AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

7-19-83
Vol. 48 No. 139
Pages 32747-32972

federal register

Tuesday
July 19, 1983

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Civil Aeronautics Board

Administrative Practice and Procedure
Internal Revenue Service

Air Carriers
Civil Aeronautics Board

Air Pollution Control
Environmental Protection Agency

Animal Drugs
Food and Drug Administration

Archives and Records
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Selected Subjects

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

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

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Title 3—

The President

Proclamation 5072 of July 15, 1983

National Atomic Veterans' Day, 1983

By the President of The United States of America

A Proclamation

Between 1945 and 1963 the United States conducted some 235 atmospheric nuclear weapons tests in the Pacific and the American Southwest. At least 220,000 American servicemen and women witnessed and participated in these tests, or served in forces occupying Hiroshima and Nagasaki immediately following World War II. It is only fitting that their dedication to duty be afforded proper recognition and brought to the attention of the American people.

Many of these American servicemen and women witnessed the awesome potential of nuclear weapons. In honoring these veterans, let us rededicate ourselves once more to our national goal of a world at peace in which nuclear war is unthinkable.

The Congress, by Senate Joint Resolution 68, has authorized and requested the President to issue a proclamation designating July 16, 1983, as "National Atomic Veterans' Day."

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby designate Saturday, July 16, 1983, as National Atomic Veterans' Day, a day dedicated to those patriotic Americans who through their participation in these tests helped lead the United States to the forefront of technology in defense of our great Nation and the freedoms we as Americans hold so dear. I urge my fellow citizens to join with me in appreciation of their service to their country.

IN WITNESS WHEREOF, I have hereunto set my hand this 15th day of July, 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 eighth.

Ronald Reagan

[FR Doc. 83-19604
Filed 7-15-83; 4:13 pm]
Billing code 3195-01-M

Rules and Regulations

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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

Food Safety and Inspection Services

9 CFR Parts 318 and 381

[Docket No. 81-037 F]

Meat and Poultry Products; Approval of Substances

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service is amending the Federal meat and poultry products inspection regulations governing approvals for the use of new substances and new uses of approved substances, including changes in usage levels for approved substances in the preparation of meat and poultry products. Applicants will be required to show that the substance has been affirmed by the Food and Drug Administration (FDA) as generally recognized as safe (GRAS) or is an approved food additive or color additive listed by FDA as appropriate for the intended use. If this is established, the use of the substance will be permitted upon a further determination by FSIS that the requested use in meat or poultry products is consistent with approved uses and is suitable for a particular product or class of product. Notification of this determination will be made by publishing the amended regulation in the Federal Register.

EFFECTIVE DATE: August 17, 1983.

FOR FURTHER INFORMATION CONTACT: Dr. Daniel D. Jones, Chief, Standards Branch, Standards and Labeling Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC, 20250, (202) 447-7503.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Department has determined in accordance with Executive Order 12291 that this final rule is not a "major rule." It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or significant 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.

This rule has been reviewed for cost effectiveness under USDA Secretary's Memorandum 1512-1 implementing Executive Order 12291. The implementation of this regulation will provide the Department with a more expedient and efficient method to handle petitions for the use of various substances in meat and poultry products. No adverse economic impacts are expected on industry, consumer prices, competition, innovation, foreign trade or employment. Industry will benefit from this action through the ability to use new substances or to implement new uses for previously approved substances faster than permitted by the current regulations. This action will allow use of only those substances which have been approved for safety by FDA and which have also received a determination of acceptance by FSIS.

Effect on Small Entities

The Administrator has determined that this action will not have a significant economic impact upon a substantial number of small entities as defined by the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601), because this will impose no new requirements on industry. The implementation of this final rule will merely allow meat and poultry processors to use new additives or to apply new uses of previously approved substances faster than permitted by the current approval system.

Background

Section 1(m)(2) of the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601(m)(2)) and section 4(g)(2) of the Poultry Products Inspection Act (PPIA) (21 U.S.C. 453 4(g)(2)) provide the Secretary of Agriculture with authority to regulate the use of food and color additives in meat and poultry poducts. Section 1(m)(2)(C) of the FMIA and section 4(g)(2)(C) of the PPIA provide than any meat or poultry carcass, part, or product is adulterated "if it bears or contains any food additive which is unsafe within the meaning of section 409 of the Federal Food, Drug and Cosmetic Act (FFDCA)." Under section 409 of the FFDCA (21 U.S.C. 348), a food additive is deemed unsafe unless it and its use or intended use conform with a regulation prescribing the conditions under which it may be safely used.

Section 1(m)(2)(D) of the FMIA and section 4(g)(2)(D) of the PPIA provide that any meat or poultry carcass, part, or product is adulterated "if it bears or contains any color additive which is unsafe within the meaning of section 706 of the FFDCA." Under section 706 of the FFDCA (21 U.S.C. 376), a color additive is deemed unsafe unless it and its use or intended use conform with a regulation prescribing the conditions under which it may be safely used. Section 1(m)(2) of the FMIA and section 4(g)(2) of the PPIA also provide that the Secretary of Agriculture may issue regulations prohibiting the use of a food additive or color additive in a meat or poultry article in establishments receiving Federal meat or poultry inspection services.

The Proposal

On June 2, 1982, the Department published a proposed rule that would amend the Federal meat and poultry products inspection regulations regarding substance use approvals for meat and poultry products. (47 FR 23941)

It was proposed that the Administrator of FSIS would reserve the authority to approve new substances, new uses for approved substances, and changes in usage levels for approved substances in or on meat or poultry products, provided:

1. That the substance is an approved food additive, color additive or GRAS substance permitted for use in or on food under Title 21, Parts 73, 74, 81, 172, 173, 182 or 184;

2. That the intended use is in accordance with any conditions specified in the FDA approval and would not violate any other applicable FDA requirement; and

3. That the Administrator determines:

a. That the Department concurs with the conclusions of FDA regarding the safety of the substance;

b. That the available data indicate that the use of the substance would have an appropriate technical effect on the product; and

c. That the available data indicate that the substance would be used at the lowest amount reasonably required to accomplish its intended technical effect.

Under the proposal, all products in which the substance is to be used would be required to be properly labeled and otherwise regulated in accordance with applicable requirements under the FMIA or PPIA.

As discussed in the preamble to the proposal, these changes reflected an effort to eliminate unnecessary delays and expense associated with substance approvals. This reflected a tentative conclusion that in many instances prior review by the FDA had served to resolve all legitimate questions regarding both the safety and the functional properties of a given substance.

In such cases, FSIS's conduct of a comprehensive rulemaking proceeding of its own was considered unnecessary. Therefore, it was proposed that based upon the criteria stated above, the Department would issue approvals for such new uses of substances through the publication of a final rule on the use in question. Comments were solicited for a period of 60 days subsequent to the publication of the proposal.

Comments

The Department received 51 comments in response to the proposed rule—10 from meat and poultry processors, 8 from various trade associations, 8 from suppliers to the meat and poultry industries, 1 from the Department of the Army, 1 from a professor of food science, 21 from individual consumers, 1 from a consumer organization, and 1 from a registered nurse. Thirty of these comments expressed general support for the proposal while 21 were opposed to it. The favorable comments were submitted almost entirely from the various trade associations, processors and suppliers, while the negative comments were received from the consumer organization and from individual commenters who identified themselves as consumers.

The comments which we generally supportive noted potential benefits in the reduction of work costs, delays, and wasted resources for the Department. Some of these comments also noted that current regulations pertaining to approval of substances were complicated and that the public would benefit from any type of effort to clarify and simplify these procedures.

Several of these comments also noted that potential cost savings to the food industry could be realized and passed on to consumers of these products.

The comments also included a variety of more specific suggestions, opinions and criticisms which are identified below. The Department's response to these comments are also included.

1. Fourteen comments expressed general opposition to the proposal on the basis that the rule would serve to facilitate the use of ingredients that might be harmful to health. In most instances such comments were not specific as to substances or to potential negative effects, although one commenter did indicate concern that various added substances may accumulate in the body over a period of time.

A wide variety of added substances have been used in food, including meat and poultry products, for many years. The use of added substances in accordance with the safety provisions of the FFDCA has served to promote the technical quality and consumer acceptability of a variety of processed foods and has reduced economic losses due to conditions such as spoilage. As noted in the proposal, the initial FDA safety review of a substance includes a thorough review of the substance's chemical composition, its method of manufacture, its intended technical effect, and the amount of the substance necessary to accomplish that effect. FDA may also require information on how to detect and measure the presence of the substance in food. For all substances, data must be provided on toxicity and on the nature of the proposed use. The Department believes that such FDA reviews are sufficient to resolve safety questions regarding the use of a substance in food. Of course, as also indicated in the proposal, the Administrator does reserve the right to seek additional data and to further restrict the use of such substances whenever there is any reason to question the safety or suitability of those substances for use in meat or poultry products.

The final rule does include one clarifying change in this regard. As proposed, the rule addressed substances listed as approved by FDA in specified sections of Title 21 of the Code of Federal Regulations or "otherwise permitted for use in food under the FFDCA." This "otherwise permitted" language is vague and may have given some commenters the impression that the Department will not be insisting upon a specific approval by FDA as a precondition to such an expedited approval. Since this will not be the case, and since the listing of the categories of FDA approvals is all-inclusive, this language is being deleted from the final rule.

2. One commenter observed that substances added to food can cause allergies, implying that this created a basis for restricting the use of new substances in food.

The Department is aware that many substances are capable of causing allergic reactions in susceptible persons. It has been estimated that some 15 percent of the people in the United States may be allergic to some food ingredient or ingredients. However, the Department has never adopted a policy of disallowing the use of various foods or food ingredients simply because they might precipitate allergic reactions. Such a policy might dictate restrictions upon such major components of the food supply as shellfish, eggs, cereals, and a wide variety of fruits and vegetables. Whenever a substance is to be added to a meat or poultry product its presence must be shown in the ingredient listing on the product label. This ingredient listing requirement has served and will continue to function as the principal tool for the consumer in identifying substances that he or she may need to avoid for dietary or other special reasons.

3. Eleven commenters expressed the view that added substances impart no nutritive value to food products.

While some ingredients are classified in categories such as "nutrient supplements" and "nutritive sweeteners," it is true that many substances do not directly impart nutritive value to the foods in which they are used. This, however, has never been a prerequisite to the use of a food ingredient. The relevant statutes have always recognized a wide variety of legitimate, non-nutritive technical effects such as binding, coloring and emulsifying. This rule does not address the validity of using ingredients permitted under the law, but simply makes adjustments in the procedures for their approval for use.

4. Thirteen commenters contended that the FDA approval of an added substance is not always supported by data, with eleven of these commenters stating that safety testing may be inadequate.

The Department is fully aware of the procedures employed by FDA in making safety determinations, and finds no validity to these comments. As

discussed both above and in the proposal, this action is largely premised upon the Department's conclusion that the FDA review is both thorough and adequate. However, as also noted above, the Department will retain the authority to conduct its own safety review whenever it is deemed appropriate by the Administrator.

5. One commenter asked whether the Department would continue to review petitions for the use of added substances.

The Department will continue to review and evaluate such petitions. No added substances will be approved for use in meat or poultry products before a full evaluation, consistent with this final rule, is made regarding their wholesomeness and suitability for use in meat and poultry products.

6. Fourteen commenters maintained that the proposal emphasized the concerns of meat and poultry processors at the expense of consumers.

The Department has the basic responsibility for assuring that meat and poultry products are wholesome, not adulterated, and properly labeled. The Department will continue to exercise its authority in making decisions as to whether to approve the use of an added substance in meat or poultry products. However, the rule will eliminate unnecessary delays in approving substances for use in meat and poultry products, and should result in some savings of time and money to the regulated industry, which could result in lower prices to consumers of some products.

7. One commenter questioned the legality of the proposal.

Since the commenter mentioned no specific legal defect, it is noted simply that both the proposed and final rule were reviewed for legal sufficiency by the Department's Office of General Counsel. In addition, the Department has consulted informally with legal personnel at FDA. All of those consulted have agreed that the rule is fully consistent with the requirements of the FMIA, PPIA, and FFDCA.

8. Two commenters suggested that an arrangement be made to allow interested parties to comment on approvals prior to their issuance. One suggested that scientists and other experts outside government agencies might have information that was not available to government scientists during their decisionmaking.

The proposal was designed to eliminate the notice and comment process in situations where the questions required for approval of a new use of a substance have already been answered in a rulemaking proceeding by FDA. A formal comment mechanism would serve to eliminate the potential benefits of the rule. The Department will continue to review data presented by experts outside the government which might bear upon the safety or appropriate use of any given substance. Such data may still be presented within the established comment process, either FDA's or USDA's, regarding a new listing. If questions are raised regarding the safety of an approved use of a substance, new and persuasive data may generate additional review or action restricting the use of the substance.

In addition, all decisions to permit the use of a new substance or a new use of a previously approved substance will be published as final rules in the **Federal Register.** Consistent with the general requirements of the Administrative Procedure Act (5 U.S.C. 553), these final rules will ordinarily not go into effect until 30 days after publication. This publication should serve to (1) focus public attention upon the use of the substance and (2) provide a specific opportunity for interested members of the public to inform the Department of any available information that raises questions about the action being contemplated. Should the Department be presented with any such data after the publication of a final notice it will review the information and, if appropriate, stay, amend or withdraw the final rule in question.

