in a packaging having a rated capacity of 110 gallons or less, it shall be:

(1) Classed radioactive material if:

(i) The material is not a hazardous waste or hazardous substance; and

(ii) The material is offered for transportation in a mode to which requirements of this subchapter pertaining to the specific material and hazard class do not apply;

(2) Classed combustible liquid or ORM–A, B, or C, as appropriate, if:

(i) The material is a hazardous waste or hazardous substance; or

(ii) The material is offered for transportation in a mode to which requirements of this subchapter pertaining to the specific material and hazard class do apply;

(3) Packaged to conform with requirements specified in §§173.421(a)–(e) or 173.422(a)–(g), as appropriate; and

(4) Offered for transportation in accordance with requirements applicable to the hazard for which it is classed.

(c) A limited quantity radioactive material which is classed other than radioactive material under provisions of paragraphs (a) or (b) of this section is excepted from requirements of §§ 173.421–1(a), 172.203(d), and 172.204(c)(4) of this subchapter if the entry "Limited quantity radioactive material" appears on the shipping paper in association with the basic description.

(d) Beginning May 3, 1985, a limited quantity radioactive material classed other than radioactive material may not be offered for transportation aboard a passenger-carrying aircraft unless that material is intended for use in, or incident to, research, or medical diagnosis or treatment.

9. In § 173.422, the introductory text is amended by adding "shipping paper and certification", immediately following the comma after the word "packaging"; paragraph (f) is amended by removing the word "and"; paragraph (g) is amended by removing the period at the end of the sentence and inserting, in its place, a semicolon followed by the word "and"; and paragraph (h) is added to read as follows:

§ 173.422 Exceptions for instruments and articles.

* * * * *

(h) The instrument or article is otherwise prepared for shipment as specified in § 173.421–1.

10. In § 173.424, the introductory text is amended by adding the words "shipping paper and certification" immediately following the word "packaging"; paragraph (a) is amended by removing the word "and"; paragraph (b) is amended by removing the period at the end of the sentence and inserting, in its place, a semicolon followed by the word "and"; and paragraph (c) is added to read as follows:

§ 173.424 Excepted articles containing natural uranium or thorium.

* * * * *

(c) The article is otherwise prepared for shipment as specified in § 173.421–1.

§ 173.448 [Amended]

11. In § 173.448, paragraph (f) is amended by removing the words "or is excepted under the provisions of § 175.10 of this subchapter".

PART 175—CARRIAGE BY AIRCRAFT

§ 175.10 [Removed and Reserved]

12. In § 175.10, paragraph (a)(6) is removed and reserved.

13. In § 175.700, paragraph (c) is revised to read as follows:

§ 175.700 Special limitations and requirements for radioactive materials.

* * * * *

(c) Except as provided in §§ 173.4, 173.421–1, and 173.421–2 of this subchapter, no person may carry aboard a passenger-carrying aircraft any radioactive material other than a radioactive material intended for use in, or incident to, research, or medical diagnosis or treatment.

(49 U.S.C. 1803, 1804, 1808; 49 CFR 1.53, App. A to Part 1)

Issued in Washington, D.C. on June 21, 1983.

L. D. Santman,

Director, Materials Transportation Bureau.

[FR Doc. 83–17319 Filed 6–29–83; 8:45 am]

BILLING CODE 4910–60–M

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 82–15; Notice 2]

Federal Motor Vehicle Safety Standards; Seat Belt Assemblies

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: The purpose of this notice is to amend Safety Standard No. 209, *Seat Belt Assemblies*, which incorporates by reference a number of recommended practices and test procedures developed by voluntary standards organizations. This amendment updates those references by incorporating the most recent version of the recommended practices and procedures. This amendment is intended to keep the standard in pace with the technological changes and improvements in the industry.

DATE: This amendment is effective August 1, 1983.

ADDRESS: Any petitions for reconsideration should refer to the docket number and notice number of this notice and be submitted to: NHTSA, Docket Section, Room 5109, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590. Docket hours are from 8:00 a.m. to 4:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: William Smith, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (202–426–2242)

SUPPLEMENTARY INFORMATION: Federal Motor Vehicle Safety Standard No. 209, *Seat Belt Assemblies* (49 CFR 571.209), specifies performance requirements for seat belts used in passenger cars, trucks, buses and multipurpose passenger vehicles (both as original and aftermarket equipment). Several of the performance requirements of the standard incorporate recommended practices developed by voluntary standards organizations and associations. In addition, the standard specifies that certain, long-established industry test procedures be used in

determining whether the seat belts meet those performance requirements. Because of the lengthy and technical nature of the recommended practices and test procedures, the standard incorporates those specifications by reference rather than setting out full texts in Standard No. 209.

Since Standard No. 209 was first issued, along with the incorporated material, some of the referenced practices and procedures have been modified in some respects by the standards organizations, because of technological changes and advancements. In light of these modifications, the agency conducted a review of all the materials incorporated by reference within Standard No. 209 to determine which materials needed to be changed so that their most recent version is incorporated in the standard. That review led to the issuance of a proposal to amend the standard to update all materials incorporated by reference (47 FR 31712, July 22, 1982). Interested persons should consult that notice of proposed rulemaking which sets out in detail the specific sections of the standard that include incorporated material, along with the proposed updated version of that material. As noted in the proposal, the incorporated material was developed by such voluntary standards associations as the American Association of Textile Chemists and Colorists (AATCC), the American Society for Testing and Materials (ASTM) and the Society of Automotive Engineers (SAE).

Nine comments were submitted to the agency in response to the notice of proposed rulemaking, all of which supported the proposed update of materials incorporated by reference in the standard. There were only a few recommended changes in the proposed revisions.

In addition to incorporating the new ASTM corrosion resistance test procedure (paragraph S5.2(a) of the standard), the agency proposed a minor change in the procedure. The ASTM procedure specifies that the seat belt hardware is to be "suitably cleaned" prior to testing. To clarify the extent of cleaning necessary, the agency proposed to specify that any temporary coating placed on the seat belt hardware shall be removed prior to testing. The purpose of the proposed change was to prevent the use of a coating material on the hardware during the corrosion resistance test that would aid the hardware in meeting the requirement, but which would not be found on the hardware when it is in actual vehicle use. Coatings which are applied permanently to the hardware would not have to be removed. The language proposed was as follows:

> Any surface coating or material not intended for permanent retention on the metal parts during service life shall be removed prior to preparation of the test specimen for testing.

Both Ford Motor Company and the Motor Vehicle Manufacturers Association requested changes in this language. Ford argued that the phrases "intended for permanent retention" and "during service life" are unduly restrictive because some anti-corrosion coatings are applied to component parts to inhibit their corrosion during shipment to assembly plants and are intended to remain on those parts after assembly of the vehicle and its delivery to the first retail purchaser. Ford noted that such oil coatings may, however, disappear (e.g., dry up) during the service life of the vehicle. (MVMA's concern appeared to be identical to Ford's.)

The agency proposed to clarify the cleaning instructions in the corrosion test procedure because a testing laboratory brought a potential problem to the agency's attention. The laboratory reported that certain seat belt components had been delivered to it for corrosion testing which has been coated with wax. Obviously, such a coating would preclude a true testing of the components' corrosion resistance and the coating would not likely be present throughout the service life of the vehicle (and might in fact be removed during vehicle assembly). While the agency understands the point raised by Ford and MVMA (that oil coatings are intended to remain on the components upon delivery), as Ford pointed out, these coatings will likely dry up during the service life of the vehicle. Therefore, it is the agency's opinion that wax, oil or other coatings that are not permanent should be removed prior to testing since they can skew the test results and misrepresent the corrosion resistance of component parts during actual vehicle use. Consequently, the proposed language is being maintained in this amendment. It should be noted, however, that this test requirement is in no way intended to preclude manufacturers from placing any coatings, either temporary or permanent, on their seat belt assembly components.

Section S5.1(e) of Standard No. 209 specifies the test procedures for measuring the resistance to light of seat belt assemblies. In May 1980, the agency proposed to alter the test apparatus used for these requirements in light of new dacron materials being used in belt assemblies (45 FR 29102). As a part of that action, the agency proposed to update the one ASTM recommended practice (E42–64) already incorporated in the standard and to add a reference to another ASTM practice (G24–66). The proposal preceding this amendment noted that the agency is awaiting the completion of additional testing before taking final action on the May 1980 proposal and that, if an amendment were adopted, the agency would incorporate the most recent version of both the ASTM recommended practices.

Volkswagen of America pointed out that ASTM G24–66 is not the most recent version of that standard and cited instead G24–73. The Motor Vehicle Manufacturers Association stated that its member companies had not yet had a chance to evaluate the new ASTM procedures and indicated that they could involve significant changes. Both commenters requested that a new proposal be issued before a final amendment involving the resistance to light requirements is issued. The agency realizes that the new ASTM procedures may involve substantial changes in the test procedures and does intend to issue an additional proposal prior to updating that aspect of the Standard No. 209 test procedures (pending completion of additional testing, as noted in the notice of proposed rulemaking).

Two commenters, American Motors Corporation and Ms. Patricia Hill, pointed out a discrepancy between the Occupant Weight and Dimension Charts referenced in S4.1(g)(3) of Standard No. 209 and in S7.1.3 of Standard No. 208, *Occupant Crash Protection* (49 CFR 571.208). The hip breadth (sitting) for the 95th percentile adult male is listed as 16.4 inches in the former and as 16.5 inches in the latter. To remove this discrepancy, this notice amends the chart in Standard No. 209 to agree with the chart in Standard No. 208 (i.e., to read 16.5 inches). (Originally, the chart in Standard No. 208 also listed the hip breadth as 16.4 inches. This was amended January 8, 1981, to be consistent with the dimensions of the Part 572 test dummy (46 FR 2064)).

The American Seat Belt Council noted that a more recent version of AATCC Test Method 30 (30–81), Resistance to Microoganisms, has been issued than was noted in the proposal (which referenced 30–79). The agency has reviewed this latest version and determined that the only difference between 30–79 and 30–81 is the optional addition of glucose to the test culture used in Test III. The agency agrees with this option and therefore is

incorporating AATCC Method 30–81 in this amendment.

The notice of proposed rulemaking preceding this amendment also solicited comments, information and data from the public concerning any current requirements of Standard No. 209 which possibly imposed a regulatory burden and have a negligible or inconsequential impact on safety. The agency solicited this information as part of its regulatory review of all existing regulations. All comments to the proposal included suggested changes or revisions to reduce burdens, clarify requirements or to harmonize Standard No. 209 with European standards. These comments are currently being reviewed by the agency under its Regulatory Reform program and may lead to additional rulemaking to reduce or eliminate regulatory burdens imposed by Standard No. 209. (Persons interested in the recommended changes should consult comments to the proposal: Docket 82–15; Notice 1.)

In addition to the amendments discussed earlier, this notice also amends 49 CFR 571.5, Matter Incorporated by Reference, to list the address of the American Association of Textile Chemists and Colorists (AATCC). This amendment will assist interested parties in obtaining copies of the AATCC test procedures which are incorporated by reference in Standard No. 209.

The amendments included in this notice are to become effective 30 days after the date of this publication. The Administrator has determined that there is good cause for an effective date sooner than 180 days because this amendment only updates material incorporated by reference and makes no real substantive changes in the standard. Consequently, the burdens on manufacturers will in no way be increased.

Executive Order 12291

The agency has evaluated the economic and other impacts of this final rule and determined that they are neither major as defined by Executive Order 12291 nor significant as defined by the Department of Transportation's regulatory policies and procedures. The final rule only updates references to recommended practices and test methods already incorporated by reference in Standard No. 209. Because the economic and other effects of this proposal are so minimal, a full regulatory evaluation has not been prepared.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, the agency has evaluated the effects of this action on small entities. Based on that evaluation, I certify that the final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis has been prepared.

Only a few of the vehicle and parts manufacturers required to comply with Standard No. 209 are small businesses as defined by the Regulatory Flexibility Act. Small organizations and governmental jurisdictions which purchase fleets of motor vehicles would not be significantly affected by the amendments. The final rule merely updates references to test methods and recommended practices incorporated by reference in Standard No. 209. These updates should not impose any costs or other burdens.

National Environmental Policy Act

The agency has also analyzed this action for purposes of the National Environmental Policy Act. The agency has determined that the final rule will not have a significant impact on the quality of the human environment.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicles safety, Motor vehicles.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

In consideration of the foregoing, the following amendments are made to Title 49, Chapter V, § 571.209, *Seat Belt Assemblies*, and § 571.5, Matter incorporated by references:

§ 571.209 [Amended]

1. The first sentences of S4.1(f) is revised to read as follows:

S4.1 * * *

* * * * *

(f) *Attachment hardware.* A seat belt assembly shall include all hardware necessary for installation in a motor vehicle in accordance with Society of Automotive Engineers Recommended Practice J800c, "Motor Vehicle Seat Belt Installation," November 1973. * * *

* * * * *

2. The chart included in S4.1(g)(3) is amended so that the dimension for hip breadth (sitting) for the 95th percentile adult male is revised. As amended, the entry for hip breadth (sitting) reads as follows:

S4.1 * * *

(g) * * *

(3) * * *

	5th percentile adult female (inch)	95th percentile adult male (inch)
Hip breadth (sitting)	12.8	16.5

* * * * *

3. The last sentence of S4.1(k) is revised to read as follows:

S4.1 * * *

* * * * *

(k) *Installation instructions.* * * * The installation instructions shall state whether the assembly is for universal installation or for installation only in specifically stated motor vehicles, and shall include at least those items specified in SAE Recommended Practice J800c, "Motor Vehicle Seat Belt Installations," November 1973.

* * * * *

4. The second sentence of S4.3(a)(1) is revised to read as follows:

S4.3 * * *

(a) *Corrosion resistance.* (1) * * * Alternatively, such hardware at or near the floor shall be protected against corrosion by at least an electrodeposited coating of nickel, or copper and nickel with at least a service condition number of SC2, and other attachment hardware shall be protected by an electrodeposited coating of nickel, or copper and nickel with a service condition number of SC1, in accordance with American Society for Testing and Materials B456–79, "Standard Specification for Electrodeposited Coatings of Copper Plus Nickel Plus Chromium and Nickel Plus Choromium," but such hardware shall not be racked for electroplating in locations subjected to maximum stress.

* * * * *

5. The first sentence of S5.1(b) is revised to read as follows:

S5.1 * * *

* * * * *

(b) *Breaking strength.* Webbing from three seat belt assemblies shall be conditioned in accordance with paragraph (a) of this section and tested for breaking strength in a testing machine of capacity verified to have an error of not more than one percent in the range of the breaking strength of the webbing in accordance with American Society for Testing and Materials E4–79, "Standard Methods of Load Verification of Testing Machines." * * *

* * * * *

6. The first sentence of S5.1(f) is revised to read as follows:

S5.1 * * *

* * * * *

(f) *Resistance to microorganisms.* Webbing at least 20 inches or 50 centimeters in length from three seat belt assemblies shall first be preconditioned in accordance with Appendix A (1) and (2) of American Association of Textile Chemists and Colorists Test Method 30–81, "Fungicides Evaluation on Textiles: Mildew and Rot Resistance of Textiles," and then subjected to Test I, "Soil Burial Test" of that test method. * * *

* * * * *

7. Paragraph (g) of S5.1 is revised to read as follows:

S5.1 * * *

* * * * *

(g) *Colorfastness to crocking.* Webbing from three seat belt assemblies shall be tested by the procedure specified in American Association of Textile Chemists and Colorists Standard Test Method 8–181, "Colorfastness to Crocking: AATCC Crockmeter Method."

* * * * *

8. Paragraph (h) of S5.1 is revised to read as follows:

S5.1 * * *

* * * * *

(h) *Colorfastness to staining.* Webbing from three seat belt assemblies shall be tested by the procedure specified in American Association of Textile Chemists and Colorists (AATCC) Standard Test Method 107–1981, "Colorfastness to Water," except that the testing shall use (1) distilled water, (2) the AATCC perspiration tester, (3) a drying time of four hours, specified in section 7.4 of the AATCC procedure, and (4) section 9 of the AATCC test procedures to determine the colorfastness to staining on the AATCC Chromatic Transference Scale.

* * * * *

9. The first sentence of S5.2(a) is revised and a new sentence is added after the first sentence so that the two sentences read as follows:

S5.2 Hardware.—

(a) *Corrosion Resistance.* Three seat belt assemblies shall be tested in accordance with American Society for Testing and Materials B117–73, "Standard Method of Salt Spray (Fog) Testing." Any surface coating or material not intended for permanent retention on the metal parts during service life shall be removed prior to preparation of the test specimens for testing. * * *

* * * * *

10. The first sentence of S5.2(b) is revised to read as follows:

S5.2 *Hardware.*

* * * * *

(b) *Temperature resistance.* Three seat belt assemblies having plastic or nonmetallic hardware or having retractors shall be subjected to the conditions prescribed in Procedure D of American Society for Testing and Materials D756–78, "Standard Practice for Determination of Weight and Shape Changes of Plastics under Accelerated Service Conditions." * * *

* * * * *

11. The eighth sentence of S5.2(k) is revised to read as follows:

S5.2 * * *

* * * * *

(k) * * * Then, the retractor and webbing shall be subjected to dust in a chamber similar to one illustrated in Figure 8 containing about 2 pounds or 0.9 kilogram of coarse grade dust conforming to the specification given in Society of Automotive Engineering Recommended Practice J726, "Air Cleaner Test Code" Sept. 1979. * * *

In § 571.5, paragraph (b)(5) is redesignated (b)(6) and a new paragraph (b)(5) is added to read as follows:

§ 571.5 Matter incorporated by reference.

* * * * *

(b) * * *

(5) *Test methods of the American Association of Textile Chemists and Colorists.* They are published by the American Association of Textile Chemists and Colorists. Information and copies can be obtained by writing to: American Association of Textile Chemists and Colorists, Post Office Box 886, Durham, NC.

* * * * *

(Secs. 103, 119, Pub. L. 89–563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegation of authority at 49 CFR 1.50)

Issued on June 22, 1983.

Diane K. Steed,

Acting Administrator.

[FR Doc. 83–17678 Filed 6–29–83; 8:45 am]

BILLING CODE 4910–59–M

Proposed Rules

Federal Register
Vol. 48, No. 127
Thursday, June 30, 1983

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 83-078]

Harry S Truman Animal Import Center

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the regulations concerning requirements for the importation of cattle through the Harry S Truman Animal Import Center (HSTAIC) to provide a mechanism for allowing authorization for the importation of additional cattle through the HSTAIC after the time of the initial lottery proceeding. This action appears to be needed to ensure that the HSTAIC is more fully utilized and to help reduce costs for the importation of animals through the HSTAIC.

DATE: Written comments must be received on or before July 15, 1983.

ADDRESS: Written comments should be submitted to T. O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Written comments received may be inspected at Room 728, Federal Building, 8 a.m., to 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. M. R. Crane, VS, APHIS, USDA, Room 846, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8170.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR 92.41 (referred to below as the regulations) contain special provisions governing the importation into the United States of cattle through the Harry S Truman Animal Import Center (referred to below as HSTAIC). This facility is located at Fleming Key, Florida, and is designed to handle importations of animals from countries affected with exotic diseases and not otherwise eligible for importation into the United States.

At times announced by Veterinary Services cattle are allowed to be imported through the HSTAIC. Because of the extended period of time required to process such cattle, the regulations provide that special authorization shall be required before any cattle may enter the facility for quarantine. Further, the regulations provide for authorization for the importation of cattle through the HSTAIC based on a lottery conducted in accordance with specified procedures. Procedures set forth in § 92.41(a) (1), (2), (3), and (4) for the lottery are as follows:

(1) *Drawing; contents of applications and deposits.* For each importation of animals into the HSTAIC, a drawing will be held of the names of applicants who desire to import animals into the facility at that particular time. Each applicant shall complete an application for importing animals through the HSTAIC which shall be received by Veterinary Services at least 5 days prior to the date of the drawing.[13] The applicant shall state on the application the number of animals he desires to import into the HSTAIC and their country of origin. Each application shall be accompanied by a certified check, money order, or letter of credit, consistent with the terms of this section and with the Cooperative and Trust Fund Agreement (9 CFR 92.41(c)), as determined by the Deputy Administrator, payable to the United States Department of Agriculture, Animal and Plant Health Inspection Service, in the amount of one thousand dollars ($1,000), for each animal for which special authorization is requested on the application: *Provided,* That if special authorization is granted, the $1,000 per head is nonrefundable: *Provided further,* That if a letter of credit is utilized, the effective date on such letter of credit must run to the date the animals are scheduled to be released from the HSTAIC or billings made by the Service have been paid. In the event the applicant does not receive special authorization for animals for which he has applied, the amount deposited with the application for each animal not so authorized will be returned. If the applicant receives special authorization, the deposited amount shall be applied against the total cost of importation of each animal. At least 60 days prior to any drawing, notice will be given in the **Federal Register** of the date, time and place of the drawing for interested persons to submit an application. The notice shall also designate the geographic areas from which animals will be considered for importation into the HSTAIC and shall also include the fee schedule for the proposed importation. All applicants, or their designated legal agents or representatives, shall be required to appear in person at the drawing. Such designated legal agent or representative shall have a notarized statement of authority signed by the applicant.

(2) *Drawing for special authorization.* At the time, date, and places specified in the Notice of Drawing, if there are more than 400 applicants, a Department employee shall consecutively draw the names of applicants, until a maximum of 400 names have been selected to receive special authorization to qualify one animal for entry into the United States through the HSTAIC. If there are less than 400 applicants for 400 animals or more, the procedure for the consecutive drawings for spaces shall be as follows: A drawing will be held of the names of those applicants seeking to import at least one animal into the HSTAIC. Then a drawing will be held on the names of applicants wishing to import at least two animals. If after these names have been selected, available space in the HSTAIC still exists, a drawing will be held of the names of those applicants seeking to import at least three animals into the center. This selection process shall continue in the same manner until no available space exists for importing animals into the HSTAIC. However, if the total applications received are for less than 400 animals, each applicant shall receive special authorization for the number requested on their application in accordance with the provisions of paragraph (4) of this paragraph (a). Further, if available space at the HSTAIC still exists at the designated time of the drawing, each of the applicants shall be offered an opportunity to request additional space(s). If the requests for additional space(s) exceed the space(s) available, a lottery drawing shall be conducted for the additional spaces in the same manner as provided above from those interested applicants. Each applicant shall receive special authorization for the additional space(s) in accordance with the provisions of paragraph (4) of this paragraph (a). At the end of the drawing when the total number of animals has been determined, the fee will be established in accordance with the graduated fee scale. If any person selected to receive a special authorization declines acceptance, the other applicants will be offered the opportunity to receive the special authorization as provided above in this paragraph. If any such additional authorization is not requested, the fee per animal shall increase in accordance with the graduated fee schedule: *Provided,* That if the total number of animals for which special authorizations are requested is not at least 50, there shall not be a lottery or importation pursuant to this paragraph, the deposits of applicants requesting special authorization pursuant to this paragraph shall be refunded and special authorization may be issued in

accordance with the procedures set forth in paragraph (b) of this section.

(3) *Area of origin: limitations.* All applications received will be carefully reviewed prior to the public drawing. In the event applications are received for the importation of cattle which originate from areas in which conditions are considered to be unacceptable as specified in § 92.4(a)(3), the applicant will be so advised in writing and the money submitted with the application will be returned.

(4) *Requirements for special authorization.* On the day of the drawing applicants selected to receive special authorization for cattle to be qualified for importation through the HSTAIC, or their designated legal agents or representatives shall be required to execute a cooperative agreement described in paragraph (d) of this section and pay the required fee in accordance with the provisions of the cooperative agreement. Authorization to qualify cattle into the United States through HSTAIC shall not be assigned or transferred, not [sic] shall any interest be assigned or transferred.

The regulations do not contain provisions for granting additional authorizations to applicants subsequent to the designated time of the drawing in those cases when available space at the HSTAIC still exists after the designated time of the drawing. This document proposes to amend the regulations to set forth a mechanism to allow, subsequent to the initial proceeding, the granting of additional authorizations to applicants granted special authorization at the initial proceeding.

In this connection, it is proposed to add a new § 92.41(a)(5) to read as follows:

If the total number of cattle for which special authorization was requested at the time of the initial drawing was at least 50 and if available space at the HSTAIC still exists subsequent to the designated time of the initial drawing, the Deputy Administrator, Veterinary Services, may upon written request by an applicant or the applicant's designated legal agent or representative, provide an additional drawing and give special authorization for additional cattle to applicants granted special authorization at the initial proceeding, if the Deputy Administrator, Veterinary Services determines that there is sufficient time for applicants and Veterinary Services personnel to make the necessary preparations for the importation of any additional cattle. Such special authorization for any additional cattle will be made in accordance with the procedures set forth in paragraphs (a)(1) through (4) of this section, except that the notice of the additional drawing shall be given to each applicant by registered or certified mail rather than by publication in the **Federal Register**, the notice of the additional drawing shall be required to be given to applicants only 10 days prior to the additional drawing rather than 60 days, calculations for the additional drawing shall be made based on the number of available spaces rather than on the number 400, applicants or their designated legal agents or representatives shall not be required to appear in person at the additional drawing unless they desire to make application for additional special authorizations at the time of the additional drawing, and applicants shall have 14 days after the drawing to submit an executed cooperative agreement described in paragraph (d) of this section and pay the required fee in accordance with the provisions of the cooperative agreement.

This proposed amendment is designed to provide a mechanism for reopening and continuing the lottery proceeding and appears to be necessary in order to more fully utilize the facilities at the HSTAIC and to help reduce the costs for the importation of the animals through the HSTAIC (the cost for importing each of the animals includes fixed costs associated with operating the HSTAIC).

Certain differences in procedures set forth in the proposed amendment compared to the procedures for the initial drawing reflect that the provisions of the amendment would come into play only after the applicants have already been determined, and that there would be time constraints concerning necessary preparations for the importation of additional cattle.

In addition, it appears to be necessary to have the applicants or their agents or representatives appear at the initial proceedings and to execute cooperative agreements and pay fees at that time for reasons that would not apply to a subsequent proceeding. At the initial proceeding it is necessary to make sure that the interested persons fully understand the importation procedures and it is necessary to determine whether sufficient commitments have been made in order to determine whether importers will be granted special authorizations for importation through the HSTAIC based on the lottery proceedings. Further, it appears that the 14 day period would be a reasonable amount of time for the submission of executed cooperative agreements and payment of fees.

Comments

Written comments are solicited through July 8, 1983. The next importation of cattle through the HSTAIC is scheduled to take place in November, 1983. The initial lottery proceeding for this importation took place on March 22, 1983, and preparations are now being made by USDA and importers for the importation of these cattle. At the initial lottery proceeding all of the available spaces were not taken, and persons who received special authorization to import cattle at the initial lottery proceeding have since requested authorizations for additional space.

If the proposal were to be adopted in time to allow its provisions to be used for the importation of additional cattle at the scheduled importation in November 1983, a final rule would have to be made effective in the early part of July. This would be necessary to allow time for an additional drawing; for the execution of cooperative agreements and payment of fees; for the selection of animals by the importers; and for the Department to make arrangements with the countries of origin concerning the preliminary exportation procedures to be used, including on-the-farm testing of the animals which would have to take place in Europe in September 1983, and preembarkation quarantining of the animals which would have to take place in Europe in October 1983.

Executive Order 12291 and Regulatory Flexibility Act

This action has been reviewed in conformance with Executive Order 12291 and Secretary's Memorandum 1512–1, and has been determined to be not a "major rule." The Department has determined that this action would not have an effect on the economy of $100 million or more; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not have any adverse effects on competition, employment, investment, productivity, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The number of cattle imported through the HSTAIC is insignificant compared with the total number of cattle imported into the United States each year. Further, the number of small entities importing cattle through HSTAIC is insignificant compared to the number of small entities importing cattle into the United States. Therefore, Bert W. Hawkins, Administrator of the Animal and Plant Health Inspection Service, has determined that this action would not have a significant economic impact on a substantial number of small entities.

Alternatives

Consideration was given concerning (1) whether to establish a mechanism for reopening the lottery proceeding and allowing additional authorizations for the importation of animals through the HSTAIC subsequent to the time of the initial drawing or (2) not to establish such a mechanism. Alternative: (1) Is proposed since it appears that the adoption of alternative (1) is necessary in order to ensure that the HSTAIC is

more fully utilized and to help reduce costs for the importation of animals through the HSTAIC.

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock & livestock products, Mexico, Poultry & poultry products, Meat & meat products, Quarantine, Transportation, Wildlife.

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

In this connection it is proposed to add a new paragraph (a)(5) to § 92–41 to read as follows:

§ 92.41 Requirements for the importation of animals into the United States through the Harry S Truman Animal Import Center.

(a) * * *

(5) *Procedures for special authorization subsequent to the time of the initial drawing.* If the total number of cattle for which special authorization was requested at the time of the initial drawing was at least 50 and if available space at the HSTAIC still exists subsequent to the designated time of the initial drawing, the Deputy Administrator, Veterinary Services, may upon written request by an applicant or the applicant's designated legal agent or representative, provide an additional drawing and give special authorization for additional cattle to applicants granted special authorization at the initial proceeding, if the Deputy Administrator, Veterinary Services, determines that there is sufficient time for applicants and Veterinary Services personnel to make the necessary preparations for the importation of any additional cattle. Such special authorization for any additional cattle will be made in accordance with the procedures set forth in paragraphs (a)(1) through (4) of this section, except that the notice of the additional drawing shall be given to each applicant by registered or certified mail rather than by publication in the **Federal Register**, the notice of the additional drawing shall be required to be given to applicants only 10 days prior to the additional drawing rather than 60 days, calculations for the additional drawing shall be made based on the number of available spaces rather than on the number 400, applicants or their designated legal agents or representatives shall not be required to appear in person at the additional drawing unless they desire to make application for additional special authorizations at the time of the additional drawing, and applicants shall have 14 days after the drawing to submit an executed cooperative agreement described in paragraph (d) of this section and pay the required fee in accordance with the provisions of the cooperative agreement.

Done at Washington, D.C., this 23rd day of June 1983.

K. R. Hook,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 83-17703 Filed 6-29-83; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 83-ASO-25]

Proposed Alteration of Transition Area, Columbia, S.C.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This notice proposes to increase the size of the Columbia, South Carolina, transition area to accommodate Instrument Flight Rule (IFR) operations at Corporate Airport. This action will lower the base of the additional controlled airspace from 1,200 to 700 feet above the surface in the vicinity of the airport. An instrument approach procedure, based on the Columbia VORTAC facility, is being developed to serve the airport and the additional controlled airspace is required for protection of IFR aeronautical activities.

DATE: Comments must be received on or before: August 13, 1983.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace and Procedures Branch, ASO-530, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763-7646.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. ———." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch (ASO-530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the Columbia, South Carolina, transition area. This action will provide additional controlled airspace for aircraft executing a new instrument approach procedure to Corporate Airport. If the proposed alteration of the transition area is found acceptable, the operating status of the airport will be changed from VFR to IFR.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Advisory Circular AC 70-3A dated January 3, 1983.

List of Subjects in 14 CFR Part 71

Aviation safety, Airspace, Transition area.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

Columbia, SC—Amended

By adding the following words to the end of the present text: ". . .; within a 6.5-mile radius of Corporate Airport (Lat. 33°47'40" N., Long. 81°14'46" W.) . . ."

(Secs. 307(a) and 313(a) Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.65)

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

Issued in East Point, Georgia, on June 20, 1983.

George R. LaCaille,

Acting Director, Southern Region.

[FR Doc. 83-17343 Filed 6-29-83; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

23 CFR Parts 625 and 655

[FHWA Docket No. 83-18]

Procedures To Amend the Manual on Uniform Traffic Control Devices; Staff Study of Alternatives; Recommendations

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of availability of staff study and proposed procedural changes, and request for comments.

SUMMARY: The FHWA announces the completion of a staff study on "Alternative Methods of Administering the National Standards for Uniform Traffic Control Devices." The national standards are contained in the Manual on Uniform Traffic Control Devices (MUTCD), which is published for FHWA by the Government Printing Office and incorporated by references in FHWA regulations (23 CFR Parts 625 and 655) setting construction standards to be met on Federal-aid highway projects as a condition of grant approval. The study recommends the adoption of streamlined procedures for revising the standards and these are set forth below. Copies of the study including the recommended procedures are being made available for public inspection and distribution to interested persons.

The FHWA recognizes its obligation to provide an opportunity to all outside parties, whether or not associated with organized groups, to have an input in the decisionmaking process, and is looking for ways to improve its ability to fulfill that obligation. The FHWA invites comments on the study, the recommended procedures, and any other aspects of the process of obtaining meaningful public input in matters related to the MUTCD.

DATE: Comments must be received on or before September 28, 1983.

ADDRESS: Submit written comments, preferably in triplicate, to FHWA Docket No. 83-18, Federal Highway Administration, Room 4205, HCC-10, 400 Seventh Street, SW., Washington, D.C. 20590. All comments received will be available for examination at the above address between 7:45 a.m. and 4:15 p.m. ET, Monday through Friday. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard. Copies of the report will be filed in the docket and will be available for inspection at the same times and location. Copies of the report will also be mailed to those individuals and organizations presently appearing on the FHWA Mailing List for MUTCD matters. Others desiring to receive a copy of the report by mail and to be included on the mailing list should submit their names and addresses to: Office of Traffic Operations, HTO-21, 400 Seventh Street, SW., Washington, D.C. 20590. The MUTCD is available for inspection and copying as prescribed in 49 CFR Part 7, Appendix D. It may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 ($20).

FOR FURTHER INFORMATION CONTACT: Mr. R. Clarke Bennett, Office of Traffic Operations, (202) 426-0411, or Mr. Michael Laska, Office of the Chief Counsel, (202) 426-0754, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: The current procedures for revising the MUTCD were determined to be too burdensome and time-consuming. The Office of Management and Budget requested FHWA to conduct a study of various aspects of the development and maintenance of the traffic control device standards to ascertain whether procedures could be simplified and whether the function was an appropriate use of Federal resources. Accordingly, three basic alternatives were considered in the study:

1. Retain principal responsibility for development and maintenance of the MUTCD in FHWA but simplify present procedures to revise it.

2. Retain authorship of the MUTCD in FHWA, but increase reliance on an association of experts acting as an advisory body.

3. Divest FHWA of authorship and transfer responsibility to an appropriate non-Federal entity to develop and maintain the standards.

The study reviewed the history of the MUTCD, the statutory authorities and rulemaking requirements for setting traffic control devices standards; sought out the opinions of officials of organizations represented on the National Committee on Uniform Traffic Control Devices through interviews conducted by the study Task Group; analyzed all the information gathered; and developed conclusions and recommendations.

The study concluded that the first alternative best satisfied the statutory mandates and met the needs of the traffic engineering profession and the traveling public. Proposed revised procedures, which will substantially reduce the time and effort required to amend the MUTCD, are outlined in this Notice.

Recognizing that interest in the MUTCD is generally limited to a particular segment of the general public, FHWA maintains a mailing list to circulate information relating to MUTCD matters. The procedures provide annual solicitations in the **Federal Register** to update the mailing list and invite suggestions for revisions to the MUTCD.

An internal review group will be established in FHWA's Office of Traffic Operations to screen suggestions and classify requests, which will cut down

on the administrative burden of repeated handling and unnecessary consideration of frivolous, impractical, incomplete, duplicative or premature suggestions. This initial review will also screen out suggestions that can be handled summarily as technical or editorial amendments to the MUTCD.

Liberal distribution of materials to the mailing list will allow consideration by the concerned public and submission of informed commentary without unnecessary cluttering of the Federal Register.

Rulemaking concerning minor revisions, or involving standards not mandated for use will most often be initiated in delayed action Final Rules to accommodate the consideration of post-rule comment. Background materials and regulatory analyses will be available for inspection in the public docket, or by mail on request. Substantial or significant changes will continue to be handled under existing notice and comment rulemaking procedures, although these are expected to be relatively few in number.

The amount of material published in the Federal Register and the number of notices published each year will be reduced. The procedures are expected to facilitate access to and by the public most likely to be concerned with MUTCD matters, without restricting access by the public at large.

Issued on: June 23, 1983.

R. D. Morgan,

Executive Director, Federal Highway Administration.

Outline of Recommended Procedures for Revising the Manual on Uniform Traffic Control Devices (MUTCD)

Procedures for Revising the MUTCD

a. Annual Notice published in the General Notice section of the Federal Register announcing that FHWA maintains a mailing list for distribution of information concerning the MUTCD. Notice will also contain information similar to Section 1A-6 of the MUTCD, concerning suggested revisions.

b. Review all requests submitted in accordance with the General Notice concerning the MUTCD in the Office of Traffic Operations.

c. Classify all requests according to what future action will be required.

Group I—Those that can be disposed of administratively by direct response to requestor, because the change is clearly invalid or because no change is required.

Group II—Those that require further consideration within FHWA, through an inhouse committee to determine appropriate action.

Group III—Those appearing to have merit that would change recommended or permissive sections, or would result in inconsequential, technical or editorial revisions.

Group IV—Those appearing to have merit that would require substantial changes to mandatory or recommended provisions in the MUTCD.

Group V—Those appearing to have extraordinary features that might require classification as a major rule under Executive Order 12291.

d. After classification, all requests are disposed of as follows:

Group I—Closed out in communication directly to requestor.

Group II—After consideration,

1. Downgraded to Group I and disposed of accordingly, or

2. Elevated to Group III or IV.

Group III—After consideration,

1. Issued as technical or editorial amendment to MUTCD, and circulated to mailing list including NCUTCD.

2. Input analyzed.

3. Published as Final Rule, effective not less than 90 days hence (allowing post-rule comment), or

4. Reduced to Group I and disposed of accordingly.

Group IV—After consideration,

1. Circulated to mailing list, including NCUTCD.

2. Related information analyzed.

3. Downgraded to Group III and published as Final Rule, or

4. Published as NPRM.

5. Comments considered.

6. Published as Final Rule, effective in 30 days.

e. Circulation to mailing list will be limited to two each year in April and October.

f. Final Rules will be published once each year in January or June.

g. The Notice of Proposed Rulemaking (NPRM) will be published once each year in January or June, except in extraordinary circumstances (e.g., major rules as defined in Executive Order 12291).

h. Except for major rules, all Final Rules and NPRMs will be published in Federal Register in summary fashion referring to the section of the MUTCD affected by the revision and *briefly* describing the action to be taken. Comments received will be filed in the Public Docket, as will regulatory analysis, which will be mailed upon request.

i. Each notice of Final Rule in Federal Register will contain a statement that advance notice was or was not provided. If not provided, the notice will include a statement of the reasons which will include:

(1) Not necessary under grant exemption.

(2) Not necessary because of minimal impact, and previously circulated to those most likely to have an interest.

(3) Interested parties may comment within 60 days after publication date.

(4) Comments will be recorded in Public Docket and considered.

[FR Doc. 83-17448 Filed 6-29-83; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR-241-81]

Dividend Reinvestment in Stock of Public Utilities

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this Federal Register, the Internal Revenue Service is issuing temporary income tax regulations relating to dividend reinvestment by certain individuals in stock of a qualified public utility. The text of those temporary regulations also serves as the comment document for this proposed rulemaking.

DATES: Written comments and requests for a public hearing must be delivered or mailed by August 29, 1983. The amendments to the final regulations are proposed to be effective for distribution after December 31, 1981, and before January 1, 1986.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-241-81), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Michel A. Dazé of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, Attention: CC:LR:T (202-566-3458, not a toll-free call).

SUPPLEMENTARY INFORMATION: The temporary regulations in the Rules and Regulations portion of this issue of the Federal Register amend Part 5c of Title 26 of the Code of Federal Regulations. The final regulations, which are proposed to be based on the temporary regulations, would amend Part 1 of 26 CFR to provide rules relating to dividend reinvestment by certain individuals in stock of a qualified public utility and would be incorporated in Part 1 of Title 26 as part of the regulations to be proposed at a future date and thereafter finalized under section 305(e). For the text of the temporary regulation see FR Doc. (T.D. 7897) published in the Rules and Regulations portion of this issue of the Federal Register. The preamble to the temporary regulations explains the addition to the regulations.

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably seven copies) to the Commissioner for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the Federal Register.

Regulatory Flexibility Act and Executive Order 12291

Although this document is a notice of proposed rulemaking which solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6). The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required.

List of Subjects in 26 CFR 1.301–1—1.385–6

Income taxes, Corporations, Corporate distributions, Corporate adjustments, Reorganizations.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 83-17984 Filed 6-29-83; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 250 and 251

Data and Information To Be Made Available to the Public

AGENCY: Minerals Management Service, Interior

ACTION: Proposed rule.

SUMMARY: The proposed rule would revise the time frames for protection of proprietary data and information collected on the Outer Continental Shelf (OCS). The revision would assure that the party that incurred the cost of producing the data and information would have exclusive use of it during at least one subsequent lease sale in the general area.

DATES: Comments must be delivered or postmarked no later than August 1, 1983.

ADDRESS: Written comments must be mailed or hand delivered to: Department of the Interior, Minerals Management Service, 12203 Sunrise Valley Drive, Mail Stop 646, Reston, Virginia 22091, Attention: David A. Schuenke.

FOR FURTHER INFORMATION CONTACT: David A. Schuenke, Chief, Branch of Rules, Orders, and Standards; Offshore Rules and Operations Division; Minerals Management Service; 12203 Sunrise Valley Drive; Mail Stop 646; Reston, Virginia 22091, Telephone: (703) 860–7916, (FTS) 928–7916.

SUPPLEMENTARY INFORMATION: Section 26 of the OCS Lands Act (43 U.S.C. 1352) requires the Secretary of the Interior to:

> * * * prescribe regulations to (1) assure that the confidentiality of privileged or proprietary information received by the Secretary under this section will be maintained, and (2) set forth time periods and conditions which shall be applicable to the release of such information * * *

The current regulations at 30 CFR 250.3 and 251.14 set 2-year and 10-year terms of protection for geological data, analyzed geological information, geophysical data, processed geophysical information, and interpreted geological and geophysical information. Numerous comments and appeals to the Secretary have indicated that these terms do not provide sufficient protection to the lessees and permittees who have incurred the cost of producing the data and information. The proposed rules would at a minimum assure that the party that incurred the cost would have exclusive use of it during at least one subsequent lease sale in the general area. Because the data and information can be used in subsequent sales, release of the data and information prior to the next subsequent sale eliminates the competitive advantage that the owner of the data and information has achieved through his own effort and cost.

The proposed revision would set minimum terms of protection equivalent to those in the current regulations of 2 and 10 years but would provide for extensions past the minimum terms if no subsequent lease had been issued in the same general area during the time of initial protection. Protection would continue until a lease was issued in the area but not to exceed a maximum term of protection of 10 years for geological data and analyzed geological information under 30 CFR 250.3 and 20 years for geophysical data, processed geophysical information, and interpreted geological and geophysical information under 30 CFR 250.3. A maximum term of 20 years would be available for data and information under 30 CFR 251.14–1. The data and information would therefore be released following the first subsequent lease issuance or the lapse of the maximum term, whichever is first. The proposed revision would apply to all data and information now in the Minerals Management Service's possession and not yet released and to all data and information received in the future.

The Department of the Interior (DOI) has determined that this document does not constitute a major rule under Executive Order 12291 as the total cost is not expected to exceed $25,000 per lease sale. With an average of seven lease sales per year, this would result in an average annualized cost of $175,000. The DOI has also determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) because hydrocarbon activities on the OCS are technically complex, financially risky, and require extensive amounts of capital. Such conditions are generally beyond the capability of a small entity.

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

Author: This document was prepared by Jane Roberts and John Mirabella, Offshore Rules and Operations Division, Minerals Management Service.

List of Subjects

30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Investigations, Mineral royalties, Oil and gas reserves, Penalties, Pipelines, Public lands/mineral resources, Reporting requirements.

30 CFR Part 251

Continental shelf, Freedom of information, Public lands/mineral resources, Reporting requirements, Science and technology.

Dated: April 26, 1983.

William P. Pendley,

Acting Assistant Secretary of the Interior.

PART 250—[AMENDED]

For the reasons set forth above, it is proposed that 30 CFR Parts 250 and 251 be amended as shown:

1. In § 250.3, paragraphs (a) and (b) are revised to read as follows:

§ 250.3 Data and information to be made available to the public.

(a) Except as provided in paragraph (c) of this section or in § 252.7 of this chapter, geophysical data, processed geophysical information, and interpreted geological and geophysical information, in the possession of MMS or submitted pursuant to the requirements of this part shall not be available for public inspection without the consent of the lessee if the lease remains in effect, for a period of 10 years from the date of submission or until 60 calendar days after the issuance of the first OCS oil and gas lease from a subsequent sale within the planning area to which the information or data relates whichever is later, but not to exceed 20 years, unless the Director determines that earlier release of such data and information is necessary for the proper development of the field or area.

(b) Except as provided in paragraph (c) of this section or in § 252.7 of this chapter, geological data and analyzed geological information, in the possession of MMS or submitted pursuant to the requirements of this part shall not be available for public inspection without the consent of the lessee if the lease remains in effect, for a period of 2 years from the date of submission or until 60 calendar days after the issuance of the first OCS oil and gas lease from a subsequent sale within 50 geographic miles (92.6 kilometers) from the well site, whichever is later, but not to exceed 10 years, unless the Director determines that earlier release of such data and information is necessary for the proper development of the field or area.

* * * * *

2. In § 251.14–1, paragraphs (c)(2), (c)(3), (d)(1), (d)(2), and (d)(3) are revised to read as follows:

§ 251.14–1 Disclosure of data and information to the public.

* * * * *

(c) * * *

(2) The Director shall make available to the public all geological data, analyzed geological information, and interpreted geological information, except geological data, analyzed geological information, and interpreted geological information obtained from the drilling of a deep stratigraphic test 10 years after the date of issuance of the permit under which the information and data were obtained or 60 calendar days after the issuance of the first OCS oil and gas lease from a subsequent sale within the planning area to which the information or data relates, whichever is later, but not later than 20 years.

(3) The Director shall make available to the public all geological data and information obtained from drilling a deep stratigraphic test 20 years after the completion date of the test or 60 calendar days after the issuance of the first OCS oil and gas lease within 50 geographic miles (92.6 kilometers) of the site of the completed test, whichever is sooner. The Director shall make available to the public all geological information and data submitted in support of an application for a permit to drill a deep stratigraphc test well at the earlier of the following times: (i) 20 years after completion of the test; or (ii) 60 calendar days after the issuance of the first OCS oil and gas lease within 50 geographic miles (92.6 kilometers) of the site of the completed test.

(d) * * *

(1) The Director shall make available to the public geophysical data 10 years after the date of issuance of the permit under which the data is obtained or 60 calendar days after the issuance of the first OCS oil and gas lease from a subsequent sale within the planning area to which the data relates, whichever is later, but not later than 20 years.

(2) The Director shall make available to the public processed geophysical information, reprocessed geophysical information, and interpreted geophysical information 10 years after the date it is submitted to the Director or 60 calendar days after the issuance of the first OCS oil and gas lease from a subsequent sale within the planning area to which the information or data relates, whichever is later, but not later than 20 years.

(3) The Director shall make available to the public processed geophysical information, reprocessed geophysical information, and interpreted geophysical information submitted in support of an application for a permit to drill a deep stratigraphic test, or which the permittee is required to obtain in order to conduct the drilling of a deep stratigraphic test, at the earliest of the following times: (i) 20 years after completion of the test; or (ii) 60 calendar days after the issuance of the first OCS oil and gas lease within 50 geographic miles (92.6 kilometers) of the site of the completed test.

[FR Doc. 83-17876 Filed 6-29-83; 8:45 am]
BILLING CODE 4310-MR-M

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30 CFR Part 251

Permit Requirements for a Deep Stratigraphic Test

AGENCY: Minerals Management Service, Interior.

ACTION: Proposed rule.

SUMMARY: The proposed rule would change the requirement for submitting certain data and information collected across a proposed drilling location for a deep stratigraphic test well on the Outer Continental Shelf (OCS) from mandatory to optional. This change would eliminate the need to submit the information when it was unnecessary and burdensome.

DATES: Comments must be hand delivered or postmarked no later than August 1, 1983.

ADDRESSES: Written comments must be mailed or hand delivered to: Department of the Interior, Minerals management Service, 12203 Sunrise Valley Drive, Mail Stop 646, Reston, Virginia 22091. Attention: David A. Schuenke

FOR FURTHER INFORMATION CONTACT: David A. Schuenke, Telephone: (703) 860–7916, (FTS) 928–7916

SUPPLEMENTARY INFORMATION: The regulations at 30 CFR 251.6–2 are being considered for revision to make the submission of certain data and information optional at the discretion of the Director.

The current regulations require the submission of certain data and information collected across a proposed location for drilling a deep stratigraphic test well. This data and information must include, but not be limited to, data and information from seismic, bathymetric, side-scan sonar, and magnetometer systems so as to allow evaluation of the structural detail to the total depth of the proposed test. The data and information is used by the Government to evaluate a Drilling Plan submitted pursuant to an application for a prerelease permit. Since the data and information from side-scan sonar and magnetometer surveys are not always needed to make the evaluation, it should only be required when it is necessary. Therefore, it is proposed to amend the regulations to make submission of side-scan sonar and magnetometer survey information optional at the discretion of the Director.

In accordance with the transfer of functions from the Bureau of Land Management (BLM) to the Minerals Management Service (MMS) by Amendment No. 1 to Secretarial Order No. 3071, dated May 10, 1982, the references to BLM in 30 CFR 251.6–4 concerning surety bonds will be revised to read MMS.

The current regulations shall remain in effect pending the final promulgation of this proposed rule.

The Department of the Interior (DOI) has determined that this document does not constitute a major rule under Executive Order 12291 as the highest cost estimated for the surveys per test well would be $100,000 if all the surveys were required. As there are only an average of two test wells drilled each year, the highest possible annualized cost would be $200,000. The DOI has also 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.) because the entities that engage in activites on the OCS are not considered small due to the technical complexity and financial resources necessary to conduct such activites.

As there are only an average of two test wells drilled per year and therefore only two respondents, the rule does not contain information requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

Author: This document was prepared by Jane Roberts, Offshore Rules and Operations Division, Minerals Management Service.

List of Subjects in 30 CFR Part 251

Continental shelf, Freedom of information, Public lands/mineral resources, Reporting requirements, Science and technology.

Dated: June 9, 1983.

William P. Pendley,

Acting Assistant Secretary of the Interior.

PART 251—[AMENDED]

For the reasons set forth above, it is proposed that 30 CFR Part 251 be amended as shown:

1. In § 251.6–2, paragraph (a)(5) is revised to read as follows:

§ 251.6–2 Permit requirements for a deep stratigraphic test.

(a) * * *

(5) Geophysical information and data sufficient to evaluate seafloor characteristics, shallow geologic hazards, and structural detail across and in the vicinity of the proposed test to the total depth of the proposed test well. Data and information from side-scan sonar and magnetometer systems shall be submitted as required, at the option of the Director; and

* * * * *

§ 251.6–4 [Amended]

2. In § 251.6–4, references to the "Bureau of Land Management" are revised to read "Minerals Management Service."

[FR Doc. 83–17675 Filed 6–29–83; 8:45 am]
BILLING CODE 4310–MR–M

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

Permanent State Regulatory Program of Pennsylvania

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

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is considering modifying the deadline for Pennsylvania to meet condition (j)(2) of its approved State permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The condition relates to requirements of the regulatory authority to conduct a mandatory review of permits for a pattern of violations and suspension or revocation of permits based on a pattern of violations.

DATE: Comments must be received by August 1, 1983, at the address below, no later than 4:00 p.m.

ADDRESS: Written comments must be mailed or hand-delivered to: Robert Biggi, Director, Harrisburg Field Office, Office of Surface Mining, 101 South 2nd Street, Suite L–4, Harrisburg, Pennsylvania 17101.

FOR FURTHER INFORMATION CONTACT: Robert Biggi, Director, Harrisburg Field Office, Office of Surface Mining, 101 South 2nd Street, Suite L–4, Harrisburg, Pennsylvania 17101, (717) 782–4036.

SUPPLEMENTARY INFORMATION: Under 30 CFR 732.13(i), the Secretary may conditionally approve a State permanent regulatory program which contains minor deficiencies where the deficiencies are of such a size and nature as to render no part of the program incomplete, the State is actively proceeding with steps to correct the deficiencies, and the State agrees to correct the deficiencies according to a schedule set in the notice of conditional approval. The curing of each deficiency is a condition of the approval. Steps to terminate the conditional approval must be taken if the conditions are not met according to the schedule. The dates are established in consultation with the State, based on the regulatory and administrative needs of the State's permanent program and SMCRA and the time required for changes to be adopted under State procedures or legislative schedules.

On February 29, 1980, the Secretary of the Interior received a proposed regulatory program from the State of Pennsylvania. On October 22, 1980, following a review of that proposed program as outlined in 30 CFR Part 732, the Secretary of the Interior disapproved the program. The State resubmitted its program on January 25, 1982, and, subsequently the Secretary approved the program conditioned on the correction of minor deficiencies. Information pertinent to the general background of the permanent program submission, as well as the Secretary's findings, the disposition of comments and explanations of the conditions of approval of the Pennsylvania program can be found in the July 30, 1982 **Federal Register** (47 FR 33050).

Condition (j)(2) on the Secretary's approval of the Pennsylvania program requires the State to submit a State program amendment to provide for mandatory review of permits for a pattern of violations and suspension or revocation of a permit based on a pattern of three or more violations within a 12-month period if committed willfuly or through unwarranted failure to comply consistent with 30 CFR 843.13 and section 521(a)(4) of SMCRA.

In a letter dated April 25, 1983, from the Commonwealth of Pennsylvania, the State requested an extension to June 1, 1983, to satisfy condition (j)(2). The Secretary granted this extension on May 25, 1983 (48 FR 23416).

In a letter dated June 6, 1983, the Commonwealth requested an additional one month to satisfy condition (j)(2). The State explained that an extension to July 1, 1983, is necessary in order to submit its modifications intended to satisfy the condition. Therefore, the Secretary proposes to allow the State until July 1, 1983, to meet condition (j)(2).

The Secretary is continuing to review with the State all of the outstanding program conditions. A final rule implementing this proposed extension may, in response to public comment, be different than the one proposed in this notice.

Additional Determinations

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

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August

28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparaton of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.)*. This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCR and the Federal rules will be met by the State.

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

List of Subjects in 30 CFR Part 938

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

(Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*)

Dated: June 24, 1983.

J. R. Harris,

Director, Office of Surface Mining

PART 938—PENNSYLVANIA

The following are proposed amendments to 30 CFR, Chapter VII, Subchapter T, Part 938.

§ 938.11 [Amended]

30 CFR 938.11(j)(2) is proposed to be amended by substituting "July 1, 1983", for June 1, 1983 each time it appears.

[FR Doc. 83-17693 Filed 6-29-83; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD 08-83-03]

Drawbridge Operation Regulations; San Bernard River, Texas

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Missouri Pacific (MOPAC) Railroad Company, the Coast Guard is considering changing the regulation governing the MOPAC swing span railroad bridge across the San Bernard River, mile 20.7, near Brazoria, Texas. The bridge presently is required to open on signal at any time.

The proposed change would require that at least three hours advance notice be given for an opening of the draw between 12 midnight and 8:00 a.m. at all times. In support of this change, MOPAC Railroad has committed to:

(1) Have a bridgetender at the bridge from at least one-half hour before to at least one-half hour after the appointed arrival time and (2) install a radiotelephone on the bridge for the bridgetender to communicate with the approaching vessel.

This proposal is being made because of the infrequent requests for opening the draw during the specified advance notice period. This action is designed to relieve the bridge owner of the burden of having a person constantly available to open the draw, while still providing for the reasonable needs of navigation.

DATE: Comments must be received on or before August 15, 1983.

ADDRESS: Comments should be mailed or hand delivered to the Eighth Coast Guard District, Bridge Administration Branch, Hale Boggs Federal Building, 500 Camp Street, New Orleans, Louisiana 70130. Comments are available for examination at this address from 9:00 a.m. to 3:00 p.m., Monday through Friday except holidays.

FOR FURTHER INFORMATION CONTACT: Joseph Irico, Chief, Bridge Administration Branch, at the address given above (504) 589–2965.

SUPPLEMENTARY INFORMATION: Interested parties are invited to participate in this proposed rule making by submitting written views, comments, data or arguments. Persons submitting comments should include their name and address, identifying the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped self-addressed post card or envelope.

The Commander, Eighth Coast Guard District, will evaluate all communications received and determine a final course of action on this proposal. The proposed regulation may be changed in the light of comments received.

Drafting Information

The principal persons involved in drafting this proposal are: Joseph Irico, Project Manager, District Operations Division, and Steve Crawford, General Attorney, District Legal Office.

Discussion of the Proposed Regulation

Vertical clearance under the closed span is two feet above high water and 19 feet above low water. Navigation through the bridge consists of commercial barge tows and an occasional small pleasure boat. Data submitted by the MOPAC Railroad for the year 1982 indicate that during the proposed advance notice period between 12 midnight and 8:00 a.m., the average monthly openings by the hour ranged from 1.3 to 2.4, with an average daily opening of 0.49.

The three hour advance notice for an opening of the draw would be given to the railroad Chief Dispatcher by placing a collect call at any time from ashore or afloat, as follows:

From Ashore Call—Spring, Texas, (713) 350–7581 or 7584.

From Afloat Call—Freeport/Bay City Public Coast Station, KGW 304, VHF Channels 25 and 27.

To provide for leeway in the appointed arrival time and to facilitate communication, MOPAC Railroad has agreed to have a bridgetender at the bridge at least one-half hour before the appointed time and to remain at least one-half hour after that time for a late arriving vessel. It further has agreed to install a marine radiotelephone on the bridge for the bridgetender to communicate with the vessel as it approaches the bridge to keep its appointment for an opening, previously scheduled by a collect call to the railroad dispatcher.

Considering the few openings involved and the provisions for the three hour advance notice, the Coast Guard feels that the proposed regulation should relieve the bridge owner of the burden of having a person constantly available at the bridge during the advance notice period, while still providing for the reasonable needs of navigation.

Economic Assessment and Certification

These propoosed regulations have been reviewed under the provisions of Executive Order 12291 and have been determined not to be a major rule. In addition, these proposed regulations are considered to be nonsignificant in accordance with guidelines set out in the Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 of 5–22–80). An economic evaluation has not been conducted since the impact is expected to be minimal. In accordance with section 605(b) of the Regulatory Flexibility Act (94 Stat. 1164), it is also certified that this rule, if promulgated, would not have a significant economic

impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

PART 117—DRAWBRIDGE OPERATION REGULATIONS

In consideration of the foregoing, it is proposed to amend Part 117 of Title 33, Code of Federal Regulations, by adding a new § 117.245(j)(40) immediately after § 117.245(j)(39) to read as follows:

§ 117.245 San Bernard River, mile 20.7, Brazoria, Texas.

* * * * *

(j)* **

(40) The draw of the Missouri Pacific railroad bridge shall open on signal from 8 a.m. to 12 midnight. From 12 midnight to 8 a.m. the draw shall open on signal if at least three hours notice is given.

(33 U.S.C. 499, 49 U.S.C. 1655(g)(2); 49 CFR 1.46(c)(5), 33 CFR 1.05–1(g)(3))

Dated: June 16, 1983.

W. H. Stewart,

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

[FR Doc. 83-17684 Filed 6-29-83; 8:45 am]

BILLING CODE 4910-14-M

VETERANS ADMINISTRATION

38 CFR Part 21

Veterans' Education; Limits Certification of Enrollment to One Term, Quarter, or Semester at a Time

AGENCY: Veterans Administration.

ACTION: Proposed regulations.

SUMMARY: These proposed regulations require schools organized on a term, quarter or semester basis to certify veterans' enrollment for only one term, quarter or semester at a time. They also eliminate the requirement that veterans and eligible people enrolled in courses leading to a standard college degree have their pursuit verified at the end of the school year. The proposal should reduce overpayments of educational assistance allowance.

DATES: Comments must be received on or before August 1, 1983. The VA proposes to make these regulations effective on the date of final approval.

ADDRESSES: Send written comments to: Administrator of Veterans' Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420.

All written comments received will be available for public inspection at the above address only between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays) until August 10, 1983. Anyone visiting Central Office in Washington, D.C. for the purpose of inspecting any such comments will be received by the Central Office Veterans Services Unit in room 132. Visitors to VA field stations will be informed that the records are available for inspection only in Central Office, and will be furnished the address and room number.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Policy and Program Administration, Education Service, Department of Veterans Benefits, Veterans Administration, Washington, D.C. 20420 (202–389–2092).

SUPPLEMENTARY INFORMATION: Sections 21.4137, 21.4203, and 21.4204, Title 38, Code of Federal Regulations are all amended to remove references to certifying enrollments on a school year basis and to require schools organized on a term, quarter or semester basis to certify only one term, quarter or semester at a time. Section 21.4204 also is amended to eliminate the requirement that when a veteran is in a course leading to a standard college degree, his or her continued pursuit must be verified at least once each school year by a Veterans Administration Representative.

In a report of audit, "Department of Veterans Benefits School Liability Program" (report number 2AB–B–05–107), the Office of Inspector General of the Veterans Administration found that overpayments of educational assistance would be substantially reduced if schools certify enrollments one quarter, term or semester at a time. This proposal, therefore, will reduce overpayments.

The Veterans Administration has determined that these proposed regulations contain no major rules as that term is defined by Executive Order 12291, Federal Regulation. The annual effect on the economy will be less than $100 million. They will not result in any major increases in costs or prices for anyone. They will have no 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.

This proposal will have an economic impact upon some small entities. A regulatory flexibility analysis follows:

The Veterans Administration is considering taking the action contained in this proposal because of the findings of the Inspector General of the Veterans Administration contained in the audit report, "Department of Veterans Benefits School Liability Program." This report, a copy of which is contained in this rulemaking file, demonstrated that overpayments of educational assistance allowance could be reduced substantially by requiring schools organized on a term, quarter or semester basis to certify on a term, quarter or semester basis. The outstanding debt to the United States that is attributable to overpayments of educational assistance allowance exceeds $400 million. It is imperative that the Veterans Administration act to reduce these overpayments.

Consequently, the objective of this proposal is to reduce overpayments. The legal basis for the proposal is 38 U.S.C. 1784(a), which requires educational institutions to report enrollments of veterans and eligible people in the form prescribed by the Administrator of Veterans' Affairs.

This proposal will apply to three types of small entities. Some schools organized on a term, quarter or semester basis are not-for-profit enterprises and are independently owned and operated. Some schools operated for profit are small businesses within the meaning of the Small Business Act. Some community colleges and high schools with courses approved for Veterans Administration training are organized on a term, quarter or semester basis and are supported by school districts with populations of under 50,000. Since the Veterans Administration does not gather data on earnings of profit-making schools, the agency is unable to make an accurate estimate of the number of small entities affected by this proposal.

Presently, schools organized on a term, quarter or semester basis are encouraged to submit one enrollment certification covering an entire school year plus the summer term for each veteran or eligible person. The proposal, which would require a separate enrollment certification for each term, quarter or semester, would have the effect of increasing the reporting burden on the school by a factor of two, three or four. There are no professional skills required to complete enrollment certifications.

The Veterans Administration considered requiring only large entities to certify by term, quarter or semester while permitting small entities to continue certifying on a school year basis. After examining the Inspector General's report, the agency discarded this idea.

Often a small low-cost community college will attract veterans through its low cost. It will then have a higher veteran enrollment (and a greater

potential for overpayments) than would a large, highcost college in the same area. It is the number of veterans enrolled in a school that is important in this instance, not whether the school qualifies as a small entity. Accordingly, the agency did not propose a separate reporting requirement for small entities.

The Veterans Administration is not aware of any Federal rule which may duplicate, overlap or conflict with the proposed rules.

The Administrator of Veterans' Affairs hereby certifies that these proposed regulations, if promulgated, will not have significant economic impact on a substantial number of any other type of small entity defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612.

The Catalog of Federal Domestic Assistance numbers for the programs affected by these proposed regulations are 64.111, 64.117 and 64.120.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs—education, Loan programs—education, Reporting requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: January 27, 1983.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

The Veterans Administration proposes to amend 38 CFR Part 21 as follows:

1. In § 21.4137, paragraph (g)(3), introductory text, is revised as follows:

§ 21.4137 Rates, educational assistance allowance—38 U.S.C. Chapter 35.

* * * * *

(g) *Advance payment.* * * *

(3) *Certification.* Advance payment will be authorized initially and at the beginning of each term preceeded by an interval of nonpayment for 1 full calendar month or more, provided the application, enrollment certification or other document signed either by an authorized official of the institution or the eligible person contains the following information: (38 U.S.C. 1780)

* * * * *

2. Section 21.4203 is amended as follows:

(a) By removing the phrase "paragraph (d)(3) or (4)" and inserting "paragraph (d)(3)" in paragraph (d)(1), introductory text, and (d)(2).

(b) By revising paragraph (b)(1), introductory text, and (b)(1)(i), introductory text, removing paragraph (d)(3), redesignating paragraph (d)(4) as (d)(3) and revising newly redesignated (d)(3) to read as follows:

§ 21.4203 Reports by schools; requirements.

* * * * *

(b) *Entrance or reentrance.* * * *

(1) Schools organized on a term, quarter or semester basis shall report enrollment for the term, quarter, semester, or summer term. If the veteran or eligible person attended the previous term, quarter, semester or summer term, and wishes to be paid educational assistance allowance for the interval between terms, the school shall report that fact. Allowances are payable for these intervals only if the provisions of § 21.4138(f) are met.

(i) The Director of the VA field station of jurisdiction may authorize payment to be made for breaks within a certified period of enrollment, and for breaks of more than a calendar month between terms, quarters, and semesters or between a term, quarter or semester and a summer term if the school is closed under an established policy based upon an order of the President or due to an emergency situation. (38 U.S.C. 1780(a))

* * * * *

(d) *Interruptions, terminations and changes in hours of credit or attendance.* * * *

(3) If the change in status or change in the number of hours of credit or attendance occurs during the 30 days of a drop-add period, the school must report the change in status or change in the number of hours of credit or attendance to the Veterans Administration in time for the Veterans Administration to receive the report within 30 days from the last date of the drop-add period or 60 days from the first day of the enrollment period, whichever occurs first. (38 U.S.C. 1784(a))

* * * * *

3. In § 21.4204, the introductory text preceding paragraph (a) is removed and paragraphs (a) and (c) are revised as follows:

§ 21.4204 Periodic certifications.

(a) *Reports by schools, veterans and eligible persons.* For a course leading to a standard college degree the Veterans Administration will accept any communication from the student, school official or other authorized person stating that the veteran or eligible person has interrupted or terminated his or her enrollment. The Veterans Administration will terminate payments accordingly. A veteran or eligible person enrolled in another type of course or training will submit reports in accordance with § 21.4203 (e), (f), or (g). (38 U.S.C. 1784)

* * * * *

(c) *Term, quarter or semester.* The periodic certification will not cover the intervals between terms, quarters, or semesters for a course not leading to a standard college degree offered by a school organized on a term, quarter, or semester basis. (38 U.S.C. 1784)

* * * * *

[FR Doc. 83-17860 Filed 6-29-83; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 10 and 157

[Docket No. CGD 77-084]

Licensing of Pilots; Manning of Vessels—Pilots

AGENCY: Coast Guard, DOT.

ACTION: Notice of additional public hearing and extension of comment period; supplemental notice.

SUMMARY: On May 9, 1983, the Coast Guard published a Notice of public hearings to be held in Belle Chase, Louisiana, St. Louis, Missouri, and New York, New York. An additional public hearing is considered appropriate and has been scheduled for Savannah, Georgia on July 6, 1983. To permit a reasonable two week period for written public comment on oral presentations received by the Coast Guard at this public hearing, the comment period on this proposal is being extended to July 20, 1983.

DATES: The Coast Guard will hold the hearing on July 6, 1983. It will begin at 10 a.m. and end at 4 p.m. or sooner if all speakers have been heard. Comments on this proposed rulemaking must be received by July 20, 1983.

ADDRESS: The public hearing will be held at: Holiday Inn Midtown, 7100 Abercorn Street, Savannah, Ga. 31416.

Attendance is open to the public.

FOR FURTHER INFORMATION CONTACT: Captain C. M. Holland, Executive Secretary, Marine Safety Council (G-CMC), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, D.C. 20593, (202) 426–1477.

Dated: June 24, 1983.

By direction of the Commandant.

C. M. Holland,

Captain, USCG, Executive Secretary, Marine Safety Council.

[FR Doc. 83-17883 Filed 6-29-83; 8:45 am]

BILLING CODE 4910-14-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[CC Docket No. 78-72, Phase IV; FCC 83-254]

MTS and WATS Market Structure

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This Notice proposes a plan for monitoring the effects of the introduction of interstate access charges and various rate changes on the availability of local telephone service. The Commission had instructed the Bureau to prepare such a proposal in the *Third Report and Order* in this proceeding. 48 FR 10319 (March 4, 1983).

DATES: Comments are due July 8, 1983. Reply comments are due July 25, 1983.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Leonard S. Sawicki, Common Carrier Bureau, (202) 632-6363.

Proposed Rule Making

In the matter of MTS and WATS market structure, CC Docket No. 78-72, Phase IV.

Adopted: May 26, 1983.

Released: June 8, 1983.

By the Commission; Commissioner Fogarty not participating; Commissioner Rivera issuing a separate statement; Commissioner Sharp absent.

I. Introduction

1. In the *Third Report and Order (Order)* in this proceeding, we stated our intention to "monitor the effects of the implementation of end user access charges" during the transition period described in the *Order*.[1] We directed the Common Carrier Bureau to prepare a monitoring plan and to present it to us within ninety days of the publication of the *Order*. This *Notice* describes the preliminary plan developed by the Bureau and seeks comments on that plan. We have also attempted to incorporate the concerns voiced by the Federal-State Joint Board Members in this plan, particularly the effects of separations changes and the high cost factor.

2. *The Third Report and Order*, among many other fundamental changes, has mandated end user access charges. These charges will be paid by all telephone subscribers to recoup the cost assigned to the interstate jurisdiction through the separations process. The rate structure decisions made in the *Third Report and Order* represent a fundamental change in the way exchange carriers are compensated for the use of their facilities. We have strived to ensure that the changes which we have ordered will benefit telephone users and that we have properly allowed for all contingencies. However, because of the fundamental changes the industry is undergoing, we recognize that unforseen consequences may arise. One of the important expressed goals of the *Third Report and Order* is universal service.[2] We therefore have an obligation to carefully follow the effects of our decision. We believe that the most skillfully crafted plan can only be successful with the full assistance and consent of the principal factors in this industry. The comments on this *Notice* will serve as the basis for our future activities. We also believe that a frank dialogue on the available data, analytical methods and the expected (and reachable) results is essential. We want the best possible valid information which will be acceptable to all interested parties.

3. Members of the Joint Board (Docket 80-286) have expressed concern about the impact of access charges and jurisdictional separations changes on telephone subscribers. Their concerns are very similar to ours in the *Third Report and Order*. In that *Order*, we established the Universal Service Fund which would offset the costs of providing service in certain areas. The means of funding this is a charge from all toll users, as outlined in the *Order*. The level of funding for the Universal Service Fund and the targeting of rate support are being established by the Joint Board through operation of the high cost factor. We understand the mutual interests of State and Federal regulators lie in the maintenance of the nationwide availability of telephone service at reasonable rates. Through the monitoring plan developed in this proceeding we hope to develop information that will answer our common concerns.

II. The Access Monitoring Plan

A. Summary of the Monitoring Plan

4. We propose to collect information in two major related areas: rates and the number of residential access lines. This information will be collected annually for seven years. Some information will be gathered from all telephone companies while more detailed information will come from a sample of companies. The staff of the Common Carrier Bureau will analyze the information and report to the Commission each year.

5. The rate information described below will tell the Commission how rates are changing, e.g., how quickly some rates are increasing, whether a "lifeline" or "dial tone" rate is being offered, and will attempt to show why rates are changing. The access lines information will tell use whether the number of access lines is increasing or decreasing. However, these direct measures are not sufficient to address the fundamental question of what changes are occurring in the residential penetration rate; that is, the percentage of households with telephones (or excess lines). While the number of lines may increase or decrease, the number of residences may be increasing or decreasing at a different rate. If this is so, the mere counting of lines would be misleading. As an elementary example, if the number of access lines stayed constant but the number of residences increased, the portion of residences that would be subscribing to telephone service would fall. It is not our objective only to be concerned with the number of residential access lines. Instead, we must focus our attention on whether the portion of potential users willing to pay for service has changed.

6. This interpretive function is clouded by the fact that the data concerning residences (households) is not kept on the same basis as telephone industry information. Demographic information [3] is usually kept on the basis of political subdivisions (e.g., states, counties) whereas industry data is kept on bases (e.g., exchange or company level) which do not correspond to political subdivisions. It is this inconsistency which is the crux of the analytical problems discussed in this *Notice*.

7. We believe that we can learn much from the behavior of prices, the quantity of lines demanded, and the causes for such changes over the next few years. This value is not diminished by problems in reconciling demographic and industry data. However, when it comes to estimating penetration rates at the company, or lower level, which are the elementary measures of changes in the availability of service, we note the problems with the accuracy of the data and the issues involved in analyzing it. As one known, accurate measure, we propose to use penetration data from the

[1] *MTS/WATS Market Structure Inquiry*, 48 FR 10319 (March 11, 1983), par. 196.

[2] *Order*, pars. 363, 366.

[3] Besides the number of households, we would expect to use other data representing factors that would affect the purchase of residential service. For example, we would review the consumer price index (a measure of inflation), unemployment, income, and other statistics.

Current Population Survey. The sample from which this data is collected is designed to be accurate only to the state level. Further disaggregation is a question upon which we seek comments. The most important goal of this *Notice* will be to determine from the comments whether an acceptable estimate or indicator of telephone penetration levels can be found and at what level of aggregation (e.g., exchange, county, company, state) we can successfully measure changes in service and meet our objectives listed below.

B. Objectives

8. The primary purpose of the Access Monitoring Plan is to track the availability of basic residential telephone service over the seven-year access charge transition. We want to know whether the availability and use of residential service is being affected, how prices are changing and why. This effort will encompass service in the various states, districts, territories and possessions of the United States; that is, the areas which are subject to the *Access Charge Order*. While we stated in the *Access Charge Order* that we were concerned with the effects of the newly instituted end user access charges, it is clear that many factors will have an effect on residential access line penetration.[4] Because so many changes that will affect local rates are occurring simultaneously, we cannot ignore other factors in our analysis.[5] We are interested in the larger question of the availability of service. Therefore, another goal of the project will be to gather information on the components of local service rate increases and analyze these changes in concert with the shift to end user access fees. We would like to focus on changes in local rates due to changes that may be made in the current jurisdictional separations formula, the deregulation of CPE, changes in depreciation rates, and the amortization of inside wiring investment, among others.

9. The jurisidictional separations system will change substantially in the next few years. It is anticipated that the major effect on rates will be felt in the gradual movement away from the Subscriber Plan Factor (SPF) to the new base and high cost factors. Coupled with the introduction of the high cost factor, significant shifts will likely occur in the amount of funds flowing to particular local areas. It is uncertain how and whether these changes will affect rates to residential telephone customers. The Universal Service Fund is intended to be a safeguard against abrupt changes in the highest cost areas. Nevertheless, the possibility exists that this safeguard may not sufficiently protect ratepayers to the extent anticipated by the Joint Board. We share the Board's expressed desire that vigilance is necessary. We wish to cooperate with the States in assuring that appropriate data are collected to meet their concerns. To this end, we invite comments that address the question of whether data collected herein will address the potential effects of the Joint Board's actions on rates and service availability as well as assuring that the entire system of explicit subsidies does not overburden those providing the funds for the subsidy.

10. Because it is likely that local tariffs will be restructed significantly over the next few years, we will pay particular attention to the lowest rate at which a subscriber can receive service. We want to know whether local subscribers are being offered a lifeline rate which would allow them to maintain connection to the telephone network. We also want to understand how our policies affect such an offering.

11. Another closely related objective is to develop information concerning actions at the state level that may affect telephone penetration. Besides lifeline rates, we want to be aware of new intrastate access charges and other actions which could also affect residential telephone penetration.

12. In all, we wish to create a picture of the various forces affecting local residential rates and basic telephone service. While the Commission is certainly concerned with other events resulting from the *Access Charge Order*, they will not be the subject of the surveys and analyses undertaken as a result of the adoption of this plan.[6]

C. Information To Be Collected.

13. We plan to collect the information which we need by the use of two surveys. One data inquiry will contain a few pieces of information and will be put to all telephone companies. The second, more detailed inquiry will be sent to a representative sample of companies. We considered getting all the data from the sample of companies rather than from all carriers. However, we concluded that getting the most basic data from all companies will allow us to be certain that we would be able to monitor the basic changes in the entire industry and avoid the possibility that important changes in even the smallest companies would be missed.

14. The amount of data needed to support the objectives of this project is substantial. With over 1,400 companies, over 10,000 exchanges and 3,137 counties, one piece of information collected quickly metamorphoses into a large scale collection effort. We have already stated our intention "to place as little a burden as possible upon the small businesses which constitute the overwhelming majority of our nation's telephone systems".[7] Further, we want a plan which is manageable and can give us usable results in a reasonable amount of processing time. We have attempted to balance these considerations with the need to develop information which is as accurate and detailed as possible. We are open to ideas which would reduce the size of this effort yet support our fundamental objectives. Any alternative approaches which still would measure changes in the availability of basic service will be considered.

15. There are two basic approaches outlined here. The first approach would be to collect penetration data directly from telephone companies using their estimates of the numbers of residences in their service areas. This may be somewhat inaccurate and will require the companies to report the counties they serve and also to estimate the number of residences in counties where they only serve a portion of the county.

16. The other approach would be to begin with state information from the Current Population Survey see para. 18, *infra*. Once each year, we could know fairly reliably the residential penetration by state. This measure would be associated with demographic characteristics, as described below. The penetration data would then be examined to determine the characteristics of those disconnecting. The next step could be one of several options. As one option, statistical analyses could be performed to determine what portion of the change in residential penetration was attributable

[4] The terms "residential access line," "residential main station" and "residential telephone service" are used interchangeably in this *Notice*.

[5] This point is well recognized. See *The Petition of the State of Michigan and Michigan Public Service Commission for Institution of an Inquiry and/or a Rulemaking Proceeding to Protect Universal Service* (MPSC Petition) and the Comments on that Petition. We plan to act on this Petition in the near future. One option under active consideration is whether to merge the Michigan PSC's request with this proceeding.

[6] As an example we expect that the adoption of end user access charges will result in decreases in certain interstate rates. Such changes can be monitored successfully within the Common Carrier Bureau. The changes in the level of OCC payments to local companies can be gathered directly at the Federal level either through a formal information request or informally. We expect that the OCC's will inform us of such changes in one form or other. Information on the "competitiveness" of the interestate market will also be examined.

[7] *MTS/WATS Market Structure Inquiry*, 48 FR 10319 (March 11, 1983) par. 196.

to rate changes with the implicit asumption that managing other changes is beyond our control. This implies that a state-wide rate index be prepared. To do this, companies would have to report all residential rate options and the number of subscribers to each. (This also has the advantage of allowing us to construct other rate indices for levels of service; for example, the cost of making twenty phone calls a month, which would indicate changes in rates over time and overcome analytical problems in acounting for changes in rate options). Once the effect of rate changes is known, we can look among the reporting companies in each state for rate changes of sufficient magnitude to cause disconnects (thus eliminating companies where rate effects were insubstantial), identify specific deleterious changes and proceed to contact the companies directly to ascertain the characteristics of the affected companies (amount of high cost factor, level of access charges per customer and other characteristics). Another option would be to compare the statewide changes with access line data provided by the companies, paying particular attention to reductions over the course of a year. Those companies indicating absolute decreases would be contacted directly by the staff to ascertain what caused the drop in access lines.

17. Under any approach chosen, individual companies subject to rapid changes in their customer base would be welcome to come forward with information at any time.

1. Current Population Survey (CPS) Data.

18. The Current Population Survey is a large, general purpose survey conducted monthly by U.S. Census Bureau. The major purpose of the CPS is to collect labor force participation data used to develop unemployment statistics. About 58,000 households are interviewed from a sample of street addresses. Data on employment status, age, race, sex, education, marital status among others, are collected monthly. Each year, during the March survey, each household is asked for additional information concerning income for the previous year. As part of the survey, interviewers have routinely asked if the respondents had a telephone at which they could be reached. This last question is really not very useful for our purposes because a positive response does not mean that the individual has a telephone in his or her residence. However, since March, 1983 the CPS has asked whether the respondent has a telephone in his or her dwelling—precisely the information which we would need to develop residential penetration figures. This data would be reliable on a country-wide level each month and down to a state level on an annual basis. Unfortunately, these are less reliable below the state level. The counties sampled account for over 85% of the U.S. population but only one third of the U.S. counties are surveyed and while they are represented in the "probability proportionate to size" sample design, very few sparsely populated counties are included. Specific information for areas below the state level and for territories and possessions would have to be collected directly by the FCC.

19. We propose to use the CPS data as the primary measure in our analysis. We need not be restricted by the information now collected by CPS. The CPS will ask nearly any question which can be justified as a portion of their survey and payment made on a cost-incurred, reimbursable basis. The CPS data has many advantages, not the least of which are reliability, speed and compatibility with other demographic data. If we can develop a price index for residential service (which requires information from all companies in a state on the number of subscribers to each rate option), we can relate changes in the economy, prices and demographics to changes in penetration, at least in a level as aggregated as a state. Because the CPS will ask different questions on a reimbursable bases, we also seek comments on whether we should contract with CPS to ask questions in addition to that already asked.

20. This leaves the question open whether we should go to a lower level of aggregation in the development of penetration figures. As we discuss elsewhere in this *Notice*, the reliability of these figures declines as we move to the company and exchange level, mainly because of the incompatibility of industry and demographic data. We will collect rate data, access line data and use the CPS data. The issue is whether we will compel companies to provide penetration data in each survey period or whether we will rely on the companies to come to us with data only when a change occurs at the local level. In the second instance we would assume that the state-wide data was a sufficient measure for continuous monitoring purposes.

21. Therefore, we have the following options:

Option 1: All companies report data on the number of subscribers to all residential rates by state (for the purpose of constructing a statewide price index). This would include, then, information listed here such as lifeline or "dial tone" rates and the components or rates. Companies would develop and report penetration data to us only when measurable drops in residential access occurred.

Option 2: All companies report data on selected rates and supply us with penetration figures by operating areas as part of the regular reporting cycle. In this manner, complete information on penetration will be available for comparison. A disadvantage of this approach would be that we would have to average demographic data over the counties served and that demographic data may not be current.

2. Information to be collected from all companies.

22. As we stated, an important piece of information to be developed will be the measure of changes in residential telephone penetration; that is, the percentage of households with telephones (or access lines). Ideally, we would collect such information for each exchange or service area from the local company. This would correspond to the rate information which is available. However, it is uncertain that many local telephone companies could provide us with information on the number of households in each exchange or rate area.[8] It is critical that we get all of our information at the same level of aggregation to be certain that all the information is comparable and that our analytical techniques validly can be applied. We know that we can get state-wide data from the CPS as described above. The question is whether individual companies can provide reliable penetration data and whether we should go to this level (or even a county level) in our analyses.

23. While some companies track the number of building permits and the types and locations of local construction projects for planning purposes, even these may not know the total number of existing, occupied residences.[9] If the companies cannot provide these data by exchange we would have to find another source and take that information on whatever basis it is available. Adjustments to the data would have to be made. The main source of these data is the Census Bureau. Even the census data have drawbacks. The Census

[8] By this we mean an exchange or group of exchanges which have the same rates.

[9] The Rural Electrification Administration (REA) requires companies to perform an area coverage design (ACD) when they apply for their first loan. The ACD could give information on residences with and without service. In theory, this is kept up to date by the borrowers for planning purposes and to support future loan requests. This could be a valuable source of data on small companies.

Bureau collects the number of households per county in the decennial census only. However, it does collect valuable data in the Current Population Survey (CPS) discussed above. The CPS is the basis of annual population data developed by the Census Bureau. We or the companies could use the average population per household for each county from the 1980 census and divide it into the annual population figures to get an annual number of households. This requires an assumption that the population per household will remain reasonably constant over the period. As another source, there are commercial services that provide household and other demographic data by county for each year.[10]

24. A problem here, of course, is that the boundaries of franchise areas do not typically follow local political boundaries. This could cause some severe analytical problems. Absent a better proposal, we would collect the number of residential mains (or residential access lines) by service area or, alternatively, by county. To develop the penetration information, it will be necessary to have the surveyed telephone companies list the counties and the respective exchanges they serve in their initial responses so that we may know which data has been combined by the companies or which we will have to aggregate. We realize that this is an imperfect proposition and it will entail a great deal of analytical effort. We want to minimize the error in any estimates, of course, but it appears that some will have to be tolerated. This means that we may not be able to discern very small changes in telelphone penetration using this method.

25. In summary, the ideal measurement point would be the exchange, but we think that most companies would not have information on the number of households in their exchange areas. Without the number of households, it is difficult to determine a meaningful measure of service availability such as the penetration rate at the company level. Therefore, this argues in support of a "top down" type of analyses where state-wide figures are used as the major indicator. Nevertheless, even at the company or county level, the key aspect of the penetration rate will be how it changes over time. Precision in its definition and the initial estimation of the rate is important but not as critical as consistency over time. We are not taking a census. We want to measure how the penetration rate changes over the transition period. The fact that different companies may count residential mains or housing units differently is not as important as having each company count the same way each reporting period. Because of this, it is not necessary to develop completely precise definitions.[11]

26. Another major piece of information which we want from all companies is the lowest rate at which service is available. If the company has different lowest rates in different rate areas (e.g., based on different exchange sizes), we will need them all with some indication of why they differ. The value of this information is high. If subscribers are not willing to pay this rate, they disconnect. We also will need to know the composition of this minimum rate. In other words, what portions of the rate are for interstate access, intrastate access, and so forth and whether any usage is included? If we get the information necessary to compile price indices, we will not need to collect this information separately because it will already be included in the rate schedule information used to develop those indices. The size of the exchange(s) to which the rate applies will also be reported, with size measured by the number of telephones. Companies will also be asked to note the "changes from last year" in the lowest rate, and there will be an inquiry on the form asking whether they have such a "lifeline" rate and whether they have a request for one pending before their state commissions. The final pieces of information which we will seek from all local companies are the average residential expenditure which indicates what individuals are actually paying and the level of any access charges and how they are billed (how much as a flat rate and how much for usage).[12]

3. Information to be collected from sample companies.

27. The Common Carrier Bureau staff will also draw a stratified sample of telephone companies representative of the various sizes of companies and reflecting their various cost characteristics (e.g., high cost). These companies will provide us with the information above plus certain detailed data which will help us ascertain the causes of local rate increases and give us a better picture of trends at the local level. We will have the sample companies report information concerning their rate increases. In particular, we will ask these companies to provide, on a per residential access line basis, the amount of rate increases attributable to changes in separations, depreciation, access charges, the phase-out of embedded CPE, and the amortization of the capitalized station connection costs. Further, if complete data on the number of subscribers to all rates are not collected from all companies, these sample companies will report the number of subscribers to their lowest cost service, the modal rate (the rate plan chosen by the greatest number of residential subscribers), the portion of subscribers subscribing to the "typical" rate, and the local flat unlimited calling rate on the same basis which it reports the information required in the "all companies" section listed above. The companies will eventually report the amount per line which is offset by (or the cost per line of) the high cost factor.[13]

28. The detailed information will aid in determining the causes of rate increases, and shifts to the lowest priced service. It will also provide a data series on changes in today's most common residential rate, the flat rate, unlimited calling service. The information will aid the FCC and the Joint Board in isolating the effects of the Universal Service Fund subsidy.

D. Reporting Frequency

29. As soon as the Commission receives the appropriate clearances from the Office of Management and Budget, we will send out the first inquiry to all telephone companies. This will establish the baseline information. A few months later, we will begin the regular reporting cycle with all reports due sometime early each year. The Common Carrier Bureau will analyze the data and make reports on an annually.

30. Because of the import of this monitoring effort and the fact that annual reports may not capture rapidly deteriorating situations, if any occur, we contemplate that persons will bring information concerning such situations to the attention of the Chief of the Common Carrier Bureau. The

[10] Another potential source of household data is that used by television rating services. The number of TV households is updated annually, based on estimates supplied by the commercial services.

[11] There may be other, very different workable approaches than those mentioned here, but the ones which we examined appear costly, imprecise or both. One proposal would have the companies survey customers who disconnect on the reason they disconnected. Because customer churning is high this would require a large number of responses. Further, many individuals would be involved in carrying out the survey and there would be significant expense involved.

[12] We wish to know the business and residential flat rates and the per minute (usage) amounts. This will assist us in gauging the "smoothness" of the transition.

[13] The Exchange Carrier Association will also be used as a source of data concerning collections and disbursements for the Universal Service Fund.

information should be consistent with that gathered in the normal course of this effort along with further data necessary to support whatever relief is sought.

E. Regulatory Flexibility Analysis and Applicability of the Paperwork Reduction Act of 1980

31. In the *Access Charge Order*, we certified that the Regulatory Flexibility Act did not apply to the rules adopted.[14] That same analysis applies here. Exchange carriers, even small ones, are dominant monopolies in their exchange areas. Because that is so, they would not fall under the definition of a "small entity." While the Regulatory Flexibility Act does not apply to carriers which will be affected by this plan, we have attempted to minimize the information burden on the companies while carrying out our public interest responsibility to ascertain the effects of our decisions on local service. We will assure that data requests which will support the final plan are made in accordance with the Paperwork Reduction Act (Pub. L. 96–511, 44 U.S.C. 3501 *et seq.*).

F. Other Questions

32. Commenting parties should address the data collection requests outlined here and whether they meet our objectives and in general support our public interest determination that we monitor changes caused by our *Access Charge Order*. We also seek comments on the burden being placed on various companies by our plan or alternative proposals that may be less burdensome and still satisfy our information needs. Parties familiar with the Joint Board's activities should comment on the consistency between this plan and the monitoring activities contemplated by that body. If any group other than the FCC can collect some of the data (*e.g.*, the states or the National Association of Regulatory Utility Commissioners), we will entertain such recommendations.

33. For the purposes of this non-restricted notice and comment rulemaking proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rulemaking until the time a public notice is issued stating that a substantial disposition of the matter is to be considered in a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever occurs earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation, and that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. *See generally*, § 1.1231 of the Commission's Rules, 47 CFR 1.1231.

34. Accordingly, it is hereby ordered, that comments may be filed on the issues and proposals discussed herein no later than thirty days after the release of this *Notice* and that replies may be filed no later than fifteen days after the filing of comments. In accordance with the provisions of § 1.419 of the Commission's Rules, 47 CFR 1.419, an original and five copies of all statements, briefs or comments, or replies, shall be filed with the Federal Communications Commission, Washington, D.C. 20554, and all such filings will be available for public inspection in the Docket Reference Room at the Commission's Washington, D.C. offices. In reaching its decision, the Commission may consider information and ideas not contained in filings, provided that such information is reduced to writing and placed in the public file, and provided that the fact of the Commission's reliance thereon is noted in the Order.

35. It is further ordered, that pursuant to 47 U.S.C. 154(i), 154(j), 201, 202, 218, and 403, and 5 U.S.C. 553, notice is hereby given of the proposed adoption of new or modified rules, in accordance with the discussion and delineation of issues in this *Notice* and on the basis of previous notices and filings in this proceeding.

36. It is further ordered that the secretary shall send copies of this Notice to the Regulatory Commissions of the various states, districts, territories and possessions which will be affected by this Notice.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Separate Statement of Commissioner Henry M. Rivera

In the Matter of MTS and WATS Market Structure CC Docket No. 78–72, Phase IV (Access Monitoring Plan).

This action reaffirms our commitment to universal service. It initiates a serious effort to develop a plan which will quickly alert us to any disruptive or deteriorating effects upon the network or universal service. The staff realistically recognizes the problems involved. Several alternatives have been proposed. We earnestly request the comments and assistance of all parties. Participation by state commissions would be most welcome.

[FR Doc. 83-17602 Filed 6-29-83; 8:45 am]

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47 CFR Part 73

[MM Docket No. 83-595; RM-4418]

FM Broadcast Stations in Merced, California; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the assignment of Channel 292A to Merced, California, as its third FM assignment, in response to a petition filed by Jack L. and Virginia Jo McFadden.

DATES: Comments must be filed on or before August 4, 1983, and reply comments on or before August 19, 1983.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mark N. Lipp, Mass Media Bureau, (202) 634–5630.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Proposed Rule Making

In the matter of amendment of § 73.202(b), table of assignments, FM broadcast stations (Merced, California); MM Docket No. 83–595, RM–4418.

Adopted: May 24, 1983.
Released: June 20, 1983
By the Chief, Policy and Rules Division.

1. A petition for rule making was filed March 24, 1983, by Jack L. and Virginia Jo McFadden ("petitioners"), proposing the assignment of Channel 292A to Merced, California, as that community's third local FM broadcast service. Petitioners submitted information in support of the proposal and expressed their interest in applying for the channel

[14] *MTS/WATS Market Structure*, 48 FR 10319 (March 11, 1983), paras. 358–362.

if assigned. The channel can be assigned in compliance with the minimum distance separation requirements.

2. In view of the fact that the proposed assignment could provide a third local FM broadcast service to Merced, California, the Commission believes it is appropriate to propose amending the FM Table of Assignments (§ 73.202(b) of the Commission's Rules), with respect to the following community:

City	Channel No.	
	Present	Proposed
Merced, Calif.	248 and 268	248, 268, and 292A

3. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

4. Interested parties may file comments on or before August 4, 1983, and reply comments on or before August 19, 1983, and are advised to read the Appendix for the proper procedures.

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

6. For further information concerning this proceeding, contact Mark N. Lipp, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment to which the reply is directed constitutes an *ex parte* presentation and shall not be considered in the proceeding.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Conterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 83-17595 Filed 6-29-83; 8:45 am]

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47 CFR Part 73

[MM Docket No. 83-597; RM-4422]

FM Broadcast Stations in Sundance, Wyoming; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes to assign FM Channel 276A to Sundance, Wyoming, as its first local broadcast service, in accordance with a request by Donald D. Grant.

DATES: Comments must be filed on or before August 5, 1983, and reply comments on or before August 22, 1983.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Philip S. Cross, Mass Media Bureau, (202) 634–6530.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Proposed Rule Making

In the matter of amendment of § 73.202(b), table of assignments, FM broadcast stations.

(Sundance, Wyoming); MM Docket No. 83-597, RM-4422.

Adopted: May 31, 1983.
Released: June 21, 1983.

By the Chief, Policy and Rules Division.

1. The Commission has before it a petition filed by Donald D. Grant to assign FM Channel 276A to Sundance, Wyoming, as its first local broadcast service. The assignment could be made consistent with the mileage separation requirements. Petitioner stated he would apply for the channel, if assigned.

2. In view of the foregoing, we conclude that the public interest would be served by our proposing the following amendment of the FM Table of Assignments, § 73.202(b) of the Commission's Rules, for the community of Sundance:

City	Channel No.	
	Present	Proposed
Sundance, Wyoming		276A

3. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorprated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

4. Interested parties may file comments on or before August 5, 1983, and reply comments on or before August 22, 1983, and are advised to read the Appendix for the proper procedures.

5. The Commission has determined that the relevent provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that Section 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend § 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

6. For further information concerning this proceeding, contact Philip S. Cross, Mass Media Bureau, (202) 632-5414. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involves channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment to which the reply is directed constitutes an *ex parte* presentation and shall not be considered in the proceeding.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to whicn this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 83-17596 Filed 6-29-83; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 83-592; RM-4406]

TV Broadcast Stations in McComb, Mississippi and Natchitoches, Louisiana; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes to assign Channel 28 to McComb, Mississippi, and to substitute UHF Television Channel *20 for Channel *28 at Natchitoches, Louisiana, in response to a petition filed by Southwestern Broadcasting Company of Mississippi. The proposal could provide a first local TV service to McComb.

DATES: Comments must be filed on or before August 4, 1983, and reply comments on or before August 19, 1983.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mark N. Lipp, Mass Media Bureau, (202) 634–6530.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Proposed Rule Making

In the matter of amendment of § 73.606(b), table of assignments, TV broadcast stations, (McComb, Mississippi and Natchitoches, Louisiana); MM Docket No. 83–592, RM–4406

Adopted: May 24, 1983.

Released: June 20, 1983.

By the Chief; Policy and Rules Division.

1. The Commission herein considers a petition for rule making filed March 18, 1983, by Southwestern Broadcasting Company of Mississippi ("petitioner"), seeking the assignment of Channel 28 to McComb, Mississippi. The substituton of UHF Television Channel *20 for UHF Television Channel *28 in Natchitoches, Louisiana[1], would be required to allow the McComb assignment to be made in compliance with the mileage separation requirements. Petitioner submitted information in support of the proposals and expressed an interest in applying for the McComb channel, if assigned. The substitution and the assignment can be made in compliance with the minimum distance separation requirements and other technical criteria.

2. McComb (population 12,331)[2], in Pike County (Population 36,173), is located in southwestern Mississippi, approximiately 112 kilometers (70 miles) south of Jackson, Mississippi.

3. In view of the fact that McComb could receive its first local television service, the Commission finds that it would be in the public interest to seek comments on the proposal to amend the Television Table of Assignments (§ 73.606(b) of the Commission's Rules) for the following communities:

City	Channel No.	
	Present	Proposed
Natchitoches, Louisiana	*28–	*20+
McComb, Mississippi		28–

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

5. Interested parties may file comments on or before August 4, 1983, and reply comments on or before August 19, 1983, and are advised to read the Appendix for the proper procedures.

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Mark N. Lipp, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in Sections 4(1), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments: Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of

[1] Channel *28 at Natchitoches is currently unoccupied and unapplied for.

[2] Population figures are taken from the 1980 U.S. Census Advance Report.

the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 83-17597 Filed 6-29-83; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 83-591; RM-4432]

TV Broadcast Stations in Norman, Oklahoma; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes to assign UHF television Channel 56 to Norman, Oklahoma, as the city's first television facility, in response to a petition by Daystar Broadcasting Corporation.

DATES: Comments must be filed on or before August 4, 1983, and reply comments on or before August 19, 1983.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Philip S. Cross, Mass Media Bureau, (202) 632-5414.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Proposed Rule Making

In the matter of amendment of § 73.606(b), table of assignments, TV Broadcast Stations (Norman, Oklahoma); MM Docket No. 83-591, RM-4432.

Adopted: May 22, 1983.

Released: June 20, 1983.

By the Chief, Policy and Rules Division.

1. The Commission has before it a petition filed by Daystar Broadcasting Corporation ("petitioner") to assign UHF Channel 46 to Norman, Oklahoma, as the city's first television facility. Norman (population 68,020),[1] the seat of Cleveland County (population 123,173), is located in central Oklahoma approximately 30 kilometers (19 miles) south of Oklahoma City. Norman is the home of the University of Oklahoma. Petitioner states that if the proposal is granted it will promptly apply for authorization to construct and operate the new television station.

2. Channel 46 in Norman would be short spaced to a pending rule making to assign Channel 61 to Oklahoma City, Oklahoma (MM Docket 83-405). However, Channel 56 meets all spacing requirements to existing assignments, provided a site restriction of 0.8 miles south of Norman is imposed to avoid short spacing should Channel 61 be assigned to Oklahoma City. We conclude that the public interest would be served by our proposing to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules, as follows:

City	Channel No.	
	Present	Proposed
Norman, Oklahoma		56+

3. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

4. Interested parties may file comments on or before August 4, 1983, and reply comments on or before August 19, 1983, and are advised to read the Appendix for the proper procedures.

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

6. For further information concernng this proceeding, contact Philip S. Cross, Mass Media Bureau, (202) 632-5414. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration, or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflicts with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

[1] Population figures are taken from the 1980 U.S. Census Advance Report.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 83-17598 Filed 6-29-83; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 83-594; RM-4409]

FM Broadcast Stations in Trinidad, Colorado; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes to substitute Class C Channel 223 for Channel 224A in Trinidad, Colorado, and to modify the Class A license of Station KCRT–FM accordingly, in order to provide a wide coverage area FM station in response to a petition filed by Colorado Broadcasting Corporation, Inc.

DATES: Comments must be filed on or before August 4, 1983, and reply comments on or before August 19, 1983.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mark N. Lipp, Mass Media Bureau, (202) 634–6530.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Proposed Rule Making

In the matter of amendment of § 73.202(b), table of assignments, FM broadcast stations (Trinidad, Colorado); MM Docket No. 83–594, RM–4409.

Adopted: May 24, 1983.

Released: June 20, 1983.

By the Chief, Policy and Rules Division.

1. A petition for rule making was filed March 18, 1983, by Colorado Broadcasting Corporation, Inc. ("petitioner"), seeking the substitution of Class C FM Channel 223 for 224A at Trinidad, Colorado, and modification of its license for Station KCRT(FM) (Channel 224A) to specify operation on Channel 223.

2. Petitioner submitted information in support of the proposal. It noted that the substitution of Class C Channel 223 would enable Station KCRT(FM) to serve a greater portion of southeastern Colodado and northern New Mexico

3. We believe that the petitioner's proposal warrants consideration. The channel can be substituted in accordance with the minimum distance separation requirements. In accordance with our established policy, we shall propose to modify the license of Station KCRT(FM) (Channel 224A) to specify operation on Channel 223. However, if another party should indicate an interest in the Class C assignment, the modification could not be implemented. Instead, an opportunity for the filing of a competing application may be provided. See *Cheyenne, Wyoming*, 62 F.C.C. 2d 63 (1976).

4 In order to provide a wide coverage area FM station, the Commission proposes to amend the FM Table of Assignments (§ 73 202(b)) of the Commission's Rules, as it pertains to Trinidad, Colorado, as follows:

City	Channel No.	
	Present	Proposed
Trinidad, Colorado	224A	223

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

6. Interested parties may file comments on or before August 4, 1983, and reply comments on or before August 19, 1983, and are advised to read the Appendix for the proper procedures.

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

8. For further information concerning this proceeding, contact Mark N. Lipp, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a *Notice of Proposed Rule Making* is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division Mass Media Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to

which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-of Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) a of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 83-17069 Filed 6-29-83; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 83-599; RM-4410]

TV Broadcast Stations in Carroll, Iowa; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the assignment of UHF Television Channel 52 to Carroll, Iowa, in response to a petition filed by Michael D. Pauley. The assignment could provide Carroll with its third television service.

DATES: Comments must be filed on or before August 5, 1983, and reply comments on or before August 22, 1983.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mark N. Lipp, Mass Media Bureau, (202) 634-6530.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Proposed Rule Making

In the matter of amendment of § 73.606(b), table of assignments, TV Broadcast Stations, (Carroll, Iowa); MM Docket No. 83-599, RM-4410.

Adopted: May 31, 1983.
Released: June 21, 1983.

By the Chief, Policy and Rules Division.

1. The Commission herein considers a petition for rule making filed March 25, 1983, by Michael D. Pauley ("petitioner"), seeking the assignment of UHF TV Channel 52 to Carroll, Iowa, as that community's third television assignment. Petitioner stated that he is currently an applicant for Channel 30 at Carroll.[1] However the site he has chosen for Channel 30 involves short-spacing problems to two applications at Omaha, Neb. and to an unoccupied allocation at Marshall, Minn. Petitioner asserts that the use of Channel 52 at Carroll would not involve spacing problems from its proposed site and therefore could result in the more prompt issuance of a construction permit to better serve the public interest. Petitioner states he will amend its pending application for Channel 30 to specify Channel 52 if the latter channel is assigned. Channel 52 can be assigned in compliance with the minimum distance separation requirements and other criteria.

2. Carroll (population 9,705)[2] seat of Carroll County (population 22,951) is located approximately 120 kilometers (75 miles) northwest of Des Moines, Iowa.

3. In view of the fact that Carroll, Iowa, could receive its third television broadcast service, the Commission finds that it would be in the public interest to seek comments on the proposal to amend the Television Table of Assignments (§ 73.606(b) of the Commission's Rules) for the following community:

City	Channel No.	
	Present	Proposed
Carroll, Iowa	*18-, 30+	*18-, 30+, and 52.

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

5. Interested parties may file comments on or before August 5, 1983, and reply coments on or before August 22, 1983, and are advised to read the Appendix for the proper procedures.

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend § 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Mark N. Lipp, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court

[1] The applicant is listed under the name of Television Development Assoc. of Iowa (BPCT-821203KE). No other applications for Channel 30 at Carroll are currently on file.

[2] Population figures are taken from the 1980 U.S. Census Advance Report.

review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment to which the reply is directed constitutes an *ex parte* presentation and shall not be considered in the proceeding.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082, 47 U.S.C. 154, 303)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other qppropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 83-17612 Filed 6-29-83; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 83-593; RM-4413]

TV Broadcast Stations in Eagle Pass, Texas; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the assignment of UHF Television Channel 16 to Eagle Pass, Texas, in response to a petition filed by Eagle Pass News Guide. The proposed assignment could provide a first television service to that community.

DATES: Comments musts be filed on or before August 4, 1983, and reply comments on or before August 19, 1983.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mark N. Lipp, Mass Media Bureau, (202) 634-6530.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Proposed Rule Making

In the Matter of: Amendment of § 76.606(b), table of Assignments, TV Broadcast Stations. (Eagle Pass, Texas) MM Docket No. 83-593, RM-4413.

Adopted: May 24, 1983.

Released: June 20, 1983.

By the Chief, Policy and Rules Division.

1. A petition for rule making was filed March 30, 1983, by Eagle Pass News Guide ("petitioner"), seeking the assignment of UHF television Channel 16 to Eagle Pass, Texas, as that community's first local television broadcast service. Petitioner submitted information in support of the proposal and expressed its interest in applying for the channel, if assigned. The channel can be assigned in compliance with the minimum distance separation requirements and other technical criteria.

2. Eagle Pass (population 21,407) [1] seat of Maverick County (population 31,398) is located in south Texas, approximately 208 kilometers (128 miles) southwest of San Antonio, Texas.

3. Since the assignment of UHF Channel 16 to Eagle Pass, Texas, is within 320 kilometers (199 miles) of the U.S.-Mexican border, the concurrence of the Mexican government must be obtained.

4. In view of the fact that Eagle Pass could receive its first local television broadcast service, we shall seek comments on the proposal to amend the Television Table of Assignments (§ 73.606(b) of the Commission's Rules) with respect to the following community:

City	Channel No.	
	Present	Proposed
Eagle Pass, Texas		16+

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures,

[1] Population figures are taken from the 1980 U.S. Census Advance Report..

and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

6. Interested parties may file comments on or before August 4, 1983, and reply comments on or before August 19, 1983, and are advised to read the Appendix for the proper procedures.

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

8. For further information concerning this proceeding, contact Mark N. Lipp, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a *Notice of Proposed Rule Making* is issued until the matter is no longer subject to Commission consideration, or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which they reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, *it is proposed to amend* the TV Table of Assignments, § 73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former peladings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 83-17810 Filed 6-29-83; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 90

[PR Docket No. 83-486]

Omnidirectional Antennas for Operational-Fixed Stations Operating in the 450–470 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment/reply comment period.

SUMMARY: The FCC is extending the time for submission of comments and reply comments in this Docket concerning the use of omnidirectional antennas by fixed stations operating in the 450–470 MHz band published at 48 FR 27797, June 17, 1983. The Commission has taken this action in order to give all interested parties ample opportunity to comment and to assure a complete record in the proceeding.

DATES: Comments are now due by July 22, 1983 and reply comments by August 12, 1983.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Eugene Thomson, Private Radio Bureau, (202) 634–2443.

List of Subjects in 47 CFR Part 90

Private land mobile radio services, Operational-fixed stations.

Order Extending Comment Period

In the matter of Amendment of Subpart K of Part 90 of the Commission's Rules and Regulations to Permit the use of Omnidirectional Antennas with Operational-Fixed Stations Operating on Assignments in the 450–470 MHz Band; PR Docket 83–486, RM–4230.

Adopted: June 20, 1983.

Released: June 22, 1983.

By the Chief, Private Radio Bureau.

1. On May 12, 1983, the Commission adopted a Notice of Proposed Rule Making in the above captioned matter. This Notice was released on May 23, 1983 (FCC 83–220, Mimeo 33249) and specified that comments were due on or

before June 22, 1983 and reply comments were due on or before July 7, 1983.

2. The Notice of Proposed Rule Making, however, was printed in the Federal Register on June 17, 1983 (48 FR 27797), making the June 22, 1983 due date for comments unrealistic. Consequently, we are extending the comment period in this proceeding.

3. Accordingly, *it is ordered*, pursuant to the authority set forth in § 0.331 of the Commission's Rules and Regulations, that interested parties will have until July 22, 1983 to file comments and until August 12, 1983 to file reply comments in this proceeding.

Federal Communications Commission.

James C. McKinney,

Chief, Private Radio Bureau.

[FR Doc. 83-17811 Filed 6-29-83; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 575

[Docket No. 83-09; Notice 1]

Consumer Information Regulations; Vehicle Stopping Distance

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Response to petition for rulemaking and notice of proposed rulemaking.

SUMMARY: This notice responds to a petition by General Motors Corporation (GM) asking the agency to rescind its requirements that information on stopping distances for new passenger cars and motorcycles be provided by the manufacturers to first purchasers, prospective purchasers, and this agency. NHTSA has reexamined those requirements as a result of the petition, and decided to grant the petition in part and to deny it in part. The agency is granting GM's request to delete the requirement that stopping distance information be provided to first purchasers of new vehicles at the time the vehicle is delivered. This notice proposes that this requirement be deleted, because the agency has tentatively concluded that the information given to consumers after they have purchased a new vehicle does not serve a significant safety purpose. Based on cost information provided by GM, the agency estimates that, if this proposal is adopted as a final rule, the auto industry would save over one million dollars annually.

The rest of GM's petition, asking that stopping distance information not be required to be provided to prospective purchasers through dealers of new passenger cars and motorcycles and to this agency, is denied. Prospective purchasers can obtain this information from dealers and this agency before they select and buy a particular model of vehicle. The information could, therefore, be used to serve a valuable purpose.

DATE: *Comment closing date:* Comments on this notice must be received on or before August 5, 1983.

ADDRESS: All comments on this notice should refer to the docket and notice numbers for this rulemaking action and be submitted to Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590. Docket hours are 8:00 a.m. to 4:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Charles Gauthier, Office of Market Incentives, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590 (202-426-1740).

SUPPLEMENTARY INFORMATION: This notice proposes a change to the requirements of 49 CFR Part 575, *Consumer Information Regulations*. That part sets forth certain information which motor vehicle manufacturers must furnish to consumers through several sources. This action relates specifically to § 575.101, which requires manufacturers of passenger cars and motorcycles to furnish information on vehicle stopping distances under specified speed, brake, loading, and pavement conditions. This information is obtained by the vehicle manufacturers from the results of tests performed to ensure compliance with Federal Motor Vehicle Safety Standard No. 105, *Hydraulic Brake Systems* (49 CFR 571.105).

Manufacturers are required to provide this information to consumers via three separate sources. First, § 575.6(a) requires manufacturers to provide the first purchasers of new vehicles with stopping distance information at the time of delivery of a new vehicle. Second, § 575.6(c) requires that stopping distance information be provided by the manufacturers to all the manufacturer's dealers, so that prospective purchasers can examine the information at no cost. Third, § 575.6(d) requires the information to be provided by the manufacturers to NHTSA, so that it can be made available to the public in NHTSA's technical reference library and upon request.