9. One commenter suggested that the Department consider allowing levels of substances greater than that amount necessary to accomplish the desired functional effect.

The establishment of appropriate levels of use must be considered on a case-by-case basis. This entails consideration of both the substance itself and the product in which it is to be used. The initial review of GRAS substances and food additives requires identification of the purpose, or function of the substance to establish the likely exposure to consumers. Many substances may be safe to consume at virtually any level, but their use in certain products, above certain levels, may result in a product that is misbranded or economically adulterated.

10. Four commenters suggested that the Department set up a review group that would evaluate petitions and then decide which ones could be processed under the revised procedures.

The new procedures will affect only those petitions which pose no questions relating to the wholesomeness, safety or labeling of affected meat and poultry products. The Administrator will proceed with full notice and comment rulemaking, or other appropriate action, whenever such questions or complications arise. As a practical matter, resolving these issues will involve a review of available materials by Department scientists and technicians, coordinated by the Standards and Labeling Division. There is no need evidenced for a separate or more formal review group.

11. Two commenters suggested that the Department establish specific time frames within which to complete its review of petitions covered by the new abbreviated procedures.

The Department hopes to dispose of a high percentage of the petitions within this category quickly. However, rigid time frames are unrealistic. Some petitions, although they might eventually be resolved through these procedures, also might require internal review, requests for additional data, and/or consultation with the FDA prior to their approval. One important variable which the Department cannot control is the quality and thoroughness of the petition itself. Obviously, review of a request that has carefully organized all relevant data, and has anticipated and responded to the pertinent regulatory issues, will be completed more quickly than review of a confusing or incomplete petition, although the Department would be obliged to engage in a thorough review of both petitions. Given these variables, the Department cannot standardize the time required to complete a petition review.

12. Four commenters, reacting to the statement in the proposed rule that the current substance listings were incomplete in some respects, requested that a complete listing of all approved substances in meat and poultry products be published in the **Federal Register.**

The Department is in the process of compiling and updating such a listing and intends, consistent with the rules being established herein, to revise its present regulations accordingly by publishing modified final rules in the **Federal Register.**

13. Three commenters suggested that individual approvals should not be published in the **Federal Register**, but that notification should be made through publication of Meat and Poultry Inspection (MPI) bulletins. Other suggested that the Department might authorize use of substances through the issuance of a letter of approval to the petitioner. The commenters indicated that use of the substance could then commence without publication of the **Federal Register** notice.

The Department believes that lists of substances approved for use of meat and poultry products should be made generally available in FSIS' regulations. Publication in the **Federal Register** and the Code of Federal Regulations assures public notice of and access to Department decisions in this area. This procedure, which may, under appropriate circumstances, by supplemented by the issuance of bulletins or letters, will serve to eliminate potential competitive disadvantages and permit interested members of the public to address information or concerns about the use of a substance to the Department before the new approval for use actually goes into effect.

Implicit in these comments is concern over potential delays between the time the decision is made on a substance and publication of the **Federal Register** document announcing approval. The Department is working to develop procedures, such as establishing uniform formats for such documents, that should serve to keep publication delays to a minimum.

Final Rule

After thorough consideration of the comments received, the Department has determined that the rule, with the modification discussed above, should be adopted as proposed. This final rule permits the Administrator to reserve the authority to approve new substances, new uses for approved substances, and changes in usage levels for approved substances in or on meat or poultry, or products thereof, provided:

1. That the substance is an approved food additive, color additive or GRAS substance permitted for use in food under Title 21, Parts 73, 74, 81, 172, 173, 182 or 184;

2. That the intended use is in accordance with any conditions specified in the FDA approval and would not violate any other applicable FDA requirement; and

3. That the Administrator determines:

a. That the Department concurs with the conclusions of FDA regarding the safety of the substance;

b. That the available data indicate that the use of the substance would have an appropriate technical effect on the product; and

c. That the available data indcate that the substance would be used at the lowest amount reasonably required to accomplish its intended technical effect.

All products in which the substance is used must be properly labeled and otherwise regulated in accordance with applicable requirements under the FMIA and PPIA.

Indexing Terms: As required by 1 CFR 18.20 (46 FR 1762, January 22, 1981) the following are the indexing terms for this regulation:

List of Subjects

9 CFR Part 318

Food additives, Meat products and preparation of product, Reporting and recordkeeping requirement.

9 CFR Part 381

Food additives, Poultry products and preparation of products, Reporting and recordkeeping requirement.

PART 318—ENTRY INTO OFFICIAL ESTABLISHMENTS: REINSPECTION AND PREPARATION OF PRODUCTS

1. The authority citation for Part 318 reads as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*, 601 *et seq.*, 33 U.S.C. 1254.

2. Section 318.7(a) is revised to read as follows:

§ 318.7 Approval of substances for use in the preparation of products.

(a)(1) No substance may be used in the preparation of any product unless it is approved in paragraph (c)(4) of this section or elsewhere in Part 318 or in Part 319 of this subchapter, or by the Administrator in specific cases.

(2) Approval of new substances or new uses or new levels of use of approved substances may be granted by the Administrator if:

(i) The substance has been previously approved by the Food and Drug Administration (FDA) for use in meat or meat food products as a food additive, color additive, or as a substance generally recognized as safe and is listed in Title 21 of the Code of Federal Regulations, Parts 73, 74, 81, 172, 173, 182 or 184.

(ii) Its use is in compliance with applicable FDA requirements; and

(iii) The Administrator has determined that:

(A) The use of the substance will not render the product in which it is used adulterated or misbranded or otherwise not in compliance with the requirements of the Act; and

(B) Its use is functional and suitable for the product and it is permitted for use at the lowest level necessary to accomplish the stated technical effect as determined in specific cases.

(3) Whenever the Administrator determines that approval of a new substance or new use or new level of use of an approved substance should be granted in accordance with paragraph (a)(2) of this section, the Administrator shall issue a final rule amending the chart of substances in paragraph (c)(4) of this section to include the additional substance or new use of the substance, and any technical effect or change in level of use of the substance.

(4) No product shall bear or contain any substance which would render it adulterated or misbranded, or which is not approved in Part 318 or Part 319 of this subchapter, or by the Administrator in specific cases.

* * * * *

(Approved by the Office of Management and Budget under OMB #0583-006)

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

1. The authority citation for Part 381 reads as follows:

Authority: Section 14 of the Poultry Products Inspection Act, as amended by the Wholesome Poultry Products Act (21 U.S.C. 451 *et seq.*); the Talmadge-Aiken Act of September 28, 1962 (7 U.S.C. 450); and subsection 21 (b) of the Water Pollution Control Act, as amended by Pub. L. 91-224 and by other laws (33 U.S.C. 1254).

2. Section 381.147 paragraphs (f)(1)-(3) are revised and paragraph (f)(4) is added preceding Table 1 to read as follows:

§381.147 Restrictions on the use of substances in poultry products.

* * * * *

(f)(1) No substance may be used as an ingredient or otherwise in the processing of any raw or cooked poultry product unless its use is approved as shown in Table 1 of paragraph (f)(4) of this section, or elsewhere in this part, or by the Administrator in specific cases.

(2) Approval of new substances or new uses or new levels of use of approved substances may be granted if:

(i) The substance has been previously approved by the Food and Drug Administration (FDA) for use in poultry or poultry products as a food additive, color additive or as a substance generally recognized as safe and is listed in Title 21 of the Code of Federal Regulations, Parts 73, 74, 81, 172, 173, 182, or 184.

(ii) Its use is in compliance with applicable FDA requirements; and

(iii) The Administrator has determined that:

(A) The use of the substance will not render he product in which it is used adulterated or misbranded or otherwise not in compliance with the Act; and

(B) Its use is functional and suitable for the product and it is permitted for use at the lowest level necessary to accomplish the desired technical effect as determined in specific cases.

(3) Whenever the Administrator determines that approval of a new substance or a new use or new level of use of an approved substance should be granted in accordance with pararaph (f)(1) of this section, the Administrator shall issue a final rule amending Table 1 of paragraph (f)(4) of this section to include the additional substance or new use of the substance, and any technical effect or change in the level of use of the substance.

(4) No poultry product shall bear or contain any substance which would render it adulterated or misbranded, or which is not approved in Part 381 or by the Administrator in specific cases.

* * * * *

(Aproved by the Office of Management and Budget under OMB #0583-008)

Done at Washington, D.C. on July 13, 1983.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 83-19350 Filed 7-18-83; 8:45 am]

BILLING CODE 3410-DM-M

FARM CREDIT ADMINISTRATION

12 CFR Part 601

Employee Responsibilities and Conduct; Correction

AGENCY: Farm Credit Administration.

ACTION: Final rule effective date; correction.

SUMMARY: On June 24, 1983 (48 FR 28976), the Farm Credit Administration published a final rule, 12 CFR 601.190, which determined that certain financial interests of members of the Federal Farm Credit Board ("Federal Board") are too remote or too inconsequential to affect the integrity of the exercise of certain statutory duties and responsibilities by Federal Board members and that such interests are therefore exempt from the conflict of interest provisions contained in Title 18, United States Code, section 208(a). This document corrects the final rule effective date notice.

The effective date of this regulation is subject to a statutory requirement that no final regulation of the Farm Credit Administration (except in cases of emergency) shall be effective prior to the expiration of 30 calendar days after publication in the **Federal Register** during which either or both Houses of Congress are in session. Periods during which both Houses of Congress are not in session because of adjournment of more than 3 days to a day certain are excluded from the computation of 30 calendar days. In light of the Independence Day holiday recess, the 30-day delay period will not expire until August 1, 1983, which requires a change in the effective date of this regulation.

FOR FURTHER INFORMATION CONTACT: Larry H. Bacon, Deputy Governor, Office of Administration, Farm Credit Administration, 490 L'Enfant Plaza, S.W., Washington, DC 20578 (202-755-2181).

Donald E. Wilkinson,

Governor.

PART 601—[AMENDED]

§ 601.190 [Amended]

Accordingly, the Farm Credit Administration is correcting the effective date for 12 CFR 601.190 as follows:

"EFFECTIVE DATE: August 1, 1983".

[FR Doc. 83-19463 Filed 7-18-83; 8:45 am]

BILLING CODE 6705-01-M

CIVIL AERONAUTICS BOARD

14 CFR Part 241

[Amdt. No. 50 Docket 41147; Regulation ER-1349]

Uniform System of Accounts and Reports for Certificated Air Carriers

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The CAB reduces reporting requirements pertaining to the all-cargo operations of carriers that also provide passenger and international air service. This will reduce the burden on these carriers in furtherance of the Cargo Deregulation Act and Paperwork Reduction Act.

DATES: Adopted: July 1, 1983. Effective: August 18, 1983.

FOR FURTHER INFORMATION CONTACT: Jack Calloway, Office of the Comptroller, 202-673-6042; or David Schaffer, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428; 202-673-5442.

SUPPLEMENTARY INFORMATION: By EDR-450, 47 FR 57733, December 28, 1982, the Board proposed to reduce reporting requirements of all-cargo air carriers. This involved amendments to two CFR parts, Part 241 and Part 291. Part 291 applies to those carriers that hold only section 418 certificates or that hold both section 401 and 418 certificates but offer only domestic all-cargo transportation. In a separate rule, issued simultaneously (ER-1350), the Board summarized this proposal with respect to Part 291 and stated that it was adopting it with only two changes. The first was to reduce the reporting frequency from semiannually to annually. The second change was the addition of net income as an item to be reported.

For the reasons set forth in ER-1350, the Board is also adopting the proposed amendments with respect to Part 241. This will reduce the reporting burden on carriers with all-cargo operations without undermining the government's ability to monitor all-cargo activity.

The Board is also reducing the reporting frequency from semiannually to annually as it did for Part 291, but is not adopting the other change (the addition of a net income reporting item) that it made in that part. The Department of Transportation (DOT) asked that net income be added because it takes into consideration profit or loss from nonoperating as well as operating activities, and thus provides a more accurate picture of the carrier's financial position. The Board agrees with DOT and has added this item to the Part 291 reporting requirements by ER-1350. It is not necessary to add that item to the section of Part 241 involved here, however, because carriers subject to Part 241 already report net income for their total system under Section 24 of that part.

Regulatory Flexibility Act

For the reasons stated in EDR-450, the Board certifies that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 14 CFR Part 241

Air carriers, Uniform System of Accounts.

PART 241—[AMENDED]

Accordingly, the Board amends 14 CFR Part 241, *Uniform System of Accounts and Reports for Certificated Air Carriers*, as follows:

1. The authority for Part 241 is:

Authority: Secs. 204, 401, 407, 416, 417, 901, 902, 1002, Pub. L. 85-726, as amended, 72 Stat. 743, 754, 766, 771, 783, 784, 788, 76 Stat. 145; 49 U.S.C. 1324, 1371, 1377, 1386, 1387, 1471, 1472, and 1482.

2. In Section 22, the first table is revised by changing the filing frequency of Schedule No. T-8 from semiannually to annually and the second table is revised by removing Schedule No. T-8 from the August 10 due date, so that they read:

§ 22 General Reporting Requirements.

* * * * *

List of Schedules in CAB Form 41 Report

Schedule No.	Schedule title	Filing frequency	...
* *	*	*	
T-8	Report of section 418 operations	Annually	...
* *	*	*	

Due Dates of Schedules in CAB Form 41 Report

Due dates[1]	Schedule No.
* *	*
August 10	A, B-1, B-3, B-5, B-7, B-7(b), B-8, B-10, B-12, B-13, P-1.1, P-1.2, P-2, P-2(a), P-3, P-3.1, P-3(a), P-4, P-5.1, P-5.2, P-5(a), P-6, P-7, P-8.
* *	*

3. Schedule T-8 of section 25 is revised to read:

§ 25 Traffic and Capacity Elements.

* * * * *

Schedule T-8—*Report of all-cargo operations.*

(a) This schedule shall be filed annually by all air carriers holding section 401 certificates that conduct all-cargo operations under certificates issued under section 418 of the Act.

(b) Data reported on this schedule shall include only results of operations conducted in all-cargo aircraft. Data shall be segregated between domestic all-cargo operations conducted within the geographic limitations of section 418 certificates and all other all-cargo operations.

(c) Statement of operations. This statement shall include the following elements:

(1) Total operating revenue, categorized as follows:

(i) Transport revenues from the carriage of property in scheduled and nonscheduled service;

(ii) Transport revenues from the carriage of mail in scheduled and nonscheduled service; and

(iii) Transport-related revenues.

(2) Total operating expenses; and

(3) Operating profit or loss, computed by subtracting the total operating expenses from the total operating revenues.

(d) Summary of traffic and capacity statistics. This summary shall include the following elements:

(1) Total revenue ton-miles, which are the aircraft miles flown on each flight stage times the number of tons of revenue traffic carried on that stage. They shall be categorized as follows:

(i) Property; and

(ii) Mail.

(2) Revenue tons enplaned, reflecting the total revenue tons of cargo loaded on aircraft during the annual period;

(3) Available ton-miles, reflecting the total revenue ton-miles available for all-cargo service during the annual period, and computed by multiplying aircraft miles flown on each flight stage by the number of tons of aircraft capacity available for that stage;

(4) Aircraft miles flown, reflecting the total number of aircraft miles flown in cargo service during the annual period;

(5) Aircraft departures performed, reflecting the total number of take-offs performed in cargo service during the annual period; and

(6) Aircraft hours airborne, reflecting the aircraft hours of flight (from take-off to landing) performed in cargo service during the annual period.

4. Schedule T-8 is revised as shown on the attachment.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

Note.—This form will not appear in the Code of Federal Regulations.

BILLING CODE 6320-01-M

Attachment to ER-1349

REPORT OF ALL-CARGO OPERATIONS

Air Carrier		All-Cargo Operations	
Year Ended December 31, 19__		Domestic (418)	Other Than Section 418
		(A)	(B)
Operating Revenues and Expenses			
Transport Revenue:			
Property	1		
Mail	2		
Transport Related Revenue	3		
Total Operating Revenue	4		
Total Operating Expense	5		
Operating Profit or (Loss)	6		
Traffic and Capacity Statistics			
Total Revenue Ton-Miles:			
Property	7		
Mail	8		
Revenue Tons Enplaned	9		
Available Ton Miles	10		
Aircraft Miles Flown	11		
Aircraft Departures Performed	12		
Aircraft Hours (Airborne)	13		

Schedule T-8 CAB Form 41

[FR Doc. 83-19481 Filed 7-18-83; 8:45 am]
BILLING CODE 6320-01-C

14 CFR Part 248

[Amdt. No. 4; Docket 41147; Regulation ER-1351]

Submission of Audit and Reconciliation Reports

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The CAB eliminates the reconciliation report required of certificated air carriers because it is no longer needed.

DATES: Adopted: July 1, 1983. Effective: August 18, 1983.

FOR FURTHER INFORMATION CONTACT: Jack Calloway, Office of the Comptroller, (202) 673-6042; or David Schaffer, Office of the General Counsel, (202) 673-5442; Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428.

SUPPLEMENTARY INFORMATION: By EDR-450, 47 FR 57733, December 28, 1982, the Board proposed to eliminate the requirement that a certificated carrier file a report reconciling its audited balance sheet and income statements with similar statements that the carrier filed with the Board as part of its Form 41 reports. This reconciliation report was required to help resolve inconsistencies between the financial statements of the carrier's independent auditor and those in the Form 41 reports. As explained in EDR-450, changes in Board accounting practices make it unlikely that there will continue to be such inconsistencies. The reconciliation report required by 14 CFR 248.3 is therefore no longer needed.

In EDR-450, the Board also proposed to make a technical change in §§ 248.2 and 248.3 to reflect staff reorganizations.

No comments were filed objecting to any of the proposed changes in Part 248. The Board is therefore adopting them as proposed.

Regulatory Flexibility Act

For the reasons stated in EDR-450, the Board certifies that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 14 CFR Part 248

Accounting, Air carriers, Reporting requirements.

PART 248—[AMENDED]

Accordingly, the Board amends 14 CFR Part 248, *Submission of Audit and Reconciliation Report*, as follows:

1. The authority for Part 248 is:

Authority: Secs. 204, 401, 407, Pub. L. 85-726, as amended, 72 Stat. 743, 754, 766; 49 U.S.C. 1324, 1371, 1377.

2. Section 248.2 is revised by replacing "Bureau of Accounts and Statistics" with "Office of Comptroller", as follows:

§ 248.2 Filing of audit reports.

(a) Whenever any air carrier subject to § 248.1 shall have caused an annual audit of its books, records, and accounts to be made by independent public accountants, such air carrier shall file with the Broad's Office of the Comptroller, in duplicate, a special report consisting of a true and complete copy of the audit report submitted by such independent public accountants, including all schedules, exhibits, and certificates included in, attached to, or submitted with or separately as a part of, the audit report.

(b) Each air carrier subject to § 248.1 that does not cause an annual audit to be made of its books, records, and accounts for any fiscal year shall, at the close of such fiscal year file with the Board's Office of the Comptroller, as a part of its periodic reports, a statement that no such audit has been performed.

§ 248.3 [Removed and Reserved]

3. Section 248.3, *Reconciliation of reports* is removed and reserved.

4. Section 248.4 is revised by replacing "Bureau of Accounts and Statistics" with "Office of the Comptroller", as follows:

§ 248.4 Time for filing reports.

The report required by this part shall be filed with the Board's Office of Comptroller within 15 days after the due date of the appropriate periodic CAB Form 41 report, filed for the 12-month period covered by the audit report, or the date the accountant submits its audit report to the air carrier, whichever is later.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 83-19484 Filed 7-18-83; 8:45 am]

BILLING CODE 6320-01-M

[Reg. ER-1350; Econ. Regs. Amendment No. 12 to Part 291; Docket 41147]

14 CFR Part 291

Domestic Cargo Transportation; Reporting Requirements

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The CAB reduces reporting requirements for all-cargo carriers. This action will reduce the burden on these carriers in furtherance of the Paperwork Reduction Act and Cargo Deregulation Act.

DATES: Adopted: July 1, 1983. Effective: August 18, 1983.

FOR FURTHER INFORMATION CONTACT: Jack Calloway, Office of the Comptroller, (202) 673-6042; or David Schaffer, Office of the General Counsel, (202) 673-5442; Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428.

SUPPLEMENTARY INFORMATION: By EDR-450, 47 FR 57733, December 28, 1982, the Board proposed to reduce the reporting requirements of all-cargo carriers. Specifically, EDR-450 proposed to limit reporting to six traffic items (total revenue ton-miles, revenue tons enplaned, available ton-miles, aircraft miles flown, aircraft departures performed, and aircraft hours airborne) and three profit and loss items (total operating revenues, total operating expenses, and operating income or loss). The Board estimated that adoption of this proposal would result in an 85 percent reduction in the level of reporting by these carriers.

The Board noted in EDR-450 that it no longer needed any data from all-cargo carriers but that the Department of Transportation (DOT) needed these data to monitor the level of air cargo activity. Since DOT will administer the Board's remaining programs after the Board "sunsets" in 1985, the Board stated that it would give great weight to the views of DOT in this matter. The Board therefore proposed to revise the reporting requirements in 14 CFR 291.42 along the lines requested by DOT as summarized above.

Comments were filed by DOT and the Air Freight Association. The Air Freight Association favored the Board's proposal. It stated that "there is no need for the Board to continue to require excessive report filings from members of the air freight industry" and that the "remaining nine required reports should be more than sufficient to allow any regulatory agency (whether the CAB, DOT, or any new agency) to monitor 'the level of demand for air cargo activity.' "

The DOT also supported the Board's proposal. It stated that some data from all-cargo carriers were necessary for it to carry out its responsibilities. These responsibilities include promoting safe air transportation, controlling the national airspace, operating a system of air traffic control, and promoting the development of an effective national airport system. DOT stated that it would use the required data in evaluating

existing and proposed rules in these areas, evaluating industry comments on these rules, performing cost/benefit analyses, and determining the impact of its actions on small businesses. DOT also stated that the required data were necessary to forecast growth of air traffic and estimate revenues in the Airport and Airway Trust Fund.

DOT asked the Board to make one change in the proposed reporting requirement. This was the addition of a requirement that carriers report net income. This is currently required of all-cargo carriers but would not have been continued under the Board's proposal. DOT stated that this item was necessary because it takes into consideration profit or loss from both operating and nonoperating activities, and thus provides a more accurate indication of the carrier's actual financial position. Under the Board's proposal, only operating income (that is, income from air transportation activities as opposed to real estate transactions, for example) would have been reported.

The Board agrees that the reporting of net income would provide a better picture of the carrier's financial situation. Also, since this information is being primarily collected for the benefit of DOT, the Board gives great weight to the views of that agency in this matter. Accordingly, the additional reporting item DOT requested will be adopted.

On its own initiative, the Board is changing the frequency of reporting from semi-annually to annually. This will further reduce the reporting burden on all-cargo carriers without compromising the ability of the Board or DOT to monitor all-cargo activity.

Regulatory Flexibility Act

For the reasons stated in EDR-450, the Board certifies that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 14 CFR Part 291

Air carriers, Antitrust, Freight, Insurance, Reporting requirements.

PART 291—[AMENDED]

Accordingly, the Board amends 14 CFR Part 291, *Domestic Cargo Transportation*, as follows:

1. The authority for Part 291 is:

Authority: Secs. 102, 204, 401, 407, 408, 416, and 418, Pub. L. 85-726, as amended; 72 Stat. 740, 743, 754, 766, 767, 771, 91 Stat. 1284; 49 U.S.C. 1302, 1324, 1371, 1377, 1378, 1386, and 1388.

2. Section 291.42 is revised to read:

§ 291.42 Section 418 financial and statistical reporting.

(a) *General instructions.* (1) Carriers operating under section 418 certificates that are not subject to Part 241 of this chapter shall file Form 291-A, Statement of Operations and Statistics Summary for section 418 operations.

(2) The form required by this section shall be filed annually on February 10 covering the 12 months ending December 31. It shall be filed at the Office of the Comptroller, Information Management Division, B-46a, Civil Aeronautics Board, Washington, D.C. 20428.

(3) The carrier's chief accounting officer shall sign a certification attesting to the truth and completeness of the reports required by this section.

(b) Statement of Operations and Statistics Summary for section 418 operations. This statement shall include the following elements:

(1) Total operating revenue, categorized as follows:

(i) Transport revenues from the carriage of property in scheduled and nonscheduled service;

(ii) Transport revenue from the carriage of mail in scheduled and nonscheduled service; and

(iii) Transport-related revenues.

(2) Total operating expenses;

(3) Operating profit or loss, computed by subtracting the total operating expenses from the total operating revenues; and

(4) Net income, computed by subtracting the total operating and nonoperating expenses, including interest expenses and income taxes, from the total operating and nonoperating revenues.

(c) Summary of traffic and capacity statistics. This summary shall include the following elements:

(1) Total revenue ton-miles, which are the aircraft miles flown on each flight stage times the number of tons of revenue traffic carried on that stage. They shall be categorized as follows:

(i) Property; and

(ii) Mail.

(2) Revenue tons enplaned, reflecting the total revenue tons of cargo loaded on aircraft during the annual period;

(3) Available ton-miles, reflecting the total revenue ton-miles available for all-cargo service during the annual period, and computed by multiplying aircraft miles flown on each flight stage by the number of tons of aircraft capacity available for that stage;

(4) Aircraft miles flown, reflecting the total number of aircraft miles flown in cargo service during the annual period;

(5) Aircraft departures performed, reflecting the total number of take-offs performed in cargo service during the annual period; and

(6) Aircraft hours airborne, reflecting the aircraft hours of flight (from take-off to landing) performed in cargo service during the annual period.

CAB Form 291-A—[Revised]

3. CAB Form 291-A is changed as shown on the attachment.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

Note.—This form will not appear in the Code of Federal Regulations.