This action is being taken pursuant to a petition for rulemaking filed by General Motors Corporation (GM). The petition asks that the consumer information regulations in § 575.101, *Vehicle Stopping Distance*, and § 575.102, *Tire Reserve Load*, be rescinded. NHTSA has already published a final rule revoking § 575.102 at 47 FR 24593, June 7, 1982, so that portion of the GM petition is moot. GM contended that these regulations should be rescinded for four reasons. Those reasons were:

(1) The information is not actually used by consumers;

(2) The information does not provide a meaningful comparison between different vehicles;

(3) The information can be counterproductive by misleading vehicle users; and

(4) Dissemination of the information is an unnecessary economic burden on the manufacturers.

In support of its contention that the information was not being used by consumers, GM provided a survey of 162 of its dealers. Of these 162 dealers, 140 had not received any requests for the stopping distance information, while 22 had received such requests. The latter group of dealers received an average of five requests each. GM asserted that this survey demonstrated its point that consumers do not actually use stopping distance information when deciding which car to buy.

Regarding its contention that the stopping distances of different models do not provide a basis for a meaningful comparison, GM's petition asserted that "because of the very severe nature of FMVSS 105", many vehicles are going to report stopping distances which are the maximum stopping distance permitted by that standard, or values very close to the maximum permitted. The fact that stopping distances will be clustered around one value suggests to GM that consumers will either overemphasize the importance of minor differences in stopping distances, or that the information will not be helpful at all to the consumer.

GM's assertion that the information could mislead vehicle users seems to have been directed entirely toward the tire reserve load information requirements, because the petition provided no supporting rationale for the assertion as it applies to the stopping distance requirements. The agency is not aware of complaints from any other parties that the stopping distance information could mislead vehicle users, nor can the agency itself perceive how this information could have that effect.

Absent some explanation of this contention, NHTSA will assume that GM was addressing this contention solely to the tire reserve load requirements, and NHTSA will not respond further to that contention in this notice.

To support its point concerning the costs, GM stated that it must spend $100,000 annually to provide stopping distance information to its dealers and to NHTSA, and another $420,000 annually to furnish the information to all first purchasers. Based on its own costs, GM estimated that the dissemination of the stopping distance information costs the entire industry $1,384,000 annually, and, GM asserted, this cost is incurred without yielding any benefits to the car-buying public.

As a result of this petition, NHTSA has reexamined the benefits of its stopping distance information requirements, and come to the following tentative conclusions. The agency does not agree with GM that the stopping distance information is not meaningful for consumers. GM's assertion that all models will be tightly clustered around the maximum stopping distance permitted by Standard No. 105 is true for some manufacturers. For instance, both Ford and Chrysler reported that all of their domestically produced 1982 models stop in the exact maximum distance permitted by Standard No. 105. However, the same data showed that, according to the manufacturer's own reported measurements, a typical GM model needs five percent less distance in which to stop than comparable Ford or Chrysler models. Information like this could be helpful to consumers.

Further, and contrary to GM's assertion, there were wide variations in the reported stopping distances. The reported distances varied from 136.7 feet to 194 feet, a range of 30 percent. Comparable models also showed some significant variations in reported stopping distances. Hence, while the reported distances do support GM's contention that they will be tightly grouped around the maximum allowed by Standard 105 for some companies, overall there were noticeable differences in the reported stopping distances for 1982 model year passenger cars.

NHTSA recognizes that the stopping distance information may not be considered by consumers to the same extent as cost or standard and optional equipment in deciding which new car to buy. However, it is a piece of safety information which is now available to consumers, and can be used to aid consumers in choosing between available vehicles. The fact that 14 percent of the dealerships surveyed by GM received requests for stopping distance information indicates that the information is being used by the public and NHTSA is reluctant to curtail the amount of information available to the public when that information is reliable and can be provided at a reasonable cost. Accordingly, the agency is not proposing to delete all aspects of the requirement that manufacturers disseminate the stopping distance information.

However, NHTSA does see some merit in GM's contention that one aspect of the present infomation dissemination requirements, the requirement to provide information to first purchasers, imposes unnecessary costs on the manufacturers. The primary value in having the information dissemination requirements for vehicle stopping distance is to enable prospective purchasers to obtain as much comparative information as they can before deciding which new car to buy. At the time of delivery of the new vehicle, the consumer has already decided which car he or she will buy and purchased the car. Hence, the information on stopping distance is provided too late to aid in the making of that decision. NHTSA cannot see any value to the consumer in receiving the stopping distance information at this time. Accordingly, this notice proposes to delete the requirement that stopping distance information be provided to first purchasers at the time of delivery of a new vehicle.

In its petition, GM stated that its annual costs for disseminating the stopping distance information were $520,000; $420,000 of which was incurred from providing the information to first purchasers. GM also estimated that the total costs for the entire auto industry to disseminate the stopping distance information were $1,384,000 annually. Assuming that these costs are incurred in the same ratio for the entire industry as they are for GM, the agency estimates the costs for providing the information to first purchasers at $1,118,000 annually. This sum would be saved if this proposed action is adopted as a final rule.

NHTSA is interested in learning whether there is a better way to ensure the continuing availability of stopping distance information for subsequent purchasers of the vehicles. The information could be used by them to help determine which used car to buy. The current practice of printing the information in the owner's manual or a separate consumer information booklet is useful to subsequent purchasers only if the owner's manual or consumer information booklet remains with the car. This does not always happen, especially in the case of the booklets. A better way could be to require the stopping distance information to appear on labels which are permanently attached to the vehicle (inside the glove compartment or on the door post of the driver's door). It appears that this could be achieved with small additional cost. NHTSA specifically requests comments on the feasibility of this alternative and any other alternatives which could more effectively disseminate this information to subsequent purchasers.

After reexamining the requirements that the stopping distance information be furnished to prospective purchasers via dealers of the manufacturer's vehicles and to this agency, NHTSA has decided to deny GM's petition to change those requirements. The information can be obtained by consumers from these sources at no cost before they decide which model to buy. Thus, it can serve a useful purpose. It can serve that purpose for $266,000 annually based on GM's estimate of total industry costs and GM's ratio of total stopping distance dissemination costs to those associated with first purchasers. That is equivalent to a cost of three cents for each car sold in a year, based on an annual figure of 8 million new passenger car sales. When an information program about an important aspect of vehicle safety performance can be carried out at this relatively insignificant cost, and in a manner which assures it is available to all interested consumers, NHTSA concludes that the program should be retained.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must be limited not to exceed 15 pages in length. Necessary attachments may be appended to these submissions without regard to the 15 page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the

agency's confidential business information regulation (49 CFR 512).

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

NHTSA has analyzed the impacts of this proposal and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. As noted above, the anticipated impacts of this proposal if adopted as a final rule would be to save passenger car and motorcycle manufacturers as a group about $1 million annually. This savings would amount to about 3 cents per vehicle, based on annual sales of 8 million new vehicles. No impacts are foreseen on the dealers or for the public. The public could still obtain this information before they buy a particular vehicle. Accordingly, a full regulatory evaluation has not been prepared for this proposal.

The agency has also considered the impacts of this proposal as required by the Regulatory Flexibility Act. I certify that this rule would not have a significant economic impact on a substantial number of small entities. The agency believes that few if any of the passenger car and motorcycle manufacturers are small entities. To the extent that some may be small entities, the savings from this proposed action would be minimal, since the effect of this action on new vehicle prices would be negligible at most, small organizations and governmental units would not be affected by this proposal if it is adopted as a final rule, nor would new vehicle dealers.

Finally, the agency has considered the environmental implications of this proposal in accordance with the National Environmental Policy Act of 1969 and determined that it would not significantly affect the human environment.

List of Subjects in 49 CFR Part 575

Consumer protection, Labeling, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 575—[AMENDED]

In consideration of the foregoing, it is proposed that 49 CFR Part 575 be revised by amending the first sentence of § 575.6(a) to read as follows:

§ 575.6 Requirements.

(a) At the time a motor vehicle is delivered to the first purchaser for purposes other than resale, the manufacturer of that vehicle shall provide to that purchaser, in writing and in the English language, the information specified in §§ 575.103 and 575.104 of this part that is applicable to that vehicle and its tires. * * *

* * * * *

(Secs. 103, 112, 119, Pub. L. 80-563, 80 Stat. 718 (15 U.S.C. 1392, 1401, 1407); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on June 24, 1983.

Kennerly H. Digges,

Acting Associate Administrator for Rulemaking.

[FR Doc. 83-17677 Filed 6-29-83; 8:45 am]

BILLING CODE 4910-59-M

Notices

Federal Register
Vol. 48, No. 127
Thursday, June 30, 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.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Agreement Regarding Expedited Council Review for Soil Conservation Service (SCS) Projects Funded Under the Jobs Bill of 1983 (98-8)

AGENCY: Advisory Council on Historic Preservation (ACHP).

ACTION: Notice.

SUMMARY: This notice provides information about and invites comments on a proposed Programmatic Memorandum of Agreement providing for expedited Council review of Soil Conservation Service Projects funded pursuant to the Jobs Bill of 1983 (98-8).

DATE: Comments must be submitted on or before August 1, 1983.

ADDRESS: Executive Director, Advisory Council on Historic Preservation, 1522 K Street, NW., Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT: Dr. Janet Friedman, 1522 K Street, NW., Washington, D.C. 20005, 202-254-3974.

SUPPLEMENTARY INFORMATION: The time constraints imposed by the goals of the Jobs Bill necessitate expedited Council review to ensure that historic properties are adequately considered during the planning of SCS projects, while permitting construction to proceed as rapidly as possible. The proposed memorandum of Agreement will provide the mechanism for increased SCS internal review and reduced Council involvement. Interested parties are encouraged to obtain a copy of the proposed Programmatic Memorandum of Agreement from the Council and submit comments.

Dated: June 23, 1983.

Robert R. Garvey, Jr.,
Executive Director.

[FR Doc. 83-17581 Filed 6-29-83; 8:45 am]
BILLING CODE 4310-10-M

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Debtor Appeal Rights

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Notice of implementation of procedures establishing debtor rights to reconsideration and appeal.

SUMMARY: The Manager of the Federal Crop Insurance Corporation (FCIC) herewith gives notice of the establishment of procedures for reconsideration and appeal of FCIC determinations on debts owed to FCIC by policyholders. The intended effect of this notice is to set forth policies and procedures relative to such reconsideration and appeal and establish the right to hearing by a debtor.

EFFECTIVE DATE: June 13, 1983.

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

SUPPLEMENTARY INFORMATION: This action relates to internal agency management. Therefore it is found upon good cause that notice and other public procedure with respect thereto are impractical and contrary to the public interest and good cause is found for making this action effective immediately.

Further, since this action relates to internal agency management, it is exempt from the provisions of Executive Order No. 12291.

Background

On June 13, 1983, FCIC implemented procedures establishing the right of appeal for person indebted to FCIC for overpayment of indemnity and/or non-payment of premium. The Debtor Appeal Rights as contained in the agency system of operation are published herewith as a notice for the general information of the public.

Debtor Appeal Rights

I. Purpose

This issuance sets forth policies and procedure for the handling of appeals by debtors.

II. Right of Appeal

Any person (producer), determined to be indebted to the Federal Crop Insurance Corporation (FCIC) for overpaid indemnity(ies), or non-payment of premium, shall have the right to a reconsideration or appeal of the determination before the District Director or the Director of the Field Operations Office, and further appeal to the Director, Kansas City Operations Office of the Corporation.

III. Mailing Appeal

Written requests for reconsideration or appeal must be received by the Director, Attn: Hearing Officer, Kansas City Operations Office, Federal Crop Insurance Corporation, P.O. Box 293, Kansas City, Missouri 64141, within 20 days of the date of notification of indebtedness.

IV. Documentation

Each request for reconsideration or appeal shall be in writing and signed by the person determined to be indebted or by an authorized representative. Each request for reconsideration or appeal shall be supported by a written statement of facts, which may be submitted with, or as a part of the request for reconsideration or appeal, or at any time prior to the hearing.

V. Informal Hearing

The producer or an authorized representative may request an informal hearing or may request a determination by the Reviewing Officer without a hearing on the basis of the written statement and supporting data submitted by such producer and other information available to the Reviewing Officer. The hearing shall be held at the time and place designated by the Reviewing Officer, taking into consideration the convenience to the producer.

A. *Reviewing Officer.* The hearing shall be conducted by the Reviewing Officer in the manner deemed most likely to obtain the facts relevant to the issue at hand. The producer shall be advised of the issues involved. The Reviewing Officer may confine the presentation of facts and evidence to pertinent matters under consideration and may exclude irrelevant, immaterial, or unduly repetitious evidence, information, or questions.

B. *Producer or Representative.* The producer or an authorized representative shall be given a full and complete opportunity to present facts and information relevant to the issue and may present oral or documentary evidence. At the discretion of the Reviewing Officer, persons other than those appearing on behalf of the producer may be permitted to present information or evidence at such hearing or be questioned by the producer or the producer's authorized representative.

VI. Hearing Report

The Reviewing Officer shall have prepared a written record containing a clear and concise statement of the facts as asserted by

the producer or the producer's authorized representative and any material facts found by the Reviewing Officer. Such record shall include the names of interested persons appearing at the hearing. Any documents presented in evidence shall be identified. A verbatim transcript may be taken, including transcript taken by electronic means, if (1) (a) the producer or the producer's authorized representative agree to provide for such transcript, (b) agrees to pay for the expense thereof, and (c) agrees that the Corporation may purchase a copy of such transcript if it deems a copy necessary, of (2) the Reviewing Officer determines that the nature or extent of the case is such as to make such transcript desirable. When the producer or the producer's authorized representative request copies of documents, information, or evidence upon which a determination is made or which will form the basis of such determination, copies of such documents, information, or evidence shall be be made available.

VII. Absented Producer or Representative

If, at the time scheduled for such hearing, the producer is absent and no appearance is made by an authorized representative on the producer's behalf, the Reviewing Officer shall, after a lapse of such period of time as is deemed proper and reasonable, may close the hearing, or may at his discretion, accept information and evidence submitted by other persons present at the hearing.

VIII. Hearing Determination

An appeal from a determination made at such hearing may be made to the Director, Kansas City Operations Office, Federal Crop Insurance Corporation, under the same provisions as described herein within 20 days of the notification of such determination, except that the location for such appeal hearing shall be in the Federal Crop Insurance Corporation's facility in Kansas City, Missouri. The Reviewing Officer for such appeal hearing shall be the Director, Kansas City Operations Office, or his designee. The determination made at the conclusion of the hearing and the summarization of information and evidence presented as to the issues considered or appealed, shall be provided to the producer and/or the producer's authorized representative and such determination shall be binding upon the producer and shall not be appealable.

Done in Washington, D.C., on June 22, 1983.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Dated: June 22, 1983.

Approved by:

Michael A. Bronsum,

Acting Manager.

[FR Doc. 83-17620 Filed 6-29-83; 8:45 am]

BILLING CODE 3410-08-M

Forest Service

Idaho, Montana, North Dakota: Northern Regional Guide Record of Decision

AGENCY: Forest Service, USDA.

ACTION: Revised Record of Decision: On June 10, 1983, Forest Service Chief R. Max Peterson signed the revised Record of Decision for the Northern Regional Guide. The selected Northern Region standards and guidelines will not become effective until at least 30 days after this notice of availability.

ADDRESSES: Request for further information should be addressed to: Regional Forester Tom Coston, Northern Region, Forest Service, USDA, P.O. Box 7669, Missoula, MT 59807.

J. B. Arthur,

Acting Regional Forester.

[FR Doc. 83-17567 Filed 6-29-83; 8:45 am]

BILLING CODE 3410-11-M

Payette National Forest Grazing Advisory Board; Meeting

June 16, 1983.

The Payette National Forest Grazing Advisory Board will meet at 12:00, July 21, 1983 at the District Forest Ranger's Office, Council, Idaho. The purpose of this meeting is for the election of new Officers for 1983 and to tour the boundary fence line between the Boise Cascade Corporation lands and the Forest Service on the Council Mountain C&H allotment. We will also discuss the proposed Corral site as agreed at the 1983 annual Board meeting.

The meeting will be open to the public. Persons who wish to attend should notify Pete Pierson, Range Staff Officer, Payette National Forest, McCall, Idaho, 634-2255. Written statements may be filed with the Board before or after the meeting.

Dated: June 21, 1983.

Kenneth D. Weyers,

Forest Supervisor.

[FR Doc. 83-17628 Filed 6-29-83; 8:45 am]

BILLING CODE 3410-11-M

CIVIL AERONAUTICS BOARD

[83-6-113]

Application of Talarik Creek Air Taxi for Certificate Authority

AGENCY: Civil Aeronautics Board.

ACTION: Notice of order to show cause (83-6-113).

SUMMARY: The Board is proposing to find Talarik Creek Air Taxi fit, willing, and able and to issue a certificate of public convenience and necessity authorizing it to provide scheduled interstate and overseas air transportation of persons, property, and mail between all points in the United States, its territories and possessions, and all-cargo service between Anchorage and Iliamna, Alaska.

DATES: Objections: All interested persons having objections to the Board issuing the proposed certificate shall file, and serve upon all persons listed below no later than July 25, 1983, a statement of objections, together with a summary of testimony, statistical data, and other material expected to be relied upon to support the objections.

ADDRESS: Objections to the issuance of a final order should be filed in Docket 41421 and should be addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Samuel E. Whitehorn, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428; (202) 673-5450.

SUPPLEMENTARY INFORMATION: The complete text of Order 83-6-113 is available from the Distribution Section, Room 100, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 83-6-113 to that address.

By the Civil Aeronautics Board: June 24, 1983.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 83-17669 Filed 6-29-83; 8:45 am]

BILLING CODE 6320-01-M

[Order 83-6-104; Docket No. 41560]

South Seas Airlines Fitness Investigation

AGENCY: Civil Aeronautics Board.

ACTION: Notice of order instituting investigation: order 83-6-104, Docket 41560.

SUMMARY: The Board is instituting the South Seas Airlines Fitness Investigation to determine the fitness of South Seas Airlines to engage in scheduled foreign, interstate and overseas air transportation of persons, property and mail between the terminal point Honolulu, Hawaii, the intermediate point Rarotonga, Cook Islands, and the terminal points Papeete, French Polynesia, Pago Pago, American Samoa, and Nadi, Fiji. If the carrier is found fit it will receive a certificate of

public convenience and necessity authorizing such air transportation.

DATE: Persons wishing to file requests for additional evidence or petitions to intervene in the South Seas Airlines Fitness Investigation shall file their requests and petitions in Docket 41560 by July 18, 1983, and serve such filings on all persons listed below.

ADDRESSES: All pleadings should be filed in the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428 in Docket 41560, South Seas Airlines Fitness Investigation.

In addition, copies of such filings should be served on: South Seas Airlines, the Hawaii Department of Transportation, the Governor of American Samoa, the Mayors and airport managers of Honolulu and Pago Pago, the U.S. Departments of State and Transportation, and the Ambassador of New Zealand in Washington, D.C.

Service will also be required on any other persons filing petitions.

FOR FURTHER INFORMATION CONTACT: Don Hainbach, Bureau of International Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, (202) 673–5035.

SUPPLEMENTARY INFORMATION: The complete text of Order 83–6 –104 is available from our Distribution Section, Room 100, 1825 Conecticut Avenue, N.W., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 83–6 –104 to the Distribution Section, Civil Aeronautics Board, Washington, D.C. 20428.

By the Civil Aeronautics Board: June 23, 1983.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 83-17698 Filed 6-29-83; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

University of California; Decision on Application for Duty-Free Entry of Scientific Instrument

The following is a decision on an application for duty-free entry of a scientific instrument pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89–651, 80 Stat. 897) and the regulations issued pursuant thereto (15 CFR Part 301 as amended by 47 FR 32517).

A copy of the record pertaining to this decision is available for public review between 8:30 AM and 5:00 PM in Room 1523, Statutory Import Programs Staff, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket No. 83–156. Applicant: University of California, Lawrence Livermore National Laboratory, P.O. Box 5012, Livermore, CA 94550. Instrument: Electron Probe X-Ray Microanalyzer Model #JXA–733 with Accessories. Manufacturer: JEOL, Inc., Japan. Intended use of instrument: See notice on page 13476 in the **Federal Register** of March 31, 1983.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument has a eucentric goniometer stage and a secondary electron image resolution of 70 Angstroms. The National Bureau of Standards advises in its memorandum dated May 20, 1983 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 83-17633 Filed 6-29-83; 8:45 am]

BILLING CODE 3510-25-M

Indiana University; Decision on Application for Duty-Free Entry of Scientific Instrument

The following is a decision on an application for duty-free entry of a scientific instrument pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897) and the regulations issued pursuant thereto (15 CFR Part 301 as amended by 47 FR 32517).

A copy of the record pertaining to this decision is available for public review between 8:30 a.m. and 5:00 p.m. in Room 1523, Statutory Import Programs Staff, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket No. 83–92. Applicant: Indiana University, 1101 E. 17th Street, Bloomington, IN 47495. Instrument: Dual Probe Evaporimeter, Model 2102. Manufacturer: Servo Med, Sweden. Intended use of instrument: See notice on page 1529 in the **Federal Register** of January 13, 1983.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument can continuously measure the evaporative heat loss from the skin of living primates. The Department of Health and Human Services advises in its memorandum dated May 18, 1983 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 83-17634 Filed 6-29-83; 8:45 am]

BILLING CODE 3510-25-M

Colorado State University; Decision on Application for Duty-Free Entry of Scientific Instrument

The Following is a decision on an application for duty-free entry of a scientific instrument pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897) and the regulations issued pursuant thereto (15 CFR Part 301 as amended by 47 FR 32517).

A copy of the record pertaining to this decision is available for public review between 8:30 a.m. and 5:00 p.m. in Room 1523, Statutory Import Programs Staff,

U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket No. 83-130. Applicant: Colorado State University Department of Chemistry, Ft. Collins, CO 80523. Instrument: Klystron Tube, VKQ 2424N. Manufacturer: Varian Canada Inc., Canada. Intended use of instrument: See notice on page 13215 in the Federal Register of March 30, 1983.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, is being manufactured in the United States.

Reasons: The foreign Instrument can generate 40 Gigahertz microwave frequencies at 100 watts. The National Bureau of Standards advises in its memorandum dated May 12, 1983 that: (1) The capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 83-17636 Filed 6-29-83; 8:45 am]

BILLING CODE 3510-25-M

University of Florida, J. Hillis Miller Health Center; Decision on Application for Duty-Free Entry of Scientific Instrument

The following is a decision on an application for duty-free entry of a scientific instrument pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued pursuant thereto (15 CFR Part 301 as amended by 47 FR 32517).

A copy of the record pertaining to this decision is available for public review between 8:30 AM and 5:00 PM in Room 1523, Statutory Import Programs Staff, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket No. 83-86. Applicant: University of Florida, J. Hillis Miller Health Center, Division of Urolgy, Box J-247, Room No. N2-11, Gainesville, FL 32610. Instrument: Rotating Prism. Manufacturer: Rank Brothers, United Kingdom. Intended use of instrument: See notice on page 56534 in the Federal Register December 17, 1982.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, is being manufactured in the United States.

Reasons: The application relates to a compatible accessory for an instrument that has been previously imported for the use of the applicant institution. The accessory is being furnished by the manufacturer which produced the instrument with which it is intended to be used. We are advised by the Department of Health and Human Services in its memorandum dated May 18, 1983 that the accessory is pertinent to the applicant's intended uses and that it knows of no comparable domestic accessory.

The Department of Commerce knows of no similar accessory being manufactured in the United States which is interchangeable with or can be readily adapted to the instrument with which the accessory is intended to be used.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 83-17637 Filed 6-29-83; 8:45 am]

BILLING CODE 3510-25-M

University of Illinois at Urbana-Champaign; Decision on Application for Duty-Free Entry of Scientific Instrument

The following is a decision on an application for duty-free entry of a scientific instrument pursuant to Section 6(c) of Educational, Scientific, and Cultural Materials importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued pursuant thereto (15 CFR Part 301 as amended by 47 FR 32517).

A copy of the record pertaining to this decision is available for public review between 8:30 AM and 5:00 PM in Room 1523, Statutory Import Programs Staff, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket No. 83-149. Applicant: University of Illinois at Urbana-Champaign, Purchasing Division, 223 Administration Bldg., Urbana, IL 61801. Instrument: Superconducting Magnet System, 11.7 Tesla, 41mm RT Bore, Persistent. Manufacturer: Oxford Instruments, Ltd., United Kingdom. Intended use of instrument: See notice on page 13215 in the Federal Register of March 30, 1983.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, was being manufactured in the United States at the time the foreign instrument was ordered (February 17, 1983).

Reasons: The foreign instrument is an 11.7 Tesla, 41 millimeter room temperature bore persistent superconducting magnet with a field stability net drift of less than one part in 10^7. The National Bureau of Standards advises in its memorandum dated June 7, 1983 that: (10) the characteristics of the foreign instrument described above are pertinent to the applicant's intended purpose and (2) it knows of no instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use which was being manufactured in the United States at the time the foreign instrument was ordered.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, which was being manufactured in the United States at the time the foreign instrument was ordered.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 83-17635 Filed 6-29-83; 8:45 am]

BILLING CODE 3510-25-M

Importers and Retailers' Textile Advisory Committee; Open Meeting

A meeting of the Importers and Retailers' Textile Advisory Committee will be held July 19, 1983, 10:30 a.m., Herbert C. Hoover Building, Room 4830, 14th Street and Constitution Avenue, N.W., Washington, D.C. (The Committee

was established by the Secretary of Commerce on August 16, 1963 to advise U.S. Government officials on problems and conditions in the textile and apparel industry.)

Agenda: Review of import trends, implementation of textile agreements, report on conditions in the domestic market, and other business.

The meeting will be open to the public with a limited number of seats available. For further information or copies of the minutes contact Helen L. LeGrande (202) 377–3737.

Dated: June 27, 1983.

Walter C. Lenahan,

Deputy Assistant Secretary for Textiles and Apparel.

[FR Doc. 83-17838 Filed 6-29-83; 8:45 am]

BILLING CODE 3510-25-M

National Bureau of Standards

National Voluntary Laboratory Accreditation Program; Fees for the Electromagnetic Calibration Services Laboratory Accreditation Program

AGENCY: National Bureau of Standards, Commerce.

ACTION: Notice of fees for accrediting laboratories that provide electromagnetic calibration services.

SUMMARY: Under the National Voluntary Laboratory Accreditation Program (NVLAP), the National Bureau of Standards (NBS) announces the fees for the laboratory accreditation program (LAP) for laboratories that provide electromagnetic calibration services for microwave power, attenuation, and reflection coefficient (the "Calibration LAPP"). A separate notice appearing in this issue of the **Federal Register** describes the accreditation process for the Calibration LAP. Laboratories that are interested in becoming accredited under this LAP may request an application package by contacting the Manager, Laboratory Accreditation, National Bureau of Standards.

EFFECTIVE DATE: August 1, 1983.

FOR FURTHER INFORMATION CONTACT: John W. Locke, Manager, Laboratory Accreditation, National Bureau of Standards, TECH B141, Washington, DC 20234; (301) 921–3431.

SUPPLEMENTARY INFORMATION:

Background. In a separate notice in this issue of the **Federal Register**, NBS announced the formal establishment of a laboratory accreditation program (LAP) for laboratories that provide electromagnetic calibration services for microwave power, attenuation, and reflection coefficient (the "Calibration LAP"). Pursuant to paragraph (a) of section 7a.10 of the NVLAP Procedures (5 CFR 7a.10(a)), notice is hereby given of the fees which the Director of the National Bureau of Standards (NBS) has established for the Calibration LAP.

Basis of Fees. NVLAP fees are established on the basis of recovering all of the operational costs incurred in evaluating laboratories seeking accreditation. The accreditation fee consists of several parts, administrative and LAP specific, which cover handling applications, administering proficiency testing, preparing evaluation reports and certificates, as well as the work-hours, travel and per diem costs of assessors used in the evaluation process.

Monitoring Visits. The accreditation fee also includes an incremental factor to cover the costs associated with conducting monitoring visits to accredited laboratories. The purpose of these monitoring visits is to review the performance of the laboratories between regularly scheduled visits. Laboratories will be selected for these monitoring visits either randomly or in response to problems perceived by the evaluation team. The laboratories may or may not be contacted in advance of such monitoring visits.

Fees for Foreign Laboratories. Foreign laboratories are offered NVLAP accreditation on the same basis and under the same criteria as required of domestic laboratories. However, the cost of the assessor's travel time and expenses and the cost of mailing proficiency testing materials outside of the continental United States will be added to the normal charges.

The specific fee schedule for the Calibration LAP is described below.

Dated: June 23, 1983

John W. Lyons,

Acting Director, National Bureau of Standards.

Calibration LAP Fee Schedule

The accreditation fee for the Calibration LAP is composed of several parts. Some parts of the fee are fixed while others vary depending on the scope of accreditation desired. While the total accreditation fee must be paid before accreditation can be granted, the various parts may be paid as the corresponding evaluation event occurs. The accreditation fee covers an accreditation period of two years.

Administrative Fee: This is a fixed fee of $800, payable when an application for initial or renewal accreditation is submitted. It covers processing an application, performing monitoring visits, preparing evaluation reports, and preparing accreditation certificates. This part of the accreditation fee must be paid when an application for accreditation is submitted.

Test Method Evaluation Fee: This is a one-time fee that covers the cost of evaluating and approving the measuring procedures which an applicant intends using in the conduct of its accredited work. The fee varies according to the complexity of the procedures under evaluation. The minimum fee will be $1,000. Any additional charges will be imposed at a rate of $500/workday for extra time required beyond two days to perform the evaluation. The test method evaluation fee is not expected to exceed a charge of $2,500. The fee will be communicated to the laboratory when the measuuring procedures are submitted for evaluation. This fee must be paid before the evaluation is begun.

LAP Enrollment Fee: This is a one-time fixed fee of $600 for new applicants in the Calibration LAP. It covers the extra costs involved in assessing a laboratory for the first time. This one-time fee must be paid prior to the on-site visit.

Assessment Fee: The assessment fee is intended to offset the costs of preparing assessors, performing on-site visits, and completing evaluations. The minimum fee will be $2,200. Any additional charges will be imposed based on a rate of $500/workday for extra assessor time required for visits expected to extend beyond two workdays. The on-site fee will be communicated to the laboratory upon receipt of an application which describes the scope of accreditation desired, and upon review of the laboratory's measuring procedures. This fee must be paid prior to the on-site visit.

Proficiency Testing Fee: The proficiency testing fee covers the cost of conducting Measurement Assurance Programs (MAPs) which satisfy LAP proficiency testing requirements. The particular MAP in which a laboratory participates depends on the scope of accreditation desired and on the measuring procedures employed. NBS will specify the MAP or MAPs after evaluating the laboratory's measuring procedures and scope of accreditation requested. The fees shown below cover only the operational cost of the MAPs. Operational costs per laboratory for various proficiency tests are:

Power MAP (For power levels of 1 mW to 10mW. Power levels beyond 10 mW require special artifacts and measurements. The cost will be established on an individual basis.) (2 bolometer mounts, 2 couplers)	$14,600
Attenuation MAP. (3 couplers, 4 pads)	11,500
Reflection Coefficient MAP. (3 couplers, 4 pads, 3 terminations)	13,500
Power and Attenuation, MAP. (2 bolometer mounts, 3 couplers,4 pads)	18,900

Power, Attenuation, and Reflection Coefficient MAP. (2 bolometer mounts, 3 couplers, 4 pads, 3 terminations)	21,000
Attenuation and Reflection Coefficient MAP. (3 couplers, 4 pads, 3 terminations)	13,500
Power and Reflection Coefficient MAP. (2 bolometer mounts, 3 couplers, 4 pads, 3 terminations)	$21,000
Connector Characterization:	
Waveguide (X or KU)	1,000
14 mm	2,000
3.5 mm	3,000
Type N	3,000

A development cost estimated to be $436,000, including purchase of artifacts, their characterization, and statistical programs for establishing laboratory performance will be incurred before the MAPs become operational. These one-time MAP development costs will be prorated among applicant laboratories as part of the accreditation fee. If 15 laboratories apply, these costs would amount to $29,000 per laboratory over and above the biennial operating costs.

Special Administrative Fee: Some applicant laboratories may have difficulty in correcting identified deficiencies promptly. NBS incurs administrative costs to maintain such applicants in an "active" status. If a laboratory has not completed all requirements for accreditation within two years from the first day of the next quarter following receipt of its application, it will be billed an administrative fee of $800 to continue its application in an active status. As an alternative, the laboratory may request that its application be suspended until such time that it is again ready to seek accreditation. The full accreditation fee will then be required.

Unusual Cost Fee: NBS reserves the reghts to impose extra fees for applicants requiring especially long or complex evaluations, or for applicants desiring faster service than the normal evaluation schedule allows. Extra fees will be discussed with the applicant before they are imposed or any fees collected.

Example Sample Calculation. Assume a laboratory requests initial accreditation for the following measurements using a computer driven six-port apparatus.

Measured quantity and range	Frequency	Limits of uncertainty	Remarks
RF Power:			
	0.3 GHz to 1.0 GHz	2%	Coaxial lines.
	1.0 GHz to 3.0 GHz	3%	Type N and 7 mm.
1.0mW to 10mW	3.0 GHz to 10.0 GHz	4%	
	10.0 GHz to 12.0 GHz	5%	
1.0mW to 10mW	6.0 Ghz to 12.0 GHz	3%	Waveguide X, KU.
RF Attenuation:			
0dB to 20dB		0.04 dB	Coaxial lines.
20dB to 30dB	10 MHz to 18 GHz	0.05 dB	Type N and 7 mm.
30dB to 40dB		0.06 dB	
40dB to 50dB		0.07 dB	
0dB to 20dB		0.04 dB	Waveguide.
20dB to 30dB	3 GHz to 18GHz	0.05 dB	X.
30dB to 40dB		0.06 dB	KU.
40dB to 50dB		0.07 dB	

[1] Does not include MAP development cost as described under the proficiency testing fee.

Administrative Fee	800
Test Method Evaluation Fee (Assume 3 days are necessary for evaluating the measuring procedures—one-time charge).	1,500
One-time LAP Enrollment Fee	600
Assessment Fee (Assume 3 days are necessary for conducting the on-site review).	2,700
Proficiency Testing Fee (Assume NBS has determined that a MAP consisting of power, attenuation, and reflection coefficient is required).	
MAP, 21,000	
Type N Connector, 3,000	
X Waveguide, 1,000	
KU Waveguide, 1,000	26,000
Total Accreditation Fee First Time: (for two year accreditation period) [1].	31,600
Total Biennial Renewal Fee:	29,500.

[FR Doc. 83-17467 Filed 6-29-83; 8:45 am]
BILLING CODE 3510-13-M

National Voluntary Laboratory Accreditation Program; Formal Establishment of Electromagnetic Calibration Services Laboratory Accreditation Program

AGENCY: National Bureau of Standards, Commerce.

ACTION: Notice of formal establishment of a program for accrediting laboratories that provide electromagnetic calibration services.

SUMMARY: Under the National Voluntary Laboratory Accreditation Program (NVLAP), the National Bureau of Standards (NBS) announces the formal establishment of a laboratory accreditation program (LAP) for laboratories that provide electromagnetic calibration services for microwave power, attenuation, and reflection coefficient (the "Calibration LAP"). A separate notice following this notice specifies the fees for this LAP. Laboratories which are interested in becoming accredited under the Calibration LAP may request an application package by contacting the Manager, Laboratory Accreditation, National Bureau of Standards.

DATES: Each laboratory which submits a completed application by August 1983, will be included among the initial group of laboratories to be evaluated for accreditation. Because of the lead time necessary in establishing and implementing measurement assurance programs which constitute the proficiency testing aspect of the LAP, on-site assessments are not expected to begin before December 1984. Accreditation of the first group of applicant laboratories is expected by April 1985. Laboratories that miss the application deadline will be included in subsequent groups.

FOR FURTHER INFORMATION CONTACT: John W. Locke, Manager, Laboratory Accreditation, National Bureau of Standards, TECH B141, Washington, DC 20234; (301) 921-3431.

SUPPLEMENTARY INFORMATION:

Background. This announcement is prepared in accordance with section

7a.8 of the NVLAP Procedures (15 CFR 7a.8). Establishment of this laboratory accreditation program (LAP) for electromagnetic calibration services for microwave power, attenuation, and reflection coefficient (the "Calibration LAP") follows the formal request of Bruno O. Weinschel of Weinschel Engineering, Gaithersburg, Maryland, as set out in his letter of February 23, 1977. Dr. Weinschel's letter identified two test methods for inclusion in the LAP. However, to the extent that laboratories have found it necessary to modify or supplement the requested test methods to maintain state-of-the-art, other test methods may be accredited as described in the final finding of need proceedings (47 FR 2146–2149, dated January 14, 1982), and expanded under the Scope section of this announcement.

As previously announced in the **Federal Register** (47 FR 14214, dated April 2, 1982), an informal public workshop was held at NBS (Boulder, CO) on July 1–2, 1982, to provide interested parties an opportunity to participate in the development of technical requirements for this LAP. A copy of the minutes of the workshop is available for inspection any copying in the Central Reference and Records Inspection Facility, Room 6622, Main Commerce Building, 14th Street between E Street and Constitution Avenue, NW, Washington, D.C. 20230.

The scope, definition, and process of accreditation, including on-site assessment and proficiency testing are described below.

Dated: June 23, 1983.

John W. Lyons,

Acting Director, National Bureau of Standards.

Scope of Accreditation

The scope of accreditation under the Calibration LAP involves electromagnetic power, attenuation, and reflection coefficient measurements. The test methods included are "IEEE Standard Specification and Test Methods for Fixed and Variable Attenuators, DC to 40 GHz (IEEE 470–1972)" and "IEEE Standard Application Guide for Bolometric Power Meters (IEEE 474–1973)." However, so as not to be overly restrictive in light of changing technology, other measurement methods may be employed. That is, laboratories may seek accreditation for alternate measurement methods in order to maintain state-of-the-art capability.

Full documentation for the measurement methods, including any alternative methods, employed must be submitted to NBS to evaluation. Approval of the methods used must be obtained from NBS and the applicant must demonstrate during an on-site assessment that the laboratory staff and equipment are capable of performing the methods described by the documentation. The documentation must cover the following:

1. Description of Service—what quantities are measured, in what range and to what accuracy, what tyes of instrument or device would be acceptable for calibration, which of the specifications are tested (i.e., temperature dependence), and what standard procedures (i.e., measurement methods) are used for performing the measurements and calibrations.

2. Design philosophy—what physical principles are used and what are their limitations with respect to the method chosen.

3. Description of system—specification of critical components and need for control of ambient conditions.

4. Operating procedure—a detailed description that would enable another operator to perform the measurement, including description of control programs for automated systems, computation of results, checks for errors, and any special skills required of the operator.

5. Analysis of uncertainties—theoretical estimate of limits of systematic uncertainties supported by experimental tests, description of how random uncertainties are determined, and statement of how estimated uncertainties are combined.

6. Evidence that the measurement process is in a state of statistical control—including check standards and provision of traceability to national reference standards (Maintenance of calibration records for quality control covering at least 25 independent calibrations of the system is required).

Range of Measurements and Level of Uncertainty

Accreditation will be granted for a range of measurements and measurement capability expressed as a limit of uncertainty. Each applicant laboratory must declare at the time of application the range and level of uncertainty of measurement for which it desires accreditation in terms of power, attenuation, and reflection coefficient versus frequency. The laboratory's measurement capability must be specified for each range and the uncertainty analysis must be supported by documentary evidence that the measurement process is in a state of statistical control. The NVLAP evaluation process determines the level of uncertainty with which the laboratory makes measurements under the conditions of the evaluation.

Measurement uncertainty must be defined in terms of reference to national standards maintained by NBS. Thus, the uncertainty to which a laboratory may be accredited must be a combination of the uncertainty of its own measurement process with that of the NBS calibration services or Measurement Assurance Program that provides traceability to national standards. Claims of measurement uncertainty better than those of NBS cannot be supported by accreditation.

Measurements beyond the range of calibration services offered by NBS may be accredited provided the extrapolation techniques used are supported by full documentation (see documentation requirements under "Scope of Accreditation") and are approved by NBS. The NVLAP evaluation process will determine if the uncertainly claimed is reasonable and appears to lie within the laboratory's capability to perform.

A laboratory may increase or alter the scope of its accreditation anytime during the accreditation period. The point of entry into the accreditation process and the corresponding charge depends on the nature of the proposed alteration. For example, a change in test procedures to provide a higher capability or a change in system architecture will require the submission of full documentation and a possible on-site verification. Adding only a different connector type however, would probably require proficiency demonstration through an artifact characterization.

This table in the Appendix is an example of how a laboratory's measurement capability may be expressed.

Definition of Accreditation

Accreditation is a recognition of a laboratory's competence. In the context of the Calibration LAP this means that all of the necessary elements are present at a laboratory for carrying out the measurement and calibration functions for which accreditation is granted, in terms of staff, equipment, procedures, quality control and all of the other items covered by the NVLAP criteria. Accreditation does not imply or warrant that a laboratory's measurements are or always will be performed within the level of uncertainty it has claimed and for which the laboratory is accredited. NBS does not monitor the daily operations of an accredited laboratory, and therefore is not responsible for either the quality of the work performed

or the fees charged by the laboratory. Accreditation is not a guarantee of performance.

Accreditation provides verification that a laboratory's measurement process is under statistical control with the level of its uncertainty traceable to NBS. Traceability is established by participation in a Measurement Assurance Program (MAP) on a continuing basis. A MAP allows a laboratory to demonstrate the level of its uncertainty through participation with NBS in the measurement and rigorous statistical analysis of a set of highly characterized artifacts. Participation in a MAP is required for accreditation under the Calibration LAP. The degree of participation depends on the scope of measurements for which the laboratory desires accreditation. A more detailed explanation of the MAP is covered in the Proficiency Testing section of this accouncement.

Successful participation in this LAP and its accompanying MAP will preclude the necessity for a laboratory to have its primary standards for microwave power and attenuation calibrated at NBS in the traditional sense, since the MAP effectively provides this calibration.

The process of evaluation described in this announcement is for the purpose of determining the soundness of a laboratory's measurement procedures and system. Laboratories are expected to follow scrupulously the procedures demonstrated during evaluation for every measurement for which accreditation is claimed, and must understand that failure to do so may be cause for instituting procedures leading to the revocation of accreditation.

Accreditation Process

Accreditation will be granted following successful completion of the following process: Submision of an application and payment of fees by the laboratory; Evaluation and approval of the laboratory's measurement techniques; On-site assessment; Proficiency testing; Deficiency resolution; Technical evaluation and administrative review. This process will be repeated with each accreditation renewal.

Requesting An Application. Any laboratory interested in becoming accredited for the Calibration should contact the Manager, Laboratory Accreditation, National Bureau of Standards, TECH B141, Washington, D.C. 20234, (301) 921–3431. No commitment by a laboratory will be inferred from a request for an application. The Manager, Laboratory Accreditation, will send an application package, but will take no further action unless and until a formal application for accreditation, included in the application package, is completed and returned.

Application Package. The application package will include an application form with instructions for providing documentation of the test procedures for which accreditation is sought, a fee schedule for estimating fees, and a Calibration LAP Handbook which describes requirements fo accreditation.

Fees. In a separate notice appearing in this issue of the **Federal Register**, NBS announces the fees for the Calibration LAP. The fees are composed of several parts which are associated with the accreditation process, all of which must be paid before accreditation is granted or renewed.

Enrollment. After submitting a completed application and paying the required accreditation fee, the measurement procedures which the laboratory proposes to use will be evaluated on and on-site visit will be scheduled. The laboratory will also be notified of any additional written information which must be supplied, and of any applicable proficiency testing requirements which must be completed prior to the on-site visit.

Basic Conditions for Accreditation. Under the NVLAP procedures, the laboratory management must agree in writing to the following basic conditions:

(1) Be examined and audited initially and on a continuing basis;

(2) Pay the required accreditation fees and charges;

(3) Avoid reference by itself and forbid others utilizing its services from referencing accredited status under NVLAP in consumer media and in product advertising or on product labels, containers and packaging or the contents therein, or in any other way which might convey the concept of product certification by the National Bureau of Standards or the Department of Commerce (Note: A NVLAP accredited laboratory may advertise its accredited status on its letterhead, brochures, and test reports as well a in trade publications and other laboratory services publications);

(4) Meet and maintain compliance with applicable general and specific criteria and with applicable requirements of the NVLAP Procedures (15 CFR Part 7a.19–7a.30); and

(5) Participate in proficiency testing that may be required for attaining or maintaining accreditation.

Criteria. The NVLAP general and specific criteria for evaluating laboratories, which are described in sections 7a.19–7a.30 of the NVLAP procedures (15 CFR Part 7a.19–7a.30), address a laboratory's orgnizational structure, technical management, professional and ethical business practices, and system for assuring the quality of test results. The criteria also address aspects of a laboratory directly related to the reliable performance of each test method for which the laboratory desires accreditation, including staff competence and training, facilities and equipment, test plans, calibration procedures, recordkeeping, data handling procedures, and quality control checks and audits.

On-site Visits. On-site visits to a laboratory's facilities are conducted prior to initial accreditation and thereafter on a regularly scheduled basis prior to each renewal to assess compliance with the NVLAP criteria. The on-site assessor will conduct an exit interview with the laboratory's management at the conclusion of an on-site visit to summarize the assessor's findings. Each laboratory will be notified whenever deficiencies are identified and will be given an opportunity to correct such deficiencies before formal accreditation recommendations are prepared or any action is commenced to revoke accreditation. The laboratory must permit the on-site assessor to review and examine any records or other documents required by the criteria. Also, if an appeal requesting a hearing under 5 U.S.C 556 has been instituted under the NVLAP Procedures, the laboratory shall permit NBS personnel to review and copy any records or other documents required by the criteria. Failure of the laboratory to cooperate with the on-site assessor may be grounds for instituting adverse accreditation action.

Monitoring Visits. In addition to regular on-site visits, monitoring visits of limited scope are used to assure that accredited laboratories continue to comply w:'h the criteria. Laboratories will be selected for these monitoring visits either randomly or in response to problems perceived by the evaluation team. The laboratories may or may not be contacted in advance of such monitoriing visits.

Proficiency Testing Proficiency testing is an integral part of the NVLAP accreditation process. Accordingly, NBS has determined that in order to be eligible for accreditation under the Calibration LAP, a laboratory must perform proficiency testing by participating in Measurement Assurance Programs (MAPs.) commensurate with the scope of accreditation desired. MAP

packages consisting of sets of highly characterized artifacts are sent to a laboratory for measurement. The laboratory must make measurements at both short and long term intervals in accordance with instructions supplied and return the data to NBS for analysis. Typically, the measurements must be made on six different occasions spaced one to three weeks apart, and on each occasion the artifact must be reconnected and remeasured three to five times. For optimal efficiency and to avoid errors due to manual transcriptions, measurement data should be returned through an on-line computer link, floppy disc, or cassette which is compatible with NBS systems. The data transfer mechanism will be arranged with each laboratory on an individual basis.

The returned data are analyzed to determine if the laboratory's measurement process is in statistical control. NBS determines the limits of uncertaintly for which accreditation will be granted and for which the laboratory may claim direct traceability.

MAP Packages are available for microwave power, attenuation, and reflection coefficient. The specific package or combination of packages which any particular laboratory must measure will be determined by NBS depending on the scope of accreditation desired and the unique measurement procedures and system employed by the laboratory.

The artifacts that comprise the MAP Packages are supplied with precision 7mm connectors. Accreditation is granted for this type of connector. Laboratories wishing accreditation for other connectors are required to characterize adapters of the relevant type.

Power MAP Package. Measure combinations of two bolometer mounts preceded by different two-ports to create a variety of mismatch and efficiency conditions.

Typical range and parameter values include:

Frequency, 0.1 GHz to 18 GHz.
Power, 1 mW to 10 mW
Reflection Coefficient, 0, 0.1, 0.25
Efficiency, 0.75, 0.9, 1

Laboratories desiring accreditation for power levels beyond 10 mW will be required to measure special artifacts. The particular measurements and charges will be established with each laboratory on an individual basis.

Attenuation MAP Package. Measure a number of matched and mismatched two-ports having attenuation values of 0 to 60 dB over a frequency range of 0.1 GHz to 18 GHz.

Reflection Coefficient MAP Package. Measure a collection of terminations whose reflection coefficients vary from 0 to 1 with selected phase angles over a frequency range of 0.1 GHz to 18 GHz.

Connector Characterization. Measure and characterize pairs of adapters over a frequency range of 0.1 GHz to 18 GHz. Adapters available include:

7mm to Type N
7mm to 3.5mm
7mm to 14mm
7mm to W/G X
7mm to W/G KU

Evaluation and Recommendations. An evaluation team composed primarily of peers in the applicable testing areas will use the following information to review each laboratory:

(1) Written information supplied by the laboratory;

(2) Results of proficiency testing; and

(3) Written reports of the assessor regarding on-site visits to the laboratory.

If deficiencies are identified during the evaluation in addition to those identified at the original on-site visit, the laboratory will be given written notification of those deficiencies and a reasonable period (ordinarily 30 days) in which to correct or resolve them. Upon completion of the review of the above information and the laboratory's response to any notification of deficiencies, the evaluation team will make an accreditation recommendation to the Manager, Laboratory Accreditation, National Bureau of Standards.

Accreditation Decision. Based on the recommendations of the evaluation team, a decision will be made to grant or deny initial accreditation for applicant laboratories or renewal for currently accredited laboratories. The laboratory will be notified by letter of the decision. If accreditation denial is proposed, the notification will state the reason.

Appeals. When denial of accreditation is proposed, a laboratory has thirty (30) days from the date of receipt of the notification to request a hearing. The notification will specify to whom a request for a hearing should be sent. If a hearing is not requested, the denial becomes final. If a hearing is requested, it will be held pursuant to 5 U.S.C. 556.

Accreditation Period. Laboratories are granted accreditation under the Calibration LAP for two years, with individual laboratory anniversary dates occurring on the first of January, April, July, or October. A laboratory will be assigned the anniversary date which is closet to the time that the decision to grant accreditation is made so as to provide a minimum of a full two years accreditation.

Accreditation Renewal. Each accredited laboratory is sent a renewal application form before its current accreditation expires (anniversary date). If acted upon promptly by the laboratory, the lead time will be sufficient to complete the evaluation for renewal before the current accreditation expires.

Termination. An accredited laboratory may voluntarily terminate its accreditation at any time. Likewise, an applicant laboratory may voluntarily terminate its application at any time prior to the completion of action on the application. The matter of refunds is covered in section 7a.15 of the NVLAP Procedures (15 CFR 7a.15).

Revocation. If the Director of NBS or the Director's designee finds that an accredited laboratory has violated the terms of its accreditation, the Director or the Director's designee may, after consultation with the laboratory, notify the laboratory that revocation of its accreditation is proposed. The laboratory has thirty (30) days in which to appeal a proposed revocation by requesting a hearing. A proposed revocation will specify to whom a request for a hearing should be sent. If the hearing is not requested, the revocation becomes final. If a hearing is requested, it will be held pursuant to 5 U.S.C. 556.

Public Notification. Accreditation actions will be published in the **Federal Register** within thirty (30) days of such action and in NVLAP quarterly and annual reports.

Compliance with Existing Laws. NVLAP accreditation does not relieve the laboratories from the necessity of observing and complying with applicable Federal, State, and local statutes, ordinances, or regulations, including consumer protection and antitrust laws.

Measured quantity and range	Frequency	Limits of uncertainty	Remarks
RF Power:			
	0.3 GHz to 1.0 GHz	2%	Coaxial lines.
	1.0 GHz to 3.0 GHz	3%	Type N and 7 mm.
1.0mW to 10mW	3.0 GHz to 10.0 GHz	4%	
	10.0 GHz to 12.0 GHz	5%	
1.0mW to 10mW	6.0 GHz to 12.0 GHz	3%	Waveguide X, KU.
RF Attenuation:			
0dB to 20dB		0.04 dB	Coaxial lines.
20dB to 30dB	10 MHz to 18 GHz	0.05 dB	Type N and 7 mm.
30dB to 40dB		0.06 dB	
40dB to 50dB		0.07 dB	
0dB to 20dB		0.04 dB	Waveguide.
20dB to 30dB	3 GHz to 18 GHz	0.05 dB	X.
30dB to 40dB		0.06 dB	KU.
40dB to 50dB		0.07 dB	

[FR Doc. 83-17486 Filed 6-29-83; 8:45 am]
BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

Announcement of Cordell Bank as an Active Candidate for National Marine Sanctuary Designation

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: NOAA is naming Cordell Bank an active candidate for possible national marine sanctuary designation and will proceed with subequent steps in the evaluation process. The site, located off the coast of northern California, was placed on the marine sanctuary List of Recommended Areas (LRA) in August 1981. Additonal information on the site was collected and used to prepare a "Cordell Bank Resource Summary and Site Description." This summary was distributed in July 1982 in order to receive comments on the feasibility and desirability of a national marine sanctuary at Cordell Bank. NOAA has reviewed the comments submitted and evaluated the site under the criteria and other requirements of the National Marine Sanctuary Program Regulations in naming Cordell Bank an active candidate. Because of the Bank's proximity to the existing Point Reyes-Farallon Islands National Marine Sanctuary, NOAA will focus future sanctuary evaluation on combining Cordell Bank with the Point Reyes site.

FOR FURTHER INFORMATION CONTACT: Rafael V. Lopez, (202) 634–4236.

ADDRESS: Sanctuary Programs Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 3300 Whitehaven ST., N.W., Washington, D.C. 20235.

SUPPLEMENTARY INFORMATION: Title III of the Marine Protection, Research and Sanctuaries Act authorizes the Secretary of Commerce, with Presidential approval, to designate ocean waters as national marine sanctuaries for the purpose of preserving or restoring their conservational, ecological or esthetic values.

In July 1981 NOAA received a marine sanctuary recommendation from Cordell Bank Expeditions, a nonprofit scientific association dedicated to the exploration and description of Cordell Bank. Cordell Bank is an undersea elevation consisting of a complex series of submerged steep-sided ridges and narrow pinnacles on the edge of the continental shelf. The site is located 20 miles due west of the Point Reyes peninsula, and approximately 50 miles west-northwest of San Francisco, California. The Bank is situated atop an underwater promontory that thrusts out towards the deeper oceanic waters of the north Pacific basin. The rapid drop-off of the continental slope lies nearby to the west and north with depths of over 2,000 meters within a few miles of the Bank. To the east is the relatively wide continental shelf off Point Reyes. Cordell Bank lies on a seaflocr plateau 300–400 feet deep and rises to within about 115 feet of the surface. Many uncharted features are found throughout the area. While a full characterization of the Bank has not been made, several of the shallower areas have been explored in some detail. These areas support extensive biological communities, which were the basis for the recommendation.

NOAA evaluated the sanctuary recommendation according to the criteria specified in the National Marine Sanctuary Program regulation (15 CFR 922) and found Cordell Bank eligible for inclusion on the LRA. The LRA is a list of areas that have at least some potential for being designated a marine sanctuary. Placement on the LRA is a preliminary step, however, and does not imply that a designation will occur. NOAA announced the placement of Cordell Bank on the LRA on August 31, 1981 (46 FR 43731). That notice specified the LRA criteria that the site met.

NOAA collected additional information on the natural resources of Cordell Bank and prepared a resource summary and site description, which is available from the address listed above. The summary was distributed in July 1982 and additonal information and public comment relating to the site and its designation potential were requested. Recipients included state and local agencies, academic institutions, industry representatives, conservation groups and other interested parties. Preliminary consultation with other Federal agencies was also conducted at that time. Overall, comments were generally favorable for proceeding with the evaluation of the site as an active candidate.

Concurrent with the evaluation of Cordell Bank for active candidate selection, NOAA has been in the process of modifying the procedures used for identification and selection of marine sanctuary candidates and for sanctuary designation. Revised final regulations were published on May 31, 1983 (48 FR 24297). They will become effective on June 30, 1983. The revised regulations reflect the refinements and programmatic policies outlined in the Program Development Plan for the National Marine Sanctuary Program (January 1982). The regulations eliminate the LRA and replace it with the Site Evaluation List (SEL) procedure, which NOAA began implementing in February 1982. NOAA used eight regional resource evaluation teams, comprised of knowledgeable scientists with regional research experience, to identify, evaluate, and recommend sites suitable for sanctuary consideration in accordance with site identification criteria developed for the SEL.

Cordell Bank was not included in the Eastern Pacific SEL team's review of existing LRA sites since additional information was already being collected for active candiate evaluation. However, to ensure consistent high resource values among sanctuaries Cordell Bank was evaluated under preliminary SEL criteria at the time of LRA placement and found to meet those standards as well. For active candidate selection the site was evaluated under both the current regulations and the active candidate criteria of the revised final regulations. As a result of this evaluation, Cordell Bank is being named an active candidate for further consideration as a national marine sanctuary. The factors listed below form the basis for this determination.

Current Selection Criteria

Selection criteria from the current National Marine Sanctuary Program regulations at 15 CFR 922.23(a):

(1) *The significance of resources identified during the review for placement on the LRA.* Information collected since the LRA notice was published has further defined the variety of habitats found at Cordell Bank, and has shown its importance to a large number of species. The site's location at the edge of the continental shelf and its isolation from nearshore environmental processes is unique in the region. Cordell Bank is characterized by a

combination of oceanic conditions and undersea topography that provides for a highly productive environment in a discrete, well-defined area. The prevailing California Current flows southward along the coast and is deflected by the Bank, causing the upwelling of nutrient-rich, deep-ocean waters. This upwelling stimulates the growths of planktonic organisms and results in an exceptionally vigorous biological community. These characteristics support the entire food chain up to the larger species, the seabirds, fish and marine mammals that are attrached to this locally productive environment. To date, 293 individuals species representing 288 genera of plants and animals have been collected or identified at Cordell Bank. Several previously undescribed species have been found on the Bank as well as many algal and invertebrate species whose presence at the Bank have set new range and depth extension records. Cordell Bank is also a focus for the feeding activity of a number of marine species. Thirty species of seabirds have been identified as they congregate above the shallower areas of the Bank to feed, as well as thirteen species of pinnipeds and cetaceans. The endangered Brown pelican is seen there frequently in fall months, prior to the start of the breeding season. The endangered humpback whale (*Megaptera novaeangliae*) has been observed feeding over the Bank, while the blue whale, also an endangered species, has been sighted travelling through the area. The hydrocoral *Allopora californica*, uncommon in other areas, is found in large numbers throught the Bank, a function of both the high water quality necessary for this species and the absence of collection pressure. Several species associated only with the hydrocoral, and dependent on it, are also found there.

(2) *The ability of NOAA to support full review of the site as an active candidate.* After Cordell Bank is named an active candidate, NOAA will begin preparing a draft designation document and a draft management plan to implement the designation. NOAA will consult with relevant Federal, state, and local agencies, Regional Fishery Management Council members, and other interested persons in preparing the plan. A draft environmental impact statement (DEIS) will be prepared on the designation document and management plan, including any draft regulations. The plan and the DEIS will be prepared in a timely manner to allow maximum public review. Early in the development of the sanctuary documents and the DEIS, public meetings will be held in the areas most affected to solicit public and government agency input on the significant issues related to the proposed action.

NOAA has allocated adequate resources to carry out the review of Cordell Bank for marine sanctuary designation as prescribed in the Program regulations under the time limits specified therein. Subsequent actions in the designation process for this site will be announced in the **Federal Register.**

(3) *The following additional factors:*

(i) *Existing or potential threats to the resources.* Present use levels have remained low enough to maintain the site in a relatively undisturbed state. Future uses projected for the area are mainly research and recreational in nature. Threats from these activities on the resources are not foreseen. However, a monitoring program would be incorporated into the site's research program to ensure that the resources are not being degraded.

In the past, Cordell Bank's location served to protect it from potential threats. Commercial activities are limited and recreational use, especially sport diving, can be a difficult undertaking. Weather conditions tend to limit human use to the fall when seas, winds and visibility are most predictable. The extent of resources of the bank have remained virtually unknown until recently. The first non-military underwater surveys of the bank occurred in October 1978. While projected commercial activities at this time do not appear to pose any major threat to the site's resources, so little is known about the Bank and its interrelationship with other ecological features in the area that all future threats cannot be accurately predicted. Increased recreational use could adversely affect invertebrate populations, particularly the *Allopora* hydrocoral, as a result of greater diving and anchoring pressures. An increase in boat traffic, especially that related to nature viewing, could significantly disturb the sensitive marine mammal and seabird populations that are being observed. A more in-depth analysis of threats and mitigating measures, such as additional regulation, is required in the course of management plan development.

(ii) *Existing regulatory mechanisms.* Cordell Bank lies entirely in Federal waters and is not protected by any site-specific regulatory mechanism. Federal regulations pertaining to the protection of the marine environment at the site are administered by a variety of government agencies. Enforcement of these regulations is uncertain and is not designed specifically to protect the site. No increase in present resource protection activities is likely. Management-related research and educational efforts designed to protect the values of the site are not addressed under the current regulatory regimes.

(iii) *Significance of the area to research opportunities.* Cordell Bank's unique location and surroundings provide numerous research opportunities to study colonization and distribution of the species found there. The oceanographic conditions found at the Bank have created an unusual zonation of habitats resulting in significant subtidal communities at uncommon depths. The Bank also provides opportunities to study the feeding behavior of the larger predator species that are drawn to the productive waters. Its proximity to the San Francisco and Bodega Bay areas makes it fairly accessible for scientific purposes, while still remaining isolated enough so that it represents a pristine control area for research in other sites.

(iv) *Complement to other public or private programs.* Cordell Bank is located northwest of the Point Reyes-Farallon Islands National Marine Sanctuary, which was designated in January 1981. Sanctuary status would allow for the coordinated management of both areas as a single unit. Cordell Bank would also complement the Point Reyes National Seashore, Golden Gate National Recreation Area and Farallons National-Wildlife Refuge (all administered by the Department of the Interior) and several state and county parks and preserves by providing comprehensive resource management in an adjacent area and by providing research opportunities on organisms frequenting or interpreted by those sites. Numerous research institutions and nature viewing groups that use the Bank would also benefit from the management approach offered by marine sanctuary status.

(v) *The esthetic qualities of the area.* From the surface Cordell Bank has historically been easily recognized by the large numbers of seabirds and marine mammals found there. The presence of these animals are a strong indication of the Bank's productivity. Beneath the surface, in the unusually bright waters at 115 feet (34m) (the Bank's shallowest known point) and deeper, the visual appearance is one of large collections of sponges, anemones, hydrocoral, hydroids, tunicates, and an occasional crab, holothurian or gastropod. Divers' reports describe a visually spectacular, yet fragile, scene

where competition for the limited available space is a major factor in restricting biological communities. Often faunal encrustation is more than 25 cm thick, and it is always brightly colored, mainly in reds, white, yellows and pink.

(vi) *The type and estimated economic value of the natural resources and human uses within the area which may be foregone as a result of marine sanctuary designation.* It appears unlikely that any significant economic impacts would result from the designation. Cordell Bank provides opportunities for a range of recreational and commercial activities, principally boating and fishing. No restrictions with significant adverse impact affecting either activity are envisioned. In addition, the scientific research opportunities, public education programs, and resource management efforts that will result from sanctuary designation will increase public awareness of the site's resources and their importance in the marine environment and will provide a further measure of protection. These action will have a beneficial impact on the natural resources and human uses within the area. Therefore, no major economic impacts are expected to present or future commercial and recreational users. A thorough analysis of the economic impacts resulting from the designation of a marine sanctuary will be conducted as part of the designation process.

(vii) *The economic benefits to be derived from protecting or enhancing the resources within the sanctuary.* The protection of the resources of Cordell Bank will permit them to be used and enjoyed for maximum compatible public and private use indefinitely. Protection will also allow new compatible uses to develop. For example, the return of humpback whales and other large cetaceans to the Cordell Bank-Farallon Islands areas has resulted in increased recreational and commercial boating to view these animals during their summer feeding season. Sanctuary interpretive and educational programs could be designed to enhance public understanding of the marine environment during these outings. Economic benefits may derive from the protection of an area of high marine resource value, which may have positive effects on existing compatible uses.

Revised Selection Criteria

The following criteria are found in the revised National Marine Sanctuary Program regulations at 15 CFR 922.30 (48 FR 24297). The procedures for active candidate selection under the revised regulations are similar to those under the existing rules. Only the criteria that were not addressed earlier in this notice are presented below. These additional standards are directed mainly towards NOA sanctuary evaluation requirements related to programmatic and management-oriented needs.

(b)(1) *Site's relative contribution to the Program's mission and goals.*

The mission of the Program provides that "designated sanctuaries should be illustrative of the nation's marine areas." Cordell Bank is a unique feature not represented in the national system of marine sanctuaries. Together with the existing Point Reyes-Farallon Islands National Marine Sanctuary it represents a significant ecological system on the northern California coast. It provides opportunities through research and public educational programs not only to enhance an awareness of the site's resources but also to illustrate the complex nature of the marine environment and show the the importance of the simpler life forms at the beginning of the food chain. The multiple compatible use goal of the Program can be fully realized at Cordell Bank.

(b)(3) *Benefits to be derived from sanctuary designation.* A national marine sanctuary at Cordell Bank would allow for the creation of a comprehensive research program that considers the resources of the nearby Point Reyes-Farallon Islands National Marine Sanctuary. While Cordell Bank has no landbase, it is used as a feeding area by many of the seabird and marine mammal species found in the Sanctuary. Information collected since the Bank was placed on the LRA indicates a closer association to the existing Sanctuary than was originally presumed. Geologically, the Bank is part of the same formation as the Farallon Islands and it experiences similar oceanographic conditions. The coordination of regulatory and educational activities with those of the existing Sanctuary would also benefit both areas.

(b)(4) *Feasibility of sanctuary designation, in terms of size, requirements for management, staffing and fiscal constraints.* Cordell Bank has high potential for designation in this category. The size of thearea now under consideration, encompassing the 50-fathom contour, is approximately 22 square miles. This is an easily delineated, manageable area with a high concentration of resources. Existing onsite management staff and facilities for the Point Reyes-Farallon Islands National Marine Sanctuary would be used for the majority of programs envisioned. The reseach component of the management approach would be the emphasis tofo the designation. Since *in situ* uses are expected to remain low even after designation, most offsite interpretive and educational activities could take place in conjunction with those for the Point Reyes-Farallon Islands sanctuary.

Because of the existing management framework for the Point Reyes-Farallon Islands sanctuary, NOAA will focus sanctuary evaluation on combining Cordell Bank with the existing sanctuary. This will allow greater flexibility in administering research and educational programs for the entire area. However, any regulations that may be proposed for Cordell Bank will be developed independently of those at Point Reyes. Under Program regulations NOAA is required to conduct a separate analysis, including a separate environmental impact statement, for each designation or change in a designation. Therefore, the terms of a Cordell Bank marine sanctuary could differ from those of the Point Reyes sanctuary.

Subsequent Actions

Cordell Bank will be considered for marine sanctuary designation on the basis of further evaluation that will result in the preparation of a DEIS. The DEIS analyzes the implementation of a site-specific management plan, which is included as part of the DEIS, that specifies goals and objectives to ensure protection of the site's resources. A Notice of Availability of the DEIS will be published in the **Federal Register.** Public hearings will also be held in the affected area to receive comments on the draft management plan and the DEIS.

Dated: June 28, 1983.

Peter L. Tweedt,

Acting Director, Office of Ocean and Coastal Resource Management.

(Federal Domestic Assistance Catalog Number 11.419, Coastal Zone Management Program Administration)

[FR Doc. 83-17836 Filed 6-29-83; 9:36 am]

BILLING CODE 3510-08-M

Caribbean Fishery Management Council and Its Administrative Subcommittee; Closed Session of the Council's Open Public Meeting

AGENCY: National Marine Fisheries Services, NOAA, Commerce.

ACTION: The Caribbean Fishery Management Council has amended the agenda for its open public meeting to

include a session which will be closed to the public.

SUMMARY: The Council will receive a briefing by U.S. Department of State representatives concerning discussions of classified documents and other confidential information.

DATES: The closed session of the meeting will convene on Wednesday, July 13, 1983, at approximately 2 p.m., and will adjourn at approximately 4 p.m. All other portions of the meeting will be open to the public. (Please refer, as necessary, to 48 FR 23472, 48 FR 24759, and 48 FR 27120, concerning previously-published information about this Council meeting as well as the Council's Administrative Subcommittee meeting.)

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, Banco de Ponce Building, Suite 1108, Hato Rey, Puerto Rico 00918, Telephone: (809) 753-4926.

Dated: June 27, 1983.

Ann **D. Terbush,**

Acting Chief, Operations Coordination Group, National Marine Fisheries Service.

[FR Doc. 83-17705 Filed 6-29-83; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Intent To Grant Exclusive Patent License

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Stauffer Chemical Company, having a place of business at Westport, Connecticut, an exclusive right to manufacture, use and sell products embodied in the invention, "Method of Increasing Biomass in Plants," U.S. Patent Application Serial No. 435,597 (filed October 21, 1982). The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 41 CFR 101-4.1. The proposed license may be granted unless, within sixty days from the date of this Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other materials relating to the proposed license must be submitted to the Office of Government Inventions and Patents, NTIS, Box 1423, Springfield, VA 22151.

Dated: June 22, 1983.

Douglas J. Campion,

Program Coordinator, Office of Government Inventions and Patents, Department of Commerce, National Technical Information Service.

[FR Doc. 83-17627 Filed 6-29-83; 8:45 am]

BILLING CODE 3510-04-M

Office of the Secretary

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: 1983 Annual Survey of Manufacturers
Form Nos.: Agency—MA-1000(MU), MA-1000(SU), MA-1000(S), MA-1000(B); OMB—0607-0154
Type of Request: New
Burden: 79,000 respondents; 206,600 reporting hours
Needs and Uses: This survey supplies the key measures of manufacturing activity for years in which the census of manufacturers is not conducted. Its results are widely used as benchmarks for other Federal satistical programs, including the Federal Reserve Board's index of industrial production, the Bureau of Economic Analysis estimates of the gross national product, and the Department of Commerce's annual publication, "Industrial Outlook".
Affected Public: Businesses or other for-profit institutions
Frequency: Annually
Respondent's Obligation: Mandatory
OMB Desk Officer: Tim Sprehe, 395-4814

Agency: Bureau of Economic Analysis
Title: Quarterly Report—Ocean Freight Revenues and Expenses—United States Carriers
Form Nos.: Agency—BE-30; OMB—0608-0011
Type of Request: Extension
Burden: 40 respondents; 800 reporting hours
Needs and Uses: These collected data are incorporated into quarterly estimates of transportation payments and receipts and included in balance of payments statistics published quarterly in the *Survey of Current Business.*
Affected Public: Businesses or other for-profit institutions
Frequency: Quarterly
Respondent's Obligation: Voluntary
OMB Desk Officer: Tim Sprehe, 395-4814

Agency: Bureau of Economic Analysis
Title: U.S. Airline Operators Foreign Revenues and Expenses
Form Nos.: Agency—BE-37; OMB—0608-0014
Type of Request: Extension
Burden: 14 respondents; 112 reporting hours
Needs and Uses: These collected data are incorporated in quarterly estimates of U.S. international transportation payments and receipts, and are included in the U.S. balance of payments statistics published quarterly in the *Survey of Current Business.*
Affected Public: Businesses or other for-profit institutions
Frequency: Quarterly
Respondent's Obligation: Voluntary
OMB Desk Officer: Tim Sprehe, 395-4814

Agency: Patent and Trademark Office
Title: International Application under the Patent Cooperation Treaty—Request
Form Nos.: Agency—PCT/ROA.101; OMB—N/A
Type of Request: Existing collection in use without an OMB control number
Burden: 2,000 respondents; 2,000 reporting hours
Needs and Uses: The request is required as part of every International Application, under the Patent Cooperation Treaty, for the protection of inventories and contains all relevant bibliographic data regarding application and benefits sought
Affected Public: Individuals or households; Federal agencies or employees; non-profit institutions; small businesses or organizations
Frequency: Other
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: Ken Allen, 395-3785

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377-4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Written comments and recommendations for the proposal information collections should be sent to the respective Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Edward Michals,

Departmental Clearance Officer.

[FR Doc. 83-17701 Filed 6-29-83; 8:45 am]

BILLING CODE 3510-CW-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Import Levels for Certain Cotton Textile Products From Indonesia

June 24, 1983.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Establishing import restraint levels for men's and boys' woven cotton shirts in Category 340 and cotton trousers in Category 347/348, produced or manufactured in Indonesia and exported during the twelve-month period beginning on July 1, 1983.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as

amended on April 7, 1983 (48 FR 15175) and May 3, 1983 (48 FR 19924).

SUMMARY: On November 9, 1982, the Governments of the United States and the Republic of Indonesia signed a Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement which establishes specific ceilings for Categories 340 and 347/348 during the agreement year beginning on July 1, 1983. In the letter following this notice the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs, in accordance with the terms of the agreement, to prohibit entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Categories 340 and 347/348, produced or manufactured in Indonesia and exported during the twelve-month period beginning on July 1, 1983 and extending through June 30, 1984, in excess of the designated levels of restraint.

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

EFFECTIVE DATE: July 1, 1983.

FOR FURTHER INFORMATION CONTACT: Claire McDermott, International Trade Specialist, Office of Textiles and Aapparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377–4212).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 24, 1983.

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of October 13 and November 9, 1982, between the Governments of the United States and the Republic of Indonesia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on July 1, 1983 and for the twelve-month period extending through June 30, 1984, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Categories 340 and 347/348, in excess of the following levels of restraint:

Category	12-month level of restraint [1] (doz)
340	324,210
347/348	579,519

[1] The levels of restraint have not been adjusted to reflect any imports after June 30, 1983.

In carrying out this directive, entries of textile products in the foregoing categories produced or manufactured in Indonesia, which have been exported to the United States on and after July 1, 1982 and extending through June 30, 1983, shall, to the extent of any unfilled balances, be charged against the levels of restraint established for those goods during that twelve-month period. In the event the levels of restraint established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The levels of restraint set forth above are subject to adjustment in the future according to the provisions of the bilateral agreement of October 13 and November 9, 1982 between the Governments of the United States and the Republic of Indonesia, which provide, in part, that specific levels of restraint may be increased for carryover and carryforward up to 11 percent of the applicable category limit; and administrative arrangements or adjustments may be made to resolve problems arising under the bilateral agreement. Any appropriate adjustments under the bilateral agreement, referred to above, will be made to you by letter.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175) and May 3, 1983 (48 FR 19924).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The action taken with respect to the Government of the Republic of Indonesia and with respect to imports of cotton textile products from Indonesia have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 83-17832 Filed 6-29-83; 8:45 am]

BILLING CODE 3510-25-M

Controlling Imports of Certain Man-Made Fiber Textile Products From Mexico

June 27, 1982.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Controlling imports of acrylic spun yarn in Category 604 pt. (only T.S.U.S.A. No. 310.5049), produced or manufactured in Mexico and exported during the twelve-month period which began on January 1, 1983 and extends through December 31, 1983 at a level of 759,421 pounds.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175) and May 3, 1983 (48 FR 19924)).

SUMMARY: On May 18, 1983 a notice was published in the Federal Register (48 FR 22345) announcing that, on March 31, 1983, under the terms of the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of February 26, 1979, as amended, the Government of the United States had requested consultations with the Government of Mexico with respect to acrylic spun yarn in Category 604 pt. (only T.S.U.S.A. No. 310.5049). The notice stated that the Government of Mexico is obligated under the agreement to limit its exports of these products to the United States during the ninety-day period which began on April 1, 1983 and extends through June 29, 1983 to 256,609 pounds and during the twelve-month period which began on January 1, 1983 to 759,421 pounds. The United States Government decided, pending consultations with the Government of Mexico to control imports at the ninety-day limit, effective on May 19, 1983. During the May 19 through June 29, 1983 period, 435,842 pounds have been released and will be charged. Charges for the period May 1, 1983 through May 18, 1983 are still outstanding and will be charged later when the data becomes available.

Consultations have not been held between the two governments. The United States Government has further decided, therefore, until such a time as a mutually satisfactory solution can be reached, to control imports of these products at the twelve-month level of 759,421 pounds. Goods exported during the January-April 1983 period amounted to 823,214 pounds and will be charged to

that level. These charges, when added to the charges of 435,842 pounds against the ninety-day level, exceed the twelve-month control limit of 759,421 pounds, as defined in the agreement. Inasmuch as the twelve-month level is oversubscribed, no further entries will be permitted until such time as a mutually satisfactory solution is reached. The letter to the Commmissioner of Customs from the Chairman of the Committee for the Implementation of Textile Agreements which follows this notice establishes the twelve-month level of 759,421 pounds for Category 604 pt. and directs that the foregoing amounts be charged.

The United States remains committed to finding a solution concerning this category. Should such a solution be reached, further notice will be published in the **Federal Register.**

EFFECTIVE DATE: June 30, 1983.

FOR FURTHER INFORMATION CONTACT: William Boyd, International Trade Specialist, Office of Textiles and Apparels, U.S. Department of Commerce, Washington, D.C. 20230 (202/377–4212).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

June 27, 1983.

Commissioner of Customs, Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of February 26, 1979, as amended, between the Governments of the United States and Mexico; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on June 30, 1983 and for the twelve-month period which began on January 1, 1983 and extends through December 31, 1983, entry into the United States for consumption and withdrawal from warehouse for consumption of man-made fiber textile products in Category 604 pt. (only T.S.U.S.A. No. 310.5049), produced or manufactured in Mexico, and exported on and after January 1, 1983, in excess of 759,421 pounds.

The foregoing level of restraint has not been adjusted to reflect any imports after December 31, 1982. Merchandise in Category 604pt. (only T.S.U.S.A. No. 310.5049) entered during the periods January 1 through April 30 and May 19 through June 29, 1983, has amounted to 1,259,056 pounds and should be charged to the full extent of the level of restraint established in this directive. Charges for the period May 1–May 18, 1983 remain outstanding and will be charged in a separate letter.

Textile products in Category 604 pt. (only T.S.U.S.A. No. 310.5049) which have been exported to the United States prior to January 1, 1983 shall not be subject to this directive.

Textile products in Category 604 pt. (only T.S.U.S.A. No. 310.5049) which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.SC. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive, unless exported during the ninety day period which began on April 1, 1983 and extends through June 29, 1983, shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175) and May 3, 1983 (48 FR 19924).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The action taken with respect to the Government of Mexico and with respect to imports of man-made fiber textile products from Mexico has been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register.**

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 83-17697 Filed 6-29-83; 8:45 am]

BILLING CODE 3510-25-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 83-CERT-013; et al.]

Cone Mills Corp. et al.; Certifications of Eligible Use of Natural Gas To Displace Fuel Oil

The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) has received the following applications for certification of an eligible use of natural gas to displace fuel oil pursuant to 10 CFR Part 595 (44 FR 47920, August 16, 1979). Notice of these applications, along with pertinent information contained in the application, was published in the **Federal Register** and an opportunity for public comment was provided for a period of ten calendar days from the date of publication. No comments were received. More detailed information is contained in each application on file and available for inspection at the ERA Fuels Conversion Division Docket Room, RG–42, Room GA–093, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, from 8:00 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

Applicant and facility	Date filed	Docket No.	Fr notice of application
Cone Mills Corp., Greenville, S.C., Salisbury, N.C., Greensboro, N.C.	Apr. 10, 1983	83-CERT-013	48 FR 24427, June 1, 1983.
W. R. Grace & Co., Duncan S.C.	do	83-CERT-014	48 FR 24427, June 1, 1983.
Mohican Mills Div., Lincoln, N.C.	do	83-CERT-015	48 FR 24427, June 1, 1983.
Spartan Mills, Spartan Plant, Spartanburg, S.C.	do	83-CERT-017	48 FR 24427, June 1, 1983.
Startex Mills, Startex, S.C.			
J. H. Montgomery Mill, Chesnee, S.C.			
Powell Mill, Spartanburg, S.C.			
Whitney Mill, Spartanburg, S.C.			
Wake Forest Univ., Winston-Salem, N.C.	do	83-CERT-018	48 FR 24427, June 1, 1983.
Clyde Fabrics, Inc., Newton, N.C.	do	83-CERT-019	48 FR 24427, June 1, 1983.
The General Tire & Rubber Co., Charlotte Tire Plant, Charlotte, N.C.	do	83-CERT-020	48 FR 24427, June 1, 1983.
Westinghouse Turbine Plant, Charlotte, N.C.	do	83-CERT-021	48 FR 24427, June 1, 1983.
Michelin Tire Corp., Greenville, Plant, Greenville, S.C.	do	83-CERT-022	48 FR 24427, June 1, 1983.

The ERA has carefully reviewed the above applications for certification in accordance with 10 CFR Part 595 and the policy considerations expressed in the Final Rulemaking Regarding Procedures for Certification of the Use of Natural Gas to Displace Fuel Oil (44 FR 47920, August 16, 1979). The ERA has determined that the applications satisfy the criteria enumerated in 10 CFR Part 595 and, therefore, has granted the certifications and transmitted those certifications to the Federal Energy Regulatory Commission.

Issued in Washington, D.C., June 23, 1983.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 83-17586 Filed 6-29-83; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 83-CERT-035 et al.]

Geo. W. Bollman & Co., Inc. et al.; Certifications or eligible Use of Natural Gas to Displace Fuel Oil

The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) has received the following applications for certification of an eligible use of natural gas to displace fuel oil pursuant to 10 CFR Part 595 (44 FR 47920, August 16, 1979). Notice of these applications, along with pertinent information contained in the application, was published in the **Federal Register** and an opportunity for public comment was provided for a period of ten calendar days from the date of publication. No comments were received. More detailed information is contained in each application on file and available for inspection at the ERA Fuels Conversion Division Docket Room, RG-42, Room GA-093, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, from 8:00 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

Applicant and facility	Date filed	Docket No.	FR notice of application
Geo. W. Bollman & Co., Inc., Adamstown, Pa.	Apr. 26, 1983	83-CERT-035	48 FR 23883, May 27, 1983.
Howmet Aluminum Corp., Lancaster, Pa.	Apr. 18, 1983	83-CERT-036	48 FR 23883, May 27, 1983.
Pfizer Minerals, Pigments & Metals Div., Easton, Pa.	...do	83-CERT-040	48 FR 23883, May 27, 1983.
Kutztown State College, Kutztown, Pa.	...do	83-CERT-041	48 FR 23883, May 27, 1983.
Victor F. Weaver, Inc., New Holland, Pa.	...do	83-CERT-042	48 FR 23883, May 27, 1983.
Dana Corp.-Parish Div., Reading Pa.	...do	83-CERT-043	48 FR 23883, May 27, 1983.

The ERA has carefully reviewed the above applications for certification in accordance with 10 CFR Part 595 and the policy considerations expressed in the Final Rulemaking Regarding Procedure for Certification of the Use of Natural Gas to Displace Fuel Oil (44 FR 47920, August 16, 1979). The ERA has determined that the applications satisfy the criteria enumerated in 10 CFR Part 595 and, therefore, has granted the certifications and transmitted those certifications t the Federal Energy Regulatory Commission.

Issued in Washington, D.C., June 23, 1983.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 83-17585 Filed 6-29-83; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 83-CERT-127 et al.]

Chrysler Corp., New Castle Machine & Forge et al.; Applications for Certification of Eligible Use of Natural Gas to Displace Fuel Oil

The Economic Regulatory Administration (ERA) of the Department of Energy has received the following applications for certification of an eligible use of natural gas to displace fuel oil pursuant to 10 CFR Part 595 (44 FR 47920, August 16, 1979). End-users who have the capability to use natural gas in place of fuel oil at any of their facilities can arrange for direct purchases and transportation of the gas to those facilities under the Federal Energy Regulatory Commission's (FERC) fuel oil displacement program. The ERA certification is required by the FERC as a precondition to interstate transportation of fuel oil displacement gas in accordance with the procedures in 18 CFR Part 284, Subpart F.

Pertinent information regarding these applications is listed below, while more detailed information is contained in each application on file and available for inspection at the ERA Fuels Conversion Divison Docket Room, RG-42, Room GA-093, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, from 8:00 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

1. 83-CERT-127

Applicant: Chrysler Corp., New Castle Machine & Forge, New Castle, Ind.
Date Filed: June 7, 1983.
Facility Location: New Castle, Ind.
Gas Volume: 460,045 Mcf per year
Oil Displacement: 72,950 barrels of No. 6 fuel oil (1-2% sulfur)
Eligible Seller: IGC Energy, Inc., Indianapolis, Ind.
Transporter: Panhandle Eastern Pipe Line Co., Houston, Tex., Michigan Wisconsin Pipe Line Co., Detroit, Mich., Indiana Gas Co., Inc., Indianapolis, Ind.

2. 83-CERT-128

Applicant: RCA Corp., Bloomington, Ind.
Date Filed: June 7, 1983
Facility Location: Bloomington, Ind.
Gas Volume: 114,144 Mcf per year
Oil Displacement: 18,100 barrels of No. 6 fuel oil (1-2% sulfur)
Facility Location: Marion, Ind.
Gas Volume: 371,126 Mcf per year
Oil Displacement: 58,850 barrels of No. 6 fuel oil (1-2% sulfur)
Totals: Gas volume, 485,270 Mcf per year; oil displacement, 76,960 barrels of No. 6 fuel oil (1-2% sulfur)
Eligible Seller: IGC Energy, Inc., Indianapolis, Ind.
Transporter: Texas Gas Transmission Corp., Owensboro, Ky., Michigan Wisconsin Pipe Line Co., Detroit, Mich., Panhandle Eastern Pipe Line Co., Houston, Tex., Indiana Gas Co., Inc., Indianapolis, Ind.

3. 83-CERT-129

Applicant: Frito-Lay, Inc., Frankfort, Ind.
Date Filed: June 7, 1983.
Facility Location: Frankfort, Ind.
Gas Volume: 218,198 Mcf per year
Oil Displacement: 34,600 barrels of No. 6 fuel oil (1-2% sulfur)
Eligible Seller: IGC Energy, Inc., Indianapolis, Ind.
Transporter: Panhandle Eastern Pipe Line Co., Houston, Tex., Michigan Wisconsin Pipe Line Co., Detroit, Mich., Indiana Gas Co., Inc., Indianapolis, Ind.

4. 83-CERT-130

Applicant: General Foods Manufacturing Co., Lafayette, Ind.
Date Filed: June 7, 1983
Facility Location: Lafayette, Ind.
Gas Volume: 142,995 Mcf per year
Oil Displacement: 22,675 barrels of No. 6 fuel oil (1-2% sulfur)
Eligible Seller: IGC Energy, Inc., Indianapolis, Ind.
Transporter: Panhandle Eastern Pipe Line Co., Houston, Tex., Michigan Wisconsin Pipe Line Co., Detroit, Mich., Indiana Gas Co., Inc., Indianapolis, Ind.

5. 83-CERT-131

Applicant: Alton Packaging Corp., Lafayette, Ind.
Date Filed: June 7, 1983
Facility Location: Lafayette, Ind.
Gas Volume: 209,654 Mcf per year

Oil Displacement: 33,150 barrels of No. 6 fuel oil (1–2% sulfur)
Eligible Seller: IGC Energy, Inc., Indianapolis, Ind.
Transporter: Panhandle Eastern Pipe Line Co., Houston, Tex., Michigan Wisconsin Pipe Line Co., Detroit, Mich., Indiana Gas Co., Inc., Indianapolis, Ind.

6. 83–CERT–132

Applicant: Ralston Purina Co., Frankfort, Ind.
Date Filed: June 7, 1983
Facility Location: Frankfort, Ind.
Gas Volume: 14,977 Mcf per year
Oil Displacement: 2,375 barrels of No. 6 fuel oil (1–2% sulfur)
Facility Location: Lafayette, Ind.
Gas Volume: 250,991 Mcf per year
Oil Displacement: 39,800 barrels of No. 6 fuel oil (1–2% sulfur)
Totals: Gas volume, 265,968 Mcf per year; oil displacement, 42,175 barrels of No. 6 fuel oil (1–2% sulfur)
Eligible Seller: IGC Energy, Inc. Indianapolis, Ind.
Transporter: Panhandle Eastern Pipe Line Co., Houston, Tex., Michigan Wisconsin Pipe Line Co., Detroit, Mich., Indiana Gas Co., Inc., Indianapolis, Ind.

7. 83–CERT–133

Applicant: Colgate-Palmolive Co., Jeffersonville, Ind.
Date Filed: June 7, 1983
Facility Location: Jeffersonville, Ind.
Gas Volume: 449,324 Mcf per year
Oil Displacement: 71,250 barrels of No. 6 fuel oil (1–2% sulfur)
Eligible Seller: IGC Energy, Inc. Indianapolis, Ind.
Transporter: Texas Gas Transmission Corp., Owensboro, Ky., Michigan Wisconsin Pipe Line Co., Detroit, Mich., Indiana Gas Co., Inc., Indianapolis, Ind.

8. 83–CERT–134

Applicant: Emge Packing Co., Inc., Anderson, Ind.
Date Filed: June 7, 1983
Facility Location: Anderson, Ind.
Gas Volume: 81,982 Mcf per year
Oil Displacement: 13,000 barrels of No. 6 fuel oil (1–2% sulfur)
Eligible Seller: IGC Energy, Inc., Indianapolis, Ind.
Transporter: Panhandle Eastern Pipe Line Co., Houston, Tex., Michigan Wisconsin Pipe Line Co., Detroit, Mich., Indiana Gas Co., Inc., Indianapolis, Ind.

9. 83–CERT–135

Applicant: General Motors Corp., Chevrolet Motor Div., Muncie, Ind.
Date Filed: June 7, 1983
Facility Location: Muncie, Ind.
Gas Volume: 337,387 Mcf per year
Oil Displacement: 53,500 barrels of No. 6 fuel oil (1–2% sulfur)
Eligible Seller: IGC Energy, Inc., Indianapolis, Ind.
Transporter: Panhandle Eastern Pipe Line Co., Houston, Tex., Michigan Wisconsin Pipe Line Co., Detroit, Mich., Indiana Gas Co., Inc., Indianapolis, Ind.

10. 83–CERT–136

Applicant: Clevepak Corp., Mill Div., Eaton, Ind.
Date Filed: June 7, 1983
Facility Location: Eaton, Ind.
Gas Volume: 389,730 Mcf per year
Oil Displacement: 61,800 barrels of No. 6 fuel oil (1–2% sulfur)
Eligible Seller: IGC Energy, Inc., Indianapolis, Ind.
Transporter: Panhandle Eastern Pipe Line Co., Houston, Tex., Michigan Wisconsin Pipe Line Co., Detroit, Mich., Indiana Gas Co., Inc., Indianapolis, Ind.

11. 83–CERT–137

Applicant: Warner Gear Div., Borg Warner, Muncie, Ind.
Date Filed: June 7, 1983
Facility Location: Muncie, Ind.
Gas Volume: 260,135 Mcf per year
Oil Displacement: 41,250 barrels of No. 6 fuel oil (1–2% sulfur)
Eligible Seller: IGC Energy, Inc., Indianapolis, Ind.
Transporter: Panhandle Eastern Pipe Line Co., Houston, Tex., Michigan Wisconsin Pipe Line Co., Detroit, Mich., Indiana Gas Co., Inc., Indianapolis, Ind.

12. 83–CERT–138

Applicant: St. Joe Container Co., Hartford City, Ind.
Date Filed: June 7, 1983
Facility Location: Hartford City, Ind.
Gas Volume: 44,775 Mcf per year
Oil Displacement: 7,100 barrels of No. 6 fuel oil (1–2% sulfur)
Eligible Seller: IGC Energy, Inc., Indianapolis, Ind.
Transporter: Panhandle Eastern Pipe Line Co., Houston, Tex., Michigan Wisconsin Pipe Line Co., Detroit, Mich., Indiana Gas Co., Inc., Indianapolis, Ind.

13. 83–CERT–139

Applicant: Sheller-Globe Corp., Montpelier, Ind.
Date Filed: June 7, 1983
Facility Location: Montpelier, Ind.
Gas Volume: 69,369 Mcf per year
Oil Displacement: 11,000 barrels of No. 6 fuel oil (1–2% sulfur)
Eligible Seller: IGC Energy, Inc., Indianapolis, Ind.
Transporter: Panhandle Eastern Pipe Line Co., Houston, Tex., Michigan Wisconsin Pipe Line Co., Detroit, Mich., Indiana Gas Co., Inc., Indianapolis, Ind.

14. 83–CERT–142

Applicant: Cummins Engine Co., Inc., Columbus, Ind.
Date Filed: June 7, 1983
Facility Location: Columbus, Ind.
Gas Volume: 175,946 Mcf per year
Oil Displacement: 27,900 barrels of No. 6 fuel oil (1–2% sulfur)
Eligible Seller: IGC Energy, Inc., Indianapolis, Ind.
Transporter: Texas Gas Transmission Corp., Owensboro, Ky., Michigan Wisconsin Pipe Line Co., Detroit, Mich., Indiana Gas Co., Inc., Indianapolis, Ind.

15. 83–CERT–143

Applicant: Gohmann Asphalt Co., Jeffersonville, Ind.
Date Filed: June 7, 1983
Facility Location: Jeffersonville, Ind.
Gas Volume: 56,895 Mcf per year
Oil Displacement: 9,022 barrels of No. 5 fuel oil (1–2% sulfur)
Eligible Seller: IGC Energy, Inc., Indianapolis, Ind.
Transporter: Texas Gas Transmission Corp., Owensboro, Ky., Michigan Wisconsin Pipe Line Co., Detroit, Mich., Indiana Gas Co., Inc., Indianapolis, Ind.

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 any of these applications to submit comments in writing to the Economic Regulatory Administration, Office of Fuels Programs, Fuels Conversion Division, RG–42, Room GA–093, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, Attention: Richard A. Ransom, within ten calendar days of the date of publication of this notice in the **Federal Register**. The docket number of the case should be printed on the outside of the envelope.

An opportunity to make an oral presentation of data, views, and arguments either against or in support of any of the above applications may be requested by any interested person in writing within the ten-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 in a particular case, further notice will be given to the applicant and any person filing comments in that case and will be published in the **Federal Register**.

Issued in Washington, D.C., on June 23, 1983.

James W. Workman,

Director, Office of Fuels Program, Economic Regulatory Administration.

[FR Doc. 83-17584 Filed 6-29-83; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. TC83-33-000]

Montana Dakota Utilities Co.; Tariff Filing

June 27, 1983.

Take notice that on May 26, 1983, Montana-Dakota Utilities Co. (Montana-Dakota), 400 North Fourth Street, Bismarck, North Dakota 58501, tendered for filing in Docket No. TC83-33-000 pursuant to the Commission's Order Approving Settlement issued November 30, 1979 in RP76-81-000 and pursuant to Part 154 of the Commission's Regulations under the Natural Gas Act the following proposed tariff sheets in its Tariff, First Revised Volume No. 1.

Sixth Revised Sheet, No. 100
Sixth Revised Sheet, No. 101
Sixth Revised Sheet, No. 102
Seventh Revised Sheet, No. 103
Sixth Revised Sheet, No. 104
Sixth Revised Sheet, No. 105
Sixth Revised Sheet, No. 106
Fifth Revised Sheet, No. 107
Fifth Revised Sheet, No. 108
Fourth Revised Sheet, No. 109
Sixth Revised Sheet, No. 110

The sheets are proposed to be effective July 1, 1983. Montana-Dakota state that the volume changes on the tariff sheets reflect updated reclassification of natural gas used for essential agricultural uses. Montana-Dakota states that it has submitted copies of this filing to all customers and persons on the official service list and additionally, that curtailment has been lifted on their system and no volume limitations would be imposed on industrial customers during the 1983-84 supply year.

Further, Montana-Dakota states that the filing also includes revisions to add four new industrial customers and an increase of allocation for two existing customers, as authorized by the stipulation and agreement approved by the Commission in Docket No. RP76-91-011,012, order issued February 11, 1982 (18 FERC 61,147). It is indicated that two name changes of industrial customers are also incorporated in the tariff sheets and that the requirements of industrial customers of a new MDU customer, Cody Gas Company (as authorized in Docket No. CP82-405-000, order issued November 26, 1982, 21 FERC 61,192) has been rejected.

Any person desiring to be heard or to make any protest with reference to said amendment should or on before June 30, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 83-17670 Filed 6-29-83; 8:45 am]
BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[SA-FRL 2391-3]

Science Advisory Board; High-Level Radioactive Waste Disposal Subcommittee; Open Meeting

Under Public Law 92-463, notice is hereby given that a two-day meeting of the High-Level Radioactive Waste Disposal Subcommittee of the Science Advisory Board will be held in the Sixth Floor Conference Room, EPA Region IX, 215 Fremont Street, San Francisco, CA, on July 25-26, 1983. The meeting will begin at 9:00 a.m. and last until 5:00 p.m. each day.

The purpose of the meeting will be to continue the review of the scientific and technical basis of the Agency's proposed rules for the management and disposal of high-level radioactive wastes. The members of the Subcomittee, and the Principal issues for the Subcommittee's consideration, were announced in the **Federal Register**, Wednesday, January 5, 1983, page 509.

The agenda for the meeting, which will be the seventh in a series of meetings on the proposed rules, will include discussions of health effects, qualitative assurance requirements and engineering and economic aspects. Work will also begin on assembling various subgroup reports into a Subcommittee Final Report.

The meeting is open to the public. Any member of the public wishing to attend or obtain further information about the meeting should contact Harry C. Torno, Executive Secretary, at (202) 382-2552, or Terry F. Yosie, Staff Director, Science Advisory Board, at (202) 382-4126. Public comment will be accepted at the meeting. Written comment will be accepted in any form, and there will be opportunity for brief oral statements. Anyone wishing to make such comment must contact Mr. Torno prior to July 19, 1983, in order to be placed on the agenda.

Terry F. Yosie,
Staff Director, Science Advisory Board.

June 24, 1983.

[FR Doc. 83-17613 Filed 6-29-83; 8:45 am]
BILLING CODE 6560-50-M

[PF-327; PH-FRL 2374-8]

Certain Companies; Pesticide Petitions

Correction

In FR Doc. 83-14736, appearing on page 26535, in the issue of Wednesday, June 8, 1983, in the second column, in paragraph 3., in the tenth line, "+03.0" should read "to 3.0".

BILLING CODE 1505-01-M

FEDERAL MEDIATION AND CONCILIATION SERVICE

Performance Review Board; Membership

Notice is hereby given in accordance with 5 U.S.C. 4314 of a revision in the membership of the Performance Review Board of the Federal Mediation and Conciliation Service. The revision consists of the following appointments:

Bernard M. O'Keefe, Director, Central Region, Chicago, Illinois, Chair—One Year
Edward F. O'Brien, Director, Southern Region, Atlanta, Georgia, Two Years
Nicholas A. Fidandis, Director, Office of Mediation Services, Washington, D.C., Two Years
Paul Yager, Director, Eastern Region, New York, New York, Alternate—Three Years

Dated: June 23, 1983.

Richard D. Williams,
Deputy Director.

[FR Doc. 83-17621 Filed 6-29-83; 8:45 am]
BILLING CODE 6372-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Digestive Diseases Advisory Board; Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the National Digestive Diseases Advisory Board on July 21, 1983, 8:30 a.m. to adjournment, at the Holiday Inn Hotel, 480 King Street, Old Town Alexandria, Virginia 22314. The meeting, which will be open to the public, is being held to discuss the Board's activities and to

continue the evaluation of the implementation of current digestive diseases plan. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

Dr. Ralph Bain, Executive Director, National Digestive Diseases Advisory Board, P.O. Box 30377, Bethesda, Maryland 20084 (301) 496-2232, will provide an agenda and roster of members. Summaries of the meeting may be obtained by contacting Carole A. Frank, Committee Management Office, NIADDK, National Institutes of Health, Room 9A46, Building 31, Bethesda, Maryland 20205 (301) 496-5765.

Dated: June 23, 1983.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 83-17614 Filed 6-29-83; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

Privacy Act of 1974; Proposed System of Records

AGENCY: Public Health Service Department of Health and Human Services.

ACTION: Notification of a proposed new Privacy Act system of records.

09-20-0161, "Records of Health Professionals in Disease Prevention and Control Training Programs," HHS/CDC/CPS.

SUMMARY: In accordance with the requirements of the Privacy Act, the Public Health Service (PHS) is publishing notice of a proposal to establish a new Privacy Act system of records: 09-20-0161, "Records of Health Professionals in Disease Prevention and Control Training Programs", HHS/CDC/CPS. This system of records will permit collection of information related to the evaluation and development of health training programs developed by the Centers for Disease Control (CDC). The information acquired will be used to improve health training curricula and programs for disease prevention and control. The system of records will be maintained by CDC's Center for Prevention Services (CPS), and Laboratory Program Office (LPO). The system notice establishes three routine uses. PHS invites interested persons to submit comments on the proposed routine uses on or before August 1, 1983.

DATE: PHS has sent a Report of New System to the Congress and to the Office of Management and Budget (OMB) on June 9, 1983. The system of records will be effective 60 days from the date submitted to OMB unless PHS receives comments on the routine uses which would result in a contrary determination.

ADDRESS: Comments should be addressed to the CDC Privacy Act Officer at the address listed below. Comments received will be available for inspection Monday through Friday, between 9 a.m. and 3 p.m., in Room B-68, at that address.

FOR FURTHER INFORMATION CONTACT: Sara S. Owens, Privacy Act Officer, Centers for Disease Control, 1600 Clifton Road, Room B-68, Atlanta, Georgia 30333, (404) 329-3121. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The purpose of this system is to assist in the evaluation of disease prevention and training programs and related health training programs developed by the Centers for Disease Control (CDC). These programs provide information and training to physicians and other health professionals throughout the nation on standards and new treatment modalities. The planned evaluation of training programs by studying individuals who have participated in those programs requires the establishment and maintenance of the proposed record system. Specifically, studies of health professionals, including physicians and nurses, will require that the system of records be developed in a way that allows for periodic followup interviews, and scientific testing and validation of previously gathered data. CDC will employ the services of a contractor to conduct investigations at selected clinics to obtain background data on clinics whose personnel have received CDC-sponsored disease prevention and treatment training and also from clinics whose staffs have not received such training. The contractor will observe and interview participants in CDC-sponsored courses and a control group of similar health professionals who have not received this training. CDC staff will reinvestigate a portion of the cases to monitor the reliability of interviewing techniques and overall performance of the contractor.

CDC has examined a number of alternative means of accomplishing this program evaluation, including the option to maintain no Privacy Act system of records. CDC concluded that the relatively minor risk to personal privacy involved by furnishing individual identifiers to permit followup interviews and data validation is outweighed by the potential improvement in health training programs which will be derived. The participants will be assured that published data will be in a format that precludes identification.

Name, type of training received, and year interviewed will be some of the indices used to retrieve records from this system. Other retrieval methods will be utilized as determined by project management.

The three routine uses proposed for this system are compatible with the stated purpose of the system. The first two of the proposed routine uses are essential to the achievement of the stated purpose of the system. The first proposed routine use will allow for disclosure to contractors who will interview health professionals and administer questionnaires, as explained above. The second proposed routine use, which provides for the analysis and refinement of the data, will allow CDC to acquire contractor services when it is cost-effective to do so and advantageous to program goals. The third routine use permits disclosure to members of Congress for the purpose of allowing subject individuals to obtain assistance from their representatives in Congress, should they so desire. Such disclosure will be made only at the explicit request of the individual.

Dated: June 14, 1983.

Wilford J. Forbush,

Deputy Assistant Secretary for Health Operations and Director, Office of Management.

09-20-0161

SYSTEM NAME:

Records of Health Professionals in Disease Prevention and Control Training Programs, HHS/CDC/CPS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Center for Prevention Services, Centers for Disease Control, Building 1, Room 3007, Atlanta, Georgia 30333.

Laboratory Program Office, Centers for Disease Control, Building 1, Room 1007, Atlanta, Georgia 30333.

Federal Records Center, 1557 St. Joseph Ave., East Point, GA 30344.

A list of contractor sites is available upon request to the System Manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Physicians, nurses, physician assistants, clinician trainees, and other health personnel who have participated in training activities, surveys, and studies developed by the Centers for Disease Control (CDC), and control group health professionals who have not participated in training activities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Responses to questionnaires by physicians, nurses, physician assistants, clinician trainees, and related health personnel, pertaining to knowledge, attitude and practices related to health problems, diseases and/or other potential preventable conditions of public health significance; health care and related training data; and demographic data of the survey population as well as identification data for followup purposes.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act, Sec. 301 Research and Investigations (42 U.S.C. 241).

PURPOSE(S):

This record system enables CDC officials to assess the impact of the agency's training programs on the knowledge, attitudes and practices of clinicians and others health care personnel, in order to develop improved training curricula and programs for disease prevention and control for such health care personnel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to CDC contractors in the conduct of training surveys and studies covered by this system notice and in the preparation of scientific reports, in order to accomplish the stated purpose of the system. The recipients will be required to maintain Privacy Act safeguards with respect to such records.

Disclosure is also made to CDC contractors for the purpose of collating, analyzing, aggregating or otherwise refining records in this system. Relevant records are maintained by the contractors. The contractors are required to maintain Privacy Act safeguards with respect to such records.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual. Such disclosure will be made only at the explicit request of the individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer tapes and file folders.

RETRIEVABILITY:

Name of individual respondent, identification number, and type of training received are some of the indices uses to retrieve records from this system.

SAFEGUARDS:

Questionnaires and data are maintained in locked containers in secured area. Keys which link I.D. numbers to names are stored separately with access limited to CDC Project Officer, interviewer, system manager, and designated contractor personnel. Locked computer rooms, with access limited to authorized personnel. The contractor is required to maintain confidentiality safeguards with respect to these records. The participants will be assured that published data will be in a format that precludes identification. The safeguards described for nonautomated records are in accordance with Chapter 45–13 in the General Administration Manual, and the supplementary PHS Chapter. For computerized records, safeguards are in accordance with HHS/ADP System Security Manual, Part 6.

RETENTION AND DISPOSAL:

Source documents for computer will be maintained for two years and then transferred to a Federal Records Center where they are destroyed after 12 years, unless needed for further analysis.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Center for Prevention Services, Centers for Disease Control, Building 1, Room 3007, Atlanta, Georgia 30333.

Director, Laboratory Program Office, Centers for Disease Control, Building 1, Room 107, Atlanta, Georgia 30333.

NOTIFICATION PROCEDURE:

An individual may learn if a record exists about himself or herself by contacting the first System Manager at the address above. Requesters in person must provide positive identification. Individuals who do not appear in person must either (1) submit a notarized request to verify their identity, or (2) must certify that they are the individuals who they claim to be and that they understand that the knowing and willfull request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Privacy Act subject to a $5,000 fine.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also specify nature of the training or survey questionnaire, and name of clinic/organization in which employed at time of training or survey participation.

CONTESTING RECORD PROCEDURES:

Contact the system manager and reasonably identify the record, specify the information to be contested, and state the corrective action sought, with supporting justification.

RECORD SOURCE CATEGORIES:

Individuals in the system and selected clinics which employ individuals who are in the system.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 83-17981 Filed 6-29-83; 8:45 am]
BILLING CODE 4160-19-M

National Center for Health Services Research; Assessment of Medical Technology

The Public Health Service (PHS), through the Office of Health Technology Assessment (OHTA), announces that it is coordinating an assessment of what is known of the safety, clinical effectiveness, appropriateness, and use (indications) of streptokinase infusion for acute myocardial infarction (thrombolytic therapy). Specifically, we are interested in clinical data to answer the following questions: (1) Is thrombolytic therapy by direct arterial catheterization for acute myocardial infarction (AMI) safe and effective as a treatment for heart attacks? (2) If so, does this method have significant advantages or disadvantages in comparison with other procedures, such as intravenous infusion of streptokinase, or usual care in coronary care units? (3) Are there specific medical indications for use of thrombolytic therapy which should be reflected in medical guidelines?

For the purposes of this announcement, streptokinase therapy is defined as a procedure that is performed by threading a catheter into a blocked coronary artery, injecting an enzyme, usually streptokinase, to limit heart damage by the lysis of thrombi obtructing coronary arteries.

The PHS assessment consists of a synthesis of information obtained from appropriate organizations in the private sector and from PHS agencies and others in the Federal Government. PHS assessments are based on the most current knowledge concerning the safety and clinical effectiveness of a technology. Based on this assessment, a PHS recommendation will be formulated to assist the Health Care Financing Administration (HCFA) in establishing Medicare coverage policy. Any person or group wishing to provide OHTA with

information relevant to this assessment should do so in writing no later than September 30, 1983, 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 and other information related to the characterization of the patient population most likely to benefit, the clinical acceptability, and the effectiveness of this technology. Proprietary information is not being sought, but published commercial information may be submitted.

Written material should be submitted to: Dr. Rita K. Chow, National Center for Health Services Research, Office of Health Technology Assessment, Park Building, Room 3–10, Stop #2, 5600 Fishers Lane, Rockville, Maryland 20852.

Further information is available from Dr. Chow, Health Service Analyst, at the above address or by telephone, (301) 443–4990.

Dated: June 20, 1983.

Harold Margulies,

Director, Office of Health Technology Assessment, National Center for Health Services Research.

[FR Doc. 83-17706 Filed 6-29-83; 8:45 am]

BILLING CODE 4160-17-M

Office of the Secretary

Office of the Inspector General; Delegation of Authority to Issue Subpoenas

Notice is hereby given of delegation by the Inspector General to the Deputy Inspector General, the Assistant Inspector General for Investigations, the Assistant Inspector General for Auditing, the Assistant Inspector General for Health Financing Integrity, and the Assistant Inspector General for Program Inspections, of the authority vested in the Inspector General by section 205 (a)(3) of Pub. L. 94–505 (42 U.S.C. 3525). Section 205 (a)(3) authorizes the Inspector General to subpoena the production of all information, documents, reports, answers, records, accounts, papers and other data and documentary evidence necessary to carry out any investigation, audit or other proceeding authorized or directed under Title II of Pub. L. 94–505.

The delegation authorizes the redelegation of this authority to any regional official who reports directly to one of the above-named officials. The authority may not be redelegated further.

The delegation superseded prior delegations of authority to issue subpoenas published at 44 FR 44949 (July 31, 1979) and 45 FR 65043 (October 1, 1980).

The Inspector General has not limited his authority to issue subpoenas by this delegation.

The delegation is effective immediately upon publication of this notice in the Federal Register.

Dated: June 21, 1983.

Dale W. Sopper,

Assistant Secretary for Management and Budget.

[FR Doc. 83-17818 Filed 6-29-83; 8:45 am]

BILLING CODE 4150-04-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe

June 14, 1983.

This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.8(a) (formerly 25 CFR 54.8(a)) notice is hereby given that the Tolowa-Tututni Tribe of Indians c/o Nele-Chun-Dun Business Council, Inc., Box 388, Fort Dick, California 95538, has filed a petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. The petition was received by the Bureau of Indian Affairs on April 18, 1983. The petition was forwarded and signed by members of the group's governing body.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be by mail to the petitioner and other interested parties at the appropriate time.

Under § 83.8(d) (formerly § 54.8(d)) of the Federal regulations, interested parties may submit factual or legal arguments in support of or in opposition to the group's petition. Any information submitted will be made available on the same basis as other information in the Bureau of Indian Affairs files.

The petition may be examined by appointment in the Division of Tribal Government Services, Bureau of Indian Affairs, Department of the Interior, 18th and C Streets, NW., Washington, D.C. 20242.

Kenneth Smith,

Assistant Secretary—Indian Affairs.

[FR Doc. 83-17842 Filed 6-29-83; 8:45 am]

BILLING CODE 4310-02-M

Colville Confederated Tribes, Washington; Ordinance Providing for the Regulation of Intoxicating Beverages

June 14, 1983.

This Notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. 1161. I certify that the Colville Liquor Control Code Resolution 1982–777 was duly adopted by the Colville Business Council on December 21, 1982. It relates to the application of the federal Indian Liquor Laws within the areas of Indian country under the jurisdiction of the Colville Confederated Tribes. The Colville Liquor Control Code reads as follows:

Kenneth Smith,

Assistant Secretary—Indian Affairs.

Resolution 1982–777

Whereas, it is the recommendation of the Law and Justice Committee to approve the attached Tribal Liquor Code.

Therefore, be it resolved, That we, the Colville Business Council, meeting in Special Session, this 21st day of December, 1982, at the Colville Indian Agency, Nespelem, Washington, acting for and in behalf of the Colville Confederated Tribes, do hereby approve the recommendation of the Law and Justice Committee of the Business Council.

The foregoing was duly enacted by the Colville Business Council by a vote of 10 For 2 Against, under authority contained in Article V, Section 19(a) of the Constitution fo the Confederated Tribes of the Colville Reservation, ratified by the Colville Indians on February 26, 1938, and approved by the Commissioner of Indian Affairs on April 19, 1938.

Attest:

Al Aubertin,

Chairman, Colville Business Council.

cc:

H. Moses, Jr. B. Widdifield
A. Dupris

Title 21 Colville Tribal Code—Colville Confederated Tribes Liquor Control Code

Legislative Findings and Purposes

21.01 *Name:* This code shall be know as the "Colville Liquor Control Code."

21.1.02 *Findings:*

(a) The introduction, possession and sale of liquor on Indian reservations has been clearly recognized as a matter of special concern to Indian tribes and to the United States for more than 150 years. *United States* v. *Sandoval,* 231 U.S. 28 (1913); 18 U.S.C. 1161; 18 U.S.C. § 1154.

(b) In the year 1953 the Business Council of the Colville Confederated Tribes acting under its inherent powers as the government of the Colville Indian Reservation and under powers delegated to it by the United States adopted a resolution permitting the sale or, and posssession of alcoholic beverages within the boundaries of the reservation, subject to the laws of the State of Washington.

(c) Under present conditions the Business Council of the Colville Confederated Tribes finds it necessary to more closely control the sale, distribution, and possession of alcoholic beverage within the boundaries of the Colville Indian Reservation. The sale, distribution and possession of such beverages has become a major or sole portion of the trade of many businesses which have been establishd on the Colville Indian Reservation affecting the people of the reservation and the schools, churches and other agencies of social betterment which have been established on the reservation.

(d) Present day circumstances make a blanket grant by the Tribes to the State of Washington of liquor regulation and taxation ineffective and unrealistic. At the same time a need exists for strict tribal regulation and control over liquor distribution.

(e) In order to operate a system for control of liquor on the reservation, the Business Council finds that appropriate license fees and taxes must be assessed against all distribution of liquor on the reservation, where such fees and taxes do not violate the Constitution of the Colville Confederated Tribes or federal law.

(f) The enactment of a tribal code governing liquor sales and distribution on the reservation, providing for taxation and licensing of all business entities selling or distributing alcohol beverages within the boundaries of the reservation will increase the ability of the tribal government to control the reservation liquor distribution, sale and possession, and at the same time will provide an important source of revenue for the continued operation of specific delivery of governmental services to the residents of the reservation.

(g) The Colville Business Council finds that alcohol related criminal and family problems are the single greatest cause of social conflict among the people of the Colville Indian Reservation.

(h) The Business Council finds that the present system of regulation by adoption of State law has been found over the course of thirty years to be inadequate to the needs of the members of the Colville Confederated Tribes and the residents of the Colville Indian Reservation.

(i) The Business Council finds that Tribal regulation of the introduction, sale distribution and possession of liquor on the reservation is necessary to portect the health, security and welfare of all persons and property on the reservation.

(j) The Business Council further finds it necesary to raise additional revenues for the Tribal Alcohol Rehabilitation Program and tribal law enforcement agencies and to provide for their expansion and increased efficiency.

(k) The Business Council further finds it necessary to raise additional revenues to provide funds for other tribal social programs.

(l) For these reasons, the Business Council finds it necessary to enact this Liquor Control Code establishing the Colville Liquor Control Board and regulating the introduction, sale, taxation, distribution and possession of liquor on the Coleville Indian Reservation.

21.1.03 *Introduction, Sale, Distribution and Possession of Liquor:* The introduction, sale, distribution and possession of liquor shall be lawful within the Indian country under the jurisdiction of the Confederated Tribes of the Colville Indian Reservation and within the exterior boundaries of the Colville Indian Reservation only when such activities are in conformity with the code. Such introduction, sale, distribution and possession shall be in conformity with the laws of the State of Washington when required by 18 U.S.C. 1161, enacted August 15, 1953, and as provided in this code and regulations and orders of the Colville Liquor Control Board.

21.1.04 *Conformity with Federal Law:* This Code shall govern the introduction, sale, distribution and possession of liquor within the Colville Indian Reservation pursuant to federal law and to Resolution 1953–50 passed on October 9, 1953 by the Colville Business Council and published in the Federal Register, Volume 18, No. 230, on November 25, 1953; and shall supersede and amend all prior enactments of the Business Council inconsistent with this Code.

Definitions

21.2.01 *Alcohol:* The term "alcohol" means that substance known as ethyl alcohol, hydrated oxide or ethyl, or spirit of wine, which is commonly procuded by the fermentation or distillation of grain, starch, molasses, or sugar, or other substances including all dilutions and mixtures of this substance.

21.2.02 *Beer:* The term "beer" means any beverage obtained by the alcoholic fermentation of an infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other wholesome grain or cereal in pure water containing not more than four percent of alcohol by weight and not less than one-half of one percent of alcohol by volume. Any such beverage, including ale, stout and porter, containing more than four percent of alcohol by weight shall be referred to as "strong beer."

21.2.03 *Brewer:* The term "brewer" means any person engaged in the business of manufacturing beer and milt liquor.

21.2.04 *Board:* The term "board" means the Colville Liquor Control Board.

21.2.05 *Council:* The term "council" means the Business Council of the Colville Confederataed Tribes.

21/2/06 *Consume:* The term "consume" means the putting of liquor to any use whether by drinking or otherwise.

21.2.07 *Distiller:* The term "distiller" means a person engaged in the business of distilling spirits.

21.2.08 *Employee:* The term "employee" means any person employed by the Board.

21.2.09 *Fund:* The term "fund" means liquor revolving fund.

21.2.10 *Interdicted Person:* The term "interdicting person" means a person to whom the sale of liquor is prohibited by an order of interdiction filed with the Board pursuant to this Code.

21.2.11 *Liquor:* The term "liquor" means the four varieties of liquor (alcohol, spirits, wine and beer), and all fermented, spirituous, vinous, or malt liquor, or combination thereof, and mixed liquor, a part of which is fermented, spirituous, vinous or malt liquor, or otherwise intoxicating; and every liquid or solid or semi-solid or other substance, patented or not, containing alcohol, spirits, wine or beer, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption, and any liquid,

semi-solid, solid, or other substance which contain more than one percent of alcohol by weight shall be conclusively deemed to be intoxicating.

21.2.12 *Manufacturer:* The term "manufacturer" means a person engaged in the preparation of liquor for sale, in any form whatsoever.

21.2.13 *Malt Liquor:* The term "malt liquor" means beer, strong beer, ale stout and porter.

21.2.14 *Package:* The term "package" means any container or receptacle used for holding liquor.

21.2.15 *Person:* The term "person" means an individual, co-partnership, association or corporation.

21.2.16 *Public Place:* The term "public place" means streets and alleys of incorporated cities and towns; state, county, township or tribal highways or roads; buildings and grounds used for school purposes, rodeo grounds, parks, tribal ceremonial grounds, public dance halls and grounds adjacent thereto; those parts of establishments where beer may be sold under this Ordinance; soft drink establishments, public buildings, public meeting halls, lobbies, halls and dining rooms of hotels, restaurants, theaters, stores, garages and filling stations which are open to and are generally used by the public and to which the public is permitted to have unrestricted access; railroad trains, stages and other public conveyances of all kinds and character and the depots and waiting rooms used in conjunction therewith which are open to unrestricted use and access by the public; publicly-owned bathing beaches, parks or playgrounds and all other places of like or similar nature to which the general public has unrestricted right of access and which are generally used by the public.

21.2.17 *Regulations:* The term "regulations" means regulations made by the Board under the power conferred by this Ordinance.

21.2.18 *Reservation:* The term "reservation" means the Colville Indian Reservation, including all land and water within the exterior boundaries thereof.

21.2.19 *Sale/Sell:* The terms "sale" and "sell" means exchange, barter and traffic; and also includes the selling or supplying or distributing by any means whatsoever of liquor, or of any liquid known or described as beer, by any name whatever commonly used to described malt or brewed liquor, or of wine, by any person to any person; and also includes a sale or selling within the reservation to a foreign consignee or his agent.

21.2.20 *Spirits:* The term "spirits" means any beverage which contains alcohol obtained by distillation, including wines exceeding seventeen percent (17%) of alcohol by weight.

21.2.21 *Store:* The term "store" means a tribally-owned or individually-owned and operated store licensed under this Code.

21.2.22 *Tribes:* The term "tribes" means the Confederated Tribes of the Colville Indian Reservation, Washington.

21.2.23 *Vendor:* Term "vendor" means a person licensed by the Board as a store manager under this Ordinance.

21.2.24 *Wine:* The term "wine" means any alcoholic beverage obtained by fermentation of fruits (grapes, berries, apples, etc.) or other agricultural product containing sugar to which any saccharine substance may have been added before, during or after fermentation and containing not more than seventeen percent (17%) of alcohol by weight.

21.2.25 *Wholesale Price:* The term "wholesale price" means the established price for which liquor, beer, and wine products are sold to the Colville Confederated Tribes or to any licensed operator by the manufacturer or distributor exclusive of any discount or other reduction.

21.2.26 *Liquor Products Outlet:* The term "liquor products outlet" means any retail sales business selling liquor, beer, or wine in sealed packages within the boundaries of the Colville Indian Reservation.

21.2.27 *Tavern:* The term "tavern" means any retail sales business selling beer, liquor or wine not in sealed packages, that is "by the drink," within the boundaries of the Colville Indian Reservation.

21.2.28 *Operator:* The term "operator" means any person employed or licensed by the Colville Liquor Board to operate a liquor outlet.

21.2.29 *Distribute:* The term "distribute" means to deliver or sell liquor products prior to retail sale.

Sale of Liquor

21.3.01 *Minimum Age of 21:* Except as otherwise provided by tribal or federal law, an employee in a tribally licensed outlet or tavern may sell liquor to any person over the age of 21 years for beverage purposes.

21.3.02 *Proof of Minimum Age:* Where there may be a question of a person's right to purchase liquor by reason of his age, such person shall be required to present any one of the following official issued cards of identification which shows his correct age and bears his signature and photograph:

a. Liquor control authority card of identification of any state.

b. Driver's license of any state or "Identicard" issued by the Washington State Department of Motor Vehicles.

c. United States active duty military identification.

d. Passport.

e. Colville Tribal identification card.

21.3.03 *Regulations Regarding Identification:* The Board may adopt such regulations as it deems proper covering the acceptance of such identification cards.

21.3.04 *Cash Sales Only:* No liquor sold under this section shall be delivered until the purchaser has paid for the liquor in cash.

21.3.05 *Sealed Packages may be Required—Exception:* The Board shall by regulation prescribe that any or all liquors other than malt liquor be delivered to any purchaser at a tribally licensed outlet only in a package sealed with the official tribal tax stamp.

21.3.06 *Consumption on Tavern Premises:* No employee in a tribally licensed tavern shall allow any container of liquor sold on the premises to be taken from the premises; provided malt liquors may be taken from the premises.

21.3.07 *Consumption on Outlet Premises:* No employee in a tribally licensed liquor outlet shall open or consume, or allow to be opened or consumed any liquor on the store premises.

21.3.08 *Sunday Closing:* No sale or delivery of liquor shall be made on or from the premises of any tribal liquor store, nor shall any store be open for the sale of liquor on Sunday before the hour of 12:00 noon.

21.3.09 *Record of Purchases:* All records whatsoever of the Board showing purchases by any individual of liquor shall be deemed confidential, and, except subject to audit by the Tribal auditor, shall not be permitted to be inspected by any person whatsoever except by employees of the Board to the extent permitted by the regulations; and no member of the Board and no employee whatsoever shall give out any information concerning such records and neither such records nor any information relative thereof shall be competent to be admitted as evidence in any court or courts except in prosecution for illegal possession or of sale of liquor.

21.3.10 *Interdicted Persons:* No tribally licensed outlet or tavern shall sell liquor to a person that the outlet or tavern owner knows, or should have known, has been found to be an habitual alcoholic by order of the Colville Tribal

Court. When the Liquor Board finds that such a sale to an interdicted person has been made, the Board shall suspend the tribal license of the outlet or tavern for not less than thirty days nor more than one year. Appeals of such a suspension shall be directly to the Tribal Court but such an appeal shall not stay the suspension during the process of the appeal.

21.2.11 *Intoxicated Persons:* No tribally licensed outlet or tavern shall sell liquor to any buyer when, from the physical appearance of the buyer at the time of the sale, it could be reasonably believed or understood that the buyer was intoxicated. Any owner of a liquor outlet or tavern found to have made a sale to such a buyer by the Colville Tribal Court, shall be, in any action for civil damages against the buyer and owner, jointly and severally liable in damages for any injury for which the buyer is found liable, and which injury occurs within eight (8) hours after the sale by the outlet or tavern to the buyer, and which injury is caused by the intoxication of the buyer.

Colville Liquor Control Board

21.4.01 *Creation of Board:* The Colville Liquor Control Board shall be comprised of three persons appointed by the Council for two year terms and paid a stipend and expenses as fixed by the Council.

21.4.02 *Terms of Office:* Two Commissioners of the Board shall hold office until January 1, 1984 and one Commissioner of the Board shall hold office until January 1, 1985. Commissioners appointed to fill positions of members whose terms of office have expired shall hold office for the ensuing two-year term. Commissioners shall hold office after expiration of their terms of office until their successors are fully appointed and approved.

21.4.03 *Ineligibility:* No member of the Board shall be at the same time a member of the Colville Business Council, or have ever been convicted of a felony crime in any jurisdiction.

21.4.04 *Removal from Office:* A Commissioner may be removed from office by the Council upon conviction of a crime, or for gross neglect of duty, misfeasance in office, or ineligibility to serve as a member of the Board. Specific written charges shall be served upon the member of the Board at least 10 days before a Council hearing upon the matter, and he shall be given an opportunity to answer the charges at the hearing. If the Commissioner refuses to appear before the Council, the Council shall proceed to vote upon his removal. The decision of the Council shall be final.

21.4.05 *Vacancy and Interim Appointment:* If a member of the Board shall die, resign, be incapacitated, leave the area of the Reservation or be removed from office, a vacancy on the Board shall be created automatically, and at its next regular or special meeting, the Council shall appoint an eligible person to fill the vacant position for the remainder of the term of office of the member of the Board whose position he is to fill.

21.4.06 *Chairman:* The Chairman of the Board shall be appointed by the Board.

21.4.07 *Bond:* Each Commissioner shall enter into a surety bond executed by a surety company authorized to do business in the State of Washington, payable to the Council, to be approved by the Council in the penal sum of $10,000.00, conditioned upon the faithful performance of his duties, and shall take and subscribe to the oath of office as provided herein.

21.4.08 *Oath of Office:* Each Commissioner shall take the following oath of Office:

"I promise to execute faithfully all provisions of the Colville Liquor Control Code and any regulations promulgated in furtherance thereof and to be bound by the Colville Law and Order Code, the jurisdiction of the Tribal Court, and the Constitution and By-Laws of the Confederated Tribes of the Colville Indian Reservation, and to perform faithfully my duties as prescribed by law."

21.4.09 *Administration and Employees:* The administration of this code shall be vested in the Board which may employ such number of employees as in its judgment are required from time to time. Board employees shall be paid pursuant to a salary schedule established by the Council.

21.4.10 *Audit:* The books, records and affairs of the Board shall be audited annually as part of any general audit of the books, records and affairs of the Colville Confederated Tribes.

21.4.11 *Regulation by Board:* For the purpose of carrying into effect the provisions of this Code according to their true intent or of supplying any deficiency therein, the Board may make such regulations and issue such order not inconsistent with the spirit of this Code as are deemed necessary or advisable. All such regulations and orders shall have the same force and effect as if incorporated in this Code. Without limiting the generality of the foregoing provisions it is declared that the power of the Board to make regulations and issue order shall include the power to:

a. Regulate the equipment, management, nature of books and records and reports concerning stores and warehouses in which tribal liquor is sold or kept.

b. Govern the purchase of liquor by the Tribes and the furnishing of liquor to persons licensed under this Code.

c. Determine the classes, varieties and brands of liquor to be kept for sale at any store on the Reservation.

d. Prescribe the hours during which liquor stores shall be open.

e. Provide the issuing and distribution of price lists showing the price to be paid by purchasers for each variety of liquor kept for sale under this Code.

f. Prescribe an official seal and official labels and stamps, if any, and determining the manner in which they shall be attached to every package of liquor sold or sealed under this Code.

g. Provide for the payment by the Board in whole or in part or carrying charges on liquor shipped by freighten-express.

h. Prescribe forms to be used for purposes of this Code of regulations.

i. Prescribe the manner of giving and serving notices required by this Code of regulations, where not otherwise provided for in this Code.

j. Specify and regulate the time, manner, method and means by which manufacturers shall deliver liquor within the Reservation; and the time, manner, methods and means by which liquor may be lawfully conveyed or carried within the Reservation.

k. Provide for getting of fidelity bonds by and for all of the employees of the Board.

l. Prescribe methods of manufacture, condition of sanitation, standard of ingredients, quality and identity of alcoholic beverages manufactured, sold, bottled or handled by the Board.

m. Seize, confiscate and destroy all alcoholic beverages manufactured, sold, or offered for sale within the Reservation which do not conform or whose manner of sale or distribution do not conform in all respects to the standards prescribed by this Code or the regulations and orders of the board.

n. Determine the localities within the Reservation where liquor stores or outlets shall be established and the number and situation of such stores within each locality.

o. Establish all necessary warehouses for the storing and bottling, diluting and rectifying of stocks of liquor for the purposes of this Code.

p. Determine the nature, form and capacity of all packages to be used for

containing liquor kept for sale under this Code.

q. Execute or cause to be executed all contracts, papers, and documents in the name of the Board under such regulations as the Board may fix.

21.4.12 *Purchase of Liquor by Board:* Every order for the purchase of liquor shall be authorized by the Board, and no order for liquor shall be valid or binding unless it is so authorized and signed by two members of the Board.

21.4.13 *Immunity From Personal Liability:* Neither the Board nor any Commissioner thereof shall be personally liable in any action at law for damages sustained by any person because of any action performed or done or omitted to be done by the Board or any employee of the Board in the performance of his duties and the administration of this Code.

21.4.14 *Preemption of Field by Tribes:* No municipality, city, town or country, nor the State of Washington, shall have power to impose an excise or any other tax upon liquor as defined in this Code, or to govern or license the sale or distribution thereof in any manner within the Colville Indian Reservation, except as permitted in the regulations of the Board.

21.4.15 *Inspection of Records:* For the purpose of obtaining information concerning any matter related to the administration or enforcement of this Code, the Board, or any person appointed by it in writing for the purpose, may inspect the books and records of any manufacturer or drugstore doing business on the Reservation and of any common carrier operating within the Reservation who possesses liquor within the boundaries of the Reservation. Every person who neglects or refuses to produce or submit for inspection any records referred to in this section when requested to do so by the Board or a person appointed by it, shall be guilty of a violation of this Code.

Liquor Revolving Fund

21.5.01 *Creation of Fund:* There shall be a fund, known as the "Liquor Revolving Fund" which shall comprise all taxes, fees, penalties, forfeitures, and all other monies, income or revenue received by the Board.

21.5.02 *Custodian of Fund:* The Board shall be custodian of the fund.

21.5.03 *Individual Indian Money Account:* The fund shall be kept in an Individual Indian Money account at the Colville Indian Agency. All monies received by the Board or any employee thereof, except an amount of petty cash fixed by the Board, shall be deposited each day into the fund.

21.5.04 *Disbursement:* Disbursement from the fund shall be on authorization of the Board or a duly authorized representative thereof.

21.5.05 *Use of Revenue:* All revenue derived from the Colville Liquor Control Code shall be used in accordance with this section. All revenue shall be specially earmarked and used only for the following purposes:

a. Costs and expenses of the Liquor Board,

b. Colville Alcohol Rehabilitation Program,

c. Colville Law Enforcement, and

d. Tribal Social and Judicial Programs.

Exemptions

21.6.01 *Home Use:* Nothing in this Code shall apply to wine or beer manufactured in any home for consumption therein, and not for sale.

21.6.02 *Sale to Board:* Nothing in this Code shall apply to or prevent the sale of liquor by any person to the Board.

21.6.03 *Shipment in Commerce:*

a. Nothing in this Code shall prevent any person licensed by the United States to manufacture liquor from keeping liquor in his warehouse or place of business.

b. Nothing in this Code shall prevent the trans-shipment of liquor in interstate and foreign commerce; but no person shall import liquor into the Reservation from the State of Washington or any other state or county, for use or sale on the Reservation, except the Board; except as otherwise provided in this Code.

c. Every provision of this Code which may affect transactions of liquor between a person in the Reservation and a person in the State of Washington or another state or foreign country shall be construed to affect such transactions only insofar as the Colville Business Council has power to make laws in relation thereto.

21.6.04 *Religious Use:* Nothing in this Code shall apply to alcoholic beverages used in a bona fide religious ceremony.

Pharmaceutical Preparation, Patent Medicines, Denatured Alcohol

21.7.01 Nothing in this Code shall apply to or prevent sale, purchase or consumption of:

a. Any pharmaceutical preparation containing liquor which is prepared by a druggist according to a formula of the pharmacopoeia of the United States or the dispensatory of the United States; or

b. Any proprietary or patent medicine; or

c. Wood alcohol or denatured alcohol, except in the case of the sale, purchase, or consumption of wood alcohol or denatured alcohol for beverage purposes, either alone or combined with any other liquid or substance.

Independent Operators License

21.8.01 Upon adoption of appropriate regulations by the Board, any person may apply to the Board for a license to operate a liquor products outlet or tavern on any lands within the Boundaries of the Colville Indian Reservation. Liquor Products Outlets and Taverns shall not be licensed to operate on the same premises.

21.8.02 The Liquor Board shall decide which applicants if any shall receive a license under this section. The Board shall give written reasons why a license is to be denied or terminated after an open hearing on the license. Each license granted shall specify what liquor products are authorized to be sold, shall specify any restrictions on the license and shall be issued for one year. Licenses shall be automatically renewed upon payment of any license fee and taxes due, unless the Board shall decide against renewal in writing and after a hearing in which the applicant may give reasons why a license shall not be denied. No person shall hold more than one liquor outlet and one tavern license at one time.

21.8.03 The Board in determining which applicant, if any, shall receive a license under this section, shall consider the current number of liquor outlets and taverns in operation in one geographic area, the reputation of the applicant and the establishment to be licensed, and shall not act so as to frustrate the central purposes of this act by allowing the unnecessary proliferation of liquor product outlets or taverns or by licensing an establishment which violates the peace and welfare of the people of the Colville Indian Reservation. Appeals from denial or cancellation of a license shall be to the Tribal Court of the Colville Tribes. Appeals shall be on the Board record and not stay the effect of the denial or cancellation. The exclusive ground for appeal shall be that the applicant was denied due process or equal protection of the law in denying or cancelling the license.

21.8.04 A licensee under this section shall be deemed to be an operator of a liquor product outlet or tavern and shall manage the outlet in a way that does not violate the laws of the Colville Confederated Tribes. The licensee shall comply with all parts of this Code, and with all rules and regulations established by the Liquor Board, and shall stipulate in the license that for purposes of this Code the licensee shall be subject to the civil jurisdiction of the

Tribal Court of the Colville Confederated Tribes.

21.8.05 The license fee when applicable for a liquor outlet or tavern shall be $250.00 per year, due January 31st of each calendar year, and shall not be proratable; or whatever fees shall be set by the Board.

Distribution of Liquor Products on the Colville Indian Reservation

21.9.01 All persons, businesses, or entities of any sort distributing liquor products to businesses or persons within the boundaries of the Colville Indian Reservation are subject to the provisions of this Code.

21.9.02 All persons, businesses or entities of any sort, distributing liquor products to businesses or persons within the boundaries of the Colville Indian Reservation shall be required to obtain a license from the Liquor Board.

21.9.03 Unless changed by regulation the sole distributor of liquor products on the Colville Indian Reservation shall be the liquor board; provided, that distributors when properly licensed under this code may distribute beers and malt liquors on the Colville Indian Reservation.

21.9.04 Any person or entity which does distribute liquor products to any person or business located within the boundaries of the Colville Indian Reservation at a time when such person or entity is not validly licensed to do business by the Liquor Board shall be in violation of this Code and in violation of applicable Federal Indian liquor laws.

21.9.05 The Liquor Board shall receive applications for licenses to distribute liquor products and shall decide whether to grant any application within 90 days of filing with the Board. The processing cost shall be $30.00 or such larger amount as the Board may determine. Upon the granting of a license to distribute the applicant shall pay the full processing cost.

21.9.06 An annual fee, when applicable, of $250.00, or such larger amount as the Board may determine, shall be charged for each license to distribute. All such fees shall be due and owing on January 31st of each year. Licenses to distribute shall expire of February 1st of each year unless the annual fee has been paid. Persons or entities holding expired licenses to distribute may apply for a new license under part .05 above.

21.9.07 Persons or entities holding licenses under this section shall be required to subject themselves in writing to the civil jurisdiction of the Colville Confederated Tribal and its Tribes Court of the purpose of this Code.

21.9.08 The Liquor Board may grant, deny or cancel a license to distribute at any time and for any reason, and shall deny or cancel a license for failure to pay taxes or failure to abide by the laws of the Colville Confederated Tribes or failure to abide by the applicable state or federal laws.

Special Retail License For Non-Profit Club or Other Organization

21.10.01 The Board, upon written petition, may issue a license similar in effect to the Washington State Class H Liquor license as defined and limited in Revised Code of Washington Section 66.04.010(5), 66.24.400, 66.24.410, 66.24.420, 66.24.450, to a club or fraternal organization; provided that the Board shall determine the fee, where applicable, to be charged for each category of license and any time limits of the license, and that R.C.W. Section 66.24.450(1) shall not apply to decisions of the Board.

Tax Rates

21.11.01 A tax amounting to precisely the same amount of tax collected by the State of Washington on the same or similiar liquor item shall be assessed and collected by the Liquor Board, unless some other amount is determined by Liquor Board Regulations. The tax shall be imposed directly on the goods sold and shall be collected from the seller. Taxes shall be paid by each taxpayer under this Code to the Board on the fifteenth day of each month for all liquor products sold or delivered during the preceding month. Unpaid taxes shall accumulate simple interest at a rate of 18% per year.

21.11.02 The Board shall collect taxes due by bringing civil lawsuits against delinquent sellers in the Tribal Court or other Court having jurisdiction. The Board shall bring these tax collection suits in its own name or in the name of the Colville Confederated Tribes. The Board, with an appropriate Tribal Court Order, shall have the power to seize and sell any property of delinquent distributors for taxes and interest due.

21.11.03 Taxes collected by the Board shall be held in a trust account until paid over by the Board to the Treasurer of the Colville Confederated Tribes.

21.11.04 The Board shall have the power to allow or license its own agent to be the sole retailer or distributor of certain liquor products within the boundaries of the Colville Indian Reservation.

Sovereign Immunity Preserved

21.12.01 Nothing in this Code is intended or shall be construed as a waiver of the sovereign immunity of the Confederated Tribes of the Colville Reservation. No member of the Liquor Board or manager or employee of the Liquor Enterprise is authorized to waive the immunity from suit of the Colville Confederated Tribes.

Other Business

21.13.01 A licensee under this Code may conduct other business simultaneously with the management of a liquor products outlet. The other business may be conducted on the same premises.

Operating Without a License

21.14.01 No person shall operate a liquor product outlet or tavern within the boundaries of the Colville Indian Reservation without first obtaining a current and valid Tribal license under this Code; persons in violation of this section shall be considered to be in violation of all federal Indian liquor laws and regulations as well as in violation of this Code.

Violations

21.15.01 The Liquor Board of the Colville Confederated Tribes shall have the following powers to enforce the Code.

21.15.02 *Non-Payment of Taxes:*

a. Any person or entity within or doing business within the boundaries of the Colville Indian Reservation who shall not pay the taxes required to be paid under this Code shall be proceeded against in the Tribal Court of the Colville Confederated Tribes.

b. The Tribal Court of the Colville Confederated Tribes is empowered to seize, attach, and forfeit to the Colville Confederated Tribes any property belonging to any person who shall be alleged or found to have failed to pay taxes due and owing under this Code; provided that the amount of property forfeited shall not be of a wholesale value greater that the amount of taxes alleged or found to be due and owing.

c. Persons sued under this Section by the Liquor Board shall be entitled to a full evidentiary and adversary hearing before the Tribal Court of the Colville Confederated Tribes before any order or forfeiture may be issued. Persons sued under this Section shall have the burden of proving that they do not owe any taxes or that they have been assessed a greater amount of taxes than they lawfully owe under this Code.

21.15.03 *Failure to Obtain a License and all other Violations:*

a. Any person or entity who shall violate any provision of this Code, except non-payment of taxes due, shall be proceeded against in a civil lawsuit by the Liquor Board in the Tribal Court of the Colville Confederated Tribes for an order and injunction closing and locking the liquor sales business. The Tribal Court shall not issue any order or injunction closing any business for a violation of this Code without granting to the defendant the opportunity to have a full evidentiary and adversary hearing before the Tribal Court.

b. The Liquor Board shall bring all persons or entities who violate any provision of this Code, except non-payment of taxes due, to the attention of the Federal Bureau of Investigation and the United States Attorney for the Eastern District of Washington, for the purpose of requesting a federal prosecution of such persons or entities for violations of Federal Indian liquor statutes.

[FR Doc. 83-17640 Filed 6-29-83; 8:45 am]
BILLING CODE 4310-02-M

Plan for the Use and Distribution of Hoopa Valley Tribe Judgment Funds in Dockets 342-70 and 343-70 Before the United States Court of Claims

June 9, 1983.

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary for Indian Affairs by 209 DM 8.

The Act of October 19, 1973 (Pub. L. 93-134, 87 Stat. 466), as amended, requires that a plan be prepared and submitted to Congress for the use or distribution of funds appropriated to pay a judgment of the Indian Claims Commission or Court of Claims to any Indian tribe. Funds were appropriated on March 8, 1982, in satisfaction of the award granted to the Hoopa Valley Tribe in United States Court of Claims Dockets 342-70 and 343-70. As authorized, under the extension of time requested in which to submit a plan for the use or distribution of these judgment funds, a plan was delivered to Congress on December 3, 1982. This plan became effective on April 12, 1983, as provided by Section 5 of the 1973 Act since Congress did not adopt a resolution disapproving it.

The plan reads as follows:

"The funds appropriated on March 8, 1982, in satisfaction of an award granted to the Hoopa Valley Tribe in Dockets 342-70 and 343-70 before the United States Court of Claims, less attorney fees and litigation expenses, and including all interest and investment income accrued, shall be used and distributed as provided herein.

Per Captia Aspect

The Secretary of the Interior (hereinafter 'Secretary') shall make a per capita distribution of eighty (80) percent of such funds, in a sum as equal as possible, to each enrollee of the Hoopa Valley Tribe born on or prior to and living on the effective date of this plan. The membership roll of the tribe shall be brought current under existing tribal procedures. Any amount remaining after the per capita payment to the enrollees shall revert to the tribe for use in the programing aspect of this plan.

Programing Aspect

Twenty (20) percent of the funds shall be utilized in economic development programs designed to stimulate and assist the economy on the reservation, subject to the approval of the Secretary.

General Provisions

The per capita shares of living competent adults shall be paid directly to them. The per capita shares of legal incompetents shall be handled pursuant to 25 CFR 115.5. The per capita shares of minors shall be handled pursuant to 25 CFR 87.10 (a) and (b)(1) and 115.4. The per capita shares of deceased individual beneficiaries shall be determined and distributed in accordance with 43 CFR Part 4, Subpart D.

None of the funds distributed per capita or held in trust under the provisions of this plan shall be subject to Federal or State income taxes, and the per capita payments shall not be considered as income or resources when determining the extent of eligibility for assistance under the Social Security Act."

John W. Fritz,

Acting Assistant Secretary, Indian Affairs.

[FR Doc. 83-17639 Filed 6-29-83; 8:45 am]
BILLING CODE 4310-02-M

Native Village of Northway; Ordinance Providing for the Introduction, Possession and Sale of Intoxicating Beverages

June 14, 1983.

This Notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. 1161. I certify that Ordinance No. 83-4 relating to the application of the Federal Indian Liquor Laws within an area of Indian country was duly adopted on January 20, 1983 by the Northway Native Village Council. The Northway Liquor Ordinance reads as follows:

Kenneth Smith,

Assistant Secretary—Indian Affairs.

Native Village of Northway, Northway, Alaska Council Ordinance No. 83-4

Whereas: The Act of Congress of August 15, 1953 (18 U.S.C. 1161, 67 Stat. 586) empowers Indian tribes having appropriate jurisdiction to enact an ordinance legalizing the introduction, sale, and possession of liquor within any area of Indian country coming within the jurisdiction of such tribe; and

Whereas: historically, the Northway Native Village Council has exercised regulatory and judicial jurisdiction over alcohol within the Northway village; and

Whereas: such regulation has declined in the last ten years because of the unclear effect of Pub. L. 280 tribal liquor regulation; and

Whereas: during these last ten years, alcohol problems in Northway have increased and now present a significant health and safety problem to residents of Northway; and

Whereas: the current state local option laws do not provide enough flexibility to meet the needs of Northway, Alaska; and

Whereas: the Ninth Circuit Court of Appeals in *Rehner v. Rice* (9th Cir., June 8, 1982 9 ILR 2084) has ruled that the Federal Indian Liquor Laws preempt State jurisdiction within the Indian country in Pub. L. 280 states,

Now therefore be it ordained as follows:

Section 1: The introduction, sale and possession of intoxicating beverages shall be lawful within the Indian country under the jurisdiction of the Native Village of Northway, subject, however, to the following provisions:

(a) introduction and possession of intoxicating beverages shall be exclusively for the personal and private use of the persons introducing such intoxicating beverages into the Indian country of the Native Village of Northway,

(b) sale of intoxicating beverages within the Indian country of the Native Village of Northway shall be pursuant to license and regulations issued by the Northway Native Village Council, and

(c) to the extent required by Federal law, such introduction, sale and possession shall be consistent with the laws of the State of Alaska.

Section 2. As used in connection with this Ordinance:

(a) the term "personal and private use" shall mean consumption or other

use within a private residence and with the consent of the owner of such residence.

(b) the term "possession" shall include possession by prior consumption.

(c) the term "sale" shall include any exchange for cash, goods, or services.

Section 3. The Northway Village Council is hereby vested with full power and authority to adopt regulations pursuant to and consistent with this Ordinance.

Section 4. All prior traditional laws, resolutions and ordinances relating to the regulation of intoxicating beverages in the Native Village of Northway are hereby repealed.

Section 5. This Ordinance shall be enforced as a civil ordinance under the Tribal Judicial Code.

Section 6. A person unlawfully introduces, possesses and/or sells intoxicating beverages contrary to 18 U.S.C. 1161 (or any subsequently enacted law relating to federal regulation of intoxicating beverages in Indian country) by:

(a) introducing, selling or possessing intoxicating beverages within the Indian country of the Northway Native Village contrary to this Ordinance, and

(b) such a determination is found pursuant to the Tribal Judicial Code, and

(c) said person fails to comply with a duly entered tribal court order. The President of the Northway Native Council is hereby authorized to request federal enforcement of 18 U.S.C. 1161 (or any subsequently enacted federal regulation of intoxicating beverages in Indian country) in the event that this section is violated.

Section 7. In the event any provision of this Ordinance is held invalid or the application of this Ordinance or any provision thereof to any person or circumstances is held invalid, the remaining provisions of this Ordinance or any provision thereof to other persons or circumstances shall not be affected by such invalidity and to such extent, the terms and provisions of this Ordinance are declared to be severable.

Section 8. This Ordinance shall be effective upon its certification by the Secretary of the Interior and its publication in the **Federal Register.**

Duly ordained, enacted and adopted this 20th day of January 1983.

Attest:

Gary Thomas,

President.

Marion Sam,

Secretary.

[FR Doc. 83-17641 Filed 6-29-83; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

Coos Bay, Oregon; Designation of an Area of Critical Environmental Concern

Pursuant to the authority in the Federal Land Policy and Management Act of October 21, 1976 (Section 202(C)(3)) and in 43 CFR 1601.6-7, I have designated land in the following area as an Area of Critical Environmental Concern (ACEC).

New River Area of Critical Environmental Concern

Willamette Meridian, Coos County, Oregon

T. 30 S., R. 15 W.,
Sec. 3, Govt. Lots 3, 4;
Sec. 10, Govt. Lots 1, 2, 3, 4, SW¼SE¼;
Sec. 15, Govt. Lots 1, 2, 3, 4, NW¼NE¼;
Sec. 21, Govt. Lot 2;
Sec. 22, Govt. Lots 1, 2, NW¼SW¼.

The New River Area is located approximately five (5) miles south of Bandon, Oregon, on the southern Oregon Coast. It is a three and one-half (3½) mile sliver of land fronting on the Pacific Ocean and west of New River, a partial estuarian stream. There is a large wave-built sand terrace between the Pacific Ocean and New River which contains unique land and water features. The area encompasses approximately 494 acres of BLM administered land.

The designation is being made to provide protection to golden-eyed grass and silver phacelia whose habitat is limited strictly to coastal sand dunes. This area provides habitat for the state threatened western Snowy Plover. Federally endangered birds known to use the area are the Aleutian Canada goose, peregrine falcon and brown pelican, along with the federally threatened bald eagle. Evidence of the presence of Indian encampments from the past have been found on the area. A unique isolated beach-marsh-estuary environment is found throughout the area. The sand dunes rest on a layer of peat which is not found in other dune areas along the coast of Oregon. The New River area is a highly scenic setting isolated from easy access by natural surroundings.

Management as an ACEC will involve closure of some of the area to offroad vehicles (ORV), reduction of uncontrolled cattle grazing, potential for acquiring access, recreation and/or other developments. There are nine mining claims located over a portion of the area. Claimants will be required to conduct their activities in accordance with 43 CFR 3809.1-4. The intention is to protect the important plants, wildlife, natural and cultural values and still provide for other compatible uses of the land.

An ACEC management plan element will be developed for the critical resource values identified in the New River ACEC within the next six months. The ACEC land-use allocations and general management direction are contained in the Coos Bay Management Framework Plan on file in the Coos Bay District Office, 333 South Fourth Street, Coos Bay, Oregon 97420.

Dated: June 21, 1983.

Thomas W. Roessler,

Acting District Manager.

[FR Doc. 83-17586 Filed 6-29-83; 8:45 am]

BILLING CODE 4310-84-M

[A-16772]

Arizona; Public Lands Exchange, Mohave County

AGENCY: Bureau of Land Management, (BLM), Interior.

ACTION: Notice of realty action—exchange, public lands in Mohave County, Arizona.

SUMMARY: The following described public 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:

Gila and Salt River Meridian, Arizona

T. 23 N., R. 13 W.,
Sec. 20: S½SE¼SW¼ and S½S½SE¼.
Comprising 60 acres of public land.

The public lands described above include all minerals with the exception of oil and gas.

The public lands described herein are an amendment to the exchange proposal published in FR Doc. 82-14847 appearing on page 23975 of Wednesday, June 2, 1982. As agreed under the terms and conditions of an exchange agreement consummated on January 19, 1983, the exchange proponent, X Bar One, Inc., agreed the additional 60 acres of public land to resolve a difference in exchange values, as determined by appraisal of September 22, 1982.

The exchange amendment is consistent with the Bureau's planning system. The public interest will be well served by making the exchange.

The public lands to be transferred 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. Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

2. A reservation of all oil and gas to the United states with the right to prospect for, mine and remove such deposits.

3. Oil and gas lease A–14781 and the right of the mineral lessee to occupy and use so much of the surface of the land as may be reasonably necessary for mineral leasing operations.

4. Such rights for water pipeline right-of-way A–18414 as provided under the authority of the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1716).

5. Such rights for road easement purposes as the County of Mohave may have under the authority of R.S. 2477, as recorded in Mohave County, Book 380 of Official Records, Pg. 874.

6. A portion of the lands described herein are situated within the 100-year floodplain as identified by Federal Emergency Management Agency mapping. Developments will therefore be subject to County floodplain restrictions as adopted by the Mohave County Board of Supervisors on May 7, 1982.

Publication of this Notice shall segregate the subject land from all appropriations under the public laws, including the mining laws with the exception of the mineral leasing laws. This segregative effect shall terminate upon the issuance of a patent or two years from the date of this Notice, or upon publication of a Notice of Termination.

Detailed information concerning the exchange can be obtained from the Area manager, 2475 Beverly Avenue, Kingman, Arizona 86401. For a period of forty-five (45) days from the date of this notice, interested parties may submit comments to the District Manager, Phoenix District Office, 2929 West Clarendon Avenue, Phoenix, Arizona 85017. Any adverse comments may be evaluated by the District Manager, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become the final determination of the Department of the Interior.

Dated: June 23, 1983.

W. K. Barker,

District Manager.

[FR Doc. 83-17652 Filed 6-29-83; 8:45 am]

BILLING CODE 4310-84-M

Boise District, Idaho, Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Boise District, Idaho, Advisory Council Meeting.

SUMMARY: In accordance with Pub. L. 92–463, the Federal Advisory Committee Act, and Pub. L. 94–579, the Federal Land Policy and Management Act, notice is hereby given that the Boise District Advisory Council will meet August 2, 1983.

SUPPLEMENTARY INFORMATION: The meeting will be held August 2, 1983, from 9:00 a.m. to 4:00 p.m. in the lower conference room at the Bureau of Land Management, Boise District Office, 3948 Development Avenue, Boise, Idaho 83705. The Council will discuss alternatives to be addressed in the Owyhee Canyonlands Wilderness Environmental Impact Statement (EIS) and make a recommendation on alternatives to be addressed in the Jacks Creek Wilderness EIS.

The public is invited to attend and a public comment period has been scheduled from 1:00 p.m. to 2:00 p.m. Written statements may also be submitted for the Council's consideration at the Boise District Office before August 2 or at the meeting.

FOR FURTHER INFORMATION CONTACT: Further information is available from the Boise District, Bureau of Land Management, 3948 Development Avenue, Boise, Idaho 83705, phone (208) 334–1582. Minutes of the meeting will be available for public inspection at the District Office.

J. David Brunner,

Associate District Manager.

June 24, 1983.

[FR Doc. 83-17653 Filed 6-29-83; 8:45 am]

BILLING CODE 4310-84-M

California Desert District; Realty Action for Public Lands in San Diego County

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action or recreation and public purposes classification and lease of public lands in San Diego County.

SUMMARY: Notice is hereby given that the Ramona Municipal Water District, has submitted an application to lease (with option to purchase) several isolated tracts of public land for a portion of a new storage reservoir and a new access road and water pipeline.

The following described land has been examined and classified as suitable for lease or sale under the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869 et. seq.):

San Bernardino Base Merdian

T. 13 S., R. 1 W.,

Sec. 21, lots 4, 5, 6, 7, 8, 10, 11, 12, 13 19, 20, 21, and 28.

Encompassing 65.67 acres.

This decision/notice is based on the following reasons:

1. The lands have been found to be valuable for public purposes and/or recreational uses.

2. The land is not of national significance and not essential to any Bureau of Land Management Program.

3. The proposed use is in conformance with the existing land use plan.

4. The proposed action will have no significant (including controversial) effects on the human and natural environment.

5. Leasing of the above described lands to the Ramona Municipal Water District will serve important public purposes. (i.e. Provide lands for a reservoir site, for access road, and water pipeline.)

6. The subject lands are isolated and receive only custodial management.

DATES: Interested parties may submit comments until 60 days after this notice is published. Send comments to the District Manager, Bureau of Land Management, 1695 Spruce Street, Riverside, California 92507. 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 realty action will become the final determination of this Department.

FOR FURTHER INFORMATION CONTACT: Information related to this Recreation and Public Purposes Application, including the environmental assessment, land report, terms, conditions and special stipulations that will be included in the lease, is available for review at the California Desert District in Riverside.

SUPPLEMENTARY INFORMATION: The classification and granting of the lease for a maximum period of 20 years with the option to purchase/patent the land will not be adverse to any known public or private interests. Classification of these lands to the Ramona Municipal Water District, California under the provisions of the above cited authority segregates them from all appropriations, including locations under the mining laws, except as to applications under the Mineral Leasing Laws and applications under the Recreation and Public Purposes Act.

This Recreation and Public Purposes Application is consistent with Bureau of Land Management policies and planning and has been discussed with the State and local officials.

Petition for classification CA 12734 is approved as to the land described above.

Name of Petitioner: Ramona Municipal Water District by its General Manager.

Type of Petition: Recreation and Public Purposes under the Act of June 14, 1926, as amended.

Dated: June 17, 1983.

Gerald E. Hillier,

District Manager.

[FR Doc. 83-17649 Filed 6-29-83; 8:45 am]

BILLING CODE 4310-84-M

California Desert District; Realty Action for Public Lands in San Diego County

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action of recreation and public purposes classification and purchase of public lands in San Diego County.

SUMMARY: Notice is hereby given that the Fallbrook Public Utility District has submitted an application to purchase an isolated tract of public land for a new storage reservoir, access road, and pipeline, plus existing water facilties currently under right-of-way lease.

The following described land has been examined and classified as suitable for sale under the Recreation and Public Purposes Act of June 14, 1926 as amended (43 U.S.C. 669 et. seq.; 44 Stat. 741.)

T. 9 S., R. 3 W., SBM,
Sec. 15, NW¼ NW¼.
Encompassing 40 acres.

This decision/notice is based on the following reasons:

1. The land has been found to be valuable for public purposes and/or recreational uses.
2. The land is not of national significance and not essential to any Bureau of Land Management Program.
3. The proposed use is in conformance with the existing land use plan.
4. The proposed action will have no significant (including controversial) effects on the human and natural environment.
5. Selling the above described land to the Fallbrook Public Utility District will serve important public purposes (i.e., provide lands for a new reservoir site, access road, and water pipeline.)
6. The subject lands are isolated and receive only custodial management.

DATES: Interested parties may submit comments until 60 days after this notice is published. Send comments to the District Manager, Bureau of Land Management, 1695 Spruce Street, Riverside, California 92507. 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 realty action will become the final determination of this Department.

FOR FURTHER INFORMATION CONTACT: Information related to this Recreation and Public Purposes Application, including the environmental assessment, land report, terms, conditions, and special stipulations that will be included in the lease, is available for review at the California Deseret District in Riverside.

Dated: June 17, 1983.

Gerald E. Hillier,

District Manager.

[FR Doc. 83-17650 Filed 6-29-83; 8:45 am]

BILLING CODE 4310-84-M

[Serial No. I-18802]

Idaho; Conveyance of Public Lands, Caribou County

June 23, 1983.

Notice is hereby given that pursuant to the Act of October 21, 1976 (90 Stat. 2750; 43 U.S.C. 1713), a patent was issued to Monsanto Company, Soda Springs, Idaho, for the following public lands:

Boise Meridian, Idaho

T. 6 S., R. 42 E.,
Sec. 11, SW¼SE¼.
Containing 40.00 acres.

The purpose of this notice is to inform the public and interested State and local governmental officials of the conveyance.

Louis B. Bellesi,

Deputy State Director for Operations.

[FR Doc. 83-17654 Filed 6-29-83; 8:45 am]

BILLING CODE 4310-84-M

Lewistown District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The Lewistown District Advisory Council will meet July 29, 1983. The agenda will be:

9:00 a.m. Screening of Cooperative Management Agreements
12:00 p.m. Adjournment

Public comment will be sought during the meeting.

DATES: July 29, 1983, 9:00 a.m. to 12:00 noon.

ADDRESS: Lewistown District Office, Airport Road, Lewistown, Montana.

FOR FURTHER INFORMATION CONTACT: Glenn W. Freeman, District Manager, Bureau of Land Management, Lewistown, Montana 59457.

SUPPLEMENTARY INFORMATION: The Lewistown District Advisory Council is authorized under Section 309 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1739). The Council advises the District Manager concerning the planning for and management of the public lands administered within the Lewistown District.

Dated: June 24, 1983.

David E. Little,

Associate District Manager.

[FR Doc. 83-17651 Filed 6-29-83; 8:45 am]

BILLING CODE 4310-84-M

[Group 34]

Oklahoma; Filing of Plat of Survey

June 21, 1983.

The plat of survey described below was officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, effective at 10 a.m. on June 15, 1983.

Indian Meridian

A dependent resurvey of a portion of the subdivisional lines and the subdivision of sections 8, 9 and 10, T. 10 N., R. 21 E., was accepted June 9, 1983.

This survey was executed to meet certain administrative needs of this Bureau.

The plat will be placed in the open files of the New Mexico State Office, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87501. Copies of the plat may be obtained from that office upon payment of $2.50 per sheet.

Leroy C. Montoya,

Deputy State Director, Operations.

[FR Doc. 83-17660 Filed 6-29-83; 8:45 am]

BILLING CODE 4310-84-M

[I-20200]

Realty Action; Noncompetitive Sale of Public Lands in Blaine County, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, I-20200, non-competitive sale of public lands in Blaine County, Idaho.

SUMMARY: The following described land has been examined, and through the development of land use decisions based on public input, it has been determined that the sale of this tract is consistent with Section 203(a) of the

Federal Land Policy and Management Act of 1976. The land will be offered by direct sale to Jim Montgomery for no less than the appraised fair market value of $300.00.

Boise Meridian, Blaine County, Idaho

T. 1 S., R. 18 east,
Sec. 31, lot 16.
Containing 0.07 acre.

Upon publication of this Notice in the **Federal Register**, the land described above will be segregated from all forms of appropriation under the public land laws, including the mining laws, but excepting the mineral leasing laws, for a period of two years or until the lands are sold. The segregative effect may otherwise be terminated by the Authorized Officer by publication of a termination notice in the **Federal Register** prior to the expiration of the two year period.

A patent for the land, when issued, shall be subject to the following reservations:

1. A right-of-way for ditches or canals constructed by the authority of the United States. Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945.

2. All minerals including Geothermal Resources and Gas and Oil shall be reserved to the United States, as required by Section 209(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1719.

3. All valid existing rights and reservations of record, at the time of sale.

The sale will be conducted by the Shoshone District Office, Bureau of Land Management, 400 West F Street, P.O. Box 2B, Shoshone, Idaho. Additional information concerning this land and terms and conditions of sale may be obtained from the Shoshone District Manager at the above address, or by calling 886–2206.

SUPPLEMENTARY INFORMATION: For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager regarding the proposed action. Any adverse comments will be evaluated by the District Manager, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Charles J. Haszier,

Dated: June 24, 1983.

Charles J. Haszier,

District Manager.

[FR Doc. 83-17655 Filed 6-29-83; 8:45 am]

BILLING CODE 4310-84-M

Realty Action; Noncompetitive Sale of Public Land in Owyhee County

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, I–20052, noncompetitive sale of public land in Owyhee County.

SUMMARY: The following described land has been examined and identified as suitable for disposal by sale under Section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750; 43 U.S.C. 1713).

Boise Meridian, Idaho

T. 5 S., R. 2 E.,
Sec. 24, E½NE¼.
80 acres.

The above described 80 acres of public land is being offered by direct sale to Henry L. Driskell, Grand View, Idaho 83624, at the appraised fair market value of $22,000.00.

Henry Driskell owns the adjoining private land to the north, west, and south of the sale tract. The land to the east is publicly owned, but there is no physical access to the sale tract because of a hilly ridge. Mr. Driskell has occupied, improved, and used the sale parcel for several years under an erroneous authorization. Disposal of the land to Driskell by direct sale will legalize his occupancy, protect his equity investment in the improvements on the land and resolve a complicated trespass situation. Sale of the land to any other party will place an undue hardship on Driskell and penalize him for an action he undertook in good faith.

The land has not been used and is not required for any Federal purpose. Disposal would best serve the public interest. The sale is consistent with the Bureau's planning system for the land involved. The land will not be offered for sale until at least 60 days after the date of this notice.

The lands will be subject to the following reservations when patented:

1. Ditches or canals.
2. All minerals.
3. Subject to all valid existing rights and reservations of record.

Detailed information concerning the sale, including the planning document and Environmental Assessment, is available for review at the Boise District Office, Bureau of Land Management, 3948 Development Avenue, Boise, Idaho 83705.

For a period of 45 days from the date of this notice, interested parties may submit comments to the Boise District Manager at the above address. Any adverse comments will be evaluated by the District Manager, who may vacate or modify this realty action and issue a final determination. This determination may be protested to the State Director. In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

Dated: June 23, 1983.

J. David Brunner,

Associate District Manager.

[FR Doc. 83-17658 Filed 6-29-83; 8:45 am]

BILLING CODE 4310-84-M

Salmon District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The Salmon District of the Bureau of Land Management (BLM) announces a forthcoming meeting of the Salmon District Advisory Council.

DATE: The meeting will be held at 10:00 a.m. Thursday, August 4, 1983.

ADDRESS: The meeting will be held at the Salmon District Office, Bureau of Land Management, Conference Room, South Highway 93, Salmon, Idaho 83467.

SUPPLEMENTARY INFORMATION: This meeting is held in accordance with Pub. L. 92–463 and 94–579. The agenda for the meeting will be limited to issue identification for the Lemhi Resource Area, Resource Management Plan.

The meeting is open to the public. Interested persons may make oral statements to the Council between 11:00 a.m. and 11:30 a.m. or file written statements for the Council's consideration. Anyone wishing to make an oral statement must notify the District Manager at the Salmon District Office by July 28, 1983. Depending on the number of persons wishing to make an oral statement, per person time limit may be established.

Summary minutes of the meeting will be maintained in the District Office and will be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting. Notification of oral statements and requests for summary minutes should be sent to: Kenneth G. Walker, District Manager, Salmon

District BLM, Box 430, Salmon, Idaho 83467.

Dated: June 21, 1983.

Kenneth G. Walker,

District Manager.

[FR Doc. 83-17655 Filed 6-29-83; 8:45 am]

BILLING CODE 4310-84-M

[W-80909]

Wyoming: Realty Action; Proposed Noncompetitive Sale of Public Lands in Johnson County, Wyoming; Correction

June 23, 1983.

This notice corrects an error in the legal description of a Proposed Noncompetitive Sale of Public Lands published in the **Federal Register**, Vol. 48, No. 113, page 26907, issue of June 10, 1983 (FR Doc. 83-15573).

The complete correct legal description should read as follows:

Sixth Principal Meridian

T. 45 N., R. 78 W.,
Sec. 34, SW¼NW¼SE¼.

Paul W. Arrasmith,

District Manager.

[FR Doc. 83-17659 Filed 6-29-83; 8:45 am]

BILLING CODE 4310-84-M

[CA 13570]

Noncompetitive Sale of Public Lands; California

AGENCY: United States Department of the Interior; Bureau of Land Management, 705 Hall Street, P.O. Box 1090, Susanville, California 96130.

ACTION: California Realty Action, Noncompetitive Sale of Public Land in Lassen County, California, CA 13570.

SUMMARY: The following described land has been examined and identified as suitable for disposal by sale under Section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713):

Mount Diablo Meridian, California

T. 34 N., R. 13 E.,
Sec. 1, SW¼;
Sec. 2, NE¼SE¼;
Sec. 11, NW¼NE¼;
Sec. 12, NE¼SW¼.

Comprising 280 acres.

The above described land is being offered by direct sale at appraised fair market value to R. C. Roberts and Barbel Roberts, the owners of the surrounding lands. The purchaser will be required to pay the publication costs for the legal notices. The purchasers must be citizens of the United States.

The lands are being offered for sale in order to facilitate land use planning in the area and enhance land use compatibility with surrounding private lands. These lands were identified for disposal in the Bureau's land use plans completed for the area in 1982 for the following reasons:

1. Their location and physical characteristics along with the private ownership of the surrounding private lands make them difficult and uneconomic to manage as public land.
2. There is no legal access to them.
3. They have low resource values.
4. They receive little or no public use.
5. They do not complement Bureau of Land management resource management programs for other public lands in the area.
6. These lands are not suitable for management by another Federal department or agency.
7. Disposal of these lands would best serve the public interest.

Disposal of the lands has been coordinated with the Lassen County Planning Department.

The terms and conditions applicable to the sale are:

Patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).
2. All mineral deposits in the lands so patented, and to the United States, or persons authorized by the United States, the right to prospect for, mine, and remove such deposits from the same under applicable law and such regulations as the Secretary of Interior may prescribe (90 Stat. 2757; 43 U.S.C. 1719).

Patent will also be subject to:

1. A right-of-way, SU 02838 for an 8 foot canal or ditch.

Detailed information concerning the identification of this land for disposal, including the planning documents and the environmental assessment, is available for review at either the Susanville District Office, 705 Hall Street, Susanville, California 96130 or the Eagle Lake Resource Area Office, 2545 Riverside Drive, Susanville, California 96130.

DATE: For a period of 45 days from the publication of this notice, interested parties may submit comments to the Bureau of Land Management. Any adverse comments will be evaluated by the California State Director, Bureau of Land Management, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of Interior.

ADDRESSES: Comments should be sent to the Susanville District Manager, P.O. Box 1090, 705 Hall Street, Susanville, California 96130.

Dated: June 17, 1983.

C. Rex Cleary,

Susanville District Manager.

[FR Doc. 83-17000 Filed 6-29-83; 8:45 am]

BILLING CODE 4310-84-M

[A 16569]

Arizona; Conveyance and Order Providing for Opening of Public Lands

Notice is hereby given that pursuant to Section 208 of the Act of October 21, 1976, 43 U.S.C. 1716 (1976), the following described lands have been conveyed to Carson Water Company, P.O. Box 1450, Las Vegas, Nevada, 89114.

Gila and Salt River Meridian, Arizona

T. 26 N., R. 16 W.,
Secs. 18, 20, 28 and 30.
T. 26 N., R. 17 W.,
Secs. 14, 16, 23 and 36.

The area described contains 5,105.72 acres in Mohave County.

All minerals subject to location under the mining laws are included in this conveyance except in Section 16, T. 26 N., R. 17 W. All leaseable minerals remain in United States ownership except for Section 16, T. 26 N., R. 17 W.

In exchange for the above land the United States acquired the surface estate only in the following described land in Mohave County. The Santa Fe Railroad Company owns all the minerals:

Gila and Salt River Meridian, Arizona

T. 25 N., R. 18 W.,
Secs. 1, 3, 11, 13, 15, 23, 25, 27 and 35.

The area described contains 5,761.60 acres, more or less, in Mohave County.

This order restores the land acquired by the United States in the second paragraph, to operation of the public land law generally.

The acquired lands are located in Mohave County south of Lake Mead and the lands have high public values for wildlife habitat and recreation.

At 10 a.m. on July 27, 1983, the lands acquired by the United States shall be open to the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable laws. All applications received at or prior to 10

a.m. on July 27, 1983, shall be considered in the order of filing.

Mario L. Lopez,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 83-17582 Filed 6-29-83; 8:45 am]

BILLING CODE 4310-84-M

Colorado: Filing of Plats of Survey

June 21, 1983.

The plats of survey of the following described lands were officially filed in the Colorado State Office, Bureau of Land Management, Denver, Colorado, effective 10:00 a.m., June 21, 1983.

Sixth Principal Meridian

T. 6 N., R. 80 W.

The plat representing the dependent resurvey of a portion of the Tenth Guide Meridian West (west boundary) and subdivisional lines, and the survey of the subdivision of sections 5 and 6, T. 6 N., R. 80 W., Sixth Principal Meridian, Colorado, Group 684, was accepted June 1, 1983.

T. 7 N., R. 80 W.

The plat representing the dependent resurvey of a portion of the Tenth Guide Meridian West (west boundary), south and east boundaries, and subdivisional lines, and the survey of the subdivision of certain sections, T. 7 N., R. 80 W., Sixth Principal Meridian, Colorado, Group 684, was accepted June 1, 1983.

T. 6 N., R. 81 W.

The plat representing the dependent resurvey of a portion of the north boundary and subdivisional lines, and the survey of the subdivision of certain sections, T. 6 N., R. 81 W., Sixth Principal Meridian, Colorado, Group 684, was accepted June 1, 1983.

T. 7 N., R. 81 W.

The plat representing the dependent resurvey of a portion of the west boundary, a portion of the subdivisional lines, a portion of the subdivision of sections 23 and 26, and the survey of the subdivision of certain sections, T. 7 N., R. 81 W., Sixth Principal Meridian, Colorado, Group 684, was accepted June 1, 1983.

T. 8 N., R. 81 W.

The plat representing the dependent resurvey of a portion of the subdivisional lines and and the survey of the subdivision of sections 20 and 29, T. 8 N., R. 81 W., Sixth Principal Meridian, Colorado, Group 684, was accepted June 1, 1983.

T. 5 N., R. 91 W.

The plat representing the dependent resurvey of a portion of the subdivisional lines and Tract 42, T. 5 N., R. 91 W., Sixth Principal Meridian, Colorado, Group 703, was accepted June 1, 1983.

T. 4 N., R. 92 W.

The plat representing the dependent resurvey of a portion of the west boundary, T. 4 N., R. 91 W., a portion of the subdivisional lines, H.E. 1829, a portion of H.E. 1042, a portion of D.L.E. 86, and the survey of the subdivision of certain sections, T. 4 N., R. 92 W., Sixth Principal Meridian, Colorado, Group 703, was accepted June 1, 1983.

These surveys were executed to meet certain administrative needs of this Bureau.

All inquiries about these lands should be sent to the Colorado State Office, Bureau of Land Management, 1037 20th Street, Denver, Colorado 80202.

Harold R. Martin,

Chief, Division of Operations.

[FR Doc. 83-17580 Filed 6-29-83; 8:45 am]

BILLING CODE 4310-84-M

Intent To Initiate a Management Framework Plan Amendment in a Portion of the Big Dry Resource Area, Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Amendment of the Redwater MFP in McCone County, Montana.

SUMMARY: The Bureau of Land Management is initiating a Management Framework Plan (MFP) Amendment for a small portion of McCone County, Montana, as a result of the Meridian Coal exchange. When consummated, this exchange will result in the Federal Government's acquisition of approximately 11,553 acres of new coal ownership. In order for this area to be eligible for an April 1984 lease sale, the Redwater MFP must be amended in accordance with 43 CFR 1610.5–5 and 43 CFR 3461.3–1(b)(1) by applying the unsuitability criteria, surface owner consultation and multiple-use analysis to these new Federal coal acreages. These lands have already been determined to be of significant development potential. The Fort Union Regional Coal Team has, additionally, requested and recommended that the new Federal coal lands acquired by the U.S. in this exchange be made available for a scheduled April 1964 lease sale. An environmental assessment will be prepared on the environmental impacts of the amendment. This amendment is highly focused and will analyze those aspects of land use planning bearing on the new Federal coal acreages. Anticipated issues include agriculture, social and economic effects and wildlife. Disciplines involved in this planning effort will include—wildlife, lands, soils, sociology, economics, hydrology and others as needed. The public is invited to submit comments in response to this notice for 30 days after the above notice date. Additional comment is invited throughout the amendment preparation period. The date(s), time(s) and location(s) of public meeting(s) or hearing(s) will be published in local newspapers at a later time. This amendment is scheduled to be completed in November 1983.

FOR FURTHER INFORMATION CONTACT: Ray Brubaker, District Manager, Miles City District Office, BLM, P.O. Box 940, Miles City, Montana 59301, Telephone: (406) 232–4331.

Vern Taylor,

Acting District Manager.

[FR Doc. 83-17586 Filed 6-29-83; 8:45 am]

BILLING CODE 4310-84-M

Burns District, Oregon; Research Natural Areas—Areas of Critical Environmental Concern

Pursuant to the authority in the Federal Land Policy and Management Act of October 21, 1976 (Section 202(c)(3)), in 43 CFR 1601.6–7 and in 43 CFR 8223, I have designated lands in the following ten areas as Research Natural Areas (RNA)—Areas of Critical Environmental Concern (ACEC).

1. Silver Creek Research Natural Area, an Area of Critical Environmental Concern.

Willamette Meridian; Harney County, Oregon

T. 21 S., R. 26 E.,
Sec. 8, all.

Silver Creek RNA includes 640 acres of BLM administered land.

The designation is being made to provide protection for three good condition communities: a third order stream system originating in Ponderosa pine zone, a big sagebrush/bluebunch wheatgrass community, and a low sagebrush/Idaho fescue community.

2. Little Blitzen Research Natural Area, an Area of Critical Environmental Concern.

Willamette Meridian; Harney County, Oregon

T. 33 S., R. 33 E.,
Sec. 10, SE¼;.

Sec. 11, S½N½, and S½;
Sec. 12, lots 3 and 4, S½NW¼, and SW¼;
Sec. 13, lots 1, 2, and 3 and W½;
Sec. 14, all;
Sec. 15, E½;
Sec. 23, NE¼NE¼;
Sec. 24, N½NW¼.
T. 33 S., R. 34 E.,
Sec. 7, W½SW¼;
Sec. 18, NW¼NW¼.

The Little Blitzen RNA totals 2,539.06 acres of BLM administered land.

The designation is being made to provide protection for fourteen rare plant species and six good condition plant communities or habitats.

The communities or habitats found here include:

- Mid to high elevation vernal pond;
- Stream system originating in subalpine;
- Aspen grove;
- Alpine communities on Steens Mountain including snow deflation and moderate snow cover communities;
- Late-lying snowbeds; and
- A token representation of a high elevation fescue grassland.

3. Little Wildhorse Lake Research Natural Area, an Area of Critical Environmental Concern.

Willamette Meridian; Harney County, Oregon

T. 33 S., R. 33 E.,
Sec. 34, S½NE¼, and N½SE¼;
Sec. 35, SW¼NW¼, and NW¼SW¼.

The Little Wildhorse Lake RNA includes 240 acres of BLM administered land.

The designation is being made to provide protection for a pristine high elevation lake.

4. South Fork Willow Creek Research Natural Area, an Area of Critical Environmental Concern.

Willamette Meridian; Harney County, Oregon

T. 33 S., R. 33 E.,
Sec. 13, Lot 4.
T. 33 S., R. 34 E.,
Sec. 18, SW¼;
Sec. 19, N½N½NW¼.

The South Fork Willow Creek RNA totals 227.54 acres of BLM administered land.

The designation is being made to provide protection for alpine communities on the Steens, including downslope snow accumulation areas and upper cirque communities, and a stream system originating in a glacial cirque.

5. Rooster Comb Research Natural Area, an Area of Critical Environmental Concern.

Willamette Meridian; Harney County, Oregon

T. 33 S., R. 32 ¾ E.,
Sec. 26, S½S½NW¼, and SW¼;
Sec. 27, E½SW¼, SW¼SW¼, and SE¼;
Sec. 34, N½N½;
Sec. 35, N½NW¼.

The Rooster Comb RNA totals 720 acres of BLM administered land.

The designation is being made to provide protection for the mountain mahogany community and black cottonwood riparian area.

6. Pueblo Foothills Research Natural Area, an Area of Critical Environmental Concern.

Willamette Meridian; Harney County, Oregon

T. 39 S., R. 35 E.,
Sec. 20, S½SW¼, and SW¼SE¼;
Sec. 28, NW¼NW¼, S½NW¼, and S½;
Sec. 29, all;
Sec. 30, SE¼NE¼, S½SW¼, and SE¼;
Sec. 31, N½, and N½S½;
Sec. 32, N½;
Sec. 33, W½NE¼, and NW¼.

The Pueblo Foothills RNA totals 2,520 acres of BLM administered land.

The designation is being made to provide protection for botanical values, including seven rare plant species. The narrowleaf cottonwood-Mormon tea community complex found here is rare in Oregon.

7. Tum Tum Lake Research Natural Area, an Area of Critical Environmental Concern.

Willamette Meridian; Harney County, Oregon

T. 39 S., R. 35 E.,
Sec. 26, SW¼, and W½SE¼;
Sec. 27, S½;
Sec. 34, lots 1, 2, 3, and 6, N½N½, and SW¼NW¼;
Sec. 35, lots 1, 2, 3, and 4, N½, N½SE¼, and SE¼SE¼.
T. 40 S., R. 35 E.,
Sec. 2, lots 2, 3, 4, 5, and 6, and SW¼NE¼.

The Tum Tum Lake RNA totals 1,521.48 acres of BLM administered land.

The designation is being made to provide protection for the low elevation vernal pond and surrounding salt desert shrub communities.

8. Long Draw Research Natural Area, an Area of Critical Environmental Concern.

Willamette Meridian; Harney County, Oregon

T. 40 S., R. 32 E.,
Sec. 33, S½NE¼, SE¼NW¼, and N½SE¼;
Sec. 34, W½SW¼.

The Long Draw RNA includes 440 acres of BLM administered land.

The designation is being made to provide protection for the excellent Indian ricegrass and needle-and-thread grass community.

9. Mickey Basin Research Natural Area, an Area of Critical Environmental Concern.

Willamette Meridian; Harney County, Oregon

T. 33 S., R. 35 E.,
Sec. 13, S½SE¼;
Sec. 24, NE¼, E½NW¼, NE¼SW¼, and N½SE¼.
T. 33 S., R. 36 E.,
Sec. 18, SW¼SW¼;
Sec. 19, W½NW¼.

The Mickey Basin RNA totals 560 acres of BLM administered land.

The designation is being made to provide protection for a winterfat community which is rare in Oregon.

10. East Kiger Plateau Research Natural Area, an Area of Critical Environmental Concern.

Willamette Meridian; Harney County, Oregon

T. 32 S., R. 34 E.,
Sec. 7, SW¼NW¼, and S½;
Sec. 17, W½SW¼;
Sec. 18, E½, and E½W½;
Sec. 19, NE¼NE¼;
Sec. 20, NW¼NW¼, S½NW¼, and SW¼.

The East Kiger Plateau RNA totals 1,240 acres of BLM administered land.

The designation is being made to provide protection for the excellent condition high elevation fescue grassland.

All of these areas will be preserved for research and educational purposes. More detailed descriptions of the resource values and special management attention required to protect these values are included in the Management Framework Plans (MFPs) for the Riley and Andrews Resource Areas. These areas and management criteria were developed through the planning process which included three stages of public participation. The MFPs are available for inspection at the Burns District Office. The Preferred Land Use Alternative documents for the Riley and Andrews Resource Areas give further information on these special management areas and are available upon request.

Joshua L. Warburton,

District Manager.

[FR Doc. 83-17648 Filed 6-29-83; 8:45 am]

BILLING CODE 4310-84-M

Burns District, Oregon; Areas of Critical Environmental Concern

Pursuant to the authority in the Federal Land Policy and Management Act of October 21, 1976 (Section 202(c)(3)) and in 43 CFR 1601.6-7, I have designated lands in the following six areas as Areas of Critical Environmental Concern (ACEC).

Areas of critical environmental concern

	Acres
1. Alvord Desert ACEC	16,700
2. Steens Mountain ACEC	50,500
3. Borax Lake ACEC	520
4. Alvord Peak ACEC	14,700

Areas of critical environmental concern—Continued

	Acres
5. Picket Rim ACEC	4,000
6. South Narrows ACEC	160

Descriptions of the resource values and special management attention required to protect these values are included in the Management Framework Plans (MFPs) for the Andrews and Riley Resource Areas. These areas and management criteria were developed through the planning process which included three stages of public participation. This effort resulted in the development of the Preferred Land Use Alternative documents for the Riley and Andrews Resource Areas. These documents are available upon request from the Burns District Office, 74 South Alvord, Burns, OR 97720. The MFPs are available for inspection at the Burns District Office.

Joshua L. Warburton,

District Manager.

[FR Doc. 83-17645 Filed 6-29-83; 8:45 am]

BILLING CODE 4310-84-M

[C-36674 (A and B)]

Colorado; Realty Action Sale of Public Land in Delta County

The following described land has been examined and identified as suitable for disposal by sale under Section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750; 43 U.S.C. 1713), at no less than the appraised fair market value.

6th Principle Meridian, Colorado

T. 15 S., R. 95 W.

Parcel	Legal description	Acreage	Fair market value
A	Sec. 24, W½NW¼	80.00	$20,000
B	Sec. 23, SE¼SE¼	40.00	10,000

The land will be sold at public auction by competitive bidding. The sale will be held at 10:00 a.m., September 7, 1983, at the Montrose District Office, 2465 South Townsend Avenue, Montrose, Colorado.

Bidding Information and Instructions: The Federal Land Policy and Management Act requires that bidders must be citizens of the United States, 18 years of age or over, or in the case of a corporation, be subject to the laws of any state of the United States. Bids may be made by a prinicpal (the one desiring to purchase the land) or his duly qualified agent. Each bid must be for all the land in a specific parcel.

Method of Bidding: Bids may be made either by sealed bids or personally at the sale. Bids sent by mail will only be considered if received by the Bureau of Land Management, Montrose District Office, P.O. Box 1269, 2465 South Townsend Avenue, Montrose, Colorado 81402, prior to 2:00 p.m., September 6, 1983. Bids accompanied by a certified check, postal money order, bank draft, or cashier's check made payable to the Bureau of Land Management for not less than one-fifth of the amount of the bid, must be in a separate sealed envelope within the transmittal envelope. The sealed envelopes must be marked in the lower left-hand corner "Sealed Bid, Public Land Sale C-36674, Parcel Number———(A or B), Sale to be September 7, 1983." Sealed bids will be opened following bidder registration.

Oral bids will be received immediately after all sealed bids have been opened and the highest sealed bid is announced. If two of more envelopes are received containing valid bids of the same amount for the same parcel, the successful bid shall be determined by drawing. The highest sealed bid will be the base for oral bids. If the highest bid is an oral bid, the successful bidder will be required to pay immediately one-fifth of the high bid price by cash, personal check, money order, bank draft, or any combination of these. The successful high bidder, whether by sealed or oral bid, will be required to submit the remainder of the land payment by cash, certified check, bank draft, money order, or any combination of these within 30 days after the determination of the highest bid.

Post Sale Instructions: If final payment is not received within the specified 30 days, the high bid is rejected, the deposit is forfeited, and the land will be offered to the second highest bidder, subject to the same terms and conditions. All unsuccessful sealed bids will be returned within 30 days of the sale.

Detailed information concerning the parcels can be obtained from the Montrose District Office.

Patents will contain the following reservations to the United States:

1. A right-of-way for ditches and canals constructed by the authority of the United States (26 Stat. 391; 43 U.S.C. 945).

2. All minerals with the right to explore, prospect for, mine, and remove under applicable law, and such regulations as the Secretary of the Interior may prescribe (43 U.S.C. 1719).

Further, patents will be subject to:

1. All valid existing rights,

2. A 50 foot wide (total) right-of-way to Trans-Colorado Pipeline under serial number C-4276 for a buried natural gas pipeline over parcel A,

3. Oil and gas lease C-17987 involving both parcels.

If either or both parcels do not sell at the September 7, 1983, sale the sale will be adjourned and the unsold parcel(s) will be reoffered on a continuing basis beginning on September 8, 1983 at 7:45 a.m. at the Montrose District Office until the parcel(s) is (are) sold or withdrawn.

Further information regarding this sale, including the planning documents and Environmental Assessment, is available for review in the Montrose District Office. For a period of 45 days from the date of this Notice, interested parties may submit comments to the District Manager, Montrose District Office. Any adverse comments will be evaluated by the District Manager who may vacate or modify this Realty Action, and issue a final determination. In the absence of any action by the District Manager, this Realty Action will become the final determination of the Department of the Interior.

Marlyn V. Jones,

Montrose District Manager.

[FR Doc. 83-17648 Filed 6-29-83; 8:45 am]

BILLING CODE 4310-84-M

Montana, Lewistown District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Lewistown District Grazing Advisory Board, Interior.

ACTION: Notice of meeting.

SUMMARY: The Lewistown District Grazing Advisory Board will meet July 28, 1983. The agenda will be:

July 28, 1983
1:00 p.m. Cooperative Management Agreement Screening
3:00 p.m. 1984 Range Improvements
4:30 p.m. Adjournment

Public comment will be sought at the end of each agenda item.

DATE: July 28, 1983, 1:00 p.m. to 4:30 p.m.

ADDRESS: Lewistown District Office, Airport Road, Lewistown, Montana.

FOR FURTHER INFORMATION CONTACT: Glenn W. Freeman, District Manager, Bureau of Land Management, Airport Road, Lewistown, Montana 59457.

SUPPLEMENTARY INFORMATION: The Lewistown District Grazing Advisory Board is authorized under Section 403 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1753). The Board advises the Lewistown

District Manager concerning the development of allotment management plans and the utilization of range betterment funds.

Dated: June 24, 1983.

David E. Little,

Associate District Manager.

[FR Doc. 83-17843 Filed 6-29-83; 8:45 am]

BILLING CODE 4310-84-M

[W-81318 and W-81319]

Realty Action; Leasing of Public Land East of Bairoil, Wyoming

June 22, 1983.

This Notice of Realty Action involves two leases on public lands administered by the Bureau of Land Management in Wyoming. The leases are intended to authorize the use and occupancy of buildings and structures erroneously constructed on public lands over 50 years ago. The proposed leases would be issued to the parties designated below.

The sites were examined and found suitable for leasing under provisions of Section 302 of the Federal Land Policy and Management Act (FLPMA), of 1976, and 43 CFR Part 2920. The legal description of the sites are described as follows:

Serial #W-81318

Designated Party: Mr. and Mrs. James Logan.

T. 26 N., R. 89 W., 6th P.M., Carbon County, Wyoming.

Section 7: A tract of land located in Lot 3 and the NE¼SW¼ more completely described as follows:

Beginning at the ¼ section corner between Sections 7 and 18 a bearing of S.81°12'E. and a distance of 2,664.1 feet to the section corner of Sections 7, 8, 17 and 18; both points monumented with brass caps;
Thence, along a line N.56°59'30"W., 3,886.4 feet to a point monumented by a 60d spike;
Thence, along a line N.75°24'30"W., 547.6 feet to a point monumented by a 60d spike;
Thence, along a line S.88°57'20"W., 233.2 feet to a point monumented by a 60d spike;
Thence, along a line N.2°19'04"W., 164.7 feet to a point monumented by a 60d spike;
Thence, along a line N.89°21'30"E., 224.2 feet to a point monumented by a 60d spike;
Thence, along a line S.5°28'24"E., 163.6 feet to a point monumented by a 60d spike;
Thence, along a line S.75°24'30"E., 547.6 feet to a point monumented by a 60d spike;
Thence, along a line S.16°26'E., 2,169.2 feet to the point of beginning.

Containing 0.86 acre.

Serial #W-81319

Designated Party: Irene Michaels.

T. 26 N., R. 90 W., 6th P.M., Sweetwater County, Wyoming.

Section 11: A tract of land located in the NE¼SE¼ more completely described as follows:

Beginning at the section corner of Sections 11, 12, 13 and 14; a bearing of N.1°19'W. and a distance of 2,579.4 feet to the ¼ section corner between sections 11 and 12; both points monumented with brass caps;
Thence, along a line S.53°06'W., 882.2 feet to a point monumented by a 60d spike;
Thence, along a line N.62°05'20"W., 224.8 feet to a point monumented by a 60d spike;
Thence, along a line N.20°20'10"E., 168.4 feet to a point monumented by a 60d spike;
Thence, along a line S.81°06'51"E., 190.5 feet to a point monumented by a 60d spike;
Thence, along a line S.12°07'47"W., 238.6 feet to a point monumented by a 60d spike;
Thence, along a line S.20°28'10"E., 2,187.1 feet to the point of beginning.

Containing 0.95 acre.

The sites will be leased on a non-competitive basis, and applications will only be accepted from the persons designated above at the Rawlins Bureau of Land Mangement District Office at Rawlins, Wyoming from June 30 to July 30, 1983.

Applications may be hand carried to the Office or mailed to the BLM Divide Resource Area Manager, P.O. Box 670, Rawlins, WY 82301. The appraised rental on the sites is $100 per year for the Logan site (W-81318), and $100 per year for the Michaels site (W-81319). Applications from the designated parties must include the name and address of proponent, statement of U.S. Citizenship and a reference to the appropriate serial number contained in this notice. No application will be accepted for less than the appraised rental price.

For more details of application content, refer to 43 CFR 2920, copies of which are available at the BLM Rawlins District Office, Divide Resource Area. Also available is information on terms and conditions that will apply to the leases, location maps, evaluation criteria, etc. The Environmental Assessment concerning the facilities is also available for review.

For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager, Bureau of Land Management, P.O. Box 670, Rawlins, WY 82301. Any adverse comments will be evaluated by the District Manager who may vacate or modify this Realty Action and issue a final determination. In the absence of any action by the District Manager, this Realty Action will become the final determination of the Bureau.

David J. Walter,

District Manager.

[FR Doc. 83-17844 Filed 6-29-83; 8:45 am]

BILLING CODE 4310-84-M

Shoshone District Advisory Council Meeting

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda for a meeting of the Shoshone District Advisory Council.

DATE: Thursday, August 4, 1983, at 9:00 a.m.

ADDRESS: Magic Resort, West Side of Magic Reservoir, Blaine County, Idaho.

FOR FURTHER INFORMATION CONTACT: Jon Idso, Assistant District Manager for Resources, Shoshone District Office, P.O. Box 2 B, Shoshone, Idaho 83352. Telephone (208) 886-2206 or FTS 554-6576.

SUPPLEMENTARY INFORMATION: The approved agenda for the meeting includes the following items:

Field Tour of Magic Recreation Area
Update on Asset Management
Update on Monument RMP

The Shoshone District Advisory Council is established under Section 309 of the Federal Land Policy and Management Act of 1976 (Pub. L. 94-579; 43 U.S.C. 1701 et seq.), as amended. Operation and administration of the Council will be in accord with the Federal Advisory Committee Act of 1972 (Pub. L. 92-463; 5 U.S.C. Appendix 1) and Department of Interior and BLM regulations, including 43 CFR Part 1784.

The meeting will be open to the public. Anyone may present an oral statement before the Council between 2:00 and 3:00 p.m. or may file a written statement with the Council regarding matters on the agenda. Oral statements will be limited to ten minutes. Anyone wishing to make an oral statement must notify the Shoshone District Manager by August 1, 1983. Records of the meeting will be available in the Shoshone District Office for public inspection or copying within 30 days after the meeting.

Charles J. Haszier,

District Manager.

[FR Doc. 83-17847 Filed 6-29-83; 8:45 am]

BILLING CODE 4310-84-M

Minerals Management Service

Oil and Gas and Sulphur Operations in the Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development and production plan.

SUMMARY: Notice is hereby given that Tenneco Oil Exploration and Production has submitted a Development and Production Plan describing the activities it proposes to conduct on Leases OCS–G 3534 and 5366, Blocks 129 and 128, East Cameron Area, offshore Louisiana.

The purpose of this notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the Plan and that it is available for public review at the Office of the Regional Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone (504) 837–4720, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in a revised Section 250.34 of Title 30 of the Code of Federal Regulations.

Dated: June 23, 1983.

John L. Rankin,

Acting Regional Manager, Gulf of Mexico OCS Region.

[FR Doc. 83-17631 Filed 6-29-83; 8:45 am]

BILLING CODE 4310-MR-M

Bureau of Mines

Bureau Survey Form Submitted for Review

A request for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau clearance officer and the Office of Management and Budget Interior Desk Officer at 202–395–7340.

Title: Determination of Design Parameters for the Improved Planning of Airflow Climate of Underground Mines

Bureau Form Number: 6–PI–17

Description of Respondents:

Annual Responses: 4,000

Bureau Clearance Officer: James T. Hereford, 202–634–1125

Frequency: Single-time

Underground Mine Operations

Annual Burden Hours: 4,000

Dated: June 9, 1983.

James F. McAvoy,

Acting Director.

[FR Doc. 83-17628 Filed 6-29-83; 8:45 am]

BILLING CODE 4310-53-M

National Park Service

[FES–83–83]

Franklin D. Roosevelt Memorial, Washington, D.C.; Availability of Final Environmental Impact Statement

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: This notice announces the availability of a Final Environmental Impact Statement (EIS) for the Franklin D. Roosevelt Memorial, Washington, D.C.

DATES: The 30-day no-action period following the Environmental Protection Agency's notice of availability of the final EIS will end July 30, 1983.

ADDRESSES: Comments on the final EIS should be submitted to Manus J. Fish, Regional Director, National Capital Region, 1100 Ohio Drive, S.W., Washington, D.C. 20242.

Public reading copies of the EIS will be available for review at the following locations.

Office of Public Affairs, National Park Service, Department of the Interior, 18th and C Streets, N.W., Washington, D.C. 20240, Telephone No. 202–343–6843;

Public Information Division, National Park Service, National Capital Region, 1100 Ohio Drive, S.W., Washington, D.C. 20242, Telephone No. 202–426–6700; and

Superintendent's Office, National Park Service, National Capital Parks-Central, 900 Ohio Drive, S.W., Washington, D.C. 20242, Telephone No. 202–426–6720.

A limited number of copies of the statement are available on request from Randolph J. Clement, Regional Environmental Coordinator, National Park Service, National Capital Region, 1100 Ohio Drive, SW., Washington, D.C., 20242 (202–426–7704).

SUPPLEMENTARY INFORMATION: Final Environmental Impact Statement for the construction of the FDR Memorial in West Potomac Park, Washington, D.C.

Effects on the natural environment will be mitigated through replacement and augmentation of plant materials. Replacement parking will be provided. Sports fields will be relocated, but there will be no decrease in playing area. There will be short-term disruption of existing traffic patterns during construction and a long-term modification of traffic routes. Pedestrian access will be improved.

Manus J. Fish, Jr.,

Regional Director.

[FR Doc. 83-17673 Filed 6-29-83; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 431]

Adoption of the Uniform Railroad Costing System for Determining Variable Costs for Purposes of Surcharge and Jurisdictional Threshold Calculations

Decided: June 22, 1983.

By Notice served January 31, 1983 (48 FR 4562, February 1, 1983), the Commission sought public comment on formal adoption of the Uniform Railroad Costing System (URCS) for the purposes of developing variable costs in surcharge and jurisdictional threshold determinations.

On April 14, 1983 the Commission issued a decision which responded to various petitions and motions which had been filed seeking clarification or modification of the Commission's January 31, 1983 Decision.

We have now received additional petitions seeking modification of the January 31, 1983 Decision and an extension of the comment period. The following parties have filed petitions:

1. Association of American Railroads (AAR).
2. Edison Electric Institute (EEI).
3. The National Industrial Transportation League (NITL).
4. Carolina Power & Light Company, Duke Power Company, and the Virginia Electric and Power Company (CP&L).

In addition, NITL filed a reply to the Commission in support of the AAR's petition.

The AAR, EEI and NITL sought a 120-day extension of the comment period,

which was granted on June 2, 1983. Comments are now due September 28, 1983.

The AAR, NITL and EEI also indicate they have been unable to obtain portions of data and materials underlying URCS. CP&L et al. suggest that interested persons outside of Washington, DC are prejudiced by the manner in which URCS data is being made available through the Commission's Offices in Washington.

On April 12, 1983, the Bureau of Accounts (BOA) issued a memorandum announcing the availability of URCS publications, files, programs and working papers. This memorandum is attached as Appendix A. The items detailed in the memorandum constitute all of the documentation and workpapers underlying URCS. We recognize that interested persons outside of Washington may be at some disadvantage in obtaining Commission reports with limited copies and staff working papers which are only available in the BOA's Public Reference Room. To alleviate this access problem, BOA has made arrangements with TS Infosystem, Inc. to have the documents contained in the Public Reference Room copied for interested parties at a nominal charge. We believe this is the only practical means by which these unique documents can be disseminated. The Public Reference Room inventory is attached as Appendix B.[1]

NITL requests release of the revised Generation II URCS Phase I and Phase II computer programs and documentation. Since work on Generation II is not complete, it is not possible to provide such information. However, the revision of the URCS computer programs in no way constitutes revision of the URCS methodology. Generation II is designed to streamline the computer programs and make the system more convenient to use, but it is not necessary to evaluate the URCS process.

CP&L et al. assert that the Commission has not adequately described the "metes and bounds" of URCS to permit informed public comment, that there is no clear-cut, final definition or designation of just what is embraced by URCS. CP&L and NITL urges the Commission to re-open the proceeding.

Our 1980 Railroad Cost Study contains a complete description of the system in its present form. That document provides an overview of the system, a description of the data sources and how that data is processed, a detailed discussion of the railroad cost variability, development of unit costs, and how these unit costs are applied to individual movements under URCS. We believe that document provides an adequate description of the metes and bounds of the URCS process.[2]

NITL points to several sections of the IC Act which also appear to require use of a cost formula. Section 10707a(e)(2)(A), pertaining to the zone of rate flexibility for railroads, contains a cross-reference to the cost determination required under Section 10709(d) (Market dominance) which section was specifically identified in our original notice. A cost calculation is required under 10707a(e)(2)(A) in order to determine whether the Commission may begin an investigation of a proposed rate increase.

Section 10701a(b)(2) contains a cross-reference to the cost determination under Section 10707a(e)(2)(A), in the context of determining whether the shipper or carrier is to bear the burden of proof in a rate reasonableness proceeding. We invite comment on the advisability of the formal adoption of URCS for use in these areas as well.

NITL states in its petition that the Commission " * * * failed to provide explicitly for comments on the methodology and operation of the revised URCS formula" CP&L et al. asserts further that the Commission assumes the inherent soundness of the URCS methodology and has denied the public opportunity to analyze and comment on the validity soundness and accuracy of URCS. Although we believe URCS represents a substantial improvement over RFA, it is not the Commission's intent to restrict comments on areas of URCS which parties believe are probelmatical. The Commission will accept comments on issues not specifically identified by the January 31, 1983 decision.

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

It is ordered:

The petitions of NITL and CP&L , et al. for reopening and other relief are denied except to the extent discussed above.

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

Agatha L. Mergenovich,

Secretary.

Appendix A.—Uniform Railroad Costing System: Release of Publications and Availability of Files, Programs and Working Papers.

The Interstate Commerce Commission's Bureau of Accounts is announcing the availability of the Uniform Railroad Costing System publications, files, programs and working papers.

[1] Any problems in obtaining information on URCS should be directed to Leslie Selzer, (202) 275-7627 or Harold J. Warren, (202) 275-7735.

[2] For those persons interested in the historical development of the URCS system, all data and work papers, leading up to the 1980 Rail-Road Cost Study are available as described above.

Document type	Document name	Document description	Availability
Input or Raw Data	1978-1980 Commission Data file—verified; 1981 preliminary.	Compendium of all reported data available on computer tape.	Computer Tape.[1]
	1978-1981 Statistical Data Base	Data used in 1980 Cost Study Statistical Analysis	Computer Tape.
	1978-1980 DEC Data	Input data formatted for DEC version of URCS program.	Computer Tape.
Cost Development Support Data	Regression Results[2]	Selected or rejected	ICC Offices only.
	Correction Files[2]	Regional and National data	Computer Tape.
	Coefficient Files[2]	Regression Coefficients from Statistical Analysis	Computer Tape.
	Program Override Files[2]	Correct errors in DEC version	Computer Tape.
Cost Development Support Data	Technical Appendix[2]	Program Adjustments to DEC version	Print.
	Indices for Phase I and II	Updating Indices for Regression & Phase II Normalization.	Print.
	Ex Parte No. 411—Cost Indexing Procedures	Updating indices to bring Phase III costs to most recent quarter.	Print.
Output Data	Full Phase II Worktables	Complete Phase II worktable data for 6 regions.	Computer Tape.[4]
	Phase III input files	Unit costs for Phase III programs and cost scales	Computer Tape.[5]
Programs	Phase I &II	DEC version[6]	Computer Tape.
	Phase III—DEC/IBM Version	Movement Costing Program	Computer Tape.
Publications	*An Introduction to the Uniform Rail Costing System*, June 1981.	Report	ICC-BOA Offices only

Document type	Document name	Document description	Availability
	Phase I, Uniform Railroad Costing System Users Manual, Operations Manual, System Design Specification, December 1979.	Report	ICC-BOA Offices only.
	Phase II, Uniform Railroad Costing System Users Manual, Operations Manual, System and Data Base Design Specification, December 1979.	Report	ICC-BOA Offices only.
	Phase II, Uniform Railroad Costing System, Worktables, December 1979.	Report	ICC-BOA Offices only.
	Preliminary 1979 Rail Cost Study, September 1981.	Report	ICC-BOA Offices only.
	1980 Railroad Cost Study, December 1982	Report	Pring.
	Phase III User's Manual, April 1983	Explains use of Phase III program	Print. [1]
	Phase III Technical Manual, April 1983	Documentation of Phase III computer programs	Print. [1]
	Rail Carload Cost Scale, April 1983	Unit costs and instructions for manual application of URCS.	Print.

[1] There is a charge of $50 per tape requested.
[2] Necessary for Phase II Application.
[3] Necessary for Phase II Application.
[4] Printed copies available at 10¢ per page. (regional runs consist of approximately 500 pages).
[5] If you buy the Phase III Fortran programs, the data base will be included on the same tape without extra charge.
[6] An IBM version will be available later this year.
[7] These publications will be mailed to anyone buying the Phase III programs.

Requests for copies of printed reports and computer tapes are available from William H. Washburn, Room 3330, (202) 275–7623 or Bonnie L. Rothfolk, Room 3328, (202) 275–0605.

Staff working papers and some reports (with limited copies) are available at ICC–BOA Offices only. They are on file in Room 3378, ICC Building. Copies of these materials, however, may be purchased from TS Infosystem, Inc.; in the Washington area, (202) 289–4357; outside the Washington area 800–424–5403.

In order to expedite mailing in requesting publications, or computer tapes, please reference your label ID number and note any address corrections. If no request is received from you by May 30, 1983, your name will be removed from the URCS Mailing List.

Appendix B.—URCS Working Papers and Reports—Public Reference Room Inventory

Item No.	Description	Approximate pages
1	PEC Regression Runs for Tables 3-5 to 3-19 1980 Railroad Cost Study.	400
2	PEC Regression Runs $Y = A^* + b\ x$ $Y = C + b\ x$ S S	800
3	PEC Regression Runs Size to A power	800
4	Regression Runs & Plots	1,200
5	Regression Runs & Plots Miscellaneous Book II.	1,400
6	Data Plots & Regressions Run at Princeton (Summer 1982).	400
7	Selected Regressions 1978–1979	26
8	History of URCS Phase I, Book I	175
9	History of URCS Phase I, Book II	575
10	History of URCS Phase I, Book III	150
11	Early Phase I Regressions (PEC)	100
12	Regression Runs Summer 1982, Test of Alternative Model, Test of Stability.	800
13	*Rail Carload Cost Scales*—1980	190
14	*Preliminary 1979 Rail Cost Study*	61
15	*Appendix B—1979 Unit Cost for Western Region.*	200
16	Phase I URCS Manual, December 1979	237
17	Phase II URCS Manual, December 1979	280
18	Phase II URCS Worktables, December 1979.	595
19	1980 URCS Phase II Run, Region 2	484
20	1980 URCS Phase II Run, Region 3	484
21	1980 URCS Phase II Run, Region 4	484
22	1980 URCS Phase II Run, Region 5	484
23	1980 URCS Phase II Run, Region 6	484
24	1980 URCS Phase II Run, Region 7	484
25	1980 URCS Phase II Run, Technical Appendix.	14
26	Early Plots Runwage	5
27	*Uniform Railroad Costing System 1980 Railroad Cost Study.*	50
28	Plots & Correlation Matrix Early Data Base (1978).	100
29	Plots of URCS, 1978–81 Data, Princeton—1982.	50
30	Letters From Santa Fe Industries, Inc	5
31	Comparison of Percent Variable by Equation Type and Year (Otis Lancaster).	15
32	1978–1979 Regression Results—Harris & Lancaster.	100
33	Notes: New Regression Study, W.P	25
34	New Regression YLOCREP	50
35	BUILD. VAR & BLG:VAR	100
36	Results of Regressions, Run on Corrected 1979–1979 Data Base.	12
37	Summary Sheets Early Results	500
38	Otis Working Papers 1978 Regression Study.	200
39	Test Results With Dummy Size Variable, Folder I.	150
40	Test Results With Dummy Size Variable Folder II.	25
41	Test Results With Dummy Size Variable, Folder III.	75
42	Test Results With Dummy Size Variable, Folder IV.	100
43	Test Results With Dummy Size Variable, Folder V.	200
44	1975/1976/1977 Conversion	200
45	"Regressions for Railroad Cost Analyses" (Otis E. Lancaster, December 1977).	28
46	Uniform Railroad Costing System Phase III, Movement Costing Program Technical Manual (2 copies).	142
47	URCS Runs for PEC	600
48	Early Regression Runs	500
49	Uniform Railroad Costing System Phase III, Movement Costing Program—User's Manual.	85
50	Regression Run Miscellaneous	450
51	Decision Ex Parte 411	5
52	Update Indices for Regression and Phase II Normalization.	6

[FR Doc. 83-17536 Filed 6-29-83; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Notice of 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 August 1, 1983. Petitions for reconsideration must be filed by July 20, 1983. Petitions for stay must be filed by July 11, 1983.

FOR FURTHER INFORMATION CONTACT: Warren C. Wood, (202) 275–7977.

SUPPLEMENTARY INFORMATION: For Further information, see the decision(s) served in the proceeding(s) listed below. To purchase a copy of the full decision contact: TS Infosystems, Inc., Room 2227, 12th and Constitution Ave., NW, Washington, DC 20423; or call (202) 289–4357 in the DC metropolitan area; or (800) 424–5403 Toll-free outside the DC area.

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.

[No. MC-F-15164]

Newbury Transport Corporation—Control Exemption—The George Rimes Trucking Company, Inc.

ADDRESSES: Send pleadings to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, D.C. 20423

and

(2) Petitioner's representative: Lewis S. Witherspoon, 2455 N. Star Rd., Columbus, OH 43221

Pleadings should refer to No. MC-F-15164.

Decided: June 23, 1983.

Under 49 U.S.C. 11343(e), the Interstate Commerce Commission exempts from the requirement of prior review and approval under 49 U.S.C. 11343(a)(5) the acquisition of control of The George Rimes Trucking Company, Inc., by Newbury Transport Corporation.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-17603 Filed 6-29-83; 8:45 am]

BILLING CODE 7035-01-M

Motor Carrier Finance Applications; Decision Notice

As indicated by the findings below, the Commission has approved the following applications filed under 49 U.S.C. 10924, 10926, 10931 and 10932.

We find:

Each transaction is exempt from section 11343 of the Interstate Commerce Act, and complies with the appropriate transfer rules.

This decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

Petitions seeking reconsideration must be filed within 20 days from the date of this publication. Replies must be filed within 20 days after the final date for filing petitions for reconsideration; any interested person may file and serve a reply upon the parties to the proceeding. Petitions which do not comply with the relevant transfer rules at 49 CFR 1181.4 may be rejected.

If petitions for reconsideration are not timely filed, and applicants satisfy the conditions, if any, which have been imposed, the application is granted and they will receive an effective notice. The notice will recite the compliance requirements which must be met before the transferee may commence operations.

Applicants must comply with any conditions set forth in the following decision-notices within 20 days after publication, or within any approved extension period. Otherwise, the decision-notice shall have no further effect.

It is ordered:

The following applications are approved, subject to the conditions stated in the publication, and further subject to the administrative requirement stated in the effective notice to be issued hereafter.

By the Commission.

Agatha L. Mergenovich,

Secretary.

Please direct status inquiries to Team 1, (202) 275-7992.

Vol. No. OP1-FC-251

No. MC-FC-81522. By decision of June 22, 1983, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1181, the Review Board, Members Joyce, Fortier and Krock approved the transfer to ELLSWORTH A. SCHIERMEISTER, d.b.a. PHILLIPS TRANSPORTATION SERVICE, Wilsonville, OR, of Certificate No. MC-159930, issued May 27, 1982, to J. D. PHILLIPS (LOIS M. PHILLIPS, personal representative of the estate of J. D. PHILLIPS), d.b.a. PHILLIPS TRANSPORTATION SERVICE, Aurora, OR, authorizing the transportation of (1) food and related products, between points in WA, OR and CA, and (2) lumber and wood products, between points in WA and OR, on the one hand, and, on the other, points in CA, NV, AZ, and CO. An application for temporary authority has been filed. Applicants' representative: Lawrence V. Smart, Jr., 419 N. W. 23rd Avenue, Portland, OR 97210.

No. MC-FC-81531. By decision of June 22, 1983, issued under 49 U.S.C. 10926 and the Commission's transfer rules at 49 CFR 1181, the Review Board, Members Krock, Fortier and Williams approved the transfer to Duane Birk Trucking, Inc., of Emporia, KS, of Certificate No. MC-4851, issued July 26, 1963, to R.E. Hind d.b.a. H & S Truck Service, of Hartford, KS, authorizing the transportation of livestock, junk, farm machinery, feed, hardware, roofing and building materials, petroleum products, in containers, seed, and road building machinery, contractors' equipment (other than road building machinery), over specified regular routes, between Neosho Rapids, KS, and Kansas City, MO, serving the intermediate and off-route points of Kansas City, KS, and those within 18 miles of Neosho Rapids, and livestock, between Neosho Rapids, KS, and points within 18 miles of Neosho Rapids, on the one hand, and, on the other, St. Joseph, MO. Representative: Stanley R. Ausemus, P.O. Box 1083, 418 Commercial, Emporia, KS 66801.

For the following, please direct status calls to Team 3 at 202-275-5223.

Vol. No. OP3-FC-288

No. MC-FC-81340. By decision of June 21, 1983, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1181, the Review Board approved the transfer to KEDASHAW, INC., Kensington, KS, of Certificate No. MC-105774 (Sub-Nos. 6F, 13 and 18), issued July 10, 1980, October 13, 1981 and October 27, 1982, to JOHNSON TRUCK LINE, INC., Osborne, KS, authorizing the transportation of 1(a) *agricultural machinery and parts* for agricultural machinery, from the facilities of Kent Manufacturing, Inc., at or near Tipton, KS, to points in AL, AR, CO, CT, DE, GA, ID, IL, IN, IA, KY, LA, MD, MI, MN, MS, MO, MT, NE, NJ, NM, NY, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VA, WA, WV, WI, and WY and (b) *materials* used in the manufacture of agricultural machinery, from Chicao and Quincy, IL, Kansas City, MO, St. Louis, MO, Houston, TX, and Oklahoma City, OK, to the facilities of Kent Manufacturing, Inc., at or near Tipton, KS, restricted to the transportation of traffic originating at or destined to the named facilities, (2) *metal products*, between the facilities of Nucor Corporation, in the U.S., on the one hand, and, on the other, points in the U.S. and (3) *food and related products*, between points in CA, CO, ID, OR, and WA, on the one hand, and, on the other, points in AR, CO, KS, MO, and NE. Representative: Erle W. Francis, 719 Capitol Federal Bldg., 700 Kansas Avenue, Topeka, KS 66603, (913) 232-0601.

By the Commission, the Review Board, Members Dowell, Carleton, and Parker.

No. MC-FC 81430. By decision of June 17, 1983, issued under the transfer rules at 49 CFR 1181, The Review Board approved the transfer to HENSON AVIATION, INC., d.b.a. HENSON AIRLINES, d.b.a. ALLEGHENY COMMUTER, Hagerstown, MD, of Certificate No. MC-126255 (Sub-No. 11)X, and its underlying authority set forth in Certificate Nos. MC-126255 (Sub-Nos. 1, 4, 6F, 7F, 8F, 9 and 10), issued June 10, 1981, March 30, 1972, June 21, 1973, September 21, 1979, May 9, 1980, November 6, 1980, and November 26, 1980, to BUTLER-JONES AIR FREIGHT, INC., Salisbury, MD, authorizing the irregular route transportation of *general commodities* (except classes A and B explosives), generally between various named points in MD, VA, DE, PA, and DC. Applicant's Representative: V. Michael Straus, Suite

401, 1001 Connecticut Ave., NW, Washington, DC 20036–5544, (202) 785–2242.

By the Commission, the Review Board, Members Joyce, Krock, and Carleton.

No. MC–FC–81487. By decision of June 21, 1983, issued under 49 U.S.C. 10931 or 10932 and the transfer rules at 49 CFR 1181, the Review Board, approved the transfer to BUMAK, INC., which on consummation will change its name to SEAWAY MOTOR EXPRESS, INC., of Watertown, NY, of Certificate of Registration No. MC–57194 Sub 2, issued December 13, 1979, to SEAWAY MOTOR EXPRESS, INC., which on consummation will change its name to MACWAY, INC., authorizing the transportation of *general commodities*, as defined in Section 800.1 of Title 17 of the Official Compilation of Codes, Rules and Regulations of the State of New York, between all points in a territory in the State of New York consisting of some 17 counties and the cities of New York and Troy.

Condition: Transferee shall file the following with this Commission's Office of Proceedings (either prior to or concurrently with the consummation of this transfer: (i) a certified copy of the State Certificate as reissued to transferee, or—if the State Commission does not reissue the Certificate—a certified copy of the State order approving the transfer of the underlying intrastate rights; and (ii) a written notice confirming the date of consummation of that intrastate transaction.

Temporary authority is not sought. Transferee is not a carrier.

Applicant's representative: Herbert M. Canter, 305 Montgomery St., Syracuse, NY 13202, for the transferee.

By the Commission, the Review Board, Members Krock, Dowell, and Carleton.

No. MC–FC 81495. By decision of June 17, 1983, issued under 49 U.S.C. 10926, and the transfer rules at 49 CFR 1181, the Review Board approved the transfer to VEHICLE DELIVERY SERVICE, INC., Fort Worth, TX 76117, of Certificate No. MC–153484, issued May 24, 1982, to JACK C. GRANT, d.b.a. VEHICLE DELIVERY SERVICE, Hurst, TX, authorizing transportation over irregular route of *wrecked, disabled and repossessed motor vehicles*, in drive-away or tow-away service, between points in Arkansas, Texas, Louisiana, Oklahoma, and New Mexico, on the one hand, and, on the other, points in the U.S. (except AK and HI). Applicant's Representative: Clint Oldham, 623 S. Henderson, Suite 200, Fort Worth, TX 76104, (817) 332–4415.

By the Commission, the Review Board, Members Dowell, Joyce, and Krock.

For the following, please direct status calls to Team 5 at 202–275–7289.

Vol. No. OPS–FC–305

MC–FC 81174 By decision of June 22, 1983, issued under 49 U.S.C. 10926, and the transfer rules at 49 CFR 1181, the Review Board, members Parker, Fortier and Krock approved the transfer to MICHAEL L. SATTERWHITE of Salem, OR, of Certificate No. MC–152238 Subs 2, 3, 4 and 15 issued April 15, 1981, May 29, 1981, June 16, 1981 and April 22, 1982 respectively, and Permit No. MC–152238 Subs 6, 7 issued June 30, 1981, Sub 10 issued August 13, 1981, Subs 11, 12, and 13, issued September 9, 1981, Sub 14, issued December 10, 1981, Sub 18, issued October 1, 1981 and Sub 19, issued January 6, 1982, to CALIFORNIA-AMERICAN TRUCKING, INC., OF Yreka, CA, authorizing (1) the transportation of *general commodities*, with exceptions, between points in the U.S. for and on behalf of the U.S. Government, (2) *building materials*, and *rubber* and *plastic products*, between specified counties in CA and OR, on the one hand, and, on the other, points in AZ, CA, OR, WA, ID, UT and NV, (3) *metal products*, between specified points in CA, OR and WA, on the one hand, and, on the other, points in AZ, TX, UT, ID, WA, OR, NV, CA, CO, MT, NM, and WY, and (4) *lumber and wood products*, between points in CA, OR, WA, ID, and MT, on the one hand, and, on the other, points in the U.S. (except AK and HI), and Permit No. MC–152238 Sub Nos. 6, 7, 10, 11, 12, 13, 14, 18 and 19, authorizing the transportation of *metal products; petroleum, natural gas and their products; agricultural implements and equipment; such commodities* as are dealt in or used by manufacturers and distributors of plastic articles; *clay, concrete glass or stone products; metal* and *metal products; salt, salt products, and salt-based products;* and *such commodities* as are dealt in by manufacturers, wholesalers, and retailers of building and construction materials, all above between points in the U.S. under continuing contract(s) with named shippers. Representative: Michael L. Satterwhite, 4840 Textrum Ct., S.E., Salem, OR 97302.

Note.—The authority above duplicates that being retained in No. MC–152238 Sub 17 in part, authorizing the transportation of (1) *building materials*, between Chicago, IL, and points in various counties in CA, CO, MT, OH, WA and WI, LA Parishes, and points in ID and OR, on the one hand, and, on the other, points in the U.S., (2) *metal and metal products*, between Seattle, WA, and points in CA and UT, on the one hand, and, on the other, points in and west of MN, IA, MO, AR and LA and (3) *lumber and wood products*, between various counties in CA, WA, WY and TX, on the one hand, and, on the other, points in the U.S., and in Sub 20 authorizing the transportation of *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in AZ, CA, IL, IN, MD, MI, NY, OH, PA, TX, UT, WA and WI. The above-mentioned Sub-17 authority is the subject of an application in No. MC–FC–81175.

MC–FC–81175. By decision of June 22, 1983 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1181, the Review Board Members Parker, Fortier and Krock, approved the tranfer to K.L.C., INCORPORATED, of Portland, OR, of Certificate No. MC 152238 Sub 1F, issued February 9, 1981, and Sub 17 isued October 8, 1981, and Permit No. MC 152238 Sub 8 issued June 30, 1981 to CALIFORNIA–AMERICAN TRUCKING, INC., of Yreka, CA, authorizing the transportation of: SUB: 1F, (a) *paper bags and wrapping paper*, and (b) *materials and supplies* used in their manufacture, between points in Multnomah County, OR, and Kings County, CA, on the one hand, and, on the other, points in AZ, CA, CO, ID, MT, NM, NV, OR, UT, WA, and WY; Sub 17, (1) *pulp, paper and related products*, between points in Maricopa County, AZ, Pierce County, WA, and CA, on the one hand, and, on the other, points in the U.S., (2) *metal and metal products*, between Seattle, WA, and points in CA and UT, on the one hand, and, on the other, points in the U.S. in and west of MN, IA, MO, AR, and LA, (3) *building materials*, between Chicago, IL, and points in Shasta, Humboldt, Siskiyou, and Tehama Counties, CA, Mesa County, CO, Lincoln Parish, LA, Flathead and Mineral Counties, MT, Putnam and Holmes Counties, OH, Pacific, Lewis, Grays Harbor, and Snohomish Counties, WA, and Sawyer County, WI, and points in ID and OR, on the one hand, and, on the other, points in the U.S., and (4) *lumber and wood products*, between point in Sonoma, Mendocino Plumas, Glenn, Kern, Tuolumne, Butte, and Nevada Counties, CA, Pend Oreille and Walla Walla Counties, WA, Fremont County, WY, and Panola, Jasper, Hardin, Walker, Trinity, Angelina, and Dallas Counties, TX, on the one hand, and, on the other, points in the U.S.; and Sub 8, *lumber and wood products*, between points in the U.S., under continuing contract(s) with Furman Lumber, Inc., of Boston, MA. Applicant presently holds authority under MC 159174 and subs thereunder. Representative: Vern Phillips, 2416 North Main Dr., Portland, OR 97217.