BILLING CODE 6320-01-M

Attachment to ER-1350

STATEMENT OF OPERATIONS AND SUMMARY STATISTICS
FOR SECTION 418 OPERATIONS

Carrier _____
Year Ended December 31, 19___

Operating Revenues and Expenses		
Transport Revenue:		
Property	1	
Mail	2	
Transport Related Revenue	3	
Total Operating Revenue	4	
Total Operating Expense	5	
Operating Profit or (Loss)	6	
Net Income or (Loss)	7	
Traffic and Capacity Statistics		
Total Revenue Ton-Miles:		
Property	8	
Mail	9	
Revenue Tons Enplaned	10	
Available Ton Miles	11	
Aircraft Miles Flown	12	
Aircraft Departures Performed	13	
Aircraft Hours (Airborne)	14	

CAB Form 291-A

14 CFR Part 297

[Amdt. No. 6; Docket 41147; Regulation ER-1352]

Foreign Air Freight Forwarders and Cooperative Shippers Associations

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The CAB eliminates reporting requirements for foreign air freight forwarders because the data reported are no longer needed by the government.

DATES: Adopted: July 1, 1983. Effective: August 18, 1983.

FOR FURTHER INFORMATION CONTACT: Jack Calloway, Office of the Comptroller, 202-673-6042; or David Schaffer, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428; 202-673-5442.

SUPPLEMENTARY INFORMATION: By EDR-450, 47 FR 57733, December 28, 1982, the Board proposed to eliminate the reporting requirements for foreign air freight forwarders and foreign cooperative shippers associations. These requirements are now in Subpart E of 14 CFR Part 297. The Board noted that it had been reducing its oversight of these entities and tentatively concluded that this reporting requirement was no longer needed.

No comments were received in response to this proposal. The Board is therefore eliminating this reporting requirement as proposed.

Regulatory Flexibility Act

For the reasons stated in EDR-450, the Board certifies that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 14 CFR Part 297

Air carriers, Air transportation—foreign, Freight, Freight forwarders, Insurance, Reporting requirements.

PART 297—[AMENDED]

Accordingly, the Board amends 14 CFR Part 297, *Foreign Air Freight Forwarders and Foreign Cooperative Shippers Associations, as follows:*

1. The authority for Part 297 is:

Authority: Secs. 204, 416, Pub. L. 85-726, as amended, 72 Stat. 743, 771; 49 U.S.C. 1324, 1386.

Subpart E—[Removed and Reserved]

2. Subpart E, *Reporting Requirements,* is removed and reserved.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 83-19480 Filed 7-18-83; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 141

Final Rule To Revise Form No. 12, Power System Statement; Correction

Issued: June 22, 1983.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; Notice of availability of corrections.

SUMMARY: This document gives notice of corrections to Form No. 12, "Power System Statement", which must be filed with the Federal Energy Regulatory Commission under 18 CFR § 141.51. Form No. 12 was revised on February 7, 1983 (Order No. 282, Docket No. RM82-10-000, 48 FR 6699, (February 15, 1983)).[1] The corrections are necessary to conform certain instructions in Form No. 12 to each other and to the specific format of Form No. 12.

FOR FURTHER INFORMATION CONTACT: Cathy Ciaglo Office of the General Counsel Federal Energy Regulatory Commission, 825 N. Capitol Street, N.E. Washington, D.C. 20426 (202) 357-8033.

SUPPLEMENTARY INFORMATION: On February 7, 1983, the Federal Energy Regulatory Commission (Commission) issued the "Final Rule to Revise Form No. 12, Power System Statement" (Order No. 282, 48 FR 6699, February 15, 1983). The corrections made to Form No. 12 conform certain of the instructions to other instructions in the form and make them consistent with the format of the form.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-19458 Filed 7-18-83; 8:45 am]

BILLING CODE 6717-01-M

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[1] Because Form 12 was not printed in the **Federal Register**, both this notice of corrections and the form are available at the Commission's Division of Public Information, 825 North Capitol St., N.E., Washington, D.C. 20426, (202) 356-8055. The corrections themselves have not been submitted to the Federal Register.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 74

[Docket Nos. 82C-0396, 82C-0397, and 82C-0399]

D&C Green No. 6; Listing as a Color Additive for use in Contact Lenses; Confirmation of Effective Date

AGENCY: Food and Drug Administration.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of April 29, 1983, for a regulation that provided for the safe use of D&C Green No. 6 as a color additive in contact lenses. The agency is taking this action in response to petitions filed by Baurs-Krey Associates, Inc., Syntex Ophthalmics, Inc., and Polymer Technology Corp.

DATE: Effective date confirmed: April 29, 1983.

FOR FURTHER INFORMATION CONTACT: Garnett R. Higginbotham, Jr., Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a final rule published in the **Federal Register** of March 29, 1983 (48 FR 13020), FDA amended the color additive regulations to provide for the safe use of D&C Green No. 6 as a color additive in contact lenses. The final rule added new Subpart D—Medical Devices to include § 74.3206 (21 CFR 74.3206) that allows the use of D&C Green No. 6 in contact lenses.

In the final rule, FDA gave interested persons until April 28, 1983, to file objections. The agency received no objections or requests for a hearing on the final rule. Therefore, FDA has concluded that the final rule published in the **Federal Register** of March 29, 1983, for D&C Green No. 6 should be confirmed.

List of Subjects in 21 CFR Part 74

Color additives, Cosmetics, Drugs, Medical devices.

PART 74—LISTING OF COLOR ADDITIVES SUBJECT TO CERTIFICATION

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 701(e), 706, 70 Stat. 919 as amended, 74 Stat. 399-407 as amended (21 U.S.C. 371(e), 376)) and under authority delegated to

the Commissioner of Food and Drugs (21 CFR 5.10), notice is given that no objections or requests for a hearing were filed in response to the final rule of March 29, 1983. Accordingly, the final rule adding § 74.3206 *D&C Green No. 6* to provide for the safe use of D&C Green No. 6 as a color additive in contact lenses became effective April 29, 1983.

Dated: July 8, 1983.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 83-19382 Filed 7-18-83; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Sulfamethazine Sustained-Release Boluses; Correction

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to provide for the over-the-counter (OTC) use of 2 sulfamethazine sustained-release bolus (Bayvet's Sulfa-Span) and the prescription use of a sulfamethazine sustained-release bolus (Bayvet's Hava-Span). In a previous document, regulations reflecting use of Bayvet's Hava-Span were inadvertently removed. This document amends the regulations to reflect use of both products.

EFFECTIVE DATE: June 3, 1983.

FOR FURTHER INFORMATION CONTACT: Charles E. Haines, Bureau of Veterinary Medicine (HFV-133), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3410.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 3, 1983 (48 FR 24871), FDA published a document reflecting approval of a supplement to Bayvet's NADA 93-329 which provided for alternate labeling, bearing revised indications and dosage, for OTC use. That document inadvertently deleted the use of Bayvet's prescription product. This document amends the regulations in § 520.2260b (21 CFR 520.2260b) to reflect use of the prescription product in paragraph (a) and the OTC product in paragraph (d).

List of Subjects in 21 CFR Part 520

Animal drugs, Oral.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), § 520.2260b is amended by revising paragraph (a)(2) and by adding new paragraph (d) to read as follows:

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

§ 520.2260b Sulfamethazine sustained-release boluses.

(a) * * *

(2) *Conditions of use*—(i) *Amount.* Depending on the duration of therapeutic levels desired, administer boluses as a single dose as follows: 3½ days—1 bolus (22.5 grams) per 200 pounds of body weight; 5 days—1 bolus per 100 pounds of body weight.

(ii) *Indications for use.* Beef and nonlactating cattle for sustained treatment of shipping fever pneumonia caused or complicated by *Pasteurella multocida;* as an aid in the treatment of foot rot, mastitis, pneumonia, metritis, bacterial enteritis, calf diphtheria, and septicemia when caused or complicated by bacteria susceptible to sulfamethazine.

(iii) *Limitations.* Cattle that are acutely ill should be treated parenterally with a suitable antibacterial product to obtain immediate therapeutic blood levels; do not slaughter animals for food within 16 days of treatment; do not use in lactating dairy cattle; Federal law restricts this drug to use by or on the order of a licensed veterinarian.

* * * * *

(d)(1) *Sponsor.* See 000859 in § 510.600(c) of this chapter for use of a 22.5-gram sulfamethazine sustained release bolus.

(2) *Conditions of use*—(i) *Amount.* Administer 1 bolus (22.5 grams) per 200 pounds of body weight, as a single dose.

(ii) *Indications for use.* Beef and nonlactating dairy cattle for the prolonged treatment of the following diseases when caused by one or more of the listed pathogenic organisms sensitive to sulfamethazine: bovine respiratory disease complex (shipping fever complex) (*Pasteurella* spp.), *bacterial pneumonia (Pasteurella* spp.), necrotic pododermatitis (foot rot) (*Fusobacterium necrophorum*), colibacillosis (bacterial scours) (*Escherichia coli*), calf diphtheria (*Fusobacterium necrophorum*), acute mastitis (*Streptococcus* spp.) and acute metritis (*Streptococcus* spp.).

(iii) *Limitations.* Cattle that are acutely ill should be treated by injection with a suitable antibacterial product to obtain immediate therapeutic blood levels; do not slaughter animals for food within 16 days of treatment; do not use in lactating diary cattle; if treated animals do not respond within 2 to 3 days, consult a veterinarian.

Effective date. June 3, 1983.

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

Dated: July 13, 1983.

Robert A. Baldwin,

Associate Director for Scientific Evaluation.

[FR Doc 83-19383 Filed 7-18-83; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs Not Subject to Certification; Oxytetracycline Hydrochloride Injection

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by John D. Copanos & Co., Inc., providing for safe and effective use of a 100-milligram-per-milliliter (mg/mL) oxytetracycline hydrochloride (OTC-HCl) injection for intravenous use for treating certain infections of cattle.

EFFECTIVE DATE: July 19, 1983.

FOR FURTHER INFORMATION CONTACT: Charles E. Haines, Bureau of Veterinary Medicine (HFV-133), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-433-3410.

SUPPLEMENTARY INFORMATION: John D. Copanos & Co., Inc., 6110 Robinwood Rd., Baltimore, MD 21225, is sponsor of NADA 93-578, currently providing for intramuscular use of a 50-mg/mL OTC-HCl injectable sterile solution in beef cattle, beef calves, nonlactating dairy cattle, and dairy calves for treatment of certain infections as published in the **Federal Register** of December 17, 1974 (39 FR 43627) and codified in 21 CFR 522.1662a. Copanos has filed a supplement providing for intravenous use of a 100-mg/mL OTC-HCl injectable sterile solution in beef cattle and nonlactating dairy cattle for treatment of pneumonia and shipping fever complex associated with *Pasteurella* spp. and *Hemophilus* spp. The supplemental NADA is approved and the regulations are amended to reflect this approval. The basis of this approval is discussed in the freedom of information (FOI) summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and

information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

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

List of Subjects in 21 CFR Part 522

Animal drugs, Injectable.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512 (i), 82 Stat. 347 (21 U.S.C. 360b (i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), § 522.1662a is amended by adding paragraph (j) to read as follows:

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

§ 522.1662a Oxytetracycline hydrochloride injection.

* * * * *

(j) (1) *Specifications.* Each milliliter of sterile solution contains 100 milligrams of oxytetracycline hydrochloride.

(2) *Sponsor.* See No. 010271 in § 510.600(c) of this chapter.

(3) *Related tolerances.* See § 556.500 of this chapter.

(4) *Special considerations.* Labeling shall bear the following statements: Treatment should be continued 24 to 48 hours following remission of disease symptoms but not to exceed a total of 4 consecutive days. If no improvement is noted within 24 to 48 hours, consult a veterinarian.

(5) *Conditions of use in beef cattle and nonlactating dairy cattle*—(i) *Amount.* Three to 5 milligrams per pound of body weight per day. In severe cases, 5 milligrams per pound of body weight.

(ii) *Indications for use.* Treatment of pneumonia and shipping fever complex associated with *Pasteurella* spp. and *Hemophilus* spp. sensitive to oxytetracycline.

(iii) *Limitations.* Administer intravenously only. Not for use in lactating dairy cattle. Discontinue treatment at least 19 days before slaughter.

Effective date. July 19, 1983.

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

Dated: July 11, 1983.

Robert A. Baldwin,

Associate Director for Scientific Evaluation.

[FR Doc. 83-19231 Filed 7-18-83; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 524

Ophthalmic and Topical Dosage Form New Animal Drugs Not Subject To Certification; Nitrofurazone Solution

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by International Multifoods, providing for use of a nitrofurazone solution for treating surface bacterial infections in dogs, cats, and horses.

EFFECTIVE DATE: July 19, 1983.

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

SUPPLEMENTARY INFORMATION: International Multifoods, 8th and Marquette Sts., Minneapolis, MN 55402, is sponsor of NADA 132–137 for use of a 0.2-percent nitrofurazone solution for treating surface bacterial infections in dogs, cats, and horses. The application is approved, and the regulations are amended accordingly. The basis of this approval is discussed in the freedom of information summary.

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

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

List of Subjects in 21 CFR Part 524

Animal drugs, Topical.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), § 524.1580d is amended by revising paragraph (b) to read as follows:

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

§ 524.1580d Nitrofurazone solution.