Note.—The authority above duplicates that being retained in No. MC 152238 Subs 2, 3, 4, and 15 which are subsequently being

transferred through another FC proceeding in MC-FC-81174, which authorize the transportation of: (1) General commodities, with exceptions, between points in the U.S., for or on behalf of the U.S. Government, (2) building materials and rubber and plastic products, between specified points in CA and OR, on the one hand, and, on the other, points in AZ, CA, OR, WA, ID, UT, and NV, (3) metal products, between specified counties in CA, OR, and WA, on the one hand, and, on the other, points in AZ, TX, UT, ID, WA, OR, NV, CA, MT, and WY, and (4) lumber and wood products, between points in CA, OR, WA, ID, and MT, on the one hand, and, on the other, points in the U.S. (except AK and HI), and SUB 20 which authorizes the transportation of general commodities, with exceptions, between points in AZ, CA, IL, IN, MD, MI, NY, OH, OR, PA, TX, UT, WA, and WI.

MC-FC-81228. By decision of June 21, 1983, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1181, the Review Board, Members Fortier, Krock and Williams, approved the transfer to CONSTABLE TRANSPORT LIMITED, Thorold, Ontario, CN, of Certificates Nos. MC-71478 Subs 41 and 51F and a portion of Certificate No. MC-71478 Sub 40, issued December 19, 1978, March 11, 1981, and December 2, 1980, respectively, to THE CHIEF FREIGHT LINE COMPANY (Debtor-in-Possession), Tulsa, OK, authorizing the transportation of general commodities, with exceptions, over regular and irregular routes, serving specified intermediate and off-route points, between points in IL, IN, KS, MO, NY, OH, and PA; and specified commodities, over regular and irregular routes, between points in IL, IN, KS, KY, MO, OH, PA, and WV. Temporary authority was granted on March 15, 1983. Representative: Robert D. Gunderman, Can-Am Building, 101 Niagara Street, Buffalo, NY 14202.

MC-FC-81269. By decision of June 22, 1983 issued under 49 U.S.C. 10926, and the transfer rules at 49 CFR 1181, Review Board, Members Krock, Parker and Joyce, approved the transfer to LADNER, INC., of Solomon, KS, of Certificate No. MC-151788 Sub-16 issued June 2, 1982, to MEL JARVIS CONSTRUCTION CO., INC., of Salina, KS, authorizing the transportation of hides between points in the United States (except Alaska and Hawaii). Representative: Ronald Barta, 611 East Iron, P.O. Box 1605, Salina, KS 67401.

Note.—The authority above duplicates that being retained in Nos. MC-151788 Sub-2 issued June 16, 1981, authorizing the transportation of food and related products, between Sedgwick County, KS, on the one hand, and, on the other, points in the United States, MC-151788 Sub-3 issued June 18, 1981, authorizing the transportation of food and related products, between points in Kansas, on the one hand, and, on the other, points in the United States, MC-151788 Sub-7 issued November 2, 1981, authorizing the transportation of hides, between points in Goshen County, WY, and Dickinson County, KS, on the one hand, and, on the other, points in the United States, and MC-151788 Sub-15 issued May 18, 1982, authorizing the transportation of general commodities (except classes A and B explosives, commodities in bulk and household goods as defined by the Commission), between points in Kansas, on the one hand, and, on the other, points in the United States (except Alaska and Hiwaii).

MC-FC-81476. By decision of June 21, 1983, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1181, the Review Board, Members Fortier, Williams and Dowell, approved the transfer to JAMES D. MORRISSEY, JR., Philadelphia, PA, of Certificate No. MC-94909 (erroneously issued as MC-94906), issued May 16, 1949, to JAMES D. MORRISSEY (MARY F. MORRISSEY, BETTE C. PLUNKETT, AND CLYDE MEASEY, executors), Holmesburg, PA, authorizing the transportation of soda fountains and equipment and fixtures therefor, from Philadelphia, PA, to points in NJ and DC, and those in NY within 50 miles of New York, NY; electrical equipment, from Philadelphia, PA, to Wilmington, DE, Baltimore, MD, and New York, NY; bleaching compound from Philadelphia, PA, to Millburn, NJ; old and worn soda fountains, from points in NJ and DC, and those in NY within 50 miles of New York, NY, to Philadelphia, PA; old or junked equipment, from Wilmington, DE, Baltimore, MD, and New York, NY, to Philadelphia, PA; railroad car wheels, between Philadelphia, PA, on the one hand, and, on the other, Baltimore, MD, Wilmington, DE, and DC; and exhibition and display materials, between Philadelphia, PA, on the one hand, and, on the other, Atlantic City, NJ, and New York, NY. Representative: D. Rodman Eastburn, 60 East Court Street, Doylestown, PA 18901.

MC-FC-81480. By decision of June 22, 1983 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1181, The Review Board, Members Williams, Joyce and Fortier, approved the transfer to ADVERTISING DISTRIBUTORS OF MARYLAND, INC., d.b.a., HARTE-HANKS TRANSPORTATION SERVICE of Baltimore, MD, of Certificate No. MC-151819 Sub-8 issued June 4, 1982, to CARGO-MASTER, INC., of Dallas, TX, authorizing the transportation of *paper, pulp, and printed matter*, between points in the U.S. (except AK and HI). An application for temporary authority has been filed. Representative: Richard S. Ewing, 1200 New Hampshire Ave., N.W., Washington, DC 20036.

Note.—The authority above duplicates that being retained in No. MC-151819(a) Sub-3 authorizing the transportation of *pulp, paper and related products*, between Dallas, TX, and points in LaFourche Parish, LA and McMinn County, TN, on the one hand, and, on the other, points in the U.S. and (b) Sub-13 authorizing the transportation of *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in TX, OK, AR, LA, MS, AL, GA, FL, SC, NC, and TN, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC-FC-81518. By decision of June 17, 1983 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1181, the Review Board Members Fortier, Williams and Dowell, approved the transfer to COLLUM TRUCKING, INC., of Perkins, OK, of Certificate No. MC-161768 issued February 1, 1983, to HOLMAN-MARRS, INC., of Moore, OK, authorizing the transportation of: (1) Metal products, and (2) machinery, between points in AR, LA, OK, TX, and WY, on the one hand, and, on the other, points in the U.S. (except AK and HI). Representative: William P. Parker, 4400 N. Lincoln Blvd., Suite 10, Oklahoma City, OK 73105.

MC-FC-81358. By decision of June 22, 1983 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1181, the Review Board Members Dowell, Fortier and Krock, approved the transfer to TRIANGLE TRUCKING, INC., of Salina, KS of Certificate No. MC-151788 Sub-8 issued October 20, 1981, and Sub-15 issued May 18, 1982 to MEL JARVIS CONSTRUCTION CO., INC., of Salina, KS, authorizing the transportation of (1) *such commodities* as are dealt in or used by manufacturers and distributors of electric storage batteries, between the facilities of General Battery Corporation at points in the U.S., on the one hand, and, on the other, points in the U.S., and (2) *general commodities* (except classes A and B explosives, commodities in bulk, and household goods as defined by the Commission), between points in KS, on the one hand, and, on the other, points in the U.S. (except AK and HI). Representative: John E. Jandera, P.O. Box 1979, Topeka, KS 66601.

Note.—The authority above duplicates that being retained in No. MC 151788 and Subs 1, 2, 3, 4, 6, 7, 10X, 11, 12, 13, 14, 16, and 17 which authorize the transportation generally, of named commodities, between named points in KS, and named points in the U.S.

[FR Doc. 83-17608 Filed 6-29-83; 8:45 am]
BILLING CODE 7035-01-M

[Decision-Notice OP3-293]

Motor Carriers; Finance Applications

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by 49 CFR 1182.1 of the Commission's Rules of Practice. See Ex Parte 55 (Sub-No. 44), *Rules Governing Applications Filed By Motor Carriers Under 49 U.S.C. 11344 and 11349*, 363 I.C.C. 740 (1981). These rules provide among other things, that opposition to the granting of an application must be filed with the Commission in the form of verified statements within 45 days after the date of notice of filing of the application is published in the **Federal Register**. Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 242 of the special rules and shall include the certification required.

Persons wishing to oppose an application must follow the rules under 49 CFR 1182.2. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00, in accordance with 49 CFR 1182.2(d).

Amendments to the request for authority will not be accepted after the date of this publication. However, the Commission may modify the operating authority involved in the application to conform to the Commission's policy of simplifying grants of operating authority.

We find, with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decison is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests as to the finance application *or* to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, the duplication shall not be construed as conferring more than a single operating right.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

Decided: June 23, 1983.

By the Commission, Review Board, Members Carleton, Joyce, and Williams.

Agatha L. Mergenovich,

Secretary.

Please direct status inquiries to Team 3 (202) 275-5223.

MC-F-15298, filed May 25, 1983. SUBURBAN TRAILS, INC. (TRAILS) (750 Somerset St., New Brunswick, NJ 08901)—PURCHASE—LINCOLN TRANSIT CO., INC. (Thomas J. O'Neill, trustee in bankruptcy) (LINCOLN) (First St. and Lexington Ave., Lakewood, NJ 08701) Representatives: Edward F. Bowes, 7 Becker Farm Road, P.O. Box Y, Roseland, NJ 07068; and Thomas J. O'Neill, 60 Park Place, Tower Suite 1900, Newark, NJ 07102. Trails seeks authority to purchase all of the interstate operating rights and property of Lincoln through the Trustee in Bankruptcy. Sidney Kuchin, the sole stockholder of Trails, seeks authority to acquire control of said rights and property through the transaction. Trails is purchasing the interstate passenger authority contained in Lincoln's certificate No. MC-58915 and sub-numbers thereunder, which authorize the transportation of passengers over (1) regular routes, between Cape May and Atlantic City, NJ and New York, NY, with incidential charter authority between specified points and all points in the United States; and (2) irregular routes, with charter authority between Atlantic City, NJ, and points within 10 miles thereof, on the one hand, and, on the other, specified points in Delaware and Maryland, and a 150-mile area in Pennsylvania, Washington, D.C., and New York, NY, with special operating authority in round-trip sightseeing tours from and to specified points in the United States. Trails is a motor common carrier of passengers, pursuant to certificate No. MC-149061 and sub-numbers thereunder. Sidney Kuchin, president and stockholder of Trails, is affiliated with Suburban Transit Corp. (Transit), a motor common carrier of passengers, operating under No. MC-115116 and sub-numbers thereunder.

Note.—(1) This notice does not purport to be a complete description of the operating rights of the carriers involved; (2) Application for temporary authority has been filed.

[FR Doc. 83-17865 Filed 6-29-83; 8:45 am]

BILLING CODE 7035-01-M

Motor Carrier Permanent Authority Decisions; Restriction Removals

The following restriction removal applications, are governed by 49 CFR 1165. Part 1165 was published in the **Federal Register** of December 31, 1980, at 45 FR 86747 and redesignated at 47 FR 49590, November 1, 1982.

Persons wishing to file a comment to an application must follow the rules under 49 CFR 1165.12. A copy of any application can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the restriction removal applications are not allowed.

Some of the applications may have been modified prior to publication to conform to the special provisions applicable to restriction removal.

Findings

We find, preliminarily, that each applicant has demonstrated that its requested removal of restrictions or broadening of unduly narrow authority is consistent with the criteria set forth in 49 U.S.C. 10922(h).

In the absence of comments filed within 25 days of publication of this decision-notice, appropriate reformed authority will be issued to each applicant. Prior to beginning operations under the newly issued authority, compliance must be made with the normal statutory and regulatory requirements for common and contract carriers.

Agatha L. Mergenovich,

Secretary.

Please direct status inquiries to Team 1, (202) 275-7992.

Volume No. OP1-252

Decided: June 23, 1983.

By the Commission, Review Board Members Krock, Williams, and Dowell.

MC 15881 (Sub-18X), filed June 9, 1983. Applicant: FERGUSON TRANSPORTATION CO., 560 Old Berwick Rd., Bloomsburg, PA 17815. Representative: Raymond Talipski, 121 So. Main St., Taylor, PA 18517; (717) 344–8030. Lead and Subs 15 and 17: (1) Broaden commodity description to household goods and furniture and fixtures, bakery goods and related products, and lighting equipment and related products, (2) broaden Kingston, PA, Berwick, PA, Greensboro, NC, Long Beach, CA and Bloomsburg, PA, and points within 15 miles of Bloomsburg to county-wide authority, (3) remove facility restriction at Kingston, PA and remove bulk restriction, and (4) broaden one-way service to radial authority.

[FR Doc. 83-17604 Filed 6-29-83; 8:45 am]

BILLING CODE 7035-01-M

Motor Carrier Permanent Authority Decisions; Decision-Notice

Motor Common and Contract Carriers of Property (fitness-only); Motor Common Carriers of Passengers (fitness-only); Motor Contract Carriers of Passengers; Property Brokers (other than household goods).

The following applications for motor common or contract carriage of property and for a broker of property (other than household goods) are governed by Subpart A of Part 1160 of the Commission's General Rules of Practice. See 49 CFR Part 1160, Subpart A, published in the **Federal Register** on November 1, 1982, at 47 FR 49583, which redesignated the regulations at 49 CFR 1100.251, published in the **Federal Register** on December 31, 1980. For compliance procedures, see 49 CFR 1160.19. Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart B.

The following applications for motor common or contract carriage of passengers filed on or after November 19, 1982, are governed by Subpart D, of the Commission's Rules of Practice. See 49 CFR Part 1160, Subpart D, published in the **Federal Register** on November 24, 1982, at 49 FR 53271. For compliance procedures, see 49 CFR 1160.86. Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart E.

These applications may be protested *only* on the grounds that applicant is not fit, willing, and able to provide the transportation service or to comply with the appropriate statutes and Commission regulations.

Applicant's representative is required to mail a copy of an application, including all supporting evidence, within three days of a request and upon payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication, (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Agatha L Mergenovich,

Secretary.

Note.–All applications are for authority to operate as a motor common carrier in interstate of 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."

For the following, please direct status calls to Team 5 at (202) 275–7289.

Volume No. OP5–308

Decided: June 23, 1983.

By the Commission, Review Board Members Joyce, Krock and Williams.

MC 158818 (Sub-2(b)), filed May 9, 1983. Applicant: BOB BOYD, d.b.a. BOB BOYD TRUCKING, 417 North M, Livingston, MT 59047. Representative: Charles A. Murray, Jr., 2822 Third Ave., N., Billings, MT 59101; (406) 252–4165. Transporting, for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S. (except AK and HI).

Note.— Applicant seeks additional authority in MC 158818 Sub-2(a) published in this same **Federal Register.**

MC 168539, filed June 13, 1983. Applicant: McLELLAN TRANSPORTATION CO., LIMITED, 19 Prospect Avenue, Kirkland Lake, Ontario, Canada P29 2T9. Representative: John L. Trigilio, Can-Am Building, 101 Niagara Street, Buffalo, NY 14202; (716) 854–5870. Transporting, *passengers*, in charter and special operations, between points in the U.S. (except HI).

Note.— Applicant seeks to provide privately funded charter and special transportation.

MC 168548, filed June 9, 1983. Applicant: INDEPENDENT BUS GARAGE CO., INC., 465 Mulberry, St., Newark, NJ 07114. Representative: James M. Burns, 1365 Main St., Suite 403, Springfield, MA 01103; (413) 781–8205. Transporting *passengers*, in special and charter operations, between points in the U.S.

Note.— Applicant seeks to provide privately funded charter and special transportation.

MC 168549, filed June 9, 1983. Applicant: KAUNAS BUS CO., INC., 465 Mulberry Street, Newark, NJ 07114. Representative: James M. Burns, 1365 Main St., Suite 403, Springfield, MA 01103; (413) 781–8205. 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 168568, filed June 9, 1983. Applicant: RAYMOND C. LAUBACH, ELWOOD R. LAUBACH, and CHARLES A. WELSHANS, a partnership, d.b.a. L L & W TRUCK LINES, RD #2 Box 522, Jersey Shore, PA 17740. Representative: Lawrence E. Lindeman, 4660 Kenmore

Ave., Suite 1203, Alexandria, VA 22304, (703) 751–2441. Transporting (1) *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners*, by the owner of the motor vehicle in such vehicle and (2) for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S. (except AK and HI).

MC 168569, filed June 9, 1983. Applicant: SOUTH ORANGE AVENUE BUS COMPANY, INC., 19 West 53rd Street, Bayonne, NJ 07002. Representative: James M. Burns, 1365 Main St., Suite 403, Springfield, MA 01103, (413) 781–8205. 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 168588, filed June 10, 1983. Applicant: MEADOWLANDS TRANSIT, INC., 465 Mulberry St., Newark, NJ 07114. Representative: James M. Burns, 1365 Main St., Suite 403, Springfield, MA 01103, (413) 781–8205. Transporting *passengers*, in charter and special operations, between points in the U.S.

Note.—The Board concluded that the applicant seeks to provide privately funded charter and special transportation, notwithstanding the receipt by applicant of some government assistance.

MC 168589, filed June 10, 1983. Applicant: CAPT. JERRY'S TRUCKING, INC., 1440 N.E. 149 St., No. Miami, FL 33161. Representative: Jerome D. Story (same address as applicant), (305) 944–2220. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S. (except HI).

For the following, please direct status calls to Team 5 at (202) 275–7289.

Volume No. OP5–309

Decided: June 23, 1983.

By the Commission, Review Board Members Williams, Dowell and Carleton.

MC 168618, filed June 13, 1983. Applicant: MADISION PARK ENTERPRISES, LTD., 5405 Pheasant Hill Rd., Monona, WI 53716. Representative: Wayne W. Wilson, 150 E. Gilman St., Suite 1000, Madison, WI 53703; 608–256–7444. Transporting *passengers* in charter and special operations, between points in the U.S. (except HI).

Note.—Applicant seeks to provide privately funded charter and special transportation.

MC 168619, filed June 13, 1983. Applicant: T. L. T. TRUCKING, INC., Rt. 1, Box 286, Woodburn, KY 42170. Representative: D.R. Beeler, P.O. Box 482, Franklin, TN 37064; 615–790–2510. As a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 168628, filed June 10, 1983. Applicant: TROPICANA PRODUCTS, INC., P.O. Box 338, Brandenton, FL 33506. Representative: J. G. Dail Jr., P.O. Box LL, McLean, VA 22101; (703) 893–3050. To operate as a *broker* of *general commodities* (except household goods), between points in the U.S.

MC 168638, filed June 13, 1983. Applicant: WILLIAM F. COCHRAN d.b.a. DISTRIBUTION MANAGEMENT SERVICES, P.O. Box 2059, Glendora, CA 91740. Representative: Milton W. Flack, 8484 Wilshire Blvd., Suite 840, Beverly Hills, CA 90211; (213) 655–3573. To operate as a *broker* of *general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 168659, filed June 13, 1983. Applicant: AYERS BROTHERS ENTERPRISES, INC., 2710 Eastern Ave. Perry, IA 50220. Representative: Thomas E. Leahy, Jr., 1980 Financial Center, Des Moines, IA 50309; (515) 245–4300. To operate as a *broker* of *general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 168669, filed June 13, 1983. Applicant: WRIGHT EXECUTIVE SERVICES, INC., 97 Hanover St., Pemberton, NJ 08068. Representative: Thomas A. Wright (same address as applicant), 609–894–8558. Transporting *passengers* in charter and special operations, between points in NJ, NY, PA, DE, MD, CT and DC.

Note.—Applicant seeks to provide privately funded charter and special transportation.

Please direct status inquiries about the following to Team Three (3) at (202) 275–5223.

Volume No. OP3–273

Decided: June 17, 1983.

By the Commission, Review Board Members Carleton, Williams, and Krock.

MC 138754 (Sub-1), filed May 31, 1983. Applicant: BASDEN TRANSPORTATION, INC., 307 So. Dixon St., Tuscumbia, AL 35674. Representative: James Robert Evans, 145 W. Wisconsin Ave., Neenah, WI 54956, (414) 722–2848. Transporting *passengers*, in charter and special operations, between points in the U.S. (except HI).

Note.—Applicant seeks to provide privately funded charter and special transportation.

MC 168394, filed June 2, 1983. Applicant: EUGENE ADDISON THOMAS d.b.a. THOMAS CHARTERED SERVICE, 2832 27th Street, N.E., Washington, DC 20018. Representative: Eugene A. Thomas (same address as applicant), (202) 635–8456. Transporting *passengers*, in special and charter operations, between points in the U.S. (except AK and HI).

Note.—Applicant seeks to provide privately funded charter and special transportation.

MC 168395, filed May 31, 1983. Applicant: CLIFTON FERRIS, d.b.a. CLIFF FERRIS, P.O. Box 3657, Lake Wales, FL 33859. Representative: (Same as applicant) (813) 676–4254. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners*, by the owner of the motor vehicle in such vehicle, between points in the U.S.

MC 168424, filed June 3, 1983. Applicant: ANTHONY LAWRENCE PERRY, d.b.a. ANTHONY L. PERRY TRUCKING; 7 Harbor Woods Circle, Clearwater, FL 33519. Representative: (Same as applicant) (813) 725–2139. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners*, by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

Please direct status inquiries to Team 1, (202) 275–7030.

Volume No. OP–1–OP1–240(F)

Decided: June 21, 1983.

By the Commission, Review Board Members Williams, Joyce, and Fortier.

MC 168621, filed June 9, 1983. Applicant: HERBERT TICHENOR and EDNA TICHENOR, a partnership, Box 381, Oxford, PA 07863. Representative: Raymond Talipski, 121 South Main Street, Taylor, PA 18517, (717) 344–8030. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners*, by the owner of the motor

vehicle in such vehicle, between points in the U.S. (except HI).

MC 168650, filed June 10, 1983. Applicant: SOUTH ORANGE AVENUE BUS ASSOCIATION, 465 Mulberry Street, Newark, NJ 07114. Representative: James M. Burns, 1365 Main Street, Suite 403, Springfield, MA 01103, (413) 781–8205. 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 168681, filed June 14, 1983. Applicant: JO V. DAVIS, d.b.a. BJ BUS LINE, 9035 Airline Highway, Baton Rouge, LA 70815. Representative: JO V. Davis (same address as applicant), (504) 926–2381 Transporting *passengers*, in charter and special operations, between points in the U.S. (except AK and HI).

Note.—Applicant seeks to provide privately funded charter and special transportation.

Please direct status inquiries to Team #1 at (202) 275–7992.

Volume No. OP1–242 (F)

Decided Date, June 21, 1983.

By the Commission, Review Board Members Carleton, Krock, and Dowell.

MC 144271 (Sub-1), filed June 9, 1983. Applicant: LLOYD S. BRUBACKER, R.D. No. 2, Box 279, Red Run Rd. Stevens, PA 17578. Representative: Lloyd S. Brubacker, (same address as applicant), (215) 267–3418. Transporting *food and other edible products and by-products intended for human consumption* (except alcoholic beverages and drugs) *agricultural limestone and fertilizers and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

MC 168561, filed June 9, 1983. Applicant: E & A BUS CO., INC., 465 Mulberry St., Newark, NJ 07114. Representative: James M. Burns, 1365 Main St. Suite 403, Springfield, MA 01103, (413 781–8205. Transporting *passengers*, in charter and special operations, between points in the U.S. Condition: The person or persons who appear to be engaged in common control of another regulated carrier must either file an application under 49 U.S.C. § 11343 or an appropriate petition for exemption or submit an affidavit indicating why such approval is unnecessary to the secretary's office. In order to expedite issuance of any authority please submit a copy of the affidavit or proof of filing the application(s) or exemption for common control to Team 1, Room 2379.

Note.—Applicant seeks to provide privately funded charter and special transportation.

Please direct status inquiries to Team 1, (202) 275–7030.

Volume No. OP–1–242(F)

Decided: June 21, 1983.

By the Commission, Review Board Members Williams, Joyce, and Fortier.

MC 144271 (Sub-1), filed June 9, 1983. Applicant: LLOYD S. BRUBACKER, R.D. No. 2, Box 279, Red Run Rd., Stevens, PA 17578. Representative: Lloyd S. Brubacker (same address as applicant), (215) 267–3418. Transporting *food and other edible products and by-products intended for human consumption* (except alcoholic beverages and drugs) *agricultural limestone and fertilizers and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

MC 168561, filed June 9, 1983. Applicant: E & A BUS CO., INC., 465 Mulberry St., Newark, NJ 07114. Representative: James M. Burns, 1365 Main St., Suite 403, Springfield, MA 01103, (413) 781–8205. Transporting *Passengers*, in charter and special operations, between points in the U.S. Condition: The person or persons who appear to be engaged in common control of another regulated carrier must either file an application under 49 U.S.C. § 11343 or an appropriate petition for exemption or submit an affidavit indicating why such approval is unnecessarey to the secretary's office. In order to expedite issuance of any authority please submit a copy of the affidavit or proof of filing the application(s) or exemption for common control to Team 1, Room 2379.

Note.—Applicant seeks to provide privately funded charter and special transportation.

Please direct status inquiries to Team 1, (202) 275–7030.

Volume No. OP–1–248(F)

Decided: June 22, 1983.

By the Commission, Review Board Members Fortier, Parker, and Joyce.

MC 2890 (Sub-62(A)) (republication), filed March 2, 1983, previously published in the **Federal Register** on March 24, 1983. Applicant: AMERICAN BUSLINES, INC., 1500 Jackson St., Dallas TX 75201. Representative: G.W. Hanthorn (same address as applicant), (214) 655–7937. Transporting over regular routes, *passengers*, (1) between Dallas, TX and Fort Worth, TX over Interstate Hwy 30, serving all intermediate points, (2) between Davenport, IA and Hastings, NE, from Daverport over Interstate Hwy 80 to junction U.S. Hwy 34/281, then over U.S. Hwy 34/281 to Hastings and return over the same route, serving all intermediate points, and (3) between the junction of Interstate Hwy 80 and U.S. Hwy 34/281 and Grand Island, NE, From the junction of Interstate Hwy 80 and U.S. Hwy 34/281 over U.S. Hwy 34/281 to junction U.S. Hwy 30, then over U.S. Hwy 30 to Grand Island, NE, and return over the same route.

Note.—Applicant seeks to provide regular route service in intrastate commerce under 49 U.S.C. 10922(c)(2)(b). The purpose of this republication is to correct the territorial application. Upon issuance of this authority the certificate issued May 25, 1983, in No. MC 2890 Sub 62A will be cancelled.

MC 162271 (Sub-1), filed June 13, 1983. Applicant: CATTELL ENTERPRISES, INC., 303 E. Third St., Mount Vernon, NY 10553. Representative: Joseph M. Shanks (same address as applicant), (914) 668–8177. As a *broker* of *general commodities* (except household goods), between points in the U.S.

MC 168691, filed June 13, 1983. Applicant: CREATIVE TOURS, INC., 820 Park Ave, Bloomfield, CT 06002. Representative: Michael B. Chiaklin (same address as applicant), (203) 243–2389. Transporting *passengers*, in charter and special operations, between points in the U.S.

Note.—Applicant seeks to provide privately funded charter and special transportation.

[FR Doc. 83–17607 Filed 6–29–83; 8:45 am]

BILLING CODE 7035–01–M

Motor Carrier; Permanent Authority Decisions; Decision-Notice

Motor Common and Contract Carriers of Property (except fitness-only); Motor Common Carriers of Passengers (public interest); Freight Forwarders; Water Carriers; Household Goods Brokers.

The following applications for motor common or contract carriers of property, water carriage, freight forwarders, and household goods brokers are governed by Subpart A of Part 1160 of the Commission's General Rules of Practice. See 49 CFR Part 1160, Subpart A, published in the **Federal Register** on November 1, 1982, at 47 FR 49583, which redesignated the regulations at 49 CFR 1100.251, published in the **Federal Register** December 31, 1980. For compliance procedures, see 49 CFR 1160.19. Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart B.

The following applications for motor common carriage of passengers, filed on or after November 19, 1982, are governed by Subpart D of 49 CFR Part

1160. Published in the **Federal Register** on November 24, 1982 at 47 FR 53271. For compliance procedures, see 49 CFR 1160.86. Carriers operating pursuant to an intrastate certificate also must comply with 49 U.S.C. 10922(c)(2)(E). Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart E. In addition to fitness grounds, these applications may be opposed on the grounds that the transportation to be authorized is not consistent with the public interest.

Applicant's representative is required to mail a copy of an application, including all supporting evidence, within three days of a request and upon payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations.

We make an additional preliminary finding with respect to each of the following types of applications as indicated: common carrier of property—that the service proposed will serve 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.

Agatha L. Mergenovich,

Secretary.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract." Applications filed under 49 U.S.C. 10922(c)(2)(B) to operate in intrastate commerce over regular routes as a motor common carrier of passengers are duly noted.

For the following, please direct status calls to Team 5 at 202–275–7289.

Volume No. OP5–306

Decided: June 23, 1983.

By the Commission, Review Board Members Joyce, Krock and Williams.

MC 135598 (Sub-62), filed May 27, 1983. Applicant: SHARKEY TRANSPORTATION, INC., P.O. Box 3156, Quincy, IL 62301. Representative: Carl L. Steiner, 135 S. La Salle St., Suite 2106, Chicago, IL 60603, (312) 236–9375. Transporting *transportation equipment and metal products* between points in the U.S. (except AK and HI), under continuing contract(s) with Can-Am Industries, Inc., of Quincy, IL.

MC 146438 (Sub-22), filed May 31, 1983. Applicant: ETV, INC., P.O. Box 393, Comstock Park, MI 48321. Representative: William B. Elmer, P.O. Box 801, Traverse City, MI 49685–0801, (616) 941–5313. Transporting *textile mill products* between points in MI, NC, and TN, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 158818 (Sub-2(a)), filed May 9, 1983. Applicant: BOB BOYD, d.b.a. BOB BOYD TRUCKING, 417 No. M, Livingston, MT 59047. Representative: Charles A. Murray, Jr., 2822 Third Ave., No., Billings, MT 59101, (406) 252–4165. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between Idaho Falls, ID, and points in MT on the one hand, and, on the other, points in TN.

Note.—Applicant seeks additional authority in MC–158818 Sub 2(b) published in this same **Federal Register.**

MC 168159, filed June 8, 1983. Applicant: C. E. DAVIS TRUCKING, INC., 4004 Taylor Ave., Baltimore, MD 21236. Representative: Robert K. Goren, One Central Plaza, No. 1017, 11300 Rockville Pike, Rockville, MD 20852, (301) 984–6266. Transporting (1) *Building materials and machinery*, and (2) *lumber and wood products*, between points in the U.S. (except AK and HI).

MC 168299, filed May 25, 1983. Applicant: WHITE LINE, INC., 3913 No. Garfield, Loveland, CO 80537. Representative: Terry L. and Jacqueline R. Allen (same address as applicant), (303) 663–0310. Transporting (1) *building materials*, under continuing contract(s) with Payless Cashways, Inc., of Kansas City, MO, (2) *railroad salvage and landscaping timbers and firewood*, under continuing contract(s) with A–1 Railroad Tie Company, of Arvada, CO, and (3) *fencing and fencing materials*, under continuing contract(s) with Cedar Supply, of Wheat Ridge, CO, between points in the U.S. (except AK and HI).

MC 168348, filed June 9, 1983. Applicant: THE FEED STORE AND SUPPLY COMPANY, 238 N. Zaragosa, El Paso, TX 79907. Representative: Joe S. Carrasco (same address as applicant), (915) 859–7320. Transporting *metal products* and *building materials*, between points in AZ, AR, CA, LA, MO, MN, OK, and TX.

MC 168498, filed June 7, 1983. Applicant: BRUCE EVERSTON, d.b.a. ROAD RUNNER AGENCY, 6016 Woodman Ave., Van Nuys, CA 91401. Representative: C. Jack Pearce, 1000 Connecticut Ave., N.W., Suite 1200, Washington, DC 20036, 202–785–0048. Transporting *transportation equipment*, between points in the U.S.

MC 168519, filed June 7, 1983. Applicant: STAN LAFFERRY, d.b.a. ALL SEASONS TRANSFER, 7437 Wilshire Blvd., Coos Bay, OR 97420. Representative: Stan Lafferry (same address as applicant), (503) 888–f5125. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S., under continuing contract(s) with Cascade West Transportation Brokers, of Lake Oswego, OR.

For the following, please direct status calls to Team 5 at 202–275–7289.

Volume No. OP5–307

Decided: June 23, 1983.

By the Commission, Review Board Members Williams, Dowell and Carleton.

MC 156419(Sub-1), filed June 1, 1983. Applicant: RIG RUNNER EXPRESS, INC. OF TEXAS, P.O. Box 418, Huffman, TX 77336. Representative: James R. Boyd, 1000 Perry Brooks, Building, 121 E. 8th, Austin, TX 78701, (512) 476–8066. Transporting (1) *Mercer commodities* between points in the U.S. (except AK and HI), (2) *metal products* between TX on the one hand, and, on the other, points in the U.S. (except AK and HI), and (3) *machinery* between points in TX and LA on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 165918, filed January 24, 1983. Applicant: OMWT TRANSPORTATION, INC., 1316 Stimmel Rd., Columbus, OH 43223. Representative: Owen B. Katzman, 1828 L St., N.W., Suite 1111, Washington, DC 20036, 202–822–8200. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in AL, AR, FL, GA, IL, IN, KS, KY, LA, MS, NY, NC, OH, OK, PA, SC, TN, TX, VA, and WV.

MC 168599, filed June 13, 1983. Applicant: OVERLAND CONTRACT CARRIERS, INC., 1221 Baltimore Ave., Suite 600, Kansas City, MO 64105–1961. Representative: Frank W. Taylor, Jr. (same address as applicant), (816) 221–1464. 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 Hallmark Cards, Inc., of Liberty, MO.

MC 168629, filed June 10, 1983. Applicant: THOMAS E. GUY, d.b.a. A & E LEASING SERVICE, P.O. Box 92, Callaway, MD 20620. Representative: Thomas E. Guy (same address as applicant), (301) 862–4234. Transporting *beer*, between Eden, NC and Upper Marlboro, MD, under continuing contract(s) with Buck Distributing Company, Inc., of Upper Marlboro, MD.

MC 168639, filed June 13, 1983. Applicant: PLYMOUTH TRANSPORTATION CORPORATION, 13101 Eckles Road, Plymouth, MI 48170. Representative: Abraham Singer, 525 N. Woodward Avenue, Suite 1000, Bloomfield Hills, MI 48013–7193, (313) 644–2800. Transporting *metal products*, between points in the lower peninsula of MI.

MC 168698, filed June 15, 1983. Applicant: ODDEE SMITH AND SONS, INC., Route 3, Box 213, Brookhaven, MS 39601. Representative: Harold D. Miller, Jr., 17th Floor, Deposit Guaranty Plaza, P.O. Box 22567, Jackson, MS 39205, (601) 948–5711. Transporting *Mercer commodities*, between points in AL, FL, LA, MS, TN, and TX.

Please direct status inquiries about the following to Team Three (3) at (202) 275–5223.

Volume No. OP3–272

Decided: June 17, 1983.

By the Commission, Review Board Members Carleton, Williams, and Krock.

MC 52914 (Sub-10), filed May 31, 1983. Applicant: FTL, INC., P.O. Bx 10799, Portland, OR 97210. Representative: Lawrence V. Smart, Jr., 419 NW 23rd Ave., Portland, OR 97210, (503) 226–3755. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), (1) between Portland, OR and Ontario, OR, over Interstate Hwy 84, serving all intermediate points and off-route points in Wasco, Sherman, Gilliam, Morrow, Umatilla, Union, Malheur and Baker Counties, OR; and (2) between Portland, OR, and Medford, OR over Interstate Hwy 5, serving all intermediate points and off-route points in Marion, Polk, Linn, Benton, Lane, Douglas, Josephine and Jackson Counties, OR.

MC 99934 (Sub-2), filed May 27, 1983. Applicant: STARKWEATHER FREIGHT LINES, INC., P.O. Box 31, Albion, NY 14411. Representative: Michael P. McCabe (same address as applicant), (716) 589–4469. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in Livingston, Wayne, Ontario, Wyoming, Chautauqua, Cattaraugus, Erie, Niagara, Orleans, Genesee, and Monroe Counties, NY.

MC 114194 (Sub-225), filed May 26, 1983. Applicant: KREIDER TRUCK SERVICE, INC., P.O. Box 147, Madison, IL 62060. Representative: Marshall Kragen, 1919 Pennsylvania Avenue, NW., Suite 300, Washington, DC 20006, (202) 466–3778. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S., under continuing contract(s) with CPC International Inc., of Englewood Cliffs, NJ.

MC 145285 (Sub-3), filed June 3, 1983. Applicant: CLICK DELIVERY SERVICE, INC., 3710 Robertson, Metairie, LA 70004. Representative: William Sheridan, P.O.Drawer 5049, Irving, TX 75062, (214) 255–6279. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in LA, on the one hand, and, on the other, points in AR, LA, MS and TX.

MC 168414, filed May 31, 1983. Applicant: G. C. EXPRESS, INC., Suite 1800, 100 E. Broad St., Columbus, OH 43215. Representative: A. Charles Tell (same address as applicant), (614) 228–1541. Transporting *general commodities* (except classes A and B explosives, commodities in bulk and household goods), between points in Allegheny County, PA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 128734 (Sub-9), filed February 15, 1983, previously published in the **Federal Register** issue of March 10, 1983. Applicant: W.B. PRODUCE HAULERS, INC., 525 Cottage Grove, S.E., Grand Rapids, MI 49507. Representative: David E. Jerome, 436 North Center, Northville, MI 48167, (313) 348–4433. Transporting *food and related products*, between points in IL, IN, MI and OH, on the one hand, and, on the other, points in the U.S. (except AK and HI).

Note.—This republication corrects the territorial description.

Volume No. OP3–284

Decided: June 21, 1983.

By the Commission, Review Board Members Joyce, Fortier, and Krock.

MC 2095 (Sub-40), filed June 7, 1983 Applicant: KEIM TRANSPORTATION, INC., 14th and Roosevelt, Sabetha, KS 66534. Representative: Clyde N. Christey, 1010 Tyler, Suite 110–L, Topeka, KS 66612, (913) 233–9629. Transporting *metal products*, between points in Brown and Nemaha Counties, KS, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 15735 (Sub-84), filed June 8, 1983. Applicant: ALLIED VAN LINES, INC., 2120 S. 25th Avenue, Broadview, IL 60153. Representative: Martin T. Boratyn, P.O. Box 4403, Chicago, IL 60680, (312) 681–8377. Transporting *general commodities* (except commodities in bulk and classes A and B explosives), between points in the U.S. (except AK and HI), under continuing contract(s) with Technicare Corporation of Solon, OH.

MC 152524 (Sub-3), filed May 31, 1983. Applicant: COLONIAL EXPRESS, INC., 4 Alger Street, South Boston, MA 02127. Representative: John F. O'Donnell, 60 Adams Street, Milton, MA 02187, (617) 698–1660. Transporting *general commodities* (except classes A and B

explosives), between Portland, ME, Portsmouth, NH, Boston, MA, Providence, RI, New York, NY, Philadelphia, PA, Baltimore, MD, Norfolk, VA, Wilmington, NC, Charleston, SC, Savannah, GA, Jacksonville, Miami and Tampa, FL, Mobile, AL, New Orleans, LA, Galveston and Houston, TX, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 160395 (Sub-1), filed June 6, 1983. Applicant: JOHNSON TRUCKING CO., INC., P.O. Box 751, Red Bay, AL 35582. Representative: John Paul Jones, P.O. Box 3140, Front Street Station, 189 Jefferson Ave., Memphis, TN 38173–0140, (901) 527–2482. 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 163585 (Sub-1), filed June 2, 1983. Applicant: HINKLE TRUCKING, INC., P.O. Box 65, Circleville, WV 26804. Representative: Henry E. Seaton, 1024 Pennsylvania Bldg., 425 13th St., N.W., Washington, D.C. 20004, (202) 347–8862. Transporting (1) *coal and coal products*, (2) *clay, concrete, glass or stone products*, and (3) *construction materials*, between points in WV, VA, OH, PA, MD, NJ, NC, KY, DE and DC, and (2) *chemicals and related products*, between points in WV, on the one hand, and, on the other, points in PA, MD, and VA.

MC 165445, filed June 6, 1983. Applicant: J. E. THOMPSON TRANSPORT, LIMITED, Box 338, 23 Dickinson Dr., Ingleside, Ontario, Canada KOC 1MO. Representative: John L. Trigilio, Can-Am Bldg., 101 Niagara St., Buffalo, NY 14202, (716) 854–5870. Transporting *cheese moulds*, and *materials, equipment, and supplies used in the packaging and distribution of dairy products*, between points in the U.S. (except AK and HI), under continuing contract(s) with Kraft Limited, of Montreal, Quebec, Canada.

MC 167965, filed June 9, 1983. Applicant: GUILLERMO G. ZAVALA and RENE LOPEZ, d.b.a. L & Z TRUCKING, 3130 Juniper Street No. B, San Diego, CA 92104. Representative: William R. Daly, 4340 Vandever Ave., Suite S, P.O. Box 20597, San Diego, CA 92120, (619) 282–7337. Transporting *asphalt*, in foreign commerce only, between ports of entry on the International Boundary line between the U.S. and Mexico, in San Diego, CA, on the one hand, and, on the other, points in Los Angeles and Prange Counties, CA, under continuing contract(s) with HY Building Materials, Inc., of Prange Counties, CA.

MC 168324, filed May 27, 1983. Applicant: NATIONAL TRANSIT AIR, INC., 2751 So. Chase Ave., Milwaukee, WI 53207. Representative: Kenneth J. Pawelski (same address as applicant), (414) 744–4700. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except AK and HI).

MC 168554, filed June 9, 1983. Applicant: VIRGINIA WAREHOUSING, INC., 6068 Farrington Avenue, Alexandria, VA 22304. Representative: Joseph L. Steinfeld, Jr., 915 Pennsylvania Bldg., 425 13th Street, N.W., Washington, DC 20004, (202) 737–1030. Transporting *lawn and garden care products*, between points in the U.S. (except AK and HI), under continuing contract(s) with O.M. Scott & Sons, a Subsidiary of ITT, of Marysville, OH. Condition: The person or persons who appear to be engaged in common control of another regulated carrier must either file an application under 49 U.S.C. § 11343 or submit an affidavit to the Secretary's Office. In order to expedite issuance of the permit, please submit a copy of the affidavit or proof of filing the application for common control to Team 3, Rm 2158.

MC 168584, filed June 10, 1983. Applicant: BIEBER'S CONTRACTING CO., INC., R.D. No. 1, New Columbia, PA 17856. Representative: J. Bruce Walter, 410 North Third Street, P.O. Box 1146, Harrisburg, PA 17108, (717) 233–5731. Transporting (1) *clay, concrete, glass or stone products*, and (2) *pulp, paper and related products*, between points in PA, on the one hand, and, on the other, points in ME, VT, NH, MA, CT, RI, NY, OH, WV, VA, NJ, DE, MD, IL, IN, NC, MI and DC.

Please direct status inquiries to Team 1, (202) 275–7030.

Volume No. OP–1–239(N)

Decided: June 21, 1983.

By the Commission, Review Board Members Williams, Joyce, and Fortier.

FF–701, filed June 9, 1983. Applicant: ADMIRAL FORWARDERS, INC., 1117 Tilton Avenue, San Mateo, CA 94401. Representative: Alan F. Wohlstetter, 1700 K Street, NW., Washington, DC 20006, (202) 833–8884. As a *freight forwarder*, in connection with the transportion of *used household goods, unaccompanied baggage and used automobiles*, between points in the U.S.

MC 117760 (Sub-8), filed June 13, 1983. Applicant: FLOYD A. SCHEIB , INC., Box 328, Hegins, PA 17938. Representative: Lee E. High, P.O. Box 8551, Reading, PA 19603, (215) 376–6721. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in FL, GA, SC, NC, VA, MD, DE, NJ, PA, NY, CT, MA, RI, VT, NH, ME, OH, WV, KY, TN, AL, MS, IN, MI, WI, IL, MO, LA, TX and DC.

MC 142061 (Sub-2), filed June 10, 1983. Applicant: SMALL TRANSPORT COMPANY, Box 358,Charleston, MO 63834. Representive: Mike Barron (same address as applicant), (314) 649–5084. Transporting *propane gas*, between points in Jefferson, Stoddard and Randolph Counties, MO, Crawford and Madison Counties, IL, Gilbson County, IN, Marshall County, KY, Shelby County, TN, and Crittenden and Craighead Counties, AR, on the one hand, and, on the other, points in MO, IL, IN, KY, TN, and AR.

MC 151910, filed June 10, 1983. Applicant: KINGMAN AUTO SALVAGE, INC., 3800) North Highway 66, Kingman, AZ 86401. Representative: Evone McKinley (same address as applicant), (602) 757–4351. Transporting *textile mill products, wood products and furniture and fixtures*, between points in the U.S., under continuing contract(s) with Hydro-Dynamics of Arizona, Inc., of Lake Havasu City, AZ.

MC 163110, filed June 13, 1983. Applicant: SILVER LINE EXPRESS, INC., 424 East Church, Libertyville, IL 60048. Representative: Albert A. Andrin, 180 North La Salle Street, Chicago, IL 60601, (312) 332–5106. Transporting general commodites (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 Area Warehousing & Distribution, Inc., of Libertyville, IL.

MC 168411, filed June 13, 1983. Applicant: SHARED SERVICE SYSTEMS, a divison of NEBRASKA METHODIST HOSPITAL, 1725 South-20th Street, Omaha, NE 68105. Representative: Robert D. Gisvold, 1600 TCF Tower, 121 South 8th Street, Minneapolis, MN 55402, (612) 333–1341. Transporting *hospital and medical supplies*, between points in the U.S. (except AK and HI), under continuing contract(s) with American McGaw, Division of American Hospital Supply Coporation, of Santa Ana, CA.

Please direct status inquiries to Team 1, (202) 275–7030.

Volume No. OP–1–241(N)

Decided: June 21, 1983.

By the Commission, Review Board Members Carleton, Krock, and Dowell.

MC 118831 (Sub-204), filed June 8, 1983. Applicant: CENTRAL TRANSPORT, INCORPORATED, P.O. Box 7007, High Point, NC 27264. Representative: Ben H. Keller III (same address as applicant), (919) 431–9186. 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 Union Carbide, of Danbury, CT.

MC 143331 (Sub-21), filed May 23, 1983. Applicant: FREIGHT TRAIN TRUCKING, INC., 4906 E. Compton Blvd., Paramount, CA 90723. Representative: William J. Monheim, P.O. Box 1756, Whittier, CA 90609, (213) 945–2745. 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 166331, filed May 23, 1983. Applicant: D & S TRUCK LINES, INC., Box 248, Thayer, KS 66776. Representative: Clyde N. Christey, 1010 Tyler, Suite 110–L, Topeka, KS 66612, (913) 233–9629. Transporting *chemicals*, between points in the U.S. (except AK and HI), under continuing contract(s) with W–G Fertilizer, Inc., of Thayer, KS.

MC 168341, filed June 9, 1983. Applicant: HYDRA TRUCKING, INC., 30120 Ahern St., Union City, CA 94587. Representative: Lawrence V. Smart, Jr., 419 N.W. 23rd Ave., Portland, OR 97210, (503) 226–3755. 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 Superior Transportation Systems, Inc., of Wilsonville, OR.

MC 168440, filed June 2, 1983. Applicant: BRADY WELDING & MACHINE SHOP, INC., P.O. Box 788, Healdton, OK 73438. Representative: William P. Parker, 4400 N. Lincoln, Suite 10, Oklahoma City, OK 73105, (405) 424–3301. Transporting (1) *metal products*, (2) *machinery*, and (3) *Mercer commodities*, between points in AR, CO, KS, LA, MS, MT, NE, ND, NM, OK, SD, TN, TX, UT and WY.

MC 168521, filed June 6, 1983. Applicant: SOUTHDALE, INC., 40 E. 52nd St., Bayonne, NJ 07002. Representative: Ronald I. Shapes, 450 7th Ave., New York, NY 10123, (212) 239–4610. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in NJ, NY, PA, and CT, on the one hand, and, on the other, points in the U.S. (except AK and HI).

Please direct status inquiries to Team 1, (202) 275–7030.

Volume No. OP–1–249(N)

Decided: June 22, 1983.

By the Commission, Review Board Members Fortier, Parker, and Joyce.

MC 111231 (Sub-373), filed May 27, 1983. Applicant: JONES TRUCK LINES, INC., 610 E. Emma Ave., Springdale, AR 72764. Representative: Harry J. Jordan, 1090 Vermont Ave., NW., Suite 200, Washington, DC 20005, (202) 783–8131. 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 General Mills, Inc., of Minneapolis, MN, its subsidiaries and divisions, (1) The Donruss Division, of Memphis, TN, (2) The Groton Division, of Gloucester, MA, (3) Sperry, of Minneapolis, MN, (4) David Crystal, of New York, NY, (5) Ship'n Shore, of Aston, PA, (6) Dunbar, of Berne, IN, (7) Kittinger, of Buffalo, NY, and (8) Pennsylvania House, of Lewisburg, PA.

MC 126881 (Sub-20), filed June 10, 1983. Applicant: RICHARD B. RUDY, INC., 203 Linden Ave., Frederick, MD 21701. Representative: Edward N. Button, 635 Oak Hill Ave., Hagerstown, MD 21740, (301) 739–4860. Transporting *such commodities* as are dealt in or used by grocery stores and food business houses, between those points in the U.S. in and east of WI, IL, KY, TN and MS.

MC 152841 (Sub-1), filed June 9, 1983. Applicant: FREEWAY EXPRESS, INC., 3580 Executive Drive, Uniontown, OH 44685. Representative: Donald Pritchett (same address as applicant), (216) 896–9515. 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 MN, IA, MO, AR, and TX.

MC 167881, filed May 4, 1983, and previously noticed in **Federal Register** issue of May 24, 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 International Corporation, of Houston, TX, and its subsidiaries.

Note.—The purpose of this republication is to show the correct supporting shipper.

MC 168481, filed June 6, 1983. Applicant: HOT FLAME TRANSPORT CO., INC., Carney, MI 49812. Representative: James R. Madler, 120 W. Madison St. 1308, Chicago, IL 60602, (312) 726–6525. Transporting *Petroleum and petroleum products*, between points in IL, MI and WI, under continuing contract(s) with Petrolane, Inc., of St. Charles, IL, and Hot Flame Gas, Inc., of Carney, MI.

MC 168501, filed June 13, 1983. Applicant: GERALD B. REYNOLDS, d.b.a. G & T TRUCKING, 289 S. Grove St., Berlin, WI 54923. Representative: Wayne W. Wilson, 150 E. Gilman St., Madison, WI 53703, (608) 256–7444. Transporting *pulp, paper and related products*, between points in Outagamie and Winnebago Counties, WI, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 168660, filed June 13, 1983. Applicant: TOWER GARAGE, INC., P.O. Box 6010, Wheeling, WV 26003. Representative: George V. Thieroff (same address as applicant), (304) 277–1000. As a *broker* of *general commodities* (except household goods), between points in the U.S.

MC 61440 (Sub-228), filed June 10, 1983. Applicant: LEE WAY MOTOR FREIGHT, INC., P.O. Box 12750, Oklahoma City, OK 73157. Representative: Fred Rahal, Jr., Suite 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 Foremost-McKesson, Inc., of San Francisco, CA.

Please direct status inquiries to Team 1, (202) 275–7030.

Volume No. OP–1–250(N)

Decided: June 17, 1983.

By the Commission, Review Board Members Williams, Parker, and Joyce.

MC 2900 (Sub-470), filed June 3, 1983. Applicant: RYDER TRUCK LINES, INC., P.O. Box 2408, Jacksonville, FL 32203. Representative: S. E. Somers, Jr. (same address as applicant), (904) 353–3111. 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 General Mills, Inc., and its subsidiaries, of Minneapolis, MN.

MC 56270 (Sub-58), filed May 27, 1983. Applicant: LEICHT TRANSFER & STORAGE CO., P.O. Box 2385, Green Bay, WI 54306. Representative: Robert B. Walker, 915 Pennsylvania Bldg., 425 13th St., NW., Washington, DC 20004 (202)

737–1030. 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 manufacturers and distributors of printed matter, pulp, paper and related products.

MC 138420 (Sub-55), filed June 2, 1983. Applicant: CHIZEK ELEVATOR & TRANSPORT, INC., P.O. Box 147, Cleveland, WI 53015. Representative: Wayne W. Wilson, 150 East Gilman St., Madison, WI 53703 (608) 256–7444. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with James River Corporation, of Richmond, VA.

MC 143031 (Sub-21), filed June 8, 1983. Applicant: MURPHY & SONS TRUCKING COMPANY, INC., Route 2, Box 139, Spring City, TN 37381. Representative: H. Stan Guthrie, 736 Georgia Ave., Chattanooga, TN 37402 (615) 756–8203. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in TN, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 144991 (Sub-6), filed May 31, 1983. Applicant: KINGSWAY TRANSPORTS, INC., 1480 Military Rd., Kenmore, NY 14217. Representative: John W. Bryant, 900 Guardian Bldg., Detroit, MI 48226, (313) 963–3750. Transporting *general commodities* (except classes A and B explosives, house hold goods, and commodities in bulk), between points in Onondaga County, NY, on the one hand, and, on the other, points in CT, DE, MA, MD, ME, NH, NJ, NY, OH, PA, RI, VT, and DC.

Note:— Applicant intends to tack the authority sought with its existing regular route authority in No. MC–144991 (Sub-Nos. 3 and 4).

MC 162160 (Sub-1), filed June 6, 1983. Applicant: NORTH AMERICAN TRANSPORT COMPANY, INC., 3620 South U.S. Highway 1, Ft. Pierce, FL 33450 Representative: Terry P. Wilson, 428 South Lawrence St., Montgomery, AL 36104 (205) 262–2756. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in AL, FL, GA, and LA.

MC 168351, filed May 27, 1983. Applicant: DIRECT CARTAGE, INC., 2155 W. 80th St., Chicago, IL 60620. Representative: Philip A. Lee, 120 West Madison, Suite 618, Chicago, IL 60602, (312) 236–8225. Transporting *machinery and metal products*, between points in IL and IN.

MC 168361, filed May 31, 1983. Applicant: W. K. FOWLER, Route No. 1, Box 74, Bankston, AL 35542. Representative: W. K. Fowler (same address as applicant), (205) 689–4862. Transporting *lumber and building materials*, between points in AL, on the one hand, and, on the other, points in IA, MS, OK, VA, KY, MO, PA, WI, AZ, LA, NE, TN, IL, NC, TX, IN, OH, MI, and MN.

MC 168381, filed May 27, 1983. Applicant: B. J. & D TRANSPORT, INC., R.D. No. 6, Box 320, Route 519, Sussex, NJ 07461. Representative: Peter J. Laemers, One Main St., P.O. Box 67 Newton, NJ 07860, (201) 383–2700. Transporting *textile mill products*, between points in NJ, NY, and PA.

MC 168560, filed June 9, 1983. Applicant: J.W. ALLEN TRANSPORTATION COMPANY, 555 Allendale Rd., Wheeling, IL 60090. Representative: Anthony E. Young, 29 South LaSalle St., Suite 350, Chicago, IL 60603, (312) 782–8880. Transporting *food and related products*, between points in the U.S. (except AK and HI) under continuing contract(s) with J.W. Allen & Company, of Wheeling, IL.

[FR Doc. 83-17608 Filed 6-29-83; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 387]

Rail Carriers; Exemptions for Contract Tariffs

AGENCY: Interstate Commerce Commission.

ACTION: Notices of provisional exemptions.

SUMMARY: Provisional exemptions are granted under 49 U.S.C. 10505 from the notice requirements of 49 U.S.C. 10713(e), and the below-listed contract tariffs may become effective on one day's notice. These exemptions may be revoked if protests are filed.

DATES: Protests are due within 15 days of publication in the Federal Register.

ADDRESS: An original and 6 copies should be mailed to: Office of the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: Douglas Galloway, (202) 275–7278.

SUPPLEMENTARY INFORMATION: The 30-day notice requirement is not necessary in these instances 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 requests meet the requirements of 49 U.S.C. 10505(a) and are granted subject to the following conditions:

These grants neither shall be construed to mean that the Commission has approved the contracts for purposes of 49 U.S.C. 10713(e) not that the Commission is deprived of jurisdiction to institute a proceeding on its own initiative or on complaint, to review these contracts and to determine their lawfulness.

*Note.—Tariff supplements advancing contract's effective date shall refer to this decision for authority. This exemption procedure is no longer necessary after June 27, 1983, see Ex Parte No. 387 (Sub-No. 200), 48 FR 23824, May 27, 1983.

Sub-No.	Name of railroad, contract No., and specifics	Review Board Members,	Decided date
952	Burlington Northern Railroad Co., ICC–BN–C–0454, (Coal).	Carleton, Parker, Dowell.	6–23–83
953	Delaware and Hudson Railway Co., ICC–DH–C–0022, (Iron ore).	Carleton, Williams, Dowell.	6–23–83

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

(49 U.S.C. 10505)

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-17534 Filed 6-29-83; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30189]

The Georgia Northern Railway Co.; Abandonment Exemption in Dougherty, Lee, Worth, Brooks, and Thomas Counties, GA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts the physical abandonment by the Georgia Northern Railway Company of an 11.6-mile segment of line in Dougherty, Lee, and Worth Counties, GA, and a 13-mile segment of line in Brooks and Thomas Counties, GA, from the requirements of prior approval under 49 U.S.C 10903 *et seq.* The exemption is subject to standard labor protective conditions.

DATES: This exemption shall be effective on August 1, 1983. Petitions to stay the effectiveness of this decision must be filed by July 11, 1983, and petitions for reconsideration must be filed by July 20 1983.

ADDRESSES: Send pleadings referring to Finance Docket No. 30189 to:

(1) Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Nancy S. Fleischman, P.O. Box 1808, Washington, DC 20013

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, contact T. S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289–4357 (D.C. Metropolitan area) or toll free (800) 242–5403.

Decided: June 22, 1983.

By the Commission, Chairman Taylor, Vice Chairman Sterrett, Commissioners Andre and Gradison. Vice Chairman Sterrett and Commissioner Andre would not impose a deadline on consummation of the exempted transaction.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-17609 Filed 6-29-83; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Agency Forms Under Review

June 27, 1983.

OMB has been sent for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. The list has all the entries grouped into new forms, revisions, or extensions. Each entry contains the following information:

(1) The name and telephone number of the Agency Clearance Officer (from whom a copy of the form and supporting documents is available); (2) The office of the agency issuing this form; (3) The title of the form; (4) The agency form number, if applicable; (5) How often the form must be filled out; (6) Who will be required or asked to report; (7) An estimate of the number of responses; (8) An estimate of the total number of hours needed to fill out the form; (9) An indication of whether Section 3504(H) of Pub. L. 96–511 applies; (10) The name and telephone number of the person or office responsible for OMB review.

Copies of the proposed forms and supporting documents may be obtained from the Agency Clearance Officer whose name and telephone number appear under the agency name. Comments and questions about the items on this list should be directed to the reviewer listed at the end of each entry and to the Agency Clearance Officer. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the reviewer and the Agency Clearance Officer of your intent as early as possible.

DEPARTMENT OF JUSTICE

Agency Clearance Officer Larry E. Miesse—202–633–4312

Reinstatement of a Previously Approved Collection for Which Approval Has Expired

- Bureau of Justice Statistics

Department of Justice

National Indigent Criminal Defense Survey

On occasion

Local Governments

The indigent criminal defense program and county surveys will provide the first nationally representative data based on sample regarding the characteristics and structure of indigent criminal defense programs. The data will be used to help create a comprehensive picture of the provision of counsel embodied in the U.S. Constitution: 1,884 respondents; 923 hours; not applicable under 3504(h).

Rob Veeder—395–4814

Larry E. Miesse,

Department Clearance Officer, Systems Policy Staff, Office of Information Technology, Justice Management Division, Department of Justice.

[FR Doc. 83-17616 Filed 6-29-83; 8:45 am]

BILLING CODE 4410-01-M

Office of the Attorney General

Proposed Consent Decree in Action To Enjoin Discharge of Air Pollutants

In accordance with Departmental policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that on June 8, 1983, a proposed Consent Decree in *United States of America* v. *Cleveland Electric Illuminating Co.*, Civil Action No. C81–438, was lodged with the United States District Court for the Northern District of Ohio.

The Consent Decree acknowledges that defendant is presently in compliance with the particulate emission limitations in the Ohio State Implementation Plan at the electric power generating facilities which are the subject of the action. It further provides that defendant will perform periodic testing through 1984 to demonstrate continued compliance. If a test shows non-compliance, the decree provides that defendant will reduce its operating level to achieve compliance or install necessary control equipment. In addition, the decree obligates defendant to install a new electrostatic precipitator at one of its facilities by May 1, 1986 to assure continued compliance in the future. The decree also provides for stipulated penalties for failure to comply with any of these requirements, and a civil penalty of $175,000 for past violations.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice written comments related to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and refer to *United States of America* v. *Cleveland Electric Illuminating Co.*, D. J. Ref. No. 90–5–2–1–312.

The proposed consent decree may be examined at the Office of the United States Attorney, 1404 East Ninth Street, Suite 500, Cleveland, Ohio 44144, at the Region V Office of Regional Counsel of the Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, and at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1521, Tenth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20530. A copy of the proposed consent decree may be obtained in person or by requesting one by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice. A payment of $2.30 (10¢/page) for duplicting costs should be forwarded with any such request.

Carol E. Dinkins,

Assistant Attorney General, Land and Natural Resources.

[FR Doc. 83-17625 Filed 6-29-83; 8:45 am]

BILLING CODE 4410-01-M

Bureau of Prisons

National Institute of Corrections Advisory Board; Meeting

Notice is hereby given that the National Institute of Corrections Advisory Board in accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 86 Stat. 770) will meet on Wednesday, August 3, 1983, starting at 9:00 a.m., at the Hyatt Regency Hotel, 400 New Jersey Avenue, N.W., Washington, D.C.

At this meeting (one of the regularly scheduled triannual meetings of the Advisory Board), the Board will receive its subcommittees' reports and

recommendations as to future thrusts of the Institute.

Allen F. Breed,

Director.

[FR Doc. 83-17624 Filed 6-29-83; 8:45 am]

BILLING CODE 4410-05-M

National Institute of Justice

Solicitation; Visiting Fellowship Grant Program

The National Institute of Justice announces a competitive solicitation of research proposals for its 1983–84 Visiting Fellowship Grant program. The program provides support to selected criminal justice scholars and practitioners to carry out an independent research project of their own design while in residence at the National Institute. Up to 5 grant awards are anticipated. Project periods may range from 6 to 18 months. Start dates are flexible, but all projects must begin between October 1, 1983, and September 30, 1984.

In parallel with the grant program, the National Institute also announces a competitive solicitation of applications for its Visiting Fellowship IPA program. While similar in its primary purpose of supporting independent research to be conducted at the National Institute, this program is restricted to officials and employees of state and local governments and of non-profit criminal justice organizations, provided the latter are certified by the Office of Personnel Management as eligible to participate under the provisions of the Intergovernmental Personnel Act of 1970, as amended (Pub. L. 91-648). Up to 5 IPA appointments are anticipated.

To be eligible for consideration under either of these two programs, *completed applications must be received at the National Institute of Justice no later than 5:00 PM August 16, 1983.*

Copies of these program announcements can be obtained by writing: NIJ Visiting Fellowship Program, National Criminal Justice Reference Service, Box 6000, Rockville, Maryland 20850, or calling them at (301) 251-5500, specifying an interest in the research grant program or in the IPA program. Further information can also be obtained by calling the NIJ program manager, Dr. Bernard Gropper, at (202) 724-7631.

James K. Stewart,

Director.

[FR Doc. 83-16686 Filed 6-29-83; 8:45 am]

BILLING CODE 4410-18-M

NATIONAL COMMUNICATIONS SYSTEM

National Security Telecommunications Advisory Committee; Closed Meeting

A meeting of the National Security Telecommunications Advisory Committee (NSTAC) will be held on July 19–20, 1983. The meeting will be held at Headquarters Strategic Air Command, Offutt Air Force Base, Bellevue, Nebraska. Portions of the meeting will be held while enroute to Offutt Air Force Base. The agenda is as follows:

July 19, 1983

A. Tour and briefing of communications aboard the National Emergency Airborne Command Post
B. Strategic Air Command Briefing
C. Soviet Strategic Force Modernization Briefing

July 20, 1983

A. Strategic Air Command, Command and Control + Warning Briefing
B. NSTAC Deliberations:
—Opening Remarks
—Administrative Actions
—Briefing on new NSDD which will replace PD/NSC-53
—Review of NSTAC activities
—Reports on NSTAC charges to IES
—Charges to the IES
—Adjournment

Due to the requirement to discuss classified information in conjunction with the issues listed above, the meeting will be closed to the public in the interest of National Defense. Any person desiring information about the meeting may telephone (Area code 202-692-2974) or write the Manager of the National Communications System, 8th Street and South Courthouse Road, Arlington, Virginia 22204.

Joseph C. Wheeler,

Colonel, USAF, NCS Joint Secretariat.

[FR Doc. 83-17602 Filed 6-29-83; 8:45 am]

BILLING CODE 3610-05-M

NUCLEAR REGULATORY COMMISSION

Governors' Designees Receiving Advance Notification of Transportation of Nuclear Waste

On January 6, 1982 (47 FR 596, 600), the Nuclear Regulatory Commission (NRC) published in the **Federal Register** as final, certain amendments to 10 CFR Parts 71 and 73 (effective July 6, 1982), which require advance notification to Governors or their designees concerning transportation of certain shipments of nuclear waste and spent fuel. The advance notification covered in Part 73 is for spent nuclear reactor fuel shipments and the notification for Part 71 is for large quantity shipments of radioactive waste (and of spent nuclear reactor fuel not covered under the final amendment to 10 CFR Part 73).

The following list updates the names, addresses and telephone numbers of those individuals in each State who are responsible for receiving information on nuclear waste shipments. The list will be published annually in the **Federal Register** on or about June 30, to reflect any changes in information.

INDIVIDUALS RECEIVING ADVANCE NOTIFICATION OF NUCLEAR WASTE SHIPMENTS

States	Part 71	Part 73
Alabama	Col. Byron Prescott, Director, Alabama Department of Public Safety, P.O. Box 1511, Montgomery, AL 36192-0501, (205) 832-5069.	Same.
Alaska	Dr. Richard A. Neve', Commissioner, Alaska Department of Environmental Conservation, Pouch O, Juneau, AK 99811, (907) 465-2600.	Same.
Arizona	Charles F. Tedford, Director, Arizona Radiation Regulatory Agency, 925 South 52nd Street, Suite 2, Tempe, AZ 85281, (602) 255-4845. After hours: (602) 996-4662.	Same.
Arkansas	E. F. Wilson, Director, Radiation Control and Emergency Management Programs, Arkansas Department of Health, 4815 West Markham Street, Little Rock, AR 72201, (501) 661-2301. After hours: (501) 661-2136 or 661-2000.	Same.
California	E. E. Kynaston, Chief, California Highway Patrol, P.O. Box 898, Sacramento, CA 95804, (916) 445-6211	Same.
Colorado	Captain John Callahan, Officer in Charge, Staff Services Branch, Colorado State Patrol, 4201 E. Arkansas Avenue, Denver, CO 80222, (303) 757-9422.	Same.
Connecticut	The Honorable Stanley J. Pac, Commissioner, Department of Environmental Protection, State Office Building, 165 Capitol Avenue, Hartford, CT 06106, (203) 566-2110	Same.
Delaware	Henry James Decker, Secretary, Department of Public Safety, Highway Administration Building, P.O. Box 818, Dover, DE 19903-0818, (302) 736-4321.	Same.
Florida	Wallace Johnson, Public Health Physicist Supervisor, Department of Health & Rehabilitative Services Radiological Health Services, P.O. Box 15490, Orlando, FL 32858, (904) 299-0580.	Same.
Georgia	Ken M. Copeland, Director of the Office of Permits and Enforcement, Georgia Department of Transportation, 940 Virginia Avenue, Hapeville, GA 30354, (404) 656-5435.	Same.
Hawaii	George R. Ariyoshi, Governor, State of Hawaii, State Capitol, Honolulu, HI 96813, (808) 548-5420	Same.

INDIVIDUALS RECEIVING ADVANCE NOTIFICATION OF NUCLEAR WASTE SHIPMENTS—Continued

States	Part 71	Part 73
Idaho	Robert D. Funderburg, Manager, Radiation Control Section, Department of Health & Welfare Division of Environment, 450 W. State, 5th Floor, Statehouse, Boise, ID 83720, (208) 334-4107. After hours: (208) 362-5260.	Same.
Illinois	Gary N. Wright, Acting Director, Illinois Department of Nuclear Safety, 1035 Outer Park Drive, 5th Floor, Springfield, IL 62704, (217) 546-8100.	Same.
Indiana	John T. Shettle, Superintendent, Indiana State Police, 301 State Office Building, 100 North Senate Avenue, Indianapolis, IN 46204, (317) 232-8248 (24 hours).	Same.
Iowa	John D. Crandell, Director, Office of Disaster Services, Hoover State Office Building, Des Moines, IA 50319, (515) 281-3231	Same.
Kansas	Leon H. Mannell, P.E., Administrator, Radiological Systems, The Adjutant General's Department, Division of Emergency Preparedness, P.O. Box C-300, Topeka, KS 66601, (913) 233-9253, Ext. 321.	Same.
Kentucky	Donald R. Hughes, Sr., Supervisor, Radiation Control, Department for Health Services, 275 East Main Street, Frankfort, KY 40621, (502) 564-3700.	Same.
Louisiana	Col. Grover W. "Bo" Garrison, Head, Louisiana State Police, 265 South Foster Drive, P.O. Box 66614, Baton Rouge, LA 70896, (504) 925-6112.	Same.
Maine	John Brochu, Director, Bureau of Oil and Hazardous Materials, Department of Environmental Protection, Statehouse—Station #17, Augusta, ME 04333, (207) 289-2651 or (207) 773-6491.	Same.
Maryland	Lt. Colonel J. G. Lough, Chief, Field Operations Bureau, Maryland State Police, 1201 Reisterstown Road, Pikesville, MD 21208, (301) 486-3101.	Same.
Massachusetts	Robert M. Hallisey, Director, Radiation Control Program, Massachusetts Department of Public Health, Room 770, 600 Washington Street, Boston, MA 02111, (617) 727-6214.	Same.
Michigan	Gene A. Rooker, Captain, Commanding Officer, Operations Division, Michigan Department of State Police, 714 S. Harrison Road, eAst Lansining, MI 48823, (517) 337-6100.	Same.
Minnesota	Deidre M. A. Krause, Operations Officer, Minnesota Division of Emergency Services, B5 State Capitol, St. Paul, MN 55155, (612) 296-0453. After hours: (612) 778-0800.	Same.
Mississippi	James E. Maher, Director, Mississippi Emergency Management Agency, P.O. Box 4501, Fondren Station, Jackson, MS 39216, (601) 354-7200.	Same.
Missouri	William Beaty, Director, State Emergency Management Agency, 1717 Industrial Drive, P.O. Box 116, Jefferson City, MO 65102, (314) 751-2321. After hours: (314) 751-2748.	Same.
Montana	Mr. Larry Lloyd, Chief, Occupational Health Bureau, Department of Health & Environmental Sciences, Room A113, Cogswell Bldg., Helena, MT 59620. (406) 449-3671.	Col. Carlyn L. Gilbertson, Administrator, Disaster and Emergency Services, Department of Military Affairs, 1100 North Last Chance Gulch, Helena, MT 59620. (406) 449-3034.
Nebraska	Col. Elmer J. Kohmetscher, Superintendent, Nebraska State Patrol, P.O. Box 94907, State House, Lincoln, NE 68509, (402) 471-2406 or (402) 471-4545.	Same.
Nevada	John Vaden, Supervisor, Radiological Health, Division of Health, Consumer Health Protection Services, 505 East Kinkead Street, Room 103, Carson City, NV 89710, (702) 885-4750.	Same.
New Hampshire	Diane Tefft, Radiation Control Officer, Office of Radiation Control, Division of Public Health, Health and Welfare Building, Hazen Drive, Concord, NH 03301, (603) 271-4588.	Same.
New Jersey	Frank Cosolito, Acting Bureau Chief, Bureau of Radiation Protection, 380 Scotch Road, Trenton, NJ 08628, (609) 292-8392	Same.
New Mexico	Alphonso A. Topp, Jr., Chief, Radiation Protection Bureau, Environmental Improvement Division, Health and Environment Department, P.O. Box 968, Santa Fe, NM 87504-0968, (505) 984-0020, ext. 279. After hours: (505) 827-9329.	Same.
New York	Donald A. Devito, Director, Disaster Preparedness Program, Division of Military and Naval Affairs, Public Security Building, State Campus, Albany, NY 12226, (518) 457-2222.	Same.
North Carolina	Lt. Walter K. Chapman, Operations Officer, North Carolina Highway Patrol Headquarters, P.O. Box 27687, Raleigh, NC 27611, (919) 733-4030. After hours: (919) 733-3861.	Same.
North Dakota	Dana K. Mount, Director, Division of Environmental Engineering, North Dakota State Department of Health, 1200 Missouri Avenue, Bismarck, ND 58501, (701) 224-2348.	Same.
Ohio	James R. Williams, Nuclear Preparedness Officer, Disaster Services Agency, 2825 Granville Road, Worthington, OH 43085, (614) 889-7157.	Same.
Oklahoma	The Honorable Paul W. Reed, Jr., Commissioner of Public Safety, Oklahoma Department of Public Safety, 3600 N. Eastern Avenue, Oklahoma City, OK 73111, (405) 424-4011.	Same.
Oregon	Donald W. Godard, Administrator Siting and Regulation, Oregon Department of Energy, 102 Labor & Industries Building, Salem, OR 97310, (503) 378-6469.	Same.
Pennsylvania	Kenneth R. Lamison, Director of Response and Recovery, Pennsylvania Emergency Management Agency, B-151 Transportation and Safety Building, Harrisburg, PA 17120, (717) 783-8150.	Same.
Rhode Island	William A. Maloney, Associate Administrator, MotorCarriers, Division of Public Utilities and Carriers, 100 Orange Street, Providence, RI 02903, (401) 277-3500.	Same.
South Carolina	Heyward G. Shealy, Chief, Bureau of Radiological Health, South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, SC 29201, (803) 758-7806. After hours: (803) 758-5531.	Same.
South Dakota	Robert D. Gunderson, Division Director, Emergency and Disaster Services, Capitol Building, Basement, Pierre, SD 57501, (605) 773-3231.	Same.
Tennessee	J. A. Bill Graham, Radiological Physicist, Division of Radiological Health, Department of Public Health, 150-Ninth Ave., N., Terra Building, Nashville, TN 37219, (615) 741-7812.	Same.
Texas	Dr. Robert Bernstein, Commissioner, Texas Department of Health, Bureau of Radiological Health, 1100 West 49th Street, Austin, TX 78756, (512) 835-7000.	Col. James B. Adams, Director, Texas Department of Public Safety, 5805 N. Lamar Blvd., Austin, TX 78752, (512) 465-2000.
Utah	Darrell M. Warren, Director, Bureau of Radiation Control, 150 W. North Temple, P.O. Box 2500, Salt Lake City, UT 84110, (801) 533-6734.	Same.
Vermont	Commissioner Paul Philbrook, Vermont Dept. of Public Safety, c/o State Administration Bldg., 133 State Street, Montpelier, VT 05602, (802) 828-2144.	Same.
Virginia	Norman McTague, Office of Emergency and Energy Services, Operations Director, 7700 Midlothian Turnpike, Richmond, VA 23235, (804) 323-2300.	Same.
Washington	Nicholas D. Lewis, Chairman, Energy Facility Site Evaluation Council, Mail Stop PY-11, Olympia, WA 98504, (206) 459-6490	Same.
West Virginia	Cecil H. Russell, Director, West Virginia Office of Emergency Services, State Capitol Building, Room EB-80, Charleston, WV 25305, (304) 348-5380.	No notifications are to be made.
Wisconsin	Carol Z. Hemersbach, Administrator, State of Wisconsin/Division of Emergency Government, 4802 Sheboygan Ave., Room 99A, P.O. Box 7865, Madison, WI 53707, (608) 266-3232.	Same.
Wyoming	Thomas A. Schell, Wyoming State Liaison Officer, Radiological Health Services (Health and Medical Services), Hathaway Building, Cheyenne, WY 82002, (307) 777-7956. After hours: (307) 777-7244.	Same.
District of Columbia	Herbert T. Wood, Ph. D., Acting Deputy Bureau Chief, BCHS, OESOA, Department of Environmental Services, 415 12th Street, N.W., Room 314, Washington, DC 20004, (202) 724-4113. After hours: (202) 529-3349.	Same.
Puerto Rico	Pedro A. Gelabert, Chairman, Environmental Quality Board, P.O. Box 11488, Santurce, PR 00910, (809) 725-8898 or (809) 725-5140.	Same.
Guam	Paul M. Calvo, Governor of Guam, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, 472-8931 or 472-8939	Same.
Trust Territory of the Pacific Islands.	Acting Deputy High Commissioner, Trust Territory of the Pacific Islands, Saipan, CM 96950, Saipan 9741	Same.
Virgin Islands	Honorable Juan Luis, Governor, Government House, Charlotte Amalie, St. Thomas, Virgin Islands 00801, (809) 774-0001	Same.
American Samoa	Honorable Peter Coleman, Governor of American Samoa, Territorial Capitol, Pago Pago, American Samoa 96799, 633-4116	Same.

INDIVIDUALS RECEIVING ADVANCE NOTIFICATION OF NUCLEAR WASTE SHIPMENTS—Continued

States	Part 71	Part 73
Commonwealth of the Northern Mariana Islands.	Nicolas M. Guerrero, Director, Department of Natural Resources, Commonwealth of Northern Marianas Government, Saipan, CM 96950, #7125 or #7126.	Same.

Questions regarding this matter should be directed to Mindy Landau at (301) 492-9880.

Dated at Bethesda, Maryland this 17th day of June 1983.

For the Nuclear Regulatory Commission.

G. Wayne Kerr,

Director, Office of State Programs.

[FR Doc. 83-17550 Filed 6-29-83; 8:45 am]

BILLING COD 7590-01-M

[Docket Nos. 50-325 and 50-324]

Carolina Power and Light Co. (Brunswick Steam Electric Plant, Units 1 and 2); Exemption

I

The Carolina Power and Light Company (the licensee) is the holder of Facility Operating License Nos. DPR-71 and DPR-62 (the licenses) which authorize operation of the Brunswick Steam Electric Plant, Units 1 and 2 located in Brunswick County, North Carolina at steady state reactor core power levels each not in excess of 2436 megawatts thermal (rated power). This license provides, among other things, that it is subject to all rules, regulations and Orders of the Commission now or hereafter in effect.

II

On October 2, 1980, the Commission proposed rulemaking on "Interim Requirements Related to Hydrogen Control and Certain Degraded Core Considerations." The proposed amendments to 10 CFR Part 50 would improve hydrogen management in light-water reactor facilities and provide specific design and other requirements to mitigate the consequences of accidents.

On Janurary 4, 1982, the proposed rule became effective and as part of the amendments, it required hydrogen recombiner capability to reduce the likelihood of venting radioactive gases following an accident. The hydrogen recombiner capability applies to light-water nuclear power reactors that rely upon purge/repressurization systems as the primary means of hydrogen control.

Section 50.44(c)(3)(ii) of 10 CFR Part 50 requires that by the end of the first scheduled outage after July 5, 1982 and of sufficient duration to permit required modifications, each light-water power reactor, that relies upon a purge/repressurization system as the primary means for controlling combustible gases following a Loss-of-Coolant Accident, shall be provided with either an internal recombiner or the capability to install an external recombiner following the start of an accident.

III

In a March 16, 1983 submittal, the licensee requested an exemption from the requirement of § 50.44(c)(3)(ii) for provision of either an internal recombiner or the capability to install an external recombiner following the start of an accident. The request was based on BWR Owners Group studies of combustible gas control submitted for NRC review by letter dated June 21, 1982. In the event that the Commission is unable to issue promptly its decision on request for exemption from the equipment requirements of § 50.44(c)(3)(ii), the licensee requested an extension of the schedule requirements of 10 CFR 50.44(c)(3)(ii).

We have very nearly completed our review of the BWR Owners Group studies on which the licensee's exemption request was based. We will be able to consider the licensees request for permanent exemption following completion of that review.

During the interim period, with respect to combustible gas control in the event of a loss-of-coolant accident, the Brunswick units can use the existing containment atmosphere control systems, in conjunction with the standby gas control systems, to avoid unacceptable combustible gas concentrations. The containment atmosphere control system maintains an inert atmosphere during normal operation and the Containment Atmosphere Dilution (CAD) system is used to control combustible gas concentrations after an accident. By means of the CAD system, hydrogen and oxygen concentrations are monitored as nitrogen is added to the containment atmosphere to dilute combustible gases. In the unlikely prospect of high containment vessel pressure, the pressure may be relieved by venting through the standby gas control system. A detailed procedure has been developed by the licensee, with operating personnel trained to use these systems in the control of combustible gases. We find these means of combustible gas control acceptable for interim operation of the Brunswick Steam Electric Plants Units 1 and 2 through December 31, 1983.

IV

Accordingly, the Commission has determined that pursuant to 10 CFR 50.12, an exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest. Therefore, the Commission hereby approves the following exemption request.

Exemption is granted from the schedular requirement of § 50.44(c)(3)(ii) to extend the required date from "the end of the first scheduled outage beginning after July 5, 1982 and of sufficient duration to permit modifications" to no later than December 31, 1983, or, if the plant is shutdown on that date, before the resumption of operation thereafter.

The Commission has determined that the granting of this exemption will not result in any significant environmental impact and that, pursuant to 10 CFR Part 515(d)(4), an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

Dated at Bethesda, Maryland, this 21st day of June 1983.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 83-17663 Filed 6-29-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-237]

Commonwealth Edison Co. (Dresden Nuclear Power Station, Unit 2); Confirmatory Order

I

The Commonwealth Edison Company (the licensee) is the holder of Provisional Operating License No. DPR-19 which authorizes the licensee to operate the Dresden Nuclear Power Station, Unit 2 (the facility), at power levels not in excess of 2527 megawatts thermal. The facility is a boiling water reactor located

at the licensee's site in Grundy County, Illinios.

II

During a routine shutdown of Brown's Ferry Unit No. 3 on June 28, 1980, 76 of 185 control rods failed to fully insert in response to a manual scram from approximately 30% power. All rods were subsequently inserted within 15 minutes and no reactor damage or hazard to the public occurred. However, the event did cause an in-depth review of the current BWR Control Rod Drive Systems which identified design deficiencies requiring both short- and long-term corrective measures. These measures were set forth in the "Generic Safety Evaluation Report BWR Scram Discharge System", dated December 1, 1980, prepared by the NRC staff.

To provide reasonable assurance of safe operation pending implementation of long-term corrective measures, the short-term corrective measures have been implemented by IE Bulletin 80–17 (with supplements) and Orders issued on January 9, 1981.

The Generic Safety Evaluation Report (SER) dated December 1, 1980, endorsed the criteria and technical bases that were developed by a BWR Owners Subgroup for use in implementing permanent system modifications to correct identified deficiencies. These criteria were designated as either functional, safety, operating, design, or surveillance, and when taken as a whole, comprise an adequate set of criteria to resolve the issues raised during the Browns Ferry event investigation.

The SER further described an acceptable means of compliance with each criterion. Pre-implementation approval of permanent modifications using the methods described in the SER for compliance with the criteria will not be required. Alternate methods of compliance will require specific NRC approval in advance of implementation.

In addition to the criteria proposed by the BWR Owners Subgroup, the SER added a criterion to address the potential for common cause failures of the scram level instrumentation. An acceptable means of complying with this criterion was the addition of diversity in the design. The addition of diverse instrumentation on the scram Discharge Instrumented Volume will minimize recurrence of known common cause failures and, thus, improve system reliability.

Therefore, we have concluded that diverse instrumentation should be provided as required in the SER, with one exception: Alternative 2(d)(ii) has been deleted as a possible means of providing diversity, due to its reliance on prompt operator action. the use of level sensors employing different operating principles, or the use of level sensors made by a different manufacturer, continues to be acceptable means of providing diverse instrumentation.

On October 1, 1980 letters were sent to all BWR licensees requesting a commitment to reevaluate the present scram system and modify it as necessary to meet the design and performance criteria developed by the BWR Owners Subgroup. The letter also requested a schedule for implementation.

III

Because the implementation of modifications to meet the criteria proposed by the BWR Owners Subgroup and endorsed by the NRC staff will restore the margins of safety in the BWR scram system, we have determined that these modifications should be completed on an expeditious schedule. In response to our letter of October 1, 1980 and additional discussions with the NRC staff, the licensee committed, by letter dated March 16, 1982 to install the long-term modifications before reactor operation in Cycle 10. These commitments were confirmed in a June 6, 1983 telephone conversation with the licensee's staff. In view of the foregoing, we have determined that these commitments are required in the interest of public health and safety and should, therefore, be confirmed by an immediately effective order.

IV

Accordingly, pursuant to sections 103, 161i, and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is hereby ordered effective immediately that:

1. The licensee shall install the long term BWR scram discharge system modification in conformance with the staff's Generic SER, which incorporates the BWR Owners Subgroup criteria, before reactor operation in Cycle 10 or, in the alternative, the licensee shall place and maintain the facility in a cold shutdown or refueling mode of operation until such modifications are made. Extensions of time for installation may be granted for good cause shown by the licensee. The modifications shall include diverse instrumentation as provided in the SER with the exception that alternative 2(d)(ii) will not be accepted.

2. For those cases in which a different method of complying with the criteria than that described in the SER is chosen, the licensee shall submit the design details and supporting analyses for approval to the Director, Division of Licensing, Washington, D.C. 20555 with a copy to the Regional Administrator of the appropriate NRC regional office, as least 3 months prior to the required implementation date.

3. Technical Specification changes required for operation with the modified system shall be submitted at least 3 months prior to the required implementation date.

V

The licensee may request a hearing on this Order within 25 days of the date of publication of this Order in the Federal Register. A request for hearing shall be submitted to the Director, Division of Licensing, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request shall also be sent to the Executive Legal Director at the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A request for hearing shall not stay the immediate effectiveness of this order.

If a hearing is requested by the licensee, the Commission will issue an order designating the time and place of any such hearing. If a hearing is held, the issue to be considered at such a hearing shall be whether the licensee should comply with the conditions set forth in Section IV of this Order.

The request for information made in this Order was approved by the Office of Management and Budget under clearance number 3150–0083 which expires on December 31, 1983. Comments on burden and duplication may be directed to the Office of Management and Budget, Reports Management, Room 3208, New Executive Office Building, Washington, D.C.

This order is effective upon issuance.

Dated at Bethesda, Maryland this 24th day of June 1983.

For the Nuclear Regulatory Commission.

Darrell Eisenhut,

Driector, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 83-17664 Filed 6-29-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-269]

Duke Power Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is

considering issuance of an amendment to Facility Operating License No. DPR-38, issued to Duke Power Company (the licensee), for operation of the Oconee Nuclear Station, Unit No. 1 (the facility) located in Oconee County, South Carolina.

In accordance with the licensee's application for amendment dated May 19, 1983, the amendment relates to the Cycle 8 reload and involves numerical changes to the core protection safety limits, the protective system maximum allowable setpoints, and the rod position limits. These limits take into account the incorporation of: (1) Four Mark BZ demonstration fuel assemblies for a second cycle of irradiation; and (2) five gadolinia lead test assemblies as part of the batch of fresh fuel used in the reload.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission has provided guidance concerning the application of these standards by providing certain examples (48 FR 14870). Example III of the types of amendments not likely to involve significant hazards considerations applies in this case as the reload is for a nuclear power reactor. The licensee has provided an evaluation of the amendment requested against the standards of 10 CFR 50.92 to demonstrate the Commission's Example III fits the case of this amendment request. The reload does not involve fuel assemblies significantly different from those found previously acceptable to the NRC. No significant changes are being made to the acceptance criteria for the Technical Specifications. The analytical method used to demonstrate conformance with the Technical Specifications and regulations is not significantly changed, and the NRC has previously found the method acceptable. In this reload, out of a total of 177 fuel assemblies to be inserted into the core, five of the fresh batch fuel assemblies are different from the remaining assemblies. These assemblies are gadolinia lead test assemblies which are part of a joint Duke Power/Babcock and Wilcox/Department of Energy program to develop and demonstrate an advanced fuel assembly design for extended burnup in pressurized water reactors. This program was initiated during earlier reload cycles. The gadolinia fuel assemblies are to be loaded in such a manner as to ensure that there will be no significant effect on the core physics parameters. The fresh batch fuel containing the gadolinia demonstration assemblies has different fuel performance characteristics than the non-gadolinia fuel, but these performance characteristics are not more limiting than the remainder of the core. In addition, four Mark BZ demonstration assemblies containing Zircaloy-4 intermediate spacer grids will be reinserted for a second cycle of irradiation. The Commission proposes to determine that the application does not involve a significant hazards consideration since it appears that the standards of 10 CFR 50.92 are met.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attn: Docketing and Service Branch.

By August 1, 1983, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John F. Stolz: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to J. Michael McGarry, III, DeBevoise & Liberman, 1200 17th Street, N.W., Washington, D.C. 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and at the Oconee County Library, 501 West Southbroad Street, Walhalla, South Carolina.

Dated at Bethesda, Maryland, this 27th day of June 1983.

For the Nuclear Regulatory Commission.

John F. Stolz,

Chief, Operating Reactors Branch No. 4, Division of Licensing.

[FR Doc. 83-17865 Filed 6-29-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-219]

GPU Nuclear Corp. and Jersey Central Power and Light Co. (Oyster Creek Nuclear Generating Station); Confirmatory Order

I

GPU Nuclear Corporation and Jersey Central Power and Light Company (the licensees) are the holders of Provisional Operating License No. DRP–16 which authorizes the operation of the Oyster Creek Nuclear Generating Station (the facility) at steady-state reactor power levels not in excess of 1930 megawatts thermal. The facility consists of a boiling water reactor (BWR) located in Ocean County, New Jersey.

II

During a routine shutdown of Browns Ferry Unit No. 3 on June 28, 1980, 76 of 185 control rods failed to fully insert in response to a manual scram from approximately 30% power. All rods were subsequently inserted within 15 minutes and no reactor damage or hazard to the public occurred. However, the event did cause an in-depth review of the current BWR Control Rod Drive Systems which identified design deficiencies requiring both short and long-term corrective measures. These measures were set forth in the "Generic Safety Evaluation Report BWR Scram Discharge System", dated December 1, 1980, prepared by the NRC staff.

To provide reasonable assurance of safe operation pending implementation of long-term corrective measures, the short-term corrective measures have been implemented by IE Bulletin 80–17 (with supplements) and Orders issued on January 9, 1981.

The Generic Safety Evaluation Report (SER) dated December 1, 1980, endorsed the criteria and technical bases that were developed by a BWR Owners Subgroup for use in implementing permanent system modifications to correct identified deficiencies. These criteria were designated as either functional, safety, operating, design, or surveillance, and when taken as a whole, comprise an adequate set of criteria to resolve the issues raised during the Browns Ferry event investigation.

The SER further described an acceptable means of compliance with each criterion. Pre-implementation approval of permanent modifications using the methods described in the SER for compliance with the criteria will not be required. Alternate methods of compliance will require specific NRC approval in advance of implementation.

In addition to the criteria proposed by the BWR Owners Subgroup, the SER added a criterion to address the potential for common cause failures of the scram level instrumentation. An acceptable means of complying with this criterion was the addition of diversity in the design. The addition of diverse instrumentation of the Scram Discharge Instrumented Volume will minimize recurrence of known common cause failures and, thus, improve system reliability.

Therefore, we have concluded that diverse instrumentation should be provided as required in the SER, with one exception: Alternative 2(d)(ii) has been deleted as a possible means of providing diversity, due to its reliance on prompt operator action. The use of level sensors employing different operating principles, or the use of level sensors made by a different manufacturer, continues to be acceptable means of providing diverse instrumentation.

On October 1, 1980 letters were sent to all BWR licensees requesting a commitment to reevaluate the present scram system and modify it as necessary to meet the design and performance criteria developed by the BWR Owners Subgroup. The letter also requested a schedule for implementation.

III

Because the implementation of modifications to meet the criteria proposed by the BWR Owners Subgroup and endorsed by the NRC staff will restore the margins of safety in the BWR scram system, we have determined that these modifications should be completed on an expeditious schedule. In response to our letter of October 1, 1980 and additional discussions with the NRC staff, the licensee committed, by letter

dated December 24, 1981 to install the long term modifications before reactor operation in Cycle 10. These commitments were confirmed in a June 6, 1983 telephone conversation with the licensee's staff.

In view of the foregoing, I have determined that these commitments are required in the interest of public health and safety and should, therefore, be confirmed by an immediately effective order.

IV

Accordingly, pursuant to sections 103, 161i, and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is hereby ordered effective immediately that:

1. The licensee shall install the long term BWR scram discharge system modifications in conformance with the staff's Generic SER, which incorporates the BWR Owners Subgroup criteria, before reactor operation in Cycle 10 or, in the alternative, the licensee shall place and maintain the facility in a cold shutdown or refueling mode of operation until such modifications are made. Extensions of time for installation may be granted for good cause shown by the licensee. The modifications shall include diverse instrumentation as provided in the SER with the exception that alternative 2(d)(ii) will not be accepted.

2. For those cases in which a different method of complying with the criteria than that described in the SER is chosen, the licensee shall submit the design details and supporting analyses for approval to the Director, Division of Licensing, Washington, D.C. 20555 with a copy to the Regional Administrator of the appropriate NRC regional office, at least 3 months prior to the required implementation date.

3. Technical Specification changes required for operation with the modified system shall be submitted at least 3 months prior to the required implementation date.

The licensee may request a hearing on this Order within 25 days of the date of publication of this Order in the **Federal Register**. A request for hearing shall be submitted to the Director, Division of Licensing, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request shall also be sent to the Executive Legal Director at the U.S. Nuclear Regulatory Commission, Washington, D.C 20555. A request for hearing shall not stay the immediate effectiveness of this order.

If a hearing is requested by the licensee, the Commission will issue an order designating the time and place of any such hearing. If a hearing is held, the issue to be considered at such a hearing shall be whether the licensee should comply with the conditions set forth in Section IV of this Order.

The request for information made in this Order was approved by the Office of Management and Budget under clearance number 3150–0083 which expires on December 31, 1983. Comments on burden and duplication may be directed to the Office of Management and Budget, Reports Management, Room 3208, New Executive Office Building, Washington, D.C.

This Order is effective upon issuance.

Dated at Bethesda, Maryland this 24th day of June 1983.

For the Nuclear Regulatory Commission.

Darrell Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 83–17666 Filed 6–29–83; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–352/353]

Philadelphia Electric Co.; Availability of the Draft Environmental Statement for Limerick Generating Station, Units 1 and 2

Pursuant to the National Environmental Policy Act of 1969 and the United States Nuclear Regulatory Commission's regulations in 10 CFR Part 51, notice is hereby given that a Draft Environmental Statement (NUREG–0974) has been prepared by the Commission's Office of Nuclear Reactor Regulation related to the proposed operation of the Limerick Generating Station, Units 1 and 2, located on the Schuylkill River, near Pottstown, in Limerick Township, Montgomery County, Pennsylvania.

The Draft Environmental Statement (DES) addresses the aquatic, terrestrial, radiological, social and economic costs and benefits associated with normal station operation. Station accidents, their likelihood of occurrence and their consequences, including severe accidents, will be addressed in a supplement to this statement. Comments on the cost/benefit balance reflecting the consideration of station accidents may be submitted after the issuance of the supplement.

Copies of NUREG–0974 are available for inspection by the public in the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C. 20555, and at the Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464. The document is also being made available at the Pennsylvania State Clearinghouse, Governor's Budget Office, P.O. Box 1323, Harrisburg, Pennsylvania 17120, and at the Delaware Valley Regional Planning Commission, Penn Towers Building, Third Floor, 1819 John F. Kennedy Boulevard, Philadelphia, Pennsylvania 19103. Requests for copies of the DES should be addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Technical Information and Document Control.

Interested persons may submit comments on this DES for the Commission's consideration. Federal, State, and specified local agencies are being provided with copies of the DES. Other local agencies may obtain these documents upon request.

Comments by Federal, State and local officials, or other members of the public received by the Commission will be made available for public inspection at the Commission's Public Document Room in Washington, D.C. and the Pottstown Public Library. Comments are due by August 15, 1983. After consideration of the comments submitted on the DES, the Commission's staff will prepare a Final Environmental Statement, the availability of which will be published in the **Federal Register.**

Comments on the Draft Environmental Statement from interested members of the public should be addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland this 24th day of June 1983.

For the Nuclear Regulatory Commission.

A. Schwencer,

Chief, Licensing Branch No. 2, Division of Licensing.

[FR Doc. 83–17667 Filed 6–29–83; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–141]

Stanford University; Order Terminating Facility License

By application dated September 20, 1973, as supplemented by letters dated November 19, 1973, August 9, 1976, December 9, 1977, September 13, 1978, June 3, 1980, April 28, 1982 and January 4, 1983, Stanford University (the licensee) requested authorization from the Nuclear Regulatory Commission (the Commission) (NRC) to dismantle the Stanford Pool Reactor (the facility), a research reactor located on the University's campus near Palo Alto, California and to terminate facility License No. R–60. The authorization

would allow the licensee to dismantle the facility, dispose of the component parts in accordance with the plan submitted as part of the application, and terminate Facility License No. R–60. Authorization to dismantle the facility and dispose of its component parts was given by the Commission's Order dated May 12, 1974. A "Notice of Proposed Issuance of Order Authorizing Termination of Facility License," dated January 18, 1978, was published in the **Federal Register** on January 26, 1978 (43 FR 3634). No request for a hearing or petition for leave to intervene was filed following notice of the proposed action.

The Commission has found that the facility has been dismantled and decontaminated, and that satisfactory disposition has been made of the components parts and fuel in accordance with the Commission's regulations in 10 CFR Chapter I, and the Commission's Order dated May 12, 1974, and in a manner not inimical to the common defense and security or to the health and safety of the public.

The facility area *has* been inspected by Nuclear Regulatory Commission (NRC) Region V inspectors and radiation surveys confirm that radiation levels meet the values defined in the dismantling plan, as revised by NRC letters dated March 15, 1981 and April 21, 1982 and the area is available for unrestricted access.

Therefore, pursuant to the application filed by the Stanford University, Facility License No. R–60 is hereby terminated as of the date of this Order.

For further details with respect to this action see: (1) The application for authorization to dismantle facility and dispose of components parts and for termination of facility license dated September 20, 1973, as supplemented by letters dated November 19, 1973, August 9, 1976, December 9, 1977, September 13, 1978, June 3, 1980, April 28, 1982 and January 4, 1983, (2) the Commission's Order Authorizing Dismantling of Facility and Disposition of Components Parts dated March 12, 1974, and (3) the Commission's Safety Evaluation related to the termination of license. Each of these items is available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 21st day of June 1983.

For the Nuclear Regulatory Commission.

Darrell Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 83–17666 Filed 6–29–83; 8:45 am]

BILLING CODE 7590–01–M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Fish Propagation Panel; Meeting

AGENCY: Fish Propagation Panel of the Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1–4. Activities will include:

- Approval of minutes;
- Update on reprogramming;
- Discussion on establishment of study groups for habitat improvement prioritization;
- Briefing on Section 900 program measures;
- Status report on fish passage and transportation studies;
- Other; and
- Public comment.

Status: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Fish Propagation Panel.

DATE: July 6, 1983, 9:30 a.m.

ADDRESS: The meeting will be held at the Heritage Inn Restaruant located in Toppenish, Washington.

FOR FURTHER INFORMATION CONTACT: Curt Marshall, (503) 222–5161.

Edward Sheets,

Executive Director.

[FR Doc. 83–17629 Filed 6–29–83; 8:45 am]

BILLING CODE 0000–00–M

Fish Propagation Panel; Meeting

AGENCY: Fish Propagation Panel of the Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1–4. Activities will include:

- Approval of minutes;
- Discussion of comments from call for priority development;
- Status report on results of enhancement planning efforts in Columbia River conservation area pursuant to SSCEA;
- Other; and
- Public comment.

Status: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Fish Propagation Panel.

DATE: July 25, 1983, 9:30 a.m.

ADDRESS: The meeting will be held at the Council's Central Office located at 700 S. W. Taylor Street, Suite 200, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Curt Marshall, (503) 222–5161.

Edward Sheets,

Executive Director.

[FR Doc. 83–17630 Filed 6–29–83; 8:45 am]

BILLING CODE 0000–00–M

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice 869]

Magnuson Fishery Conservation and Management Act; Applications for Permits To Fish in the United States Fishery Conservation Zone

The Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) requires all foreign vessels fishing in the U.S. fishery conservation zone to have a permit. Section 204 of the Magnuson Act requires the Secretary of State to publish a summary of applications received.

Individual vessel applications for fishing in 1983 have been received from the Governments of Japan and Spain.

If additional information regarding any application is desired, it may be obtained from: Fees, Permits, and Regulations Division (F/M12), National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235, telephone (202) 634–7432.

Dated: June 21, 1983.

James A. Storer,

Director, Office of Fisheries Affairs.

Fishery codes and designation of regional councils which review applications for individual fisheries are as follows:

Code	Fishery	Regional council
ABS	Atlantic billfishes and sharks	New England. Mid-Atlantic. South Atlantic. Gulf of Mexico. Caribbean.
BSA	Bering Sea and Aleutian Islands trawl, longline and herring gillnet.	North Pacific.
CRB	Crab (Bering Sea)	North Pacific.
GOA	Gulf of Alaska	North Pacific.

Code	Fishery	Regional council
NWA	Northwest Atlantic	New England, Mid-Atlantic.
SMT	Seamount groundfish (Pacific Ocean).	Western Pacific.
SNA	Snails (Bering Sea)	North Pacific.
WOC	Washington, Oregon, California trawl.	Pacific.

Code	Fishery	Regional council
PBS	Pacific billfish and sharks	Western Pacific.

Activity code	Fishing operations
1	Catching, processing, and other support.
2	Processing and other support only.
3	Other support only.

Activity codes specify categories of fishing operations applied for are as follows:

Nation/vessel name/vessel type	Application No.	Fishery	Activity
Japan:			
Albatross, cargo/transport vessel	JA-83-0081	NWA, BSA, GOA, SMT	3
Eikyu Maru No. 81, medium stern trawler	JA-83-0082	BSA	1, 2
Ryusei Maru, cargo/transport vessel	JA-83-0083	BSA, GOA	3
White Arrow, cargo/transport vessel	JA-83-0084	BSA, GOA	3
Spain:			
Tasarte, stern trawler/freezer	SP-83-0114	NWA	2
Farpesca IV, stern trawler/freezer	SP-83-0093	NWA	2

Joint Venture

Anavar, S.A., of Vigo, Spain and Stonington Seafood Products, Inc., P.O. Box 748, Narragansett, Rhode Island 02882, Phone: (401) 783-3310, have applied to engage in a joint venture fishery for Loligo squid between the months of April 1, 1983 and March 41, 1984. These parties have agreed to form a new entity which will operate generally under the name: Stonavar Industries, Inc.

The Spanish processing vessel will receive fish only from U.S. vessels. One goal of the activities proposed is for the parties, mutually and jointly, to develop a method of conducting a broadly diversified fishing enterprise which is capable of engaging completely in all phases of harvesting, processing and marketing fish and fishery products. Consequently, Stonavar's activities are viewed as a long-term undertaking by Stonington Seafood Products, Inc., and Anavar, S.A. The parties intend, for example, to purchase between 3500 and 5000 metric tons of Loligo squid shoreside during the period referenced above. Stonavar will also actively be seeking new markets and products for the fish which it harvests. Any incidental catch may be returned to the U.S. harvesting vessels.

[FR Doc. 83-17623 Filed 6-29-83; 8:45 am]

BILLING CODE 4710-09-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Public Access To Indices To Chief Counsel Opinions

AGENCY: Maritime Administration (MARAD), DOT.

ACTION: Notice.

SUMMARY: Notice is given that pursuant to the opinion of the United States Court of Appeals for the District of Columbia Circuit in *Schlefer* v. *United States of America*, 703 F. 2d 233, the indices to Chief Counsel Opinions apropos the Shipping Act, 1916, the Merchant Marine Act, 1920, and the Merchant Marine Act, 1936, are available for inspection in the Department of Transportation Law Library, Room 2215, NASSIF Building, 400 Seventh Street, S.W., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Georgia P. Stamas, Freedom of Information Officer, Room 7300, NASSIF Building, 400 Seventh Street, S.W., Washington, D.C. 20590; (202) 426-5746.

Dated: June 27, 1983.

By Order of the Maritime Administration.

Georgia P. Stamas,

Secretary.

[FR Doc. 83-17671 Filed 6-29-83; 8:45 am]

BILLING CODE 4910-81-M

Office of the Secretary

Minority Business Resource Center Advisory Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1), notice is hereby given of a meeting of the Minority Business Resource Center Advisory Committee to be held July 25, 1983, at 8:30 a.m. in The President's Room at the White Hall Hotel, 1700 Smith Street, Houston, Texas 77002. The agenda for the meeting is as follows:

—Status report on MBRC operations.

—Status report on the MBE program under the Surface Transportation Assistance Act.

Attendance is open to the interested public but limited to the space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to attend and persons wishing to present oral statement should notify the Minority Business Resource Center not later than the day before the meeting. Information pertaining to the meeting may be obtained from Ms. Betty Chandler, Minority Business Resource Center, 400 7th Street, SW., Washington, D.C. 20590, telephone (202)426-2852. Any member of the public may present a written statement to the Committee at any time.

Issued in Washington, D.C. on June 21, 1983.

Melvin Humphrey,

Director, Office of Small and Disadvantaged Business Utilization.

[FR Doc. 83-17325 Filed 6-29-83; 8:45 am]

BILLING CODE 4910-62-M

Urban Mass Transportation Administration

Intent To Prepare an Environmental Impact Statement on Alternative Transit Improvements in the Minneapolis and St. Paul Region, Minnesota

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Notice to prepare an Environmental Impact Statement.

SUMMARY: The Urban Mass Transportation Administration (UMTA) and a consortium of local public agencies are undertaking the preparation of an Environmental Impact Statement (EIS) for alternative transit improvements in the Southwest and the University Avenue Corridors of the Twin Cities Region. The local participating agencies are: the Cities of Minneapolis, St. Paul, St. Louis Park, Hopkins, and Minnetonka, Hennepin and Ramsey counties, the Metropolitan Transit Commission, the Minnesota Department of Transportation, the Metropolitan Council and the University of Minnesota. The EIS is being prepared

in conformance with 40 CFR Part 1500, Council on Environmental Quality, Regulations for Implementing the Procedural Requirements of the National Environmental Policy Act of 1969 as amended; and 49 CFR Part 622, Federal Highway Administration and Urban Mass Transportation Administration Environmental Impact and Related Procedures.

FOR FURTHER INFORMATION CONTACT: Mr. Fredric Ridel, UMTA Region 5, 300 South Wacker Drive, Suite 1740, Chicago, Illinois 60606, Telephone: (312) 353-2820.

SUPPLEMENTARY INFORMATION:

Scoping Meeting

Two public scoping meetings will be held to help establish the purpose, scope, framework, and approach for the analysis for each corridor. A public scoping meeting will be held for the University Avenue Corridor on July 18, 1983, at 7:00 p.m., at the Thomas-Dale Community Center, 911 Lafond Avenue (Victoria & Lafond), St. Paul, Minnesota. A public scoping meeting will be held for the Southwest Corridor on July 19, 1983, at 7:00 p.m., in the Heritage Hall, Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, Minnesota. At the scoping meetings, staff will present a description of the proposed scope of the study, using maps and visual aids, as well as a plan for an active citizen involvement program, a projected work schedule, and an estimated budget. Members of the public and interested Federal, State, and local agencies are invited to comment on the proposed scope of work, alternatives to be assessed, impacts to be analyzed, and evaluation criteria to be used to arrive at a decision. Comments may be made either orally at the meeting or in writing.

Corridor Description

The University Avenue Corridor links downtown Minneapolis and downtown St. Paul. It also includes the University of Minneapolis, a large urban university which is a major activity center. The corridor is entirely urban, lying in the heart of the Metropolitan Area and well-established neighborhoods between the Burlington Northern Railroad tracks on the north and I-94 on the south.

The Southwest Corridor begins in downtown Minneapolis and proceeds in a southwest direction through Minneapolis and into St. Louis Park and Hopkins. The corridor turns westward, and extends through Minnetonka, Deephaven, Greenwood, Shorewood and terminates in Excelsior. The corridor generally follows the Chicago & North/Western Railroad tracks. Its boundaries are downtown Minneapolis on the east, downtown Excelsior on the west, Minnetonka Boulevard and Lake Minnetonka on the north and Excelsior Boulevard on the south.

Alternatives

Transportation alternatives proposed for consideration in the University Avenue Corridor are the following:

1. a no-build option, under which existing bus services would continue to operate.
2. a low-cost transportation system management approach that would improve existing bus service with strategies such as passenger shelters, better passenger information, increase of bus speeds, better traffic signal operations.
3. a busway that would consist of bus-only lanes within the University Avenue right-of-way, physically separated from street traffic except at street crossings.
4. a light rail transit line operating on a pair of at-grade tracks within the University Avenue right-of-way. It would be physically separated from street traffic except at street crossings.

Transportation alternatives proposed for consideration in the Southwest Corridor are:

1. A no-build option, under which existing bus services would continue to operate;
2. A low-cost transportation system management approach that would improve existing bus service with strategies such as route pattern changes, roadway geometric or signing changes, by-pass lanes in congested areas, better traffic signal operations, and additional passenger amenities;
3. A busway that would consist of a paved roadway along the Chicago & North/Western Railroad right-of-way;
4. A light rail transit line operating on a pair of rail tracks on the Chicago & North/Western Railroad right-of-way.

Comments at the scoping meeting should focus on the appropriateness of these and other options for consideration in the study, not on individual preferences for a particular alternative as most desirable for implementation.

Probable Effects

Impact proposed for analysis include changes in the natural environment (air quality, noise, water quality, aesthetics), changes in the social environment (land use, development, neighborhoods), impacts on parklands and historic sites, changes in transit service and patronage associated changes in highway congestion, capital cost, operating and maintenance costs, and financial implications. Impacts will be identified both for construction period and for long-term operation of the alternatives.

The proposed evaluation criteria include transportation, environmental, social, economic and financial measures as required by current Federal (NEPA) and State environmental laws and current CEQ and UMTA guidelines. Mitgating measures will be explored for any adverse impacts that are identified.

Comments at the scoping meeting should focus on the completeness of the proposed sets of impacts and evaluation criteria. Other impacts or criteria judged relevant to local decision-making should be identified.

Issued on June 22, 1983.

Joel P. Ettinger,

Regional Administrator.

[FR Doc. 83-17452 Filed 6-29-83; 8:45 am]

BILLING CODE 4910-57-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

Debt Management Advisory Committee; Meeting

Notice is hereby given, pursuant to Section 10 of Pub. L. 92-463, that a meeting will be held at the U.S. Treasury Department in Washington, D.C. on July 26 and 27, 1983, of the following debt management advisory committee:

Public Securities Association
U.S. Government and Federal Agencies Securities Committee

The agenda for the Public Securities Association U.S. Government and Federal Agencies Securities Committee meeting provides for a working session on July 26 and the preparation of a written report to the Secretary of the treasury on July 27, 1983.

Pursuant to the authority placed in Heads of Departments by section 10(d) of Pub. L. 92-463, and vested in me by Treasury department Order 101-5, I hereby determine that this meeting is concerned with information exempt from disclosure under section 552b(c)(4) and (9)(A) of Title 5 of the United States Code, and that the public interest requires that such meetings be closed to the public.

My reasons for this determination are as follows. The Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decision on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial

community, which committees have been utilized by the Department at meetings called by representatives of the Secretary. When so utilized, such a committee is recognized to be an advisory committee under Pub. L. 92-463. The advice provided consists of commercial and financial information given and received in confidence. As such debt management advisory committee activities concern matters which fall within the exemption covered by section 552b(c)(4) of Title 5 of the United States Code for matters which are "trade secrets and commercial or financial information obtained from a person and privileged or confidential."

Although the Treasury's final announcement of financing plans may or may not reflect the recommendations provided in reports of an advisory committee, premature disclosure of these reports would lead to significant financial speculation in the securities market. Thus, these meetings also fall within the exemption covered by 552b(C)(9)(A) of Title 5 of the United States Code.

The Assistant Secretary (Domestic Finance) shall be responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of committee activities and such other matters as may be informative to the public consistent with the policy of 5 U.S.C. 552b.

Dated: June 27, 1983.

C. Warren Carter,

Acting Assistant Secretary (Domestic Finance).

[FR Doc. 83-17691 Filed 6-29-83; 8:45 am]

BILLING CODE 4810-25-M

[Supplement to Department Circular, Public Debt Series, No. 20-83]

Bonds of 2003; Interest Rate

June 24, 1983.

The Secretary announced on June 23, 1983, that the interest rate on the bonds designated Bonds of 2003, described in Department Circular—Public Debt Series—No. 20-83, dated June 15, 1983, will be 11⅛ percent. Interest on the bonds will be payable at the rate of 11⅛ percent per annum.

Carole J. Dineen,

Fiscal Assistant Secretary.

[FR Doc. 83-17695 Filed 6-29-83; 8:45 am]

BILLING CODE 4810-40-M

[Supplement to Department Circular, Public Debt Series, No.19-83]

Series E-1990; Interest Rate

June 23, 1983.

The Secretary announced on June 22, 1983, that the interest rate on the notes designated Series E-1990, described in Department Circular—Public Debt Series—No. 19-83 dated June 15, 1983, will be 10¾ percent. Interest on the notes will be payable at the rate of 10¾ percent per annum.

Carole J. Dineen,

Fiscal Assistant Secretary.

[FR Doc.83-17696 Filed 6-29-83; 8:45 am]

BILLING CODE 4810-40-M

VETERANS ADMINISTRATION

Agency Forms Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists a form extension. This entry contains the following information: (1) The department or staff office issuing the form; (2) The title of the form; (3) The agency form number, if applicable; (4) How often the form must be filled out; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to fill out the form; and (8) An indication of whether section 3504(H) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the proposed form and supporting documents may be obtained from Patricia Viers, Agency Clearance Officer (004A2), Veterans Administration, 810 Vermont Ave. NW., Washington, D.C. 20420, (202) 389-2146. Comments and questions about the items on this list should be directed to the VA's OMB Desk Officer, Rich Shepard, Office of Management and Budget, 726 Jackson Place, NW., Washinton D.C. 20503, (202) 395-6880.

DATES: Comments on the form should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: June 24, 1983.

By direction of the Administrator.

Dominick Onorato,

Associate Deputy Administrator for Information Resources Management.

Extension

1. Department of Veterans Benefits.
2. Statement of Person Claiming to Have Stood in Relation of Parent.
3. VA Form 21-524.
4. On occasion.
5. Individuals or households.
6. 2,000 responses.
7. 4,000 hours.
8. Not applicable under 3504(H).

[FR Doc. 83-17617 Filed 6-29-83; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 48, No. 127
Thursday, June 30, 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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Pacific Northwest Electric Power and Conservation Planning Council	7

1

COMMODITY FUTURES TRADING COMMISSION:

TIME AND DATE: 2 p.m., Thursday, June 30, 1983.

PLACE: 2033 K Street NW., Washington, D.C., eighth floor conference room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Judicial Session

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254-6314.

[S-945-83 Filed 6-28-83; 3:15 pm]

BILLING CODE 6351-01-M

2

CONSUMER PRODUCT SAFETY COMMISSION

AGENCY: Consumer Product Safety Commission.

TIME AND DATE: 10 a.m. Wednesday, July 6, 1983.

LOCATION: Third floor hearing room, 1111 18th Street NW., Washington, D.C.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. *Chain Saws: Status Report*
The staff will brief the Commission on the report on the status of the chain saw project. The report includes information on: (1) The availability and use of various chain saw safety devices; (2) selected preliminary results from the consumer chain saw survey; (3) summary of the ANSI B175 Committee Meetings; (4) summary of hand-held tests; (5) status of chain saw injury surveys; and (6) report on chain saw information and education activities.

2. *Operating Plan FY84*
The Commission will consider issues related to the Operating Plan for Fiscal Year 1984. This is a continuation of the meeting of Wednesday, June 22, 1983.

For a recorded message containing the latest agenda information: call 301-492-5709.

CONTACT PERSON FOR MORE INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md 20207; 301-492-6800.

[S-942-83 Filed 6-28-83; 2:08 pm]

BILLING CODE 6355-01-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 522b), notice is hereby given that at 4:25 p.m. on Friday, June 24, 1983, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider the application of Midland Bank & Trust Company, Memphis, Tennessee, and insured State nonmember bank, for the Corporation's consent to merge, under its charter and title, with United Sourthern Bank of Humpreys County, Waverly, Tennessee, and to establish the four offices of United Southern Bank of Humphreys County as branches of the resultant bank.

At the same meeting the Board made funds available for the payment of insured deposits of Western National Bank of Lovell, Lovell, Wyoming, which was closed by the Acting Comptroller of the Currency on Friday, June 24, 1983.

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. Doyle L. Arnold, acting in the place and stead of Director C. T. Conover (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(6), (c)(8), (c)(8)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C 552b(c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: June 27, 1983.
Federal Deposit Insurance Corporation.
Hoyle L. Robinson
Executive Secretary

[S-944-83 Filed 6-28-83; 2:08 pm]

BILLING CODE 6714-01-M

4

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 48 FR 29657, June 27, 1983.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., June 29, 1983.

CHANGE IN THE MEETING: The following item has been added to the agenda:

Item No., Docket No., and Company

CAG-41. RE83-35-000, RP81-109-000, RP82-37-000, RP74-41-016, *et al.*, TA83-1-17-003 and TA82-2-17-000, Texas Eastern Transmission Corporation.

Kenneth F. Plumb,
Secretary.

[S-940-83 Filed 6-28-83; 9:40 am]

BILLING CODE 6717-02-M

5

NATIONAL LABOR RELATIONS BOARD

TIME AND DATE: 2:30 p.m., Monday, 27 June 1983.

PLACE: Board Conference Room, sixth floor, 1717 Pennsylvania Avenue NW.

STATUS: Closed to public observation pursuant to 5 U.S.C. 552b(c)(2) (internal personnel rules and practices) and (c)(6) (personal information where disclosure would constitute a clearly unwarranted invasion of personal privacy).

MATTERS TO BE CONSIDERED:

Personnel matters

CONTACT PERSON FOR MORE INFORMATION: John C. Truesdale, Executive Secretary, Washington, D.C. 20570, Telephone (202) 254-9430.

Dated in Washington, D.C., June 24, 1983.
By direction of the Board.
John C. Truesdale,
Executive Secretary, National Labor Relations Board.

[S-941-83 Filed 6-28-83; 2:08 pm]

BILLING CODE 7545-01-M

6

NUCLEAR REGULATORY COMMISSION

DATE: Week of June 27, 1983 (revised).

PLACE: Commissioners' Conference Room, 1717 H Street NW., Washington, D.C.

STATUS: Open and closed.

MATTERS TO BE DISCUSSED: *Tuesday, June 28:*

10:00 a.m.
Discussion of Management-Organization and Internal Personnel Matters (closed—Exemptions 2 and 6) (As announced)

2:00 p.m.:
Discussion and Possible Vote on Final Rule (10 CFR 50.73) Licensee Event Report (LER) System (Public Meeting) (Title Change)

3:30 p.m.:
Affirmation/Discussion and Vote (Public Meeting) (New Item):
a. Review of ALAB–687 (Tentative) (*Postponed* from June 23)
b. Commission Determination on Acceptance of Certified Question from LBP–82–31 on Low-Power Operation at Shoreham Nuclear Power Station (Tentative) (*Postponed* from June 23)

Thursday, June 30:

2:00 p.m.:
Briefing on Emergency Operations Facility for Point Beach Units 1 and 2 (Public Meeting) (Tentative) (*Postponed*)

2:00 p.m.:
Affirmation/Discussion and Vote (Public Meeting) (Time Change):
a. Final Rule to Modify Requirement that Power Reactor Licensees Maintain Property Damage Insurance
b. Disposition of Adjudication Concerning Self-Powered Lighting, Inc.
c. Revision to 10 CFR Part 71
d. Review of ALAB–714
e. Final Rule 10 CFR 50.73, Licensee Event Report System (Tentative)

AUTOMATIC TELEPHONE ANSWERING SERVICE FOR SCHEDULE UPDATE: (202) 634–1498. Those planning to attend a meeting should reverify the status on the day of the meeting.

CONTACT PERSON FOR MORE INFORMATION: John Hoyle, (202) 634–1410.

John Hoyle,

Office of the Secretary.

[S–939–83 Filed 6–27–83; 4:50 pm]

BILLING CODE 7590–01–M

7

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL
Northwest Power Planning Council

STATUS: Open.

TIME AND DATE: July 7, 1983, 9 a.m.

PLACE: Ramada Inn, Inland Empire Room, Spokane International Airport, Spokane, Washington.

MATTERS TO BE CONSIDERED:

- BPA Long-Term Conservation Contracts
- BPA Billing Credit Policy
- Briefing on Hood River Project
- California Sales
- Status Report on BPA Rate Case
- Administrative Matters
- Public Comment

CONTACT PERSON FOR MORE INFORMATION: Ms. Bess Wong (503) 222–5161.

Edward Sheets,

Executive Director.

[S–943–83 Filed 6–20–83; 2:08 pm]

BILLING CODE 0000–00–M

federal register

Thursday
June 30, 1983

Part II

Department of the Interior

National Park Service

General and Special Regulations for Areas Administered by the National Park Service

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Parts 1, 2, 3, 4, 5, 6, 7, and 12

General Regulations for Areas Administered by the National Park Service

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: The National Park Service is revising regulations codified in 36 CFR Parts 1–7, and 12. These rules provide guidance and controls for public use and recreation activities (*e.g.*, camping, fishing, hunting, winter activities, boating) in areas administered by the National Park Service. Changes stress consistency, clarity, and increased public involvement in Service management procedures. These revisions will help the National Park Service provide improved visitor safety and resource protection. Enactment of these regulations eliminates many requirements that are ineffective or out-of-date, and applies new rules that reflect current public use and resource management needs. The proposed rule was published in the **Federal Register** on March 17, 1982 (47 FR 11598). This final rule adopts many of the suggestions made during the public comment period.

EFFECTIVE DATE: These regulations will become effective on October 3, 1983.

FOR FURTHER INFORMATION CONTACT: Maureen Finnerty, Division of Visitor Services, National Park Service, Washington, D.C. 20240, Telephone (202) 343–34874 or 5607.

SUPPLEMENTARY INFORMATION:

Background

The regulations contained in Parts 1 through 7, and Part 12 of Title 36 of the Code of Federal Regulations are the basic mechanism used by the National Park Service to protect the natural and cultural resources of the parks and to protect visitors and property within the parks. Parts 1 through 6 are general regulations applicable to all areas of the National Park System, with some exceptions, while Part 7 contains special regulations that have been found necessary for individual parks as supplements to the general regulations. Part 12 contains regulations for the National Cemeteries within the National Park System.

The general regulations were last revised in 1966, although amendments and additions have been made from time to time since then, usually in response to new situations for which the existing regulations were not sufficient. Since 1966, the evolution of the National Park System, new statutory authorities, and changing visitor use patterns led to a determination that a comprehensive review of the general regulations was needed. When combined with recent governmentwide efforts to simplify regulations and ease the burden of regulations on the public, this situation led to a Service decision in 1980 to review and revise the general regulations.

A task force of employees with a wide variety of backgrounds in law enforcement, park management, and regulations was established to work on this project. Their charge was to review the existing regulations, determine their applicability to the current park management framework, and identify unnecessary or duplicative rules.

The adoption of these revised regulations will have several effects. One is to establish rules that can be clearly understood and followed by the public and by National Park Service employees and managers. Consistency in the use of terms is stressed throughout the document. This objective is largely achieved through an expanded list of definitions. All of the regulations in Parts 1–3 have been renumbered. This was done to group like rules and to make finding and reference easier. The revised regulations will also result in more consistent application and enforcement Servicewide. Confusing and inconsistent standards, such as the current permit system, have been clarified and, where appropriate, consolidated or eliminated. Additional guidelines, such as the creation of a systematic procedure for public notification of park closures or restrictions, have been devised.

A major effect of this rulemaking is the elimination of the management categories from Parts 1–3 of the Code of Federal Regulations. In 1964 all units of the National Park System were broadly categorized as natural, historical or recreational. The National Park Service developed a series of Administrative Policies for each category that served as guidelines for park management and were incorporated into general regulations.

Since 1964 changes in the composition of the National Park System have been extensive. However, the strong direction of the 1916 Organic Act remains unchanged:

> * * * To conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations. 16 U.S.C. 1.

This mandate on the management and administration of the National Park System was reiterated by Congress in 1978.

> The authorization of activities shall be construed and the protection, management, and administration of these areas shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established, except as may have been or shall be directly and specifically provided by Congress. 16 U.S.C. 1a–1.

In light of this specific legislative direction, the management and administration of park areas must be in accordance with both the general laws relating to the National Park System and the more specific laws relating to the authorization and administration of a particular park unit.

The National Park Service has developed these regulations in accordance with Executive Order 12291 of Federal Regulations (46 FR 13193, February 19, 1981). This rulemaking will eliminate unnecessary, conflicting, and duplicative regulations. This is accomplished through such features as the adoption of Coast Guard regulations in Part 3. A further outcome of these revisions is the elimination of nearly 100 special regulations from 36 CFR Part 7. This final rule is published elsewhere in today's **Federal Register** and is also effective on October 3, 1983.

This rulemaking document makes no substantive changes to long-standing regulations or policies. The Service believes these rules respond to concerns for managing the National Park System, providing maximum flexibility to park managers to deal with the wide variety of situations found throughout the System, and maintaining protection and sound management of the resources and values that have led to the establishment of units of the National Park System.

Summary of Comments

These rules were published in proposed form for public comment on March 17, 1982 (47 FR 11598), with the comment period extended until July 19, 1982 (47 FR 24143). The National Park Service received 1966 timely written comments regarding the proposed regulations. Comments were received from 1701 individuals, 131 organizations, 18 agencies of State governments, 10 local governments, 3 Federal agencies, 8 representatives of the legal community, and 84 offices or individuals of various disciplines within the National Park Service.

In addition, the National Park Service received 17 petitions with 1163 signatures.

Analysis of Comments

PART 1—GENERAL PROVISIONS

Management Categories

The National Park Service received 48 comments on the deletion of the management categories—45 in favor of deletion, and 3 opposed.

Under previously codified regulations in 36 CFR Parts 1–4, public use in the National Park System was governed by 82 regulations. Eight of these regulations governed public use by reference to the three management categories—natural, historical and recreational. These management categories were established administratively in the mid-1960's, by grouping park areas with similar legislative requirements. Rapid expansion of the National Park System, changing land use, and other external factors have resulted in divergence from the traditional concepts concerning appropriate activities within park areas. As a consequence, the management categories are too rigid and do not provide the flexibility to properly manage public use and natural and cultural resources within individual park areas.

Moreover, with the enactment of Pub. L. 94–250, 16 U.S.C. 1a-1, Congress reaffirmed and directed that in *all* areas of the National Park System:

> The authorization of activities shall be construed and the protection, management, and administration of these areas shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these areas have been established, except as may have been or shall be directly and specifically provided by Congress. 16 U.S.C. 1a–1.

Pursuant to this statutory mandate, activities and uses in derogation of park values can be allowed only under a park area's enabling legislation or other express statutory authorization. Accordingly, activities such as timber harvesting, mining, or the construction or use of unauthorized dams, roads, and airports are generally prohibited.

One commenter indicated that the National Park Service was, through regulation, attempting to increase the protection of park resources and deemphasize the recreational purposes for which the national recreation areas, national lakeshores, national seashores and national rivers were established. It should be noted that the Service recognizes the high public value associated with outdoor recreation and fully intends to comply with the legislative history governing intended public use of these areas.

To accommodate those situations where Congress has specifically authorized an activity, or where the Service may exercise some discretion in allowing activities that are not in derogation of park values, the Service has established a designation process in § 1.7. This process provides the superintendent with the flexibility, in accordance with the park's enabling legislation, and consistent with the regulations in this chapter, to address park use and resource protection in a timely and straightforward manner, while still providing for appropriate public involvement. In addition, flexibility is built into certain regulations to accommodate variations in the enabling authorities for different park areas. Finally, special regulations may be promulgated for a particular unit.

Section 1.2 Applicability and scope.

Easements. In its proposed rule of March 17, 1982 (47 FR 11599), the National Park Service specifically requested comments on whether these general regulations should be applicable to scenic easements. Eighteen comments were received on this issue. In response to these comments, and as a result of further research, the Service has decided to have these regulations apply to less-than-fee interests to the extent of the acquired Federal interest and compatible with the retained nonfederal interest. For example, if the easement agreement permits public access, then the regulations in this chapter governing public use will apply. If a *scenic* easement has been acquired, the Service will promulgate special regulations necessary to protect that interest. In all instances, every effort will be made to protect interests retained by landowner. This is in keeping with the Service's commitment to protect resources and provide for visitor use, while not infringing on the rights of private property owners.

Appalachian National Scenic Trail. One comment was received requesting that these regulations be inapplicable to the Appalachian National Scenic Trail because of the "unusual nature of this multi-jurisdictional trail and the need for its management and regulation to be consistent and compatible with the 60-year tradition of cooperation between volunteer clubs, State agencies, and the Federal government." The Service has no intention of changing this relationship, and in fact strongly endorses its continuation. In accordance with this approach, these regulations will apply only to those segments of the trail under the primary land management responsibility of the National Park Service. The Service is required under 16 U.S.C. 3 to promulgate regulations necessary or proper for the use and management of the National Park System. The rules published below are such regulations. The Service cannot abrogate this responsibility by excluding areas of the National Park System from coverage under these regulations. Should an individual park have a specific need to amend, modify, relax, or make more stringent a particular general regulation, then a special regulation can be written and placed in 36 CFR Part 7. One such special rule has already been adopted for the Appalachian Trail and appears in § 7.100, below. It is expected, over the next several months, that additional special regulations will be published.

Legislative Jurisdiction and Privately Owned Lands. Numerous commenters requested a clarification of the term, "legislative jurisdiction." As a result, the Service has defined the term in § 1.4, below. Other individuals expressed concern that NPS was attempting to regulate privately owned lands and waters within park areas. Only 10 of these regulations are applicable on the privately owned lands and waters under the exclusive or concurrent jurisdiction of the United States, that is, lands and waters over which a State has ceded police powers to the United States. This will allow the National Park Service to respond to the complaints on private property such as: Disorderly conduct, fighting, hunting or discharging weapons, playing loud music or other loud disturbances, trespassing on privately owned boats, planes, or in houses or sheds on private property, and gambling. The National Park Service has determined that this is the minimum necessary to protect property rights and ensure public safety for owners of both private and commercial properties within park areas.

The 10 regulations that are applicable to privately owned lands are § 2.2, Wildlife Protection; § 2.3, Fishing; § 2.4, Weapons, Traps and Nets; § 2.13, Fires; § 2.22, Property; § 2.30, Misappropriation of Property and Services; § 2.31, Trespassing, Tampering, and Vandalism; § 2.32, Interfering with Agency Functions; § 2.34, Disorderly Conduct; and § 2.36, Gambling.

Alaska. Several commenters in Alaska questioned the applicability of these regulations to park areas in that State. In general, the rules found in 36 CFR Part 13 apply to Alaska park areas and supersede the general regulations found in 36 CFR Parts 1–6 in those

specific instances where the provisions of the general regulations are in conflict. For example, Alaskan park areas have specific regulatory provisions concerning snowmobiles, motorboats, aircraft, weapons, traps and nets, hunting, trapping, off-road vehicles, nonmotorized surface transportation (including dogsleds), unattended or abandoned property, camping, picnicking, permits, access, and cabins.

A number of general regulations or portions thereof continue to apply in Alaska. These include, but are not limited to, audio disturbances, fires, sanitation and refuse, misappropriation of property and services, trespassing, tampering and vandalism, interfering with agency functions, disorderly conduct, and the regulations governing First Amendment activities (sale or distribution of printed matter, public assemblies).

Closures in park areas in Alaska will be established in accordance with the requirements of the Alaska National Interest Lands Conservation Act 16 U.S.C. 3101 et. seq., and its implementing regulations in 36 CFR 13.30.

Section 1.3 Penalties.

A few commenters questioned why the National Park Service has three different types of penalty provisions and suggested that they be standardized. The penalty provisions are established by statute and can only be changed through legislation.

One individual recommended that the Service add a section providing for the forfeiture of property and equipment related to violations of regulations. It is generally agreed that forfeiture proceedings may not be initiated unless authorized by an applicable statute. In the absence of such statutory authority, the Service cannot adopt this suggestion.

Section 1.5 Closures and Public Use Limits.

A few commenters expressed concern that this section would allow the superintendent to be arbitrary and excessive in implementing closures and exercising public use control authority. All of the management tools recognized in this section have their utilization tied to situations described in § 1.5(a). They may not be used if they would conflict with "applicable legislation," such as 16 U.S.C. 1, or the enabling legislation for a specific park area. Furthermore, this authority may be applied *only* after the superintendent determines that at least one of the objectives described in § 1.5(a) necessitates such action.

The designation process provided in this section gives the superintendent some discretion in allowing activities within park areas provided they are *not* contrary to Federal statutory law or in derogation of park values. Designations that provide for relaxation from generally imposed restrictions are provided for in the individual regulations in this chapter.

The designation process may *never* be used to contravene Federal statutory law and may only be used where specifically provided for in a particular section of the regulations in this chapter.

Several commenters stated that this section will allow superintendents to make decisions without adequate public involvement. The Service believes that the regulation, as written, will have just the opposite effect. It was drafted to more closely pattern the notice and comment procedures of the Administrative Procedure Act. (5 U.S.C. 551 *et seq.)* This section requires superintendents to rely on notice and comment rulemaking for actions that will have a major impact on the visitor-use patterns for all or a portion of a park area, adversely affect the park's natural, aesthetic, scenic or cultural values, require a long-term or significant modification in the resource management objectives (or traditional visitor-use patterns of that unit), or are of a highly controversial nature. The public will be notified of actions that fall below this threshold in accordance with the procedures in § 1.7.

Section 1.6 Permits.

Seventy individuals expressed opposition to this section because it was too broad and gave the superintendent too much authority to waive regulations and to provide exceptions, thereby endangering park resources. The regulation is structured to allow the superintendent to issue a permit for an otherwise prohibited or restricted activity or impose a public use limit *only* when authorized by other regulations in the chapter. Sixteen regulatory provisions authorize the issuance of permits. Section 1.6 further stipulates that: "The Activity allowed by a permit *shall* be consistent with applicable legislation, Federal regulations and administrative policies, and based upon a determination that public health and safety, environmental or scenic values, natural or cultural resources, scientific research, implementation of management responsibilities, proper allocation and use of facilities, or the avoidance of conflict among visitor use activities will not be adversely impacted." The Service views these restrictions on permitting as adequate to ensure protection of park resources.

A few commenters suggested that all authorized permits be filed in written form. A "permit," as defined in § 1.4, is a written authorization. A further stipulation in this regulation is that a compilation of those activities requiring a permit shall be maintained by the superintendent and available to the public upon request.

One individual expressed concern over the obtaining of permits for through travel: "The regulations should allow * * * for permits to be issued in advance by mail for the convenience of visitors who cannot reasonably be expected to apply in person." The Service agrees that permits can be issued by mail, and it is the intent of this regulation to allow such an accommodation at the discretion of the superintendent.

In its proposed regulation (47 FR 11600), the National Park Service stated that it was strongly considering the imposition of criminal sanctions for permit violations. Seventeen comments were received in response to this query—16 supported the imposition of criminal penalties, and one was opposed. This provision has been included in each of the regulations in which the issuance of a permit is specifically prescribed, with the exception of § 2.51 and § 2.52, which authorize First Amendment activities. The National Park Service has determined that the imposition of criminal sanctions for permit violations is fair and equitable. It allows the Service to take a less severe form of corrective action for certain activities conducted outside the scope of the permit, or in violation of the permit terms and conditions, rather than taking a more severe action, which is the total loss of the privilege through permit revocation. The Service believes that in some situations mandatory loss of a permit is an undesirably severe penalty, and in some cases after-the-fact revocation is a meaningless penalty.

The Service received several comments concerning the giving of false information on permit applications. Since these applications are necessary to gauge the scope and impact of the proposed activity on park resources and to fix responsibility for the permittee's actions, it is crucial that reasonably accurate and reliable information be provided. Therefore, the Service has amended § 2.32(a)(3) to prohibit the giving of false information on an application for a permit.

Section 1.7 Public Notice.

Six individuals suggested that this section be modified to require notice to

the public of all permit applications. The National Park Service has determined that this requirement is neither necessary nor administratively feasible, since the Service issues tens of thousands of permits each year. Section 1.6, below, provides that the public must be notified of the existence of a permit *system*, pursuant to § 1.7.

Section 1.10 Symbolic Signs.

In its proposed rule (47 FR 11609), the National Park Service requested comments on the retention of this section from the earlier codifications of NPS regulations. Five comments were received, 3 in favor of keeping the section, and 2 opposed. The Service has decided to retain this regulation because it provides general information on signing within park areas, and is used as a means of designation in accordance with the provisions of § 1.7.

PART 2—RESOURCE PROTECTION, PUBLIC USE AND RECREATION

Section 2.1 Preservation of Natural, Cultural and Archeological Resources.

Forty-nine commenters indicated that this regulation did not spell out, specifically enough, all of the natural, cultural and archeological resources that need protection within park areas. The National Park Service believes that the use of broad, generic terms is a better way to provide resource protection. It is the intent to this regulation to protect all natural, cultural, and archeological resources within park areas to leave them unimpaired for the enjoyment of future generations. The listing of specific terms, the Service believes, invites the risk of omitting one, and weakens protection of park resources through a technical omission.

A few commenters requested that the word "digging" be added to § 2.1(a) as a prohibited activity. The Service has adopted this recommendation.

Numerous individuals supported the provision that prohibits the introduction of exotic species of plants and animals into park areas. The Service believes that the introduction of exotic species of plants and animals is a serious and significant resource problem. While this regulation cannot prevent unassisted spreading of species from outside locations, it does give the superintendent the clear authority to halt any deliberate introductions.

Several commenters cited the lack of any specific provision in the proposed rule concerning the gathering of firewood for use within park areas. This regulation addresses that concern by prohibiting the use or possession of wood gathered from within the park area. This blanket prohibition may only be relaxed by the superintendent upon a determination that the gathering and use of dead wood on the ground for fuel for recreation purposes will not adversely affect park resources, including the need to recycle wood through the ecosystem by natural processes. This is particularly true in semiarid, sparsely wooded areas, where decomposing wood may become bedding for plant species and a source of food for animals.

Many individuals expressed concern that this regulation, as proposed, would have the effect of restricting legitimate cross-country hiking. Paragraph (b) of this regulation has been revised to provide the superintendent with the authority to prohibit leaving a trail for the purpose of shortcutting to the same or an adjacent trail segment. This paragraph is not intended to prohibit cross-country travel, or off-trail exploring in those park areas where it has been determined that these activities do not result in resource damage or pose a concern for public safety.

A few commenters questioned the applicability of this regulation to the taking, use or possession of fish, wildlife or plants for ceremonial or religious purposes. In response to these comments, the service has added a provision to this section prohibiting such activities except where authorized by Federal statutory law, treaty rights, or in accordance with § 2.2 or § 2.3. This section is also intended to cover activities undertaken by Native Americans.

The Service recognizes that the American Indian Religious Freedom Act directs the exercise of discretion to accommodate Native religious practice consistent with statutory management obligations. The Service intends to provide reasonable access to, and use of, park lands and park resources by Native Americans for religious and traditional activities. However, the National Park Service is limited by law and regulations from authorizing the consumptive use of park resources.

Section 2.2. Wildlife Protection.

Target Practicing. Numerous commenters opposed the provision in this regulation that prohibits discharging a weapon except for the purpose of legally taking wildlife. The National Park Service has retained this prohibition in this final rule to prohibit the random discharge of weapons and target practicing, except where the National Park Service has approved the use of existing facilities. The Service believes that this prohibition is necessary to ensure public safety and protect park resources.

Trapping. In the March 17, 1982 **Federal Register** (47 FR 11614), the National Park Service in its proposed rule published a clarification of its existing regulation on hunting and trapping. The proposed revision, which was *not* a change in policy eliminated the three management categories (natural, historical, recreational), and referred specifically to a park's enabling legislation as the authority for both hunting and trapping.

For certain park areas, Congress has stated that the taking of wildlife through hunting or trapping is an acceptable activity. This authority is found most frequently in connection with national recreation areas, lakeshores, and seashores. In recognition of this explicit Congressional authorization, these activities are clearly permissible in these specified areas.

If the legislation for a park area authorizes hunting or trapping on a discretionary basis, special regulations for the park area will govern a hunting or trapping program.

In units of the National Park System where hunting and trapping activities are not authorized by the enabling legislation for a park area, resource management for purposes of wildlife use and control is accomplished only pursuant to the authority of 16 U.S.C. 3 which authorizes the reduction of animal populations determined to be "detrimental" to the use of the area and its statutory values.

During the 120-day comment period, of the 1,966 letters received, 1,721 of these were on the trapping issue. Those in support of the NPS regulation (allowing trapping only where specifically authorized by Federal statutory law) numbered 1,584, including one State agency—those opposed numbered 137, including four State agencies.

Inspections. One commenter suggested that a provision be added to the regulation authorizing the National Park Service to conduct inspections of hunting equipment and wildlife that has been taken pursuant to applicable Federal and State regulations. This suggestion has been adopted in § 2.2(f). This provision is similar to the fishing inspection regulation set forth in § 2.3(f).

Hunting Guides. In its proposed rule (47 FR 11601), the Service specifically solicited comments on the need for a provision regulating persons who assist or guide hunting parties. Only two comments were received indicating that this is a commercial activity and should be regulated as such. The National Park Service agrees, and has decided to defer

this issue pending a comprehensive review of its commercial regulations. (36 CFR Part 5).

Section 2.3 Fishing.

Taking of Aquatic Wildlife. The proposed rule (47 FR 11614) authorized fishing and the taking of aquatic wildlife in accordance with State law. Aquatic wildlife was defined to include frogs, turtles, crabs, clams, mussels, cray fish, and lobsters. Eighty-seven commenters objected to this interpretation of fishing. Many individuals stated that the taking of frogs, turtles, and the like, did not constitute fishing and should be prohibited, unless such taking was specifically authorized by Federal statutory law.

In response to these comments, the National Park Service has determined that this broadened interpretation of "fishing" is inconsistent with past administrative practice and policy to conserve and protect park resources and the wildlife therein.

Consequently, this final rule authorizes only fishing, in accordance with the State law. "Fishing," is defined in § 1.4, as the taking of bony fish, sharks, salt water mollusks or crustaceans. The taking of other aquatic wildlife, such as frogs and turtles is *not* authorized, nor is the taking of mollusks or crustaceans in fresh water.

On commenter pointed out that the Service was inconsistent in the proposed regulations in only prohibiting commercial fishing in the fresh waters of park areas unless authorized by law. The National Park Service agrees with this comment. Engaging in commercial activities is prohibited under 36 CFR 5.3. The Service has clarified this provision to make it clear that all commercial fishing is prohibited unless authorized by Federal statutory law or regulation.

Live or Dead Bait. Numerous commenters read the proposed rule as a total prohibition on the use of live or dead minnows, chubs and other bait fish, in fresh waters. This was not a correct reading of the proposed rule, and the Service has clarified the provision in this rulemaking.

The use of live or dead bait is prohibited *except* in designated waters. No waters may be so designated, however, unless *all* of these criteria are met: (1) Non-native species are already established; (2) the introduction of additional number of types of non-native species would not impact populations of native species adversely; and (3) park management plans do not call for elimination of non-native species. This clarification is consistent with law and National Park Service policies.

Section 2.4 Weapons, Traps and Nets.

A few commenters suggested that the language of the proposed rule that prohibited loaded weapons in vessels not underway, and used as a stationary shooting platform, was too restrictive. The Service has modified the regulation in response to this comment.

Several individuals requested that this section be revised to prohibit the carrying of weapons or guns in park areas where hunting is not permitted.

The Service has determined that it is not feasible to prohibit the possession of weapons in all situations, and a total prohibition would be unenforceable. The regulation, therefore, allows the possession of unloaded weapons within residential dwellings and temporary lodgings, such as a motel room, and within or upon a mechanical mode of transportation. The latter provision will provide relief for transient individuals passing through park areas. Horseback riders or those on foot must apply for permits.

Access Corridors. The Service received 88 comments in opposition to the provision authorizing the superintendent to designate access corridors where weapons, traps or nets may be carried or possessed for the purpose of gaining access to otherwise inaccessible lands or waters where access is impracticable or impossible. The issue raised in these comments was that the establishment of these corridors would invite poaching and unauthorized use of weapons, traps and nets within park areas. The Service recognizes this concern and has modified the regulation to limit the carrying or possession of weapons, traps or nets to those circumstances enumerated in § 2.4 and in accordance with a permit issued by the superintendent. This provision is not intended to provide easy or more economical access to hunting sites adjacent to park areas. It is intended to recognize and address individual access problems to private property or address those rare instances where public access to adjacent lands or waters has, in effect, been eliminated by the implementation of these regulations or is otherwise impracticable. It was identified as a needed authority in several large western park areas.

Section 2.5 Research Specimens.

The proposed regulations identified the Regional Director as the approving authority for research permits. Several commenters indicated that this level of approval was too high and would result in unnecessary delay without increasing the protection of park resources. The Service concurs with these comments and has amended the regulations to place the approval authority for research specimens with the superintendent.

One commenter questioned whether this section applied to the tagging and attachment of radio collars to fish and wildlife. The term "taking" is defined in § 1.4. This term was defined to address the elements of pursue, capture, collect, hunt, net, trap or attempt to engage in the above activities. The attachment of tags or monitoring equipment requires the capture of an animal and the subsequent monitoring requires pursuit. These elements are adequately addressed in § 2.5(a). The Service intends that this regulation govern both consumptive and nonconsumptive research.

Several commenters suggested that the regulation was unclear as to when a permit to collect an endangered species was required from the U.S. Fish and Wildlife Service or a State agency. The Service has amended the proposed regulation to require that prior to obtaining an NPS permit to collect specimens, including endangered or threatened species, the applicant obtain previously all State and Federal permits, including a permit from the U.S. Fish and Wildlife Service to collect an endangered species.

Section 2.10 Camping and Food Storage.

One individual indicated that the prohibition against the installation of permanent camping facilities was not adequately established in the proposed rule. The Service has adopted this suggestion by removing the word "temporary" from § 2.10(b)(2).

Comments were received that the proposed rule, prohibiting camping within 100 feet of a flowing stream, river, body of water, or 25 feet of a main road, was too restrictive. The Service has determined that these standards should be maintained. However, superintendents may designate areas and conditions where camping within 100 feet of a flowing stream, river, body of water, or 25 feet of a main road is allowed, based upon a determination that those areas are essential to the accommodation of visitor needs and that resulting impact will not adversely affect water quality or the area's aesthetics, or damage park resources.

In its proposed rule, the Service specifically requested comments on the retention of the "quite hours" restriction in campgrounds (47 FR 11603). Fourteen comments generally supportive of this retention were received. A few individual suggested that this provision

be covered under the procedures of § 1.5. The Service has decided that the "quite hours" restriction should be included in the camping regulation, as there is need for a servicewide standard on this issue. Should the 10:00 p.m. to 6:00 a.m. timeframe not be suited to a particular park's need, a superintendent may designate different times under the authority of § 1.5.

The Service also requested comments in its proposed rule on whether the provision should be retained prohibiting the use of a campsite within a park area as a base for hunting outside of the park. The National Park Service has determined that it is inappropriate to prohibit the use of campsites within a park as a base for hunting outside the park. The law enforcement and public use concerns of the Service will be met through a prohibition on the display of wildlife carcasses, remains or parts thereof except when taken pursuant to § 2.2. If further restrictions are needed, the superintendent may use the designation process authority in § 1.5. It should be noted that while the display of widlife or parts thereof is prohibited except pursuant to § 2.2, the enabling legislation for the following park areas provides that the *possession* of the dead bodies of wildlife or the parts thereof shall be prima facie evidence of the violation of the applicable statutory prohibition on the taking of wildlife: Crater Lake, Glacier, Great Smoky Mountains, Hawaii Volcanoes, Isle Royale, Lassen Volcanic, Mammouth Cave, Mesa Verde, Mount Rainier, Olympic, Rocky Mountain, Sequoia, Shenandoah, Yellowstone and Yosemite National Parks.

In response to comments that the food storage regulation did not provide enough flexibility for the superintendent to meet individual park needs, the Service has modified this provision. Superintendents have the authority to designate locations in which food storage requirements will be in effect and have discretion in implementing these restrictions.

Section 2.11 Picnicking.

The National Park Service received 68 comments in opposition to this regulation, which establishes a single standard for picnicking in all National Park System areas. This rule generally allows picnicking, an activity that is enjoyed by many park visitors with little, if any, resource impact in a number of park areas. However, the Service also recognizes that there are many parks or portions of parks where picnicking is not appropriate, *i.e.*, battlegrounds, cemeteries, historical sites. To accommodate these areas, this regulation authorizes the superintendent to restrict picnicking or close areas to this activity. Since previous codifications of this rule generally required that the public be advised of the picnicking prohibition through signing or other notification, the Service believes that this rule will have little actual impact on the manner in which picnicking is regulated.

Section 2.12 Audio Disturbances.

Numerous commenters pointed out two problems with this proposed regulation: (1) The sound pressure level of 85 decibels for motorized equipment or machinery was too high; and (2) without a specified distance at which to measure this sound, the regulation was unenforceable. In response to these comments, the Service has adopted a noise level of 60 decibels measured on the A-weighted scale at 50 feet. Devices producing noise above this level are prohibited. A second standard or test has also been added in park areas where a decibel meter is unavailable or where reasonablenesss calls for a lower level of noise, such as in crowded campgrounds, during interpretive programs, and at night when individuals are sleeping. The standard here will be whether the noise is reasonable, considering the nature and purpose of the actor's conduct, location, time of day or night, or impact on other park users. This standard is identical to the one adopted in § 2.10 and §2.34.

Section 2.13 Fires.

A few individuals questioned the need to apply this regulation to privately owned lands under the exclusive or concurrent jurisdiction of the United States. This does not represent a change from earlier codifications on this provision. The Service believes that it must have the authority to restrict such fires that, if uncontrolled, could spread to threaten park lands or endanger resources, persons or property on other private lands.

Section 2.14 Sanitation and Refuse.

Two commenters suggested that the prohibition, in the proposed regulation, against polluting or contaminating a drinking water supply, should be broadened to include all park area waters or water courses. The National Park Service has adopted this suggestion. Another individual recommended that the Service *require* the burial of human waste in nondeveloped areas. This in not feasible in certain areas because of hydrological, geological and ecological factors, such as frozen ground conditions or rocky terrain. The superintendent needs some discretion to establish procedures concerning the disposal, containerization or carryout of human waste, as required in a particular situation. This final rule provides that flexibility.

Section 2.15 Pets.

Several individuals suggested that this regulation be rewritten to authorize the closing of portions of a park to all pets. Should such a closure be necessary, it can be accomplished under the authority of § 1.5.

A few commenters requested that a provision be added to this regulation to prohibit one from leaving a pet locked in a car on a hot day. To alleviate this problem, the superintendent can designate certain stipulations in accordance with the procedures of § 1.5 and §1.7.

One writer suggested that the term "unreasonable" in §2.15(a)(4) should be more precisely defined. The Service has, therefore, adopted a noise standard, similar to the one used in §2.10, §2.12 and § 2.34, for this regulation.

One individual indicated that a paragraph should be added excluding from the provisions of this section, dogs used by authorized Federal, State and local law enforcement officers in the performance of their official duties. This suggestion has been adopted in §2.15(f)

Several commenters requested a clarification of the applicability of this section to sled dogs. In park areas where sledding is permitted, dogs, while in harness, may be used to pull sleds within designated areas. Sled dogs are authorized for use in Alaskan park areas under 36 CFR 13.12.

Section 2.16 Horses and Pack Animals.

One individual commented that the term "unreasonable noise or gesture" as used in §2.16(f) was too vague to be enforceable. The Service agrees with this comment, and has adopted the following standard for unreasonable noise or geature "considering the nature and purpose of the actor's conduct, and other factors that would govern the conduct of a reasonably prudent person * * *" This standard is identical to the one used in § 2.15(a)(4).

Several commenters suggested that this regulation be revised to authorize the use of sled dogs as pack animals. The Service has determined that, as a general rule, dogs should *not* be designated as pack animals. They are inappropriate in nondeveloped areas where they frequently interact unfavorably with park visitors and wildlife. Sled dogs are authorized for

use in Alaskan park areas under 36 CFR 13.12.

Section 2.17 Aircraft and Air Delivery.

One commenter indicated that the National Transportation Safety Board (NTSB) must release a wreck scene before parts may be removed from a downed aircraft. This applies to general aviation, as well as to commercial aircraft. In response to this comment, the Service has deleted the provision authorizing the owner of a downed aircraft to remove component parts at the time of incident, or within a reasonable period thereafter with the approval of NTSB. In addition, when the superintendent is establishing the conditions for removal of the wreck, consideration must be given to the National Transportation Safety Board's release of the wreck scene.

A few commenters recommended that the Service prohibit the use of hovercraft in park areas. The National Park Service has adopted this suggestion. "Hovercraft" is defined as a device that is supported by a fan-generated air cushion. The Service has determined that hovercraft should be prohibited because they provide virtually unlimited access to park areas and introduce a mechanical mode of transportation into locations where the intrusion of motorized equipment by sight or sound is generally inappropriate. This is consistent with the Service's intent to control portable engines and motors under § 2.12. Hovercraft shall only be permitted pursuant to special regulations and only following a thorough analysis of their effect on park resources.

Numerous individuals requested that the National Park Service promulgate regulations covering minimum altitudes for flights over park areas. Once again the Service responds that it does not have jurisdiction over airspace. The assimilation of Federal Aviation Administration regulations by the National Park Service governs aircraft operating on the lands and waters of the National Park System. The problem of low-flying aircraft, over park areas, must be handled on a case-by-case basis. The Service will work with FAA officials and other interested organizations at the local level in an attempt to encourage pilots to comply with minimum altitudes over park areas.

Definition of Aircraft. The Service received several comments from individuals who believed that the proposed rule failed to regulate powerless flight, *i.e.*, hang gliders. The term "aircraft," as defined in § 1.4, means a device used or intended to be used for human flight in the air, including powerless flight. This definition expands the controls to ultralight aircraft and powerless flight, and will simplify and ensure greater uniformity in regulating air delivery activities.

Hang gliding. The Service received 78 comments citing the inappropriateness of hang gliding in park areas. Two commenters supported this activity. The National Park Service acknowledges that in a particular park area hang gliding may be a desirable and appropriate recreational activity. On the other hand, the Service recognizes that while the passage of hang gliders through the air may have negligible impact, the launching and landing sites may require protection from overuse, and there is a known potential for unlimited flights to interfere with other activities. National Park Service responsibilities for park preservation and use require that a reasonable degree of control be exercised over hang gliding.

In response to the significant public comment on this issue, and in an effort to provide greater uniformity in regulating special uses within park areas, the Service has modified this final rule. Section 2.17(a)(1) of this regulation prohibits: "Operating or using aircraft on lands or waters other than at locations designated pursuant to special regulations." This revision requires that the use of park areas by aircraft (powered and powerless) will only be allowed through rulemaking. This is a change from the proposed rule that called for use of aircraft at designated take-off or landing areas, or by permit.

The National Park Service will be consistent in its approach to authorizing special uses in park areas. Special uses, which may have a major impact on the resources or visitor use patterns for a park area, or may be controversial in nature, will be allowed only after full public involvement and the policy reviews that are accorded all rulemaking documents. Superintendents will be required to rely on notice and comment rulemaking procedures *before* authorizing the use of aircraft, whether powered or powerless.

Section 2.18 Snowmobiles.

One individual indicated that the 45 mph speed for snowmobiles was too high. The Service points out that 45 mph is the *maximum* speed allowable. Should conditions indicate the need for lesser speeds, the public will be notified. In response to another comment, the Service has added a restriction against snowmobile racing. This activity is inappropriate in park areas for public safety reasons.

The National Park Service received 99 comments from individuals who were opposed to any snowmobiling in parks. The Service recognizes that snowmobile use is inappropriate in certain park areas and should therefore be prohibited. However, there are park areas where such use may be acceptable as a mode of transportation and recreation that provides an alternative form of park enjoyment or access when snow cover interrupts normal vehicular access to a park. Snowmobile use in these areas is restricted to designated routes and water surfaces that are used by motorized vehicles or motorboats during other seasons. Snowmobiles shall not be allowed except where designated and only when their use is consistent with the park's natural, cultural, scenic and aesthetic values, safety considerations, park management objectives, and will not disturb wildlife or damage park resources. Routes and water surfaces so designated shall be promulgated as special regulations.

As indicated above, the Service believes that special uses that have a major impact on the resources or visitor use patterns for a park area, or may be controversial in nature, should only be allowed after full public involvement. Notice and comment procedures will be followed in accordance with the Administrative Procedure Act.

Section 2.21 Smoking.

Several commenters requested that the smoking prohibition in this regulation be extended to all public buildings, park trails and backcountry areas. The Service believes that the scope of this rule is broad enough to address current problems. Should additional closures be necessary, the authority in § 1.5 may be used.

Section 2.22 Property.

One individual commented that this regulation may not be necessary because of the excellent coverage of this subject in Title 41 of the Code of Federal Regulations. Title 41 deals only with abandoned property, and it is referenced in § 2.22(c)(3). This regulation, however, also deals with impoundment, and includes other provisions tailored to the National Park Service.

One commenter suggested that a provision be added to this section providing for the impoundment of unattended vehicles. In response, the Service has added to § 2.22(b)(2) the phrase that "Unattended property that interferes with * * * orderly management of the park area * * * may be impounded by the superintendent at any time." This is intended to cover a

vehicle, vessel, aircraft or other property that interferes with public transportation systems, is illegally registered, impedes emergency services, or illegally obstructs the orderly movement of persons, vehicles, vessels or saddle and pack animals, or otherwise interferes with park operations.

Section 2.32 Interfering with Agency Functions.

In response to a comment, the National Park Service has added to § 2.32(a)(1) the phrase that interfering with a government employee engaged in an official duty "or on account of the performance of an official duty," is prohibited. This addition is intended to deal with threats or intimidations that arise and are dealt with after an employee goes off duty, but which are directly related to an individual's employment. Another commenter suggested that the interference and false report provisions also apply to "agents" of the National Park Service. The Service agrees and intends that the work agent refer to officially enrolled volunteers, contractors and others who are performing specific duties or functions for the National Park Service.

Several individuals recommended that this section be broadened to prohibit interference with *all* activities regulating public use. The Service has rejected these comments. The prohibitions in this regulation were narrowly drafted and intended to give the Service the authority it needs to ensure that government operations proceed without interference. The Service does not believe that blanket authority is necessary.

Section 2.33 Report of Injury or Damage.

In response to a specific comment, the National Park Service has added a value limit to this regulation. It requires the reporting, as soon as possible, of all incidents resulting in injury to persons or damage to property in excess of $100. This does not preclude reporting damages that are less than $100.

Section 2.35 Alcoholic Beverages and Controlled Substances.

Standard Applied. Several commenters suggested that this regulation be revised to delete the standard that must accompany the prohibition against the presence in a park area when under the influence of alcohol or a controlled substance. The Service has determined that the standard that prohibits one from being under the influence of alcohol or controlled substances "to a degree that may endanger oneself or another person, or damage property or park resources" is required to ensure Servicewide consistency in the enforcement of this regulation.

Open Containers. Numerous individuals pointed out that the proposed rule prohibiting the possession of an open container of alcohol within a motor vehicle was too broad. One commenter wrote: "This is too broad and unintentionally restrictive and subject to being enforced selectively. If carried to the limit, enforcement of this would mean that drinking by a couple, of wine with dinner, served at their table in the living area of their motor home or trailer parked in their campsite could result in enforcement action."

The Service is receptive to these comments and has modified this regulation accordingly. The application of this regulation is now limited to drinking or possessing an open container of alcohol within the passenger area of a motor vehicle or the cargo area of a motor vehicle, such as a pickup bed, when that area is used to transport passengers. This rule directs that open containers may be stored in the area of a motor vehicle designed for the transportation of luggage, or in the case of motor homes, the areas designed for storage of food and beverages such as cupboards or refrigerators. The Service does not intend that this prohibition apply to motor vehicles, including vans and motor homes parked in designated camping and picnic areas, or other designated areas where food and alcoholic beverages may be consumed or are being prepared for consumption.

A few commenters suggested that the "open container" provision be dropped and that State law be followed. The National Park Service has determined that a Servicewide standard is necessary. State open container laws vary and are nonexistent in some States.

Closures. Many individuals recommended that the limited closure authority provided in the regulation be broadened beyond public buildings and parking areas to authorize the superintendent to close entire parks or large portions thereof to the consumption of alcoholic beverages. The Service has broadened this closure authority somewhat by allowing the closure of vessels, overlooks, walkways, gravesites, commemorative areas, or archeological sites. This limited closure authority, however, must be conducted in accordance with § 1.5(b) *and* based upon one of two determinations: (1) That the consumption of alcohol would be inappropriate considering the purpose of the park area and the dignity or atmosphere to be maintained; or (2) that incidents of aberrant behavior related to the consumption of alcohol are of such magnitude that the fair, impartial and diligent application of § 1.5 and § 2.34 do not alleviate the problem.

This limited closure authority will allow superintendents to prevent many disruptive events from occurring. However, the National Park Service is equally concerned that the consumption of alcoholic beverages in a park area not be unnecessarily or unfairly curtailed due to the actions of a disruptive minority of the visiting public. Proposals to close an entire park area to the consumption of alcoholic beverages, therefore, require the promulgation of special regulations.

Combination of Regulations on Alcohol and Controlled Substances. In its proposed rule (47 FR 11607), the National Park Service requested comments on whether the combination of these two offenses in one regulation would compromise the ability of the United States to prosecute persons under the influence of alcohol or controlled substances within park areas. Four comments were received in response to this query, all of which indicated no problem with the combination. It is therefore retained in this final rule.

Section 2.36 Gambling.

In its proposed rule (47 FR 11607), the National Park Service requested comments on whether, in view of existing State law in this area, this regulation is needed. Eight comments were received, six of these supported retention of the provision. The Service has decided to retain this section.

Section 2.50 Special Events.

In response to a comment, the Service has removed a provision that appeared in the proposed regulation that required the superintendent to designate on a map areas available for special events. Because of the wide range of activities held in park areas varying in length, location, character and number of participants, managers need flexibility in scheduling.

This regulation authorizes the holding of special events provided there is a meaningful association between the park area and the event, the observance contributes to visitor understanding of the park, and a permit has been issued by the superintendent.

Section 2.51 Public Assemblies, Meetings.

Several commenters suggested that the requirement that permit applications

reach the superintendent at least 48 hours in advance of the proposed event was unreasonably short, as was the superintendent's response time requirement of 48 hours. The Service has deleted these time requirements. It is anticipated that applicants will submit their requests in a timely fashion in advance of the proposed public assembly or meeting. The superintendent shall, without unreasonable delay, act upon the request.

Section 2.52 Sale or Distribution of Printed Matter.

The same comments regarding time frames were addressed in this regulation, and the Service's response is the same as above. In response to a request that the National Park Service develop a regulation restricting petitions, the Service does not feel that such a rule is necessary at this time. Petitioning does not appear to be enough of a concern Servicewide to justify the development of a general regulation. However, the Service will continue to monitor this situation and should a greater need arise, a regulation could be developed.

Section 2.60 Livestock Use and Agriculture.

The Service received 20 comments indicating that its proposed regulation needed further guidance as to when livestock use and agriculture are appropriate in a park area. In response to these individuals, the Service has clarified this rule. The section prohibits running-at-large, herding, pasturing or grazing of livestock of any kind in a park area, or the use of a park area for agricultural purposes, except: when specifically authorized by Federal statutory law, when required under a reservation of use rights arising from acquisition of a tract of land, or when designated and conducted as necessary and as an integral part of a recreational activity or required in order to maintain a historic scene.

Section 2.61 Residing on Federal Land.

Several commenters requested that the National Park Service define residence. The Service has declined to define this term. Residence situations vary from park to park. Consequently a standard definition would create administrative difficulties. Parks will have to construct their own criteria for this violation, relying on State law for support.

Section 2.62 Memorialization.

In its proposed rule (47 FR 11609), the National Park Service requested comments on whether a provision was needed to regulate the scattering of ashes in park areas. Four comments were received, generally supportive of the provision. The Service has decided to retain it to alleviate the lack of a clear determination as to whether this is a permissible activity.

PART 3—BOATING AND WATER USE ACTIVITIES

Section 3.1 Applicable Regulations.

In its proposed rule, the National Park Service requested comments on the pros and cons of codifying commonly used U.S. Coast Guard regulations in this Part, or merely adopting them by cross reference. The Service received eight comments, five in support of adoption by reference, and 3 opposed. In this final rule, the National Park Service will retain the adoption of Coast Guard regulations by cross reference, having determined that codification of all of these rules is impractical, and not in keeping with regulatory reform. Codifying all applicable Coast Guard regulations would also be costly and require constant monitoring and changes. The Service intends to reprint pertinent Coast Guard regulations in a publication for park personnel and for possible distribution to the public.

A few commenters asked whether the Part 3 regulations were applicable to non-navigable waters. The Service is applying pertinent Coast Guard regulations to all waters within park areas, even if they are non-navigable.

Section 3.2 National Park Service Distinctive Identification.

One commenter suggested that the Service require that the name of the park appear on the vessel. The Service has determined that placing the name of the park on the hull of a vessel is inappropriate

Another commenter requested that all NPS vessels be equipped with a revolving blue light. The Service is not accepting this suggestion. The blue light is specific to vessels used in law enforcement, whereas this section applies to all National Park Service vessels.

Section 3.6 Prohibited Operations.

Two individuals indicated that the prohibition in the proposed rule against operating a vessel "in the vicinity of a diver's marker, downed water skier or swimmer" was too vague. The Service agrees, and has added the distance "100 feet" to this provision.

Closure Authority for Quiet Areas. The National Park Service received 21 comments requesting that it include a provision authorizing the closure of certain park waters. The existing regulation was inadvertently omitted from the proposed rulemaking and has been included in this final rule.

Length Restriction. Fifty-one commenters indicated a need for a length requirement in this regulation. The Service has, therefore, added a prohibition against operating a vessel in excess of designated size, length, or width restrictions. This will provide superintendents with the flexibility needed to deal with specific situations. It is anticipated that existing length limitations will be retained in most park areas.

Section 3.20 Water Skiing.

One commenter requested that the Service include a provision in this section that a "skier down" flag be required. This is not a universal requirement, and therefore will not be included in these general regulations. State law can be adopted where appropriate and necessary.

PART 4—VEHICLES AND TRAFFIC SAFETY

Hitchhiking

The Service received five comments on the pros and cons of prohibiting hitchhiking within park areas. The Service has decided not to take any action on this provision pending a comprehensive review and analysis of 36 CFR Part 4.

Section-by-Section Analysis

PART 1

Section 1.1 Purpose.

This section sets forth the purpose of these general regulations, which is to provide for the proper use, management and protection of persons and resources within areas under the jurisdiction of the National Park Service. It further highlights the rationale for the Service's regulatory program by referencing the statutory purposes of areas of the National Park System.

Section 1.2 Applicability and Scope.

These regulations apply to all persons entering, using, visiting or otherwise within the boundaries of lands or waters administered by the National Park Service. These rules are also applicable within or upon easements to the extent they are necessary to protect the Federal interest held. For example, if the easement agreement permits public access, then the Service regulations governing the public use on NPS lands apply. The interests of landowners who

have granted a less-than-fee interest will be protected.

These regulations are not applicable on privately owned lands and waters (including Indian lands and waters) within the boundaries of a park area, except as may be provided by specific regulations relating to such lands under the legislative jurisdiction of the United States. The term "legislative jurisdiction" is defined in § 1.4 to mean lands and waters under the exclusive or concurrent jurisdiction of the United States. This is intended to also include State inholdings that are under the legislative jurisdiction of the United States. These terms are defined and explained in *Jurisdiction over Federal Areas within the States, Report of the Interdepartmental Committee for the Study of Jurisdiction over Federal Areas within States*, Part II, 1957. Only 10 of these regulations are applicable on privately owned lands under the legislative jurisdiction of the United States.

These rules do not apply to park areas administered by the National Park Service in the District of Columbia and its environs, to which Part 50 is applicable. These regulations may be amended, modified, relaxed, or made more stringent by the regulations contained in Part 7 and Part 13 (Alaska parks) of this chapter, where special rules prescribed for specific park areas are set forth.

A final provision of this section provides that "administrative activities" (as defined in § 1.4) undertaken by the National Park Service pursuant to approved management plans, and in concert with existing policy or emergency actions taken in an effort to safeguard life or property, are not subject to the prohibitions prescribed in these regulations. This provision is intended to apply to National Park Service employees, agents, or volunteers working under the direction of the National Park Service.

Section 1.3 Penalties.

This section specifies the penalties to be assessed on persons convicted of violating a provision of the regulations contained in this chapter. These penalties are prescribed by statute, and are therefore not subject to rulemaking. Paragraph (d) provides the penalty authority for the recreation fee regulations found in § 2.23 and promulgated under authority of section 4 of the Land and Water Conservation Fund Act of 1965, as amended, 16 U.S.C. 460*l*.

Section 1.4 Definitions.

This section defines 54 terms used throughout the regulations. This provides clarity and consistency, and eliminates the need to have terms defined in specific regulations. The definitions from 36 CFR 4.2 have been moved to this section so that all definitions in the general regulations will appear in one place.

Paragraph (b) applies the definitions pertaining to navigation, navigable waters, and shipping enumerated in Title 14 United States Code, Title 33 Code of Federal Regulations, Title 46 Code of Federal Regulations, Title 49 Code of Federal Regulations, the Federal Boating Safety Act of 1971, and the Inland Navigational Rules Act of 1980, for boating and water activities.

Section 1.5 Closures and Public Use Limits.

This regulation establishes a uniform administrative framework for the exercise of a superintendent's closure and public use control authority. This section accomplishes three objectives: (1) It standardizes, to the greatest degree possible, the circumstances under which a superintendent may apply closures, public use limitations, and visiting hour, area designations, and activity restrictions; (2) it provides, in conjunction with § 1.7, for consistent and effective public notification of the imposition of a closure or other restriction or control; and (3) it provides, in appropriate instances, an opportunity for public input into the superintendent's decisionmaking process.

The term "public use limit" is defined in § 1.4 to mean the number of persons; number and type of animals; amount, size and type of equipment, vessels, mechanical modes of conveyance or food/beverage containers allowed to enter, be brought into, remain in, or be used within a designated geographic area or facility; or the length of time a designated geographic area or facility may be occupied.

This regulation adopts into its administrative scheme five types of controls: (1) Visiting hours; (2) public use limits; (3) closures; (4) area designations; and (5) activity restrictions.

Each of the five categories of controls serves a specific purpose. A visiting hour restriction, for example, may not be imposed for the purpose of achieving an activity restriction. Similarly, activity restrictions may not be imposed to such a degree that they will, in effect, result in the closure of an area to all use. In subparagraph (a)(1) the superintendent may establish visiting hours, impose a public use limit, or close an area (or all of the park) to all use or to a specific activity. In addition, the superintendent is authorized under subparagraph (a)(2), to impose restrictions or conditions on a use or activity. Subparagraph (a)(3) provides the authority to relax the restrictions or controls imposed under (a) (1) and (2).

All of the management tools recognized in this section have their utilization tied to situations described in paragraph (a). They may not be used if they would conflict with applicable legislation, such as 16 U.S.C. 1, or the enabling legislation for a specific park area. Furthermore, this authority may be applied *only* after the superintendent determines that at least one of the objectives described in paragraph (a) requires such action.

Under paragraph (b), the superintendent must maintain a written record of the determinations that serve as the basis for invoking the authority of this section. Although this record need not be detailed or lengthy, it must provide a meaningful explanation of the reason the action was taken. When the action must be implemented to address an emergency situation, such as where there is an imminent, serious threat to public health and safety or park resources, this determination need not be prepared until after the action has been taken. The Service does not intend that park superintendents develop a written record for closures implemented prior to the effective date of these regulations.

Paragraph (d) explains how the public will be notified of, and involved in, the exercise of authority conveyed by § 1.5. As provided in this paragraph, except when there is a serious threat to public health and safety or park resources, the superintendent shall rely on notice and comment rulemaking procedures for closures, designations, uses, or restrictions on use, or the termination or relaxation of such, having a major impact on the visitor use patterns for all or a major portion of a park area, adversely affect the park's natural, aesthetic, scenic or cultural values, require a long-term or significant modification in the resource management objectives (or traditional visitor use patterns of that unit), or is of a highly controversial nature. In making this determination, a broad prospective must be maintained. A permanent closure of a limited area within a park does not require the use of notice and comment procedures, unless it also has the required effect of significantly altering or disrupting use by a substantial number of park visitors. In

this connection, it should be noted that a particular closure or restriction in a small park unit may require rulemaking, even though the same action would not if applied in a larger park with a different use pattern.

Public notice and comment is not intended to apply to measures taken to achieve routine resource management objectives, such as construction, facility maintenance or rehabilitation, and routine practices which are aimed at preserving the viability, integrity and natural character of the park ecosystem. The public will be notified of closures, designations, restrictions and conditions falling below the threshold of paragraph (d), and all visiting hour restrictions, public use limits, and public use limit procedures, as appropriate, under § 1.7. Paragraph (f) sets forth the penalty clause for failing to abide by closures, activity restrictions, visiting hours and public use limits. Prohibitive language for an activity restriction implemented by a permit system, or violation of the terms and conditions of a permit is found in the specific regulations that authorize the application of that authority. *See, e.g.,* Picnicking, § 2.11.

The designation process specified in this section gives the superintendent limited discretion in allowing activities within park areas provided they are *not* contrary to Federal statutory law or in derogation of park values. Designations that allow a relaxation from Servicewide regulatory restrictions are *specifically* provided for in the individual regulations in this chapter. The superintendent is *not* authorized to use § 1.5(a) to relax Servicewide regulatory standards except where the authority is directly and specifically provided in a regulation. Superintendents may use the authority of § 1.5(a)(3) only to relax restrictions imposed at the park level under the authority of § 1.5 or another section providing authority to the superintendent. Section 1.5(a) may *never* be used to contravene Federal statutory law or the general regulations in this chapter, unless specifically provided for in a particular section.

Section 1.6 Permits.

The purpose of this regulation is to establish a basic procedure for the application, processing and revocation of permits issued pursuant to the regulations in this chapter. The term "permit," as defined in § 1.4, means a written authorization to engage in uses or activities that are otherwise prohibited, restricted, or regulated.

Permits may be issued only when specifically authorized by another regulation in this chapter, or when necessary to implement a public use limit imposed pursuant to § 1.5(a)(1). The establishment of a permit system is permissible only when authorized by and consistent with applicable laws, regulations and policies. Permit systems authorized and issued pursuant to specific regulations in this chapter, except § 1.5, need not be supported by a written determination unless required by the specific authorizing regulation. The use of a permit system to implement an activity restriction, use condition, or public use limit must be supported by the written determination required by § 1.5(b).

When a permit system is established, application for that permit must be submitted during regular business hours unless the superintendent has designated an alternative time period. When a regulation in this chapter requires that a permit application be received by the superintendent a minimum number of hours prior to a proposed activity, the permit application must be received during normal business hours and within the minimum time limit.

Paragraph (c) provides that the public must be notified of the existence of a permit system. The superintendent may choose the public notice methods of § 1.7 that best achieve this goal.

Paragraph (d) requires that once a permit system is created, permits that have been properly applied for *must be issued* unless to do so would, in the judgment of the superintendent, adversely impact one of the criteria listed in paragraph (a), or result in the designated capacity for an area or facility being exceeded.

Paragraph (h) provides that violations of the terms and conditions of a permit are prohibited acts and therefore subject to the penalties set forth in § 1.3. The National Park Service has determined that the imposition of criminal sanctions for permit violations is fair and equitable and allows the Service to take a less severe form of corrective action for certain activities conducted outside the scope of the permit or in violation of the permit terms and conditions. In some instances the total loss of the privilege, through permit revocation, is a more severe penalty than the imposition of § 1.3 penalties. Paragraph (g) provides the superintendent with general authority to revoke a permit for violation of its terms or conditions. Paragraph (h) establishes that violation of the terms and conditions of a permit is also prohibited. This general authority supplements the specific permit violation provisions of the regulations found in Parts 2 and 3.

Section 1.7 Public Notice.

The purpose of this regulation is to provide public notice methods for § 1.5(a) controls. Whenever the superintendent decides to close an area, establish visiting hours, impose public use limits, conditions or restrictions, designate areas for a specific use or activity, or terminate any of the above, the public shall be notified by one or more methods.

The superintendent shall choose whichever method, or combination of methods, will appropriately advise park users of such controls. In selecting the appropriate method of public notice, it is intended that the superintendent will consider a variety of factors including, but not limited to, the nature of the use affected, points of access, the number of users likely to be involved, the compatibility of the means of notice with the park environment, legal requirements, and the effectiveness of alternative means. The posting of signs, for example, may interfere with the natural setting of backcountry areas, in which case other means should be used. When rulemaking is required under § 1.5(b), those procedures are considered adequate for purposes of public notice. However, once a final rule is in effect, the superintendent should use additional methods of public notification to ensure adequate public notice and encourage voluntary compliance.

Paragraph (b) requires the superintendent to assemble in written form and update annually, a compilation of closures, use restrictions and other discretionary designations. This annual update will ensure that the Service keeps its information on these decisions current, and will result in the termination of those closures, restrictions and designations that are no longer valid or necessary. This compilation will be satisfied by compling in one source all § 1.5(a) written determinations and § 1.6(f) permit requirement listings, and other discretionary actions implemented under individual regulations in this chapter.

Section 1.10 ymbolic Signs.

This section provides general information on signing within park areas. Certain of the signs designate activities that are either allowed or prohibited. The signs are divided into the following sections: General, Accommodation or Service, Winter Recreation, Water Recreation, and Land Recreation. Consistent with international notification standards,

activities symbolized by a sign bearing a slash mark are prohibited. These signs will be used as a means of designation in accordance with the provisions of § 1.7.

PART 2

Section 2.1 Preservation of Natural, Cultural and Archeological Resources.

This section sets forth the regulations adopted by the Service that implement and supplement existing statutory law relating to the protection of the natural, cultural and archeological resources of the National Park System. "Archeological" and "cultural resources" are defined in § 1.4. The regulation has been structured to provide equal emphasis and protection of both natural and cultural resources, while continuing to recognize that in some cases the proper protection and management of these resources requires a different regulatory approach.

Paragraph (a) of the regulations set forth the specific prohibitions that are necessary to ensure that public use and enjoyment of natural and cultural resources is generally non-consumptive in nature and conducted in a manner that conserves those resources and leaves them unimpaired for the enjoyment of future generations.

Subparagraph (a)(2) has been developed to prohibit the introduction of exotic species of plants and animals into park areas. The introduction of exotic species of plants and animals poses a serious threat to the viability and integrity of park resources and may pose a direct threat to native species. While this regulation cannot prevent unassisted spreading of species from outside locations, it does give the superintendent the authority to halt deliberate introductions.

Subparagraph (a)(4) provides that the use or possession of wood gathered from within park areas is prohibited. This section is not intended to prohibit the use or possession of wood legally obtained from sources outside the park area or from authorized commercial sources or the National Park Service within the park area. This blanket prohibition may only be relaxed by the superintendent upon a determination that the gathering and use of dead wood on the ground for use as fuel for recreation purposes will not adversely affect park resources, including the need to recycle wood through the ecosystem by natural processes. The Service recognizes that in many instances the gathering of dead and down wood for use in campfires or picnic areas is appropriate to the park experience and does not result in resource damage. Conversely, in some park areas the level of use, size of the area, and purposes for which the park was established make it inappropriate to gather wood for use in fires. Further, air quality or public safety considerations may require the prohibition of open fires in some park areas. In areas where fires are not permitted, the gathering and use of wood will not be permitted.

Subparagraph (a)(7) prohibits the possession or use of a mineral or metal detector, magnetometer, side scan sonar, or other metal detecting device, or subbottom profiler. This paragraph does not apply to such devices when they are broken down and stored or packed to prevent use in park areas, electronic equipment used primarily for the navigation and safe operation of boats and aircraft, and such devices used for authorized scientific, mining, or administrative activities. The term "administrative activities" is defined in § 1.4.

The use of such devices and the removing of artifacts, relics, or historic or archeological objects, have long been prohibited on lands administered by the National Park Service. This prohibition is intended to protect historic and archeological resources. Once a historic or archeological object is unearthed, much of its value is lost since it can no longer be studied in conjunction with its location and other nearby artifacts.

Paragraph (b) of this regulation addresses the resource damage that occurs in park areas where park users shortcut between portions of the same trail or boardwalk, or shortcut to an adjacent trail or boardwalk. This regulation provides the superintendent with the authority to prohibit leaving a trail for the purpose of shortcutting to the same or an adjacent trail segment. In many park areas, severe erosion results from shortcutting. Moreover, park users shortcutting at trail switchbacks often dislodge rocks that pose a hazard to trail users immediately below the shortcutting area. In other park areas with fragile vegetation such as dune grass or with dangers to public safety, such as geyser basins, the authority will be implemented to confine travel to designated boardwalks. The superintendent is authorized and directed to prohibit shortcutting on a trail or a portion thereof upon a determination that the shortcutting activity is resulting of may adversely impact the criteria set forth in § 1.5(a). This regulation is not intended to prohibit cross-country travel, or off-trail exploring in those park areas where it has been determined that these activities do not result in resource damage or pose a threat to public safety.

Paragraph (c) authorizes the superintendent to designate certain types of fruits, berries, nuts, or unoccupied seashells that may be gathered for personal use or consumption. These designations shall be included in the compilation of designations, closures, permit requirements, and other restrictions that are available in the park area. (*See* § 1.5 and § 1.7) This paragraph provides limited authority to the superintendent to authorize the consumptive use of park resources. However, the authority may only be implemented by the superintendent upon a determination that: (1) The loss of the natural product from the ecosystem will not adversely affect park wildlife through disruption of the food chain; (2) the loss of reproductive fruits or nuts will not result in a diminished reproductive capacity of the affected plant species; or (3) that the gathering activity would otherwise adversely affect park resources. In addition, the superintendent may, if necessary, limit the consumption and use of natural products to the park area. This provision would allow park visitors to gather certain fruits or berries for consumption while in a park area but would protect park resources from the potential adverse effects of large numbers of people entering the park solely for the purpose of harvesting a natural product and transporting that product out of the park.

Paragraph (d) is intended to clarify the Service's policy on the taking, use or possession of fish, wildlife or plants for ceremonial or religious purposes. Such taking, use, or possession is prohibited except where specifically authorized by Federal statutory law, treaty rights, or in accordance with § 2.2 or § 2.3. This section is also intended to cover activities undertaken by Native Americans.

The Service recognizes that the American Indian Religious Freedom Act states that:

> [H] henceforth it shall be the policy of the United States to protect and preserve for American Indians, their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including but not limited to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rights. 44 U.S.C. 1996.

This statute, however, does not create additional rights or change existing authorities. Rather, it directs the exercise of discretion to accommodate Native religious practices consistent with statutory management obligations. Therefore, the Service will provide

reasonable access to and use of park lands and park resources by Native Americans for religious and traditional activities. However, the National Park Service is limited by law and regulation from authorizing the consumptive use of park resources.

Section 2.2 Wildlife Protection.

This regulation provides that the taking of wildlife in park areas through authorized hunting and trapping activities, must be conducted in accordance with Federal and State statutory law. "Wildlife," as defined in § 1.4, means any member of the animal kingdom and includes a part, product, egg or offspring thereof, or the dead body or part thereof, except fish. The term "taking" has been defined in § 1.4. The term includes "attempt" as an element of the definition. Additionally, the terms hunting and trapping both reference the taking of wildlife, but through different methods. This regulation further prohibits the feeding, touching, teasing, frightening or intentional disturbing of wildlife nesting, breeding or engaged in other activities. Possessing unlawfully taken wildlife, or portions thereof, including but not limited to, hair, blood, meat, teeth, horns and antlers, is also prohibited.

Subparagraph (a)(4) prohibits the discharge of a weapon, except for the purpose of taking wildlife where hunting is allowed. This provision is intended to limit the discharge of weapons to those instances when a hunter is actively attempting to take wildlife. This provision is intended to prohibit the random discharge of weapons, and target practicing.

Paragraph (b) recognizes that for certain park areas, Congress has stated that the taking of wildlife through hunting or trapping, is an acceptable activity. This authority is found most frequently in connection with recreation areas, lakeshores, and seashores. In recognition of explicit Congressional authorization, these activities are clearly permissible in these specified areas. In those park areas where the legislation directs that hunting or trapping be permitted, the Service will implement the types of restrictions necessary to ensure resource protection and public safety.

If the legislation for a park area authorizes hunting or trapping on a discretionary basis, special regulations for the park area will be required in order to implement a hunting or trapping program. The process of developing special regulations will require compliance with the National Environmental Policy Act and provide for an opportunity for public comment.

In units of the National Park System where hunting and trapping activities are not authorized by enabling legislation, resource management for purposes of wildlife use and control is accomplished under a more stringent statutory scheme. In furtherance of the management responsibility of 16 U.S.C. 3, as well as that of other sections of the NPS Organic Act, 16 U.S.C. 1 *et seq.*, it is sometimes necessary to reduce populations determined to be "detrimental" to the use of the area and its statutory values. In these situations, it is the policy of NPS to authorize individuals when appropriate to accomplish this task through a controlled harvest program. This approach will be utilized only when a finding of "detriment," based on scientific documentation, has been made by the superintendent, and it is determined that removal is an acceptable method of resource management.

The above approaches are consistent with legislation governing the National Park System. In section 1c(b) of 16 U.S.C. 1, Act, it is stated that "[e]ach area within the national park system shall be administered in accordance with the provisions of any statute made specifically applicable to that area." 16 U.S.C. 1c(b). A similar requirement is set forth in section 1a–1, where it is provided that, "[t]he authorization of activities shall be construed and the protection, management and administration of these areas shall be conducted in light of the high public values and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established, except as may have been or shall be directly and specifically provided by Congress." 16 U.S.C. 1a–1.

The values for park areas are set forth in certain general provisions of the Organic Act, as amended, and in the enabling legislation for particular units. By following the directives of the statutes for each National Park System unit and implementing, as necessary, the general wildlife management authorities that apply to all units, public use and enjoyment of NPS areas will be maximized and necessary levels of resource protection achieved.

Subparagraph (b)(4) ensures that, consistent with Federal law, hunting and trapping activities, where authorized, shall be conducted within the framework of applicable State law. Additionally, this paragraph adopts State laws governing hunting and trapping as Federal law.

Paragraph (c) reaffirms existing departmental regulations found at 43 CFR Part 24 and requirements found in the enabling legislation for many park areas. This provision encourages cooperation and communication with State agencies relating to the management and protection of wildlife within units of the National Park System. However, it is not intended to bind the National Park Service to the recommendations of the State or lessen the authority or responsibility of the superintendent to ensure that management actions are consistent with public safety and enjoyment, sound resource management principles, and are compatible with the primary objectives for which the park area is established. Paragraph (d) authorizes the superintendent to establish conditions and procedures for transporting lawfully taken wildlife through the park area. Paragraph (e) gives the superintendent the authority to designate all or a portion of a park area closed to the viewing of wildlife with an artificial light. (*See* § 1.5 and § 1.7) This provides protection for wildlife in those park areas with a history of poaching problems.

To conform National Park Service wildlife protection authority with that of most State agencies, paragraph (f) has been added to make it clear that authorized personnel have authority to conduct inspections of hunting and trapping licenses and permits; hunting and trapping equipment; and wildlife that has been taken. Inspections authorized by the paragraph are to be conducted to determine compliance with applicable hunting and trapping restrictions. The provision is not intended to enlarge or diminish, in any way, existing law enforcement search and seizure authority.

The regulations in this section are applicable on the privately owned lands and waters under the exclusive or concurrent jurisdiction of the United States.

Section 2.3 Fishing.

This regulation authorizes fishing in park areas in accordance with State law. "Fish" are defined in § 1.4 as bony fish or sharks, or as salt water mollusks or crustaceans. Taking of other aquatic species such as frogs and turtles is *not* authorized, nor is the taking of mollusks or crustaceans in fresh water, unless specifically authorized by Federal statutory law.

Paragraph (c) reaffirms existing legislative requirements applicable to park areas and the departmental regulations found at 43 CFR Part 24. This provision encourages cooperation and communication with State agencies

relating to the management and protection of wildlife and fish within units of the National Park System. It is not intended to bind the Nation Park Service to the recommendations of the State or lessen the authority or responsibility of the superintendents to ensure that management actions are consistent with public safety and enjoyment, sound resource management principles, and are compatible with the primary objectives for which the park area is established.

Paragraph (d) limits fresh water fishing to hook and line, with the rod being closely attended. It further prohibits the use of live or dead minnows, amphibians, nonpreserved fish eggs or fish roe as bait in fresh water areas, except as designated. (*See* § 1.5 and § 1.7) No waters may be so designated, however, unless *all* of these criteria are met: (1) Non-native species are already established; (2) the introduction of additional numbers or types of non-native species would not impact populations of native species adversely; and (3) park management plans do not call for elimination of non-native species. This paragraph also prohibits commercial fishing, except where specifically authorized by Federal statutory law or regulations.

Paragraph (e) allows fishing with a net, spear, or weapon in the salt waters of park areas in accordance with State law, unless otherwise designated. (*See* § 1.5 and § 1.7)

To conform National Park Service wildlife protection authority with that of most State agencies, paragraph (f) has been added to make it clear that authorized personnel have authority to conduct inspections of fishing licenses and permits, creels, tackle and fishing gear, and fish that have been taken. Inspections authorized by the paragraph are to be conducted to determine compliance with applicable fishing restrictions. This provision is not intended to enlarge or diminish, in any way, existing law enforcement search and seizure authority.

The regulations in this section are applicable on the privately owned lands and waters under the exclusive or concurrent jurisdiction of the United States.

Section 2.4 Weapons, Traps and Nets.

This regulation has been designed to ensure public safety and provide maximum protection of natural resources by limiting the opportunity for unauthorized use of weapons, traps, or nets while providing reasonable regulatory relief for persons living within or traveling through park areas. The terms "weapons, traps, and nets" are defined in § 1.4

The regulation bases allowed use or possession of weapons, traps, or nets on three criteria. First, the possession or use of weapons, traps, and nets is allowed, in accordance with State and Federal law, at those times and locations when their use is necessary to engage in hunting, trapping or fishing authorized under § 2.2 or § 2.3.

Second, the regulation recognizes that the traveling public often possesses property that is unrelated to their visit to a park area. Accordingly, the regulations provide that the properly stored, unloaded weapons, traps, or nets may be possessed within or upon a mechanical mode of transportation, or within a temporary lodging such as a motel room or tent that is directly accessible by a mechanical mode of transportation. Weapons, traps or nets may not be carried in the backcountry or nondeveloped areas, except as provided in paragraph (a). The Service recognizes that many persons living within park areas own weapons, traps, or nets. Subparagraph (a)(2)(i) was developed in order to provide relief from the basic prohibition found in paragraph (a).

Third, the regulation provides that the superintendent may issue a permit to possess or carry a weapon, trap or net. This limited authority is necessary to properly implement park programs and permit legitimate cooperative activities, while at the same time reaffirming the long-established principle that except where needed to engage in the lawful taking of fish and wildlife, the possession and carrying of weapons, traps and nets presents law enforcement, administrative and public safety difficulties for the National Park Service. Subparagraph (d)(4) authorizes the superintendent to issue a permit to possess or carry weapons, traps or nets across park areas for the purpose of gaining access to otherwise inaccessible lands or waters where access is otherwise impracticable or impossible. The Service intends that this regulation be implemented in a manner that provides access to lands and waters otherwise inaccessible, while ensuring that protection of park resources is not diminished. The regulation is not intended to provide easy or more economical access to hunting sites adjacent to park areas. It is intended to recognize and address individual access problems to private property or address those rare instances where public access to adjacent lands or waters has effectively been eliminated by the implementation of these regulations, or is otherwise impracticable.

The definition of "weapons" found in § 1.4 includes any weapon the possession of which is prohibited under the laws of the State in which the park area or a portion thereof is located. In some States this may include weapons such as switchblades, blackjacks, daggers, or brass knuckles. The Service intends that paragraph (f) of this regulation be read to prohibit the possession of these implements. The Service does not intend that this definition be construed to cover U.S. Coast Guard approved flare guns that are mandatory on certain types of vessels.

The regulations in this section are applicable on the privately owned lands and waters under the exclusive or concurrent jurisdiction of the United States.

Section 2.5 Research Specimens.

This regulation establishes the procedure for individuals to collect plants, fish, wildlife, rocks, or minerals from park areas. The collection of these objects must be done in accordance with a specimen collection permit. The criteria are included in the body of this regulation rather than in § 1.6.

Permits may be issued only to certain persons or reputable scientific or educational institutions in the person of an official representative. In addition, the specimens must be sought for research, baseline inventories, monitoring or impact analysis. Applications for collection permits for the purpose of group study or museum display must meet a further test of being crucial to the institution's goals and, moreover, a finding made that the specimens cannot be obtained outside the park area. Permits to secure species listed as endangered or threatened under the Endangered Species Act are granted by the Director only if a permit has been secured from the U.S. Fish and Wildlife Service, the specimen cannot be secured outside of the park area, and its collection is crucial to the successful completion of a scientific research or resource management project where the primary purpose is the enhanced protection of the endangered or threatened species.

Paragraph (d) provides limited authority for collecting that requires the killing of plants, fish or wildlife.

If a specimen collection permit is sought for activities that contemplate the killing of plants, fish, or wildlife, certain restrictions apply depending on the particular park area for which the permit is sought. Although the classification of park areas in paragraph (d) is based on legislative referring to

the taking of wildlife, the classification itself applies to biota generally. Thus, permit applications that contemplate the destruction of plants are likewise governed by this classification.

If a permit is sought for park area in which the enabling legislation authorizes the taking of wildlife, the permit may be issued only if the superintendent determines that collection of the specimen will benefit science. Benefit to science may be based upon use of the specimen for such activities as research, baseline inventories, monitoring or impact analysis.

If a permit is sought for a park area in which the enabling legislation neither authorizes nor prohibits the taking of wildlife, the permit may be issued only if the superintendent, in a written finding, determines that the collection: (1) Will not result in the derogation of the values or purposes for which the park area was established; and (2) has the potential of conserving and perpetuating such plants, fish, or wildlife.

No specimen collection permits that contemplate the killing of plants, fish, or wildlife may be issued for those park areas in which the enabling legislation prohibits the injury, damage or killing of wildlife.

The Service has determined that the stringent requirements concerning the collection of research specimens are in keeping with its mandate to conserve and protect park resources. The National Park Service cannot authorize the general collection of research specimens (where the killing of biota is contemplated), that violates statutory mandates in some parks. On the other hand, collection for scientific purposes should be allowed unless prohibited by the enabling legislation for a park area and when such collection will not result in derogation of park values, and has the potential of conserving and perpetuating such biota.

Section 2.10 Camping and Food Storage.

This regulation authorizes the superintendent to require permits, designate sites or areas, and establish conditions for camping. Permits will be issued in accordance with the criteria and procedures in § 1.6. The major provisions of this section include limitations on the length of time a person may camp, a prohibition against digging or leveling the ground at any campsite, or leaving camping equipment, site alterations, or refuse after departing from the campsite. The regulation also prohibits camping within 25 feet of a water hydrant or main road, or within 100 feet of a flowing stream, river or body of water, except as designated by the superintendent.

There is a requirement that park users refrain from creating unreasonable noise between the hours of 10:00 p.m. and 6:00 a.m. The rule also prohibits persons from connecting to a utility system, except in designated areas. This is to prevent the unauthorized use of facilities that were not meant for this purpose and, moreover, remove the threat to public safety posed by electric cords and water hoses strung from utility hook-ups to a campsite.

The display of wildlife carcasses, or other remains or parts thereof, is prohibited, except where hunting or trapping is authorized.

Paragraph (d) gives all superintendents the authority to designate locations in which food storage requirements will be in effect, and provides flexibility in implementing these restrictions. This authority is needed to reduce human/wildlife conflicts. Inclusion of the food storage requirement authority in this general regulation allowed a number of parks to eliminate special regulations with these requirements. These are parks in which camper-bear, camper-horse and camper-deer incidents have proven to be a problem. With this authority in a general regulation, the superintendents of all park areas will have the ability to use this means of reducing the opportunity for bears or other wildlife to obtain food from campers. Since imposing food storage requirements will no longer require special regulations, they can be applied as needed in any park.

Section 2.11 Picnicking.

This regulation establishes a single standard for picnicking in all National Park System areas. The basic rule allows picnicking, but superintendents have the authority to close areas or restrict picnicking.

In those parks, or portions of parks where picnicking would be inappropriate, *i.e.*, battlegrounds, cemeteries, the superintendent has the authority to restrict picnicking or close areas to this activity. The authority to establish time limits for this activity is covered in § 1.5, and the public will be notified by one of the methods specified in § 1.7.

Section 2.12 Audio Disturbances.

This regulation separates those audio devices that may, under certain circumstances, be utilized in the exercise of First Amendment rights, from those devices that are merely noise-producing. Subparagraph (a)(1), therefore, allows public address systems to be used in conjunction with a Special Event (§ 2.50) or Public Assembly (§ 2.51) permit. All other noise-producing devices are prohibited if they exceed a noise level of 60 decibels measured on the A-weighted scale at 50 feet or, if below that level, nonetheless produce noise that is unreasonable, considering the nature and purpose of the actor's conduct, location, time of day or night, or impact on other park users. Reasonableness calls for a lower level of noise in crowded campgrounds, during interpretive programs, at night when individuals are sleeping, and in certain areas of the park, such as wilderness, natural and primitive zones, where the sounds of civilization should be greatly diminished.

The establishment of hours when generators may be run in campgrounds will be regulated under the authority of § 1.5.

Subparagraph (a)(2) authorizes the operation or use of a power saw by permit.

The permit will specify the hours of use and any other restrictions. Any permits issued under this section will be in accordance with the criteria established in § 1.6.

In nondeveloped areas, the use of any type of portable motor or engine, or device powered by portable motor or engine, is only allowed pursuant to a permit. This does not apply to vessels in areas where boating is allowed. Furthermore, it is not intended to authorize the use of motors in wilderness areas. Such use is prohibited by the Wilderness Act (16 U.S.C. 1133).

Section 2.13 Fires.

This regulation establishes specific conditions for the lighting of fires. Fires must be lighted in designated areas or receptacles, in accordance with § 1.5 and § 1.7, and in a safe manner. Leaving a fire unattended is prohibited.

Paragraph (b) allows superintendents to prescribe acceptable means of extinguishing a fire and disposing of ashes and other burned material. This ability to regulate fire extinguishing and cleanup procedures is necessary to protect environmental and scenic values. In some situations, burying may be acceptable and practical; in others, only water should be used. Restrictions can be tailored to individual park conditions in order to prevent wildfires and reduce injury. For example, in beach areas, fires extinguished only by smothering with sand result in the sand becoming super-heated, and have resulted in personal injury when stepped upon by beach users. In some park areas, proper resource protection requires that fires be limited to certain

locations or that a communal fire be shared by several parties. Diverse geographic locations, varying intensities of use, coupled with limited resource resiliency, require that the decisions relating to use of fires be made at the park level.

Paragraph (c) makes all of these fire restrictions applicable to privately owned lands under the legislative jurisdiction of the United States. This additional authority is necessary because fires on privately owned lands not subject to these controls could spread to threaten park lands or endanger resources, persons or property on other private lands.

Section 2.14 Sanitation and Refuse.

This regulation establishes requirements for the disposal of refuse. The term "refuse," as defined in § 1.4, includes garbage, rubbish, waste papers, bottles, cans, debris, litter, oil, solvents and liquid wastes. The main provisions of this section include prohibitions against draining or dumping refuse, cleaning food, bathing or washing clothing or household articles, except in facilities provided for such purpose, and polluting or contaminating park area waters or water courses. The prohibition on bathing and washing is intended to keep food or soap residue out of water supplies that are used for drinking and cooking purposes. It also prohibits disposal of fish remains on lands, or in waters within 200 feet of boat docks or designated swimming beaches, or within developed areas, except as otherwise designated in accordance with the procedures of § 1.5 and § 1.7. The sections relating to disposal of human body waste are treated separately, and a distinction is made between procedures to be followed in developed and nondeveloped areas. Additionally, the superintendent is provided authority to establish procedures concerning the disposal, containerization, or carryout of human waste. This provision is needed to ensure that human body waste is disposed of in a sanitary manner, while not unnecessarily limiting a use or activity that might otherwise be curtailed due to sanitary concerns.

Section 2.15 Pets.

This regulation establishes procedures for the control of dogs, cats and other pets within park areas. "Pets," as defined in § 1.4, means dogs, cats, or any animal that has been domesticated. Subparagraph (a)(2) establishes a maximum leash length of six feet. This is identical to that established by other Federal agencies (Forest Service, Corps of Engineers) and is the most reasonable length to be used—both to give the pet some leeway and to reduce the hazard of tripping other visitors. Hunting dogs are exempt from the leash requirement when actually engaged in a hunting activity, under the control of a licensed hunter, at times and in park locations where hunting is authorized and permitted. Otherwise, for the purposes of this section, the word "pets" includes hunting dogs. Subparagraph (a)(3) prohibits leaving a pet unattended and tied to an object, except in designated areas or under conditions established by the superintendent. (*See* § 1.5 and § 1.7) This prevents an owner from leaving a pet tied to a car for several hours in a hot parking lot, but also gives the superintendent some flexibility to allow pets to be tied and left unattended in areas where this is established as acceptable, such as pet hitching posts. To alleviate the problem of a pet left locked in a car on a hot day, the designation procedures in § 1.5 and § 1.7 may be used.

The regulation authorizes the superintendent to close other areas of the park to the possession of dogs, cats and other pets. The Service has determined that most commemorative, wilderness, natural and backcountry zones should be closed to the possession of pets. Subparagraph (a)(1) provides the authority to implement the closures necessary to protect the values enumerated in § 1.5(a).

Subparagraph (a)(4) prohibits unreasonable pet noise. Excessive barking or howling often disturbs park visitors and frightens wildlife. The standard for what constitutes "unreasonable" noise is the same as that used in § 2.10, Camping, and § 2.12, Audio Disturbances (location, time of day or night, impact on park users).

Subparagraph (a)(5) gives the superintendent the authority to prescribe procedures for pet excrement disposal. This is a particular problem in urban park areas. Pets may be kept by residents of park areas in accordance with procedures established by the superintendent.

Paragraph (c) authorizes the destruction of pets or feral animals running-at-large and observed in the act of killing, injuring, or molesting humans, livestock or wildlife, if necessary for public safety or protection of wildlife. Pets running-at-large may also be impounded, and the owner charged reasonable fees for kennel or boarding costs in accordance with paragraph (d). Impoundment authority formalizes a process which has been in effect in most parks as a matter of necessity. The government will be able to recover expenses incurred in the impoundment process, and parks will have clear authority to dispose of unclaimed animals relatively quickly, instead of treating them in the same manner as other abandoned property. Local organizations may be used to hold animals, in lieu of the National Park Service.

The provisions of this section do not apply to dogs used by authorized Federal, State and local law enforcement officers in the performance of their official duties.

Section 2.16 Horses and Pack Animals.

This regulation establishes procedures for the use of horses and pack animals in park areas, including requirements on where these animals can be used and how they are to be handled when near park visitors or in developed areas.

The regulation limits, by definition (§ 1.4), those animals that are considered pack animals to horses, burros, mules, or other hoofed mammals. In addition, those animals that qualify as pack animals by definition must be designated by the superintendent prior to use within a park area in accordance with § 1.5 and § 1.7. The regulation provides authority for the superintendent to designate as pack animals certain hoofed mammals, in addition to horses and burros. This limited designation authority is intended to provide for the alternative use of hoofed mammals, such as llamas, when the superintendent determines that park resources and visitor safety will not be adversely impacted.

Dogs, cats and other pets without hooves may not be designated as "pack animals." The Service has determined that a dog, because of its loyalty to an owner and strong inclination to protect personal possessions, is inappropriate in nondeveloped areas, particularly on trails, whether there as a pet or "pack animal." Moreover, experience has shown that some dogs and other pets interact unfavorably with park visitors and wildlife.

Paragraph (c) prohibits the use of horses or pack animals on park roads. The regulation is designed to enhance public safety by reducing to the greatest possible extent the use of horses and pack animals on roads that are open to the use of motor vehicles. The regulation allows park users to cross park roads that bisect a designated trail or area, or to cross park roads from privately owned property to a designated trail or area. This general authorization to use horses and pack animals on park roads is limited to those locations where alternative routes or trails have not been

designated, and the use is of a limited duration and distance.

Paragraph (d) prohibits the free trailing or loose herding of horses and pack animals on trails, except in areas designated pursuant to § 1.5 and § 1.7. The Service has determined that this provision is necessary to protect vegetation and other resources along trails and promote the safety of pedestrians on these trails. Unacceptable trail widening will be reduced if horses and pack animals are under rigid control. However, the superintendent may designate certain hazardous segments of trails where horses and pack animals may be free-trailed for reasons of safety.

Paragraph (g) gives the superintendent the authority to prescribe conditions concerning the use of horses and pack animals. Individual park managers may need special procedures to deal with a particular situation in their park, *i.e.*, keeping horses/pack animals out of campgrounds, or designating entire campground for their use, establishing requirements for the hitching of these animals (in order to protect trees and other resources), or developing guidelines for the use of stock feed in park areas.

Section 2.17 Aircraft and Air Delivery.

This regulation limits the operation and use of aircraft to designated areas and generally prohibits the air delivery of persons or property. In addition, the regulation requires that aircraft be operated in accordance with current FAA regulations. It should be noted that the assimilation of FAA regulations is intended to govern aircraft that are operating on lands and waters of the National Park System. Control of airspace, however, is the prerogative of the FAA.

The regulation maintains the same types of controls over aircraft as were codified in previous regulations. However, the definition of the term "aircraft" (§ 1.4) expands these controls to include ultralight aircraft and powerless flight. This definition is not intended to include parachutes, covered under subparagraph § 2.17(a)(3), or air delivery.

The inclusion of ultralight aircraft and powerless flight activities under this regulation will simplify the administration of these activities and ensure greater uniformity in regulating air delivery activities.

Paragraph (a)(1) prohibits the operation or use of aircraft on lands or waters of the National Park System except at locations designated through the rulemaking process. The Service has adopted this requirement to ensure that aircraft use and air delivery activities are only undertaken in NPS areas subsequent to full public involvement and the policy reviews that are accorded rulemaking documents.

Paragraph (c) sets forth procedural guidelines for the removal of aircraft that crash or otherwise land in parks under conditions which prevent them from taking off. The Service developed a similar regulation for the National Park System units in Alaska. Public notice and comment indicated that the regulation was appropriate and necessary. The National Park Service intends that downed aircraft be treated on a case-by-case basis. Where the removal operation would present a significant risk to human life, result in extensive resource damage, or otherwise be impracticable or impossible, waiver of removal requirements is appropriate. Factors such as the condition and size of the downed aircraft, season, as well as the relief, elevation, aesthetics, and scenic intrusion and vegetation of the surrounding terrain will be controlling in this analysis. In determining the times and means of removal to be specified in a permit when removal is required, these factors will be equally controlling.

Finally, this paragraph would prohibit any attempt to salvage, remove, or possess a downed aircraft without a permit from the superintendent. The intent here is to protect the aircraft and its valuable and easily removed component parts from being appropriated without authorization by the owner, and to provide resource protection through appropriate removal techniques. Except in instances provided in § 2.17(c), it also prohibits aircraft removal outside of the permit system.

Paragraph (e) prohibits the operation or use of hovercraft. "Hovercraft" is defined to include devices that are supported by fan-generated air cushions.

Section 2.18 Snowmobiles.

This regulation establishes procedures and criteria for the use of snowmobiles within park areas. The term "snowmobile" is defined in § 1.4 and conforms to the standard definition used by the International Snowmobile Industry Association. The Service does *not* intend that this definition be broadly interpreted to include other off-road vehicles (ORV's), such as 3-wheelers, or other types of all-terrain vehicles.

Paragraph (a) adopts all sections of 36 CFR Part 4 (Vehicles and Traffic Safety) that logically should apply to snowmobile operation. This adoption relieves the Service of the necessity of writing a separate section on snowmobile safety. State laws pertaining to snowmobiles are also adopted. Adoption of State laws will improve public awareness of acceptable operating conditions by conforming to generally accepted restrictions applicable outside the parks.

Paragraph (c) establishes a regulatory scheme for determining where snowmobiles may be used. This conforms to the present Service management policy on this subject. By conforming the regulation dealing with route designation to existing Service policy, a greater degree of uniformity is provided Servicewide. The wording of this regulation does not authorize the superintendent to designate land *areas* as available to the use of snowmobiles. The authority is limited to land *routes* and water surfaces. This authority is further *limited* to routes and water surfaces that are used by motor vehicles and motor boats during other seasons. Proposed routes and water surfaces shall be published as proposed rulemaking to ensure adequate public participation and that all relevant factors are considered.

A standard for permissible noise levels has been placed in subparagraph (d)(1). This standard is based upon accepted industry standards, adopted by many States. Noise standards will help mitigate the most widely cited adverse impact of snowmobiles upon the resources of park areas. Conflicts with other uses will be reduced if noise levels are held to these standards. Subparagraph (d)(4) prohibits racing or operating a snowmobile in excess of 45 mph, unless otherwise designated or restricted in accordance with § 4.14 of this chapter (Reckless or careless driving).

Paragraph (e) provides restrictions on snowmobile operation by people under 16 years of age. Subparagraph (e)(1) requires that a person under 16 years of age operating a snowmobile be accompanied by another individual and supervised within line of sight. This is intended to cover situations where either one or two snowmobiles are involved. The Service believes that safety aspects of snowmobile operation will be improved by the application of additional traffic controls and restrictions on the operation of these vehicles by underage operators.

Section 2.19 Winter activities.

This regulation contains procedures governing winter sports activities in park areas. It prohibits these activities on roads and in parking areas that are open to motor vehicle traffic, except as

otherwise designated. *(See* § 1.5 and § 1.7)

Paragraph (b) prohibits the towing of persons on skis, sleds, or other sliding devices, except in designated areas or on designated routes. Sleds designed specifically to be towed behind snowmobiles, and that are joined to the snowmobile with a rigid hitching mechanism, are exempt from this prohibition.

Section 2.20 Skating, Skateboards and Similar Devices.

This regulation prohibits the use of roller skates, skateboards, roller skis, coasting vehicles, or similar devices, except in areas designated. (*See* § 1.5 and § 1.7.) This provides the superintendent with flexibility in selecting the method of designation and the manner in which the public will be notified. The superintendent, through this process, may designate residential areas within parks as open to these activities.

The general prohibition on these activities is intended to provide public safety for park visitors—particularly in urban park areas where these devices are frequently in use.

Section 2.21 Smoking.

Paragraph (a) of this regulation authorizes the superintendent to designate a portion of a park area, all or a portion of a building, structure or facility as closed to smoking, when necessary to protect park resources, reduce the risk of fire, or prevent conflicts among visitor-use activities. The Service, for example, would consider implementing this authority in auditoriums where large groups of people are gathered for a sustained period of time. The term "smoking" is defined in § 1.4.

Paragraph (b) closes all caves and caverns to smoking. This is necessary for health and resource protection reasons. Any closures will be undertaken in accordance with the procedures outlined in § 1.5.

Section 2.22 Property.

This provision establishes a regulatory framework for the control, impoundment, and disposition of property within units of the National Park System.

Paragraph (a) consists of three subparagraphs. The first subparagraph prohibits abandoning property in park areas. "Abandonment," as defined in § 1.4, means the voluntary relinquishment of property with no intent to retain possession. The second subparagraph controls the period of time property may be left unattended. The third subparagraph requires that all found property be turned in to the superintendent.

Paragraph (b) sets forth the criteria under which property may be impounded by the superintendent. These criteria are designed to provide protection for visitor property from fire, flood or other casualty; to protect park resources from vehicles, vessels or other property that for reasons of mechanical failure, poor maintenance, or other factors are damaging park resources or may damage park resources unless removed to a less sensitive location; to ensure public safety by impounding cars parked near fire hydrants, on blind curves or other property that may present a public hazard; to ensure orderly management by impounding vehicles, vessels or other property that interfere with public transportation systems, are illegally registered, or impede emergency services or otherwise obstruct park operations by their illegal presence in a specific area.

Paragraph (c) contains several provisions relating to the disposition of property. First, a 60-day holding period is established for found property. After 60 days, the property may be claimed by the finder. If the finder does not want the property or the finder is ineligible to receive the property, as in the case of Service employees, then the property is presumed abandoned and disposed of in accordance with existing Federal property management regulations. National Park Service employees are ineligible to receive unclaimed property. However, the family members of NPS employees who find and comply with the provisions of this section are eligible to receive unclaimed property.

In addition, the superintendent is authorized to impound property and charge a fee for the cost of storage and impoundment. As an alternative to the National Park Service bearing the cost of impoundment, the regulations require the owner to pay the impoundment fees or towing fees to the vendor who performed the service.

Subparagraph (c)(4) provides that in areas of exclusive Federal jurisdiction, where State civil law relating to the disposition of property does not apply, all property will be disposed of in accordance with State law.

Section 2.23 Recreation Fees.

This regulation, based upon the requirements of the Land and Water Conservation Fund Act, as amended (16 U.S.C. 460 *1),* establishes procedures for establishing and collecting recreation fees.

Paragraph (a) provides a cross reference to the Department of the Interior regulations (36 CFR Part 71) that govern the establishment of recreation fees in areas of the National Park System.

Paragraph (b) prohibits persons from entering designated fee areas or using specialized sites or facilities without paying the required fee, or possessing the required permits. Paragraph (c) provides superintendents with general authority to suspend fee collection when in the public interest.

Section 2.30 Misappropriation of Prope and Services.

This regulation is designed to enhance the ability of the National Park Service to protect personal property and to ensure that commercial enterprises providing services to the public are properly protected from fraud, absconding or deception.

The first paragraph redefines the term "take." This is a technical amendment to the definition found in § 1.4 necessary to make the use of the term "take" consistent with the law of larceny.

The first paragraph sets forth the individual prohibitions. Subparagraph (a)(1) is intended to serve as the basic theft or larceny prohibition. It is designed to address the actual or constructive taking away of the goods or property of another without the consent or against the will of the owner and with the intent to permanently deprive the owner of the benefit of the property.

Subparagraph (a)(2) is intended to address those types of incidents where goods or services are offered to the public in exchange for compensation, and payment is not made. A violation of this section occurs when a person utilizes a service or obtains goods and fails to make payment. This section will be used in cases such as obtaining food, gasoline, lodging or similar goods and services, and absconding without making payment or when making partial payment.

Subparagraph (a)(3) combines several elements into a section designed to address incidents where goods or services are offered for sale or compensation and payment is either waived by the commercial enterprise due to a deception on the part of the violator or payment is made by fraudulent means. An example of the first type of incident would be a person who contacts a park concessioner purporting to represent a travel magazine or some other aspect of the travel industry and requests complimentary accommodations. The other elements of this subparagraph are designed to cover the use of fraudulently obtained, stolen, revoked, forged or

expired credit cards. The last element addresses the use of stolen checks, checks drawn on closed accounts, or other "bad checks."

Subparagraph (a)(4) is designed to address typical shoplifting cases where merchandise is concealed on or about the person or by paying less than the purchase price by deception, such as switching price tags or concealing smaller sized goods inside of larger sized items.

Subparagraph (a)(5) is designed to address those incidents where stolen property is possessed by a person with knowledge or reason to believe that the property is stolen.

Paragraph (b) makes this regulation applicable to privately owned lands under the legislative jurisdiction of the United States. This will allow the National Park Service to provide better protection to businesses or others that suffer a loss of property or services within park areas.

Section 2.31 Trespassing, Tampering and Vandalism.

This section consists of three basic provisions. The first provision, paragraph (a)(1), prohibits trespassing upon property, including real property, not open to the public. This provision is similar to State trespassing statutes. While most of the buildings, lands, and facilities within park areas are open to the visiting public, various buildings, facilities, vehicles, aircraft, or vessels located within park areas are privately owned and not open to the general public. Paragraph (a)(1) prohibits entry or occupancy of this property except with the express invitation or consent of the person having lawful control of the property. Paragraph (a)(2) is designed to address incidents where unauthorized manipulation of the property, real property or the component parts thereof has occurred or is occurring, and the elements of other criminal offenses such as theft, trespassing, burgulary or vandalism have not been realized. The National Park Service views the utilization of this section as a means to prevent unauthorized activities from developing into more serious offenses.

Paragraph (a)(3) prohibits vandalism within park areas. This provision is similar to the vandalism ordinances found in many municipal codes. The Service intends that this section be utilized to address cases such as "graffiti" inscribed on restroom walls and telephone booths, paint sprayed on automobiles, broken automobile radio antennas, and other acts of destructive or hazardous behavior directed toward property or real property. This provision would not normally be used in cases where park resources are involved; § 2.1 more specifically deals with such situations.

Paragraph (b) extends this regulation to privately owned lands under the legislative jurisdiction of the United States. The National Park Service anticipates that the extension of this section to privately owned lands will provide better service and protection to these lands and structures.

Section 2.32 Interfering with Agency Functions.

Subparagraph (a)(1) of this regulation prohibits threatening, resisting, intimidating, or intentionally interfering with a government employee or agent engaged in an official duty, or on account of the performance of an official duty. This provision is necessary to ensure that government operations proceed without interference. It is also intended to deal with threats or intimidations that arise and are dealt with after an employee goes off duty, but are directly related to an employee's employment. The term "agent" in paragraph (a) is intended to refer to officially enrolled volunteers, contractors and others who are performing specific duties or functions for the National Park Service.

Several of the elements in subparagraph (a)(1) are currently found in 18 U.S.C. 111. Codification as a petty offense will permit prosecution in those cases not serious enough to merit prosecution under Title 18.

Subparagraph (a)(2) requires obedience to the lawful order of a government employee or agent during emergency operations such as firefighting, search and rescue, law enforcement, or wildlife management operations involving animals that pose a threat to public safety. This provision is similar to State statutes that invest a degree of authority in persons in charge of public safety operations during an emergency situation. It is intended to require adherence to instructions issued by lifeguards at lifeguard protected beaches.

Subparagraph (a)(3) prohibits knowingly giving a false or fictitious report to an authorized person investigating an accident or violation of law or regulation, or on an application for a permit.

Subparagraph (a)(4) prohibits the giving of a false report to a government official in the conduct of official duties and prohibits making a false report that results in a response by an employee or agent of the United States.

Paragraph (b) makes these regulations applicable on the privately owned lands and waters under the exclusive or concurrent jurisdiction of the United States.

Section 2.33 Report of Injury or Damage.

This regulation cross references the reporting requirements of § 3.4 (boating accidents) and § 4.15 (motor vehicle accidents). It requires the reporting, as soon as possible, of all incidents resulting in injury to persons or damage to property in excess of $100. This does not preclude reporting damages of less than $100. This regulation also requires the reporting of injuries to persons or animals caused by a pet.

Section 2.34 Disorderly Conduct.

This regulation defines disorderly conduct and provides a guide to agency enforcement action.

Subparagraphs (a)(1)–(4) set forth prohibited the types of conduct. They indicate that disorderly conduct is committed when a person engages in the actions described in subparagraphs (a)(1)–(4) with the intent to cause public alarm, nuisance, jeopardy or violence. These subparagraphs also establish that such a violation occurs if the actor undertakes these actions with knowledge of, or reckless disregard for, the fact that the action performed is creating, or is likely to create, a risk of public alarm, nuisance, jeopardy or violence.

The harms that the regulation seeks to avoid are commonly understood. "Violence" is intended to mean the use of force, action or treatment resulting in physical contact that is likely to result in injury or harm. The concept of "jeopardy" is meant to apply to situations or hazards that threaten physical harm or injury. The term "nuisance" is meant to be construed in accordance with its commonly accepted legal definition, and includes but is not limited to that class or conduct arising from the careless and reckless use of property or otherwise creating a condition that poses a risk of physical harm or injury to individuals. "Public alarm" refers to actions producing, in a reasonable person, an apprehension of danger or sudden fear.

Subparagraph (a)(1) prohibits violent physical acts. Subparagraph (a)(2) has been written to provide for protected speech activities, while forbidding actions that are obscene, physically threatening, or constitute "fighting words"—those that result in a "clear and present danger" of violence or physical harm. Subparagraph (a)(3) prohibits the making of "noise" that, considering all pertinent factors, is "unreasonable." A "prudent" person

standard must be applied to determine violations of this provision. The intent is to establish a flexible standard that would prohibit one class of noise-producting activity in, for example, a parking lot during the day, and another in a backcountry campsite during the night. The final category of prohibited acts, set forth in subparagraph (a)(4), is intended to cover actions such as rock throwing, trail feature modification, and other types of hazardous acts that generally involve structures, objects or obstructions presenting a risk of physical harm or injury.

Paragraph (b) makes this regulation applicable on the privately owned lands and waters under the exclusive or concurrent jurisdiction of the United States.

Section 2.35 Alcoholic Beverages and Controlled Substances.

This section is designed to enhance public safety, protect property and park resources and protect the visitor's "park experience" through the regulated use and possession of alcoholic beverages and controlled substances.

Paragraph (a) combines the elements necessary to control the use and possession of alcoholic beverages. Subparagraph (a)(2) sets forth a number of prohibited activities, such as the sale or gift of an alcoholic beverage to a minor or the possession of an alcoholic beverage by a minor. These provisions are intended to prevent underage individuals from possessing or receiving alcoholic beverages.

Subparagraph (a)(2)(iii) prohibits the possession of open containers of alcoholic beverages in motor vehicles. This provision is intended to assist in reducing the incidence of drunk driving within units of the National Park System and persons leaving the park areas. The Service intends that this provision apply to parked as well as moving vehicles. The application of this regulation is limited to drinking or possessing an open container of alcohol within the passenger area of a motor vehicle or the cargo area of a motor vehicle, such as a pickup bed, when that area is used to transport passengers.

The Service recognizes that persons visiting park areas may transport, in some manner, food and beverages. Likewise, the Service recognizes that the different types and styles of motor vehicles do not always permit the segregation of transported goods from the passenger compartment. Since unopened alcoholic beverage containers may be transported in any location, the issue to be resolved is limited to previously opened containers the contents of which are being retained for use at a later date, such as an opened bottle of wine.