* * * * *

(b) *Sponsor.* See 000857, 015562, 015579, and 051259 in § 510.600 (c) of this chapter for use as in paragraph (d) (1) and (2) of this section. See 012518 in § 510.600 (c) of this chapter for use as in paragraph (d) (1) of this section.

* * * * *

Effective date. July 19, 1983.

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

Dated: July 12, 1983.

Lester M. Crawford,

Director, Bureau of Veterinary Medicine.

[FR Doc. 83-19228 Filed 7-18-83; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 524

Ophthalmic and Topical Dosage Form New Animal Drugs Not Subject To Certification; Selenium Disulfide Suspension

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Farnam Companies, Inc., providing for a change from prescription to over-the-counter (OTC) distribution of a selenium disulfide suspension for use on dogs as a cleansing shampoo and as an agent for removing skin debris associated with dry eczema, seborrhea, and nonspecific dermatoses.

EFFECTIVE DATE: July 19, 1983.

FOR FURTHER INFORMATION CONTACT: Bob G. Griffith, Bureau of Veterinary Medicine (HFV–112), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3430.

SUPPLEMENTARY INFORMATION: Farnam Companies, Inc., 2230 East Magnolia St., Phoenix, AZ 85036, filed a supplement to

NADA 115–579 providing for OTC distribution of a selenium disulfide suspension for use on dogs as a cleansing shampoo and as an agent for removing skin debris associated with dry eczema, seborrhea, and nonspecific dermatoses. The supplement is approved and the regulations are amended to reflect the approval. The basis for approval is stated in the freedom of information (FOI) summary.

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

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

List of Subjects in 21 CFR Part 524

Animal drugs, Topical.

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

§ 524.2101 [Amended]

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), § 524.2101 *Selenium disulfide suspension* is amended by numerically inserting the number "017135" in paragraph (c) and by removing paragraph (e).

Effective date. July 19, 1983.

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

Dated: July 12, 1983.

Robert A. Baldwin,

Associate Director for Scientific Evaluation.

[FR Doc. 83–19232 Filed 7–18–83; 8:45 am]

BILLING CODE 4160–01–M

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21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Lincomycin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

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

EFFECTIVE DATE: July 19, 1983.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Bureau of Veterinary Medicine (HFV–130), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4913.

SUPPLEMENTARY INFORMATION: Ag-Mark, Inc., P.O. Box 127, Teachey, NC 28464, is sponsor of NADA 133–035 filed in its behalf by the Upjohn Co. The NADA provides for use of 50-gram-per-pound lincomycin premixes to manufacture 4- and 20-gram-per-pound lincomycin intermediate premixes for subsequent incorporation into complete swine feeds. The swine feeds are used for control and/or treatment of swine dysentery as provided in 21 CFR 558.325(f)(2)(i), (ii) and (iii). The basis of approval of this NADA is discussed in the freedom of information (FOI) summary. Based on the data and information submitted, the NADA is approved and the regulations are amended to reflect the approval.

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

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

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), § 558.325 is amended by adding new paragraph (b)(14) to read as follows:

PART 558—NEW DRUGS ANIMAL FOR USE IN ANIMAL FEEDS

§ 558.325 Lincomycin.

* * * * *

(b) * * *

(14) Premix levels of 4 and 20 grams per pound have been granted to 024174 in § 510.600(c) of this chapter for use as in paragraph (f)(2)(i), (ii) and (iii) of this section.

* * * * *

Effective date. July 19, 1983.

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

Dated: July 12, 1983.

Lester M. Crawford,

Director, Bureau of Veterinary Medicine.

[FR Doc. 83–19223 Filed 7–18–83; 8:45 am]

BILLING CODE 4160–01–M

CFR Part 558

New Animal Drugs For Use In Animal Feeds; Bambermycins

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by American Hoechst Corp., requesting waiver of the requirements of section 512(m) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360(b)(m)) to make finished turkey feeds from feed supplements containing not more than 80 grams of bambermycins per ton.

EFFECTIVE DATE: July 19, 1983.

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

SUPPLEMENTARY INFORMATION: American Hoechst Corp., Animal Health Division, Route 202–206 North, Somerville, NJ 08876, submitted a supplement to its approved NADA 44–759 requesting waiver of the requirements of section 512(m) of the act for making finished turkey feeds from feed supplements containing not more than 80 grams of bambermycins per ton. Approval for use of the 2-or 10-gram-per-pound bambermycins premix in complete turkey feeds was published in the **Federal Register** of December 1, 1981 (46 FR 58300). A section 512(m) waiver

for use of premixes containing 0.4, 2, and 10 grams of bambermycins per pound to make broiler and swine feeds is currently codified at 21 CFR 558.95(d)(1). A section 512(m) waiver for use of feed supplements containing not more than 80 grams of bambermycins per ton in growing-finishing swine feeds is currently codified in 21 CFR 558.95(d)(2). The supplement concerning the waiver for making turkey feeds is approved, and the regulations are amended accordingly. In addition, 21 CFR 558.95(d)(2) is amended to include making finished broiler feeds from these feed supplements to be consistent with that waiver provided by paragraph (d)(1), and the phrase "as the sole drug" is being removed from 21 CFR 558.95(d)(1) and (2). The basis for approval and amendment of the regulation is discussed in the footnote on p. 15246 of the **Federal Register** of April 8, 1983.

In approving this section 512(m) waiver for making turkey feeds, the agency has not waived the current good manufacturing practice regulations under Part 225 (21 CFR Part 225) for mixing such feeds.

Approval of these supplements is an administrative action that did not require new effectiveness of safety data in support of the waiver. Therefore, a freedom of information summary is not required for this action.

The Bureau of Veterinary Medicine has determined pursuant to 21 CFR 25.24(b)(22) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal feeds, Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), § 558.95 is amended by revising paragraph (d)(1) and (2) to read as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

§ 558.95 Bambermycins.

* * * * *

(d) * * *

(1) Premixes containing 0.4, 2, or 10 grams of bambermycins per pound used to make broiler or swine feeds and conforming to paragraph (e)(1) and (2) of this section.

(2) Feed supplements containing not more than 80 grams of bambermycins per ton used to make finished feeds conforming to paragraph (e) of this section.

* * * * *

Effective date. July 19, 1983.

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

Dated: July 13, 1983.

Robert A. Baldwin,

Associate Director for Scientific Evaluation.

[FR Doc. 83-19385 Filed 7-18-83; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner [Federal Housing Administration]

24 CFR Parts 201, 203, 207, 213, 220, 221, 232, 234, 235, 236, 241, 242 and 244

[Docket No. R-83-1107]

Mortgage Insurance and Home Improvement Loans; Changes in Interest Rates

AGENCY: Department of Housing and Urban Development.

ACTION: Final rule.

SUMMARY: This change in the regulations increases the maximum allowable finance charge on insured home, project, and mobile home loan programs. This action by HUD is designed to bring the maximum financing charges into line with other competitive market rates and help assure an adequate supply of and demand for FHA financing.

EFFECTIVE DATE: July 11, 1983.

FOR FURTHER INFORMATION CONTACT: John N. Dickie, Director, Financial Analysis Division, Office of Financial Management, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410 (202-755-7270).

SUPPLEMENTARY INFORMATION: The following miscellaneous amendments have been made to this chapter to increase the maximum interest rate which may be charged on loans insured by this Department. The maximum interest rate on HUD/FHA mortgage insurance programs has been raised from 12.00 percent to 12.50 percent for level payment insured home mortgage programs (including operative builder home loan programs), and from 12.25 percent to 12.75 percent for graduated payment home loan programs (GPM). For insured multifamily project mortgage loan programs, the maximum interest rate has been raised from 12.50 percent to 13.00 percent for permanent financing loans. The maximum finance charge on mobile home loans has been raised from 14.00 percent to 15.00 percent, and the finance charge on combination loans for the purchase of a mobile home and a developed/undeveloped lot has been raised from 13.50 percent to 14.50 percent.

The Secretary has determined that such changes are immediately necessary to meet the needs of the market and to prevent speculation in anticipation of a change, in accordance with his authority contained in 12 U.S.C. 1709-1, as amended. The Secretary has, therefore, determined that advance notice and public comment procedures are unnecessary and that good cause exists for making this amendment effective immediately.

This is a procedural and administrative determination as set forth in the statutes and as such does not require a determination of environmental applicability.

List of Subjects

CFR Part 201

Health facilities, Historic preservation, Home improvement, Mobile homes, Manufactured homes and lots.

CFR Part 203

Home improvement, Loan programs, Housing and community development, Mortgage insurance, Solar energy.

CFR Part 207

Mortgage insurance, Rental housing, Mobile home parks.

CFR Part 213

Mortgage insurance, Cooperatives.

CFR Part 220

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

CFR Part 221

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

CFR Part 232

Fire prevention, Health facilities, Loan programs: Health, Loan programs: Housing and community development, Mortgage insurance, Nursing homes, Intermediate care facilities.

CFR Part 234

Condominiums, Mortgage insurance, Homeownership, Projects, Units.

CFR Part 235

Condominiums, Cooperatives, Low and moderate income housing, Mortgage insurance, Homeownership, Grant programs: Housing and community development.

CFR Part 236

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

CFR Part 241

Energy conservation, Mortgage insurance, Solar energy, Projects.

CFR Part 242

Hospitals, Mortgage insurance.

CFR Part 244

Health facilities, Mortgage insurance.

Accordingly, Chapter II is amended as follows:

PART 201—PROPERTY IMPROVEMENT AND MOBILE HOME LOANS

Subpart B—Eligibility Requirements—Mobile Home Loans

1. In § 201.540 paragraph (a) is revised to read as follows:

§ 201.540 Financing charges.

(a) *Maximum financing charges.* The maximum permissible financing charge which may be directly or indirectly paid to, or collected by, the insured in connection with the loan transaction, shall not exceed 15.00 percent simple interest per annum. No points or discounts of any kind may be assessed or collected in connection with the loan transaction, except that a one percent origination fee may be collected from the borrower. If assessed, this fee must be included in the finance charge. Finance charges for individual loans shall be made in accordance with tables of calculation issued by the Commissioner.

* * * * *

Subpart D—Eligibility Requirements—Combination and Mobile Home Lot Loans

2. In § 201.1511, paragraph (a)(1) is revised to read as follows:

§ 201.1511 Financing charges.

(a) * * *

(1) 14.50 percent per annum.

* * * * *

PART 203—MUTUAL MORTGAGE INSURANCE AND INSURED HOME IMPROVEMENT LOANS

Subpart A—Eligibility Requirements

3. In § 203.20 paragraph (a) is revised to read as follows:

§ 203.20 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 12.50 percent per annum with respect to mortgages insured on or after July 11, 1983.

* * * * *

4. In § 203.45 paragraph (b) is revised to read as follows:

§ 203.45 Eligibility of graduated payment mortgages.

* * * * *

(b) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 12.75 percent per annum with respect to mortgages insured on or after July 11, 1983.

* * * * *

5. In § 203.46 paragraph (c) is revised to read as follows:

§ 203.46 Eligibility of modified graduated payment mortgages.

* * * * *

(c) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 12.75 percent per annum with respect to mortgages insured on or after July 11, 1983.

* * * * *

PART 207—MULTIFAMILY HOUSING MORTGAGE INSURANCE

Subpart A—Eligibility Requirements

6. In § 207.7 paragraph (a) is revised to read as follows:

§ 207.7 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor with respect to mortgages receiving initial endorsement (or endorsement in cases involving insurance upon completion) on or after July 11, 1983, which rate shall not exceed:

(1) 13.00 percent per annum with respect to permanent financing;

(2) 12.50 percent per annum with respect to construction financing prior to and including the cutoff date for cost certification.

* * * * *

PART 213—COOPERATIVE HOUSING MORTGAGE INSURANCE

Subpart A—Eligibility Requirements—Projects

7. In § 213.10 paragraph (a) is revised to read as follows:

§ 213.10 Maximum interest rate.

(a) The mortgage or a supplementary loan shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, or the lender and the borrower, with respect to mortgages or supplementary loans receiving initial endorsement (or endorsement in cases involving insurance upon completion) on or after July 11, 1983, which rate shall not exceed:

(1) 13.00 percent per annum with respect to permanent financing;

(2) 12.50 percent per annum with respect to construction financing prior to and including the cutoff date of cost certification.

* * * * *

Subpart C—Eligibility Requirements—Individual Properties Released From Project Mortgage

8. In § 213.511 paragraph (a) is revised to read as follows:

§ 213.511 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 12.50 percent per annum with respect to mortgages insured on or after July 11, 1983.

* * * * *

PART 220—URBAN RENEWAL MORTGAGE INSURANCE AND INSURED IMPROVEMENT LOANS

Subpart C—Eligibility Requirements—Projects

9. In § 220.576 paragraph (a) is revised to read as follows:

§ 220.576 Maximum interest rate.

(a) The loan shall bear interest at the rate agreed upon by the lender and the borrower with respect to loans receiving initial endorsement (or endorsement in cases involving insurance upon completion) on or after July 11, 1983, which rate shall not exceed:

(1) 13.00 percent per annum with respect to permanent financing;

(2) 12.50 percent per annum with respect to construction financing prior to and including the cutoff date of cost certification.