In order to address this problem, subparagraph (a)(2)(iv) directs that opened containers may be stored in the area of a motor vehicle designed for the transportation of luggage, or in the case of motor homes, the areas designed for the storage of food and beverages such as cupboards or refrigerators. The Service intends that this provision apply on park roads and in parking areas. The Service does not intend that this prohibition apply to motor vehicles, including vans and motor homes, parked in designated camping and picnic areas, or other areas where food and alcoholic beverages may be consumed or are being prepared for consumption.

Subparagraph (a)(3) provides the superintendent with the authority to close all or a portion of public buildings, structures, vessels, parking lots, picnic areas, overlooks, walkways, gravesites, commemorative areas, historic areas, or archeological sites within a park area to the consumption of alcoholic beverages. This limited closure authority must be conducted in accordance with § 1.5(b) and based upon two determinations:

(1) That the consumption of alcohol would be inappropriate considering the purpose of the park area and the dignity or atmosphere to be maintained; or (2) that incidents of aberrant behavior related to the consumption of alcohol are of such magnitude that the fair, impartial and diligent application of other provisions of this section and of § 1.5 (public use limits) and § 2.34 (disorderly conduct), do not alleviate the problem.

Closures of a greater magnitude than those authorized in § 2.35(a)(3) may *not* be expanded by using the authority of § 1.5. The Service has determined that closures of a broader nature than authorized pursuant to § 2.35(a)(3) would be of such a nature as to require special regulations to ensure full public notice and comment as required by § 1.5(b) and the Administrative Procedure Act.

The authority to close facilities to the consumption of alcoholic beverages will allow superintendents to take steps to eliminate activities that threaten resources and facilities or their enjoyment by the public. For example, while the consumption of an alcoholic beverage with a meal may be appropriate in a picnic pavilion, it may be unacceptable in an historic home. Experience has demonstrated that alcohol is often the catalyst for large, disruptive gatherings that result in damage or prevent use by others for legitimate purposes. This limited closure authority will allow superintendents to prevent these disruptive events from occurring. However, the National Park Service is equally concerned that the consumption of alcoholic beverages in a park area not be unnecessarily or unfairly curtailed due to the actions of a disruptive minority of the visiting public. Proposals to close an entire park area to the consumption of alcoholic beverages, therefore, require the promulgation of special regulations.

Paragraph (b) sets forth the prohibition necessary to ensure that the use, possession and delivery of controlled substances in park areas is limited to prescription drugs.

Paragraph (c) of this section prohibits the presence of a person in a park area when under the influence of alcohol or drugs to a degree that may endanger oneself, another person, or damage park resources. Since alcohol and illegal drugs are frequently abused in tandem, the synergistic effect of multiple substance abuse can produce extreme intoxication with vastly increased attendant hazards. The combination of the two elements of alcohol abuse and drug abuse into one paragraph permit the control of either or both. Certain behavior, whether or not induced by the the use of alcohol or drugs, *e.g.*, fighting, is prohibited under § 2.34, Disorderly Conduct.

Section 2.36 Gambling.

This section prohibits gambling in any form, or the operation of gambling devices within park areas. This regulation is applicable on the privately owned lands and waters under the legislative jurisdiction of the United States.

Section 2.37 Noncommercial Soliciting.

This regulation prohibits soliciting or demanding gifts, money, goods or services except in accordance with the terms and conditions of a permit issued under § 2.50, § 2.51 or § 2.52. The term "soliciting" includes asking, begging and non-verbal gestures, such as a hand out or palm up. The words "gifts", "money", and "goods or services" provide a better understanding of the nature of the prohibited activities. This regulation is not intended to prohibit collection of money or goods that takes place as an integral part of any activity for which the superintendent has issued a permit.

Section 2.38 Explosives.

This regulation prohibits the use or possession of explosives, fireworks and firecrackers, except pursuant to the terms and conditions of a permit and in accordance with applicable State law.

Permits will be issued in accordance with the criteria and requirements of § 1.6.

This section is intended to provide reasonable flexibility to the superintendent. It allows the superintendent to authorize limited use in prescribed locations upon a finding that public safety, resource protection, or aesthetics will not be adversely affected or is appropriate considering the event and the purpose for which the area was established or is maintained. The superintendent, for example, may choose not to require a permit for use of sparklers on the 4th of July, but might simply designate a certain area and issue specific guidelines for their use.

The addition of the words "storing", "transporting," and "blasting agents" to paragraph (a) provides a better understanding of the nature of the activities, and types of explosives that are prohibited. All use of explosives and fireworks, when permitted, must be in accordance with applicable State law.

Section 2.50 Special Events.

This regulation authorizes the holding of special events (pageants, regattas, entertainments) provided there is a meaningful association between the park area and the event, the observance contributes to visitor appreciation or understanding of the park, and a permit has been issued by the superintendent. The Service intends that special events will not interfere with or be given priority over the use of the area for activities involving individual participation of visitors.

This regulation includes procedural guidelines for permit applications, time limits for submission of applications and issuance of permits, and standards to be applied in denying permits. If, for example, the special event will cause injury or damage to park resources, provide a clear and present danger to public health and safety, result in significant conflict with other uses, unreasonably impair the area's atmosphere of peace and tranquillity, unreasonably interfere with Service program activities, or substantially impair the operation of public use facilities or services of National Park Service concessioners or contractors, then the permit will be denied. The Service believes these are reasonable criteria to apply to any request for a special event permit to ensure public safety and protection of park resources. The guidelines will also make the permitting process more uniform Servicewide, reduce the discretionary power of superintendents to deny permits without good cause, and require timely processing of permit requests.

Subparagraph (c)(1) authorizes the superintendent, as a condition of permit issuance, to require a bond to cover restoration, rehabilitation, cleanup, utility costs, and other costs resulting from the special event.

Subparagraph (c)(2) provides further authority to require that a permittee acquire liability insurance. The addition of liability insurance as a requirement for a special event permit provides an additional mechanism by which the government can be protected against liability claims.

Section 2.51 Public Assemblies, Meetings.

This regulation provides guidance for the conduct of public meetings, assemblies, and other public expressions of views. These activities are allowed within park areas, provided a permit has been issued by the superintendent. A standard permit is used to obtain the information required by paragraph (b). Procedural guidelines for permit issuance and denial are included, as are specific guidelines for use in determining what areas in a park are available for activities of this type.

Paragraph (b) states that permit applications must be submitted to the superintendent. A provision is also included in paragraph (c) to require action on a permit request without unreasonable delay.

Paragraph (e) provides the superintendent with the authority to designate on a map the locations that are available for public assemblies. Locations may only be designated as unavailable if the public assembly will cause injury or damage to park resources, provide a clear and present danger to public health and safety arising from the location of the activity, result in significant conflict with other existing uses, unreasonably impair the area's atmosphere of peace and tranquility, unreasonably interfere with Service program activities, or substantially impair the operation of public use facilities or services of National Park Service concessioners, contractors, or agents.

Paragraph (g) provides a maximum limitation of 7 days for a permit. This limitation was included to provide a reasonable opportunity for equal access to the parks for all groups or individuals. A 7-day internal requirement for permit renewal should not be unduly burdensome to superintendents or applicants. If no conflicting applications have been received and granted during the period since the initial application or last renewal, a renewal can normally be granted immediately by the superintendent.

The intended effect of this regulation is to impose on those activities that involve First Amendment considerations only those narrow restrictions that are necessary to protect park resources and to ensure the management of park areas for public enjoyment. Federal court decisions have long recognized First Amendment protection for the communication of views and the conduct of proselytizing activities. However, the courts have also recognized the authority of the Federal Government to reasonably regulate the conduct associated with these activities to protect legitimate governmental interest. It is, therefore, the purpose of this regulation to control such activities only to the extent necessary to properly protect the legitimate interests of the National Park Service and to do so in a manner that will ensure even-handed administration of these controls.

Section 2.52 Sale or Distribution of Printed Matter.

This regulation provides guidance for the sale or distribution of printed matter. These activities are allowed within park areas, provided a permit has been issued by the superintendent. A standard permit is used to obtain the information required by paragraph (b). Procedural guidelines for permit issuance and denial are included, as are specific guidelines for use in determining what areas in a park are available for activities of this type. The Service intends that printed matter include textual printed material such as books, pamphlets, magazines, and leaflets whose primary purpose is the advocacy, definition or explanation of a group's or individual's political, religious, scientific or moral beliefs.

Paragraph (b) states that permit applications must be submitted to the superintendent. A provision is also included in paragraph (c) to require action on a permit request without unreasonable delay.

Paragraph (e) provides the superintendent with the authority to designate on a map, the locations that are available for the sale or distribution of printed matter. Locations may only be designated as unavailable if the sale or distribution of printed matter will cause injury or damage to park resources, provide a clear and present danger to public health and safety arising from the location of the activity, result in significant conflict with other existing uses, unreasonably impair the area's atmosphere of peace and tranquility, unreasonably interfere with Service program activities, or substantially impair the operation of public use

facilities or the services of National Park Service concessioners or contractors.

Paragraph (g) provides a maximum limitation of 14 days for a permit. This limitation was included to provide a reasonable opportunity for equal access to the parks for all groups or individuals seeking to sell or distribute printed material. The season of heavy visitor use in many areas of the National Park System is fairly short.

A requirement for permit renewal at 14 day intervals should not be unduly burdensome to superintendents or applicants. If no conflicting applications have been received and granted during the period since the initial application or last renewal, a renewal normally can be granted immediately by the superintendent.

A limitation of 14 days, rather than the 7-day limitation for public assemblies, has been designated as it has been the experience of the National Park Service that sale or distribution of printed materials generally involve fewer people than public assemblies and interferes less with park activities. In addition, generally more than one group or individual can utilize the same park area for sale or distribution of printed matter. There is less necessity, then, for allocating space on a time-basis between groups or individuals.

Paragraph (i) provides that permit revocation will always be confirmed in writing, stating the reasons for the action, but an immediate, verbal revocation may be made under emergency circumstances, such as when it appears that there is an immediate danger to public health and safety. Such revocations will be made only for the reasons listed in this paragraph, and will be followed by written confirmation within 72 hours.

Like section 2.51, Public Assemblies, Meetings, this regulation has been developed to allow First Amendment activities while protecting the legitimate interests of the National Park Service.

Section 2.60 Livestock Use and Agriculture.

This regulation prohibits the running-at-large, herding, pasturing or grazing of livestock of any kind in a park area, or the use of a park area for agricultural purposes, except as specifically authorized by Federal statutory law, required under a reservation of use rights arising from acquisition of a tract of land, or as designated and conducted as a necessary and integral part of a recreational activity or required in order to maintain a historic scene. (*See* § 1.5 and § 1.7.) The term "livestock" is defined in § 1.4 as domesticated animals that are personal property kept for commercial purposes.

Paragraph (b) provides that any of the exceptions provided for in paragraph (a) shall be allowed only pursuant to the terms and conditions of a license, permit, or lease.

Paragraph (c) regulates livestock trespassing within park areas, and gives the superintendent impoundment authority. It also provides for the disposal of unclaimed animals in the absence of applicable State statutes.

Section 2.61 Residing on Federal Lands.

This provision prohibits residing in park areas except pursuant to the terms and conditions of a permit, lease or contract. This prohibition does not apply to persons residing on privately owned lands.

Section 2.62 Memorialization.

This regulation prohibits the installation of memorial structures or objects without the permission of the Director.

Paragraph (b) and (c) establish procedural guidelines on the scattering of human ashes. Superintendents will be able to require a permit to scatter ashes, or can designate areas where a permit is not required, in accordance with the procedues of § 1.5 and § 1.7. Authority is included to restrict this activity as may be necessary. This will establish a basis for controlling the scattering of human ashes to prevent possible conflicts with other park uses.

PART 3

Applicability and Scope. The regulations in Part 3 deal with documentation, registry, enrollment, licensing, and numbering of vessels; compliance with rules to prevent collisions, and equipment requirements. Their purpose is to maintain and improve safety standards, protect boat owners, passengers, and property.

The object of these rules is not only to enforce "safety on water" requirements, but also to encourage operational practices, navigational methods, and water use that contribute to the promotion of safety for park visitors.

The term "vessel" is defined in § 1.4 and means every type or description of craft, other than a seaplane on the water, used or capable of being used as a means of transportation on water, including a buoyant device permitting or capable of free flotation.

Section 3.1 Applicable Regulations.

This regulation adopts United States Coast Guard regulations and promotes uniformity and reciprocity of boating regulations between States and the Federal Government. Service personnel and the boating public are required to consult the appropriate U.S. Coast Guard regulations.

This section recognizes the United States Coast Guard laws and regulations as the guiding Federal standard for boating, but provides ability to enforce State or National Park Service regulations where there is specific need.

Section 3.2 National Park Service Distinctive Identification.

This regulation sets forth the specifications for a National Park Service distinctive marking system. The distinctive markings comply with 41 CFR 114.38–5507; and Section 4(c)(3) of the "Federal Boat Safety Act of 1971," requiring agency identification of certain watercraft. This method of identification will be uniform throughout the Service. To the extent practicable, vessel hulls shall be white in color. If the vessel to be purchased is not available in white hull, then the lightest color shall be substituted.

This provision will enable the boating public to easily recognize National Park Service watercraft, an especially important factor in life-threatening situations. This provision is not intended to apply to those vessels whose design or manufacture makes compliance impossible or impracticable, such as canoes or johnboats.

Section 3.3 Permits.

This section authorizes the superintendents to issue a permit for the use of vessels in accordance with the criteria and procedures of § 1.6. Non-fee permits are often issued to ensure that the boating public is aware of hazards and special conditions existing existing in park areas. The permit describes area policy, equipment, requirements, closures or restrictions, and special hazards.

Section 3.4 Accidents

This regulation requires persons involved in a boating accident or other casualty to file a report with the superintendent within 24 hours. This reporting responsibility lies with the operator(s) of the vessels involved. However, in the event the operator(s) is unable to file a report, this responsibility is shared by other persons on board the vessel(s).

This provision enables the National Park Service to meet its responsibility for boating safety within park areas, as required by 16 U.S.C. 1a–2(h).

Section 3.5 Inspections.

This regulation permits authorized persons to stop or board a vessel to examine documents, licenses or permits relating to the operation of the vessel, and to inspect such vessels to determine compliance with regulations pertaining to safety equipment and operation.

Paragraph (b) provides the authority for an authorized person to direct the operator of a boat to take immediate and reasonable steps to correct a hazardous condition, proceed to a mooring, dock, or anchorage, or suspend further use of the boat until the hazardous condition is corrected, to ensure the safety of those aboard the vessel. This paragraph incorporates authority currently existing under Coast Guard regulations and is necessary to ensure compliance with safe boating practices.

Section 3.6 Prohibited Operations.

This regulation specifies operations which are prohibited when using vessels in park areas. They include operating a vessel in a reckless or negligent manner or when under the influence of alcohol or a controlled substance to a degree that may endanger oneself or another person or damage property or park resources. Operating a vessel in excess of 5 mph or creating a wake in areas so designated in accordance with the provision of § 1.5 and §1.7, or within 100 feet of a diver's marker, downed water skier or swimmer, is also prohibited.

The launching or operating of airboats is prohibited, unless authorized pursuant to this chapter. An "airboat" as defined in § 1.4 is a vessel supported by the buoyancy of its hull and powered by a propeller or fan above the waterline.

Operating a vessel in excess of designated size, length or width restrictions is prohibited. Designations will be made in accordance with the provisions of § 1.5 and § 1.7, and will provide the superintendent with the flexibility needed to deal with specific situations.

Section 3.7 Noise Abatement.

This regulation prohibits operating a vessel in or upon inland waters so as to exceed a noise level of 82 decibels measured at a distance of 82 feet (25 meters) from the vessel. This section establishes procedures that will be employed to determine such noise levels.

Section 3.20 Water Skiing.

This regulation prohibits the towing of persons by vessels except in designated waters. (*See* § 1.5 and § 1.7.) This section is intended to apply to all forms of towing, *i.e.*, with or without skis, on surfboards, or parasails. Where towing is authorized, the following are prohibited: Towing between the hours of sunset and sunrise; towing without one person (other than the operator) observing the progress of the person being towed; and towing or being towed in channels or within 500 feet of areas designated as harbors, swimming beaches, or mooring areas in accordance with § 1.5 and § 1.7, or within 100 feet of a person fishing or swimming, or a diver's marker.

Subparagraph (b)(3) prohibits towing a person who is not wearing a personal flotation device. A United States Coast Guard approved flotation device must be worn by the person being towed or readily available in the towing vessel.

Section 3.21 Swimming and Bathing.

This regulation prohibits swimming or bathing in locations designated as closed in accordance with the procedures specified in § 1.5. It also prohibits swimming or bathing in violation of designated restrictions. (*See* § 1.5 and § 1.7.) Swimming from vessels which are underway is also prohibited, except in circumstances where a capable operator is on board and all propulsion machinery is off and/or sails are furled. This exception recognizes the fact that swimming from a drifting vessel on a calm stretch of river, or even through moderate rapids with life jackets, is an acceptable practice.

Paragraph (b) authorizes the superintendent to prohibit the use of flotation devices within location designated as swimming beaches in accordance with § 1.5 and § 1.7.

Section 3.22 Surfing.

This section prohibits the use of surfboards and similar rigid devices within locations designated as swimming beaches. (*See* § 1.5 and § 1.7.) This designation may be seasonal and/or time specific, as necessary.

Section 3.23 SCUBA and Snorkeling.

This regulation prohibits SCUBA and snorkeling within locations designated as swimming, docking, or mooring areas, except in accordance with conditions that may be established by the superintendent. (*See* § 1.5 and § 1.7.)

Paragraph (b) prohibits diving in waters open to the use of vessels, other than those propelled by hand, without displaying a standard diver's flag. This requirement is intended to afford added protection to park visitors engaged in diving activities. It also recognizes the fact that while much diving occurs in areas where there is boating activity, many diving locations are in areas where no boats are present, *i.e.*, certain reefs, fresh water caves, pools.

PART 4

Section 4.22 Hitchhiking.

This section prohibits hitchhiking, or the solicitation of transportation, within park areas.

PART 7

Section 7.100 Appalachian National Scenic Trail.

Paragraph (a) prohibits the use of bicycles, motorcycles, snowmobiles, or other motor vehicles on the Appalachian National Scenic Trail. Paragraph (b) prohibits the use of horses or pack animals on the Trail, except in designated locations. (*See* § 1.5 and § 1.7.)

PART 12

Section 12.1 Applicability and Scope.

This section makes the regulations in 36 CFR Parts 1–7, as well as the rules in Part 12, applicable to the operation, maintenance, and administration of the National Cemeteries within the National Park System.

Drafting Information

The primary authors of these regulations are Carl Christensen, Gulf Islands National Seashore, Michael Finley, Assateague Island National Seashore, Maureen Finnerty, Division of Visitor Services, Washington, D.C., and Donald Baur, Division of Conservation and Wildlife, Office of the Solicitor, Department of the Interior, Washington, D.C. In addition, numerous National Park Service employees from park areas throughout the National Park System contributed significantly to their review and development.

Paperwork Reduction Act

The information requirements contained in § 2.4, § 2.5, § 2.10, § 2.12, § 2.17, § 2.33, § 2.38, § 2.50, § 2.51, § 2.52, § 2.60, § 2.61, § 2.62, § 3.3, and § 3.4 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*, and assigned clearance number 1024–0026.

Compliance With Other Laws

As required by the National Environmental Policy Act (42 U.S.C. 4332 *et seq.*), the Service has prepared an environmental assessment on these regulations and has made a Finding of No Significant Impact (FONSI). Copies of the Environmental Assessment and FONSI are available for public review at the address noted at the beginning of this rulemaking.

The Department of the Interior has determined that this document is not a major rule under E.O. 12291, and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The Department has made the latter finding because these regulations will only have minimal positive or negative impacts on the following: Some small businesses selling certain park-related items; local guide services and commercial packers; aircraft salvage companies; local repair shops and filling stations; and ranching and farming interests.

List of Subjects

36 CFR Part 1

National parks, Penalties.

36 CFR Part 2

National parks, Signs and symbols.

36 CFR Part 3

Marine safety, National parks.

36 CFR Part 4

National parks, Traffic regulations.

36 CFR Part 5

Alcohol and alcoholic beverages, Business and industry, Civil rights, Equal employment opportunity, National parks, Pets, Transportation.

36 CFR Part 6

Motor vehicles, National parks.

36 CFR Part 7

National parks.

36 CFR Part 12

Cemeteries, Military personnel, National parks, Veterans.

Authority.—The Service's authority for promulgating these regulations is 16 U.S.C. 1 and 3, and statutes relating to specific park areas.

In consideration of the foregoing, 36 CFR Chapter I is amended as follows:

1. Parts 1, 2 and 3 are revised to read as follows:

PART 1—GENERAL PROVISIONS

Sec.

1.1 Purpose.
1.2 Applicability and scope.
1.3 Penalties.
1.4 Definitions.
1.5 Closures and public use limits.
1.6 Permits.
1.7 Public notice.
1.8 Information collection.
1.10 Symbolic signs.

Authority: 16 U.S.C. 1, 3.

§ 1.1 Purpose.

(a) The regulations in this chapter provide for the proper use, management, government, and protection of persons, property, and natural and cultural resources within areas under the jurisdiction of the National Park Service.

(b) These regulations will be utilized to fulfill the statutory purposes of units of the National Park System: to conserve scenery, natural and historic objects, and wildlife, and to provide for the enjoyment of those resources in a manner that will leave them unimpaired for the enjoyment of future generations.

§ 1.2 Applicability and scope.

(a) The regulations contained in this chapter shall apply to all persons entering, using, visiting or otherwise within:

(1) The boundaries of federally owned lands and waters administered by or subject to the jurisdiction of the National Park Service; or

(2) The boundaries of lands and waters, controlled, leased, administered or otherwise subject to the jurisdiction of the National Park Service; or

(3) Less-than-fee interests to the extent necessary to fulfill the purpose of the acquired Federal interest and compatible with the retained nonfederal interest.

(b) The regulations contained in Parts 1 through 7 of this chapter are not applicable on privately owned lands and waters (including Indian lands and waters owned individually or tribally) within the boundaries of a park area, except as may be provided by regulations relating specifically to privately owned lands and waters under the legislative jurisdiction of the United States.

(c) The regulations contained in Parts 1 through 6 of this chapter are not applicable to park areas administered by the National Park Service in the District of Columbia and its environs, to which Part 50 is applicable.

(d) The regulations contained in Part 7 and Part 13 of this chapter are special regulations prescribed for specific park areas. Those regulations may amend, modify, relax or make more stringent the regulations contained in Parts 1 through 6 and Part 12 of this chapter.

(e) The regulations contained in Parts 2 through 7 shall not be construed to prohibit administrative activities conducted by the National Park Service, or its agents, in accordance with approved general management and resource management plans, or in emergency operations involving threats to life, property, or park resources.

§ 1.3 Penalties.

(a) A person convicted of violating a provision of the regulations contained in Parts 1 through 7 and Part 13 of this chapter, within a park area not covered in paragraphs (b) or (c) of this section, shall be punished by a fine not exceeding $500 or by imprisonment not exceeding 6 months, or both, and shall be adjudged to pay all costs of the proceedings. 16 U.S.C. 3.

(b) A person who knowingly and willfully violates any provision of the regulations contained in Parts 1 through 7 of this chapter, within any of the national military parks, battlefield sites, national monuments, or miscellaneous memorials transferred to the jurisdiction of the Secretary of the Interior from that of the Secretary of War by Executive Order No. 6166, June 10, 1933, and enumerated in Executive Order No. 6228, July 28, 1933, shall be punished upon conviction thereof by a fine of not more than $100, or by imprisonment for not more than 3 months, or by both. 16 U.S.C. 9a.

(c) A person convicted of violating any provision of the regulations contained in Parts 1 through 7 of this chapter, within a park area established pursuant to the Act of August 21, 1935, 49 Stat. 666, shall be punished by a fine of not more than $500 and shall be adjudged to pay all costs of the proceedings. 16 U.S.C. 462.

(d) Notwithstanding the provisions of paragraphs (a), (b) and (c) of this section, a person convicted of violating § 2.23 of this chapter shall be punished by a fine of not more than $100. 16 U.S.C. 460*l*.

§ 1.4 Definitions.

(a) The following definitions shall apply to this chapter, unless modified by the definitions for a specific part or regulation:

"Abandonment" means the voluntary relinquishment of property with no intent to retain possession.

"Administrative activities" means those activities conducted under the authority of the National Park Service for the purpose of safeguarding persons or property, implementing management plans and policies developed in accordance and consistent with the regulations in this chapter, or repairing or maintaining government facilities.

"Airboat" means a vessel that is supported by the buoyancy of its hull and powered by a propeller or fan above the waterline. This definition should not be construed to mean a "hovercraft," that is supported by a fan-generated air cushion.

"Aircraft" means a device that is used or intended to be used for human flight in the air, including powerless flight.

"Archeological resource" means material remains of past human life or activities that are of archeological interest and are at least 50 years of age. This term includes, but shall not be limited to, objects made or used by humans, such as pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of structures, pit houses, rock paintings, rock carvings, intaglios, or any portion or piece of the foregoing items, and the physical site, location or context in which they are found, or human skeletal materials or graves.

"Authorized emergency vehicle" means a vehicle in official use for emergency purposes by a State or Federal agency, private ambulances, and other vehicles operated by or under the direction of the superintendent.

"Authorized person" means an employee or agent of the National Park Service with delegated authority to enforce the provisions of this chapter.

"Bicycle" means every device propelled solely by human power upon which a person or persons may ride on land, having one, two, or more wheels.

"Boundary" means a delineation of Federal interest on a map:

(1) Authorized by Congress; or (2) published pursuant to law in the Federal Register; or (3) filed or recorded by a State or political subdivision in accordance with applicable law.

"Camping" means the erecting of a tent or shelter of natural or synthetic material, preparing a sleeping bag or other bedding material for use, parking of a motor vehicle, motor home or trailer, or mooring of a vessel for the apparent purpose of overnight occupancy.

"Carry" means to wear, bear, or have on or about the person.

"Controlled substance" means a drug or other substance, or immediate precursor, included in schedules I, II, III, IV, or V of Part B of the Controlled Substance Act (21 U.S.C. 812) or a drug or substance added to these schedules pursuant to the terms of the Act.

"Cultural resource" means material remains of past human life or activities that are of significant cultural interest and are less than 50 years of age. This term includes, but shall not be limited to, objects made or used by humans, such as pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of structures, or any portion or piece of the foregoing items, and the physical site, location, or context in which they are found, or human skeletal materials or graves.

"Developed area" means roads, parking areas, picnic areas, campgrounds, or other structures, facilities or lands located within development and historic zones depicted on the park area land management and use map.

"Director" means the Director of the National Park Service.

"Downed aircraft" means an aircraft that cannot become airborne as a result of mechanical failure, fire, or accident.

"Firearm" means a loaded or unloaded pistol, rifle, shotgun or other weapon which is designed to, or may be readily converted to, expel a projectile by the ignition of a propellant.

"Fish" means any member of the subclasses *Agnatha, Chondrichthyes,* or *Osteichthyes,* or any mollusk or crustacean found in salt water.

"Fishing" means taking or attempting to take fish.

"Hunting" means taking or attempting to take wildlife, except trapping.

"Legislative jurisdiction" means lands and waters under the exclusive or concurrent jurisdiction of the United States.

"Livestock" means domesticated animals that are personal property kept for commercial purposes.

"Motorcycle" means every motor vehicle having a seat for the use of the rider and designed to travel on not more that three wheels in contact with the ground, but excluding a tractor.

"Motor Vehicle" means every vehicle that is self-propelled and every vehicle that is propelled by electric power, but not operated upon rails, or upon water, except a snowmobile.

"Net" means a seine, weir, net wire, fish trap, or other implement designed to entrap fish, except a hand-held landing net used to retrieve fish taken by hook and line.

"Nondeveloped area" means all lands and waters within park areas other than developed areas.

"Operator" means a person who operates, drives, controls or otherwise has charge of a vehicle.

"Pack animal" means horses, burros, mules or other hoofed mammals when designated as pack animals by the superintendent.

"Park area" means lands and waters administered by the National Park Service.

"Park road" means the main-traveled surface of a roadway open to motor vehicles, owned, controlled or otherwise administered by the National Park Service.

"Permit" means a written authorization to engage in uses or activities that are otherwise prohibited, restricted, or regulated.

"Person" means an individual, firm, corporation, society, association, partnership, or private or public body.

"Pet" means a dog, cat or any animal that has been domesticated.

"Possession" means exercising direct physical control or dominion, with or without ownership, over property, or archeological, cultural or natural resources.

"Practitioner" means a physician, dentist, veterinarian, scientific investigator, pharmacy, hospital or other person licensed, registered or otherwise permitted by the United States or the jurisdiction in which such person practices to distribute or possess a controlled substance in the course of professional practice.

"Public use limit" means the number of persons; number and type of animals; amount, size and type of equipment, vessels, mechanical modes of conveyance, or food/beverage containers allowed to enter, be brought into, remain in, or be used within a designated geographic area or facility; or the length of time a designated geographic area or facility may be occupied.

"Refuse" means trash, garbage, rubbish, waste papers, bottles or cans, debris, litter, oil, solvents, liquid waste, or other discarded materials.

"Regional Director" means the official in charge of a region of the National Park Service.

"Secretary" means the Secretary of the Interior.

"Services" means, but is not limited to, meals and lodging, labor, professional services, transportation, admission to exhibits, use of telephone or other utilities, or any act for which payment is customarily received.

"Smoking" means the carrying of lighted cigarettes, cigars or pipes, or the intentional and direct inhalation of smoke from these objects.

"Snowmobile" means a self-propelled vehicle intended for travel primarily on snow, having a curb weight of not more than 1000 pounds (450 kg), driven by a track or tracks in contact with the snow, and steered by ski or skis in contact with the snow.

"State" means a State, territory, or possession of the United States.

"Superintendent" means the official in charge of a park area or an authorized representative thereof.

"Take" or "taking" means to pursue, hunt, harass, harm, shoot, trap, net, capture, collect, kill, wound, or attempt to do any of the above.

"Traffic" means pedestrians, ridden or herded animals, vehicles, and other conveyances, either singly or together

while using any road, trail, street or other thoroughfare for purpose of travel.

"Trap" means a snare, trap, mesh, wire or other implement, object or mechanical device designed to entrap or kill animals other than fish.

"Trapping" means taking or attempting to take wildlife with a trap.

"Underway" means when a vessel is not at anchor, moored, made fast to the shore or docking facility, or aground.

"Unloaded," as applied to weapons and firearms, means that: (1) There is no unexpended shell, cartridge, or projectile in the chamber or magazine of a firearm; (2) a muzzle-loading weapon does not contain gunpowder in the pan, or the percussion cap is not in place; and (3) bows, crossbows, spear guns or any implement capable of discharging a missile or similar device by means of a loading or discharging mechanism, when that loading or discharging mechanism is not charged or drawn.

"Vehicle" means every device in, upon, or by which a person or property is or may be transported or drawn on land, except snowmobiles and devices moved by human power or used exclusively upon stationary rails or track.

"Vessel" means every type or description of craft, other than a seaplane on the water, used or capable of being used as a means of transportation on water, including a buoyant device permitting or capable of free flotation.

"Weapon" means a firearm, compressed gas or spring-powered pistol or rifle, bow and arrow, crossbow, blowgun, speargun, hand-thrown spear, slingshot, irritant gas device, explosive device, or any other implement designed to discharge missiles, and includes a weapon the possession of which is prohibited under the laws of the State in which the park area or portion thereof is located.

"Wildlife" means any member of the animal kingdom and includes a part, product, egg or offspring thereof, or the dead body or part thereof, except fish.

(b) In addition to the definitions in paragraph (a), for the purpose of the regulations contained in Parts 3 and 7 of this chapter, the definitions pertaining to navigation, navigable waters and shipping enumerated in Title 14 United States Code, Title 33 Code of Federal Regulations, Title 46 Code of Federal Regulations, Title 49 Code of Federal Regulations, the Federal Boating Safety Act of 1971, and the Inland Navigational Rules Act of 1980, shall apply for boating and water activities.

§ 1.5 Closures and public use limits.

(a) Consistent with applicable legislation and Federal administrative policies, and based upon a determination that such action is necessary for the maintenance of public health and safety, protection of environmental or scenic values, protection of natural or cultural resources, aid to scientific research, implementation of management responsibilities, equitable allocation and use of facilities, or the avoidance of conflict among visitor use activities, the superintendent may:

(1) Establish, for all or a portion of a park area, a reasonable schedule of visiting hours, impose public use limits, or close all or a portion of a park area to all public use or to a specific use or activity.

(2) Designate areas for a specific use or activity, or impose conditions or restrictions on a use or activity.

(3) Terminate a restriction, limit, closure, designation, condition, or visiting hour restriction imposed under paragraph (a)(1) or (2) of this section.

(b) Except in emergency situations, a closure, designation, use or activity restriction or condition, or the termination or relaxation of such, which is of a nature, magnitude and duration that will result in a significant alteration in the public use pattern of the park area, adversely affect the park's natural, aesthetic, scenic or cultural values, require a long-term or significant modification in the resource management objectives of the unit, or is of a highly controversial nature, shall be published as rulemaking in the **Federal Register**.

(c) Except in emergency situations, prior to implementing or terminating a restriction, condition, public use limit or closure, the superintendent shall prepare a written determination justifying the action. That determination shall set forth the reason(s) the restriction, condition, public use limit or closure authorized by paragraph (a) has been established, and an explanation of why less restrictive measures will not suffice, or in the case of a termination of a restriction, condition, public use limit or closure previously established under paragraph (a), a determination as to why the restriction is no longer necessary and a finding that the termination will not adversely impact park resources. This determination shall be available to the public upon request.

(d) To implement a public use limit, the superintendent may establish a permit, registration, or reservation system. Permits shall be issued in accordance with the criteria and procedures of § 1.6 of this chapter.

(e) Except in emergency situations, the public will be informed of closures, designations, and use or activity restrictions or conditions, visiting hours, public use limits, public use limit procedures, and the termination or relaxation of such, in accordance with § 1.7 of this chapter.

(f) Violating a closure, designation, use or activity restriction or condition, schedule of visiting hours, or public use limit is prohibited. When a permit is used to implement a public use limit, violation of the terms and conditions of a permit is prohibited and may result in the suspension or revocation of the permit.

§ 1.6 Permits.

(a) When authorized by regulations set forth in this chapter, the superintendent may issue a permit to authorize an otherwise prohibited or restricted activity or impose a public use limit. The activity authorized by a permit shall be consistent with applicable legislation, Federal regulations and administrative policies, and based upon a determination that public health and safety, environmental or scenic values, natural or cultural resources, scientific research, implementation of management responsibilities, proper allocation and use of facilities, or the avoidance of conflict among visitor use activities will not be adversely impacted.

(b) Except as otherwise provided, application for a permit shall be submitted to the superintendent during normal business hours.

(c) The public will be informed of the existence of a permit requirement in accordance with § 1.7 of this chapter.

(d) Unless otherwise provided for by the regulations in this chapter, the superintendent shall deny a permit that has been properly applied for only upon a determination that the designated capacity for an area or facility would be exceeded; or that one or more of the factors set forth in paragraph (a) of this section would be adversely impacted. The basis for denial shall be provided to the applicant upon request.

(e) The permit shall contain special conditions the superintendent deems necessary to protect park resources or public safety.

(f) A compilation of those activities requiring a permit shall be maintained by the superintendent and available to the public upon request.

(g) The superintendent may suspend or revoke a permit for violation of its terms or conditions.

(h) Violation of the terms and conditions of a permit is prohibited.

§ 1.7 Public notice.

(a) Whenever the authority of § 1.5(a) is invoked to restrict or control a public use or activity, to relax or revoke an existing restriction or control, to designate all or a portion of a park area as open or closed, or to require a permit to implement a public use limit, the public shall be notified by one or more of the following methods:

(1) Signs posted at conspicuous locations, such as normal points of entry and reasonable intervals along the boundary of the affected park locale.

(2) Maps available in the office of the superintendent and other places convenient to the public.

(3) Publication in a newspaper of general circulation in the affected area.

(4) Other appropriate methods, such as the removal of closure signs, use of electronic media, park brochures, maps and handouts.

(b) In addition to the above-described notification procedures, the superintendent shall compile in writing all the designations, closures, permit requirements and other restrictions imposed under discretionary authority. This compilation shall be updated annually and made available to the public upon request.

§ 1.8 Information collection.

The information collection requirements contained in § 2.4, § 2.5, § 2.10, § 2.12, § 2.17, § 2.33, § 2.38, § 2.50, § 2.51, § 2.52, § 2.60, § 2.61, § 2.62, § 3.3 and § 3.4 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*, and assigned clearance number 1024–0026. This information is being collected to solicit information necessary for the superintendent to issue permits and other benefits, and to gather information. This information will be used to grant administrative benefits. In all sections except § 2.33 and § 3.4, the obligation to respond is required to obtain a benefit. In § 2.33 and § 3.4, the obligation to respond is mandatory.

§ 1.10 Symbolic signs.

(a) The signs pictured below provide general information and regulatory guidance in park areas. Certain of the signs designate activities that are either allowed or prohibited. Activities symbolized by a sign bearing a slash mark are prohibited.

(b) The use of other types of signs not herein depicted is not precluded.

BILLING CODE 4310-70-M

GENERAL


AREA WHERE FIREARMS ARE PERMITTED.*


AREA WHERE SMOKING IS PERMITTED.*


ROADWAY OR OTHER FACILITY WHERE AUTOMOBILES PERMITTED.*


ROADWAY WHERE TRUCKS PERMITTED.*


TUNNEL.


AN OBSERVATION, LOOKOUT OR FIRE TOWER.


A LIGHT HOUSE.


AREA OF FALLING ROCKS.


LOCATION OF A DAM.


AREA WHERE BEARS ARE FREQUENT AND MIGHT BE VIEWED BY VISITORS.


DRINKING WATER.*


FISH HATCHERY.


AREA WHERE DEER ARE FREQUENT AND MIGHT BE VIEWED BY VISITORS.


VISITOR INFORMATION.


RANGER STATION OR ADMINISTRATIVE OFFICE.


ROAD CROSSING PERMITTED.*


AREA WHERE PETS UNDER PHYSICAL CONTROL PERMITTED.*


ENVIRONMENTAL STUDY AREA OR SPECIAL ENVIRONMENTAL PROGRAM AREA

ACCOMMODATIONS OR SERVICE


PUBLIC OVERNIGHT ACCOMMODATIONS (HOTEL, LODGE, MOTEL, ETC.)


RESTAURANT, CAFETERIA, SNACK SHOP, LUNCHROOM.


GROCERIES, FOOD OR CAMP STORE.


MEN'S RESTROOM.


RESTROOMS FOR BOTH MEN AND WOMEN.


WOMEN'S RESTROOM.


FIRST AID STATION.


PUBLIC TELEPHONE.


U.S. POST OFFICE.


AUTOMOBILE OR BOAT REPAIRS.


FACILITY FOR THE PHYSICALLY HANDICAPPED.


AIRPORT OR LANDING STRIP.


LOCKED STORAGE.


BUS OR TOUR VEHICLE STOP.


GAS STATION OR GAS DOCK.


VEHICLE FERRY.


AREA WHERE PARKING OF MOTOR VEHICLES PERMITTED.*


SHOWER FACILITY.


OBSERVATION POINT FROM WHICH SCENIC AND HISTORIC AREAS CAN BE SEEN OR PHOTOGRAPHED


TRAIL SLEEPING SHELTERS.


AREA WHERE PUBLIC CAMPING PERMITTED.*


PICNIC SHELTER.


AREA WHERE TRAILERS OR TRAILER CAMPING PERMITTED.*


TRAILER SANITARY STATION FOR DUMPING WASTE FROM HOLDING TANKS.


AREA WHERE CAMPFIRES PERMITTED.*


TRAIL SHELTER, PROVIDING SOME PROTECTION FROM THE WEATHER.


AREA WHERE PICNICKING PERMITTED.*


KENNEL FOR PETS

WINTER RECREATION


WINTER RECREATION AREA


CROSS COUNTRY SKI TRAIL.


AREA WHERE DOWNHILL SKIING PERMITTED.*


SKI JUMP FACILITY.


SLEDDING AND SNOW PLAY AREA.*


AREA WHERE ICE SKATING PERMITTED *


TRAIL WHERE SKI BOBBING PERMITTED.*


AREA OR TRAIL WHERE SNOWMOBILES PERMITTED.*

WATER RECRECREATION


WATER RECREATION AREA, OR BOAT DOCK, HARBOR, BOAT SLIPS, OR BOAT MARINA.


RAMP WHERE BOAT LAUNCHING PERMITTED.*


AREA WHERE MOTORBOATS AND MOTOR VESSELS PERMITTED.*


AREA WHERE SAILBOATS ARE PERMITTED.*


AREA FOR HAND PROPELLED VESSELS (ROW BOATS, CANOES, KAYAKS.)


AREA WHERE WATER SKIING PERMITTED.*


WATER OR BEACH WHERE SURFING ACTIVITIES ARE PERMITTED *


AREA WHERE SCUBA DIVING PERMITTED.*


AREA WHERE SWIMMING PERMITTED.*


AREA WHERE DIVING PERMITTED.*



FISHING PERMITTED.*

LAND RECREATION



TRAIL OR AREA WHERE HORSE RIDING PERMITTED.*



TRAIL WHERE MOTORCYCLES PERMITTED.*



TRAIL OR ROAD WHERE BICYCLES PERMITTED.*



TRAIL WHERE OFF-ROAD RECREATION VEHICLES PERMITTED.*



HIKING TRAIL.



PLAYGROUND FOR CHILDREN.



*THE ABOVE SYMBOLS INDICATED BY ASTERISKS WHEN DISPLAYED WITH A RED SLASH SUPERIMPOSED OVER THE SYMBOL INDICATES THE ACTIVITY IS PROHIBITED. THE DESIGN AND FORM OF SUCH A SLASH IS HERE PICTURED.



AMPHITHEATER, CAMPFIRE CIRCLE OR OTHER ASSEMBLY POINT WHERE PROGRAMS ARE PRESENTED.



TRAMWAY, SKI LIFT, OR SIMILAR DEVICE.



AREA WHERE HUNTING PERMITTED.*



HORSE OR MULE STABLE.



INTERPRETIVE TRAIL.



INTERPRETIVE AUTO TOUR ROUTE

BILLING CODE 4310-70-C

PART 2—RESOURCE PROTECTION, PUBLIC USE AND RECREATION

Sec.

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2.5 Research specimens.
2.10 Camping and food storage.
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2.13 Fires.
2.14 Sanitation and refuse.
2.15 Pets.
2.16 Horses and pack animals.
2.17 Aircraft and air delivery.
2.18 Snowmobiles.
2.19 Winter activities.
2.20 Skating, skateboards and similar devices.
2.21 Smoking.
2.22 Property.
2.23 Recreation fees.
2.30 Misappropriation of property and services.
2.31 Trespassing, tampering and vandalism.
2.32 Interfering with agency functions.
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2.34 Disorderly conduct.
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2.37 Noncommercial soliciting.
2.38 Explosives.
2.50 Special events.
2.51 Public assemblies, meetings.
2.52 Sale or distribution of printed matter.
2.60 Livestock use and agriculture.
2.61 Residing on Federal lands.
2.62 Memorialization.

Authority: 16 U.S.C. 1, 3.

§ 2.1 Preservation of natural, cultural and archeological resources.

(a) Except as otherwise provided in this chapter, the following is prohibited:

(1) Possessing, destroying, injuring, defacing, removing, digging, or disturbing from its natural state:

(i) Living or dead wildlife or fish, or the parts of products thereof, such as antlers or nests.

(ii) Plants or the parts or products thereof.

(iii) Nonfossilized and fossilized paleontological specimens, cultural or archeological resources, or the parts thereof.

(iv) A mineral resource or cave formation or the parts thereof.

(2) Introducing wildlife, fish or plants, including their reproductive bodies, into a park area ecosystem.

(3) Tossing, throwing or rolling rocks or other items inside caves or caverns, into valleys, canyons, or caverns, down hillsides or mountainsides, or into thermal features.

(4) Using or possessing wood gathered from within the park area: *Provided, however,* That the superintendent may designate areas where dead wood on the ground may be collected for use as fuel for campfires within the park area.

(5) Walking on, climbing, entering, ascending, descending, or traversing an archeological or cultural resource, monument, or statute, except in designated areas and under conditions established by the superintendent.

(6) Possessing, destroying, injuring, defacing, removing, digging, or disturbing a structure or its furnishing or fixtures, or other cultural or archeological resources.

(7) Possessing or using a mineral or metal detector, magnetometer, side scan sonar, other metal detecting device, or subbottom profiler.

This paragraph does not apply to:

(i) A device broken down and stored or packed to prevent its use while in park areas.

(ii) Electronic equipment used primarily for the navigation and safe operation of boats and aircraft.

(iii) Mineral or metal detectors, magnetometers, or subbottom profilers used for authorized scientific, mining, or administrative activities.

(b) The superintendent may restrict hiking or pedestrian use to a designated trail or walkway system pursuant to § 1.5 and § 1.7. Leaving a trail or walkway to shortcut between portions of the same trail or walkway, or to shortcut to an adjacent trail or walkway in violation of designated restrictions is prohibited.

(c)(1) The superintendent may designate certain fruits, berries, nuts, or unoccupied seashells which may be gathered by hand for personal use or consumption upon a written determination that the gathering or consumption will not adversely affect park wildlife, the reproductive potential of a plant species, or otherwise adversely affect park resources.

2. The superintendent may:

(i) Limit the size and quantity of the natural products that may be gathered or possessed for this purpose; or

(ii) Limit the location where natural products may be gathered; or

(iii) Restrict the possession and consumption of natural products to the park area.

(3) The following are prohibited:

(i) Gathering or possessing undesignated natural products.

(ii) Gathering or possessing natural products in violation of the size or quantity limits designated by the superintendent.

(iii) Unauthorized removal of natural products from the park area.

(iv) Gathering natural products outside of designated areas.

(v) Sale or commercial use of natural products.

(d) This section shall not be construed as authorizing the taking, use or possession of fish, wildlife or plants for ceremonial or religious purposes, except where specifically authorized by Federal statutory law, treaty rights, or in accordance with § 2.2 or § 2.3.

Note.—Regulations concerning archeological resources are found in 43 CFR Part 3.

§ 2.2 Wildlife protection.

(a) The following are prohibited:

(1) The taking of wildlife, except by authorized hunting and trapping activities conducted in accordance with paragraph (b) of this section.

(2) The feeding, touching, teasing, frightening or intentional disturbing of wildlife nesting, breeding or other activities.

(3) Possessing unlawfully taken wildlife or portions thereof.

(4) Discharging a weapon, except for the purpose of taking wildlife where hunting is allowed.

(b) *Hunting and trapping*

(1) Hunting shall be allowed in park areas where such activity is specifically mandated by Federal statutory law.

(2) Hunting may be allowed in park areas where such activity is specifically authorized as a discretionary activity under Federal statutory law if the superintendent determines that such activity is consistent with public safety and enjoyment, and sound resource management principles. Such hunting shall be allowed pursuant to special regulations.

(3) Trapping shall be allowed in park areas where such activity is specifically authorized by Federal statutory law.

(4) Where hunting or trapping or both are authorized, such activities shall be conducted in accordance with Federal law and the laws of the State within whose exterior boundaries a park area or a portion thereof is located. Nonconflicting State laws are adopted as a part of these regulations.

(c) Except in emergencies or in areas under the exclusive jurisdiction of the United States, the superintendent shall consult with appropriate State agencies before invoking the authority of § 1.5 for the purpose of restricting hunting and trapping or closing park areas to the taking of wildlife where such activities are mandated or authorized by Federal statutory law.

(d) The superintendent may establish conditions and procedures for transporting lawfully taken wildlife through the park area. Violation of these conditions and procedures is prohibited.

(e) The Superintendent may designate all or portions of a park area as closed to the viewing of wildlife with an artificial light. Use of an artificial light for purposes of viewing wildlife in closed areas is prohibited.

(f) Authorized persons may check hunting and trapping licenses and permits; inspect weapons, traps and hunting and trapping gear for compliance with equipment restrictions; and inspect wildlife that has been taken for compliance with species, size and other taking restrictions.

(g) The regulations contained in this section shall be applicable on the privately owned lands and waters under the legislative jurisdiction of the United States.

§ 2.3 Fishing.

(a) Except in designated areas or as provided in this section, fishing shall be in accordance with the laws and regulations of the State within whose exterior boundaries a park area or portion thereof is located. Nonconflicting State laws are adopted as a part of these regulations.

(b) State fishing licenses are not required in Big Bend, Crater Lake, Denali, Glacier, Isle Royale (inland waters only), Mammoth Cave, Mount Rainer, Olympic and Yellowstone National Parks.

(c) Except in emergencies or in areas under the exclusive jurisdiction of the United States, the superintendent shall consult with appropriate State agencies before invoking the authority of § 1.5 for the purpose of restricting or closing park areas to the taking of fish.

(d) The following are prohibited:

(1) Fishing in fresh waters in any manner other than by hook and line, with the rod or line being closely attended.

(2) Possessing or using as bait for fishing in fresh waters, live or dead minnows or other bait fish, amphibians, nonpreserved fish eggs or fish roe, except in designated waters. Waters which may be so designated shall be limited to those where non-native species are already established, scientific data indicate that the introduction of additional numbers or types of non-native species would not impact populations of native species adversely, and park management plans do not call for elimination of non-native species.

(3) Chumming or placing preserved or fresh fish eggs, fish roe, food, fish parts, chemicals, or other foreign substances in fresh waters for the purpose of feeding or attracting fish in order that they may be taken.

(4) Commercial fishing, except where specifically authorized by Federal statutory law.

(5) Fishing by the use of drugs, poisons, explosives, or electricity.

(6) Digging for bait, except in privately owned lands.

(7) Failing to return carefully and immediately to the water from which it was taken a fish that does not meet size or species restrictions or that the person chooses not to keep. Fish so released shall not be included in the catch or possession limit: *Provided*, That at the time of catching the person did not possess the legal limit of fish.

(8) Fishing from motor road bridges, from or within 200 feet of a public raft or float designated for water sports, or within the limits of locations designated as swimming beaches, surfing areas, or public boat docks, except in designated areas.

(e) Except as otherwise designated, fishing with a net, spear, or weapon in the salt waters of park areas shall be in accordance with State law.

(f) Authorized persons may check fishing licenses and permits; inspect creels, tackle and fishing gear for compliance with equipment restrictions; and inspect fish that have been taken for compliance with species, size and other taking restrictions.

(g) The regulations contained in this section shall be applicable on the privately owned lands and waters under the legislative jurisdiction of the United States.

§ 2.4 Weapons, traps and nets.

(a) Possessing, using, discharging or carrying a weapon, trap or net is prohibited: *Provided, however,*

(1) Weapons, traps and nets may be used, carried or discharged only:

(i) At designated times and locations in park areas where hunting, fishing or trapping are authorized by law; and

(ii) When actually used in the taking of fish or wildlife in accordance with § 2.2 and § 2.3 of this chapter.

(2) Unloaded weapons, traps and nets may be possessed:

(i) Within a residential dwelling.

(ii) Within a temporary lodging or mechanical mode of conveyance when such implements are rendered inoperable or packed, cased or stored in a manner that will prevent their ready use.

(b) Carrying or possessing a loaded weapon in a motor vehicle, vessel, or other mode of transportation is prohibited, except that carrying or possessing a loaded weapon in a vessel is allowed when such vessel is not under way or is used as a shooting platform in accordance with applicable Federal and State law.

(c) The use of a weapon, trap or net in a manner that endangers persons or property is prohibited.

(d) The superintendent may issue a permit to carry or possess a weapon, trap or net under the following circumstances:

(1) When necessary to support research activities conducted in accordance with § 2.5.

(2) To carry firearms for persons in charge of pack trains or saddle horses for emergency use.

(3) For employees, agents or cooperating officials in the performance of their official duties.

(4) To provide access to otherwise inaccessible lands or waters contiguous to a park area when other means of access are otherwise impracticable or impossible

Violation of the terms and conditions of a permit issued pursuant to this paragraph is prohibited and may result in the suspension or revocation of the permit.

(e) Authorized Federal, State and local law enforcement officers may carry firearms in the performance of their official duties.

(f) The carrying or possessing of a weapon, trap or net in violation of applicable Federal and State laws is prohibited.

(g) The regulations in this section shall be applicable on the privately owned lands and waters under the legislative jurisdiction of the United States.

§ 2.5 Research specimens.

(a) Taking plants, fish, wildlife, rocks or minerals except in accordance with other regulations of this chapter or pursuant to the terms and conditions of a specimen collection permit, is prohibited.

(b) A specimen collection permit may be issued only to an official representative of a reputable scientific or educational institution or a State or Federal agency for the purpose of research, baseline inventories, monitoring, impact analysis, group study, or museum display when the superintendent determines that the collection is necessary to the stated scientific or resource management goals of the institution or agency and that all applicable Federal and State permits have been acquired, and that the intended use of the specimens and their final disposal is in accordance with applicable law and Federal administrative policies. A permit shall not be issued if removal of the specimen

would result in damage to other natural or cultural resources, affect adversely environmental or scenic values, or if the specimen is readily available outside of the park area.

(c) A permit to take an endangered or threatened species listed pursuant to the Endangered Species Act, or similarly indentified by the States, shall not be issued unless the species cannot be obtained outside of the park area and the primary purpose of the collection is to enhance the protection or management of the species.

(d) In park areas where the enabling legislation authorizes the killing of wildlife, a permit which authorizes the killing of plants, fish or wildlife may be issued only when the superintendent approves a written research proposal and determines that the collection will benefit science or has the potential for improving the management and protection of park resources.

(e) In park areas where enabling legislation does not expressly prohibit the killing of wildlife, a permit authorizing the killing of plants, fish or wildlife may be issued only when the superintendent approves a written research proposal and determines that the collection will not result in the derogation of the values or purposes for which the park area was established and has the potential for conserving and perpetuating the species subject to collection.

(f) In park areas where the enabling legislation prohibits the killing of wildlife, issuance of a collecting permit for wildlife or fish or plants, is prohibited.

(g) Specimen collection permits shall contain the following conditions:

(1) Specimens placed in displays or collections will bear official National Park Service museum labels and their catalog numbers will be registered in the National Park Service National Catalog.

(2) Specimens and data derived from consumed specimens will be made available to the public and reports and publications resulting from a research specimen collection permit shall be filed with the superintendent.

(h) Violation of the terms and conditions of a permit issued in accordance with this section is prohibited and may result in the suspension or revocation of the permit.

Note.—The Secretary's regulations on the preservation, use, and management of fish and wildlife are found in 43 CFR Part 24. Regulations concerning archeological resources are found in 43 CFR Part 3.

§ 2.10 Camping and food storage.

(a) The superintendent may require permits, designate sites or areas, and establish conditions for camping.

(b) The following are prohibited:

(1) Digging or leveling the ground at a campsite.

(2) Leaving camping equipment, site alterations, or refuse after departing from the campsite.

(3) Camping within 25 feet of a water hydrant or main road, or within 100 feet of a flowing stream, river or body of water, except as designated.

(4) Creating or sustaining unreasonable noise between the hours of 10:00 p.m. and 6:00 a.m., considering the nature and purpose of the actor's conduct, impact on park users, location, and other factors which would govern the conduct of a reasonably prudent person under the circumstances.

(5) The installation of permanent camping facilities.

(6) Displaying wildlife carcasses or other remains or parts thereof, except when taken pursuant to § 2.2.

(7) Connecting to a utility system, except as designated.

(8) Failing to obtain a permit, where required.

(9) Violating conditions which may be established by the superintendent.

(10) Camping outside of designated sites or areas.

(c) Violation of the terms and conditions of a permit issued in accordance with this section is prohibited and may result in the suspension or revocation of the permit.

(d) *Food storage*—The superintendent may designate all or a portion of a park area where food, lawfully taken fish or wildlife, garbage, and equipment used to cook or store food must be kept sealed in a vehicle, or in a camping unit that is constructed of solid, non-pliable material, or suspended at least 10 feet above the ground and 4 feet horizontally from a post, tree trunk, or other object, or shall be stored as otherwise designated. Violation of this restriction is prohibited. This restriction does not apply to food that is being transported, consumed, or prepared for consumption.

§ 2.11 Picnicking.

Picnicking is allowed, except in designated areas closed in accordance with § 1.5. The superintendent may establish conditions for picnicking in areas where picnicking is allowed. Picnicking in violation of established conditions is prohibited.

§ 2.12 Audio disturbances.

(a) The following are prohibited:

(1) Operation motorized equipment or machinery such as an electric generating plant, motor vehicle, motorized toy, or an audio device, such as a radio, television set, tape deck or musical instrument, in a manner: (i) That exceeds a noise level of 60 decibels measured on the A-weighted scale at 50 feet; or, if below that level, nevertheless; (ii) makes noise which is unreasonable, considering the nature and purpose of the actor's conduct, location, time of day or night, purpose for which the area was established, impact on park users, and other factors that would govern the conduct of a reasonably prudent person under the circumstances.

(2) In developed areas, operating a power saw, except pursuant to the terms and conditions of a permit.

(3) In nondeveloped areas, operating any type of portable motor or engine, or device powered by a portable motor or engine, except pursuant to the terms and conditions of a permit. This paragraph does not apply to vessels in areas where motor boating is allowed.

(4) Operating a public address system, except in connection with a public gathering or special event for which a permit has been issued pursuant to § 2.50 or § 2.51.

(b) Violation of the terms and conditions of a permit issued in accordance with section is prohibited and may result in the suspension or revocation of the permit.

§ 2.13 Fires.

(a) The following are prohibited:

(1) Lighting or maintaining a fire, except in designated areas or receptacles and under conditions that may be established by the superintendent.

(2) Using stoves or lanterns in violation of established restrictions.

(3) Lighting, tending, or using a fire, stove or lantern in a manner that threatens, causes damage to, or results in the burning of property, real property or park resources, or creates a public safety hazard.

(4) Leaving a fire unattended.

(5) Throwing or discarding lighted or smoldering material in a manner that threatens, causes damage to, or results in the burning of property or park resources, or creates a public safety hazard.

(b) Fires shall be extinguished upon termination of use and in accordance with such conditions as may be established by the superintendent. Violation of these conditions is prohibited.

(c) During periods of high fire danger, the superintendent may close all or a portion of a park area to the lighting or maintaining of a fire.

(d) The regulations in this section shall be applicable on the privately owned lands and waters under the legislative jurisdiction of the United States.

§ 2.14 Sanitation and refuse.

(a) The following are prohibited:

(1) Disposing of refuse in other than refuse receptacles.

(2) Using government refuse receptacles or other refuse facilities for dumping household, commercial, or industrial refuse, brought as such from private or municipal property, except in accordance with conditions established by the superintendent.

(3) Depositing refuse in the plumbing fixtures or vaults of a toilet facility.

(4) Draining refuse from a trailer or other vehicle, except in facilities provided for such purpose.

(5) Bathing, or washing food, clothing, dishes, or other property at public water outlets, fixtures or pools, except at those designated for such purpose.

(6) Polluting or contaminating park area waters or water courses.

(7) Disposing of fish remains on land, or in waters within 200 feet of boat docks or designated swimming beaches, or within developed areas, except as otherwise designated.

(8) In developed areas, the disposal of human body waste, except at designated locations or in fixtures provided for that purpose.

(9) In nondeveloped areas, the disposal of human body waste within 100 feet of a water source, high water mark of a body of water, or a campsite, or within sight of a trail, except as otherwise designated.

(b) The superintendent may establish conditions concerning the disposal, containerization, or carryout of human body waste. Violation of these conditions is prohibited.

§ 2.15 Pets.

(a) The following are prohibited:

(1) Possessing a pet in a public building, public transportation vehicle, or location designated as a swimming beach, or any structure or area closed to the possession of pets by the superintendent. This subparagraph shall not apply to guide dogs accompanying visually impaired persons or hearing ear dogs accompanying hearing-impaired persons.

(2) Failing to crate, cage, restrain on a leash which shall not exceed six feet in length, or otherwise physically confine a pet at all times.

(3) Leaving a pet unattended and tied to an object, except in designated areas or under conditions which may be established by the superintendent.

(4) Allowing a pet to make noise that is unreasonable considering location, time of day or night, impact on park users, and other relevant factors, or that frightens wildlife by barking, howling, or making other noise.

(5) Failing to comply with pet excrement disposal conditions which may be established by the superintendent.

(b) In park areas where hunting is allowed, dogs may be used in support of these activities in accordance with applicable Federal and State laws and in accordance with conditions which may be established by the superintendent.

(c) Pets or feral animals that are running-at-large and observed by an authorized person in the act of killing, injuring or molesting humans, livestock, or wildlife may be destroyed if necessary for public safety or protection of wildlife, livestock, or other park resources.

(d) Pets running-at-large may be impounded, and the owner may be charged reasonable fees for kennel or boarding costs, feed, veterinarian fees, transportation costs, and disposal. An impounded pet may be put up for adoption or otherwise disposed of after being held for 72 hours from the time the owner was notified of capture or 72 hours from the time of capture if the owner is unknown.

(e) Pets may be kept by residents of park areas consistent with the provisions of this section and in accordance with conditions which may be established by the superintendent. Violation of these conditions is prohibited.

(f) This section does not apply to dogs used by authorized Federal, State and local law enforcement officers in the performance of their official duties.

§ 2.16 Horses and pack animals.

The following are prohibited:

(a) The use of animals other than those designated as "pack animals" for purposes of transporting equipment.

(b) The use of horses or pack animals outside of trails, routes or areas designated for their use.

(c) The use of horses or pack animals on a park road, except: (1) Where such travel is necessary to cross to or from designated trails, or areas, or privately owned property, and no alternative trails or routes have been designated; or (2) when the road has been closed to motor vehicles.

(d) Free-trailing or loose-herding of horses or pack animals on trails, except as designated.

(e) Allowing horses or pack animals to proceed in excess of a slow walk when passing in the immediate vicinity of persons on foot or bicycle.

(f) Obstructing a trail, or making an unreasonable noise or gesture, considering the nature and purpose of the actor's conduct, and other factors that would govern the conduct of a reasonably prudent person, while horses or pack animals are passing.

(g) Violation of conditions which may be established by the superintendent concerning the use of horses or pack animals.

§ 2.17 Aircraft and air delivery.

(a) The following are prohibited:

(1) Operating or using aircraft on lands or waters other than at locations designated pursuant to special regulations.

(2) Where a water surface is designated pursuant to paragraph (a)(1) of this section, operating or using aircraft under power on the water within 500 feet of locations designated as swimming beaches, boat docks, piers, or ramps, except as otherwise designated.

(3) Delivering or retrieving a person or object by parachute, helicopter, or other airborne means, except in emergencies involving public safety or serious property loss, or pursuant to the terms and conditions of a permit.

(b) The provisions of this section, other than paragraph (c) of this section, shall not be applicable to official business of the Federal government, or emergency rescues in accordance with the directions of the superintendent, or to landings due to circumstances beyond the control of the operator.

(c)(1) Except as provided in paragraph (c)(3) of this section, the owners of a downed aircraft shall remove the aircraft and all component parts thereof in accordance with procedures established by the superintendent. In establishing removal procedures, the superintendent is authorized to: (i) Establish a reasonable date by which aircraft removal operations must be complete; (ii) determine times and means of access to and from the downed aircraft; and (iii) specify the manner or method of removal.

(2) Failure to comply with procedures and conditions established under subparagraph (1) of this paragraph is prohibited.

(3) The superintendent may waive the requirements of paragraph (c)(1) of this section or prohibit the removal of downed aircraft, upon a determination that: (i) The removal of downed aircraft would constitute an unacceptable risk to human life; (ii) the removal of a downed aircraft would result in extensive

resource damage; or (iii) the removal of a downed aircraft is impracticable or impossible.

(d) The use of aircraft shall be in accordance with regulations of the Federal Aviation Administration. Such regulations are adopted as a part of these regulations.

(e) The operation or use of hovercraft is prohibited.

(f) Violation of the terms and conditions of a permit issued in accordance with this section is prohibited and may result in the suspension or revocation of the permit.

§ 2.18 Snowmobiles.

(a) Notwithstanding the definition of vehicle set forth in § 1.4, the provisions of § 4.6, § 4.8, § 4.9, § 4.13, § 4.14, § 4.15, § 4.16, § 4.18 and § 4.20 of this chapter shall apply to snowmobiles.

(b) Except as otherwise provided in this section, the laws of the State in which the exterior boundaries of a park area or a portion thereof is located shall govern equipment standards and the operation of snowmobiles. Nonconflicting State laws are adopted as a part of these regulations.

(c) The use of snowmobiles is prohibited, except on designated routes and water surfaces that are used by motor vehicles or motorboats during other seasons. Routes and water surfaces designated for snowmobile use shall be promulgated as special regulations. Snowmobiles are prohibited except where designated and only when their use is consistent with the park's natural, cultural, scenic and aesthetic values, safety considerations, park management objectives, and will not disturb wildlife or damage park resources.

(d) The following are prohibited:

(1) Operating a snowmobile that makes excessive noise. Excessive noise for snowmobiles manufactured after July 1, 1975 is a level of total snowmobile noise that exceeds 78 decibels measured on the A-weighted scale measured at 50 feet. Snowmobiles manufactured between July 1, 1973 and July 1, 1975 shall not register more than 82 decibels on the A-weighted scale at 50 feet. Snowmobiles manufactured prior to July 1, 1973 shall not register more than 86 decibels on the A-weighted scale at 50 feet. All decibel measurements shall be based on snowmobile operation at or near full throttle.

(2) Operating a snowmobile without a lighted white headlamp and red taillight from one half-hour after sunset to one half-hour before sunrise, or when persons and vehicles are not clearly visible for a distance of 500 feet.

(3) Operating a snowmobile that does not have brakes in good working order.

(4) Racing, or operating a snowmobile in excess of 45 mph, unless otherwise designated or restricted in accordance with § 4.14 of this chapter.

(e) Except where State law prescribes a different minimum age or qualification for the person providing direct supervision and accomaniment, the following are prohibited:

(1) The operation of a snowmobile by a person under 16 years of age unless accompanied and supervised within line of sight by a responsible person 21 years of age or older;

(2) The operation of a snowmobile by a person under 12 years of age, unless accompanied on the same machine by a responsible person 21 years of age or older; or

(3) The supervision by one person of the operation of snowmobiles by more than one person under 16 years of age.

§ 2.19 Winter activities.

(a) Skiing, snowshoeing, ice skating, sledding, innertubing, tobogganing and similar winter sports are prohibited on park roads and in parking areas open to motor vehicle traffic, except as otherwise designated.

(b) The towing of persons on skis, sleds, or other sliding devices by motor vehicle or snowmobile is prohibited, except in designated areas or routes. This paragraph shall not apply to sleds designed to be towed behind snowmobiles and joined to the snowmobile with a rigid hitching mechanism.

(c) Failure to abide by area designations or activity restrictions established under this section is prohibited.

§ 2.20 Skating, skateboards, and similar devices.

Using roller skates, skateboards, roller skis, coasting vehicles, or similar devices is prohibited, except in designated areas.

§ 2.21 Smoking.

(a) The superintendent may designate a portion of a park area, or all or a portion of a building, structure or facility as closed to smoking when necessary to protect park resources, reduce the risk of fire, or prevent conflicts among visitor use activities. Smoking in an area or location so designated is prohibited.

(b) Smoking is prohibited within all caves and caverns.

§ 2.22 Property.

(a) The following are prohibited:

(1) Abandoning property.

(2) Leaving property unattended for longer than 24 hours, except in locations where longer time periods have been designated or in accordance with conditions established by the superintendent.

(3) Failing to turn in found property to the superintendent as soon as practicable.

(b) *Impoundment of property*

(1) Property determined to be left unattended in excess of an allowed period of time may be impounded by the superintendent.

(2) Unattended property that interferes with visitor safety, orderly management of the park area, or presents a threat to park resources may be impounded by the superintendent at any time.

(3) Found or impounded property shall be inventoried to determine ownership and safeguard personal property.

(4) The owner of record is responsible and liable for charges to the person who has removed, stored, or otherwise disposed of property impounded pursuant to this section; or the superintendent may assess the owner reasonable fees for the impoundment and storage of property impounded pursuant to this section.

(c) *Disposition of property*

(1) Unattended property impounded pursuant to this section shall be deemed to be abandoned unless claimed by the owner or an authorized representative thereof within 60 days. The 60-day period shall begin when the rightful owner of the property has been notified, if the owner can be identified, or from the time the property was placed in the superintendent's custody, if the owner cannot be identified.

(2) Unclaimed, found property shall be stored for a minimum period of 60 days and, unless claimed by the owner or an authorized representative thereof, may be claimed by the finder, provided that the finder is not an employee of the National Park Service. Found property not claimed by the owner or an authorized representative or the finder shall be deemed abandoned.

(3) Abandoned property shall be disposed of in accordance with Title 41 Code of Federal Regulations.

(4) Property, including real property, located within a park area and owned by a deceased person, shall be disposed of in accordance with the laws of the State within whose exterior boundaries the property is located.

(d) The regulations contained in (a)(2), (b) and (c) of this section shall be applicable on the privately owned lands and waters under the legislative jurisdiction of the United States.

§ 2.23 Recreation fees.

(a) Recreation fees shall be established as provided for in Part 71 of this chapter.

(b) Entering designated entrance fee areas or using specialized sites, facilities, equipment or services, or participating in group activities, recreation events, or other specialized recreation uses for which recreation fees have been established without paying the required fees and possessing the applicable permits is prohibited. Violation of the terms and conditions of a permit issued in accordance with Part 71 is prohibited and may result in the suspension or revocation of the permit.

(c) The superintendent may, when in the public interest, prescribe periods during which the collection of recreation fees shall be suspended.

§ 2.30 Misappropriation of property and services.

(a) The following are prohibited:

(1) Obtaining or exercising unlawful possession over the property of another with the purpose to deprive the owner of the property.

(2) Obtaining property or services offered for sale or compensation without making payment or offering to pay.

(3) Obtaining property or services offered for sale or compensation by means of deception or a statement of past, present or future fact that is instrumental in causing the wrongful transfer of property or services, or using stolen, forged, expired revoked or fraudulently obtained credit cards or paying with negotiable paper on which payment is refused.

(4) Concealing unpurchased merchandise on or about the person without the knowledge or consent of the seller or paying less than purchase price by deception.

(5) Acquiring or possessing the property of another, with knowledge or reason to believe that the property is stolen.

(b) The regulations contained in this section shall be applicable on the privately owned lands and waters under the legislative jurisdiction of the United States.

§ 2.31 Trespassing, tampering and vandalism.

(a) The following are prohibited:

(1) *Trespassing*—Trespassing, entering or remaining in or upon property or real property not open to the public, except with the express invitation or consent of the person having lawful control of the property or real property.

(2) *Tampering*—Tampering or attempting to tamper with property or real property, or moving, manipulating or setting in motion any of the parts thereof, except when such property is under one's lawful control or possession.

(3) *Vandalism*—Destroying, injuring, defacing, or damaging property or real property.

(b) The regulations contained in this section shall be applicable on the privately owned lands and waters under the legislative jurisdiction of the United States.

§ 2.32 Interfering with agency functions.

(a) The following are prohibited:

(1) *Interference*—Threatening, resisting, intimidating, or intentionally interfering with a government employee or agent engaged in an official duty, or on account of the performance of an official duty.

(2) *Lawful order*—Violating the lawful order of a government employee or agent authorized to maintain order and control public access and movement during fire fighting operations, search and rescue operations, wildlife management operations involving animals that pose a threat to public safety, law enforcement actions, and emergency operations that involve a threat to public safety or park resources, or other activities where the control of public movement and activities is necessary to maintain order and public safety.

(3) *False information*—Knowingly giving a false or fictitious report or other false information: (i) To an authorized person investigating an accident or violation of law or regulation or; (ii) on an application for a permit.

(4) *False Report*—Knowingly giving a false report for the purpose of misleading a government employee or agent in the conduct of official duties, or making a false report that causes a response by the United States to a fictitious event.

(b) The regulations in this section shall be applicable on the privately owned lands and waters under the legislative jurisdiction of the United States.

§ 2.33 Report of injury or damage.

(a) In addition to the requirements of § 3.4 and § 4.15 of this chapter, all incidents resulting in injury to persons; or damage to property in excess of $100.00, must be reported by the persons involved to the superintendent as soon as possible. Filing this report does not satisfy State accident report requirements.

(b) Failure to report an incident in accordance with paragraph (a) of this section is prohibited.

§ 2.34 Disorderly conduct.

(a) A person commits disorderly conduct when, with intent to cause public alarm, nuisance, jeopardy or violence, or knowingly or recklessly creating a risk thereof, such person commits any of the following prohibited acts:

(1) Engages in fighting or threatening, or in violent behavior.

(2) Uses language, an utterance, or gesture, or engages in a display or act that is obscene, physically threatening or menacing, or done in a manner that is likely to inflict injury or incite an immediate breach of the peace.

(3) Makes noise that is unreasonable, considering the nature and purpose of the actor's conduct, location, time of day or night, and other factors that would govern the conduct of a reasonably prudent person under the circumstances.

(4) Creates or maintains a hazardous or physically offensive condition.

(b) The regulations in this section shall be applicable on the privately owned lands and waters under the legislative jurisdiction of the United States.

§ 2.35 Alcoholic beverages and controlled substances.

(a) *Alcoholic beverages.*

(1) The use and possession of alcoholic beverages within park areas is allowed in accordance with the provisions of this section.

(2) The following are prohibited:

(i) The sale or gift of an alcoholic beverage to a person under 21 years of age, except where allowed by State law. In a State where a lower minimum age is established, that age limit will apply for purposes of this subparagraph.

(ii) The possession of an alcoholic beverage by a person under 21 years of age, except where allowed by State law. In a State where a lower minimum age is established, that age will apply for purposes of this subparagraph.

(iii) Carrying a bottle, can or other receptacle containing an alcoholic beverage that has been opened, or a seal broken, or the contents partially removed, within a motor vehicle upon a park road or designated parking area.

(iv) Storing a bottle, can or other receptacle containing any alcoholic beverage that has been opened, or seal broken or the contents of which have been partially removed, within a motor vehicle upon a park road or designated parking area. This restriction shall not apply to containers stored in the trunk of a vehicle, or stored in some other portion of the vehicle designed for the storage of luggage and not normally occupied by the driver or passengers, if

the vehicle is not equipped with a trunk. A utility compartment or glove compartment shall be deemed to be within the area occupied by the driver and passengers. This subparagraph shall not apply to the living quarters of a motor home or camper.

(3) The superintendent may close all or a portion of public buildings, or structures, vessels, parking lots, picnic areas, overlooks, walkways, gravesites, commemorative areas, historic areas, or archeological sites within a park area to the consumption of alcoholic beverages when it is determined that: (i) The consumption of alcohol would be inappropriate considering other uses of the location and the purpose for which it is maintained or established; or (ii) incidents of aberrant behavior related to the consumption of alcohol are of such magnitude that the diligent application of the authorities in this section and § 1.5 (public use limits, visiting hours) and § 2.34 (disorderly conduct) over a reasonable time period, do not alleviate the problem. Failure to abide by such a closure is prohibited.

(b) *Controlled substances.*

The following are prohibited:

(1) The delivery of a controlled substance, except when distribution is made by a practitioner in accordance with applicable law. For the purposes of this paragraph, delivery means the actual, attempted or constructive transfer of a controlled substance whether or not there exists an agency relationship.

(2) The possession of a controlled substance, unless such substance was obtained by the possessor directly, or pursuant to a valid prescription or order, from a practitioner acting in the course of professional practice or otherwise allowed by Federal or State law.

(c) Presence in a park area when under the influence of alcohol or a controlled substance to a degree that may endanger oneself or another person, or damage property or park resources, is prohibited.

§ 2.36 Gambling.

(a) Gambling in any form, or the operation of gambling devices, is prohibited.

(b) The regulation in this section shall be applicable on the privately owned lands and waters under the legislative jurisdiction of the United States.

§ 2.37 Noncommercial soliciting.

Soliciting or demanding gifts, money, goods or services is prohibited, except pursuant to the terms and conditions of a permit that has been issued under § 2.50, § 2.51 or § 2.52.

§ 2.38 Explosives.

(a) Using, possessing, storing, or transporting explosives, blasting agents or explosive materials is prohibited, except pursuant to the terms and conditions of a permit. When permitted, the use, possession, storage and transportation shall be in accordance with applicable Federal and State laws.

(b) Using or possessing fireworks and firecrackers is prohibited, except pursuant to the terms and conditions of a permit or in designated areas under such conditions as the superintendent may establish, and in accordance with applicable State law.

(c) Violation of the conditions established by the superintendent or of the terms and conditions of a permit issued in accordance with this section is prohibited and may result in the suspension or revocation of the permit.

§ 2.50 Special events.

(a) Sports events, pageants, regattas, public spectator attractions, entertainments, ceremonies, and similar events are allowed: *Provided, however,* There

(1) The filing of a bond payable to the Director, in an amount adequate to cover costs such as restoration, rehabilitation, and cleanup of the area used, and other costs resulting from the special event. In lieu of a bond, a permittee may elect to deposit cash equal to the amount of the required bond.

(2) In addition to the requirements of paragraph (c)(1) of this section, the acquisition of liability insurance in which the United States is named as co-insured in an amount sufficient to protect the United States.

(d) The permit may contain such conditions as are reasonably consistent with protection and use of the park area for the purposes for which it is established. It may also contain reasonable limitations on the equipment used and the time and area within which the event is allowed.

(e) Violation of the terms and conditions of a permit issued in accordance with this section is prohibited and may result in the suspension or revocation of the permit.

§ 2.51 Public assemblies, meetings.

(a) Public assemblies, meetings, gatherings, demonstrations, parades and other public expressions of views are allowed within park areas, provided a permit therefor has been issued by the superintendent.

(b) An application for such a permit shall set forth the name of the applicant; the date, time, duration, nature and place of the proposed event; an estimate of the number of persons expected to attend; a statement of equipment and facilities to be used and any other information required by the permit application form.

(c) The superintendent shall, without unreasonable delay, issue a permit on proper application unless:

(1) A prior application for a permit for the same time and place has been made that has been or will be granted and the activities authorized by that permit do not reasonably allow multiple occupancy of that particular area; or

(2) It reasonably appears that the event will present a clear and present danger to the public health or safety; or

(3) The event is of such nature or duration that it cannot reasonably be accommodated in the particular location applied for, considering such things as damage to park resources or facilities, impairment of a protected area's atmosphere of peace and tranquillity, interference with program activities, or impairment of public use facilities.

(d) If a permit is denied, the applicant shall be so informed in writing, with the reason(s) for the denial set forth.

(e) The superintendent shall designate on a map, that shall be available in the office of the superintendent, the locations available for public assemblies. Locations may be designated as not available only if such activities would:

(1) Cause injury or damage to park resources; or

(2) Unreasonably impair the atmosphere of peace and tranquillity maintained in wilderness, natural, historic or commemorative zones; or

(3) Unreasonably interfere with interpretive, visitor service, or other program activities, or with the administrative activities of the National Park Service; or

(4) Substantially impair the operation of public use facilities or services of National Park Service concessioners or contractors; or

(5) Present a clear and present danger to the public health and safety.

(f) The permit may contain such conditions as are reasonably consistent with protection and use of the park area for the purposes for which it is established. It may also contain reasonable limitations on the equipment used and the time and area within which the event is allowed.

(g) No permit shall be issued for a period in excess of 7 days, provided that permits may be extended for like periods, upon a new application, unless another applicant has requested use of the same location and multiple

occupancy of that location is not reasonably possible.

(h) It is prohibited for persons engaged in activities covered under this section to obstruct or impede pedestrians or vehicles, or harass park visitors with physical contact.

(i) A permit may be revoked under any of those conditions, as listed in paragraph (c) of this section, that constitute grounds for denial of a permit, or for violation of the terms and conditions of the permit. Such a revocation shall be made in writing, with the reason(s) for revocation clearly set forth, except under emergency circumstances, when an immediate verbal revocation or suspension may be made to be followed by written confirmation within 72 hours.

(j) Violation of the terms and conditions of a permit issued in accordance with this section may result in the suspension or revocation of the permit.

§ 2.52 Sale or distribution of printed matter.

(a) The sale or distribution of printed matter is allowed within park areas, provided that a permit to do so has been issued by the superintendent, and provided further that the printed matter is not solely commercial advertising.

(b) An application for such a permit shall set forth the name of the applicant, the name of the organization (if any), the date, time, duration, and location of the proposed sale or distribution, the number of participants, and any other information required by the permit application form.

(c) The superintendent shall, without unreasonable delay, issue a permit on proper application unless:

(1) A prior application for a permit for the same time and location has been made that has been or will be granted and the activities authorized by that permit do not reasonably allow multiple occupancy of the particular area; or

(2) It reasonably appears that the sale or distribution will present a clear and present danger to the public health and safety; or

(3) The number of persons engaged in the sale or distribution exceeds the number that can reasonably be accommodated in the particular location applied for, considering such things as damage to park resources or facilities, impairment of a protected area's atmosphere of peace and tranquility, interference with program activities, or impairment of public use facilities; or

(4) The location applied for has not been designated as available for the sale or distribution of printed matter; or

(5) The activity would constitute a violation of an applicable law or regulation.

(d) If a permit is denied, the applicant shall be so informed in writing, with the reason(s) for the denial set forth.

(e) The superintendent shall designate on a map, which shall be available for inspection in the office of the superintendent, the locations within the park area that are available for the sale or distribution of printed matter. Locations may be designated as not available only if the sale or distribution of printed matter would:

(1) Cause injury or damage to park resources; or

(2) Unreasonably impair the atmosphere of the peace and tranquility maintained in wilderness, natural, historic, or commemorative zones; or

(3) Unreasonably interfere with interpretive, visitor service, or other program activities, or with the administrative activities of the National Park Service; or

(4) Substantially impair the operation of public use facilities or services of National Park Service concessioners or contractors.

(5) Present a clear and present damage to the public health and safety.

(f) The permit may contain such conditions as are reasonably consistent with protection and use of the park area for the purposes for which it is established.

(g) No permit shall be issued for a period in excess of 14 consecutive days, provided that permits may be extended for like periods, upon a new application, unless another applicant has requested use of the same location and multiple occupancy of that location is not reasonably possible.

(h) It is prohibited for persons engaged in the sale or distribution of printed matter under this section to obstruct or impede pedestrians or vehicles, harass park visitors with physical contact or persistent demands, misrepresent the purposes or affiliations of those engaged in the sale or distribution, or misrepresent whether the printed matter is available without cost or donation.

(i) A permit may be revoked under any of those conditions, as listed in paragraph (c) of this section, that constitute grounds for denial of a permit, or for violation of the terms and conditions of the permit. Such a revocation shall be made in writing, with the reason(s) for revocation clearly set forth, except under emergency circumstances, when an immediate verbal revocation or suspension may be made, to be followed by written confirmation within 72 hours.

(j) Violation of the terms and conditions of a permit issued in accordance with this section may result in the suspension or revocation of the permit.

§ 2.60 Livestock use and agriculture.

(a) The running-at-large, herding, driving across, allowing on, pasturing or grazing of livestock of any kind in a park area or the use of a park area for agricultural purposes is prohibited, except:

(1) As specifically authorized by Federal statutory law; or

(2) As required under a reservation of use rights arising from acquisition of a tract of land; or

(3) As designated, when conducted as a necessary and integral part of a recreational activity or required in order to maintain a historic scene.

(b) Activities authorized pursuant to any of the exceptions provided for in paragraph (a) of this section shall be allowed only pursuant to the terms and conditions of a license, permit or lease. Violation of the terms and conditions of a license, permit or lease issued in accordance with this paragraph is prohibited and may result in the suspension or revocation of the license, permit, or lease.

(c) *Impounding of livestock*

(1) Livestock trespassing in a park area may be impounded by the superintendent and, if not claimed by the owner within the periods specified in this paragraph, shall be disposed of in accordance with applicable Federal and State law.

(2) In the absence of applicable Federal or State law, the livestock shall be disposed of in the following manner:

(i) If the owner is known, prompt written notice of impoundment will be served, and in the event of the owner's failure to remove the impounded livestock within five (5) days from delivery of such notice, it will be disposed of in accordance with this paragraph.

(ii) If the owner is unknown, disposal of the livestock shall not be made until at least fifteen (15) days have elapsed from the date that a notice of impoundment is originally published in a newspaper of general circulation in the county in which the trespass occurs or, if no such newspaper exists, notification is provided by other appropriate means.

(iii) The owner may redeem the livestock by submitting proof of ownership and paying all expenses of the United States for capturing, advertising, pasturing, feeding, impounding, and the amount of damage

to public property injured or destroyed as a result of the trespass.

(iv) In determining the claim of the government in a livestock trespass, the value of forage consumed shall be computed at the commerical rates prevailing in the locality for the class of livestock found in trespass. The claim shall include the pro rata salary of employees for the time spent and the expenses incurred as a result of the investigation, reporting, and settlement or prosecution of the claim.

(v) If livestock impounded under this paragraph is offered at public sale and no bid is received, or if the highest bid received is less than the amount of the claim of the United States or of the officer's appraised value of the livestock, whichever is the lesser amount, such livestock, may be sold at private sale for the highest amount obtainable, condemned and destroyed, or converted to the use of the United States.

§ 2.61 Residing on Federal lands.

(a) Residing in park areas, other than on privately owned lands, except pursuant to the terms and conditions of a permit, lease or contract, is prohibited.

(b) Violation of the terms and conditions of a permit issued in accordance with this section is prohibited and may result in the suspension or revocation of the permit.

§ 2.62 Memorialization.

(a) The installation of a monument, memorial, tablet, structure, or other commemorative installation in a park area without the authorization of the Director is prohibited.

(b) The scattering of human ashes from cremation is prohibited, except pursuant to the terms and conditions of a permit, or in designated areas according to conditions which may be established by the superintendent.

(c) Failure to abide by area designations and established conditions is prohibited.

(d) Violation of the terms and conditions of a permit issued in accordance with this section is prohibited and may result in the suspension or revocation of the permit.

PART 3—BOATING AND WATER USE ACTIVITIES

Sec.

3.1 Applicable regulations.
3.2 National Park Service distinctive identification.
3.3 Permits.
3.4 Accidents.
3.5 Inspections.
3.6 Prohibitive operations.
3.7 Noise abatement.
3.20 Water skiing.
3.21 Swimming and bathing.
3.22 Surfing.
3.23 SCUBA and snorkeling.

Authority: 16 U.S.C. 1, 3.

§ 3.1 Applicable regulations.

(a) In addition to the regulations contained in this part, Title 14 United States Code, Title 33 Code of Federal Regulations, Title 46 Code of Federal Regulations, Title 49 Code of Federal Regulations, and the laws and regulations of the State within whose exterior boundaries a park area or portion thereof is located shall govern water use, vessels, and their operation and are adopted as a part of these regulations.

(b) As adopted herein, Federal regulations authorizing an action by the "captain of the port" or another officer or employee of the United States Coast Guard, authorize a like action by the superintendent.

§ 3.2 National Park Service distinctive identification.

(a) The distinctive identification insignia of National Park Service vessels shall consist of the following:

(1) Three adjacent diagonal stripes running from the waterline to the gunwale on both port and starboard topsides approximately one-quarter of the length from the bow. The stripes are set at an angle of 30° from the vertical, approximately parallel to the bow. The insignia consists of a broad forest green stripe followed by one narrow white and one narrow forest green stripe. Width of the broad green stripe shall be ½ the vertical distance between gunwale and waterline. The narrow white and green stripes are 8% and 11% the width of the main green stripe respectively.

(2) The National Park Service arrowhead symbol, described in 36 CFR Part 11, centered within the broad green diagonal stripe.

(3) The words "National Park Service" in contrasting color to vessel hull and utilized in place of State identification/registration numbers on the bow.

(b) Displaying identifying markings identical to or resembling those prescribed for National Park Service vessels is prohibited.

§ 3.3 Permits.

(a) The superintendent may require a permit for use of vessels within park areas in accordance with the criteria and procedures of § 1.6 of this chapter.

(b) Violation of the terms and conditions of a permit issued in accordance with this section is prohibited and may result in the suspension or revocation of the permit.

§ 3.4 Accidents.

(a) All incidents involving an accident, collision, fire injury or other casualty shall be reported to the superintendent within 24 hours. Filing this report does not satisfy applicable United States Coast Guard, State and county accident report requirements.

(b) Failure to report an incident to the superintendent as soon as possible is prohibited.

§ 3.5 Inspections.

(a) Authorized persons may at any time stop or board a vessel to examine documents, licenses or permits relating to operation of the vessel, and to inspect such vessel to determine compliance with regulations pertaining to safety equipment and operation.

(b) An authorized person who observes a vessel being operated without sufficient lifesaving or firefighting devices, or in an overloaded or unsafe condition, as defined in United States Coast Guard or National Park Service regulations, may direct the operator to take immediate and reasonable steps necessary for the safety of those aboard the vessel, including but not limited to directing the operator to:

(1) Correct the hazardous condition immediately;

(2) Proceed to a mooring, dock, or anchorage; or

(3) Suspend further use of the boat until the hazardous condition is corrected.

(c) Violation of directions issued in accordance with paragraph (b) of this section is prohibited.

§ 3.6 Prohibited operations.

The following are prohibited:

(a) Operating a vessel, or knowingly allowing another person to operate a vessel, in a reckless or negligent manner, or in a manner so as to endanger or be likely to endanger a person or property.

(b) Operating a vessel when under the influence of alcohol or controlled substance to a degree that may endanger oneself or another person or damage property or park resources.

(c) Failing to observe restrictions established by a regulatory marker.

(d) Operating a vessel in excess of 5 mph or creating a wake:

(1) In areas so designated; or

(2) Within 100 feet of a diver's marker, downed water skier or swimmer.

(e) Operating a vessel not propelled by hand within 500 feet of a location designated as a swimming beach. This prohibition does not apply in locations such as rivers, channels, or narrow

coves where passage is restricted to less than 500 feet. In such restrictive locations, the operation of a vessel in excess of 5 mph or creating a wake is prohibited.

(f) Allowing a person to ride on the gunwales, transom, or on the decking over the bow of a vessel propelled by machinery, operating in excess of 5 mph; *Provided, however,* That this provision shall not apply under the following circumstances:

(1) When that portion of the vessel was designed and constructed for the purpose of carrying passengers safely at all speeds,

(2) When the vessel is being maneuvered for anchoring, mooring or casting off moorings.

(g) Attaching a vessel to or interfering with a marker, navigation buoy or other navigational aid.

(h) Using trailers to launch or recover vessels, except at designated launching sites.

(i) Launching a vessel propelled by machinery at other than designated launch sites.

(j) Operating a vessel propelled by machinery on waters not directly accessible by road.

(k) Launching or operating airboats.

(l) Operating a vessel in excess of designated size, length or width restrictions.

§ 3.7 Noise abatement.

Operating a vessel in or upon inland waters so as to exceed a noise level of 82 decibels measured at a distance of 82 feet (25 meters) from the vessel is prohibited. Testing procedures employed to determine such noise levels shall be in accordance with or equal to the Exterior Sound Level Measurement Procedure for Vessels recommended by the Society of Automotive Engineers SAE–J34a (Revised April, 1977).

§ 3.20 Water skiing.

(a) The towing of persons by vessels is prohibited, except in designated waters.

(b) Where towing is authorized, the following are prohibited:

(1) Towing between the hours of sunset and sunrise.

(2) Towing without one person (other than the operator) observing the progress of the person being towed.

(3) Towing a person who is not wearing a personal flotation device. If the person being towed is wearing a flotation device not approved by the United States Coast Guard, there must be an approved personal flotation device readily available in the towing vessel.

(4) Towing or being towed in channels or within 500 feet of areas designated as harbors, swimming beaches, or mooring areas, or within 100 feet of a person fishing or swimming, or a diver's marker.

§ 3.21 Swimming and bathing.

(a) The following are prohibited:

(1) Swimming or bathing in locations designated as closed.

(2) Swimming or bathing in violation of designated restrictions.

(3) Swimming from vessels which are underway, except in circumstances where a capable operator is on board and all propulsion machinery is off and/or sails are furled.

(b) The superintendent may prohibit the use of flotation devices, glass containers, kits, or incompatible sporting activities within locations designated as swimming beaches.

§ 3.22 Surfing.

The use of surfboards and similar rigid devices within locations designated as swimming beaches is prohibited.

§ 3.23 SCUBA and snorkeling.

The following are prohibited:

(a) SCUBA diving and snorkeling within locations designated as swimming, docking, or mooring areas, except in accordance with conditions which may be established by the superintendent.

(b) Diving in waters open to the use of vessels, other than those propelled by hand, without displaying a standard diver flag.

PART 4—VEHICLES AND TRAFFIC SAFETY

§ 4.2 [Removed and Reserved]

2. Section 4.2 is removed and reserved.

3. A new § 4.22 is added as follows:

§ 4.22 Hitchhiking.

Hitchhiking, or the solicitation of transportation, is prohibited.

PART 5—COMMERCIAL AND PRIVATE OPERATIONS

4. §§ 5.11, 5.12 are removed and reserved and §§ 5.15 and 5.16 are removed.

PART 6— MISCELLANEOUS FEES

5. § 6.1 is removed and reserved and § 6.5 is removed.

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

6. By adding a new § 7.100 to Part 7 as follows:

§ 7.100 Appalachian National Scenic Trail.

(a) The use of bicycles, motorcycles, snowmobiles, or other motor vehicles is prohibited.

(b) The use of horses or pack animals is prohibited, except in locations designated for their use.

PART 12—NATIONAL CEMETERY REGULATIONS

7. By revising § 12.1 as follows:

§ 12.1 Applicability and scope.

In addition to the regulations in Parts 1–7, the regulations in this part shall apply to the operation, maintenance, and administration of the national cemeteries.

§§ 12.2, 12.3, 12.4 and 12.6 [Removed]

8. By removing § 12.2, § 12.3, § 12.4, § 12.6.

§ 12.5 [Redesignated as § 12.2]

9. § 12.5 Redesignated as § 12.2.

§ 12.7 [Redesignated as § 12.3]

10. § 12.7 Redesignated as § 12.3.

§ 12.8 [Redesignated as § 12.4]

11. § 12.8 Redesignated as § 12.4.

§ 12.9 [Redesignated as § 12.5]

12. § 12.9 Redesignated as § 12.5.

§ 12.10 [Redesignated as § 12.6]

13. § 12.10 Redesignated as § 12.6.

§ 12.11 [Redesignated as § 12.7]

14. § 12.11 Redesignated as § 12.7.

§ 12.12 [Redesignated as § 12.8]

15. § 12.12 Redesignated as § 12.8.

Dated: June 17, 1983.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 83-17468 Filed 6-29-83; 8:45 am]

BILLING CODE 4310-70-M

DEPARTMENT OF THE INTERIOR

36 CFR Parts 4, 6, 7, 9 and 13

Special Regulations for Areas Administered by the National Park Service

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: The National Park Service is deleting regulations codified in 36 CFR Parts 7 and 13. This rulemaking deletes 65 park-specific regulations which have been determined to be unnecessary and duplicative because of revisions to the general regulations applicable to all National Park System areas, published elsewhere in today's **Federal Register**. The Service is also making minor, technical revisions to regulations codified in 36 CFR Parts 4, 6, 7, 9 and 13, such as changing section or paragraph references. These changes are also required because of revisions to the Service's general regulations.

EFFECTIVE DATE: These regulations will become effective on October 3, 1983.

FOR FURTHER INFORMATION CONTACT: Maureen Finnerty, Division of Visitor Services, National Park Service, Washington, D.C. 20240, Telephone: 202–343–4874.

SUPPLEMENTARY INFORMATION:

Background

The National Park Service has revised regulations codified in 36 CFR Parts 1–7 and 12. These rules provide guidance and controls for public use and recreation activities (*e.g.*, camping, fishing, hunting, winter activities, boating) in areas administered by the National Park Service, and are published elsewhere in today's **Federal Register**. The publication of this final rule makes it possible for the Service to delete 65 park-specific special regulations which are now unnecessary, and duplicative. This will enable the National Park Service to comply with Executive Order 12291 on Federal Regulations (46 FR 13193, February 19, 1981).

The revisions to the general regulations also make necessary numerous minor, technical changes to other regulations codified in 36 CFR Parts 4, 6, 7, 9 and 13. These revisions are primarily reference changes to paragraphs and sections because of the renumbering of the revised general regulations.

A final change in a minor revision to 36 CFR 4.19, travel on roads and designated routes, to delete reference to the management categories (natural, historical and recreational). The Service discontinued this categorization in 1975, and the Code of Federal Regulations was never revised to reflect this change. The deletion of the management categories from § 4.19 should have been included in the final rule published elsewhere in today's **Federal Register**. Through oversight it was not, and therefore it is included in this rulemaking

In its proposed rule (47 FR 11598) the National Park Service indicated that it would seek public comment on revisions to and elimination of numerous special regulations. In this rule, the Service has narrowed that proposal to merely eliminate duplicative rules and make minor technical revisions to other rules.

Because of the nature of these amendments, the National Park Service has determined that notice and comment procedures are impracticable, unnecessary and contrary to the public interest. The other revisions to Part 7 will be dealt with in future rulemakings.

Drafting Information

The primary author of this rule is Maureen Finnerty, Division of Visitor Services, National Park Service, Department of the Interior, Washington, D.C.

Paperwork Reduction Act

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

Compliance with Other Laws

The National Park Service has concluded that promulgation of this rule clearly would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (42 U.S.C. 4332 *et seq.*), and therefore does not require an environmental impact statement or an environmental assessment.

The Department of the Interior has determined that this document is not a major rule under E.O. 12291, and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The Department has made the latter finding because the only economic effect of this rule is a positive one, a cost savings to the United States Government of an estimated $1,800. This will be the result of publishing approximately 30 fewer pages in the Code of Federal Regulations.

List of Subjects

36 CFR Part 4

National parks, Traffic regulations.

36 CFR Part 5

Alcohol and alcoholic beverages, Business and industry, Civil rights, Equal employment opportunity, National parks, pets, Transportation.

36 CFR Part 6

Motor vehicles, National parks.

36 CFR Part 7

National parks.

36 CFR Part 9

Environmental protection, Mines, National parks, Oil and gas exploration, Public lands/Mineral resources, Public lands/Rights-of-way.

36 CFR Part 13

Aircraft, Alaska, National parks, Penalties, Traffic regulations.

Authority

The Service's authority for promulgating these regulations is found in 16 U.S.C. 3.

In consideration of the foregoing, 36 CFR Chapter I is amended as follows:

CHAPTER I—[AMENDED]

1. Wherever the following references appear in Chapter I (excluding Parts 1, 2, 3), change:

a. "Mount McKinley National Park" to "Denali National Park and Preserve"

b. "Katmai National Monument" to "Katmai National Park and Preserve"

c. "Channel Islands National Monument" to "Channel Islands National Park"

d. "Cape Hatteras National Seashore Recreational Area; hunting" to "Cape Hatteras National Seashore"

e. § 1.2 to § 1.4

f. § 1.42(b) to § 4.17

g. § 2.2 and 2.2(a) to §2.17

h. 36 CFR §2.2 and 2.2(b) to 36 CFR §2.17

i. § 2.6 and 2.6(b) to § 1.5

j. 36 CFR § 2.6(b) to 36 CFR § 1.5

k. § 2.8 to § 2.15

l. § 2.11 and 2.11(a) to § 2.4

m. § 2.13 to §2.3

n. § 2.16 to § 2.35

o. § 2.25(a),(b),(c) and (d) to § 2.5

p. § 2.32 to § 2.2

q. § 3.1 to § 1.4

r. § 4.1 to § 1.4

s. § 4.2(g) to § 1.4

t. 36 CFR § 5.16 to 36 CFR §2.60

u. § 7.23(b)–(f) to § 13.65(b)–(f)

v. § 1227.10 of Chapter XII of this title to 36 CFR Part 71.

w. 43 CFR § 18.10 to 36 CFR Part 71.

PART 4—VEHICLES AND TRAFFIC SAFETY

2. a. In § 4.19, revise paragraphs (a) and (b) as follows:

§ 4.19 Travel on roads and designated routes.

(a) The use of motor vehicles off established roads and parking areas is prohibited, except on routes designated as open for that use.

(b) Routes for the off-road use of motor vehicles shall be promulgated as special regulations in Part 7 of this chapter. The designation of such routes shall be in accordance with the procedures and criteria of § 1.5 of this chapter and E.O. 11644 (37 FR 2877). No routes shall be designated except in national recreation areas, national seashores, national preserves and national lakeshores.

* * * * *

b. Revise the reference in paragraph (c) from (b)(1) to (b).

PART 6—MISCELLANEOUS FEES [RESERVED]

3. Remove and reserve all of Part 6.

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

4. In § 7.1 add a new paragraph (b) as follows:

§ 7.1 Colonial National Historical Park.

* * * * *

(b) *Commercial passenger—carrying motor vehicles.* Permits shall be required for the operation of commercial passenger-carrying vehicles, including taxi-cabs, carrying passengers for hire on any portion of the Colonial Parkway. The fees for such permits shall be as follows:

(1) Annual permit for the calendar year: $3.50 for each passenger-carrying seat in the vehicle to be operated.

(2) Quarterly permit for a period beginning January 1, April 1, July 1, or October 1: $1 for each passenger-carrying seat in the vehicle to be operated.

(3) Permit good for one day, 5-passenger vehicle: $1.

(4) Permit good for one day, more than 5-passenger vehicle: $3.

5. In § 7.3 revise paragraph (h) as follows:

§ 7.3 Glacier National Park.

* * * * *

(h) To promote the purpose of the Act of May 2, 1932 (47 Stat. 145; 16 U.S.C. 161a), Canadian dollars tendered by Canadian visitors entering the United States section of Glacier National Park will be accepted at the official rate of exchange in payment of the recreation fees prescribed for the park.

§ 7.5 Mount Rainier National Park [Amended]

6. a. In § 7.5 remove paragraph (a)(1) and redesignate paragraphs (a)(2) as (a)(1), (a)(3) as (a)(2), (a)(4) as (a)(3), and (a)(5) as (a)(4).

b. Remove paragraphs (c)(1) and (c)(3) and redesignate paragraphs (c)(2) as (c)(1), and (c)(4) as (c)(2).

c. Remove paragraph (d)(1) and redesignate paragraph (d)(2) as (d)(1).

§ 7.7 Rocky Mountain National Park [Amended]

7. a. In § 7.7 remove paragraph (a)(1)(ii) and redesignate paragraph (a)(1)(iii) as (a)(1)(ii).

b. Amend paragraph (b) by revising the last sentence as follows:

(b) * * * Fees will be charged for such trucking over Trail Ridge Road as provided in paragraph (g) of this section.

* * * * *

c. Revise paragraph (g) as follows:

* * * * *

(g) *Trucking permits.* (1) The fees for permits issued for trucking over the Trail Ridge Road shall be as follows:

Vehicle, 1 ton or less: $2.

Vehicle, over 1 ton but not more than 2 tons: $3.

Vehicle, over 2 tons but not more than 3 tons: $4.

Vehicle, over 3 tons but not more than 5 tons: $5.

Vehicle, over 5 tons but not more than 10 tons: $10.

(2) The applicable fee shall be charged for the licensed capacity of a truck, trailer, or semitrailer.

(3) The fee charged is for one round trip, provided such trip is made in 1 day otherwise the fee is for a one-way trip.

(4) No vehicle which has a gross weight, including vehicle and load, in excess of 10 tons, shall be operated or moved on the Trail Ridge Road.

(5) The fees provided in this paragraph shall also apply to special emergency trucking permits issued pursuant to § 5.6(b) of this chapter.

d. Remove paragraph (h).

§ 7.8 Sequoia and Kings Canyon National Parks [Amended]

8. a. In § 7.8 remove paragraph (e).

§ 7.9 St. Croix National Scenic Rivers [Amended]

9. In § 7.9 remove paragraph (a)(2)(ii) and redesignate (a)(2)(iii) as (a)(2)(ii) and (a)(2)(iv) as (a)(2)(iii).

10. a. In § 7.10 amend paragraph (c) by revising the last sentence as follows:

§ 7.10 Zion National Park.

* * * * *

(c) * * * For providing the required convoy service, a convoy fee shall be charged for each vehicle or combination of vehicles as specified in paragraph (d).

b. Add a new paragraph (d) as follows:

* * * * *

(d) Vehicles exceeding size limitations established by the superintendent must be convoyed over the park roads for which a fee of $5 per single trip will be charged for each vehicle or combination of vehicles. The convoy fee shall be in addition to the recreation fees.

11. a. In § 7.13 revise paragraph (c) as follows:

§ 7.13 Yellowstone National Park.

* * * * *

(c) *Trucking.* The superintendent may issue permits for the use of park roads for trucking, for which fees shall be charged. The fee schedule shall be as follows:

Emergency trucking between any two park entrances—Round trip permit fee: $10.

Trucking between the north and northeast entrances:

Trucks with a capacity of ¾ ton, but with a capacity of not more than 1½ tons—Yearly permit fee: $20.

Trucks with a capacity of more than 1½ tons—Yearly permit fee: $40.

* * * * *

b. Remove paragraphs (d)(9)(i) and (ii) and redesignate paragraph (d)(9)(iii) as (d)(9)(i).

c Remove paragraph (d)(13)

d. Revise paragraph (e)(8)(iv) as follows:

(e)* * *

(8) * * *

(iv) When in the possession of any fishing equipment and while immediately adjacent to or on waters of the park, no person shall possess any worms, insects, or other organic matter, or parts thereof or fish lures, except as provided for in paragraphs (e)(8) (ii), (iii), and (v) of this section.

* * * * *

e. Remove paragraph (e)(9) and redesignate paragraph (e)(10) as (e)(9).

f. Remove paragraph (g)(3).

g. Revise paragraph (l) as follows:

* * * * *

(l) *Snowmobiles.* (1) The superintendent may, by the posting of appropriate signs, require persons to register or obtain a permit before attempting any oversnow travel. The superintendent shall issue a permit upon ascertaining that suitable winter survival supplies and equipment are available for human use in the event of mechanical failure. Where a permit is required, it must be carried on the person, or within the oversnow vehicle, and shall be exhibited upon request of any authorized person.

(2) Upon designated routes, snowmobile use shall be limited to the unplowed roadway, which is defined as that portion of the roadway located between the road shoulders designated

by snow poles or poles, ropes, and signs erected by the superintendent to regulate snowmobile activity. The designated routes for snowmobile use shall be:

(i) The Grand Loop Road from its junction with Terrance Springs Drive to Norris Junction.

(ii) Norris Junction to Canyon Road.

(iii) The Virginia Cascade Drive.

(iv) The Grand Loop Road from Norris Junction to Madison Junction.

(v) The West Entrance Road from the Park Boundary at West Yellowstone to Madison Junction.

(vi) The Grand Loop Road from Madison Junction to West Thumb.

(vii) The Firehole Canyon Drive.

(viii) The Blacktail Plateau Drive.

(ix) The Fountain Flat Drive.

(x) The South Entrance Road from the South Entrance to West Thumb.

(xi) The Grand Loop Road from West Thumb to its junction with the East Entrance Road.

(xii) The East Entrance Road from the East Entrance to its junction with the Grand Loop Road.

(xiii) The Grand Loop Road from its junction with the East Entrance Road to Canyon Junction.

(xiv) The Canyon Rim Drives.

(xv) The Grand Loop Road from Canyon Junction to Tower Junction.

(xvi) In the developed areas of Madison Junction, Old Faithful, Grant Village, Lake, Fishing Bridge, Canyon and Norris Junction, snowmobile routes to scenic points of interest, lodging and other facilities will be designated by appropriate snow poles and signs; said routes being limited to the unplowed roadways. The criteria for determining specific routes in these areas will be: the most direct access, weather and snow conditions and the elimination of congestion and improvement of circulation in the interest of public safety.

§ 7.14 Great Smoky Mountains National Park [Amended]

12. a. Remove paragraph (a)(3)(i) and redesignate (a)(3)(ii) as (a)(3)(i) and (a)(3)(iii) as (a)(3)(ii).

b. Remove paragraph (b)(2) and redesignate paragraph (b)(1) as (b).

c. Remove paragraph (c).

§ 7.15 Shenandoah National Park [Amended]

13. a. Remove paragraphs (a)(7) and (a)(8).

b. Remove and reserve paragraphs (c) and (e).

c. Remove paragraph (f)(5) and redesignate paragraph (f)(6) as (f)(5).

d. Remove paragraph (g).

§ 7.16 Yosemite National Park [Amended]

14. a. Remove paragraph (e)(3).

b. Amend paragraph (f) by revising the last sentence as follows:

(f). * * * An annual registration fee will be charged for vehicles registered with the superintendent which are not connected with the operation of the park. This fee will be found in paragraph (m) of this section.

* * * * *

c. Revise paragraph (k) as follows:

* * * * *

(k) Skelton Lakes and Delaney Creek from its beginning at the outlet of the lower Skelton Lake to its interception with the Tuolumne Meadows—Young Lakes Trail, are closed to all public fishing.

* * * * *

d. Add paragraphs (l) and (m) as follows:

* * * * *

(l) Motor vehicles driven or moved upon a park road must be registered and properly display current license plates. Such registration may be with a State or other appropriate authority or, in the case of motor vehicles operated exclusively on park roads, with the superintendent. An annual registration fee of $6 will be charged for vehicles registered with the superintendent which are not connected with the operation of the park.

(m) *Trucking.* (1) The fees for special trucking permits issued in emergencies pursuant to paragraph (b) of § 5.6 of this chapter shall be based on the licensed capacity of trucks, trailers, or semitrailers, as follows:

Trucks, less than 1 ton.
Trucks of 1 ton and over, but not to exceed 10 tons.
Appropriate automobile permit fee. $5 for each ton or fraction thereof.

(i) The fee charged is for one round trip between any two park entrances provided such trip is made within one 24-hour period; otherwise the fee is for a one-way trip.

(ii) Trucks carrying bona fide park visitors and/or their luggage or camping equipment may enter the park upon payment of the regular recreation fees.

(2) The fee provided in paragraph (m)(1) of this section also shall apply to permits which the superintendent may issue for trucking through one park entrance to and from privately owned lands contiguous to the park boundaries, except that such fee shall be considered an annual vehicle fee covering the use of park roads between the point of access to such property and the nearest park exit connecting with a State or county road.

15. In § 7.18 add paragraph (a) as follows:

§ 7.18 Hot Springs National Park.

(a) *Commercial Vehicles.* Permits shall be required for the operation of commercial passenger-carrying vehicles, including taxicabs, carrying passengers for hire over park roads for sightseeing purposes. The fees for such permits shall be as follows:

(1) Fleet operator; equipment that includes any combination of commercial passenger-carrying vehicles, including taxicabs. Calendar-year permit—$25.

(2) Bus operator; equipment limited to a single bus-type vehicle with passenger-carrying seat capacity in excess of eight persons. Calendar-year permit—$20.

(3) Taxicab operator; equipment limited to a single vehicle with a capacity of not over eight passenger-carrying seats. Calendar-year permit—$12.

(4) The fees for permits issued for commercial passenger-carrying vehicle operations starting on or after July 1 of each calender year will be one-half of the respective rates mentioned in paragraphs (a)(1), (2), and (3) of this section.

* * * * *

§ 7.21 John D. Rockefeller, Jr. Memorial Parkway [Amended]

16. In § 7.21 remove paragraphs (a)(3) and (a)(4) and redesignate paragraph (a)(5) as (a)(3).

§ 7.22 Grand Teton National Park [Amended].

17. a. In § 7.22 remove paragraph (b)(2) and redesignate paragraph (b)(3) as (b)(2) and (b)(4) as (b)(3).

b. Remove paragraph (i)(5) and redesignate paragraph (i)(6) as (i)(5).

c. Remove paragraph (j).

§ 7.23 [Amended]

18. a. In § 7.23 remove paragraph (a).

b. Redesignate paragraph (b), (c), (d), (e) and (f) as § 13.65 (b), (c), (d), (e) and (f).

c. Revise the reference in paragraph (c)(2)(i) from "§ 7.23(c)(1)" to "§ 13.65(c)(1)."

d. Revise the reference in paragraph (d)(4) from "36 CFR 2.6,"to" 36 CFR 1.5."

e. Revise the reference in paragraph (g) from "§ 7.23(e)" to "§ 13.65(e)".

§ 7.24 Catoctin Mountain Park [Reserved]

19. Remove and reserve § 7.24.

20. In § 7.25 revise paragraph (b) as follows:

§ 7.25 Hawaii Volcanoes National Park.

* * * * *

(b) *Backcountry registration.* No person shall explore or climb about the lava tubes or pit craters in the park without first registering with the superintendent and indicating the approximate length of time involved in the exploration and the number of people in the party. This section does not apply to the maintained trail through Thruston Lava Tube, nor the maintained trail down and across Kilauea Iki pit crater.

§ 7.28 Olympic National Park [Amended]

21. In § 7.28 remove paragraph (f)(2).

22a. In § 7.34 revise paragraph (b)(4) as follows:

§ 7.34 Blue Ridge Parkway

* * * * *

(b) * * *

(4) Prohibited bait in waters in paragraphs (b)(3) (i) and (ii) of this section: Possession of or use as bait of insects, worms, and other similar organic bait or parts thereof adjacent to, on, or in streams or lakes while in possession of fishing tackle, is prohibited.

* * * * *

b. Remove and reserve paragraph (d).

23. In § 7.36 revise paragraph (a)(1) as follows:

§ 7.36 Mammoth Cave National Park.

(a) *Fishing*—(1) *General.* Trot and throw lines shall contain hooks which are spaced at least 30 inches apart.

* * * * *

§ 7.43 Natchez Trace Parkway [Amended]

24. a. In § 7.43 remove and reserve paragraphs (a) and (b).

b. Revise paragraph (d) as follows:

* * * * *

(d) *Beer and alcoholic beverages.* The possession of beer or any alcoholic beverage in an open or unsealed container is prohibited, except in designated picnic, lodging, residence, and camping areas.

§ 7.44 [Amended]

25. In § 7.44 redesignate paragraphs (a) and (d) as § 13.63 (e) and (f) and remove paragraphs (b), (c), and (e).

§ 7.46 [Amended]

26. In § 7.46 redesignate paragraph (a) as § 13.66 (b) and remove paragraphs (b) and (c).

27. In § 7.47 revise paragraph (a) as follows:

§ 7.47 Carlsbad Caverns National Park.

(a) *Cave entry.* With the exception of the regular trips into Carlsbad Caverns under the guidance or supervision of employees of the National Park Service, no person shall enter any cave or undeveloped part or passage of any cave without a permit.

* * * * *

§ 7.57 Lake Meredith Recreation Area.

28. In § 7.57 remove paragraph (a)(3).

§ 7.58 Cape Hatteras National Seashore Recreational Area; Hunting [Amended]

29. In § 7.58 remove paragraph (c)(1)(i) and redesignate paragraphs (c)(1)(ii) as (c)(1)(i), (c)(1)(iii) as (c)(1)(ii), (c)(1)(iv) as (c)(1)(iii), (c)(1)(v) as (c)(1)(iv), and (c)(1)(vi) as (c)(1)(v).

30. a. In § 7.65 revise paragraph (a) as follows:

§ 7.65 Assateague Island National Seashore.

(a) *Hunting.* (1) Hunting, except with a shotgun, bow and arrow, or by falconry is prohibited. Hunting with a shotgun, bow and arrow, or by means of falconry is permitted in accordance with State law and Federal regulations in designated hunting areas.

(2) Hunting, or taking of a raptor for any purpose is prohibited except as provided for by permit in § 2.5 of this chapter.

(3) A hunter shall not enter upon Service-owned lands where a previous owner has retained use for hunting purposes, without written permission of such previous owner.

(4) Waterfowl shall be hunted only from numbered Service-owned blinds except in areas with retained hunting rights; and no firearm shall be discharged at waterfowl from outside of a blind unless the hunter is attempting to retrieve downed or crippled fowl.

(5) Waterfowl hunting blinds in public hunting areas shall be operated within two plans:

(i) First-come, first-served.

(ii) Advance written reservation.

The superintendent shall determine the number and location of first-come, first-served and/or advance reservation blinds.

(6) In order to retain occupancy rights, the hunter must remain in or near the blind except for the purpose of retrieving waterfowl. The leaving of decoys or equipment for the purpose of holding occupancy is prohibited.

(7) Hunters shall not enter the public waterfowl hunting area more than 1 hour before legal shooting time and shall be out of the hunting area within 45 minutes after close of legal shooting time. The blind shall be left in a clean and sanitary condition.

(8) Hunters using Service-owned shore blinds shall enter and leave the public hunting area via designated routes from the island.

(9) Prior to entering and after leaving a public hunting blind, all hunters shall check in at the registration box located on the trail to the blind he is or has been using.

(10) Parties in blinds are limited to two hunters and two guns unless otherwise posted at the registratrion box for the blinds.

(11) The hunting of upland game shall not be conducted within 300 yards of any waterfowl hunting blind during waterfowl season.

(12) Hunting on seashore lands and waters, except as designated pursuant to § 1.5 and § 1.7, is prohibited.

* * * * *

b. Remove paragraph (b)(1)(iii) and redesignate paragraphs (b)(1)(iv) as (b)(1)(iii) and (b)(1)(v) as (b)(1)(iv).

c. Remove paragraph (b)(3)(iv) and redesignate paragraph (b)(3)(v) as (b)(3)(iv).

d. Remove paragraph (b)(5).

§ 7.67 Cape Cod National Seashore [Amended].

31. a. In § 7.67 amend paragraph (b)(1)(ii) by revising the last sentence as follows:

(b) * * *

(1) * * *

(ii) * * * As specified in paragraph (h), fees will be charged for the issuance of these two permits.

* * * * *

b. Add a new paragraph (h) as follows:

* * * * *

(h) *Commercial vehicles.* Permits shall be required for the operation of commercial passenger-carrying vehicles, carrying passengers for hire over sand routes on federally owned lands within the seashore as follows:

(1) Annual permit for calendar year: $3 for each passenger-carrying seat in the vehicle to be operated.

(2) Annual guide permit for the calendar year, or any part thereof: $5.

§ 7.70 Glen Canyon National Recreation Area [Amended].

32. In § 7.70 remove and reserve paragraph (d).

§ 7.71 Delaware Water Gap National Recreation Area [Amended].

33. In § 7.71 remove and reserve paragraph (a).

§ 7.73 Buck Island Reef National Monument [Amended].

34. In § 7.73 remove and reserve paragraph (a).

§ 7.74 Virgin Islands National Park [Amended].

35. In § 7.74 remove and reserve paragraph (a).

§ 7.75 Padre Island National Seashore [Amended].

36. a. In § 7.75 remove and reserve paragraphs (c), (d), and (f).

b. Revise paragraphs (h) (3) and (4) as follows:

* * * * *

(h) * * *

(3) *Exercise of non-Federal Oil and Gas Rights.* Before entering the National Seashore for the purpose of conducting any operations pursuant to a mineral interest authorized under the Act providing for establishment of the Seashore, the operator shall comply with the requirements of Part 9, Subpart B of this chapter.

(4) All activities relating to the exercise of mineral interests which take place within the boundaries of the park shall be in accordance with an approved Plan of Operations.

* * * * *

c. Remove existing paragraph (h)(5) and redesignate paragraph (h)(6) as (h)(5).

§ 7.79 Amistad Recreation Area [Amended].

37. In § 7.79 remove and reserve paragraphs (a) and (b).

§ 7.84 Channel Islands National Monument [Amended].

38. a. In § 7.84 remove and reserve paragraph (a).

b. Remove paragraph (c)(5).

§ 7.85 Big Thicket National Preserve [Amended].

39. a. In § 7.85 remove paragraph (d)(3).

b. Remove paragraphs (e) and (f).

§ 7.86 Big Cypress National Preserve [Amended].

40. In § 7.86 remove and reserve paragraph (d).

§ 7.87 [Amended]

41. In § 7.87 remove paragraphs (a) through (h).

§ 7.93 Guadalupe Mountains National Park

42. In § 7.93 revise paragraph (a) as follows:

(a) *Cave entry.* No person shall enter any cave or passageway of any cave without a permit.

§ 7.94 Andersonville National Historic Site [Amended].

43. In § 7.94 remove and reserve paragraph (a).

PART 9—MINERALS MANAGEMENT

44. Change the reference in § 9.18(b) from "§ 7.44 (a) and (b)" to "§ 7.45(a)."

PART 13—NATIONAL PARK SYSTEM UNITS IN ALASKA

§ 13.3 [Reserved]

45. Remove and Reserve § 13.3.

Dated: June 17, 1983.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

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Thursday
June 30, 1983

Part III

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

Surface Mining and Reclamation Operations Under a Federal Program; State of North Carolina

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 933

Surface Mining and Reclamation Operations Under a Federal Program for the State of North Carolina

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

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the Department of the Interior promulgates a Federal program for regulation of coal exploration and surface coal mining and reclamation operations on non-Federal and non-Indian lands in North Carolina. This includes surface effects of underground coal mining. This program is necessary in order to regulate surface coal mining activities in the absence of a State program.

DATE: Effective date, August 1, 1983.

ADDRESSES: Documents in the Administrative Record are available for public review and copying during regular business hours at the Office of Surface Mining, Knoxville Field Office, 530 Gay Street, SW, Knoxville, Tennessee 3902, or the Administrative Record Room Office of Surface Mining, 1100 L Street, NW., Washington, DC. Copies of both the proposed and final rules may also be obtained by mail from the Office of Surface Mining, Knoxville Field Office, 530 Gay Street, SW, Knoxville, Tennessee 37902, or from Office of Surface Mining, Administrative Record, 1951 Constitution Avenue, NW., Washington, DC. 20240. Copies of both may also be obtained at either location.

FOR FURTHER INFORMATION CONTACT: James M. Kress, Office of Surface Mining, Branch of Regulatory Programs, Room 222, 1951 Constitution Avenue, NW., Washington, D.C. 20240. Telephone (202) 343-5866. James A. Curry, Knoxville Field Office, Office of Surface Mining, Knoxville, Tennessee (615) 673-4504.

SUPPLEMENTARY INFORMATION:

Availability of Copies

Copies of this program are available for inspection and may be obtained at the OSM office listed above in "ADDRESSES."

Background

Under Section 504(a) of the Surface Mining Control and Reclamation Act of 1977 (the Act), Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*, the Secretary of the Interior (the Secretary) is required to promulgate a Federal program within 34 months after passage of the Act if a State fails to submit a program to assume responsibility for regulating surface mining activities, fails to resubmit a program within 60 days of disapproval, or fails at any time to implement, enforce or maintain an approved State program.

North Carolina has identifiable coal reserves, but has not submitted a program to the Secretary to obtain primary regulatory responsibility. The Director, therefore, has decided to promulgate this Federal program for North Carolina.

This decision does not necessarily imply any expectation of imminent mining in North Carolina. It instead recognizes that the Act prohibits coal exploration or surface coal mining in States which do not have either an approved State program or a fully promulgated Federal program. Accordingly, OSM believes it prudent to put the required regulatory framework into place so that any future coal exploration or mining may be conducted in North Carolina legally, without unnecessary delay, and in an environmentally sound manner.

Once a decision is made that a Federal program is necessary for a State, the Secretary must make several determinations before promulgating a program. Section 504(a) of the Act requires that in implementing a Federal program the Secretary take into consideration the nature of the State's terrain, climate, biological, chemical, and other relevant physical conditions. This requirement is also found in the regulations, 30 CFR 736.22(a)(1). The Act (Section 505(b)) and the regulations (Section 736.23(b)) also provide that if a State has more stringent land use and environmental laws or regulations, they shall not be construed to be inconsistent with the Act or the Secretary's regulations. If the State's laws or regulations establish more stringent standards regulating surface mining control and reclamation procedures than those found in the Act or the Secretary's regulations, or if the State regulates or protects an aspect of the environment affected by surface mining operations which neither the Act nor the Secretary's regulations protect, then those State standards are specifically preserved. Thus, the Secretary believes that the requirements of Section 505(b) can best be met by identifying North Carolina laws and regulations which impose equivalent or more stringent environmental controls and by listing them in Section 933.700(e).

Also, in promulgating a program for a State, Section 504(g) specifies that any State statutes or regulations which regulate surface mining and reclamation operations subject to the Act will be superseded and preempted by the Federal program to the extent that they interfere with the achievement of the purposes and requirements of the Act and the Federal program. This provision is reinforced by Section 505(a) of the Act, which states that only those State laws and regulations which are inconsistent with the Act and its implementing regulations shall be superseded by the Federal program. Thus, State statutes and rules regulating the same activities as those covered by the Federal law and regulations and which interfere with achievement of the purposes of the Act must be identified and preempted by OSM.

Finally, a Federal program, according to Section 504(h) of the Act, must include a process for coordinating the review and issuance of surface mining permits with other Federal or State permits applicable to the proposed operation. The Federal statutes with which the surface mining permitting process must be coordinated are set out in 30 CFR 736.22(c). State statutes for which a permit is required must be identified in the process of promulgating a Federal program, and the Federal program must provide for coordination with the review and issuance procedures required by those statutes.

Federal programs are based on the Secretary's permanent program regulations: 30 CFR Subchapters A, F, G, J, K, L and M. The permanent program regulations establish procedures and performance standards under the Act and form the benchmark for State programs. In order for a State to have a program approved by the Secretary, Section 503(a)(7) requires that the State's rules and regulations be consistent with the Secretary's regulations.

The parts of the permanent program regulations that must be included in a Federal program are listed at 30 CFR 736.22(b). They include general requirements and definitions (Parts 700 and 701), the exemption for coal extraction incident to government-financed highway or other construction (Part 707), the designation of lands unsuitable for surface mining (Parts 760, 761, 762, and 764), permits and permit applications (Subchapter G), reclamation bonding (Subchapter J), performance standards (Subchapter K), inspection and enforcement (Parts 842, 843 and 845), and blaster training and certification (Subchapter M). In

addition, the provisions in the permanent regulations on protection of employees (Subchapter P) and restrictions on financial interests (Part 706) are applicable to Federal employees who perform functions or duties under the Act. The rules for the permanent program are found in 30 CFR Parts 700–707 and 730–865. Part 705 was published October 20, 1977 (42 FR 56060). Parts 795 and 865 (originally Part 830) were published December 13, 1977 (42 FR 62639). The other permanent program regulations were published at 44 FR 15323–15463 (March 13, 1979). Subchapter M was published on December 12, 1980 (45 FR 82098). Corrections were published at 44 FR 15485 (March 14, 1979); 44 FR 53507–53509 (September 14, 1979); 44 FR 66195 (November 19, 1979); 45 FR 26001 (April 16, 1980); 45 FR 37818 (June 5, 1980); and 45 FR 47424 (July 15, 1980). Amendments to the rules have been published at 44 FR 60969 (October 22, 1979) as corrected at 44 FR 75143 (December 19, 1979); at 44 FR 77440–77447 (December 31, 1979); 45 FR 2626–2629 (January 11, 1980); 45 FR 25998–26001 (April 16, 1980); 45 FR 33926–33927 (May 20, 1980); 45 FR 39446–39447 (June 10, 1980); 45 FR 52306–52324 (August 6, 1980); 45 FR 52375 (August 7, 1980); 45 FR 58780–58786 (September 4, 1980); and 45 FR 76932 (November 20, 1980); 46 FR 37232 (July 17, 1981); 46 FR 41702 (August 17, 1981); 46 FR 47720 (September 29, 1981); 46 FR 53376 (October 28, 1981); 46 FR 59934 (October 26, 1981); 47 FR 32942 (July 30, 1982); 47 FR 33431 (August 2, 1982); 47 FR 35620 (August 16, 1982); and 47 FR 38486 (August 31, 1982); 47 FR 44942 (October 12, 1982); 47 FR 47212 (October 22, 1982); 47 FR 51316 (November 12, 1982); 48 FR 1160 (January 10, 1983); 48 FR 2266 (January 18, 1983); 48 FR 9478 and 9486 (March 4, 1983); 48 FR 9788 (March 8, 1983); 48 FR 14814 (April 15, 1983); 48 FR 19314 (April 28, 1983); 48 FR 20392 (May 5, 1983); 48 FR 21446 (May 12, 1983); 48 FR 22110 (May 16, 1983); 48 FR 22092 (May 16, 1983); 48 FR 23356 (May 24, 1983); and 48 FR 24638 (June 1, 1983).

Representatives of industry, two States and several environmental groups challenged the permanent regulatory program in the U.S. District Court for the District of Columbia. These suits were consolidated and heard in a single lawsuit entitled *In re: Permanent Surface Mining Regulation Litigation* (Civil Action No. 79–1144). In response to the arguments raised in the challenges, the Secretary voluntarily suspended several permanent program regulations. These suspensions were announced in the **Federal Register** on November 27, 1979 (44 FR 67942); December 31, 1979 (44 FR 77447–77455); January 30, 1980 (45 FR 6913); and August 4, 1980 (45 FR 51547–51550). In two opinions the Court remanded certain other regulations which had been challenged in the lawsuit. These opinions were issued on February 26, 1980, and May 16, 1980. Many of the issues decided by the District Court have been appealed to the Court of Appeals for the District of Columbia Circuit. *In re: Permanent Surface Mining Regulation Litigation*, Nos. 80–1810, 80–1811, 80–1812, 80–1813 and 80–1823. The appeals have been remanded to the District Court and the issues on appeal have been considered in the revisions to the permanent program rules discussed below.

North Carolina Federal Program

OSM published a proposed Federal program for North Carolina in the **Federal Register** on March 2, 1983. 48 FR 8954–8961. The notice announced a 60-day comment period ending on May 2, 1983, and a public hearing for April 4, 1983, in Sanford, North Carolina. On April 1, 1983, OSM announced the postponement of the public hearing and the extension of the public comment period until April 26, 1983. Because no one expressed an interest in testifying, OSM subsequently published a notice on April 26, 1983, cancelling the public hearing.

As mentioned above, when promulgating a Federal program for a State, the Secretary is required by Section 504(a) of the Act to take into consideration the nature of the terrain, climate, biological, chemical, and other relevant physical conditions of that State. OSM has reviewed North Carolina laws and regulations to determine whether they suggest that special provisions may be necessary or appropriate based on special terrain or other physical conditions in the State. The results of the review are found under the section below entitled "Detailed Discussion."

Pursuant to Section 504(a), the Secretary becomes the regulatory authority when a Federal program is implemented for a State. OSM's permanent program regulations contain references to "the regulatory authority" and to "the State regulatory authority," both of which mean the Secretary when a Federal program for a State is involved. Section 701(22) of the Act. The Office of Surface Mining is delegated all of the Secretary's authority for implementing, maintaining and enforcing a Federal program. This Federal program for North Carolina does not change these responsibilities.

Explanation of Cross-Referencing

In the general notice of intent to promulgate Federal programs of May 16, 1980 (45 FR 32228), OSM stated that each Federal program would be specific to the particular State and would implement the permanent program procedures and environmental protection provisions of the Act (45 FR at 32229). However, except for changes to incorporate more stringent State environmental protection standards, to list other State laws requiring permits for which coordination is required, and to recognize unique or unusual physical conditions affecting surface coal mining and reclamation in a State, OSM believes that few changes are needed in the permanent program regulations for any particular State for which a Federal program must be promulgated.

In January, 1981, the Secretary directed that the Department review all existing regulations in order to eliminate those which are burdensome, excessive and unnecessary. Review of the permemant program regulations was initiated and in many instances is resulting in significant revision of them. See Calendar of Federal Regulations notice of rule review and revision, 47 FR 1709 (January 13, 1982). See also; e.g., revisions of OSM's subsidence regulations, 30 CFR Sections 784.20 and 817.121 and 122. 48 FR 24638 (June 1, 1983) and OSM's inspection and enforcement regulations, 30 CFR Parts 842, 843, and 845, 47 FR 35620 (August 16, 1982).

In order to take advantage of the results which revision of the permanent program regulations will achieve, OSM is promulgating this Federal program in the following manner. Rather than repeating the full text of the permanent regulations which are being revised, there is a cross-reference to the permanent program regulations. For example, criteria for the designation of lands unsuitable for surface coal mining have been provided by the statement that "Part 762 of this Chapter . . . shall apply to surface coal mine operations" (see Section 933.762). One effect of cross-referencing the permanent program regulations is that as the permanent program regulations are revised, this Federal program will be similarly revised. Over time, all of the permanent program regulations will undergo review and many will be revised. No separate rulemaking will be undertaken or necessary for revision of this program, however, unless OSM determines that special conditions are necessary for North Carolina.

The promulgation of this cross-referencing program will not result in any modification of the substance of OSM's permanent program rules. Where specific provisions are needed for an individual State's Federal program which are different from the permanent program regulations, a separate paragraph has been added to the appropriate section of this Federal program. Cross-referencing to the permanent program rules is also used in the promulgation of other Federal programs. Public comment on the cross-referencing method as it affects other Federal programs, however, should be directed to each of those rulemaking notices.

When all of the permanent program rules have been revised, OSM will publish corrections to the cross-referencing Federal programs in order to combine changes in the numbering of permanent program rules to the citation in the **Federal Register.**

Several provisions of the permanent program regulations are already applicable and need not be cross-referenced here because they were fully promulgated for application to all regulatory programs. Those provisions are 30 CFR Chapter VII, Subchapter P—Protection of Employees; Part 706—Restrictions on Financial Interests of Federal Employees; and Part 769—Petition Process for Designation of Federal Lands Unsuitable for Surface Coal Mining. (30 CFR Part 764—Designating Lands Unsuitable for Surface Coal Mining are included in the North Carolina Federal program by a cross-reference under Section 933.764, to provide a petition process on non-Federal and non-Indian lands in that State.)

This final rule notice does not contain Section 983.818 because the final rule notice revising the concurrent surface and underground mining rules deleted 30 CFR Part 818. 48 FR 24638 (June 1, 1983).

With regard to the bonding regulations (Subchapter J), only Part 800 is cross-referenced here because OSM has proposed to revise Subchapter J to include just one part, Part 800. 46 FR 45082 (September 9, 1981) (proposed). Should this program become effective before a final rule notice revising the bonding regulations appears, and the bonding rules not be revised by the time a permit under this program is to be issued, as a condition of issuance of that permit the applicant will be required to abide by the then-effective bonding rules until such rules are superseded.

Content and Organization of the Program

The content and organization of the Federal program for North Carolina generally follow the permanent program regulations. But, as discussed above, instead of the full text appearing, each section of the program includes only reference to the pertinent permanent program regulation. Sections 933.700 (e) and (f), respectively, list North Carolina statutes that are more stringent than, and those that are inconsistent with, the Act. Where specific provisions are needed for this Federal program which are different from the permanent program regulations, a separate paragraph has been added to the appropriate section.

Detailed Discussion

In order to fulfill the Secretary's obligation under Section 504(a) of the Act to take into consideration the nature of the terrain, climate, biological, chemical, and other relevant physical conditions in each State, OSM has reviewed North Carolina laws and regulations. OSM has determined that certain North Carolina statutes may impose, in certain circumstances, more stringent environmental controls than are provided for under the act or the Federal regulations. Section 933.700(e) lists the North Cariolina laws which OSM has identified as setting more stringent land use and environmental controls for surface mining. Those more stringent North Carolina statutes are summarized as follows:

(a) North Carolina General Statute (NCGS) 74–51, concerning conditions under which a mining permit may be granted, contains provisions which are not found in the Act or the Federal regulations. The North Carolina Department of Natural Resources and Community Development may deny a permit for a mining operation which will have a significantly adverse effect on the purposes of a publicly owned park, forest, or recreation area. OSM has altered the following sections as they apply to Part 933: 30 CFR 761.11(c) has been amended by adding the phrase "forest, recreation area," after the phrase "publicly owned park,"; 30 CFR 761.12(f)(1) has been amended by adding the phrase "forest, recreation area," after the phrase "public park,"; and 30 CFR 780.31 and 784.17 have been amended by adding, "forest, or recreation areas" after the phrase "public parks."

NCGS 74–51 also provides that permit approval may be conditioned on a "requirement of visual screening, vegetative or otherwise, so as to screen the view of the operation from public highways, public parks, or residential areas where the Department finds such screening to be feasible and desirable." As these sections are more stringent, OSM has added to Sections 780.31 and 784.17 paragraphs requiring that mining operations visible from public parks, public highways, or residential areas include in the plan of operations, measures to be taken to screen the operation from the view of public parks, public highways, or residential areas or reasons why such screening measures are either not feasible or not desirable.

(b) North Carolina mining laws and regulations apply to mining operations affecting an area greater than one acre, while the Act applies to those mining operations affecting an area greater than two acres, Section 528(2). To the extent that North Carolina mining law and regulations apply to coal mining operations not regulated by the Surface Mining Control and Reclamation Act, they are not preempted by this Federal program for North Carolina. Also, the mining of peat, an activity which is believed to be imminent in North Carolina, is not subject to regulation under the Surface Mining Control and Reclamation Act. It may, however, be subject to regulation under the State's mining laws and regulations because it includes the mining of substances other than those minerals listed. NCGS 74–49(6). Regulation of peat mining under the North Carolina Mining Act of 1971 would not interfere with achievement of the purposes of the Federal Act.

(c) Dam Safety Law of 1967, NCGS 143–215.23 through 143–215.37, and Title 15 North Carolina Administrative Code, Subchapter 2K, Dam Safety, include requirements for certification and inspection of water impoundments and diversions.

(d) Geophysical Exploration regulations, Title 15, North Carolina Administrative Code, Subchapter 5C, applies to any coal exploration involving the use of explosives.

In accordance with 30 CFR 736.23, OSM has found that those North Carolina statutes and rules listed in Section 933.700(f) interfere with the attainment of the goals and purposes of the act and the permanent program rules thereunder. Thus, the following North Carolina statutes and rules are preempted and superseded on and after the effective date of this program:

(a) North Carolina Mining Act of 1971 (NCGS 74–46 through 74–68) insofar as it applies to surface coal mining operations affecting more than two acres and which are regulated by the Surface Mining Control and Reclamation

Act. North Carolina law continues to apply to the mining of minerials and substances other than coal, and to coal mining operations which affect two acres or less or otherwise are not regulated by the Surface Mining Control and Reclamation Act.

(b) Title 15, North Carolina Administrative Code, Subchapters 5A, 5B, and 5F, Mining and Mineral Resources, insofar as they apply to surface coal mining operations of more than two acres and which are regulated by the Surface Mining Control and Reclamation Act. These regulations continue to apply to the mining of minerals and substances other than coal and to coal mining operations that affect two acres or less or otherwise not regulated by the Surface Mining Control and Reclamation Act.

These North Carolina laws and regulations represent the main body of North Carolina law relating to the exploration and surface mining of minerals and the reclamation of mined land. A close review of these North Carolina statutes and rules indicates that they are not consistent with the Act or the Federal permanent program rules and that they interfere with the attainment of the goals and purposes of the Act. Thus, the North Carolina statutes and rules described above will no longer be applicable to the regulation of coal exploration, surface coal mining operations or the reclamation of surface coal mined lands in North Carolina, except as they pertain to operations affecting two acres or less or which otherwise are not regulated by the Surface Mining Control and Reclamation Act.

Paragraph (g) of Section 933.700 authorizes the Secretary to grant a limited variance from the performance standards of the permanent program rules based on a showing by a permit applicant or permittee that the variance is necessary due to the unique nature of North Carolina's terrain, climate, biological, chemical, or other relevant physical conditions. This provision gives effect to Section 504(a) which directs the Secretary to take into consideration, in promulgating a Federal program for a State, the aforementioned physical characteristics. In promulgating each Federal program for a State, the Secretary reviews State laws to determine whether any would interfere with achievement of the purposes of a Federal program and must be superseded and whether any establish more stringent standards for environmental protection and must therefore, be preserved. The presumption is that State laws are a reflection of the particular environmental conditions in the State. There may, however, be conditions present which are not specifically covered by State law, but which must be deferred to pursuant to the requirement in Section 504(a). Paragraph (e) authorizes the Secretary to so do. The variance that may be granted must be shown by a permit applicant to be necessitated by special environmental conditions in North Carolina in order to be granted. It is not a general variance authorization. Congress did not provide for a general variance from standards set in the Act. Congress was concerned that States not be allowed to grant variances from Federally-set minimum standards. The variance allowed under Section 933.700(g), however, would be granted by the Secretary through OSM and would be tied to the relevant environmental conditions found in North Carolina.

To coordinate the Federal program permitting process under the Act with the permitting requirements imposed by other Federal statutes and by North Carolina, Section 933.770 identifies the various permits, statutes, and rules which may, expressly or impliedly, impact on coal exploration and surface coal mining and reclamation under this Federal program. The following permits, statutes, and rules are pertinent and are listed in Section 933.770.

(a) NCGS 143–211 through 143–215.114 set forth requirements for the protection of air and water resources. 1) A permit is required from the Environmental Management Commission of the Department of Natural Resources and Community Development for any outlet into the waters of the State, pursuant to NCGS 143–215.1. 2) A permit may be required by the local government authority for any obstruction to a floodway pursuant to NCGS 143–215.57. 3) The Dam Safety Act, NCGS 143–215.23 through 143–215.37 and Dam Safety Regulations, Title 15, North Carolina Administrative Code, Subchapter 2K, require that notice be provided to the Department of Natural Resources and Community Development at least ten days prior to the construction of any dam and that a certificate of approval of the dam, if necessary, be obtained from the Department in accordance with NCGS 143–215.26 and Title 15, Subchapter 2K. 4) An air pollution control permit may be required pursuant to NCGS 143–215.108. 5) Mining operations must maintain air and water quality reporting systems as required by NCGS 143–215.63 through 143–215.69.

(b) The Coastal Area Management Act, NCGS 113A–100 through 113A–128, requires a permit from the Secretary of Natural Resources and Community Development for a mining operation in any area of environmental concern designated pursuant to that Act.

(c) A permit is required for dredging or for filling in or about estuarine water on State-owned lakes, in accordance with the provisions of NCGS 113–229. The obstruction of navigable water is regulated by NCGS 76–40 and 76–41.

(d) Mining operations must comply with any applicable land use regulations adopted in a soil conservation district pursuant to Section 139–9 of the Soil Conservation District Law, NCGS 139–1 *et seq.*

(e) NCGS 153A–128 requires compliance with any county ordinance or regulation concerning the possession, storage, use or conveyance of explosives. NCGS 14–284.1 regulates the sale, delivery and storage of explosives and imposes criminal sanctions for violations of the statute. NCGS 14–50 through 14–50.1 impose criminal sanctions for the improper use of explosives.

(f) Title 15, North Carolina Administrative Code, Subchapter 5C, Geophysical Exploration, requires a permit for all coal exploration involving the use of explosives.

(g) NCGS 14–284.2 prohibits the dumping of toxic substances without a permit and imposes criminal sanctions for violations.

Other North Carolina laws with which compliance is required but which do not require a permit or license have not been listed. These include, but are not limited to:

NCGS 113.265, which prohibits the obstruction, pollution or diminution of the natural flow of water through a fish hatchery; NCGS 113.293, which prohibits the obstruction of rivers and creeks in a manner preventing the passage of fish; NCGS 113.263, pursuant to which the Wildlife Resource Commission may inspect proposals and specifications for dams having an adverse impact upon fish within the State; and NCGS 143–434 through 143–447, under which mining operations using pesticides must comply with the Pesticide Control Law.

Disposition of Comments

OSM proposed a Federal program for North Carolina in the March 3, 1983, **Federal Register**. The notice announced a 60-day comment period ending on May 2, 1983, and a public hearing for April 4, 1983, in Sanford, North Carolina. On April 1, 1983, OSM announced the postponement of the public hearing and

the extension of the public comment period until April 26, 1983. Because no one expressed an interest in testifying, OSM subsequently published a notice on April 26, 1983, canceling the public hearing.

OSM received written comments on the proposed North Carolina Federal program from the North Carolina Department of Natural Resources and Community Development and from Delta Mining, Inc.

1. Delta Mining stated their interest in mining North Carolina coal reserves, and urged that OSM implement the Federal program in North Carolina.

2. The North Carolina Department of Natural Resources and Community Development identified several errors in the preamble and the text of the proposed Federal program for North Carolina as printed in the March 3, 1983, **Federal Register**. They were:

(a) Page 8958, first column, second line, the correct citation is NCGS 14–284.1, not 14–248.1;

(b) Page 8958, first column, two-thirds of the way down, the reference to the Pesticide Control Law should be to NCGS 143–434 through 143–447, not 143–441; and

(c) Page 8960, first column, line 22, the correct name of the cited agency is the Department of Natural Resources and Community Development.

Further, OSM has made the following modification in the final program as a courtesy to North Carolina:

OSM has added a new Paragraph (b) to § 933.786, under which the Secretary will forward to the North Carolina Department of Natural Resources and Community Development a copy of each decision to grant or deny a permit application.

OMB Review

The recordkeeping and reporting requirements of the Federal program for North Carolina are the same as those of the permanent program regulations which have been approved by the Office of Management and Budget under 44 U.S.C. 3507. Although this program contains information and recordkeeping requirements, OSM anticipates less than ten respondents. Under the Paperwork Reduction Act, clearance of information collection forms is required only when ten or more respondents are expected. If in the future the number of respondents appears to be increasing, the proper forms, if they differ from those already approved, will be submitted to the Office of Management and Budget with accompanying notices in the **Federal Register**, in accordance with the requirements of 44 U.S.C. Chapter 35.

Other Information

OSM has examined these rules according to the criteria of Executive Order 12291 (46 FR 13193, February 19, 1981) and determined that they do not constitute a major rule. There will be no major economic impact through adoption of this rule because it will affect only a small number of mining operations.

OSM has examined these rules pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, and determined that they will not have a significant impact on a substantial number of small entities.

Section 702(d) of the Act provides that promulgation of a Federal program shall not constitute a major Federal action under the National Environmental Policy Act, 42 U.S.C 4332. Thus, no Environmental Assessment is required for this rulemaking.

List of subjects in 30 CFR Part 933

Coal mining, Intergovernmental relations, Surface mining, Underground mining, Reporting and recordkeeping requirements.

Drafting Information

These regulations were drafted by Courtney W. Shea, Office of the Solicitor and James M. Kress, Branch of Regulatory Programs, Office of Surface Mining.

Dated: June 10, 1983.

William P. Pendley,

Acting Assistant Secretary, Energy and Minerals.

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C 1201 *et seq.*).

30 CFR Chapter VII is amended by adding Part 933 to read as follows:

PART 933—NORTH CAROLINA

Sec.

933.700—North Carolina Federal Program.
933.701—General.
933.707—Exemption for coal extraction incident to government-financed highway or other construction.
933.761—Areas designated unsuitable for surface coal mining by act of Congress.
933.762—Criteria for designating areas as unsuitable for surface coal mining operations.
933.764—Process for designating areas unsuitable for surface coal mining operations.
933.770—General requirements for permit and exploration procedures.
933.771—General requirements for permits and permit applications.
933.776—General requirements for coal exploration.
933.778—Surface mining permit applications—minimum requirements for legal, financial, compliance, and related information.
933.779—Surface mining permit applications—minimum requirements for information on environmental resources.
933.780—Surface mining permit applications—minimum requirements for reclamation and operations plan.
933.782—Underground mining permit applications—minimum requirements for legal, financial, compliance, and related information.
933.783—Underground mining permit applications—minimum requirements for information on environmental resources.
933.784—Underground mining permit applications—minimum requirements for reclamation and operation plan.
933.785—Requirements for permits for special categories of mining.
933.786—Reviews, public participation, and approval or disapproval of permit applications and permit terms and conditions.
933.787—Administrative and judicial review of decisions on permit applications.
933.788—Permit review, revisions, and renewals, and transfer, sale, and assignment of rights granted under permits.
933.795—Small operator assistance.
933.800—General requirements for bonding of surface coal mining and reclamation operations.
933.815—Performance standards—coal exploration.
933.816—Performance standards—surface mining activities.
933.817—Performance standards—underground mining activities.
933.819—Special performance standards—auger mining.
933.823—Special performance standards—operations on prime farmland.
933.824—Special performance standards—mountaintop removal.
933.826—Special performance standards—operations on steep slopes.
933.827—Special performance standards—coal processing plants and support facilities not located at or near the minesite or not within the permit area for a mine.
933.828—Special performance standards—in situ processing.
933.842—Federal inspections.
933.843—Federal enforcement.
933.845—Civil penalties.
933.850—Blaster training and certification.

Authority: Pub. L. 95–87, The Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.*, 91 Stat. 445.

§ 933.700—North Carolina Federal Program.

(a) This part contains all rules that are applicable to surface coal mining operations in North Carolina which have been adopted under the Surface Mining Control and Reclamation Act of 1977.

(b) The rules in this part cross-reference pertinent parts of the permanent program regulations in this chapter. The full text of a rule is in the

permanent program rule cited under the relevant section of the North Carolina Federal program.

(c) The rules in this part apply to all surface coal mining operations in North Carolina conducted on non-Federal and non-Indian lands. The rules in Subchapter D of this chapter apply to operations on Federal lands in North Carolina.

(d) The information collection requirements contained in this part do not require approval by the Office of Management and Budget under 44 U.S.C. 3507 because there are fewer than ten respondents annually.

(e) The following provisions of North Carolina laws and regulations provide, where applicable, for more stringent environmental control and regulation of some aspects of surface coal mining operations than do the provisions of the Act and the regulations in this chapter. Therefore, pursuant to section 505(b) of the Act, they shall not be construed to be inconsistent with the Act unless in a particular instance the rules in this chapter are found by OSM to establish more stringent environmental controls.

(1) North Carolina General Statute (NCGS) 74–51, concerning conditions under which a mining permit may be granted, authorized the North Carolina Department of Natural Resources and Community Development to deny a permit for a mining operation which will have a significantly adverse effect on the purposes of a publicly owned park, forest, or recreation area and may condition permit approval on a requirement of visual screening, vegetative or otherwise, so as to screen the view of the operation from public highways, public parks, or residential areas where the Department finds such screening to be feasible and desirable, or determines that such screening measures are either not feasible or not desirable.

(2) North Carolina mining laws and regulations apply to mining operations affecting an area greater than one acre. To the extent that North Carolina mining law and regulations cited in Paragraph (f) of this Section apply to coal mining operations not regulated by the Surface Mining Control and Reclamation Act, they are not preempted by this Federal program for North Carolina.

(3) North Carolina Dam Safety Law of 1967, North Carolina General Statutes (NCGS) 143–215.23 through 143–215.37.

(4) Geophysical Exploration regulations, Title 15, North Carolina Administrative Code, Subchapter 5C, applies to any coal exploration involving the use of explosives.

(f) The following are North Carolina laws and regulations that generally interfere with the achievement of the purposes and requirements of the Act and are, in accordance with Section 504(g) of the Act, preempted and superseded to the extent that they regulate coal exploration or surface coal mining and reclamation operations regulated by the Surface Mining Control and Reclamation Act. Other North Carolina laws may interfere with the achievement of the proposes of goals of the Act in an individual situation, and may be preempted and superseded as they affect a particular coal exploration or surface mining operation by publication of the notice to that effect in the **Federal Register.**

(1) North Carolina Mining Act of 1971, as amended, NCGS 74–46 through 74–68, except to the extent that the Mining Act is preserved as provided in Paragraph (e) of this section.

(2) Title 15, North Carolina Administrative Code, Subchapters 5A, 5B, and 5F Mining and Mineral Resources, except to the extent that those regulations are preserved as provided in Paragraph (e) of this section.

(g) The Secretary may grant a limited variance from the performance standards of §§ 933.815 through 933.828 of this Part if the applicant for coal exploration approval or a surface mining permit submitted pursuant to §§ 933.770 through 933.788 of this Part can demonstrate in the application that: (1) such variance is necessary because of the unique nature of the State's terrain, climate, biological, chemical, or other relevent physical conditions; and (2) that the proposed alternative will achieve equal or greater environmental protection than does the performance requirement from which the variance is requested.

§ 933.701—General.

Sections 700.5, 700.11, 700.12, 700.13, 700.14, 700.15 and Part 701 of this chapter shall apply to surface coal mining and reclamation operations in North Carolina.

§ 933.707—Exemption for Coal Extraction Incident to government-financed highway or other construction.

Part 707 of this chapter, Exemption for Coal Extraction Incident to Government-Financed Highway or Other Construction, shall apply to surface coal mining and reclamation operations.

§ 933.761—Areas designated unsuitable for surface coal mining by Act of Congress.

Part 761 of this chapter, Areas Designated Unsuitable for Coal Mining by Act of Congress, with the exception of §§ 761.11(c) and 761.12(f)(1), shall apply to surface coal mining and reclamation operations, beginning one year after the effective date of this program. For the purposes of Part 933, the following §§ 761.11(c) and 761.12(f)(1) shall replace the existing §§ 761.11(c) and 761.12(f)(1).

(c) On any lands which will adversely affect any publicly owned park, forest, recreation area, or any places included on, or eligible for listing on, the National Register of Historic Places, unless approved jointly by the regulatory authority and the Federal, State, or local agency with jurisdiction over the park, forest, recreation area, or places;

(f)(1) Where the proposed surface coal mining operation may adversely affect any public park, forest, recreation area, or any places included on, or eligible for listing on, the National Register of Historic Places, the regulatory authority shall transmit to the Federal, State, or local agencies with jurisdiction over, or a statutory or regulatory responsibility for, the park, forest, recreation area, or historic place a copy of the completed permit application containing the following:

(i) A request for that agency's approval or disapproval of the operators;

(ii) A notice to the appropriate agency that it must respond within 30 days from receipt of the request.

§ 933.762—Criteria for designating areas as unsuitable for surface coal mining operations.

Part 762 of this chapter, Criteria for Designation Areas Unsuitable for Surface Coal Mining Operations, shall apply to surface coal mining and reclamation operations.

§ 933.764—Process for designating areas unsuitable for surface coal mining operations.

Part 764 of this chapter, State Processes for Designatng Areas Unsuitable for Surface Coal Mining Operations, pertaining to petitioning, initial processing, hearing requirements, decisions, data base and inventory systems, public information, and regulatory responsibilities shall apply to surface coal mining and reclamation operations beginning one year after the effective date of this program.

§ 933.770—General requirements for permits and exploration procedures.

(a) Part 770 of this chapter, General Requirements for Permit System Under State Programs, shall apply to coal exploration and surface coal mining and reclamation operations.

(b) The Secretary shall coordinate, to the extent practicable, the issuance of the following permits, leases and/or certificates required by the State of North Carolina: Water discharge permit (NCGS 143–215.1); water use permits in

a capacity use area (NCGS 143-215.5); an approval of dam construction (NCGS 143-215.108); an air pollution control permit (NCGS 143-215.26, Title 15, North Carolina Administrative Code, Subchapter 2K); air and water quality reporting systems (NCGS 143-215.63—143-215.69); a geophysical exploration permit (Title 15, North Carolina Administrative Code, Subchapter 5C); a development permit for operations in an area of environmental concern designated pursuant to the Coastal Area Management Act (NCGS 113A-100—113A-128); a dredging or filling permit issued by the Department of Natural Resources and Community Development (NCGS 113-229); a permit for dumping of toxic substances (NCGS 14-284.2); compliance with any applicable land use regulations adopted in a soil conservation district (NCGS 139-9); and compliance with any county ordinance regarding explosives (NCGS 153A-128).

(c) No person shall be granted a permit to conduct exploration which results in the removal of more than 250 tons of coal or shall conduct surface coal mining unless that person has acquired all required permits, leases, and/or certificates listed in paragraph (b) of this section.

§ 933.771—General requirements for permits and permit applications.

(a) Part 771 of this chapter, General Requirements for Permits and Permit Applications, shall apply to any person who makes application for a permit to conduct surface coal mining and reclamation operations.

(b) A person who wishes to conduct new surface coal mining and reclamation operations or who wishes a revision of his permit shall file a complete application at least 12 months prior to the date upon which permit issuance or revision is desired, and shall pay to the Secretary a permit fee in accordance with Section 736.25 of this chapter.

§ 933.776—General requirements for coal exploration.

(a) Part 776 of this chapter, *General Requirements for Coal Exploration*, shall apply to any person who conducts or seeks to conduct coal exploration operations.

(b) OSM shall make every effort to act on an exploration application within 60 days of receipt or such longer time as may be reasonable under the circumstances. If additional time is needed, OSM shall notify the applicant that the application is being reviewed, but that more time is necessary to complete such review, setting forth the reasons and the additional time that is needed.

§ 933.778—Surface mining permit application—Minimum requirements for legal, financial, compliance and related information.

Part 778 of this chapter, *Surface Mining Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information*, shall apply to any person who makes application for a permit to conduct surface coal mining and reclamation operations.

§ 933.779—Surface mining permit applications—minimum requirements for information on environmental resources.

Part 779 of this chapter, *Surface Mining Permit Applications*—Minimum Requirements for Information on Environmental Resources, shall apply to any person who makes application to conduct surface coal mining and reclamation operations.

§ 933.780—Surface mining permit applications—minimum requirements for reclamation and operation plan.

Part 780 of this chapter, *Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan*, shall apply to any person who makes application to conduct surface coal mining and reclamation operations, except that for the purposes of Part 933, the paragraph in § 780.31 shall be replaced by the following two paragraphs:

(a) For any public parks, forest, or recreation areas, or historic places that may be adversely affected by the proposed operations, each plan shall describe the measures to be used to minimize or prevent these impacts and to obtain approval of the regulatory authority and other agencies as required in 30 CFR 761.12(f).

(b) Each application for an operation which will be visible from any public park, public highway, or residential area shall include measures to be taken to screen the operation from the view of public parks, public highways and residential areas, or shall set forth the reasons why such screening measures are either not feasible or not desirable.

§ 933.782—Underground mining permit applications—minimum requirements for legal, financial, compliance, and related information.

Part 782 of this chapter, *Underground Mining Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information*, shall apply to any person who makes application for a permit to conduct underground coal mining operations.

§ 933.783—Underground mining permit applications—minimum requirements for information on environmental resources.

Part 783 of this chapter, *Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources*, shall apply to any person who submits an application to conduct underground coal mining operations.

§ 933.784—Underground mining permit applications—minimum requirements for reclamation and operation plan.

Part 784 of this chapter, *Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan*, shall apply to any person who makes application to conduct underground coal mining except that for the purposes of Part 933, the paragraph in Section 784.17 shall be replaced by the following two paragraphs:

(a) For any public parks, forest, or recreation areas, or historic places that may be adversely affected by the proposed operation, each plan shall describe the measures to be used to minimize or prevent these impacts and to obtain approval of the regulatory authority and other agencies as required in 30 CFR 761.12(f).

(b) Each application for an operation which will be visible from any public park, public highway, or residential area shall include measures to be taken to screen the operation from the view of public parks, public highways and residential areas, or shall set forth the reasons why such screening measures are either not feasible or not desirable.

§ 933.785—Requirements for permits for special categories of mining.

Part 785 of this chapter, *Requirements for Permits for Special Categories of Mining*, shall apply to each person who makes application for a permit to conduct certain categories of surface coal mining and reclamation operations as specified therein.

§ 933.786—Review, public participation, and approval or disapproval of permit applications and permit terms and conditions.

(a) Part 786 of this chapter, *Review, Public Participation, and Approval or Disapproval of Permit Applications and Permit Terms and Conditions*, shall apply to the review of applications made by any person for surface coal mining and reclamation operations.

(b) The Secretary shall provide to the North Carolina Department of Natural Resources and Community Development a copy of each decision to grant or deny a permit application.

§ 933.787—Administrative and judicial review of decisions on permit applications.

Decisions on permit applications shall be subject to administrative and judicial review in accordance with Part 787 of this chapter and sections 520, 525 and 526 of the Act.

§ 933.788—Permit reviews, revisions, and renewals, and transfer, sale, and assignment of rights granted under permits.

Part 788 of this chapter, *Permit Reviews, Revisions, and Renewals, and Transfer, Sale, and Assignment of Rights Granted Under Permits,* shall apply to review, revision, and renewal of permits for surface coal mine operations, and to transfer, sale, and assignment of rights granted under permits.

§ 933.795—Small operator assistance.

Part 795 of this chapter, *Small Operator Assistance,* shall apply to any person making application for assistance under the small operator assistance program.

§ 933.800—General requirements for bonding of surface coal mining and reclamation operations.

Part 800 of this chapter, *General Requirements for Bonding of Surface Coal Mining and Reclamation Operations Under Regulatory Programs,* shall apply to all surface coal mining and reclamation operations.

§ 933.815—Performance standards—coal exploration.

Part 815 of this chapter, *Permanent Program Performance Standards—Coal Exploration,* shall apply to any person conducting coal exploration operations.

§ 933.816—Performance standards—surface mining activities.

Part 816 of this chapter, *Permanent Program Performance Standards—Surface Mining Activities,* shall apply to any person who conducts surface coal mining and reclamation operations.

§ 933.817—Performance standards—underground mining activities.

Part 817 of this chapter, *Permanent Program Performance Standards—Underground Mining Activities,* shall apply to any person who conducts underground coal mining operations.

§ 933.819—Special performance standards—auger mining.

Part 819 of this chapter, *Special Permanent Program Performance Standards—Auger Mining,* shall apply to any person who conducts surface coal mining operations which include auger mining.

§ 933.823—Special performance standards—operations on prime farmland.

Part 823 of this chapter, *Special Permanent Program Performance Standards—Operations on Prime Farmland,* shall apply to any person who conducts surface coal mining and reclamation operations on prime farmlands.

§ 933.824—Special performance standards—mountaintop removal.

Part 824 of this chapter, *Special Permanent Program Performance Standards—Mountaintop Removal,* shall apply to any person who conducts surface coal mining operations constituting mountaintop removal mining.

§ 933.826—Special performance standards—operations on steep slopes.

Part 826 of this chapter, *Special Permanent Program Performance Standards—Operations on Steep Slopes,* shall apply to any person who conducts surface coal mining and reclamation operations on steep slopes.

§ 933.827—Special performance standards—coal processing plants and support facilities not located at or near the minesite or not within the permit area for a mine.

Part 827 of this chapter, *Special Permanent Program Performance Standards—Coal Processing Plants and Support Facilities Not Located at or Near the Minesite or Not Within the Permit Area for a Mine,* shall apply to any person who conducts surface coal mining and reclamation operations which include the operation of coal processing plants and support facilities not located at or near the minesite or not within the permit area for a mine.

§ 933.828—Special performance standards—in situ processing.

Part 828 of this chapter, *Special Permanent Program Performance Standards—In Situ Processing,* shall apply to any person who conducts in situ processing activities.

§ 933.842—Federal inspections.

(a) Part 842 of this chapter, *Federal Inspections,* shall apply to all exploration and surface coal mining and reclamation operations.

(b) OSM will furnish a copy of any inspection report written pursuant to this part to the North Carolina Department of Natural Resources and Community Development upon request.

§ 933.843—Federal enforcement.

(a) Part 843 of this chapter, Federal Enforcement, shall when enforcement action is required for violations on surface coal mining and reclamation operations.

(b) OSM will furnish a copy of each enforcement action and order to show cause issued pursuant to this part to the North Carolina Department of Natural Resources and Community Development upon request.

§ 933.845—Civil penalties.

Part 845 of this chaper, Civil Penalties, shall apply when civil penalties are assessed for violations on surface coal mining and reclamation operations.

§ 933.850—Blaster training and certification.

Part 850 of this chapter, *Program for Blaster Training and Certification,* shall apply to any person who conducts coal exploration or surface coal mining operations.

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federal register

Thursday
June 30, 1983

Part IV

Department of Transportation

Office of the Secretary

Standard Time Zone Boundaries in the State of Alaska; Proposed Relocation

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 71

[OST Docket No. 9; Notice 83-13]

Standard Time Zone Boundaries in the State of Alaska; Proposed Relocation

AGENCY: Office of the Secretary, DOT.

ACTION: Proposed rule.

SUMMARY: DOT proposes to relocate the boundaries between Pacific and Yukon time, Yukon and Alaska–Hawaii time, and Alaska–Hawaii and Bering time in the State of Alaska in order to reduce from four to two the number of time Zones in that State. Public comments are invited and public hearings will be held in the State.

DATE:

Public hearings: To be announced later

Deadline for submission of comments: August 29, 1983.

Proposed effective dates: For the Yukon/Alaska–Hawaii and Alaska–Hawaii/Bering changes—2 a.m. A.H.d.t. and 2 a.m. B.d.t., respectively, Sunday, October 30, 1983; for the Pacific/Yukon change—2 a.m. p.s.t. Sunday, April 30, 1984

ADDRESSES: The public hearings will be held at times and places to be announced later. Written comments should be addressed to Docket Clerk, OST Docket No. 9, Office of the General Counsel, C–50, Department of Transportation, Washington, DC 20590. If you wish to receive acknowledgement that your comment has been received, please include with your comments a self-addressed stamped postcard. All comments received will be available for public inspection and copying, both before and after the deadline date above, in the Office of the Assistant General Counsel for Regulation and Enforcement, Room 10105, Department of Transportation, 400 Seventh Street, SW, Washington, D.C., Between 9:00 a.m. and 5:30 p.m. eastern time.

FOR FURTHER INFORMATION CONTACT: Robert I. Ross, Office of the General Counsel, (202) 426–4723.

SUPPLEMENTARY INFORMATION:

Background of the proposal. Under the Standard Time Act of 1918, as amended by the Uniform Time Act of 1966 (15 U.S.C. 260–64), the Secretary of Transportation has authority to issue regulations modifying the boundaries between time zones in the United States in order to move an area from one time zone to another. The standard in the statute for such decisions is "regard for the convenience of commerce and the existing junction points and division points of common carriers engaged in interstate or foreign commerce".

A formal request from the Governor and Legislature of the State of Alaska has been submitted to the Secretary requesting that the present four time zones in Alaska be reduced to two zones. In support of this request, information has been submitted indicating that changing the State's time as requested would serve the convenience of commerce, as discussed below. Consequently, DOT is proposing to make the change requested and inviting public comment. Although the State has submitted sufficient information to begin the rulemaking process, the decision whether actually to make the change will be based upon the information received at the public hearings and submitted in writing to the docket. Persons favoring the change should not assume that the change will be made merely because DOT is making the proposal. DOT reserves the right to implement the entire proposal, or some variation of it, or reject it completely.

The appropriate times for Alaska have been the subject of much controversy over the past few years. The State is in four of the eight time zones in the United States. The current arrangement of four time zones was established by DOT on October 27, 1968 and, except as noted below, has not been changed since. Under this arrangement, that portion of the State which is east of 137 degrees west longitude (southeastern Alaska, including the cities of Juneau, Ketchikan, and Petersburg) is in the Pacific time zone and on the same time as contiguous portions of Canada. The portion of the State which falls between 137 degrees west longitude and 141 degrees west longitude is in the Yukon time zone; it includes Yakutat and the Tongass National Forest. It is not on the same time as any other portion of North America, since the adjoining portion of Canada moved to Pacific time some years ago. The portion of the State which lies between 141 and 162 degrees west longitude—the "Railbelt"—is in the Alaska-Hawaii zone. It includes the majority of the population of the State, including the cities of Anchorage, Fairbanks, and Bethel, and the route of the Alaska Railroad; its time differs by two hours from the time of contiguous portions of Canada. The fourth zone—Bearing—includes that portion of the State which is west of 162 degrees west longitude, including the Aleutian Islands; it includes Nome. During the period of the year when standard time is in effect, its time differs on the clock by four hours from the time of the nearest portions of Japan. (When it is 1:00 p.m. B.s.t. Monday in Nome, it is 9:00 a.m. Tuesday in Tokyo.) Under this arrangement, there is a two-hour time difference between Juneau and Anchorage-Fairbanks, and a three-hour difference between Juneau and Nome. A decision by DOT to grant the request of the State would mean that there would not be more than a one-hour time difference betwen any points in the State. Alaska is the only State in which there is now more than a one-hour time difference within the State.

The State's request. There are two elements of the State's request. The first is a Joint Resolution of the Legislature (House Joint Resolution 25; Legislative Resolve No. 10) transmitted to DOT by the Lietutenant Governor of Alaska on April 28, 1983. It asks the Secretary of Transportation to make the change discussed above. It states four arguments in support of the request: (1) Alaska is the only State that spans four time zones; (2) Time differences between communities in Alaska create an artificial barrier that impairs efforts to improve communications among the widely scattered population centers of this vast State; (3) Elimination of the time differential between the State Capital and the other centers of finance, trade, and commerce in Alaska would bring State government closer to all the people of the State; and (4) The transfer of most of Alaska to the Yukon Standard Time Zone would place most Alaskans on an identical time schedule that would avoid inconvenience to the traveler, the transportation industry, and other commercial enterprises.

The other element of the request is a letter from the Governor of Alaska to the Secretary of Transportation dated May 16, 1983; it includes extensive supporting material. It also adds that the State's own analysis of the impact of the requested change on commerce and transportation demonstrates that the benefits of consolidating the State's four time zones into two far outweigh the possible inconveniences. Much of the material submitted in support of the requested change discusses the improvements in administration of the State Government that would ensue from the reduction in the number of time zones. Other benefits included commercial improvements within the State from having more of the States on the same time, and between the State and the continental United States from having more of the State's major cities closer in time to the "Lower 48" States. Included also are reports on a series of 16 hearings throughout the State conducted by the State on the time zone

issue. Of the 79 persons who participated, a majority opposed the change. Of the 109 letters submitted to the State on the proposal, 24 were in support and 85 in opposition. The Governor suggests that the relatively small amount of participation by State residents indicates that the requested change is not a negative or divisive issue. He adds that Statewide editorial and press coverage of the proposal has been extensive and, for the most part, favorable.

History of time zones in Alaska. Prior to the enactment of the current Federal statute—the Uniform Time Act of 1966, which took effect April 1, 1967—there were no formal time zones for Alaska except Pacific time, in which Juneau had been included since 1937. The 1966 Act added three more zones—Yukon, Alaska-Hawaii, and Bering—and in 1968 DOT proposed boundaries for these zones. The proposal that was published for public comment on August 9, 1967 included in Yukon time all territory of the United States between 127 degrees 30 minutes west longitude and 141 degrees west longitude; in Alaska-Hawaii, between 141 degrees west longitude and 157 degrees 30 minutes west longitude and the entire State of Hawaii; and in Bering, between 157 degrees 30 minutes west and 172 degrees 30 minutes west longitude (thus including also American Samoa), and all of the Aleutian Islands west of 172 degrees 30 minutes west, but not any part of Hawaii. The effect of this would have been to include in the Yukon zone both Juneau and Ketchikan; on the basis of strong objections from residents of those areas that they wished for reasons of commerce to remain on the same time as the west coast of the continental United States, the proposal was amended on November 30, 1967 to include in Yukon time only that portion of the United States which lies between 137 degrees west and 141 degrees west longitude. As so amended, the proposal was adopted.

In 1968, complaints were received from the Bristol Bay area of Alaska, most particularly the city of Dillingham. By the initial establishment of the three new time zones, this part of the State had been placed within the Bering zone. On the basis of Dillingham's role as a commercial trading area for several villages and towns lying to the east and situated in the Alaska-Hawaii zone, residents in the area requested that Dillingham and several adjacent villages in the Bristol Bay area be included within the Alaska-Hawaii zone facilitate commerce and public services in the area. On June 14, 1968, DOT proposed to achieve this end by extending the Alaska-Hawaii zone westward to 161 degrees west longitude. The proposal was adopted and the zone extended effective September 22, 1968.

During the proceeding which led to the extension of the Alaska-Hawaii zone westward to 161 degrees west longitude, the Alaska Region of the Federal Aviation Administration (FAA), a part of DOT, recommended that the zone be extended to 162 degrees west, so as to include the community of Bethel as well as Dillingham in the Alaska-Hawaii zone; the benefits urged for this included more effective administration of FAA facilities, since the office responsible for FAA matters in these two communities was located in the Alaska-Hawaii time zone; and improved transportation and communications in the area generally, since so much of these services are provided to the Bristol Bay area from Anchorage in the Alaska-Hawaii zone. Accordingly, a proposal was published for public comment to extend the Alaska-Hawaii zone to 162 degrees west longitude. The proposal was adopted without change and took effect October 27, 1968.

The relative isolation of Juneau, the State Capital, from the rest of the State led to a movement to relocate the State Capital to Willow, near Anchorage. In an attempt to moot some of the opposition to keeping Juneau as the capital, in 1979 the government of Juneau asked that DOT move Juneau and its surrounding area—but not the entire Panhandle area of the State—to Yukon time, thus reducing by one hour the time differences with the rest of the State. DOT proposed this change for public comment and conducted hearings in the affected area. On September 27, 1979, DOT made the requested change, to be effective April 27, 1980. On Friday, March 28, 1980, by a popular vote of approximately 2–1, the voters of Juneau required the City Assembly to seek DOT's reconsideration of the change to Yukon time. On May 5, 1980, DOT denied the City's petition for reconsideration, largely on the basis that it would have been unfair to those commercial interests that had relied on the change to undo it on such short notice. DOT stated its willingness to consider the matter further and to conduct further hearings in the area. On Monday, June 9, 1980, DOT proposed to return the affected area to Pacific time and invited public comment. On September 25, 1980, DOT made the change back to Pacific time for the affected area, to take effect October 26, 1980. There have been no changes in the time zone situation in Alaska since this date. In 1982, Alaska voted not to move the capital from Juneau.

Issues to considered. The principal standard in the 1966 Act—"the convenience of commerce"—is construed very broadly by DOT. We examine not merely the impact that a time zone change would have on the business community in the area, but also, for example, on the activities of all levels of government, including schools; on recreation, transporation, and tourism; and on the needs of individuals to travel for employment, worship, shopping, medical care, education, and other aspects of daily life. Initial investigation indicates that Alaska is a unique part of the United States in respects which affect how DOT will evaluate the proposal. First, impacts on foreign commerce may be much more significant than in the normal time zone rulemaking, given the proximity to Canada and Japan. Second, the State's far northern location means that there are seasonal extremes in conditions of daylight and darkness which may affect the role which recreation plays in our consideration. Third, the State's vast size, small population, and relatively greater use of general aviation to communicate with outlying communities may affect the relevancy of the "daily life" factors mentioned above. Fourth, the harshness of the winter weather means that life in Alaska may be more cyclical than in other parts of the United States (e.g., very much less outdoor activity in winter than in summer). It is not clear what impact these differences may have upon the factors which DOT normally evaluates in making time zone change decisions. We emphasize our desire to receive comment on these and other aspects of the uniqueness of Alaska.

Impact of proposal on observance of daylight saving time. The proposal has no relation to the observance of daylight saving time (DST). Under the Uniform Time Act of 1966, the standard time of each time zone in the United States is advanced one hour from 2:00 a.m. on the last Sunday in April until 2:00 a.m. on the last Sunday in October, except in any State that has, by law, exempted itself from this observance. (A State in more than one time zone may have its exemption apply only to that part of the State which is in the more easterly time zone.) Although the State of Alaska did not observe DST before the 1966 Act took effect, it has done so every year since then. Whether this proposal is adopted or not does not in any way affect the State's power to observe DST or not.

Timing. The State's request asks that the entire requested time zone change take effect when DST ends this year (2:00 a.m. local time Sunday, October 30, 1983). Insofar as the changes west of Yakutat are concerned, this aspect of the proposal comports completely with DOT practice. If a decision is made to move an area to the zone to its east, that is done when DST next ends. Since, for example, Bering DST is the same time on the clock as Alaska-Hawaii standard time, making the change from Bering to Alaska-Hawaii effective at the moment DST ends means that clocks in the affected area do not have to be changed. Thus, confusion is minimized. On the other hand, when a decision is made to move an area to the zone to the west, that is done at the moment when DST next begins, for the converse reasons of those above. Consequently, the State's request to have the change from Pacific to Yukon made effective October 30, 1983 does not comport with DOT's normal practice, in that it would require a two-hour time change. Consequently, DOT proposes that, if that portion of the proposal relating to the Pacific time zone is implemented, it be made effective at 2.00 a.m. PST Sunday, April 30, 1984. Comments are invited on this issue of the timing of any change.

Public participation. Interested persons are invited to participate in this rulemaking by submitting written comments to the above address not later than the date shown above. Although it is DOT's policy to consider to the maximum extent possible comments which are received after the deadline date, we urge that persons who wish to participate do so promptly. Additionally, to facilitate participation by persons in the State, a number of public hearings will be held in the State. Their dates, times, and locations, will be announced later. It will not be necessary to request in advance the opportunity to speak at the hearings. The hearings will be recorded.

Regulatory Impact. I certify under the criteria of the Regulatory Flexibility Act that this proposed rule, at promulgation, would not have a significant economic impact on a substantial number of small entities, because of its highly localized impact. Further, it is not a major rule under Executive Order 12291, nor a significant rule under DOT Regulatory Policies and Procedures, 44 FR 11034, for the same reason. The anticipated economic impact is so minimal that it does not warrant preparation of a regulatory evaluation. Finally, DOT has determined that this rulemaking is not a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act and therefore that an environmental impact statement is not required. Comments are invited on all of these issues, however, and DOT very much wants interested persons to comment upon the environmental, economic, and energy impacts, if there be any, of making the requested change or not.

List of Subjects in 49 CFR Part 71

Time.

PART 71—[AMENDED]

In consideration of the foregoing, it is proposed to amend Title 49, Code of Federal Regulations, by revising §§ 71.10 through 71.13 to read as appears below:

§ 71.10 Pacific zone.

The fifth zone, Pacific standard time zone, includes that part of the continental United States that is west of the boundary line between the mountain and Pacific standard time zones described in § 71.9, but does not include and part of the State of Alaska.

§ 71.11 Yukon zone.

The sixth zone, the Yukon standard time zone, includes that part of the State of Alaska which is east of 162 degrees west longitude.

§ 71.12 Alaska-Hawaii zone.

The seventh zone, the Alaska-hawaii standard time zone, includes the entire State of Hawaii and that part of the State of Alaska that is west of 162 degrees west longitude.

§ 71.13 Bering zone.

The eight zone, the Bering standard time zone, includes that part of the United States that is between 162 degrees west longitude and 172 degrees 30 minutes west longitude, but does not include any part of the States of Hawaii and Alaska.

(Act of March 19, 1918, as amended by the Uniform Time Act of 1966 and Pub. L. 97–449, 15 U.S.C. 260–64; 49 CFR 1.59(a))

Issued in Washington, D.C., on June 27, 1983.

James H. Burnley IV,

General Counsel.

[FR Doc. 83-17700 Filed 6-29-83; 8:45 am]

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Thursday
June 30, 1983

Part V

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

Surface Coal Mining and Reclamation Operations Permanent Regulatory Program; Stream Buffer Zones and Fish, Wildlife, and Related Environmental Values; Final Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 816 and 817

Surface Coal Mining and Reclamation Operations Permanent Regulatory Program; Stream Buffer Zones and Fish, Wildlife, and Related Environmental Values

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

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is adopting final rules for protection of stream buffer zones and fish, wildlife, and related environmental resources. The new rules will revise the requirements relative to stream buffer zones and protection of endangered species; clarify the relationship of the Surface Mining Control and Reclamation Act of 1977 to the Endangered Species Act and the Bald Eagle Protection Act; remove several specific design standards; and allow regulatory authorities and operators greater flexibility in protecting stream buffer zones as well as fish, wildlife, and related environmental values from adverse impacts due to surface coal mining and reclamation operations.

EFFECTIVE DATE: August 1, 1983.

FOR FURTHER INFORMATION CONTACT: John D. Parsons, Division of Engineering Analysis, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240, 202–343–3190.

SUPPLEMENTARY INFORMATION:

I. Background.
II. Discussion of Comments and Rules Adopted.
III. Procedural Matters.

I. Background

On March 30, 1982 (47 FR 13466), OSM published a notice of proposed rulemaking to revise the rules for protection of stream buffer zones and fish, wildlife, and related environmental resources. The rules were proposed to reduce the burdens of existing rules, change the requirements relating to stream buffer zones, wetlands protection, and endangered species protection, and to clarify the relationship between the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.* ("the SMCRA" or "the Act"), and the Bald Eagle Protection Act.

Rules governing the hydrologic balance of stream buffer zones were initially published as proposed rules for public comment on September 18, 1978 (43 FR 41888, 41908) and were published as final rules on March 13, 1979 (44 FR 15403, 15430). Rules for protection of fish, wildlife, and related environmental values were initially published as rules proposed for public comment on September 18, 1978 (43 FR 41894, 41914) and were published as final rules on March 13, 1979 (44 FR 15410, 15437).

Throughout the development of these final rules, OSM solicited public comments and recommendations. Following the publication of proposed rules in the **Federal Register** (47 FR 13466, March 30, 1982), OSM made provisions to hold public hearings and to schedule public meetings upon request. OSM scheduled public hearings in the Department of Interior Auditorium, Washington, D.C., and in the 2d Floor Conference Room, Brooks Tower, Denver, Colorado, on April 27, 1982. However, no persons requested a hearing or meeting, and therefore none was held.

The **Federal Register** notice provided for the comment period to close on April 29, 1982. To provide the public with additional opportunity to participate in the rulemaking process, the comment period was reopened on May 13, 1982 (47 FR 20361), and extended until August 25, 1982. The comment period was again reopened, on September 7, 1982 (47 FR 39201), and remained open until September 10, 1982.

II. Discussion of Comments and Rules Adopted

OSM received over 175 comments from operators, representatives of industry, environmental groups, State regulatory authorities, and Federal and State fish and wildlife agencies. OSM has reviewed each comment carefully and has considered the commenters' suggestions and remarks in writing these final rules. Since the rules for underground mining activities are identical to those for surface mining activities, the following discussion applies to both Parts 816 and 817.

A. Stream Buffer Zones

General

Buffer zones are used to protect streams from sedimentation and from gross disturbance of stream channels caused by surface coal mining and reclamation operations. Final § 816.57 recognizes that stream buffer zones are an effective method, in conjunction with sedimentation ponds and other measures, to prevent excessive sedimentation of streams by runoff from disturbed surface areas. (Tennessee Valley Authority, 1971; Karr and Schlosser, 1978; Grim and Hill, 1974, p. 102 and Appendix D, p. 255; Hardaway and Kimball, 1976, pp. 27–29; Weigle, 1965; U.S. Environmental Protection Agency, 1976, vol. 1, pp. 7, 14, 19, 30, 32, 61–62.) The new rules also recognize that intermittent and perennial streams generally have environmental-resource values worthy of protection under Section 515(b)(24) of the Act. Several commenters agreed with the proposed changes in the rules and believed that OSM's suggested revisions were necessary and cost effective and that they clarified the rules. Commenters strongly endorsed the requirement for stream buffer zones along all perennial and intermittent streams, regardless of a stream's biological communities.

Section 816.57(a)

As proposed, § 816.57(a) provided that no land within 100 feet of a perennial or an intermittent stream could be disturbed by surface mining activities unless the regulatory authority specifically authorizes surface mining activities closer to, or through, such a stream. After considering remarks from commenters and for the reasons discussed below, OSM has adopted the proposed rule as final § 816.57(a).

Several commenters objected to OSM's proposal to include stream buffer requirements and urged that proposed § 816.57 be deleted from OSM's final rules. These commenters argued that the concept of stream buffer zones was not specifically supported by the Act and that hydrologic balance and related environmental values were adequately protected by numerous other rules. One commenter contended that Congress would have addressed the issue of buffer zones directly in the Act if it had intended to impose such a drastic requirement on operators. This commenter also claimed that the requirement of buffer zones was an onerous and unnecessary burden that could have serious adverse effects on many operations and preclude the mining of significant reserves.

OSM rejects the position that there is no need for a section dealing with stream buffer zones. Final § 816.57 implements Sections 515(b)(10) and 515(b)(24) of the Act and is also authorized by Sections 102, 201, 501, 503, 504, 506, 507, 508, 510, and 517 of the Act. Streams are crucial conduits of sediment pollution from mine areas and are often valuable fish and biological habitats. Because of the significance of streams, OSM will specify how streams are to be treated and protected. Section 816.57 establishes the kinds of streams that will trigger direct protection measures. Proposed § 816.43 would describe how stream channels and surface water must

be handled when diversions are justified (see the preferred alternative for § 816.43 in Volume III of OSM's Final Environmental Impact Statement OSM EIS–1: Supplement (EIS)).

One commenter recommended that the word "significantly" be added before the word "disturbed" in proposed § 816.57(a) to allow activities such as minimal clearing for drill holes and construction of sedimentation-pond discharge structures to take place. The commenter believed that such activities within the buffer zone would not necessarily alter stream-channel configuration or water quality.

OSM has rejected the change proposed by the commenter. OSM recognizes that some surface mining activities can be conducted within 100 feet of a perennial or an intermittent stream without causing significant adverse impacts on the hydrologic balance and related environmental values. The final rule provides the regulatory authority the flexibility to allow surface mining activities to take place within the 100-foot buffer zone if such activities are conducted in an environmentally acceptable manner. Under final § 816.57(a), the use of erosion and drainage-control measures near the stream will be allowed if they are approved by the regulatory authority in accordance with the specified requirements.

Previous § 816.57(a) required that no land within 100 feet of a perennial stream or a stream with a biological community be disturbed, except where the regulatory authority made certain determinations entitling the operator to an exemption under paragraph (c) of the section. Previous § 816.57(c) stated that a stream had a biological community if it had an assemblage of at least two species of arthropods or molluscan animals which are adapted to, or are dependent on, flowing water, which reproduce in the stream, and which are longer than 2 millimeters at some stage in their lives. Several commenters supported OSM's proposal to remove reference to streams with a biological community and to add reference to intermittent stream on the grounds that the inclusion of intermittent streams would provide a more appropriate and less confusing description of the streams to be protected by buffer zones, as well as eliminate from consideration insignificant streams containing biological communities. Other commenters urged OSM to continue to require a buffer zone for any stream with a biological community. These commenters failed to appreciate how difficult it was to apply the biological-community concept under previous § 816.57(a). They argued that the proposed intermittent-stream standard was logically unrelated to the values which the Act sought to protect and that the proposed rule would exclude from coverage many small streams with biological communities worthy of protection.

OMS has rejected the suggestion that it continue to require protection for any stream with a biological community. The final rule will require buffer zones within 100 feet of any intermittent or perennial stream regardless of the existence of a biological community, unless the regulatory authority grants the operator an exemption. The biological-community standard was confusing to apply since there are areas with ephemeral surface waters of little biological or hydrologic significance which, at some time of the year, contain a biological community as defined by previous § 816.57(c). Thus, much confusion arose when operators attempted to apply the previous rule's standards to springs, seeps, ponding areas, and ephemeral streams. While some small biological communities which contribute to the overall production of downstream ecosystems will be excluded from special buffer-zone protection under final § 816.57(a), the purposes of Section 515(b)(24) of the Act will best be achieved by providing a buffer zone for those streams with more significant environmental-resource values. Those streams not covered by final § 816.57 will still be subject to the general requirements for protection of water quality and hydrologic balance under the preferred alternative of § 816.41 (see volume III of EIS). It is impossible to conduct surface mining without disturbing a number of minor natural streams, including some which contain biota. For this reason, surface coal mining operations will be permissible as long as environmental protection will be afforded to those streams with more significant environmental-resource value.

Several commenters feared that the proposed rule would require buffer zones for insignificant streams, such as manmade drainage ditches and small headwater streams. One commenter recommended that the regulatory authority be allowed to determine what would constitute an intermittent stream according to a minimum drainage area. Two commenters suggested that the regulatory authority be allowed to set a rate of flow figure for streams or, if the regulatory authority chose not to set such a figure, that it be required to use the U.S. Army Corps of Engineers' limit of 5 cubic feet per second as specified by Section 404 of the Clean Water Act. A commenter also suggested that the regulatory authority be required to determine whether the intermittent stream is significant for purposes of protection.

OSM has rejected these suggestions and has retained the definition of intermittent stream provided in 30 CFR 701.5 to avoid problems of interpretation. This definition, coupled with final § 816.57, will allow the regulatory authority the flexibility to determine the significance of streams and the appropriate measures for their protection. The preamble to § 701.5 (44 FR 14932, March 13, 1979) further explains the rationale for OSM's adoption of its definition for the term.

One commenter thought that rills, gullies, drains, and access roads were intermittent streams for which buffer zones would be required under the proposed rule. This commenter feared that no waivers by the regulatory authority would be allowed for construction of head-of-hollow and valley fills and haul roads and for mountaintop-removal projects. Under § 701.5, an intermittent stream is defined to mean a stream or reach of a stream that drains a watershed of at least 1 square mile or that is below the local water table for at least some part of the year and obtains its flow from both surface runoff and ground-water discharge. Thus, by definition, rills, gullies, drains, and access roads will be excluded from the rules for intermittent streams under final § 816.57.

One commenter thought the proposed rule needed clarification and justification since the definition of intermittent stream in § 701.5 is based solely on hydrologic factors and includes no consideration of a stream's importance for biological or wildlife resources. Asserting that the proposed rule was intended to protect intermittent streams of biological importance, the commenter suggested that the rule be revised to take into account whether or not an intermittent stream has significant enough biological value to warrant protection. Although final § 816.57 is intended to protect significant biological values in streams, the primary objective of the rule is to provide protection for the hydrologic balance and related environmental values of perennial and intermittent streams. A definition of intermittent streams based on hydrologic considerations helps avoid problems of practical application and will aid in uniform interpretation of the rule.

Commenters recommended that the proposed rule be revised to give the regulatory authority discretion to determine the width of a buffer zone on a site-specific basis. Because some intermittent-stream valleys in Appalachia are less than 100 feet wide at the bottom, one commenter thought it would be impossible to maintain the 100-foot buffer zone even if a diversion were constructed. One commenter added that designation of 100-foot buffer zones would be difficult in areas where the stream meanders or in areas with seasonal changes in channel configuration. Accordingly, he suggested that the 100-foot buffer zone be retained as a general guideline, but urged that flexibility be built into the rule to allow for a case-by-case evaluation of the width of the buffer zone necessary to protect "associated habitat values."

The 100-foot limit is used to protect streams from sedimentation and help preserve riparian vegetation and aquatic habitats. Since the 100-foot zone provides a simple and valuable standard for enforcement purposes, OSM has chosen not to change the general rule. However, OSM recognizes that site-specific variations in the 100-foot standard should be available whenever there is an objective basis for expanding or contracting the width of the buffer zone. Final § 816.57(a) allows the width of the buffer zone to be modified pursuant to the findings of the regulatory authority.

Sections 816.57(a) (1) and (2)

Section 816.57(a), as proposed, provided that the regulatory authority may authorize surface mining activities within 100 feet of a perennial or an intermittent stream only upon finding that: (1) Any temporary or permanent stream-channel diversion will comply with § 816.44, and (2) such activities will not adversely affect the water quantity and quality of the stream as determined by State and Federal water quality standards. OSM has adopted the proposed rule in final § 816.57(a) with several changes. First, the cross reference to § 816.44 in the proposed rule has been changed to § 816.43 in final § 816.57(a)(2). If the preferred alternative of § 816.43 is not adopted (see volume III of the EIS), a technical amendment will be issued to incorporate the correct reference. Second, the phrase "as determined by State and Federal water quality standards" in proposed § 816.57(a)(2), has been modified and replaced with the requirement that surface mining activities will not cause or contribute to the violation of applicable State or Federal water quality standards, and will not adversely affect the water quantity and quality or other environmental resources of the stream in final § 816.57(a)(1). Third, a revision has been made to clarify that the provisions of § 816.43 relating to stream-channel diversions apply when such diversions occur, but that there does not have to be a diversion for mining to occur inside the buffer zone. In addition, the order of the two paragraphs has been reversed so that proposed paragraph (a)(1) is final paragraph (a)(2) and proposed paragraph (a)(2) is final paragraph (a)(1).

A commenter stated that field sampling of premining aquatic habitats would be necessary to restore aquatic habitats that approximate premining stream-channel characteristics as required by previous § 816.44. Previous § 816.44 would be superseded and replaced by a new § 816.43 (referenced in the preceding paragraph) if the preferred alternative is adopted. However, OSM agrees that in order for an applicant to demonstrate that a proposed temporary or permanent stream-channel diversion will comply with proposed §§ 816.43 and 816.57, sufficient premining field data and plans are necessary to show how important characteristics of stream channels will be restored.

Several commenters asserted that "and," used as a connective between paragraphs (a)(1) and (a)(2) of proposed § 816.57, implied that operators were required to construct stream-channel diversions to obtain waivers of the general buffer-zone requirements. They requested that the qualifying word "only" be deleted and that the connective "and" be replaced by the word "or" to allow regulatory authorities to consider circumstances on a State- or site-specific basis in making the requisite buffer-zone determinations.

The words "only" and "and" have been retained. However, the second aspect of the commenters' suggestion has been accepted in part. As indicated by another commenter, some minor disturbances such as minimal clearing for drill holes or construction of hydrologic-discharge structures may be appropriate within the 100-foot buffer zone. However, such activities may not be significant enough to justify a diversion of the stream channel. The proposed rule was not intended to prohibit such activities unless the stream channel was going to be diverted, but merely to require that such disturbance be specifically authorized by the regulatory authority on the basis of a finding that water quantity and quality would not be adversely affected. The final rule more accurately reflects this intention by applying the channel-diversion requirements of proposed § 816.43 only if there will be a stream-channel diversion.

A commenter noted that proposed § 816.57(a)(1) would not require restoration of the original stream channel affected by mining, but, instead, would require restoration of important stream-channel characteristics (for example, meanders, pool-riffle ratio, gradients, and riparian vegetation) as specified in proposed § 816.43. The commenter thought this would provide flexibility to the industry in satisfying the requirements of previous § 816.44(d). OSM concurs with the commenter's remarks.

One commenter suggested that proposed § 816.57(a) be revised to include additional language requiring a finding that the native community would be kept functional within the 100-foot buffer zone. A commenter also suggested that § 816.57(a)(1) be revised to contain an explicit provision that disturbed areas in the buffer zone be revegetated with a community of native plants to function as riparian areas.

OSM has rejected the commenter's first suggestion. The Act does not prohibit the disturbance of the native community. Rather, Section 515(b)(19) of the Act requires the reestablishment of vegetation upon completion of mining. The second suggestion has also been rejected as unnecessary since requirements for revegetation are already specified in § 816.11 and since § 816.97(g) prescribes additional vegetation requirements for postmining enhancement of fish and wildlife habitat. Also, proposed § 816.43 requires restoration or approximation of riparian vegetation after stream-channel diversions.

Two commenters thought that the preamble to the proposed rule suggested that restored stream channels had to comply only with requirements for permanent diversions in previous § 816.44(d), while proposed § 816.57 encompassed all of previous § 816.44. These commenters suggested that the proposed rule should also require an operator to reproduce the average stream gradient, channel configuration, meandering, roughness, vegetative habitat, and bank stability in order to minimize disturbances to the sediment-transport process and to restore premining stream habitats.

The reference in the preamble to the proposed rule was intended only to point out that previous § 816.44(d) specified those characteristics of stream channels which mine operaters were required to restore, not to suggest that

operators were required to comply only with those criteria. The requirements for operators to restore characteristics of stream channels have been generally carried forward in proposed § 816.43. However, final § 816.57(a)(2) will allow the regulatory authority to authorize disturbances within the 100-foot buffer zone only if any stream-channel diversion will comply with proposed § 816.43. Thus, operators will be required to comply with all the requirements for permanent or temporary diversions provided in proposed § 816.43, not merely with the rule's requirements for restoration of the important features of altered streams.

One commenter alleged that destruction of aquatic inhabitants would be increased and that natural recovery of altered streams would be delayed because operators would no longer be required to reconstruct the original stream channel under proposed § 816.57(a)(1). Alteration of streams may have adverse aquatic and ecological impacts on both diverted stream reaches and other downstream areas with which they merge. However, final § 816.57(a) will minimize these impacts since mining within the 100-foot stream buffer zone will be allowed only in situations where the regulatory authority determines that any proposed diversion will comply with proposed § 816.43 and that water quantity and quality and related environmental resources will not be adversely affected by these mining activities. Thus, these adverse effects will be short term and natural recovery of the diverted stream will be enhanced.

One commenter felt the requirement for restoration or approximation of the original stream channel would violate a property-owner's rights to achieve a landform compatible with the intended use. He claimed that proposed § 816.57(a)(1) would eliminate the use of valley fills and require operators to remove culverts and road fills which were properly designed to cross streams although these restrictions were unauthorized by the Act.

Final § 816.57(a) provides the regulatory authority sufficient flexibility to allow stream disturbances, including permanent crossings, if adequate environmental protection measures will be adopted. Additional requirements pertaining to culverts and other features of roads are specified in §§ 816.150 and 816.151. (See volume III of the EIS.)

One commenter argued that temporary stream diversions should not have to meet the same standards as permanent diversions, since it frequently may not be possible to stabilize the stream banks and surrounding area for a short period of time in a cost-effective manner to ensure that applicable water-quality standards will be met.

OSM has rejected the commenter's argument as inconsistent with the Act's requirements for operators to minimize disturbances to the prevailing hydrologic balance and to the quality and quantity of water. In particular, Section 515(b)(10)(i) of the Act provides that surface coal mining operations shall be conducted so as to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area. Proposed § 816.43 would require that any diversion, whether permanent or temporary, remain stable and prevent the conveyance of suspended solids outside the permit area in accordance with Section 515(b)(10) of the Act. Because damage to the prevailing hydrologic balance can result from permanent or temporary alterations of streams, new § 816.57(a)(2) will require all proposed diversions of perennial or intermittent streams to comply with the criteria specified in proposed § 816.43.

One commenter thought that the period for comment on deletion of the requirement for restoration of the original stream channel under proposed § 816.57(a)(1) should have been extended until the time that revisions of existing requirements on channel diversions in § 816.44 were published. Changes in § 816.44 were explained in the notice of proposed rulemaking and published on June 25, 1982 (47 FR 27712). Although the notice of proposed rulemaking discussing revision of rules on stream buffer zones was published on March 30, 1982 (47 FR 13466), the period for comments on both proposed rulemakings was extended until September 10, 1982 (47 FR 39201). In view of these facts, commenters were provided sufficient time in which to analyze the interaction of these provisions.

Proposed § 816.57(a)(2) provided that the regulatory authority may authorize surface mining activities within 100 feet of a perennial or an intermittent stream upon finding that such activities will not adversely affect the water quantity and quality of the stream as determined by State and Federal water quality standards. In response to the remarks of commenters and for reasons discussed below, OSM has modified the phrase "as determined by State and Federal water quality standards" in final § 816.57(a)(1). Under the final rule, the regulatory authority may authorize mining within the stream buffer zone upon finding that such activities will not adversely affect the water quantity and quality and related environmental resources of the stream.

Several commenters recommended deletion or clarification of the phrase "as determined by State and Federal water quality standards" in proposed § 816.57(a)(2). Two commenters asked whether the proposed rule would require the operator to "clean up" a stream flowing into the permit area so that it would meet applicable State and Federal water-quality standards even though the operation did not adversely affect the stream's water quantity and quality. A commenter questioned whether the "standards" reference in the proposed rule pertained to drinking-water standards, effluent limitations for the coal-mine point-source category (NPDES), or some other water-quality standards. Several commenters contended that State and Federal water-quality standards would not provide sufficient protection for all streams because standards for smaller streams might be nonexistent, some State standards might not cover various salts and heavy metals released by mining activities, or because quality standards would not minimize disturbance of the quantity of stream water as required by Section 515(b)(10) of the Act. Commenters also argued that water-quality standards are inadequate to ensure that aquatic habitats would be restored to approximate their premining conditions since the standards failed to consider turbidity and streamflow during periods of drought. One commenter claimed that the proposed rule would emasculate the requirements in Sections 515(b)(10)(B)(i) and 515(b)(24) of the Act by allowing the regulatory authority to decrease the width of the 100-foot buffer zone according to the impact on streams under State and Federal water quantity and quality standards. The commenter alleged that reductions in the width of the buffer zone should not be allowed unless the quantity and quality of water in a stream would not be affected.

Under proposed § 816.41, operators will be required to protect the prevailing hydrologic balance and comply with all applicable non-Act requirements for water-quality protection. To eliminate confusion, OSM has modified the phrase "as determined by State and Federal water quality standards" in final § 816.57(a)(1) to require mining activities not to cause or contribute to the violation of applicable State or Federal water quality standards and not to adversely affect water quantity and quality or other environmental resources of the stream. In determining whether an

operator should be granted an exemption from the buffer-zone requirement, the final rule requires the regulatory authority to consider whether there will be an adverse effect on water quality and whether mining will inhibit the attainment of applicable water-quality standards.

One commenter thought that OSM should delete the word "quantity" from proposed § 816.57(a)(2) because water quantity is not determined by State and Federal water-quality standards. The commenter added that water quantity is adequately covered by § 816.54, but that, in some situations, it would be desirable to separate water flow into several drainage patterns to achieve the most beneficial postmining land use. Another commenter recommended that the quantity aspects of the proposed rule be explored since quantity in water-quality standards usually relates to mixing and dilution capabilities.

OSM recognizes that State and Federal water-quality standards ordinarily do not regulate water quantity. However, instead of deleting the word "quantity" in the final rule, OSM has separated the "quantity" standard from the applicability of State and Federal water quality standards. Under final § 816.57(a)(1), the regulatory authority will consider impacts on streamflow in making the requisite buffer-zone determination.

The phrase "and related environmental resources" has been added to the language of the final rule to indicate that regulatory authorities will be allowed to consider factors other than water quantity and quality in making buffer-zone determinations. This revision will provide a more accurate reflection of the objectives of Sections 515(b)(10) and 515(b)(24) of the Act.

Section 816.57(b)

Section 816.57(b), as proposed, would have provided that the operator must designate the area not be be disturbed as a buffer zone and must mark it as specified in § 816.11. Two commenters contended that the language of the proposed rule went beyond the intent of the Act since it could be interpreted as granting the operator a prerogative to define the limits of the buffer zone. These commenters recommended that the rule be reworded to make it clear that the regulatory authority will have sole responsibility for delineating buffer-zone boundaries.

In final § 816.57(b), OSM has adopted the revised language suggested by the commenters. Accordingly, the final rule provides that the area not to be disturbed must be designated as a buffer zone, and, further, that the operator must mark it as specified in § 816.11.

Section 817.57

Final § 817.57 is essentially the same as final § 816.57, except that this is rule applies the stream buffer-zone requirements to underground mining activities. Interested persons should consult the preamble to final § 816.57 for a discussion of comments and responses relative to final § 817.57. In addition to the authorities cited in the preamble to § 816.57, this rule is also based on Section 516 of the Act.

B. Protection of Fish, Wildlife, and Related Environmental Values

General

OSM received several general comments on proposed § 816.97. A commenter objected to the proposed rules, alleging that they failed to provide for development of natural resources in a responsible manner that would guard fish and wildlife from the adverse impacts of coal mining for the benefit of present and future generations. OSM disagrees with this comment. Final § 816.97 will ensure that harm to fish and wildlife from surface coal mining and reclamation operations will be minimized to the extent possible by requiring operators to use the best technology currently available to protect these resources.

Other commenters favored the proposed rules. One commenter agreed with OSM's proposal to delete certain design requirements specified in previous § 816.97 since they applied only to coal regions and had limited effectiveness as national standards for fish and wildlife protection. A commenter thought the proposal clarified the operator's obligation to protect fish and wildlife from the adverse impacts of mining by eliminating unnecessary language from the rule. Another commenter approved of OSM's efforts to allow regulatory authorities to consider conditions of relevance to fish and wildlife protection, which vary according to the locale of the mine site, but added that some of the proposed changes "seemed reactionary" to district court decisions, which were subject to reversal on appeal and had no "beneficial impact" on wildlife.

Proposed § 816.97 was not simply a reaction to district court decisions. Section 816.97 is intended to satisfy OSM's statutory responsibilities under the Surface Mining Control and Reclamation Act, 30 U.S.C. 1201 *et seq.*; the Endangered Species Act, 16 U.S.C. 1531 *et seq.*; and the Bald Eagle Protection Act, 16 U.S.C. 688 *et seq.*

Representatives of the coal industry, the States of Virginia and Illinois, and certain environmental groups challenged OSM's previous permitting rules as legally inconsistent with the Act. *In re: Permanent Surface Mining Regulation Litigation*, No. 79–1144 (D.D.C., filed March 10, 1979). In that matter, the plaintiffs argued that there was no statutory authorization in Sections 507, 508, or 515(b)(24) of the Act to require fish and wildlife information in the permit application or the reclamation plan. Since Sections 507 and 508 of the Act gave the regulatory authority power to decide on other necessary requirements, plaintiffs contended that the challenged rules usurped the role Congress had delegated to the States by creating a uniform system of permit-data requirements, which left no flexibility for consideration of State-specific conditions.

The district court remanded 30 CFR 779.20 and 780.16, which provided permit requirements for fish and wildlife information. See *In re: Permanent Surface Mining Regulation Litigation*, No. 79–1144, slip op. at 39 (D.D.C. February 26, 1980). OSM subsequently suspended the remanded rules (45 FR 51547, August 4, 1980). Informational requirements on fish and wildlife for permit applications are therefore beyond the scope of this rulemaking.

Section 816.97(a)

Section 816.97(a), as proposed, provided that the operator must, to the extent possible using the best technology currently available, minimize disturbances and adverse impacts of fish, wildlife, and related environmental values and must achieve enhancement of such resources where practicable. In response to remarks from commenters and for reasons discussed below, OSM has adopted the proposed rule in final § 816.97(a). Commenters urged that the phrase "[t]he operator" in the proposed rule be replaced with the phrase "[a]ny person," which was used in previous § 816.97(a). They argued that OSM's revision would constrict the scope of protection afforded by Section 515(b)(24) of the Act, since the language of proposed § 816.97(a) would no longer require all non-operators on permitted mine sites to minimize disturbance on fish and wildlife or impose liability on operators for damage to fish and wildlife as a result of illegal (nonpermitted) mining.

This suggestion has been rejected. Under Section 515(b)(24) of the Act, all surface coal mining and reclamation operations are required to minimize disturbances on fish and wildlife, and

related environmental resources to the extent possible by use of the best technology currently available. Final § 816.97(a) makes the operator responsible for minimizing disturbances on fish, wildlife, and related environmental resources in the permit area. The operator is reasonsible for the actions of all persons engaged in the surface coal mining and reclamation operation and for ensuring that the operation is in compliance with the requirements of the Act. In addition, these responsibilities do not supersede those imposed by any other statute or regulation.

Because § 701.5 treats as a "permittee" any person required by the Act or 30 CFR Chapter VII to have a mining permit, an operator mining without a permit is subject to civil liability for violation of the Act's requirements under Section 518. Persons conducting surface coal mining operations without a permit are also subject to the immediate issuance of a cessation order under 30 CFR 843.11(a)(2). (See 47 FR 16558, April 29, 1982.) Accordingly, the duty to minimize the adverse impacts of mining on fish and wildlife under final § 816.97(a) will apply to illegal operators as well as to operators having valid permits.

Commenters found the language of proposed § 816.97(a) unclear regarding who would make the decision as to what would constitute an acceptable minimization of harm from mining on fish and wildlife. One commenter thought that a handbook of guidelines for fish and wildlife protection, prepared by OSM in conjunction with the U.S. Fish and Wildlife Service (USFWS), should be required to clarify these deficiencies.

Under final § 816.97(a), the regulatory authority will determine what will consititute an acceptable minimization of harm. As announced in the notice of the proposed rulemaking (47 FR 13468, March 30, 1982), OSM plans to work with USFWS to devleop manuals to assist operators in preparing site-specific fish and wildlife protection plans. However, the suggestion that operators be required to comply with the guidelines in OSM's proposed manuals has been rejected. The commenter's suggested requirement would discourage operators from implementing innovative conservation techniques. Furthermore, specific manuals provide only suggestions on appropriate techniques; they are not intended to be used as regulatory requirements. Final § 816.97(a) will allow an operator to consult any technical authorities on conservation methods to assure their compliance with the statutory requirement for use of the best technology currently available.

Section 816.97(b)

Proposed § 816.97(b) prohibited any surface mining operations likely to jeopardize the continued existence of endangered or threatened species listed by the Secretary or to result in the destruction or adverse modification of designated critical habitats of such species. Under the proposed rule, the operator was required to report promptly to the regulatory authority any endangered or threatened species within the permit area of which he or she became aware. The proposed rule also required the regulatory authority to consult with appropriate State and Federal fish and wildlife agencies upon such notification from an operator and authorized the regulatory authority to identify whether, and under what circumstances, the operator might proceed with mining only after the mandatory consultation. OSM has adopted the proposed rule in final § 816.97(b) with minor revisions.

Commenters questioned the purpose and source of authority for proposed § 816.97(b). One commenter claimed that neither the SMCRA nor the Endangered Species Act (ESA) authorized OSM's proposed rule. Another commenter, viewing proposed § 816.97(b) as a means for OSM to ensure enforcement of the ESA's provisions by States with approved Title V programs, argued that such a provision would be unnecessary since Section 11 of the ESA granted OSM enforcement power under these circumstances.

Final § 816.97(b), as proposed and adopted, is intended to satisfy OSM's responsibilities under the ESA and to provide protection for endangered or threatened species listed by the Secretary of the Interior and for critical habitats of such species after appropriate consultation with the affected States.

OSM has authority under the ESA to ensure that approved State programs contain appropriate requirements to avoid jeopardy to listed species and to prevent destruction or adverse modification of their critical habitats. Final § 816.97(b) is authorized by Section 7(a) of the ESA, which requires non-ESA programs to be administered and used to further the ESA's purposes. The rule has been revised to indicate specific reliance on the provisions of the ESA. Other sources of authority for this rule are Sections 515(b)(24), 515(b)(10), 515(b)(17), and 201 of the Act.

A commenter recommended that proposed § 816.97(b) be revised to include requirements for species "proposed" for listing, as provided in the 1979 amendments to the ESA. The requirements for species proposed for listing have not been incorporated into the final rule. Final § 816.97(b) provides protection only for endangered or threatened species listed by the Secretary, as was proposed, and for critical habitats of such species designated pursuant to Section 7(a) of the ESA.

One commenter objected to the absolute prohibition of surface mining in proposed § 816.97(b) and contended that OSM's responsibilities under the ESA could be satisfied by requiring that surface mining operations not be conducted "*in such a manner* as to jeopardize the continued existence of endangered or threatened species listed by the Secretary or result in the destruction or adverse modification of designated critical habitats of such species" [emphasis added].

Under the commenter's alternative language, mining operations which could affect endangered species or critical habitats would be allowed, but they would have to be conducted so as to avoid destruction of such species or adverse modification of their critical habitats. OSM agrees with the commenter and has revised § 816.97(b) to prohibit only those operations which would jeopardize endangered or threatened species, by substituting the word "will" for the words "is likely to." Final § 816.97(b) will prohibit operators from conducting surface mining activities which will jeopardize the existence of endangered species or destroy or adversely modify their critical habitats in violation of the ESA. The final rule is consistent with 30 CFR § 786.19(o) of the permitting rules, under which approval of a permit application is contingent on a finding by the regulatory authority that the proposed operation would not affect the existence of listed species or result in destruction of their critical habitats, as determined by the ESA. (See also the perferred alternative for 30 CFR 773.15(c)(10) in volume III of the EIS.)

Previous § 816.97(b) required that operators report promptly to the regulatory authority sightings on the permit area of any plant or animal listed by the State as threatened or endangered. One commenter supported the proposal to delete this provision from OSM's final rules and agreed that the reporting requirement under previous § 816.97(b) would be provided in State programs approved under Title V of the Act.

Several commenters took the position that OSM's final rules should retain a specific requirement for reporting species listed by the State in order to promote identification of critical habitats on mine sites and to achieve the objectives expressed in Section 515(b)(24) of the Act. Commenters alleged that the proposed rule would leave considerations regarding the biological status of species listed by the State to the convenience of mine operators. They argued that the reference to State-listed species in previous § 816.97(b) should be added to the language of OSM's proposed rule to provide endangered species listed by the State the same degree of protection accorded endangered species under Federal law. One commenter believed that operators should be required to continue to report sightings of endangered species listed by the State, since the regulatory authority's responsibility for consultation on the reported sightings under proposed § 816.97(b) would not involve the same full-scale consultation required of Federal agencies by Section 7(a) of the ESA.

A group of commenters claimed that the absence of explicit reference to State listed species in proposed § 816.97(b) would preclude regulatory authorities from requiring operators to report the presence of such species on mine sites in any jurisdiction where enactment of provisions more stringent than those contained in the Federal statute or rules is prohibited by State law. Another commenter feared that OSM would lack authority to order the cessation of mining operations conducted pursuant to a Federal program for a State if an express requirement for reporting species listed by the State were omitted from OSM's final rule.

OSM has rejected the commenters' suggestions and has eliminated express reference to State-listed species from final § 816.97(b). OSM concedes that the consultation required of regulatory authorities under this final rule is not the same formal consultation process required of Federal agencies by the ESA. However, endangered or threatened species listed by the State are not necessarily entitled to protection under Federal law. Additional protection may be required for State-listed species under State law according to Section 505 of the Act.

Previously §816.97(b) required operators to report promptly to the regulatory authority the presence in the permit area of any critical habitat of a threatened or endangered species listed by the Secretary. Several commenters urged OSM to retain this requirement in the final rule to ensure identification and verification of critical habitats known to be within the permit area. One commenter contended that a specific duty to report critical habitats coupled with the responsibility to report sightings, would promote identification and verification of critical habitats not known to exist in the permit area before commencement of mining operations. Another commenter, who supported the proposed deletion of the previous requirement, agreed that critical habitats on mine sites would be adequately identified and reported to the regulatory authority during the permitting process pursuant to § 786.19(o).

OSM has not reinstated the requirement for reporting critical habitats in new § 816.97(b). Under § 786.19(o), approval of an operator's mine permit application is conditional on a determination by the regulatory authority that the proposed operation would not have an adverse effect on critical habitats protected by the ESA. Thus, critical habitats on mine sites will be considered pursuant to § 786.19(o) before a proposed operation is authorized by the regulatory authority. Critical habitats are designated by the Secretary; therefore, they would not be "discovered" on the mine site after the commencement of mining operations.

One commenter wondered whether the reporting requirement in proposed § 817.97(b) applied only to species known to reside on the mine site or whether it also included sightings of endangered or threatened birds along migration routes or flyways in the permit area. The commenter recommended that the final rule require an operator to report such sightings only if the species discovered on the permit area is known to reside there or in a similar habitat.

Final § 816.97(b), as proposed and adopted, requires an operator to report endangered or threatened species within the permit area of which the operator becomes aware. It does not require operators to report species merely sighted at a distance as they fly near the permit area. However, endangered or threatened species found in the permit area must be reported.

One commenter recommended that the reporting and consultation requirements be eliminated from the rule since these procedures are adequately provided for by the ESA. Citing the attraction of eagles and other raptors to silos as evidence that some mining facilities have no adverse impacts on threatened or endangered species, the commenter characterized the reporting requirement in proposed § 816.97(b) as inconsistent with the ESA and as onerous to operators.

OSM has rejected the commenter's recommendation. The reporting and consultation duties in final § 816.97(b) are consistent with Section 7(a) of the ESA, which obligates Federal agencies to use their authority in furtherance of the ESA's objectives.

One commenter advocated that the words "consult" and "consultation" in the proposed rule be changed to "coordinate" and "coordination" to make it clear that the regulatory authority's responsibility for consultation under OSM's rule would not be the same consultation required of Federal agencies by Section 7(a) of the ESA. OSM acknowledges that the consultation required under final § 816.97(b) will not be the formal consultation provided for in Section 7(a) of the ESA when a Federal agency takes an action which may harm an endangered species. While "coordination" refers to the process of harmonizing and adjusting a set of interrelated requirements, "consultation" denotes the process of conferring with other persons for their advice or opinions in order to reach a decision on a particular matter. OSM continues to believe that the word "consultation" as used in final § 816.97(b) is appropriate.

A commenter recommended that the phrase "continuing to operate while taking proper precautions to protect such species" be added to the end of the second sentence and that the words "whether and" be deleted from the last sentence of proposed § 816.97(b) so that mining could continue on the permit area during the interim between the reported sighting and the verification of any threatened species or critical habitat on the mine site.

Another commenter requested that OSM clarify whether proposed § 816.97(b) would require the regulatory authority to order the shutdown of an entire permitted operation or the cessation of mining only in the area of the sighting during the interim between reporting the sighting and the regulatory authority's determination on continuation of mining.

Final § 816.97(b) authorizes the shutdown of a permitted operation only after the regulatory authority has determined that the operation may not be allowed to proceed and after consulting with the appropriate fish and wildlife agencies. The language suggested by the commenter is unnecessary since the final rule will

allow a permitted operation to proceed with mining during the interim between the reported sighting and the regulatory authority's decision on continuation of the operation. However, final § 816.97(a) will require the operator to continue to use the best technology currently available to minimize harm to fish and wildlife as a result of mining during that interim.

In addition, OSM has retained the words, "whether and" in new § 816.97(b). Thus, the final rule authorizes the cessation of a permitted operation after startup upon a determination by the regulatory authority, in consultation with the appropriate fish and wildlife agencies, that such a mining operation will jeopardize the continued existence of federally-listed species or result in destruction or adverse modification of their critical habitats.

One commenter feared that continuation of any mining operation after startup would automatically be jeopardized by the unexpected appearance of any endangered or threatened species, whether migratory or transitory, as a result of the consultation requirement in proposed § 816.97(b). Because species permanent or indigenous to the areas of the operation would be identified in the operator's permit application, the commenter argued that the consultation requirement should be deleted from proposed § 816.97(b) to protect the substantial legal and financial commitments of the operator on the permit site.

The commenter has overstated the potential impact of mandatory consultation on the continuation of permitted mining operations. Final § 816.97(b) requires consultation whenever the regulatory authority receives a report from an operator that any endangered species has been identified on the permit area. The consultation process will lead to the shutdown of a permitted operation only if the regulatory authority, upon consultation with the appropriate fish and wildlife agencies, determines that mining may not proceed on all or part of the site. Final § 816.97(b) should result in the cessation of very few permitted operations, since the regulatory authority is required to consider impacts of the operation on threatened and endangered species before permit approval under § 786.19(o). No permit will be issued to an operator unless the regulatory authority finds that the proposed mining activities will not jeopardize the continued existence of endangered species or result in the destruction or adverse modification of their critical habitats. Even in those situations where mandatory consultation will culminate in the permanent shutdown of permitted operations, provisions for appeal of the regulatory authority's cessation order at 30 CFR Part 775 will provide due-process protection for any substantial legal and financial commitments of the operator in procuring a permit for the site.

Section 816.97(c)

Proposed § 816.97(c) prohibited surface mining operations from being conducted in a manner which would result in the unlawful taking of a golden eagle nest. Under the proposed rule, the operator was required to report promptly to the regulatory authority any golden eagle nest on the permit area of which he became aware. The proposed rule also required the regulatory authority to consult with the appropriate Federal and State fish and wildlife agencies upon such notification from the operator, and authorized the regulatory authority to identify whether, and under what circumstances, the operator may proceed with mining only after the mandatory consultation.

OSM has adopted the language of the proposed rule in final § 816.97(c), with one change. The phrase "a golden eagle nest" in the first sentence of proposed § 816.97(c) has been revised to "a bald or golden eagle, its nest, or any if its eggs" in the final rule. This revision will provide protection for bald and golden eagles and their nests or eggs in accordance with the Bald Eagle Protection Act (BEPA), as amended, 16 U.S.C. 668 *et seq.* and will clarify the relationship between the SMCRA and the 1978 amendment to the BEPA that authorizes the taking of inactive or abandoned golden eagle nests which interfere with the development and recovery of natural resources.

Since the BEPA authorizes the U.S. Fish and Wildlife Service (USFWS) to protect golden eagle nests, one commenter suggested that operators should be required to report to USFWS any golden eagle nest sighted on the permit area, rather than to State regulatory authorities.

This suggestion has been rejected. The objective of the provision is to ensure that the regulatory authority implementing the SMCRA is provided necessary information to resolve conflicts between the SMCRA and the BEPA, not to create an enforcement or reporting mechanism for the fish and wildlife agencies. The commenter's reporting alternative would require USFWS to notify OSM, State regulatory authorities, or State fish and wildlife agencies of the need for consultation. OSM has no authority to require USFWS to assume or discharge such a duty. Thus, the reporting requirement under final § 816.97(c) is considered more appropriate to ensure that mining operations are conducted in accordance with Section 515(b)(24) of the SMCRA and the provisions of the BEPA and that the requirements of the two statutes are promptly reconciled.

One commenter recommended that the proposed rule be revised to require prompt reports to the regulatory authority "in accordance with the approved mining and reclamation plan" of the operation. OSM has not accepted this recommendation since addition of the phrase suggested by the commenter could require the operator to report the presence of a golden or bald eagle nest on the mine site only if the eagle had been previously identified by the operator and listed in the operational plan segment of his or her permit application. A broader reporting and consultation provision is warranted. Final § 816.97(c) will require the operator to submit a prompt report to the regulatory authority of *any* bald or golden eagle nest, regardless of whether its existence on the mine site was identified during the permitting process or disclosed after commencement of a permitted mining operation.

A commenter suggested that OSM not include the proposed provisions for mandatory consultation in final § 816.97(c) since the regulatory authority would *always* consult with the appropriate fish and wildlife agencies upon notice from the operator. The commenter claimed any specification limited the flexibility that the regulatory authority needs in consultation.

OSM disagrees and has retained the proposed consultation requirement in final § 816.97(c). The final rule requires the regulatory authority to consult the USFWS and also, where appropriate, the State fish and wildlife agency, to ensure that the regulatory authority has the benefit of their concerns and suggestions before instructing the operator whether and under what conditions, he or she may proceed. This will not impose any undue burden or create additional delay.

Section 816.97(d)

Proposed § 816.97(d) provided that nothing in Chapter VII authorized the taking of an endangered or threatened species or a golden eagle nest in violation of the Endangered Species Act of 1973 (ESA), as amended, 16 U.S.C.

1531 *et seq.*, or the Bald Eagle Protection Act, as amended, 16 U.S.C. 668 *et seq.*

One commenter suggested that the relationship between the BEPA and SMCRA should be clarified by revising the language of the proposed rule to protect bald eagles as well as golden eagles, their nest, and their eggs. A commenter also recommended that OSM insert a specific reference to the Migratory Bird Treaty Act of 1918, 16 U.S.C. 703 *et seq.*, in the language of the proposed rule to ensure administration of the SMCRA's requirements in accordance with the other act's provisions.

OSM has accepted both suggestions. The language of the proposed rule has been revised to incorporate the commenters' recommendations in final § 816.97(d) regarding the protection of bald eagles. The final rule provides that nothing in Chapter VII authorizes the taking of an endangered or threatened species, a bald or golden eagle, its nest, or any of its eggs in violation of the ESA or the BEPA. This section makes it clear that in reconciling the requirements of the SMCRA with the acts identified under Paragraphs (b) and (d) of this section, these other acts take precedence over the requirements of the SMCRA. OSM will insert a specific reference to the Migratory Bird Treaty Act of 1918, as amended, 16 U.S.C. 703 *et seq.*, in final 30 CFR 773.12 to recognize the regulatory authority's responsibilities under that act in the permit-application review process.