* * * * *

PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE

Subpart C—Eligibility Requirements—Moderate Income Projects

10. In § 221.518 paragraph (a) is revised to read as follows:

§ 221.518 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor with respect to mortgages receiving initial endorsement (or endorsement in mortgages involving insurance upon completion) on or after July 11, 1983, which rate shall not exceed:

(1) 13.00 percent per annum with respect to permanent financing;

(2) 12.50 percent per annum with respect to construction financing prior to and including the cutoff date of cost certification.

Interest shall be payable in monthly installments on the principal amount of the mortgage outstanding on the due date of each installment.

* * * * *

PART 232—NURSING HOMES AND INTERMEDIATE CARE FACILITIES MORTGAGE INSURANCE

Subpart A—Eligibility Requirements

11. In § 232.29 paragraph (a) is revised to read as follows:

§ 232.29 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor with respect to mortgages receiving initial endorsement (or endorsement in cases involving insurance upon completion) on or after July 11, 1983, which rate shall not exceed:

(1) 13.00 percent per annum with respect to permanent financing;

(2) 12.50 percent per annum with respect to construction financing prior to and including the cutoff date of cost certification.

* * * * *

Subpart C—Eligibility Requirements—Supplemental Loans To Finance Purchase and Installation of Fire Safety Equipment

12. In § 232.560 paragraph (a) is revised to read as follows:

§ 232.560 Maximum interest rate.

(a) The loan shall bear interest at the rate agreed upon by the lender and the borrower, which rate shall not exceed 13.00 percent per annum with respect to loans insured on or after July 11, 1983.

* * * * *

PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE

Subpart A—Eligibility Requirements—Individually Owned Units

13. In § 234.29 paragraph (a) is revised to read as follows:

§ 234.29 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 12.50 percent per annum with respect to mortgages insured on or after July 11, 1983.

* * * * *

14. In § 234.75 paragraph (b) is revised to read as follows:

§ 234.75 Eligibility of graduated payment mortgages.

* * * * *

(b) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 12.75 percent per annum with respect to mortgages insured on or after July 11, 1983.

* * * * *

15. In § 234.76 paragraph (c) is revised to read as follows:

§ 234.76 Eligibility of modified graduated payment mortgages.

* * * * *

(c) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 12.75 percent per annum with respect to mortgages insured on or after July 11, 1983.

* * * * *

PART 235—MORTGAGE INSURANCE AND ASSISTANCE PAYMENTS FOR HOME OWNERSHIP AND PROJECT REHABILITATION

Subpart D—Eligibility Requirements—Rehabilitation Sales Projects

16. In § 235.540 paragraph (a) is revised to read as follows:

§ 235.540 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 13.00 percent per annum with respect to mortgages insured on or after July 11, 1983.

* * * * *

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

Subpart A—Eligibility Requirements for Mortgage Insurance

17. In § 236.15 paragraph (a) is revised to read as follows:

§ 236.15 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor with respect to mortgages receiving initial endorsement (or endorsement in cases involving insurance upon completion) on or after July 11, 1983, which rate shall not exceed:

(1) 13.00 percent per annum with respect to permanent financing;

(2) 12.50 percent per annum with respect to construction financing prior to and including the cutoff date for cost certification.

* * * * *

PART 241—SUPPLEMENTARY FINANCING FOR INSURED PROJECT MORTGAGES

Subpart A—Eligibility Requirements

18. Section 241.75 is revised to read as follows:

§ 241.75 Maximum interest rate.

(a) The loan shall bear interest at the rate agreed upon by the lender and the borrower with respect to loans insured on or after July 11, 1983, which rate shall not exceed:

(1) 13.00 percent per annum with respect to permanent financing;

(2) 12.50 percent per annum with respect to construction financing prior to and including the cutoff date for cost certification.

Interest shall be payable in monthly installments on the principal then outstanding.

PART 242—MORTGAGE INSURANCE FOR HOSPITALS

Subpart A—Eligibility Requirements

19. In § 242.33 paragraph (a) is revised to read as follows:

§ 242.33 Maximum interest rate.

(a) The mortage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor with respect to mortgages receiving initial endorsement (or endorsement in cases involving insurance upon completion) on or after July 11, 1983, which rate shall not exceed:

(1) 13.00 percent per annum with respect to permanent financing;

(2) 12.50 percent per annum with respect to construction financing prior to and including the cutoff date for cost certification.

Interest shall be payable in monthly installments on the principal then outstanding.

* * * * *

PART 244—MORTGAGE INSURANCE FOR GROUP PRACTICE FACILITIES

Subpart A—Eligibility Requirements

20. In § 244.45 paragraph (a) is revised to read as follows:

§ 244.45 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor with respect to mortgages receiving initial endorsement (or endorsement in cases involving insurance upon completion) on or after July 11, 1983, which rate shall not exceed:

(1) 13.00 percent per annum with respect to permanent financing;

(2) 12.50 percent per annum with respect to construction financing prior to and including the cutoff date for cost certification.

* * * * *

(Sec. 3(a), 82 Stat. 113; 12 U.S.C. 1709–1; sec. 7, Department of Housing and Urban Development Act, 42 U.S.C. 3535(d))

Dated: July 8, 1983.

Philip Abrams,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 83-19403 Filed 7-18-83; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 7900]

Income Tax; Investment Credit for Single Purpose Agricultural or Horticultural Structures

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the investment credit for single purpose agricultural or horticultural structures. This action is necessary because of changes to the applicable tax law made by the Revenue Act of 1978 and the Economic Recovery Tax Act of 1981. The regulations provide the public with the guidance needed to comply with this legislation.

DATES: In general, the amendments are effective on July 18, 1983, and apply to open taxable years ending after August 15, 1971.

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

SUPPLEMENTARY INFORMATION:

Background

This document contains final amendments to the Income Tax Regulations (26 CFR Part 1) under section 48(a)(1) (D) and (p) of the Internal Revenue Code, relating to the investment credit for single purpose agricultural or horticultural structures. These regulations were published in proposed form in the **Federal Register** on January 23, 1981 (46 FR 7397). A number of comments were received suggesting various changes to the proposed amendments, and a public hearing was held on June 25, 1981. With several revisions, the proposed amendments are adopted by this Treasury decision.

Effective Date

The proposed regulations provided that the investment credit for single purpose agricultural and horticultural structures was available for open taxable years ending after August 15, 1971. This provision was based on *United States v. Zacks*, 375 U.S. 59 (1963), and Rev. Rul. 79–343, 1979–2 C.B. 18. Nevertheless, a number of comments suggested on grounds of equity that the credit should be retroactive to August 15, 1971, without regard to the statute of limitations, since the legislative history showed that Congress in 1978 only clarified the intent of Congress in 1971. The *Zacks* decision was cited in support of this view, since the decision focused on a case-by-case approach based on the specific statute and legislative history.

The recommendation of these comments was effectively disposed of in a recent Court of Claims order that examined the retroactivity issue in light of *Zacks* and concluded that the credit was only available for open years after 1971. *Gebhardt* v. *United States*, 225 Ct. Cl. 612 (1980), 80–2 U.S.T.C. ¶ 9687. On the basis of prior case law, *Gebhardt* interpreted *Zacks* to require application of the normal limitations period absent sound evidence of a contrary intent. The *Gebhardt* court found that, as in *Zacks*, the 1978 "clarifying amendment" did not expressly waive the statute of limitations. Nor did the legislative history indicate such an intent. In both cases, Congress disagreed with the Service's interpretation of a statute and expressed concern over the resulting litigation. These concerns did not conclusively demonstrate a Congressional intent to waive the statute of limitations, nor could such an intent be inferred from the fact that the change was made retroactively applicable to past years. On the basis of *Gebhardt*, the final regulations apply only to open taxable years ending after August 15, 1971.

Specifically Designed and Constructed

The proposed regulations state that single purpose agricultural or horticultural structures must be specifically designed and constructed exclusively for permissible purposes. Proposed § 1.48–10 (b)(1)(i) and (c)(1)(i). A structure is specifically designed and constructed if it is economically impractical to use the structure for purposes other than the one for which it originally qualified for the credit. Proposed § 1.48–10(d).

One of the comments essentially argued that the specific design rule should be rejected, and that a structure should qualify if the taxpayer intended to use it for a qualifying purpose. Since the statute on its face mandates a specific design rule, the suggestion was rejected. Other comments, however, accepted the specific design rule but contended that the economic impracticality test was imprecise and overly narrow, essentially requiring that the structure be useless for other purposes. Since it was not intended that the test be applied in such a fashion, the provision has been revised in the final regulations. The key inquiry in the revised test is whether the structure is designed and constructed for a particular permissible purpose in such a way that it would not make economic sense, prospectively, to build such a structure and then use it for another purpose. For example, a structure designed and constructed for raising hogs, with farrowing stalls specifically designed for hogs, a sloping floor, and other specifications necessary for or convenient to that activity, will satisfy the specific design and construction test since it would not make economic sense to build such a structure and then use it for another purpose. Because the additional exclusivity requirement adds little to the specific design and construction rule, it is deleted from the final regulations.

Specifically Used: Exclusive Use

The proposed regulations state that a structure must be used exclusively for permissible purposes, and only for the *particular* permissible purpose for which it originally qualified. Proposed § 1.48–10(e)(1). Incidental use for storage of feed or machinery, however, will not disqualify the structure. The proposed regulations defined "incidental use" as a use which is both "minor and related to the qualifying purpose." Proposed § 1.48–10(e)(1)(ii). Two comments suggested that this definition of incidental use is too vague, and recommended a safe harbor rule defining "minor" as a specified percentage of the structure's space. A definition of "related" was also suggested. The final regulations amend the definition of "incidental use" to permit storage if that use is both related and subordinate to the qualifying purpose of the structure. Use of a dairy structure for storing feed for dairy cattle for example, satisfies the requirement that the storage function be related to the qualifying purpose (here, operating a dairy facility). Storing feed within the dairy structure for purposes other than feeding the cattle served by the structure will disqualify the structure, however, since the storage function is not subordinate to the dairy activity conducted in the structure. All of the facts and circumstances must be considered in determining whether the storage function is subordinate to the qualifying purpose. Examples of pertinent factors are included in the final regulations at § 1.48–10(e)(1)(ii)(A)–(E). The word "minor" is deleted in the final regulations in order to remove the inference that there is an inflexible quantitative limitation on the size of the storage area. Although the final regulations create a presumption that the storage function is not subordinate to the qualifying purpose if more than a third of the structure's total usable volume is devoted to storage, the taxpayer in such a case is permitted to show on the basis of clear and convincing evidence that the storage function is nonetheless subordinate.

Required Equipment

The proposed regulations provide that agricultural structures (but not horticultural structures) must contain "equipment necessary to house, raise, and feed the livestock . . . ." Proposed § 1.48–10(b)(1)(iii). Such equipment must be integral to the structure, in the sense that it is economically impractical to use the structure for another purpose once the equipment is installed. Proposed § 1.48–10(b)(4). One of the comments objected to the basic rule of required equipment, noting that some agricultural structures require little or no equipment. Since the statute clearly states that required equipment is necessary, such structures simply will not qualify. Another comment challenged the economic impracticality test, contending that it was almost impossible to apply and inconsistent with the rule that the life of the structure need not be contemporaneous with that of the equipment it houses. Since the economic impracticality test is subject to misunderstandings and may be difficult to apply, it is deleted in the final regulations, which instead provide that required equipment is an integral part of the structure if it is physically attached to or a part of the structure.

Permissible Purposes of Agricultural Structures

Section 1.48–10(b)(2)(i) is amended in the final regulations to clarify that, while the taxpayer has the option to use an agricultural structure to house produce, the structure cannot be used solely to house produce but must also be used to house, raise, and feed livestock. See § 1.48–10(b)(3) for this rule, along with new clarifying language on the distinction between livestock and produce.

Special rules apply to dairy facilities, which qualify even though they are not used to house, raise and feed livestock. It is sufficient if the milking of dairy cattle is carried on in the facility. Because one of the comments reflected confusion on this point, the final regulations provide that facilities used solely for milk storage, including separate structures where raw milk is cooled and stored but not processed, do not qualify. This provision is based on the general rule that structures used solely to house produce are ineligible for the credit. Although one comment suggested that milk storage structures should be included because they are integral to permissible purposes, there is no statutory support for such a rule.

Livestock; Particular Type of Livestock

The definition of "livestock" in the proposed regulations does not include horses. Several comments urged that horses be included, and pointed out that the definition employed is drawn from § 1.48–1(l), which interprets section 48(a)(6). That provision states that livestock other than horses shall be considered section 38 property. Section 48(p)(6), which addresses the meaning of "livestock" for purposes of the credit for single purpose livestock structures, contains no such exclusion, and many sections of the Code include horses. It was pointed out that investment credit rules for livestock are not necessarily applicable to the investment credit for structures.

The final regulations follow the proposed regulations in excluding horses from the definition of livestock, with a minor clarification. Section 48(p)(6) is not an independent definition of livestock, but merely supplements the definition in section 48(a)(6). Absent a specific indication of a contrary legislative intent, it is reasonable to rely on Congress' general treatment of livestock for investment credit purposes when interpreting this specific application of the credit.