One commenter suggested that the word "active" be inserted before the phrase "golden eagle nest" in proposed §§ 816.97 (c) and (d). This revision was claimed to be consistent with rules proposed by the USFWS under the BEPA. Since eagles are known to construct several nests simultaneously and since nests not in use may last several years, the commenter argued that operators should not be required to report the presence of inactive or abandoned nests on the permit area. The commenter's suggested language has not been accepted. To the extent that an inactive nest could be disturbed under the BEPA and the fish and wildlife rules, the consultation provisions of § 816.97 (c) should not impose and undue burden on operators, but instead, may help operators to avoid actions in violation of the BEPA.

Final §§ 816.97 (c) and (d), which require operators to report inactive or abandoned nests on permitted sites, is in accordance with USFWS rules under the BEPA. The rules proposed by USFWS (45 FR 809, January 3, 1980) would authorize the taking of nests under limited circumstances and would require permits for removal or disturbance of nests with documented use patterns.

Section 816.97(e)(1)

Previous § 816.97(c) required mine operators to ensure that electric powerlines and other transmission facilities used for, or incidental to, mining activities on the permit area were designed and constructed in accordance with guidelines set forth by the U.S. Departments of the Interior and of Agriculture (1970) or in other manuals approved by the regulatory authority. The previous rule also required that distribution lines be designed and constructed in accordance with criteria specified by the U.S. Rural Electrification Administration (1972), or in the other guidance manuals approved by the regulatory authority. OSM proposed the deletion of these provisions from the rules on the theory that their requirements would be implicit in the operator's duty to use the best technology currently available under § 816.97(a), as proposed. Only one commenter concurred with OSM's proposal. The overwhelming majority of commenters urged OSM to retain specific criteria for design and construction of powerlines on the permit area.

Commenters thought specific requirements were necessary in the rules to minimize entanglement and electrocution hazards and to avoid any increase in raptor mortality from mining activities which are inconsistent with the purposes of the Bald Eagle Protection Act and related Federal statutes. A commenter claimed that OSM's elimination of the requirement would leave States without the authority to require mine operators to use raptor-proof powerlines even though 6 golden eagles had been electrocuted on mine sites in Wyoming during the past 2 years as a result of poorly designed powerlines. Commenters argued for reinstatement of specific requirements since the technology-forcing aspect of Section 515(b)(24) of the Act must be coupled with adequate notice and guidance for operators to ensure the protection of wildlife. One commenter considered the manual that OSM proposed to develop to assist operators in preparing site-specific plans for fish and wildlife protection inappropriate, since it would not empower regulatory authorities to require proper construction of power poles on mine sites. A commenter added that the Act's public-participation requirements would be thwarted if design standards were eliminated from the rule and placed in manuals known only to mine operators. One commenter claimed the lack of specific design criteria would leave mine operators too much discretion and assure inadequate compliance with the best-technology standard. Another commenter contended that the previous rule did not impose excessive burdens on the coal mining industry because costs of compliance with the former requirements for design of powerlines reported by some operators were less than costs for conventionally-designed lines. One commenter advocated express requirements in the rules to make operators aware of potential hazards to large raptors from powerlines on mine sites, inform them of the best technology currently available to protect such species, and ensure effective implementation of the best-technology requirement by regulatory authorities.

OSM has modified the substance of previous § 816.97(c) and specified revised requirements for design and construction of powerlines in a new § 816.97(e)(1) to accord with the commenters' concerns and to avoid problems of interpretation. Under the final rule, operators will be required, to the extent possible using the best technology currently available, to ensure that electric powerlines and other transmission facilities used for or incidental to surface mining activities on the permit area are designed and constructed to minimize electrocution hazards to raptors, except where the regulatory authority determines that such requirements are unnecessary. This exemption will provide the regulatory authority discretion to take into account specific conditions on each mine site as well as to eliminate the need for operators to comply with new § 816.97(e)(1) when eagles or other large birds are not known to frequent the permit area or there is no chance that raptors will be electrocuted on the site.

One commenter suggested that the reference in previous § 816.97(c) to the U.S. Rural Electrification Administration Bulletin 61–10 (1972) be omitted from the final rules since raptor-proofing powerlines would be less costly than retrofitting problem powerlines. OSM agrees with the commenter's position, and the previously cited reference has been deleted from final § 816.97(e)(1).

Another commenter recommended that operators be required to construct powerlines on mine sites in accordance with design criteria set forth in a 1981 report on raptor protection from powerlines. However, because specific sources of guidance for wildlife protection may become obsolete or outdated as a result of technical innovations, OSM has eliminated any

citations to specific manuals or publications from the final rule. Final § 816.97(e)(1) will require the regulatory authority to determine which specific measures are necessary to ensure that hazards of electrocution to raptors will be minimized on the permit area. However, mine operators will be free to consult any technical literature for guidance on how to protect large birds from contact with powerlines.

Sections 816.97 (e)(2) and (e)(3)

OSM specifically requested comments on whether requirements for location and use of haul roads, fencing of migratory routes, and fencing of toxic ponds, as provided in paragraphs (d)(1), (d)(2), and (d)(3) of previous § 816.97, should be retained in the new rules. Several commenters supported OSM's proposal to delete these requirements since they involved issues which should be resolved by State regulatory authorities based on the site-specific needs of local species. They believed OSM's rules should afford regulatory authorities the flexibility to develop specific guidelines for wildlife protection tailored to particular conditions in each State. Other commenters recommended that final § 816.97(a) include a specific requirement for operators to comply with guidelines for fish and wildlife protection in regional manuals prepared by USFWS, instead of retaining previous §§ 816.97 (d)(1), (d)(2), and (d)(3) in the final rules. One commenter thought that the previous requirements should be specified in the final rules until such time as OSM could issue a technical manual to guide operators in preparing site-specific plans for fish and wildlife protection.

The majority of commenters, however, objected to OSM's proposal to delete previous §§ 816.97 (d)(1), (d)(2), and (d)(3) and advocated their retention in the final rules. One commenter complained that the Act's public-participation requirements would be thwarted if these requirements were eliminated from OSM's final rules and placed in manuals known only to mine operators. Several commenters claimed that specification of the requirements was necessary to provide for effective implementation of the general performance standard in proposed § 816.97(a) for operators to use the best technology currently available. They argued that the language of proposed § 816.97(a) merely restated the general mandate in Section 515(b)(24) of the Act and was insufficient to satisfy Section 201(c) of the Act in the absence of specific requirements for protection of fish and wildlife. Another commenter thought OSM should reinstate the former requirements in the final rules to help States comply with their obligations under Section 515(b)(24) of the Act, since regulatory authorities had tended to overlook many considerations relevant to wildlife protection during the permitting process.

One commenter, characterizing the general mandate in proposed § 816.97(a) as "very broad," recommended that the final rules expressly provide for the previous requirements "when deemed necessary to wildlife protection by the regulatory authority" to avoid problems of interpretation as well as problems resulting from nationwide application of rules suited only to a particular geographic region. A commenter claimed that elimination of the requirements from OSM's rules would leave States without authority to initiate the development of guidelines and standards for the protection of fish and wildlife. Another commenter argued that OSM's proposal was contrary to the congressional policy expressed in the Act for a consistent nationwide program inasmuch as State regulatory authorities would be allowed to develop guidelines and impose requirements for fish and wildlife protection on a local basis. According to the commenter, these developments would invite the type of varying enforcement that originally made the Act necessary. One commenter contended that the proposal would make mine operators responsible for identification of riparian communities and threatened or endangered species, designation of buffer zones, and evaluation of habitats of unusually high value, even though OSM should be responsible for those functions which require professional judgment and expertise.

Previous § 816.97(d)(1) required that, to the extent possible using the best technology currently available, mine operators locate and operate haul and access roads so as to avoid or minimize impacts on important fish and wildlife species or other species protected by State or Federal law. Numerous commenters urged OSM to retain this requirement in the final rules as a specific qualification of the operator's general duty to protect fish and wildlife by use of the best technology currently available. Commenters claimed that previous § 816.97(d)(1) should be retained to inform operators of their specific obligations and emphasize the importance of their compliance since improperly used or located haul roads have the potential to disrupt oxygen, production of plants, destroy fish and benthic macroinvertebrates, and interfere with aquatic reproduction by introducing large amounts of eroded silt and sediment into streams.

Proper use and placement of haul roads are factors of which mine operators should be aware, given the potential of roads to cause environmental damage. For this reason, OSM has reinstated the previous requirements for haul roads in a new § 816.97(e)(2). However, OSM has rejected the suggestion for addition of the phrase "when deemed necessary to wildlife protection by the regulatory authority" as inappropriate since proper location and operation of haul and access roads is necessary in all parts of the country. New § 816.97(e)(2) will continue to require mine operators, to the extent possible using the best technology currently available, to locate and operate haul and access roads so as to avoid or minimize impacts on important fish and wildlife species or other species protected by State or Federal law.

Under previous § 816.97(d)(2), mine operators were required to fence roadways, to the extent possible using the best technology currently available, where specified by the regulatory authority to guide locally important wildlife to underpasses or overpasses and to construct the necessary passages. The previous rule also prohibited the creation of new barriers in known and important wildlife migration routes.

Numerous commenters recommended that a specific requirement for protection of migratory routes be included in OSM's final rules. One commenter found the term "best technology currently available" ambiguous and urged OSM to retain the previous requirements as a means of emphasizing to operators the importance of protecting wildlife-migration routes from the impacts of mining activities. Commenters noted that migratory routes in some areas are extremely important to large mammals which rely on different seasonal habitats, such as elk and mule deer. Other commenters considered obstruction of large-mammal movement to be a major problem only in the Western states, where survival of an entire herd may well depend on the animals' ability to migrate into areas where forage is available and other conditions are favorable for reproduction. A commenter, claiming that State regulatory authorities had not used previous § 816.97(d)(2) to obstruct mining, alleged that it prescribed cost-effective means for operators to protect Western wildlife from the impacts of mining. One commenter recommended that OSM adopt a new rule prohibiting

the development of any mine plan feature that would create new barriers to any corridor important to wildlife movement. Another commenter suggested that OSM adopt a new rule requiring operators to design barriers with a potential for obstructing the movement of wildlife in a manner that would allow wildlife access to important migratory routes.

In response to the commenters' concerns, OSM has adopted a revised requirement for protection of wildlife-migration routes in new § 816.97(e)(3). Obstruction of wildlife migration is a regional problem with potentially severe impacts on large mammals peculiar to the West. For this reason, the final rule will require mine operators to design fences, overland conveyers, and other potential barriers to permit passage for large mammals, using the best technology currently available to the extent possible. OSM has also added the phrase "except where the regulatory authority determines that such requirements are unnecessary" in new § 816.97(e)(3) to avoid the problems attendant to nationwide application of rules suited only for a particular geographic region. This will allow the regulatory authority to exempt an operator from the specified requirements on the basis of a finding that compliance is unnecessary for wildlife protection. Additionally, new § 816.97(e)(3) will provide regulatory authorities the discretion to consider regional or site-specific conditions in determining whether compliance with the rule's requirements is necessary to protect wildlife on a particular permit area.

Previous § 816.97(d)(3) required mine operators, to the extent possible using the best technology currently available, to fence, cover, or use other appropriate methods to exclude wildlife from ponds containing hazardous concentrations of toxic-forming materials. Numerous commenters urged OSM to retain the previous requirement in the final rules. Several commenters contended that the absence of a specific fencing requirement from the rules would mean that regulatory authorities in those States that do not allow restrictions more stringent than Federal rules in their State programs or other laws would no longer be able to require operators to block wildlife access to toxic ponds. Since various species of wildlife, including big game and waterfowl, that are part of the human food chain in the West are attracted to water sources in an otherwise arid region, a commenter thought that retention of the fencing requirement was necessary to ensure that toxic substances consumed by these species would not eventually be passed on to humans.

Some commenters claimed it was inconsistent with the best-technology standard for OSM to relieve operators of the obligation to fence toxic ponds on mine sites. Although several commenters agreed with OSM's contention that fencing does not totally preclude access to toxic ponds for *all* wildlife, they thought that elimination of this requirement from the final rule would increase adverse impacts of mining operations on wildlife. One commenter also recommended that OSM adopt a new rule retaining fencing requirements only for large mammals, since the Migratory Bird Act already requires operators to take protective measures to exclude waterfowl and migratory birds from hazardous impoundments on mine sites.

OSM has rejected the commenters' suggestions and has eliminated the fencing requirement in the final rule. Toxic ponds are not ordinarily found on mine sites, even in the West. To date, there is little evidence of specific damage to wildlife as a result of unprotected toxic ponds on the site of any mining operation. In the event that there is a local problem with fish and wildlife being adversely affected by toxic ponds, the regulatory authority will have the authority under final § 816.97(a) to require the operator to use whatever method is consistent with the requirement to use the best technology currently available to exclude wildlife from those ponds, including fencing. For these reasons, a specific fencing requirement is deemed unnecessary in the final rule.

Previous § 816.97(d)(7) provided that operators, using the best technology available to the extent possible, must not use persistent pesticides on the permit area unless their use was approved by the regulatory authority. Several commenters recommended that this prohibition be retained in the final rules to qualify the operator's general duty to protect wildlife through use of the best technology currently available. One commenter, claiming that State regulatory authorities tended to overlook many considerations relevant to wildlife protection in the past, thought the prohibition should be restated to assist State regulatory authorities in enforcing Section 515(b)(24) of the Act.

Some commenters favored retention of previous § 816.97(d)(7) on the grounds that persistent chemicals are not readily degradable and would cause adverse impacts on fish and wildlife as well as on humans by remaining active in the environment for long periods of time after their use. Other commenters supported OSM's coordination efforts, but found the proposed rule inconsistent with OSM's obligations under Section 515(b)(24) of the Act, since the effects of pesticides used in coal mining operations are not specifically addressed by the U.S. Environmental Protection Agency (EPA) rules. See 40 CFR Parts 162–180. A commenter also claimed that specific prohibition on use of persistent pesticides was consistent with OSM's asserted jurisdiction over endangered species in connection with coal mining operations and would assist OSM's effort to coordinate inter-agency requirements.

OSM has rejected the suggestions that the prohibition on use of pesticides in previous § 816.97(d)(7) be included in this final rule. Operators will no longer be specifically prohibited from using pesticides on mine sites without prior regulatory authority approval. However, a regulatory authority will be able to impose necessary conditions concerning pesticides under final § 816.97(a). Also, pesticides used on the mine area will have to conform to Federal and State laws, including the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136a *et seq.*, which allows the use of only those chemicals registered or cleared by the EPA. For most circumstances, EPA regulations provide adequate restrictions on the use of pesticides during mining operations. See 40 CFR Parts 162–180.

Previous § 816.97(d)(8) required mine operators, to the extent possible using the best technology currently available, to prevent, control, and suppress range, forest, and coal fires not approved by the regulatory authority as part of a management plan. Several commenters urged OSM to retain this requirement in the final rules as an express qualification of the operator's duty to use the best technology currently available to protect wildlife. However, another commenter argued that the fire-prevention requirement should be specified because it was logically unrelated to the operator's responsibilities under proposed § 816.97(a). Other commenters disputed OSM's contention that the requirement was implicit in proposed § 816.97(a). They favored its specification in the final rules to ensure compliance with Sections 201(c)(2) and 515(b)(24) of the Act because 30 CFR 816.86 did not address all types of fires potentially incidental to coal mining operations. OSM has rejected the commenters' suggestions and has omitted the requirement from the final rules, since

coal-refuse fires are already addressed by § 816.86. Furthermore, final § 816.97(a) will allow the regulatory authority to require operators to prevent fires by using the best technology currently available where site-specific conditions make such a requirement necessary and where local regulation might be insufficient. In addition, fire prevention is standard procedure for most mines.

Section 816.97(f)

Proposed § 816.97(e) required the operator conducting surface mining activities to avoid disturbances to, enhance where practicable, restore, or replace wetlands, riparian vegetation along rivers and streams, and littoral-zone vegetation bordering ponds and lakes. The proposed rule also required that surface mining activities avoid disturbances to, enhance where practicable, restore, or replace habitats of unusually high value for fish and wildlife. OSM has adopted proposed § 816.97(e) as final § 816.97(f), but has not adopted the phrase "littoral zone vegetation" in the language of the final rule. Operators will be required to avoid disturbances to, enhance where practicable, restore, or replace wetlands and riparian vegetation along rivers and streams and bordering ponds and lakes.

Specific comments were requested and received on whether it was necessary or appropriate to include the proposed references to wetlands in OSM's final rules, given the U.S. Army Corps of Engineers' (Corps) regulatory authority over wetlands under Section 404 of the Clean Water Act, 33 U.S.C. 1344, and Section 10 of the Rivers and Harbors Act, 33 U.S.C. 403. Several commenters believed that references to wetlands should be eliminated from OSM's new rules since these areas would be protected from the impacts of coal mining under the Corps' permit program. One commenter found wetlands requirements unnecessary in OSM's rules on the grounds that these areas are already protected from damage as a result of surface mining activities by Section 404 of the Clean Water Act. Another commenter thought that OSM's proposal would provide mine operators more flexible standards for wetlands preservation than those provided by the previous rules, but agrued that wetlands protection involving surface mining activities should be left to State regulatory authorities under 33 CFR 330.5(a)(21) of the Corps' permit rules (44 FR 31833, July 22, 1982). A commenter found the Corps' permit program preferable to OSM's proposed § 816.97(e), which included no definition of wetlands and failed to specify the duties required of operators for compliance.

Among commenters who favored adoption of OSM's proposed wetlands provisions in its final rules, one claimed the provisions are necessary to implement OSM's statutory responsibilities under Section 515(b)(24) of the Act. Several commenters thought that OSM's proposed rules would provide greater protection for wetlands than would the Corps' permit program. One commenter noted that proposed § 816.97(e) would omit the 5-cubic-feet-per-second (cfs) limitation in the Corps' nationwide general permits and would include wetlands, including both riparian- and littoral-vegetation zones, while the commenter believed that the Corps' rules would protect only wetlands below the ordinary high-water line. A commenter recommended that references to wetlands be retained in OSM's final rules until the Corps resolves the issue of blanket permit status for surface mining activities nationwide under § 330.5(a)(21), as in its interim final rules. One commenter also suggested that OSM apply proposed § 816.97(e) only where neither the State nor the Corps has clearcut permit jurisdiction over the mining operation under Section 404 of the Clean Water Act. In situations where their regulatory responsibilities clearly overlap, the commenter thought that OSM or the Corps should waive jurisdiction.

OSM has decided to retain specific reference to wetlands protection in the final rules. These had been proposed at § 816.97(e) and are included under § 816.97(f) of the final rule.

In establishing special provisions for wetlands under Section 515(b)(24) of the Act, OSM recognizes that there will be some duplication between the requirements imposed by OSM under the Surface Mining Act and those imposed by the Corps under Section 404 of the Clean Water Act. OSM will continue to work with the Corps to minimize this duplication through the development of general permits under the Clean Water Act and, where appropriate, through future OSM rulemaking. Inclusion of specific wetlands-protection provisions in these final rules should help expedite the development of general permits by the Corps, since wetlands will always be ensured of regulatory protection. OSM has not developed a new definition for wetlands in § 816.97(f). Instead OSM intends to rely upon the wetlands definition developed by EPA and the Corps for the Section 404 program. Under the definition at 40 CFR 230.3, "wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated-soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. This same definition of wetlands also appears in the Corps' interim final rules on dredging permits at 33 CFR 323.2(c) (47 FR 31811, July 22, 1982).

Several commenters sought reinstatement of the reference to "[e]ach person" under previous § 816.97(d) on the grounds that use of "[t]he operator" in proposed § 816.97(e) narrowed the scope of protection afforded by Section 515(b)(24) of the Act by allowing for unchecked wetlands degradation. For reasons discussed above under § 816.97(a), OSM disagrees and has used the term "[e]ach operator" in final § 816.97.

Several commenters requested that OSM reinstate the language of previous § 816.97(d)(10) that "[w]etlands shall be preserved or created rather than drained or otherwise permanently abolished" to effectuate the purposes of Section 515 (b)(24) of the Act. OSM has rejected this suggestion as unnecessary. Final § 816.97(f) will require that wetlands not be permanently abolished and that equivalent wetlands replace wetlands harmed by mining. These requirements are implicit in the duty to "restore, or replace wetlands . . ." under the final rule.

One commenter felt it was impracticable and infeasible to require an operator to "restore or replace" wetlands disturbed by mining. Another commenter suggested that "where practicable" be added after "restore" and that "where practicable or desirable" be inserted after "replace" in the first sentence of proposed § 816.97(e), since land would be more economically productive in postmining uses other than wetlands in many cases. Another commenter suggested that wetlands and habitats of unusually high value for fish and wildlife be restored "where consistent with a surface owner's post mining land use and if removal of such wetlands will have significant hydrological consequences on surrounding lands."

The value of wetlands has been recognized under the Clean Water Act and Executive Order 11990. These authorities indicate a strong presumption in favor of restoration of wetlands. OSM recognizes that restoration of the land to a higher and better use is also specifically allowed under Section 515(b)(2) of the Act. This

provision is implemented under § 816.133 to allow for alternative postmining land uses. However, when no alternative postmining land use is allowed, restoration of wetlands must proceed in accordance with final § 816.97(f).

One commenter recommended that the term "avoid" in proposed § 816.97(e) be replaced by the term "minimize," since the Act nowhere requires the operator to "avoid" disturbances. OSM has rejected this recommendation and retained the term "avoid" in final § 816.97(f). The final rule does not prohibit disturbance of wetlands. However, it does recognize that avoiding such disturbances would be consistent with the requirements of Section 515(b)(24) of the Act to protect fish, wildlife, and related environmental values.

Another commenter advocated the revision of proposed § 816.97(e) to require that riparian vegetation be restored "where practicable" or replaced "where practicable or desirable." According to this commenter, riparian vegetation cannot be replaced in its premining location whenever the postmining land use does not require restoration of a diverted stream or requires the stream to be replaced in another location. No change is necessary to accommodate the commenter's concern. The final rule is not intended to require restoration of riparian vegetation in locations other than near where the stream is ultimately located.

Several commenters urged OSM to reinstate "riparian" as the modifier of "vegetation bordering ponds and lakes" in proposed § 816.97(e), since the reference to "riparian vegetation" would include vegetation at the end of the waterline as well as vegetation in ponds and lakes. They contended that the proposed rule would not require mine operators to "avoid disturbances to, enhance where practicable, restore or replace" vegetation beyond the waterline because "littoral zone vegetation" is generally defined to include only aquatic vegetation.

The term "littoral zone vegetation" refers only to vegetation that exists in the interval between the high- and low-water marks, while "riparian zone" vegetation denotes vegetation growing at any place along the banks of a body of water. Accordingly, OSM has omitted the proposed reference to "littoral zone" as unnecessary. Under final § 816.97(f), mine operators will be required to avoid disturbances to, enhance where practicable, restore, or replace wetlands and riparian vegetation along rivers and streams and bordering ponds and lakes.

One commenter, who found proposed § 816.97(e) vague for not including a definition of "riparian vegetation," requested clarification on this point. Another commenter suggested that "riparian vegetation" be defined in the final rule to avoid confusion over the scope of the term.

It is unnecessary to include a definition of "riparian vegetation" in final § 816.97(f). Riparian vegetation varies considerably from site to site, but generally includes aquatic vegetation as well as other vegetation on the banks of a body of water.

One commenter requested that OSM clarify how far riparian vegetation would extend and whether operators would be required by proposed § 816.97(e) to enhance, restore, or replace riparian vegetation beyond the 100-foot buffer zone. Another commenter recommended addition of the terms "perennial and intermittent" before the words "rivers and streams" in proposed § 816.97(e) so that individual States would be responsible for determining what are "perennial and intermittent rivers and streams." As previously stated, riparian vegetation means aquatic vegetation as well as other vegetation on the banks of a body of water. This could include any body of water and need not be limited to perennial and intermittent streams. If existing riparian vegetation extends beyond the 100-foot zone before mining, then restoration of riparian vegetation beyond that limit could also be warranted. This determination will have to be made on a site-by-site basis.

Several commenters asked who would determine habitats of unusually high value for fish and wildlife under proposed § 816.97(e). One commenter recommended that consultation with Federal and State fish and wildlife agencies be required in making this determination. Another commenter suggested that the phrase "as determined by the regulatory authority" be added at the end of the second sentence of proposed § 816.97(e) to make it clear that the regulatory authority will be responsible for determining what constitutes a habitat of unusually high value for fish and wildlife.

It is unnecessary to add the provision "as determined by the regulatory authority" to final § 816.97(f). For purposes of clarification, the regulatory authority will be responsible for determining what will constitute a habitat of unusually high value under final § 816.97(f). OSM agrees that the regulatory authority should consult with Federal and State fish and wildlife agencies in determining habitats of unusually high value. However, a specific requirement for consultation has not been added to final § 816.97(f) since the regulatory authority may use other means to identify habitats of importance and need not be limited to any particular form of consultation.

Commenters agreed that determinations of habitats of unusually high value for fish and wildlife should depend on site-specific conditions, but suggested that OSM adopt a generic definition for the term to provide operators some certainty regarding the scope of their duties under proposed § 816.97(e). OSM has rejected the commenters' suggestion and omitted any specific definition from final § 816.97(f) to provide the regulatory authority maximum flexibility in determining what constitutes a habitat of unusually high value for fish and wildlife. Under the final rule, the determination may be established on the basis of conditions peculiar to the region where the mining operation is located. OSM will monitor application of these requirements and, if the provision proves to be unnecessarily confusing, OSM will consider providing additional guidance.

A commenter recommended that the second provision of proposed § 816.97(e) be deleted from the final rule, since habitats of unusually high value were already protected as "critical designated habitats" of endangered or threatened species under proposed § 816.97(b). Habitats of unusually high value for fish and wildlife under final § 816.97(f) are not intended to be limited to the "designated critical habitats" of endangered or threatened species under final § 816.97(b). Rather, this provision is intended to provide the regulatory authority the flexibility to require protection of certain locally important habitats even though they may not be critical habitats of any threatened or endangered species.

Section 816.97(g)

Proposed § 816.97(f) specified vegetation requirements for enhancement of lands that will be used for postmining fish and wildlife habitat. Paragraphs (f)(1), (f)(2), and (f)(3) of the proposed rule required that the plant species to be used on such reclaimed areas be selected on the basis of their proven nutritional value for fish or wildlife, their use as cover for fish or wildlife, and their ability to support and enhance fish or wildlife habitat after the release of performance bonds. In addition, proposed § 816.97(f)(3) required that the selected plants be grouped and distributed in a manner which optimizes edge effect, cover, and

other benefits to fish or wildlife. OSM has adopted the proposed provisions in final §§ 816.97 (g)(1), (g)(2), and (g)(3).

A commenter thought that microsites would be necessary to maximize plant diversity and develop a mixture of plant species capable of supporting postmining fish or wildlife habitat under proposed § 816.97(f). He conceded that topographic irregularities and selective soil salvage and replacement would promote the successful growth of various plant species, but claimed that wildlife species would not use areas of diverse vegetation for habitat when other conditions, such as rock or brush cover and snags or perches, are nonexistent in those areas.

Under final § 816.97(g), the regulatory authority will approve the mixture and distribution of plants required to optimize the reclaimed areas for use as postmining fish and wildlife habitats. OSM intends that operators create microsites only where the regulatory authority determines these conditions are necessary to support or enhance postmining habitat uses on the basis of site-specific factors.

A commenter stated that operators should be required to use only species native to the mined area in revegetation unless scientific research could clearly demonstrate that non-native plant species would have no impact upon surrounding native vegetation. He recommended addition of such a requirement to the language of proposed § 816.97(f). OSM has rejected this suggestion. Provisions for approval of the use of introduced species are included in the existing revegetation rules at 30 CFR 816.112 and in proposed 30 CFR 816.111, as set forth in Volume III of the EIS.

Section 816.97(h)

When cropland is to be the postmining land use, proposed § 816.97(g) required operators, where appropriate for wildlife- and crop-management practices, to intersperce the fields with trees, hedges, or fence rows throughout the harvested area to break up large blocks of monoculture and diversify habitat types for birds and other animals. After considering remarks from several commenters, OSM has adopted the proposed rule in final § 816.97(h).

One commenter found the proposed rule unnecessary and impractical because it would require areas for fish or wildlife habitats to be designed and included on reclaimed lands even where no fish or wildlife habitat existed before mining. The commenter suggested that operators be required to enhance cropland to support postmining fish and wildlife habitat only on areas diverted from use as premining fish and wildlife habitat.

This suggestion has been rejected. Final § 816.97(h) will allow the regulatory authority to require enhancement for fish or wildlife of all lands which will be used for postmining agriculture, not just those which were diverted from a premining fish or wildlife use. The general mandate of Section 515(b)(24) of the Act will be achieved more readily by final § 816.97(h) than by previous § 816.97(d)(10).

Another commenter claimed that the proposed requirement of enhancement for wildlife would impair the primary agricultural postmining land use unless crop-management practices were carefully planned. OSM agrees that careful planning by operators will be necessary to ensure that measures for enhancement of wildlife habitat are consistent with appropriate crop-management practices. The enhancement requirement in final § 816.97(h), however, will not impair agricultural postmining land uses. In situations where the specified enhancement measures are inconsistent with agricultural management practices, the final rule will allow the regulatory authority to exempt operators from the requirement to intersperse croplands with trees, rows, and hedges for wildlife habitat.

Section 816.97(i)

For postmining land uses which are residential, commercial, or industrial, proposed § 816.97(h), which has been renumbered as final § 816.97(i), required operators to intersperse the reclaimed lands with greenbelts utilizing species of grass, shrubs, and trees useful as food and cover for wildlife where such greenbelts are consistent with the approved postmining land use.

Commenters recommended that the phrase "public service" in former § 816.97(d)(11) be retained as a substitute for the word "commercial" in the proposed rule. They asserted that the reference to "public service" uses in the previous rule included both public and private uses, while the reference to "commercial" uses under proposed § 816.97(h) encompassed only private uses.

OSM has accepted this recommendation and replaced the proposed reference to "commercial" uses with the reference to "public service" uses in final § 816.97(i). Under the final rule, "public service" uses will encompass both private and public uses. Where the primary postmining land use is to be residential, public service, or industrial, final § 816.97(i) will require the operator to intersperse the land with greenbelts where these areas are consistent with the approved postmining land use.

One commenter contended that §§ 816.97 (f), (g), and (h), as proposed, amounted to an unconstitutional taking of private property by government regulation. In addition, the commenter suggested that these provisions be deleted from OSM's final rules because they prescribe requirements too specific for nationwide application and are inconsistent with Section 508(a)(3) of the Act in failing to allow for any consideration of surface-owners' preferences on postmining land uses.

OSM has rejected the commenter's suggestion and adopted the proposed requirements in final §§ 816.97 (g), (h), and (i). These rules are authorized by Sections 515(b)(24) and 515(b)(2) of the Act. Neither Section 508(a)(3) nor any other provision of the Act makes the operator's reclamation responsibilities contingent on surface-owner consent. Section 508(a)(3) of the Act merely authorizes the regulatory authority to approve alternative proposed postmining land uses after mandatory consultation with the landowner, as recognized in § 816.133(c).

OSM also disagrees with the commenter's contention that the proposed requirements are too specific to include in national rules. The new rules are general in nature and cover anticipated categories of approved postmining land uses, including mixed postmining land uses. They require enhancement of reclaimed lands for postmining fish or wildlife uses only where enhancement is consistent with the specific proposed postmining land use. Certainly, this is not an unconstitutional taking of private property. In addition, regulatory authorities will be allowed to consider site- or region-specific factors in applying the general standards contained in the rules. Thus, final §§ 816.97 (g), (h), and (i) will provide requirements which are sufficiently flexible for nationwide application.

One commenter recommended that proposed §§ 816.97 (g) and (h) be revised to allow surface-owner preferences on postmining land use to prevail over the specified reclamation requirements. Another commenter suggested that a requirement for prior surface-owner consent be included in Paragraph (g) to provide explicit recognition of the surface-owner's right to state a preference on postmining land uses. The commenter argued that the proposed rules would not enhance

wildlife protection in a cost-effective manner unless the operator's reclamation responsibilities were contingent on the surface-owner's prior consent, since any postmining reclamation not mutually agreed upon could be eliminated or reversed by the surface owner once he or she regained control of the property if it interfered with his or her normal land uses. A commenter also noted that the reclamation measures required of the operator under proposed § 816.97(g) would be costly to implement on cropland even though it could be destroyed by the surface owner following bond release.

OSM has rejected the suggestion that surface-owner preferences on postmining land use be allowed to negate the operator's reclamation responsibilities. The suggestion is unauthorized by the Act and inconsistent with OSM's obligation to enforce Sections 515(b)(24) and 515(b)(2) of the Act. Final §§ 816.97 (h) and (i) will require operators to enhance reclaimed lands to support fish and wildlife habitats only where the specified methods of enhancement are appropriate for wildlife- and crop-management practices or are consistent with the approved postmining land use, respectively.

In the event that the specified enhancement measures are inappropriate to agricultural management practices or inconsistent with the approved postmining land use, the final rules allow the regulatory authority to exempt operators from requirements of enhancement to support postmining fish and wildlife habitats.

The suggestion to add a requirement of prior surface-owner consent to proposed § 816.97(g) has also been rejected. Under Section 508(a)(3) of the Act, the reclamation plan submitted as part of each permit application must explain the use proposed for the affected land following reclamation and include the comments of any surface landowner, who will have to approve or authorize the proposed postmining land use following reclamation. Section 508(a)(3) also empowers the regulatory authority to approve alternative proposed postmining land uses after mandatory consultation with the landowner. The landowner's right to mandatory consultation on the proposed postmining land use is already recognized in § 816.133(c).

A commenter recommended that "shall" in proposed §§ 816.97 (g) and (h) be replaced by "may" to ensure consistency of the operator's postmining enhancement with future land uses consented to by the surface owner. OSM has rejected this suggestion. The revisions advocated by the commenter are unnecessary. Final §§ 816.97 (h) and (i) will achieve the commenter's objective by requiring operators to intersperse reclaimed lands with the specified vegetation only when such vegetation is appropriate for agricultural management practices or consistent with the approved postmining land uses.

One commenter suggested that proposed §§ 816.97 (g) and (h) specify a minimum percentage of land that must be restored by the operator and include provisions for uniform dispersal of fish or wildlife habitats over the reclaimed areas to reduce the chance that the rules' requirements could be satisfied by token, but ineffective, plantings.

OSM has rejected both suggestions. Specification of a minimum percentage of land that must be restored to support postmining fish or wildlife uses is an inappropriate requirement to include in national rules. Because conditions vary according to site and region, only the local regulatory authority will be in a position to determine how much land will be required to restore a specific site to a condition capable of supporting postmining fish or wildlife habitat. Hence, final §§ 816.97 (h) and (i) will allow the regulatory authority to dictate the minimum percentage of land which an operator must restore to support postmining fish or wildlife habitats on the basis of site- or State-specific factors. A provision for uniform dispersal of requisite habitats over the reclaimed area will be unnecessary. Final § 816.97(g)(3) will allow the regulatory authority to direct the operator to plant species uniformly throughout the reclaimed area, whenever site-specific factors require uniform dispersal to optimize edge effect, cover, and other benefits to fish and wildlife.

A commenter recommended that OSM delete Paragraphs (f), (g), and (h) from proposed § 816.97 and include them with the standards for postmining land use proposed by OSM on April 14, 1982 (47 FR 16152). He claimed that the proposed requirements for postmining enhancement of fish and wildlife habitats could jeopardize the operator's ability to achieve bond release under the terms of the approved reclamation plan unless they were treated as requisite elements of the operator's revegetation plan.

Because these rules will implement the obligation in Section 515(b)(24) of the Act for operators to achieve enhancement of environmental resources where practicable by use of the best technology currently available, OSM rejects this suggestion and has included the enhancement requirements in final §§ 816.97 (g), (h), and (i).

Section 817.97

Final § 817.97 is essentially the same as final § 816.97, except that this rule applies the requirements for protection of fish, wildlife, and related environmental values to underground mining activities. Interested persons should consult the preamble to final § 816.97 for a discussion of comments and responses relative to final § 817.97. In addition to the authorities cited in the preamble to § 816.97, this rule is also based on Section 516 of the Act.

C. Reference Materials

Reference material (on file in OSM's Administrative Record) used to develop these final rules are as follows:

Grim, E. C., and Hill, R. D., 1974, Environmental protection in surface mining of coal: U.S. Environmental Protection Agency Publication EPA-670/2-74-093, 276 pp.

Hardaway, J. E., and Kimball, D. B., 1976, Trip report, Environmental Protection Agency research and development activities: Savage mine, Rosebud mine, Big Sky mine, Decker No. 1 mine, proposed East Decker and North Decker mines (Montana), Public Service of Oklahoma No. 1 mine, Bighorn mine, Wyodak mine, Black Thunder mine, Jacobs Ranch mine, proposed Coal Creed mine, Belle Ayr mine, Dave Johnston mine, and Highland uranium mine and mill. Memorandum dated July 10, 1076.

Karr, J. E., and Schlosser, I. J., 1978, Water resources and the land-water interface: Science, Vol. 2301, pp. 229–234.

Tennessee Valley Authority, 1971, Surface mining reclamation and conservation requirements, *in* Appendix A of Environmental statement: Policies relating to sources of coal used by the Tennessee Valley Authority for electric power generation: Tennessee Valley Authority Report TVA-OHES-EIS-71-4, pp. A-1 through A-10.

U.S. Department of the Interior and U.S. Department of Agriculture, 1970, Environmental criteria for electric transmission systems, 52 pp.

U.S. Envionmental Protection Agency, 1976, Erosion and sediment control-Surface mining in the eastern United States; Vol. 1, Planning; Vol. 2, Design: U.S. Environmental Protection Agency Technology Transfer Seminar Publication EPA-625/3-76-006. Vol. 1, 102 pp.; Vol. 2, 137 pp. (Available from U.S. Department of Commerce, NTIS PB 261-343.)

U.S. Rural Electrification Administration, 1972, Powerline contacts by eagles and other large birds: U.S. Rural Electrification Administration Bulletin 61-10, 6 pp.

Weigle, W.K., 1965, Designing coal-haul roads for good drainage, U.S. Forest Service, 23 pp.

III. Procedural Matters

Agency Approval

OSM has obtained all necessary comments and concurrences from other agencies. Sections 501 (a)(B) and (b) of the Act require the written concurrence of the Administrator of the U.S. Environmental Protection Agency in rules relating to air- or water-quality standards promulgated under the Clean Air Act, as amended, and the Federal Water Pollution Control Act, as amended. The Administrator of the Environmental Protection Agency has concurred in the issuance of these rules. Section 516(a) of the Act requires the written concurrence of the head of the department that administers the Federal Mine Safety and Health Act of 1977, the successor to the Federal Coal Mine Health and Safety Act of 1969, in rules concerning the surface effects of underground mining. OSM has obtained the written concurrence of the Assistant Secretary for Mine Safety and Health, U.S. Department of Labor.

Federal Paper Reduction Act

There are no information-collection requirements established by these rules requiring the approval of the Office of Management and Budget under 44 U.S.C. 3507.

Executive Order 12291

The U.S. Department of the Interior has determined that this document is not a major rule and does not require a regulatory impact analysis under Executive Order 12291.

Regulatory Flexibility Act

The U.S. Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities and therefore does not require a regulatory flexibility analysis under Public Law 96-354. The rules will allow small coal operators increased flexibility in meeting performance standards and should especially ease the regulatory burden on small coal operators in Appalachia.

National Environmental Policy Act

OSM analyzed the impacts of these final rules in its "Final Environmental Impact Statement OSM-EIS-1: Supplement" (FEIS) according to section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(c)(C)). The EIS is available in OSM's Administrative Record, Room 5315, 1100 L Street, NW., Washington, D.C., or by mail request to Mark Boster, Chief, Branch of Environmental Analysis, Room 134, Interior South Building, U.S. Department of the Interior, Washington, DC 20240. This preamble serves as the record of decision under NEPA. A number of modifications from the proposed rules which are discussed in this preamble also differ from the draft final rules published in Volume III of the EIS. These changes do not affect the analysis in the EIS except to the extent discussed earlier in this preamble. The order of final §§ 816.57 (a)(1) and (a)(2) has been reversed from the order of those paragraphs in the EIS, as has the order of §§ 817.57(a) (1) and (2)). The substantive requirements of final paragraph (a)(2) are the same as those in paragraph (a)(1) of the EIS. Final paragraph (a)(1) does not include the specific references to the "normal flow or gradient of the stream," to "fish migration," and to "material damage" that appeared in Volume III of the EIS. The removal of these terms does not affect the EIS analysis as it applies to these final rules because they are all subsumed in the final proscription against causing or contributing to the violation of applicable State or Federal water quality standards and against adversely affecting the water quantity and quality or other environmental resources of the stream.

List of Subjects

30 CFR Part 816

Coal mining, Environmental protection, Reporting requirements, Surface mining.

30 CFR Part 817

Coal mining, Environmental protection, Reporting requirements, Underground mining.

For the reasons set forth in the preamble, 30 CFR Parts 816 and 817 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

1. Section 816.57 is revised to read as follows:

§ 816.57 Hydrologic balance: Stream buffer zones.

(a) No land within 100 feet of a perennial stream or an intermittent stream shall be disturbed by surface mining activities, unless the regulatory authority specifically authorizes surface mining activities closer to, or through, such a stream. The regulatory authority may authorize such activities only upon finding that—

(1) Surface mining activities will not cause or contribute to the violation of applicable State or Federal water quality standards, and will not adversely affect the water quantity and quality or other environmental resources of the stream; and

(2) If there will be a temporary or permanent stream-channel diversion, it will comply with § 816.43.

(b) The area not to be disturbed shall be designated as a buffer zone, and the operator shall mark it as specified in § 816.11.

2. Section 816.97 is revised to read as follows:

§ 816.97 Protection of fish, wildlife, and related environmental values.

(a) The operator shall, to the extent possible using the best technology currently available, minimize disturbances and adverse impacts on fish, wildlife, and related environmental values and shall achieve enhancement of such resources where practicable.

(b) *Endangered and threatened species.* No surface mining activity shall be conducted which will jeopardize the continued existence of endangered or threatened species listed by the Secretary or which will result in the destruction or adverse modification of designated critical habitats of such species in violation of the Endangered Species Act (16 U.S.C. 1531 *et seq.*). The operator shall promptly report to the regulatory authority any endangered or threatened species within the permit area of which the operator becomes aware. Upon notification, the regulatory authority shall consult with appropriate State and Federal fish and wildlife agencies and, after consultation, shall identify whether, and under what conditions, the operator may proceed.

(c) *Bald and golden eagles.* No surface mining activity shall be conducted in a manner which would result in the unlawful taking of a bald or golden eagle, its nest, or any of its eggs. The operator shall promptly report to the regulatory authority any golden or bald eagle nest within the permit area of which the operator becomes aware. Upon notification, the regulatory authority shall consult with the U.S. Fish and Wildlife Service and also, where appropriate, the State fish and wildlife agency and, after consultation, shall identify whether, and under what conditions, the operator may proceed.

(d) Nothing in this chapter shall authorize the taking of an endangered or threatened species or a bald or golden eagle, its nest, or any of its eggs in violation of the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et*

seq., or the Bald Eagle Protection Act, as amended, 16 U.S.C. 668 *et seq.*

(e) Each operator shall, to the extent possible using the best technology currently available—

(1) Ensure that electric powerlines and other transmission facilities used for, or incidental to, surface mining activities on the permit area are designed and constructed to minimize electrocution hazards to raptors, except where the regulatory authority determines that such requirements are unnecessary;

(2) Locate and operate haul and access roads so as to avoid or minimize impacts on important fish and wildlife species or other species protected by State or Federal law; and

(3) Design fences, overland conveyers, and other potential barriers to permit passage for large mammals, except where the regulatory authority determines that such requirements are unnecessary.

(f) *Wetlands and habitats of unusually high value for fish and wildlife.* The operator conducting surface mining activities shall avoid disturbances to, enhance where practicable, restore, or replace, wetlands, and riparian vegetation along rivers and streams and bordering ponds and lakes. Surface mining activities shall avoid disturbances to, enhance where practicable, or restore, habitats of unusually high value for fish and wildlife.

(g) Where fish and wildlife habitat is to be a postmining land use, the plant species to be used on reclaimed areas shall be selected on the basis of the following criteria:

(1) Their proven nutritional value for fish or wildlife.

(2) Their use as cover for fish or wildlife.

(3) Their ability to support and enhance fish or wildlife habitat after the release of performance bonds. The selected plants shall be grouped and distributed in a manner which optimizes edge effect, cover, and other benefits to fish and wildlife.

(h) Where cropland is to be the postmining land use, and where appropriate for wildlife- and crop-management practices, the operator shall intersperse the fields with trees, hedges, or fence rows throughout the harvested area to break up large blocks of monoculture and to diversify habitat types for birds and other animals.

(i) Where residential, public service, or industrial uses are to be the postmining land use, and where consistent with the approved postmining land use, the operator shall intersperse reclaimed lands with greenbelts utilizing species of grass, shrubs, and trees useful as food and cover for wildlife.

PART 817—PERMANENT PROGRAM PERFORMANCE STANDARDS—UNDERGROUND MINING ACTIVITIES

3. Section 817.57 is revised to read as follows:

§ 817.57 Hydrologic balance: Stream buffer zones.

(a) No land within 100 feet of a perennial stream or an intermittent stream shall be disturbed by underground mining activities, unless the regulatory authority specifically authorizes underground mining activities closer to, or through, such a stream. The regulatory authority may authorize such activities only upon finding that—

(1) Underground mining activities will not cause or contribute to the violation of applicable State or Federal water quality standards and will not adversely affect the water quantity and quality or other environmental resources of the stream; and

(2) If there will be a temporary or permanent stream-channel diversion, it will comply with § 817.43.

(b) The area not to be disturbed shall be designated a buffer zone, and the operator shall mark it as specified in § 817.11.

4. Section 817.97 is revised to read as follows:

§ 817.97 Protection of fish, wildlife, and related environmental values.

(a) The operator shall, to the extent possible using the best technology currently available, minimize disturbances and adverse impacts on fish, wildlife, and related environmental values and shall achieve enhancement of such resources where practicable.

(b) *Endangered and threatened species.* No underground mining activity shall be conducted which will jeopardize the continued existence of endangered or threatened species listed by the Secretary or which will result in the destruction or adverse modification of designated critical habitats of such species in violation of the Endangered Species Act (16 U.S.C. 1531 *et seq.*). The operator shall promptly report to the regulatory authority any endangered or threatened species within the permit area of which the operator becomes aware. Upon notification, the regulatory authority shall consult with appropriate State and Federal fish and wildlife agencies and, after consultation, shall identify whether, and under what conditions, the operator may proceed.

(c) *Bald and golden eagles.* No underground mining activity shall be conducted in a manner which would result in the unlawful taking of a bald or golden eagle, its nest, or any of its eggs. The operator shall promptly report to the regulatory authority any golden or bald eagle nest within the permit area of which the operator becomes aware. Upon notification, the regulatory authority shall consult with the U.S. Fish and Wildlife Service and also, where appropriate, the State fish and wildlife agency and, after consultation, shall identify whether, and under what conditions, the operator may proceed.

(d) Nothing in this chapter shall authorize the taking of an endangered or threatened species or a bald or golden eagle, its nest, or any of its eggs in violation of the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*, or the Bald Eagle Protection Act, as amended, 16 U.S.C. 668 *et seq.*

(e) Each operator shall, to the extent possible using the best technology currently available—

(1) Ensure that electric powerlines and other transmission facilities used for, or incidental to, underground mining activities on the permit area are designed and constructed to minimize electrocution hazards to raptors, except where the regulatory authority determines that such requirements are unnecessary;

(2) Locate and operate haul and access roads so as to avoid or minimize impacts on important fish and wildlife species or other species protected by State or Federal law; and

(3) Design fences, overland conveyors, and other potential barriers to permit passage for large mammals, except where the regulatory authority determines that such requirements are unnecessary.

(f) *Wetlands and habitats of unusually high value for fish and wildlife.* The operator conducting underground mining activities shall avoid disturbances to, enhance where practicable, restore, or replace, wetlands, and riparian vegetation along rivers and streams and bordering ponds and lakes. Underground mining activities shall avoid disturbances to, enhance where practicable, or restore, habitats of unusually high value for fish and wildlife.

(g) Where fish and wildlife habitat is to be a postmining land use, the plant species to be used on reclaimed areas shall be selected on the basis of the following criteria:

(1) Their proven nutritional value for fish or wildlife.

(2) Their use as cover for fish or wildlife.

(3) Their ability to support and enhance fish or wildlife habitat after the release of performance bonds. The selected plants shall be grouped and distributed in a manner which optimizes edge effect, cover, and other benefits to fish and wildlife.

(h) Where cropland is to be the postmining land use, and where appropriate for wildlife- and crop-management practices, the operator shall intersperse the fields with trees, hedges, or fence rows throughout the harvested area to break up large blocks of monoculture and to diversify habitat types for birds and other animals.

(i) Where residential, public service, or industrial uses are to be the postmining land use, and where consistent with the approved postmining land use, the operator shall intersperse reclaimed lands with greenbelts utilizing species of grass, shrubs, and trees useful as food and cover for wildlife.

(30 U.S.C. 1201 *et seq.*)

[FR Doc. 83-17702 Filed 6-29-83; 8:45 am]

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federal register

Thursday
June 30, 1983

Part VI

Department of Transportation

Federal Highway Administration
Urban Mass Transportation Administration

Urban Transportation Planning; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Urban Mass Transportation Administration

23 CFR Part 450

49 CFR Part 613

Urban Transportation Planning

AGENCY: Federal Highway Administration (FHWA) and Urban Mass Transportation Administration (UMTA), DOT.

ACTION: Final rule.

SUMMARY: The purpose of this document is to issue amendments to existing regulations governing transportation planning under FHWA and UMTA grant programs. These amendments are intended to: (1) Increase flexibility at the State and local level; (2) reduce redtape and simplify administration of the planning process; and (3) shift certain responsibilities from the Federal to the State and local level while maintaining an appropriate Federal oversight role.

DATES: These final amendments are effective on August 1, 1983. For additional information, see **"SUPPLEMENTARY INFORMATION".**

FOR FURTHER INFORMATION CONTACT: FHWA: Sam W. P. Rea, Jr., Urban Planning and Transportation Management Division, (202) 426–2961, or Jerry Boone, Office of the Chief Counsel, (202) 426–0761; or UMTA: Robert Kirkland, Office of Planning Assistance, (202) 426–2360, or Anthony Anderson, Office of the Chief Counsel, (202) 426–4011, all located at 400 Seventh Street, SW., Washington, D.C. 20590. FHWA office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday; UMTA office hours are from 8:30 a.m. to 5:00 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: This document amends the FHWA/UMTA regulations for urban transportation planning (23 CFR Part 450 and 49 CFR Part 613). The provisions of 23 CFR Part 450, Subparts A and B are incorporated into 49 CFR Part 613.

Effective Dates

These final amendments are effective on August 1, 1983. This final rule allows for several simplified procedures to be instituted at the option of State and/or local officials. As such, implementation schedules are not prescribed. However, FHWA and UMTA should be advised as soon as possible of any procedural changes instituted by State and local officials. Section 450.114 institutes a required State/metropolitan planning organization certification. This certification must accompany all transportation improvement programs/annual (or biennial) elements submitted to FHWA and UMTA after the effective date of this rule. Any difficulties in meeting this requirement should be brought to FHWA and UMTA's attention for resolution on a case-by-case basis.

OMB Control Numbers: 2132–0031 and 2132–0529.

Paperwork Reduction Act

The information collection requirements contained in this regulation (sections 450.108 and 450.110) have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB control numbers 2132–0031 and 2132–0529.

Background

On September 17, 1975, FHWA and UMTA jointly issued final regulations (40 FR 42976) implementing the urban transportation planning process mandated by the Federal-Aid Highway Acts and the Urban Mass Transportation Act of 1964 (UMT Act), as amended. The statutes require a continuing, comprehensive and cooperative (3C) transportation planning process in all urban areas of more than 50,000 population.

Proposed amendments to the urban transportation planning regulations were published for notice and comment on October 30, 1980 (45 FR 71990). Final amendments and a request for additional public comments were published on January 19, 1981 (46 FR 5702). These amendments were originally scheduled to take effect on February 18, 1981. On February 4, 1981, the DOT postponed the effective date until March 31, 1981 (46 FR 10706). This action was taken pursuant to the President's memorandum of January 29, 1981, which, among other things, directed executive agencies to postpone for 60 days the effective dates of regulations which had been issued but were scheduled to become effective during the 60-day period following issuance of the memorandum. As a result of their initial review of the postponed amendments, the FHWA and UMTA decided to postpone the effective date further in order to provide sufficient time for full and appropriate review and revision of the subject amendments (46 FR 19233, March 30, 1981).

Based on their review of the postponed amendments and the comments submitted to the public docket, FHWA and UMTA decided to withdraw those amendments. In their place, interim final regulations were issued on August 6, 1981 (46 FR 40170) which incorporated only those provisions of the withdrawn amendments which: (1) Reduced redtape and streamlined the planning process for areas under 200,000 population; (2) incorporated recent legislative changes; and (3) clarified the purpose of transportation system management (TSM) and several other aspects of the planning process.

As part of FHWA and UMTA's continuing efforts to evaluate their programs, a comprehensive review of the urban transportation planning process was undertaken to determine what further changes should be made in the process. This review considered the shift in Federal priorities away from transit operating assistance and towards maintaining existing highway and transit systems, as well as the President's efforts to reduce Federal intrusion in areas of essentially State and local interest. Neither FHWA nor UMTA has any preconceived positions on the issues under review. The only assumption used to guide the review was that the Federal role would be reduced in areas of essentially State and local interest. The purpose of the comprehensive review was to analyze the various aspects of the transportation planning process and to recommend any changes which would improve the existing delivery of transportation programs to States and local areas with a minimum of Federal involvement.

While this review had been a joint FHWA/UMTA effort, it also had been the subject of extensive participation by national interest groups and the public. Major national associations made suggestions on issues to be addressed, and these suggestions were helpful in preparing an "issues and options" paper, entitled, "Solicitation of Public Comment on the Appropriate Federal Role in Urban Transportation Planning." A notice of availability and request for public comment was published in the **Federal Register** on December 17, 1981 (46 FR 61531), and an official docket was established to receive comments (FHWA Docket 81–10). This paper served as the vehicle to solicit public comment on specific issues as well as to solicit recommendations on issues not addressed in the paper.

The public comments on the "issues and options" paper clearly indicated that the Federal role in the urban transportation planning process needed reconsideration, especially in regard to

the smaller urbanized areas (those urbanized areas with populations of less than 200,000). This general conclusion was also reflected in the comments from the staffs of both FHWA and UMTA. Further, the experience of FHWA and UMTA in administering the urban transportation planning program authorized by the Federal-Aid Highway and Urban Mass Transportation Acts, and the growing technical abilities of the States and local agencies added support to the position that administrative and regulatory revisions to the federally mandated urban transportation planning requirements must be considered. A detailed summary of the comments is included in the regulatory evaluation.

As a result of the comprehensive review, FHWA and UMTA proposed amendments to the urban transportation planning regulations in a notice of proposed rulemaking (NPRM) published in the **Federal Register** on August 26, 1982 (47 FR 37758).

The preamble to the NPRM discussed its overall policy direction under the major subject areas of the "issues and options" paper: Federal Planning Requirement Threshold; Roles and Responsibilities; Planning and Project Implementation; Technical Requirements; Certification; and Federal Funding for the Planning Process. The specific proposals were discussed in detail under the heading, Section-by-Section Analysis, and are restated in this preamble under the same heading.

This final rule is intended, as was the NPRM, to reduce the role of the Federal Government in urban transportation planning to the maximum extent possible under governing statutes. This is accomplished by: (1) Providing for greater State and local flexibility in administering the planning process and associated Federal funds; (2) clarifying the intent with respect to the flexibility of institutional relationships; and (3) eliminating most of the non-regulatory language from the regulation.

This regulation presents a further reduced Federal role, based on a clearer distinction between Federal requirements and good planning practices. FHWA and UMTA intend to continue to provide technical assistance to advance good planning and programming practices. Formalized training courses, as well as on-site visits on an "as requested" basis, will be provided along with other forms of technical assistance.

Disposition of Comments

In response to the notice of proposed rulemaking (NPRM), one hundred-forty seven comments were received including 66 from metropolitan planning organizations and regional planning agencies, 36 from State departments of transportation, 9 from transit operators and authorities, 16 from State and local governments, 11 from Federal agencies, private citizens and other interested parties, and 9 from national organizations and groups which represent groups such as State and local governments, transit operators, and metropolitan planning organizations.

The majority of the comment were very positive and supported the general purpose of the proposed revisions, that is, to provide more flexibility to State and local officials and to streamline the planning process. While many comments supported the reduction in prescriptive provisions proposed in the NPRM, they believed that several proposed provisions needed clarification and further explanation. Several commenters criticized certain proposed revisions and questioned the basis for these actions.

In the preparation of the final rule set forth below, consideration was given to the concerns mentioned earlier and all other commenters received insofar as they relate to the scope of the NPRM. Comments received after October 25, 1982, (close of comment period) also were considered to the extent that time allowed. The majority of the changes are for the purposes of clarification although several comments did result in substantive alterations to the regulations. The Surface Transportation Assistance Act of 1982, Pub. L. 97-424, required some changes to the NPRM, due to the change to the capital and operating assistance grant programs authorized by amendments to the Urban Mass Transportation Act.

Section-by-Section Analysis

Each section of this final rule is discussed in detail below.

The existing Subpart B to 23 CFR Part 450, "Metropolitan Planning Funds" (40 FR 38151, August 27, 1975, as amended at 46 FR 40176, August 8, 1981) is not affected in any way by this rulemaking action. However, the proposal presented in the NPRM to redesignate this subpart as Subpart C is made final.

The existing appendices regarding transportation system management and simplified procedures in areas under 200,000 population were deleted from the August 26, 1982 NPRM since they are advisory. For that reason those appendices have also been deleted from this final rule. The FHWA and UMTA will continue to provide advice and guidance on these issues, but intend to do so in a non-regulatory manner.

23 CFR 450 Subpart A—Urban Transportation Planning

Section 450.100 Purpose.

This section states that this subpart implements the urban transportation planning requirements of 23 U.S.C. 134 and Section 8 of the Urban Mass Transportation Act of 1964, as amended. The section is unchanged from that proposed in the NPRM.

Section 450.102 Applicability.

This section states that the provisions of this subpart apply to the transportation planning process in urbanized areas and is identical to that in the NPRM.

Section 450.104 Definition.

Section 450.104 defines the terms used in this part. As proposed, the definitions of the terms, "Highway Safety," "Interstate Substitution Projects" and "Interstate System Projects," are no longer included because these terms are defined elsewhere in 23 CFR or are no longer used in this regulation.

The term "Designated Section 9 Recipient" is added to the final rule in recognition of changes to UMTA programs brought about by the Surface Transportation Assistance Act of 1982.

The proposal in the NPRM to allow for an annual element to cover a period of up to two years was widely accepted. However, several commenters recommended that the term, "annual element", be changed to reflect this increased flexibility. The FHWA and UMTA decided to use the term "annual (or biennial) element" in this rule and expect State and local officials will use either "annual element" or "biennial element" depending upon the program period used. The definition is modified slightly to reflect this change.

As proposed in the NPRM, the revision to the definition of the "metropolitan planning organization" is made final. This proposal made more general the wording regarding membership and is meant to be less prescriptive. Also, the last sentence under the term, "metropolitan planning organization," which recommends "that principal elected officials of general purpose local government be represented on the metropolitan planning organization," is deleted since it duplicates paragraph (b) in Section 450.106. Further discussion on these other items directly affecting the metropolitan planning organization is contained in the following section.

Section 450.106 Metropolitan planning organization.

Section 450.106, which provides for the designation of the metropolitan planning organization, is not changed from that proposed in the NPRM. It is intended to follow closely 23 U.S.C. 134(b)(2) and 49 U.S.C. 1607(b)(3) so that the intent of Congress with regard to the designation of metropolitan planning organizations is explicitly recognized.

A number of the commenters expressed concern that the important role of local elected officials was being reduced. This concern was directed at proposed changes to this section as well as sections 450.108 regarding funding, 450.112 regarding participant responsibilities, and 450.206 regarding project selection. These specific concerns are addressed in the discussion in this preamble under each of these sections.

The specific concerns expressed mostly by commenters from local governments and regional planning agencies under Sections 450.106 and 450.104 regard the deletion of the requirement that principal elected officials of general purpose local government have adequate representation on the metropolitan planning organization and that the metropolitan planning organization be defined as, "a forum of cooperative transportation decisionmaking by principal elected officials of general purpose local government." Several U.S. Senators also expressed this same concern.

The FHWA and UMTA strongly believe that local officials involvement in the 3C planning process, through the metropolitan planning organization, is important. The changes proposed in the NPRM were not intended to reflect any change in this belief. Rather, this rule was changed to rely primarily upon the statutory requirements with minimum administrative interpretation to allow the widest latitude possible in the designation of metropolitan planning organizations. Therefore, the provisions of 23 U.S.C. 134 and Section 8 of the UMT Act (49 U.S.C. 1607) are emphasized. These provisions call for the designation of a metropolitan planning organization to be ". . . by agreement among the units of general purpose local government and the Governor."

Local government involvement in the designation or redesignation of a metropolitan planning organization constitutes a substantial and important role for local officials in structuring the 3C process. The FHWA and UMTA strongly believe that the metropolitan planning organization should adequately represent local elected officials and the implementing agencies, but that decisions such as who should serve on the metropolitan planning organization should be made by local governments and not be mandated by the Federal Government. This representation would be determined at the time of designation or redesignation and does not prohibit appointed officials, such as representatives of the State DOT or local public transit operators, from being voting members of the metropolitan planning organization.

As stated in the NPRM, FHWA and UMTA do not anticipate significant organizational or functional changes being made to existing arrangements as a result of these amendments, which reduce Federal prescription on what responsibilities the organizations or partners in the process must assume as long as there is mutual agreement.

Section 450.108 Urban transportation planning process: Funding.

This new section incorporates various provisions of several sections of the existing regulation and provides the program requirements for the use of FHWA and UMTA planning funds to carry out the urban transportation planning process.

The UMTA has decided to retain the provision proposed in the NPRM giving States the option of receiving and allocating its Section 8 funds for those urbanized areas below the 200,000 population threshold. In response to the concerns of several commenters regarding funding of those small urbanized areas where they are part of larger metropolitan planning organizations, the final regulation has been changed to recognize that groups of urbanized areas under a single metropolitan planning organization with an aggregate population of 200,000 or more should continue to receive funds through the metropolitan planning organization. In addition, many of the smaller urbanized areas were concerned that the draft rule would allow States to opt unilaterally to retain Section 8 funds and spend them for the benefit of the small urbanized areas, rather than passing them through for the direct use by those metropolitan planning organizations. Although States would not be precluded from spending these funds for the benefit of the small urbanized areas, it could only be done with the concurrence of the designated metropolitan planning organization. The final rule has been changed to clarify this point. The UMTA intends that the States allocate the Section 8 funds among small urbanized areas annually in collaboration with the metropolitan planning organizations in lieu of it being done at the Federal level by UMTA, but there is no intent that the States co-opt the program in these areas. This provision creates a potential for allocation of combined FHWA and UMTA planning funds which is more sensitive to local needs by building on the States current allocation of FHWA planning funds based on a formula approved by FHWA. The FHWA and UMTA also encourage State and local officials to work together to ensure consistent and timely delivery of funds. The FHWA amd UMTA are working together to ensure the same at the Federal level.

The reference to 23 U.S.C. 104(f)(3) is included in this regulation as it was in the proposed rule to ensure that the intent of Congress is followed in regard to the administration of PL funds. This section does not prohibit the administration and/or expenditure of PL funds by another organization as allowed under § 450.108(e) so long as agreed to by the metropolitan planning organization. The FHWA strongly encourages such latitude be used, especially in the smaller urbanized areas.

In an effort to reduce the Federal presence in the administration of the planning process in urbanized areas with less than 200,000 population, the FHWA and UMTA proposed in the NPRM that a unified planning work program (UPWP) need not be developed for these areas; rather, planning tasks for these areas would be documented as agreed to by the State and the metropolitan planning organization. This provision was welcomed by most commenters who addressed the issue and has been retained in the final rule. The FHWA and UMTA believe that it is appropriate to provide State and local officials with the flexibility to determine the planning activities that are to be done, who would do the work, and how the funds would be expended without specifying how this information is documented.

In order to strengthen UMTA's long standing advocacy of appropriate transit operator involvement in the planning process, § 450.108(f) of the NPRM was replaced by § 450.108(e) in this final rule to specifically address and encourage fund pass through and the sharing of appropriate work responsibilities by the metropolitan planning organization and transit operators. The FHWA continues to allow pass through of PL funds to other agencies but emphasizes that, in all urbanized areas, the metropolitan planning organization must agree to the

use of PL funds made available to the metropolitan planning organization by the State in accordance with 23 U.S.C. 104(f)(3) and 23 CFR 450.108(a).

Finally, § 450.108 has been modified to reflect provisions of Section 9(j) of Title III of the Surface Transportation Assistance Act of 1982 which provides for the expenditure of Section 9 or 9A grant funds for planning purposes. This Act was passed after the NPRM was published. To assure that planning conducted with Section 9 or 9A funds by designated recipient is fully coordinated with, and a part of the 3C process, § 450.108(c) has been modified to require that Section 9 or 9A funded planning activities be included in the UPWP for areas of over 200,000 population and that the designated recipient be included in the work program development process. Similarly, § 450.108(d) has been modified to require that Section 9 or 9A funds used for planning purposes be included in the description of activities for areas of less than 200,000 population.

Section 450.110 Urban transportation planning process: Products.

Section 450.110 is identical to that proposed in the NPRM except that paragraph (a) has been changed slightly to be more consistent with statutory language.

As proposed in the NPRM, this section combined and simplified several sections of the existing regulation. The FHWA and UMTA are reducing the product requirements to the minimum necessary to permit Federal stewardship: (1) A transportation plan (without the requirement for long- and short-range elements), and (2) the TIP and its annual (or biennial) element. Consequently, State and local officials will have maximum flexibility in developing and endorsing these products. A planning work program will continue to be required under section 450.108 to support the request for PL and Section 8 funds needed to perform these activities and prepare these products.

Several commenters were concerned by the lack of guidance presented in this section, especially with regard to the transportation plan. The FHWA and UMTA continue to believe that many of the existing provisions are advisory and, therefore, have been removed from the regulation.

Several commenters were concerned with the issue of the geographic scope of planning, which was not specifically addressed in the NPRM. The existing regulations require the planning process to cover, "as a minimum, the urbanized area and the area likely to be urbanized in the period covered by the long-range element of the transportation plan." 23 U.S.C. 134 and 49 U.S.C. 1607 require that area which lies within the urbanized area boundary (as defined by the Bureau of the Census) is the minimum geographic area to be covered by the 3C process. The statutory requirement is reflected in § 450.100, "Purpose," and section 450.102, "Applicability," of this final rule. Defining a geographic area larger than this minimum is permitted. It should be determined by State and local officials and consider such factors as the areas which will be urbanized in the foreseeable future, representation on a metropolitan planning organization, jurisdictional boundaries, as well as the current and future transportation system and transportation issues in the area. The FHWA and UMTA do not intend to prescribe the outer boundaries of the urban transportation planning area but expect that State and local officials will establish appropriate geographic boundaries for the urban transportation planning process.

Several commenters also were concerned that FHWA and UMTA, by eliminating specific requirements for long- and short-range elements of the plan were de-emphasizing an orderly flow of the planning and project development process from general systems analysis through analysis of alternatives to project selection and implementation. This is not the case. Several commenters also believed that the "regional" nature of the planning process would be lost without a Federal requirement for a long-range element. The FHWA and UMTA believe the planning process has matured to the extent that neither time horizons nor specific plan elements have to be specified in Federal regulations and anticipate that without this specificity, the transportation plan will be more responsive to each area's situation, and result, therefore, in more useful products of the planning process.

Paragraph (c) has been retained in this final rule to indicate that the planning process may also include other planning and project development activities, as determined by State and local officials, in addition to those indicated in paragraphs (a) and (b). The FHWA and UMTA believe that while the 3C process is mandated by Federal law its objective is to insure that important State and local transportation issues are adequately addressed.

Section 450.112 Urban transportation planning process: Participant responsibilities.

This section is retained as proposed in the NPRM. It provides for the metropolitan planning organization, the State and publicly owned operators of mass transportation services to mutually determine their roles and responsibilities for developing the products of the urban transportation planning process. This change gives the principal participants greater flexibility in determining their appropriate roles and is intended to eliminate the perception that there are regulatory restrictions regarding the involvement of implementing agencies in the urban transportation planning process. This change also eliminates the existing requirement for an annual endorsement of the transportation plan and TIP/annual (or biennial) element. Since these may not change significantly from year to year, an annual endorsement may be an unnecessary burden. Endorsement of the transportation plan will only be necessary when significant changes occur and endorsement of the TIP/annual (or biennial) element will be required when a new or revised TIP/annual (or biennial) element is submitted to FHWA and UMTA. The FHWA and UMTA encourage the use of simplified procedures for revising the annual (or biennial) element.

The Federal requirements prescribed by section 450.108 of the existing regulation for agreements between the metropolitan planning organization, State, and transit operators, as necessary, are eliminated since these requirements are an unnecessary Federal intrusion.

While most of the commenters supported the increased flexibility afforded State and local officials, a number of commenters believed that without a federally prescribed "lead agency" or explicit Federal support for a particular assignment of responsibilities, major disagreements among the parties could result in a stalemate. As stated earlier, this regulation provides State and local officials with increased flexibility to carry out the 3C process with a minimum Federal role. Inherent with this increased flexibility is the responsibility to reconcile their differences.

Section 450.114 Urban transportation process: Certification.

In keeping with the goal of reducing the Federal presence in urban transportation planning, FHWA and UMTA proposed in the NPRM that the current procedures for Federal certification of the planning process be eliminated and that the State and the Metropolitan planning organization certify that the planning process complies with all applicable Federal laws and regulations. This section of the

NPRM also required that the planning process be consistent with other Federal laws and that the process include activities to support the development and implementation of the TIP, transportation plan and subsequent project development activities as necessary and to the degree appropriate.

The existing section concerning certification (§ 450.212) and elements (§ 450.120) are combine as proposed in the NPRM to clarify what the State/metropolitan planning organization certification action should address. Furthermore, the list of technical activities included in the existing regulation was considered to be advisory and, therefore, was deleted from the NPRM. For that same reason, the list is not included in this final rule.

The commenters were very supportive of this State/metropolitan planning organization certification as proposed. Therefore, FHWA and UMTA decided to retain this provision as proposed, except for the changes noted below.

Several commenters recommended that the certification action be based on criteria established by FHWA and UMTA. FHWA and UMTA believe that this final rule in fact contains the criteria and do not intend to provide a more explicit interpretation except as included in this preamble. To do so would detract from the responsibility of State and local officials to assess the adequacy of the urban transportation planning process. FHWA and UMTA believe that this final rule provides adequate interpretation of the applicable statutes.

Paragraph (a) has been revised to emphasize that the urban transportation planning process must also include activities to support the implementation as well as the development of the transportation plan and TIP.

Paragraph (b) of the NPRM regarding the State/metropolitan planning organization certification provision has been revised in the final rule. Subparagraph (b)(4) of the NPRM has been deleted since the statutory requirements it references (23 U.S.C. 109(h), 49 U.S.C. 1604(h)(2), and 49 U.S.C. 1610, regarding social, economic and environmental impacts) address areas already covered by 23 U.S.C. 134 and 49 U.S.C. 1607 and are project level requirements. Also, the references to 49 U.S.C. 1602(d) and 1610(b) in paragraph (c) are deleted for the same reasons.

Subparagraph (b)(4) regrading the elderly and handicapped provision is not subject to the State/metropolitan planning organization certification as proposed in the NPRM, since 49 CFR Part 27, the regulation implementing this requirement, already requires a separate certification action.

A new subparagraph (b)(3) is added to reflect changes concerning minority business enterprises brought about by the Surface Transportation. Assistance Act of 1982 Pub. L. 97–424, Section 105(f)). The planning process should take into account the need to comply with the requirements of Section 105(f) regarding involvement of minority business enterprises in FHWA and UMTA funded projects.

The two requirements addressed by the State/metropolitan planning organization certification action are:

The urban transportation planning process requirements of 23 U.S.C. 134 and 49 U.S.C. 1607 and requirements of this final rule; and

The transportation planning and programming-related requirements contained in Sections 174 and 176 (c) and (d) of the Clean Air Act. Implementing regulations are contained in 23 CFR Part 770 and 49 CFR Part 623.

The urban transportation planning process requirements are included to provide the State and local officials increased responsibility in carrying out the urban transportation planning process. This certification action is intended to provide a focal point for the State/metropolitan planning organization assessment of the planning process. The Clean Air Act requirements are included because of the relationship between urban transportation planning and transportation related air quality planning as presently identified in the Clean Air Act, as amended.

Several commenters questioned the differences between these two requirements and the two requirements included in section 450.114(c) and (d) of the NPRM regarding private enterprise and civil rights. These commenters were concerned that FHWA and UMTA were giving greater emphasis to these two requirements because they were specifically cited outside of the self-certification provisions. This was the intent; FHWA and UMTA continue to believe that these two statutory provisions require additional Federal attention outside of the State/metropolitan planning organization certification procedures.

This certification action is intended to be a simple statement that the requirements of 23 CFR Part 450 have been met (i.e., "We certify that the requirements of 23 CFR 450.114(c) are met.") A more elaborate submittal (i.e., with supporting documentation) is acceptable but not required by FHWA or UMTA. Since the certification action is to reflect the current planning process, it is to be submitted to FHWA and UMTA at the time a new TIP, including the annual (or biennial) element, is submitted to the Federal Government, but no less frequently than 4 years. This requirement is not intended to mandate when the actual certification action is to take place. However, FHWA and UMTA expect that development and preparation of the TIP, including the annual (or biennial) element being submitted, is based on a currently certified process and that, at a minimum, a statement to this effect should accompany the TIP. The FHWA and UMTA want to stress that the certification procedures should be determined by the State and metropolitan planning organization. FHWA and UMTA encourage a joint single action, although it is not required.

Institution of the State/metropolitan planning organization self certification does not relieve FHWA and UMTA of their oversight responsibilities and the necessity of making statutory findings discussed under § 450.212 "Program Approval." The FHWA and UMTA will still conduct appropriate, independent reviews as a basis for these findings. The State/metropolitan planning organization self certification, and these reviews will assist FHWA and UMTA in meeting their statutory responsibilities.

The State/metropolitan planning organization certification is not an optional requirement. Therefore, some action must be taken in order for FHWA and UMTA to make subsequent program and project approvals under § 450.212. However, failure of either party to certify full compliance does not, by itself, necessarily trigger a negative finding by either FHWA or UMTA. In such cases FHWA and UMTA intend to discuss the situation with the parties involved to determine the cause of their action as well as possible remedies. Other factors which also form the basis for the Federal finding, such as a properly developed and endorsed TIP, a plan and work program, will also be considered during these discussions.

Deficiencies in the process identified by State and local officials are to be corrected according to their own proposals, within a reasonable self-imposed time frame.

23 CFR 450 Subpart B—Transportation Improvement Program

Section 450.200 Purpose.

This section is retained as proposed in the NPRM. The NPRM proposal differed from the existing regulation by dropping the language, "and to prescribe guidelines for the selection by implementing agencies of annual

programs of projects to be advanced in urbanized areas." This language is no longer necessary since the prescriptive provisions included in the existing regulation regarding project initiation are eliminated (see section 450.208).

Section 450.202 Applicability.

Section 450.202 states the types of projects to which this rule applies. The projects are categorized by the various Federal funding programs. Projects under the Highway Bridge Replacement and Rehabilitation (HBRR) Program (23 U.S.C. 144), and the Sections 9 and 9A transit program created by the Surface Transportation Assistance Act of 1982 (49 U.S.C. 1607a and 1607a–1) have been added to those that were listed in the NPRM. Although the Interstate 4R program was technically included in the existing regulation, under the general citation for the Interstate System (23 U.S.C. 104(b)(5)), there was some confusion because it was not explicitly identified in the NPRM. This has been clarified by including the specific reference to the Interstate 4R program in this section.

The FHWA believes the HBRR program should be subject to the urban transportation planning process because major bridge reconstruction projects in urbanized areas may have potential regional impact and intergovermental interest. While the FHWA believes that these types of bridge projects are being included in the TIP process because they most likely are located on a roadway designated as part of a Federal-aid system, the direct citation of the program in this section should make it clear that the regulation does apply. Many areas already include those classes of projects in their TIP and annual element.

The Section 9 program (and the Section 9A program through fiscal year 1983) are also added. These programs are subject to the urban transportation planning process by virtue of the self-certification requirement contained in section 9(e)(3)(G) of the UMT Act. Information regarding the Section 9A program was published by UMTA in the January 24, 1983, **Federal Register**, (48 FR 3300) and in UMTA Circular C–9020.1 of February 3, 1983. Information regarding the Section 9 program will be published in the **Federal Register** prior to October 1, 1983.

Several commenters questioned the need to retain the provision that projects "serving" (as opposed to "in") urbanized areas be included. The FHWA and UMTA believe that many transportation improvements are constructed or instituted for the sole purpose of serving the needs of a specific urbanized area. Transit routes, carpool and vanpool lanes, and park-and-ride lots, are a few examples of the types which would be outside of an urbanized area's boundaries but whose primary purpose is to serve the transportation needs of the urbanized areas.

Paragraph (b) has been changed to allow the State, upon agreeemnt in writing with the metropolitan planning organization, to propose Federal-aid primary, Interstate (including 4R) and HBRR projects (but not Federal-aid urban system projects, Interstate substitution projects or UMTA-funded projects) for implementation in the statewide program of projects (105 program), without these projects being drawn from the annual (or biennial) element of the TIP if they are repair, safety, or localized traffic operation projects that do not alter the functional traffic capacity or capability of the facilities being improved.

This revised paragraph expands the provisions in the NPRM which covered only highway safety-related projects that are included in the State prepared highway safety improvement program under 23 CFR 924. The reference to the highway safety improvement program is eliminated from this final rule since safety-related projects are now covered by this optional provision.

The FHWA has decided to expand the provision to include, in addition to highway safety improvement projects, other projects which are not of significant scale to warrant the same level of effort required for projects with greater reginal impact. Quite often, these improvements evolve from the statewide or systemwide program to maintain and improve the condition and safety of existing streets and highways. The FHWA believes that these types of projects need not be on the TIP, including the annual (or biennial) element, to assure adequate transportation planning and programming under 23 U.S.C. 134(a). This optional and flexible provision does not exempt these types of projects from being based on the 3C process and FHWA fully intends to continue to exercise its statutory authority under 23 U.S.C. 134(a) which requires the Secretary to make such a finding.

The FHWA anticipates that this optional provision will be used primarily to address categories of projects (as opposed to individual projects) and will be excercised in concert with simplified procedures to update the TIP and annual (or biennial) element under Section 450.204(c) and the procedures to select projects for inclusion in the annual (or biennial) element under 450.206(a)(4).

FHWA stresses that: (1) This provision applies only to the certain types or categories of projects described earlier and, (2) the State/metropolitan planning organization agreement is a key requirement. Regarding the project types, the State should make FHWA aware of the exclusion that the State intends to apply as early as possible. This early action is intended: (a) To provide FHWA with sufficient time to alert the State to any concerns FHWA may have regarding the types of projects (or categories of projects) proposed to be covered by this provision, and (b) to preclude the delay of the projects when the 105 program or an amendment to it is formally submitted to FHWA.

Regarding the agreement requirement, the State should clearly indicate how it was accomplished (e.g., copies of the correspondence). FHWA fully expects the agreement to be made sufficiently in advance of the preparation of the annual statewide program of projects under 23 U.S.C. 105 or any proposed amendment to an approved program of projects. This provision allows for the agreement to be effective for several years, however, the State's notification to both FHWA and the metropolitan planning organization is to be on the same cycle as 105 program actions, and projects (or categories of projects) should be identified whenever possible in the same detail that they will be described in the 105 program of projects.

The existing requirement that the State notify the appropriate metropolitan planning organization of 105 program actions taken on projects (or categories of projects) in each urbanized area is retained as § 450.210(d).

Section 450.204 Transportation improvement program: General.

This section is retained in identical form as proposed in the NPRM except that paragraph (d)(2) is changed slightly to indicate clearly that FHWA does not take any approval action on the TIP, including the annual (or biennial) element but rather uses it as a basis for meeting the applicable air quality procedures contained in 23 CFR Part 770 and as a basis for the subsequent review and approval of the statewide program of projects under 23 U.S.C. 105. As proposed in the NPRM, this section incorporated sections 450.314, "Annual element modification," and 450.316, "Action required by the metropolitan planning organization."

Section 450.206 Annual (or biennial) element: Project selection.

The proposal to eliminate § 450.310, "Annual element: Project initiation" and replace it with § 450.206 has been retained in this final rule. Several commenters opposed this proposal, believing that the authority for selecting Federal-aid urban system projects mandated by 23 U.S.C. 105(d) was being ignored. The FHWA and the UMTA do not believe that this is the case. Section 450.310 provided for an administratively determined procedure for initiating all projects, not just Federal-aid urban system projects, which FHWA and UMTA believe is too prescriptive and goes beyond the statutory requirements.

Section 105(d) of 23 U.S.C. does not refer to project initiation; it states in pertinent part that Federal-aid urban system projects, ". . . be selected by the appropriate local officials with the concurrence of the State highway department . . ."

The statutory requirement is explicitly acknowledged in section 450.206(a)(2). Also the statutory requirement regarding the selection of Interstate substitution projects by responsible local officials, contained in 23 U.S.C. 103(e)(4) and 23 CFR 476 is acknowledged in § 450.206(a)(3). The FHWA and UMTA believe that the specific procedures to meet these statutory provisions should be decided by the local officials and not prescribed by the Federal Government. The FHWA and UMTA also believe that endorsement of the annual (or biennial) element by the metropolitan planning organization will be evidence that local officials have in fact selected the Federal-aid urban system projects as well as the Interstate substitution projects on the annual (or biennial) element. Paragraph (b) to § 450.206 has been added to recognize this concern.

Section 450.208 Annual (or biennial) element: Content.

The only change to this section from that proposed in the NPRM is made to clarify paragraph (b)(1) that project phases as well as complete projects may be proposed in the annual (or biennial) element. The word "phase" replaces "stage" which appears in the existing regulation and the NPRM in order to use the term which appears in 23 CFR Part 630.

Several commenters suggested that either the TIP or the annual element be eliminated, while others gave strong support to inclusion of both the TIP and the annual element. The proposal in the NPRM to allow for an annual element to cover a period of up to two years was widely accepted. These were similar comments received on the "issues and options" paper. Based on these comments, FHWA and UMTA believe that the relationship between the TIP and the annual (or biennial) element and their role in the project development process need to be clarified.

The annual (or biennial) element is simply the list of transportation improvement projects proposed for implementation during the first year (or 2 years) of the program period of the TIP. Projects in the annual (or biennial) element are generally described in greater detail than those in the TIP. This description is to be based on the factors included in section 450.208(b) and is necessary for subsequent Federal program approvals.

This TIP provides continuity between the transportation planning process, the transportation plan and the projects included in the annual (or biennial) element. As such, the TIP provides a framework in which to place, in perspective, those projects which are proposed for implementation with the policies and strategies of the area described in the transportation plan (not necessarily discrete projects).

While longer range projects and subsequent phases of a project are to be included in the TIP, there is no requirement that those improvements selected for inclusion in the annual (or biennial) element must have appeared first in the out years of the TIP. However, as the schedule for a project (or improvement) in the TIP advances, its description should be refined to the level of detail needed to allow it to be included in the annual (or biennial) element.

Metropolitan planning organization endorsement of the TIP (which includes the annual (or biennial) element) is a prerequisite for subsequent FHWA and UMTA approvals of the programs of projects. In addition, the metropolitan planning organization endorsement of the annual (or biennial) element constitutes the selection of projects by local officials pursuant to 23 U.S.C. 105(d) and 103(e)(4). One endorsement action satisfies both requirements.

Section 450.210 Selection of projects for implementation.

The only substantive changes made to this section relate to the addition of the HBRR projects to the applicability section, (450.202(a)(6)) and optional exclusion allowed under § 450.202(b). Both of these are discussed in detail in this preamble under § 450.202.

The NPRM proposed that an already existing exemption which currently applies to Interstate and primary projects be extended to apply to Federal-aid urban system projects. This proposal has been made final. This provision permits proposed urban system projects, for which substantial commitment of Federal funding has been made, to be included in the statewise program of projects under 23 U.S.C. 105 without having been in the current annual (or biennial) element. These projects may be included in the 105 program only if (1) they have already received Federal approval for right-of-way acquisition or federal approval of physical construction or implementation where right-of-way acquisition was not previously federally funded and (2) previous phases of such project or projects were included in an annual (or biennial) element endorsed by the metropolitan planning organization. This provision does not affect those urban system projects which, as of the effective date of this final rule, have already received Federal authorization to acquire right-of-way or Federal approval of physical construction or implementation where right-of-way acquisition was not previously federally funded.

This provision is based on the rationale behind the existing regulatory provision that the commitment of substantial resources for a project which has advanced through the planning process to later phases of development should be considered, in effect, committed to that project from a planning standpoint This concept has been extended to similar urban system projects.

Several commenters objected to this proposal on the grounds that they believed it makes the priority setting process of the metropolitan planning organization meaningless and thwarts the planning of when and if projects will advance. The FHWA and UMTA do not share this view since these projects must be included in a metropolitan planning organization endorsed annual (or biennial) element and receive Federal approval either for right-of-way acquisition, construction or implementation prior to reaching such an advanced stage of development.

It should be noted that this exemption is not intended to circumvent the role of local officials in the urban transportation planning process, especially with respect to the selection of Federal-aid urban system projects. If this exemption is used, § 450.210(b)(3)(iii) requires that the state must submit a statement with the 105 program of projects which includes for each applicable project or group of projects the views of the metropolitan planning organization and indicates how

the requirements of 23 U.S.C. 134(a) have been met. In addition, § 450.210(d) requires the State to notify the metropolitan planning organization of the disposition of the projects on the annual (or biennial) element as well as those projects included on the 105 program of projects under either this exemption or the optional provision provided under § 450.202(b).

Paragraph (c) of this section has been changed from the NPRM to specifically acknowledge that the agreement between the State and metropolitan planning organization under § 450.202(b) will satisfy the requirement that the projects or categories of projects affected by the agreement are based on the 3C process.

Section 450.212 Program approval.

Two changes are made to this section from that proposed in the NPRM. The first change is the addition of the clause "and Interstate subtitution projects" to paragraph (a). This is done to acknowledge that these projects are not identified on the statewide program of projects prepared pursuant to 23 U.S.C. 105 but are to be based on the planning process. This omission was identified by several commenters.

The second change is the addition of HBRR projects to the FHWA approval under paragraph (a)(4).

Several commenters pointed out that a reference to FHWA's air quality-related responsibilities under 23 CFR Part 770, "Air Quality Conformity and Priority Procedures for use in Federal-Aid Highway and Federally Funded Transit Programs" was not included in this section. FHWA decided that a reference to 23 CFR Part 770 is more appropriate § 450.204(d)(2). As was stated in the earlier explanation of § 450.204, FHWA reviews the TIP when it is submitted, but does not take any approval action.

Other Considerations

The NPRM indicated that FHWA and UMTA were evaluating the merits of having certification acceptance (23 CFR Part 640) apply to the 3C planning process and requested comments accordingly. Based on the comments received FHWA and UMTA have decided not to take any action at this time to include the 3C process under the certification acceptance provisions.

Administrative Matters

These amendments are considered to be significant under the regulatory policies and procedures of the Department of Transportation because they involve important departmental policy. A regulatory evaluation has been prepared and is available for inspection in the rulemaking docket (No. 82-10, Room 4205). Copies of the regulatory evaluation may be obtained by contacting Mr. Sam W. P. Rea, Jr., at the address provided above under the heading "For Further Information Contact." The FHWA and UMTA have determined that this final rule does not constitute a major rule under the criteria of Executive Order 12291. These amendments reduce burdens imposed on State and local governments in the conduct of urban transportation planning and will not have a significant economic impact. Accordingly, under the criteria of the Regulatory Flexibility Act, it is certified that these amendments will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 23 CFR Part 450 and 49 CFR Part 613

Grant programs—transportation, Highways and roads, Mass transportation, Urban transportation planning.

In consideration of the foregoing, the FHWA and UMTA hereby amend Chapter I of Title 23, Code of Federal Regulations, and Chapter VI of Title 49, Code of Federal Regulations, as set forth below:

1. Part 450, Subpart A of 23 CFR is revised to read as follows:

PART 450—PLANNING ASSISTANCE AND STANDARDS

Subpart A—Urban Transportation Planning

Sec.

450.100 Purpose.
450.102 Applicability.
450.104 Definitions.
450.106 Metropolitan planning organization.
450.108 Urban transportation planning process: Funding.
450.110 Urban transportation planning process: Products.
450.112 Urban transportation planning process: Participant responsibilities.
450.114 Urban transportation planning process: Certification.

Authority: 23 U.S.C. 104(f)(3), 134 and 315; Secs. 3, 5, 8, 9, and 9A of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1602, 1604, 1607, 1607a, and 1607a-1); Secs. 174 and 176 of the Clean Air Act (42 U.S.C. 7504 and 7506); and 49 CFR 1.48(b) and 1.51.

Subpart A—Urban Transportation Planning

§ 450.100 Purpose.

The purpose of this subpart is to implement 23 U.S.C. 134, and Section 8 of the Urban Mass Transportation Act of 1964, as amended (UMT Act) (49 U.S.C. 1607), which require that each urbanized area, as a condition to the receipt of Federal capital or operating assistance, have a continuing, cooperative, and comprehensive transportation planning process that results in plans and programs consistent with the comprehensively planned development of the urbanized area. These plans and programs support transportation improvements and subsequent project development activities in the area.

§ 450.102 Applicability.

The provisions of this subpart are applicable to the transportation planning process in urbanized areas.

§ 450.104 Definitions.

(a) Except as otherwise provided, terms defined in 23 U.S.C. 101(a) are used in this part as so defined.

(b) As used in this part:

(1) "Governor" means the Governor of any one of the fifty States, or Puerto Rico, and includes the Mayor of the District of Columbia.

(2) "Designated Section 9 Recipient" means that organization designated in accordance with Section 9(m) or 5(b)(1) of the UMT Act, as amended, as being responsible for receiving and dispensing Section 9 and/or Section 5 funds.

(3) "Metropolitan planning organization" means that organization designated as being responsible, together with the State, for carrying out the provisions of 23 U.S.C. 134, as provided in 23 U.S.C. 104(f)(3), and capable of meeting the requirements of Sections 3(e)(1), 5(l), 8 (a) and (c) and 9(e)(3)(G) of the UMT Act (49 U.S.C. 1602(e)(1), 1604(1), 1607 (a) and (c) and 1607a(e)(3)(G)). The metropolitan planning organization is the forum for cooperative transportation decisionmaking.

(4) "Annual (or biennial) element" means a list of transportation improvement projects proposed for implementation during the first year (or 2 years) of the program period.

(5) "Transportation improvement program (TIP)" means a staged multiyear program of transportation improvements including an annual (or biennial) element.

§ 450.106 Metropolitan planning organization.

(a) Designation of a metropolitan planning organization shall be made by agreement among the units of general purpose local government and the Governor. To the extent possible, only one metropolitan planning organization should be designated for each urbanized area or group of contiguous urbanized areas.

(b) Principal elected officials of general purpose local governments shall be represented on the metropolitan planning organization to the extent agreed to pursuant to paragraph (a) of this section.

§ 450.108 Urban transportation planning process: Funding.

(a) Funds authorized by 23 U.S.C. 104(f) shall be made available by the State to the metropolitan planning organization, as required by 23 U.S.C. 104(f)(3).

(b) Funds authorized by Section 8 of the UMT Act (49 U.S.C. 1607) shall be made available to the metropolitan planning organization, to the extent possible, in urbanized areas with populations of 200,000 or more or where the metropolitan planning organization represents a group of contiguous or related urbanized areas with an aggregate population of 200,000 or more. In urbanized areas with populations below 200,000, such funds shall be made available to the State, at the State's option, to allocate among such urbanized areas, or, with respect to any given urbanized area, to use for the benefit of such area with the concurrence of the metropolitan planning organization. If the State does not elect this option, these funds shall be made available directly to the metropolitan planning organization, to the extent possible.

(c) In urbanized areas with populations of 200,000 or more, the State, metropolitan planning organization, and designated Section 9 or 9A funds recipient, where Section 9 or 9A funds are used for planning purposes, shall develop a unified planning work program (UPWP) which describes urban transportation and transportation related planning activities anticipated in the area during the next 1- or 2-year period including the planning work to be performed with Federal planning assistance and with funds available under Section 9 or 9A, if any. The UPWP shall be endorsed by the metropolitan planning organization. (OMB Control Number 2132-0031)

(d) In urbanized areas with populations below 200,000, the State and the metropolitan planning organization (and where Section 9 or 9A funds are to be used for planning, the designated recipient) shall cooperatively describe and document how Federal planning funds and funds available under Section 9 or 9A if any, would be expended for planning in each area, who would do the work and what work in general would be done. The work proposed shall be endorsed by the metropolitan planning organization.

(e) The staff resources of other agencies (such as the State, local government and transit operator staff) may be utilized where appropriate to carry out the planning process, including the activities funded with Federal planning funds, through contractual agreements.

§ 450.110 Urban transportation planning process: Products.

The urban transportation planning process shall include the development of:

(a) A transportation plan describing policies, strategies and facilities or changes in facilities proposed. The transportation plan shall be formulated according to the requirements of 23 U.S.C. 134 and Section 8 of the UMT Act (49 U.S.C. 1607) which include and analysis of transportation system management strategies to make more efficient use of existing transportation systems.

(b) A transportation improvement program (TIP) including an annual (or biennial) element as prescribed in Subpart B of this part. The program shall be a staged multiyear program of transportation improvement projects consistent with the tranportation plan. (OMB Control Number 2132-0529)

(c) Other planning and project development activities deemed necessary by State and local officials to assist in addressing transportation issues in the area.

§ 450.112 Urban transportation planning process: Participant responsibilities.

(a) The metropolitan planning organization, the State, and publicly owned operators of mass transportation services shall determine their mutual responsibilities in the development of the planning work program, transportation plan and TIP specified in Sections 450.108 and 450.110.

(b) The metropolitan planning organization shall endorse the transportation plan and TIP required by Sections 450.110 and 450.204. These endorsements are prerequisites for the approval of programs of projects in urbanized areas pursuant to 23 U.S.C. 105(d) and 134(a), Section 8(c) of the UMT Act (49 U.S.C. 1607(c)), and Subpart B of this part.

§ 450.114 Urban transportation planning process: Certification.

(a) The urban transportation planning process shall include activities to support the development and implementation of a transportation plan and TIP/annual (or biennial) element and subsequent project development activities, including the environmental impact assessment process. These activities shall be included as necessary and to the degree appropriate for the size of the metropolitan area and the complexity of its transportation problems.

(b) The planning process shall be consistent with:

(1) Sections 8(e) and 3(e) (49 U.S.C. 1607 and 1602(e)) of the UMT Act concerning involvement of the appropriate public and private transportation providers;

(2) Title VI of the Civil Rights Act of 1964 and the Title VI assurance executed by each State under 23 U.S.C. 324 and 29 U.S.C. 794.

(3) Section 105(f) of the Surface Transportation Assistance Act of 1982 regarding the involvement of minority business enterprises in FHWA and UMTA funded projects (Pub. L. 97–424, Section 105(f); 49 CFR Part 23); and

(4) Section 16 of the UMT Act 49 U.S.C. 1612), Section 165(b) of the Federal-Aid Highway Act of 1973, as amended, and 49 CFR Part 27, which call for special efforts to plan public mass transportation facilities and services that can effectively be utilized by elderly and handicapped persons.

(c) At the time the TIP/annual (or biennial) element is submitted, the State and the metropolitan planning organization shall certify that the planning process is being carried on in conformance with all applicable requirements of:

(1) 23 U.S.C. 134, Section 8 of the UMT Act (49 U.S.C. 1607) and these regulations;

(2) Sections 174 and 176 (c) and (d) of the Clean Air Act (42 U.S.C. 7504, 7506 (c) and (d)).

Subpart B (§§ 450.200–450.206) Redesignated as Subpart C (§§ 450.300–450.306).

2. Part 450, Subpart B, Metropolitan Planning Funds, (40 FR 38151, August 27, 1975, as amended) is redesignated as Part 450, Subpart C.

The sections are renumbered as follows:

Former section	New section
450.200	450.300
450.202	450.302
450.204	450.304
450.206	450.306

3. Former Part 450, Subpart C is redesignated as Part 450, Subpart B and revised to read as follows:

Subpart B—Transportation Improvement Program

Sec.
450.200 Purpose.

Sec.
450.202 Applicability.
450.204 Transportation improvement program: General.
450.206 Annual (or biennial) element: Project selection.
450.208 Annual (or biennial) element: Content.
450.210 Selection of projects for implementation.
450.212 Program approval.

Authority: 23 U.S.C. 105, 134(a), and 135(b); Sections 3, 5, and 8(c) of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1602, 1604, and 1607(c); Sections 174 and 176 of the Clean Air Act (42 U.S.C. 7504 and 7506); and 49 CFR 1.48(b) and 1.51.

Subpart B—Transportation Improvement Program

§ 450.200 Purpose.

The purpose of this subpart is to establish regulations for the development, content, and processing of a cooperatively developed transportation improvement program (TIP) in urbanized areas.

§ 450.202 Applicability.

(a) The provisions of this subpart shall be applicable to projects in or serving urbanized areas with funds made available under:

(1) 23 U.S.C. 104(b)(6) (urban system projects);

(2) 23 U.S.C. 103(e)(4) (Interstate substitution projects);

(3) Sections 3, 5, 9, and 9A of the Urban Mass Transportation Act of 1964, as amended (UMT Act) (49 U.S.C. 1602, 1604, 1607a and 1607a–1) (UMTA capital and operating assistance projects);

(4) 23 U.S.C. 104(b)(1) (projects on extensions of primary systems in urbanized areas), except as provided in this subpart

(5) 23 U.S.C. 104(b)(5) (A) and (B) (projects on the Interstate System), except as provided in this subpart.

(6) 23 U.S.C. 144 (highway bridge replacement and rehabilitation projects), except as provided in this subpart.

(b) Projects under paragraphs (a) (4), (5) and (6) of this section which are for resurfacing, restoration, rehabilitation, reconstruction (4R), or highway safety improvement; and which will not alter the functional traffic capacity or capability of the facility being improved may be excluded from the TIP including its annual (or biennial) element by agreement between the State and the metropolitan planning organization.

§ 450.204 Transportation improvement program: General.

(a) The TIP, including the annual (or biennial) element, shall be developed by the metropolitan planning organization, the State and publicly owned operators of mass transportation services in cooperation with recipients authorized under Sections 5, 9, or 9A of the UMT Act (49 U.S.C. 1604, 1607a or 1607a–1).

(b) The TIP shall as a minimum: (1) Consist of improvements from the transportation plan developed under Section 450.110(a) and recommended for Federal funding during the program period;

(2) Cover a period of not less than 3 years;

(3) Indicate the area's priorities; and

(4) Include realistic estimates of the total costs and revenues for the program period.

(c) The metropolitan planning organization endorsement of the TIP including the annual (or biennial) element is a prerequisite for the approval of programs of projects in urbanized areas pursuant to 23 U.S.C. 105(d) and 134(a), and Section 8(c) of the UMT Act (49 U.S.C. 1607(c)). The State, metropolitan planning organization, and publicly owned operators of mass transportation services are encouraged to develop simplified procedures for updating or modifying an endorsed annual (or biennial) element.

(d) The TIP including the annual (or biennial) element shall be submitted:

(1) To the Governor and the Urban Mass Transportation Administrator, and

(2) Through the State to the Federal Highway Administrator for use as a basis for meeting the applicable air quality procedures contained in 23 CFR Part 770 and for the subsequent approval of the statewide program of projects under 23 U.S.C. 105 in accordance with § 450.212 and 23 CFR Part 630.

§ 450.206 Annual (or biennial) element: Project selection.

(a) Federally funded projects shall be selected for inclusion in the annual (or biennial) element at all phases in the development of the transportation improvement for which program action is proposed. The projects to be included in the annual (or biennial) element of the TIP shall be selected in accordance with:

(1) State and local law;

(2) 23 U.S.C. 105(d) regarding the selection of urban system projects by the appropriate local officials with concurrence of the State highway department;

(3) 23 U.S.C. 103(e)(4) and 23 CFR Part 476 regarding the selection of Interstate substitution projects by the responsible local officials; and

(4) Procedures acceptable to the State highway department, the metropolitan planning organization, and local public transit operating officials.

(b) The endorsement of the annual (or biennial) element of the TIP by the metropolitan planning organization constitutes the selection of the projects by local officials pursuant to 23 U.S.C. 105(d) and 23 U.S.C. 103(e)(4).

§ 450.208 Annual (or biennial) element: Content.

(a) Except as provided in Section 450.210(b)(3) and (4), the annual (or biennial) element shall contain projects selected under Section 450.206 and endorsed under § 450.204.

(b) With respect to each project under paragraph (a) of this section the annual (or biennial) element shall include:

(1) Identification of the projects, including the phase of phases proposed for implementation.

(2) Estimated total cost and the amount of Federal funds proposed to be obligated during the program period.

(3) Proposed source of Federal and non-Federal matching funds; and

(4) Identification of the recipient and State and local agencies responsible for carrying out the project.

(c) Projects proposed for Federal funding that are not considered to be of appropriate scale for individual inclusion in the annual (or biennial) element may be grouped by functional classification, geographic area or work type.

(d) The annual (or biennial) element shall be reasonably consistent with the amount of Federal funds expected to be available to the area. Federal funds that have been allocated to the area pursuant to 23 U.S.C. 150 shall be identified.

(e) The total Federal share of projects included in the annual (or biennial) element and proposed for funding under Sections 5, 9, or 9A of the UMT Act (49 U.S.C. 1604, 1607a and 1607a–1) may not exceed apportioned Section 5, 9, or 9A funds available to the urbanized area during the program year (or 2 years).

§ 450.210 Selection of projects for implementation.

(a) The projects proposed to be implemented with Federal assistance under Sections 3, 5, 9 and 9A of the UMT Act (49 U.S.C. 1602, 1604, 1607a and 1607a–1) and nonhighway public mass transit projects under 23 U.S.C. 103(e)(4) shall be those contained in the annual (or biennial) element of the TIP submitted to the Urban Mass Transportation Administrator.

(b) Upon receipt of the TIP, the State shall include in the statewide program of projects required under 23 U.S.C. 105:

(1) Those projects drawn from the annual (or biennial) element and

proposed to be implemented with Federal assistance under 23 U.S.C. 104(b)(6) (Federal-aid urban system) in which the State concurs): provided, however, that in case any where the State does not concur in a nonhighway public mass transit project, a statement describing the reasons for the nonconcurrence shall accompany the statewide program of projects.

(2) Those projects drawn from the annual (or biennial) element and proposed to be implemented with Federal assistance under 23 U.S.C. 104(b)(1) (projects on urban extensions of the Federal-aid primary system) and 23 U.S.C. 104(b)(5) (Interstate System projects in urbanized areas); and 23 U.S.C. 144 (highway bridge replacement and rehabilitation projects), in which it concurs;

(3) Those projects not drawn from the annual (or biennial) element that are proposed to be implemented with Federal assistance under 23 U.S.C. 104(b)(6) (Federal-aid highway urban system), 23 U.S.C. 104(b)(1) (Projects on urban extensions of the Federal-aid primary system) and 23 U.S.C. 104(b)(5) (Projects on the Interstate System) provided that:

(i) Previous phases of such project or projects were selected pursuant to Section 450.206, and advanced;

(ii) Such project or projects are for highway transportation improvements for which there has been a Federal authorization to acquire right-of-way or Federal approval of physical construction or implementation where right-of-way acquisition was not previously federally funded; and

(iii) A statement accompanies the statewide program of projects which includes for such projects the views of the metropolitan planning organization and indicates how the requirements of 23 U.S.C. 134(a) have been met; and

(4) Those projects not drawn from the annual (or biennial) element that were excluded under section 450.202(b) and are proposed to be implemented.

(c) The preparation and endorsement of the TIP, the selection of projects in accordance with this subpart, and the agreement under section 450.202(b), if any, will meet the requirements of 23 U.S.C. 105(d), 23 U.S.C. 134(a) and Section 8(c) of the UMT Act (49 U.S.C. 1607(c)).

(d) The State shall notify the appropriate metropolitan planning organizations of the 23 U.S.C 105 program actions taken on projects in each urbanized area.

§ 450.212 Program approval.

(a) Upon the determination by the Federal Highway Administrator and the Urban Mass Transportation Administrator that the TIP or portion thereof is in conformance with this subpart and that the planning process is in conformance with Subpart A, programs of projects and Interstate Substitution projects selected for implementation under §§ 450.210 and 450.206, respectively will be considered for approval as follows:

(1) Federal-aid urban system projects included in the statewide program of projects under 23 U.S.C. 105 will be approved by:

(i) The Federal Highway administrator with respect to highway projects;

(ii) The Urban Mass Transportation Administrator with respect to nonhighway public mass transit projects; and

(iii) The Federal Highway Administrator and the Urban Mass Transportation Administrator jointly in any case where the statewide program of projects submitted pursuant to 23 U.S.C. 105 does not include all Federal-aid urban system nonhighway public mass transit projects contained in the annual (or biennial) element.

(2) Interstate substitution nonhighway public mass transit projects included in the annual (or biennial) element will be approved by the Urban Mass Transportation Administrator.

(3) Projects proposed to be implemented under Sections 3, 5, 9, and 9A of the UMT act (49 U.S.C. 1602, 1604, 1607a and 1607a–1) included in the annual (or biennial) element will be approved by the Urban Mass Transportation Administrator after considering any comments received from the Governor within 30 days of the submittal required by § 450.204(d)(1).

(4) Federal-aid urban extensions of primary projects, Interstate projects and highway bridge replacement and rehabilitation projects included in the statewide program of projects under 23 U.S.C. 105 will be approved by the Federal Highway Administrator.

(b) Approvals by the Federal Highway Administrator or joint approvals by the Federal Highway Administrator and Urban Mass Transportation Administrator will be in accordance with the provisions of this subpart and with 23 CFR Part 630, Subpart A. These approvals will constitute:

(1) The approval required under 23 U.S.C. 105; and

(2) A finding that the projects are based on a continuing, comprehensive transportation planning process carried on cooperatively by the States and local communities in accordance with the provisions of 23 U.S.C. 134.

(c) Approvals by the Urban Mass Transportation Administrator will be in accordance with the provisions of this subpart. These approvals will constitute:

(1) The approval required under Section 8(c) of the UMT Act (49 U.S.C. 1607(c));

(2) A finding that the program is based on a continuing, cooperative and comprehensive transportation planning process carried on in accordance with the provisions of Section 8 of the UMT Act (49 U.S.C. 1607), as applicable;

(3) A finding that the projects are needed to carry out a program for a unified officially coordinated urban transportation sytem in accordance with the provisions of Section 3(e)(1), 5(l), or 8(c) of the UMT Act (49 U.S.C. 1602(e)(1), 1604(l) or 1607(c)), as applicable; and

(4) In nonattainment areas which require transportation control measures, a finding that the program conforms with the SIP in accordance with procedures in 49 CFR Part 623.

Part 613 of 49 CFR is amended as set forth below:

PART 613—PLANNING ASSISTANCE AND STANDARDS

4. Suppart A of Part 613 is revised as set forth below:

Subpart A—Urban Transportation Planning

§ 613.100 Urban transportation planning.

The urban transportation planning regulations implementing 23 U.S.C. 134 and Section 8 of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1607), which require comprehensive planning of transportation improvements which are set forth in 23 CFR Part 450, Subpart A, are incorporated into this subpart.

(23 U.S.C. 104(f)(3), 134 and 315; sec. 3, 5, 8, 9, and 9A of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1602, 1604, 1607, 1607a and 1607a–1); secs. 174 and 176 of the Clean Air Act (42 U.S.C. 7504 and 7506); and 49 CFR 1.48(b) and 1.51)

5. Subpart B of Part 613 is revised as set forth below:

Subpart B—Transportation Improvement Program

§ 613.200 Transportation improvement program.

The transportation improvement program regulations establishing guidelines for the development, content, and processing of a cooperatively developed transportation improvement program in urbanized areas which are set forth in 23 CFR Part 450, Subpart B are incorporated into this subpart.

(23 U.S.C. 105, 134(a), and 135(b); secs. 3, 5, and 8(c) of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1602, 1604, and 1607(c)); secs. 174, and 176 of the Clean Air Act (42 U.S.C. 7504, and 7506); and 49 CFR 1.48(b) and 1.51)

(Catalog of Federal Domestic Assistance Program Numbers 20.205, Highway Research Planning, and Construction; 20.500 Urban Mass Transportation Capital Grants; 20.501, Urban Mass Transportation Capital Improvement Loans; and 20.507, Urban Mass Transportation Capital and Operating Assistance Formula Grants. The provisions of OMB Circular No. A-95 regarding State and State and local clearinghouse review of Federal and federally assisted programs and projects apply to these programs)

Issued on June 27, 1983.

R. A. Barnhart,

Federal Highway Administrator, Federal Highway Administration.

Arthur E. Teele, Jr.,

Urban Mass Transportation Administrator, Urban Mass Transportation Administration.

[FR Doc. 83-17709 Filed 6-29-83; 8:45 am]

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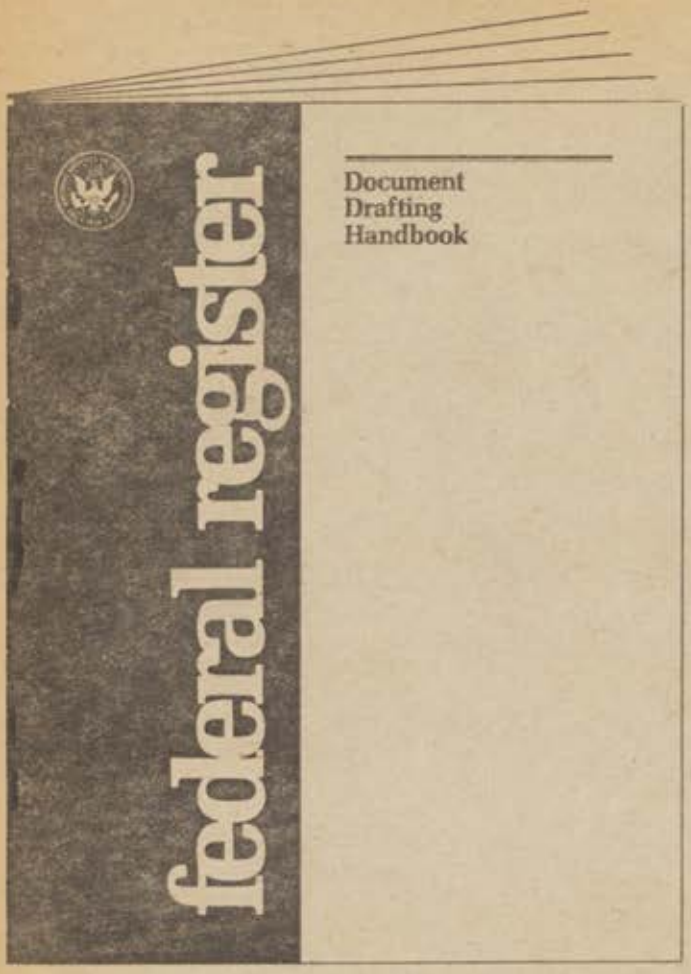
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