Several comments objected to the provision in proposed § 1.48–10(b)(3)(ii) that a livestock structure qualfies only if used to house, raise, and feed one particular type of livestock. The rule has not been changed because section 48(p)(2)(A) speaks of structures used for "a particular type of livestock." In addition, the Conference Report notes, as an example of the exclusive use requirement, that "a hog structure will not be eligible if it is used for * * * poultry or cattle * * *." H.R. Rept. No. 95–1800, 95th Cong., 2d Sess. 227, 1978–3 C.B. 521, 561.

Recapture of Credit

Under proposed § 1.48–10(g), the investment credit will be recaptured if, within a specified period, the taxpayer ceases to use the structure for the specific use by reason of which the structure qualified for the credit. Thus, for example, the credit will be recaptured if the structure is used to house, raise, and feed a type of livestock other than the one for which it originally qualified. The comments contended that this rule is unrealistic in light of volatile livestock markets which require flexible livestock operations. Section 48(p)(5), however, clearly applies a special recapture rule to these structures, and mandates recapture even if the new use is one for which the structure could have originally qualified. *See also* H.R. Rep. No. 95–1800, 95th Cong., 2d Sess. 227–28, 1978–3 C.B. 521, 561–62 (Conference Report). Accordingly, the recapture provision was not changed except for a minor revision to reflect an amendment to section 47 made by the Economic Recovery Tax Act of 1981.

Relation to Section 48(a)(1)(B)

The proposed regulations provided that property meeting the requirements of section 48 (a)(1)(B) and (a)(1)(D) would be considered to qualify only under the latter clause. In response to the comments, the final regulations

provide that structures satisfying the requirements of section 48 (a)(1)(B) and (a)(1)(D) will be considered to qualify under either provision.

Relationship to 1245 and 1250

Many comments objected to § 1.48–10 (h)(2) of the proposed regulations, which characterized single purpose structures as section 1250 property. While sections 201(b) and 209(a) of the Economic Recovery Tax Act of 1981 require that structures placed in service after December 31, 1980, be treated as section 1245 property, the Senate Report stated "that no inference should be made as to the treatment under present law of these single purpose structures. . . ." S. Rep. 97–144, 97th Cong., 1st Sess. 49 (1981). On the basis of a careful review of the comments, however, the final regulations provide that structures qualifying under section 48(a)(1)(D), placed in service before January 1, 1981, are also section 1245 property. In addition, the regulations provide that taxpayers who did not use rapid depreciation methods authorized only for section 1245 property on structures placed in service before 1981 have the option to treat the structures as section 1250 property for purposes of depreciation recapture. Otherwise, taxpayers who heretofore considered these structures section 1250 property would face the unanticipated possibility of recapture of all depreciation. If the property was placed in service in a year now closed, moreover, these taxpayers would be unable to retroactively take advantage of accelerated methods of depreciation available for section 1245 property.

Notice of Proposed Rulemaking Not Needed To Reflect ERTA Amendment

As explained above, the characterization of single purpose structures acquired after December 31, 1980, as section 1245 property is based on an amendment made by the Economic Recovery Tax Act of 1981 (ERTA). While this specific change was not reflected in the notice of proposed rulemaking, a separate notice is unnecessary for several reasons. First, the section 1245 issue was thoroughly discussed in the notice. In addition, the change based on ERTA merely reflected, without interpretation, the prospective amendment to section 1245. Finally, the change based on ERTA could not operate to the disadvantage of any taxpayers.

Executive Order 12291 and Regulatory Flexibility Act

The Commissioner of Internal Revenue has determined that this final rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. The Secretary of the Treasury has certified that this rule will not have a significant economic impact on a substantial number of small entities. A Regulatory Flexibility Analysis is, therefore, not required because the economic and any secondary or incidental impact of the regulations flows directly from the underlying statute.

Drafting Information

The principal author of these final regulations is Duane H. Pellervo 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 regulations, both on matters of substance and style.

List of Subjects in 26 CFR 1.0–1 Through 1.58–8

Income taxes, Tax liability, Tax rates, Credits.

Adoption of amendments to the regulations

PART 1—[AMENDED]

Accordingly, 26 CFR Part 1 is amended as follows:

New § 1.48–10 is added after § 1.48–9, to read as follows:

§ 1.48–10 Single purpose agricultural or horticultural structures.

(a) *In general*—(1) *Scope.* Under section 48(a)(1)(D), "section 38 property" includes single purpose agricultural and horticultural structures, as defined in section 48 (p) and paragraphs (b) and (c) of this section. These structures are subject to a special rule for recapture of the credit. See paragraph (g) of this section. For the relation of this section to section 46(a)(1)(B) (other tangible property) and to sections 1245 and 1250 (depreciation recapture), see paragraph (h) of this section.

(2) *Effective date.* The provisions of section 48(a)(1)(D) and this section apply to open taxable years ending after August 15, 1971.

(b) *Definition of single purpose agricultural structure*—(1) *In general.* Under section 48(p)(2), a single purpose agricultural structure is any structure or enclosure that meets all of the following requirements:

(i) It is specifically designed and constructed for permissible purposes (as defined in paragraph (b)(2) of this section). See paragraph (d) of this section for the rule regarding "specifically designed and constructed".

(ii) It is specifically used exclusively for those permissible purposes. See paragraph (e) of this section for the rules regarding "specifically used".

(iii) It houses equipment necessary to house, raise, and feed livestock and their produce. See paragraph (b)(3) and (4) of this section.

(2) *Permissible purposes.* The following are the only permissible purposes for a single purpose agricultural structure:

(i) Housing, raising, and feeding a particular type of livestock and, at the taxapayer's option, its produce. The term "housing, raising, and feeding" includes the full range of livestock breeding and raising activities, including ancillary post-production activities (as defined in paragraph (f) of this section). Thus, for example, use of a structure for breeding livestock, or for producing eggs or livestock, is permitted. The structure may also be used for storing feed or machinery, but more than strictly incidental use for these purposes will disqualify the structure. See paragraph (e)(1) of this section. For the special rule concerning the permissible purposes for a milking parlor, see paragraph (b)(2)(iii) of this section.

(ii) Housing required equipment (including any replacements) as defined in paragraph (b)(4) of this section.

(iii) If the structure is a dairy facility, it will qualify if it is used for: (A) activities consisting of the production of milk or of the production of milk and the housing, raising, or feeding dairy cattle, and (B) housing equipment (including any replacements) necessary for these activities. The term "housing, raising, or feeding" includes the full range of dairy cattle breeding and raising activities including ancillary post-production activities (as defined in paragraph (1) of this section). The structure may also be used for storing feed or machinery, but more than incidental use for these purposes will disqualify the structure. See paragraph (e)(1) of this section.

(3) *Livestock; particular type of livestock*—(i) *Livestock.* Livestock qualifying as "section 38 property" under § 1.48–1(l) constitutes livestock for purposes of this section. Thus, for example, horses are not livestock for purposes of this section since they do not qualify as "section 38 property" under § 1.48–1(l). Under section 48(1)(p)(8) poultry constitutes livestock for purposes of section 48(a)(1)(D). The term "livestock" includes the offspring of livestock.

"Livestock" is distinguished from the produce of livestock, such as milk and

eggs held for sale. For purposes of this section, eggs held for hatching and newborn livestock are considered livestock. A structure used solely to house produce of livestock or equipment necessary to house produce of livestock will not qualify as a single purpose agricultural structure. Thus, for example, a dairy facility used solely for storing milk will not qualify.

(ii) *Particular type of livestock.* A structure qualifies as a single purpose agricultural structure only if it is specifically designed, constructed, and used exclusively for permissible purposes with respect to one particular type of livestock. For purposes of this section, each species is a different type except that all species of poultry are considered to be of a single type. Thus, for example, a structure specifically designed and constructed as a single purpose hog-raising facility will not qualify if it is used to raise dairy cows, but a structure specifically designed, constructed, and used to raise poultry may house, raise, and feed both chickens and turkeys.

(4) *Required equipment rule.* (i) A single purpose agricultural structure must also house equipment necessary to house, raise, and feed the livestock ("required equipment"). Required equipment must be an integral part of the structure, and includes, but is not limited to, equipment necessary to contain the livestock, to provide them with water or feed, and to control the temperature, lighting, and humidity of the interior of the structure. For purposes of this section, equipment is an integral part of the structure if it is physically attached to or a part of the structure. The useful life of the structure, however, need not be contemporaneous with the life of the equipment it houses. A structure without required equipment is not a single purpose agricultural structure.

(ii) A single purpose agricultural structure may, but is not required to, house equipment (for example, loading chutes) necessary to the conduct of ancillary post-production activities as defined in paragraph (e) of this section.

(5) *Livestock structure.* In section 48(p)(2), the terms "single purpose livestock structure" and "single purpose agricultural structure" are interchangeable.

(c) *Definition of single purpose horticultural structure*—(1) *In general.* Under section 48(p)(3), a single purpose horticultural structure is any structure that meets both of the following requirements:

(i) It is a greenhouse or other structure specifically designed and constructed for permissible purposes (as defined in paragraph (c)(2) of this section). See paragraph (d) of this section for the rule regarding "specifically designed and constructed."

(ii) It is specifically used exclusively for those permissible purposes. See paragraph (e) of this section for the rules regarding "specifically used."

(2) *Permissible purposes.* The following are the only permissible purposes for a single purpose horticultural structure:

(i) The commercial production of plants (including plant products such as flowers, vegetables, or fruit) in a greenhouse.

(ii) The commercial production of mushrooms.

(iii) A single purpose horticultural structure also may, but is not required to, house equipment necessary to carry out these permissible purposes listed in paragraph (c)(2) (i) and (ii) of this section.

(3) *Ancillary post-production activities.* The terms "commercial production of plants" and "commercial production of mushrooms" include ancillary post-production activities (as defined in paragraph (f) of this section).

(d) *Specifically designed and constructed.* A structure is specifically designed and constructed if it is not economic to design and construct the structure for the intended qualifying purpose and then use the structure for a different purpose. For example, if a hog raising structure is designed and constructed in accordance with a standard set of plans for such a structure provided by the Department of Agriculture, it would not be economic to use the structure for purposes other than hog raising.

(e) *Specifically used.* There are two aspects of the specific use requirement—exclusive use and actual use.

(1) *Exclusive use.* (i) A structure qualifies as a single purpose agricultural or horticultural structure only if it is used exclusively for the permitted purposes by reason of which it qualified for the credit. Thus—

(A) The structure may not be used for any nonpermissible purposes (for example, processing, marketing, or more than incidental use for storing feed or equipment) and

(B) It may not be put to any use other than the specific use by reason of which it qualifies for the credit.

(ii) For purposes of this section, the term "incidental use" means a use which is both related and subordinate to the qualifying purpose. Thus, for example, if feed is stored in an agricultural structure which will be used for raising hogs, the feed must be used only for the hogs in order to be related to the qualifying purpose. In determining whether use of the structure for feed storage is subordinate to the qualifying purpose, all of the facts and circumstances must be considered, including, with respect to feed storage, the following:

(A) Type of animal involved;

(B) Number of, and consumption rate for, each animal;

(C) Climate of area;

(D) Total volume of storage area; or

(E) Percentage of structure's total volume devoted to storage.

(iii) It will be presumed that the storage function is not subordinate to the qualifying purpose of the structure if more than one-third of the structure's total usable volume is devoted to storage. This presumption may be rebutted with clear and convincing evidence.

(iv) A structure may fail the exclusive use test if either of the requirements of paragraph (e)(1)(i) of this section is not met. Thus, for example, a horticultural structure that contains an area for processing plants or plant products will fail the exclusive use test because there is a nonpermissible use. An agricultural structure that is used to house more than one particular type of livestock fails the exclusive use test for the same reason. A change in the use of an agricultural structure from one species of livestock to another will cause the structure to fail the exclusive use test when the change occurs. Thus, for example, a hog-raising facility which qualified for the credit when it was placed in service cannot later be modified and used for producing broiler chickens even if the structure would have qualified for the credit if it had been originally designed, constructed, and used exclusively for producing broiler chickens.

(2) *Actual use.* (i) A single purpose agricultural or horticultural structure also must actually be used for the permissible purpose by reason of which it qualifies for the credit "Actual use" means "placed in service" (as defined in § 1.48–3 (d)). Mere vacancy, on a temporary basis, will not disqualify the structure. Thus, for example, a structure that is designed and constructed as a hog-raising structure will not qualify if it is never placed in service for raising hogs. However, a turkey-raising facility will not be disqualified if the turkeys are all sent to a packing plant in November and the structure remains vacant until the next spring when newly hatched turkeys are placed in the structure to be raised.

(ii) For purposes of this section, "vacancy on a temporary basis"

includes temporary vacancy caused by market fluctuations or other economic considerations and vacancy on a seasonal basis.

(f) *Work space; ancillary post-production activities*—(1) *Permissible work space.* Under section 48(p)(4), a single purpose agricultural or horticultural structure may contain work space only if it is used for—

(i) Stocking, caring for, or collecting livestock, plants, or mushrooms,

(ii) Maintenance of the structure, or

(iii) Maintenance or replacement of the equipment or stock enclosed by or contained in the structure. Thus, for example, an eligible structure may not contain space devoted to processing or marketing or other nonpermissible purposes.

(2) *Ancillary post-production activities.* The term "stocking, caring for, or collecting" the livestock, plants, or mushrooms includes ancillary post-production activities. These activities, therefore, constitute permissible purposes when carried on in conjunction with other permissible purposes, and a qualifying structure may contain work space devoted to such activities. Ancillary post-production activities include gathering, sorting, and loading livestock, plants, and mushrooms and packing unprocessed plants, mushrooms, and the live offspring and unprocessed produce of the livestock. Ancillary post-production activities do not include processing activities, such as slaughtering or packing meat, nor do they include marketing activities.

(g) *Special rule for recapture under section 47.* Under section 48(p)(5), if a structure which qualifies for the credit under this section becomes ineligible because it ceases to be held for the specific use by reason of which it qualified (or it is used for other than that qualifying use) before the end of the applicable estimated useful life or period specified in section 47(a), then the investment credit previously allowed with respect to the structure may be partially or entirely recaptured under section 47. Unlike other property to which section 47 applies, single purpose structures may not be converted from one permissible use to another without recapture. See subparagraph (e)(2) of this section.

(h) *Relationship to other sections*—(1) *Relation to section 48(a)(1)(B).* All structures satisfying the requirements of section 48(a)(1)(B) and (a)(1)(D) will be considered to qualify under either provision.

(2) *Relationship to sections 1245 and 1250.* For purposes of depreciation recapture, property to which section 48(a)(1)(D) applies is section 1245 property, except that property placed in service prior to January 1, 1981, may, at the option of the taxpayer, be treated as section 1250 property if depreciation deductions allowed were not under one of the methods authorized only for section 1245 property.

(i) [Reserved]

(j) *Examples.* The provisions of this section may be illustrated by the following examples:

Example (1). A constructs a rectangular structure for use as an egg-producing facility. The structure has no windows. The walls and roof are made of corrugated steel and there is a door which is 4 feet wide and 8 feet tall at each end of the structure. At the end of each wall are louvered openings approximately 4 feet high and 8 feet long. These openings house thermostatically controlled fans. In the center of the walls are manually operated fresh-air openings. Corrugated steel "curtains" hang from the top of the openings so that the openings can be completely closed in cold weather, but the curtains can be propped open to admit fresh air. The building is well insulated. A has reinforced the roof with extra trusses and rafters and reinforced the building with extra wall studs. Two rows of cages are suspended from the rafters by thin steel girders and wires. The floor of the structure is a sloping concrete slab perced with long troughs which run the length of the structure beneath the cages. The troughs are used for collection and disposal of chicken wastes. When this structure is placed in service it will qualify for an investment credit under this section.

Example (2). B constructs a greenhouse for the commercial production of plants. The greenhouse is a rectangular structure with translucent fiberglass walls and roof. The structure is equipped with an automatic temperature and humidity control system. Pipes were installed to carry water and liquid fertilizer to the plants and to release minute amounts of carbon dioxide into the air. When the structure was originally placed in service B used the entire structure for growing flowers commercially. In September 1978, B began to use the structure for growing tomatoes. Because of the success of the venture, in January 1979, B began to use the entire structure for growing tomatoes. In February 1980, B set up a small counter with a cash register at one end of the structure so that workers could sell tomatoes to customers at the greenhouse. Until February 1980, the structure would qualify for the credit under this section. The change in use from growing flowers to growing tomatoes will not affect the eligibility of the structure. Once the cash register is installed, however, the structure fails to meet both the exclusive use test of paragraph (e)(1) of this section and the work space rule of paragraph (f) of this section since a single purpose structure may not be used for marketing activities.

Example (3). C purchases a prefabricated structure and makes modifications so that the structure will meet C's requirements. C adds gates and constructs a partition which divides the structure into two parts. One part of the structure constitutes less than one-third of the total usable volume of the structure and is used to house feeder cattle while they are fed with hay. This part of the structure has a sloping concrete floor. The other part of the structure constitutes more than two-thirds of the total usable volume of the structure and is used to store the hay used to feed the cattle. This structure will not qualify for the credit since it fails the required equipment test. The structure does not contain equipment which is an integral part of the structure. This structure also fails the "specifically designed and constructed" test of paragraph (d) of this section since it would be economic to use the structure for purposes other than housing, raising, and feeding cattle (such as a general purpose barn, for example). Finally, the structure fails the incidental use test of paragraph (e) of this section because the storage function is presumptively not subordinate to the qualifying purpose since more than two-thirds of the structure's total usable volume is devoted to storage and none of the facts will serve to rebut the presumption.

This Treasury decision is issued under the authority contained in Code sections 7805 (68A Stat. 917, 26 U.S.C. 7805) and 38 (b)(76 Stat. 926, 26 U.S.C. 38).

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: May 23, 1983.

John E. Chapoton,

Assistant Secretary of the Treasury.

[FR Doc. 83-19372 Filed 7-18-83; 8:45 am]

BILLING CODE 4830-01-M

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26 CFR Part 301

[T.D. 7899]

Administrative Summonses

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final regulations relating to administrative summonses. Changes to the applicable tax law were made by the Tax Reform Act of 1976. These regulations provide necessary guidance to the public for compliance with the Act and affect persons who receive summonses and persons with respect to whose tax liability a summons is issued.

DATE: The regulations apply to and are effective generally with respect to summonses issued after February 28, 1977.

FOR FURTHER INFORMATION CONTACT: Philip R. Bosco 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) 202-566-3238. Not a toll-free call.

SUPPLEMENTARY INFORMATION: On August 21, 1980, the Federal Register published proposed amendments to the Regulations on Procedure and Administration (26 CFR Part 301) under sections 7609 and 7610 of the Internal Revenue Code of 1954 (45 FR 55764). The amendments were proposed to conform the regulations to section 1205 of the Tax Reform Act of 1976 (90 Stat. 1699). No requests for a public hearing were received and accordingly none was held. After consideration of all written comments regarding the proposed amendments, these amendments are adopted as revised by this Treasury decision.

The regulations contain a reference to amendments to section 7609 made by the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97-248). This reference has been added to the regulations in order to alert taxpayers that section 7609 has been amended since the time it was originally enacted. However, the regulations do not provide guidance with respect to these amendments. This guidance will be provided in a later regulations project.

Summonses to Third-Party Recordkeepers

Generally, when a summons is served upon a third-party recordkeeper to examine records, section 7609(a) requires that notice be given of the service of the summons to the taxpayer or other person to whom the summoned records pertain (the notified person). The proposed regulations contain interpretative guidelines as to the circumstances under which notice is required to be given under section 7609(a). They also contain guidelines as to when and to what extent examination of the summoned records is restricted after such notice is given and as to the period during which the statute of limitations for civil and criminal liability may be suspended.

Fees for Witnesses

Under section 7610, the Secretary is authorized to pay witness fees and mileage when a witness is required to appear in response to a summons and authorizes the Secretary to reimburse a summoned party (other than the taxpayer or his representatives) for direct costs incurred in locating, copying and transporting any summoned records (other than records in which the taxpayer has a proprietary interest). Such payments and reimbursements are to be at rates, and subject to such conditions, as may be prescribed in regulations. The proposed regulations prescribe the rates and conditions under which such payments and reimbursements may be paid.

Third-Party Recordkeeper Status

The proposed regulations provide one example with respect to when third-party recordkeeper status arises. This Treasury decision retains that example and adds another to clarify that a credit card issuer is a third-party recordkeeper with respect to records relating to transactions involving the use of the issuer's credit card, in transactions between the person to whom the summoned records pertain and the credit card issuer.

Fees and Costs

The proposed regulations provide reimbursement to the third-party recordkeeper for search costs and reproduction costs at a rate of $5.00 per person hour and $.10 per page respectively. Several comments suggested increasing those rates to reflect the rate established by the Federal Reserve Board under the Right to Financial Privacy Act. That suggestion is not adopted in this Treasury decision. However, this Treasury decision raises the search costs to $8.50 per hour and reproduction costs to $.20 per page. These revised rates will be effective for summonses issued after July 19, 1983.

Public Comments

Several public comments were received in response to the notice of proposed rulemaking. These comments resulted in only one clerical change to the proposed regulations. Other suggestions were not adopted because their adoption would be beyond the scope of the statute or would make this regulation unduly long and complex.

Special Analyses

The Commissioner of Internal Revenue has determined that this final rule is not a major rule as defined in Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required. Because this regulation was proposed prior to the adoption of the Regulatory Flexibility Act, a regulatory flexibility analysis is not required.

Drafting Information

The principal author of these regulations was Philip R. Bosco 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 301

Administrative practice and procedure, Bankruptcy, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Penalties, Pensions, Statistics, Taxes, Disclosure of information, Filing requirements.

Adoption of Amendments to the Regulations

Accordingly, after careful consideration of all comments received the amendments to the regulations proposed in 45 FR 55764 are adopted as set forth below:

PART 301—[AMENDED]

Sections 301.7609-1, 301.7609-2, 301.7609-3, 301.7609-4, 301.7609-5, and 301.7610-1 are revised to read as follows:

§ 301.7609-1 Special procedures for third-party summonses.

Section 7609 requires the Internal Revenue Service to follow special procedures when summoning the records of persons defined by section 7609(a)(3) as "third-party recordkeepers." Under these special procedures, the person about whom information is being gathered must be notified in advance in many cases. If the person about whom information is being gathered has received a notice and requests the recordkeeper not to comply with the summons, the Service must obtain a court order or the consent of the person staying compliance with the summons before it can obtain the information. During the time the validity of the summons is being litigated, the statutes of limitations are suspended under section 7609(e). Section 7609 does not restrict the authority under section 7602 (or under any other provision of law) to examine records and witnesses without serving a summons and without giving notice of an examination. Sections 301.7609-1 through 301.7609-5 related to section 7609; § 301.7609-2, discusses matters under section 7609(a)(3), relating to third-party recordkeepers; § 301.7609-3 discusses matters under section 7609(b), relating to intervention rights; § 301.7609-4 discusses matters under section 7609(c), relating to summonses excepted from the section 7609 procedures; and § 301.7609-5 discusses matters under section 7609(e), relating to the

suspension of the statute of limitations. Generally, section 7609 and its regulations are effective for summonses issued after February 28, 1977. For new rules relating to summonses issued after December 31, 1982, see subsections (a)(1), (a)(3), (b), (d), (h), and (i), of section 7609.

§ 301.7609-2 Third-party recordkeepers.

(a) *Definitions*—(1) *Accountant.* A person is an "accountant" under section 7609(a)(3)(F) for purposes of determining whether that person is a third-party recordkeeper if the person is registered, licensed, or certified under State law as an accountant.

(2) *Attorney.* A person is an "attorney" under section 7609 (a)(3) (E) for purposes of determining whether that person is a third-party recordkeeper if the person is admitted to the bar of a State.

(3) *Credit cards*—(i) *Person extending credit through credit cards.* The term "person extending credit through the use of credit cards or similar devices" under section 7609 (a)(3)(C) generally includes any person who issues a credit card. It does not include a seller of goods or services that honors credit cards issued by other parties but does not extend credit on the basis of credit cards or similar devices issued by itself.

(ii) *Similar devices to credit cards.* An object is a "similar device" to a credit card under section 7609 (a)(3)(C) only if it is physical in nature, such as a coupon book, a charge plate, or a letter of credit. Thus, a person who extends credit by requiring credit customers to sign sales slips without requiring use of physical objects issued by that person is not a third-party recordkeeping under section 7609 (a) (3) (C).

(b) *When third-party recordkeeper status arises*—(1) *In general.* A person is a "third-party recordkeeper" with respect to a given set of records only if the person made or kept the records in the person's capacity as a third-party recordkeeper. Thus, for instance, an accountant is not a third-party recordkeeper (by reason of being an accountant) with respect to the accountant's records of a sale of property by the accountant to another person. Similarly, a credit card issuer is not a third-party recordkeeper (by reason of being a person extending credit through the use of credit cards or similar devices) with respect to—

(i) Records relating to noncredit card transactions, such as a cash sale by the issuer to a holder of the issuer's credit card; or

(ii) Records relating to transactions involving the use of another issuer's credit card.

(2) *Examples.* The rules of paragraph (b)(1) of this secton may be illustrated by the following examples:

Example (1). V issues a credit card (the V card) that is honored by R, a retailer. When using the V card, C signs a sales slip in triplicate. C, R, and V each retain one copy. Only the copy held by V is held by a third-party recordkeeper under section 7609 (a)(3), even though R may issue its own credit card.

Example (2). Assume the same facts as in example (1), except R does issue its own credit card to C (the R card). When C makes a credit purchase from R using the R card, C signs a sales slip in duplicate. C and R each retain one copy. Because R keeps the copy in its capacity as credit card issuer, as well as in its capacity as seller, it is a third-party recordkeeper under section 7609 (a)(3) with respect to that copy.

§ 301.7609-3 Right to intervene; right to stay compliance.

(a) *Notified person.* Under section 7609(a), the Internal Revenue Service must give a notice of summons to any person, other than the person summoned, who is identified in the description of the books and records contained in the summons in order that such person may stay compliance pending litigation of the right of the Service to examine the summoned records. Thus, if the Service issues a summons to a bank requesting checking account records of more than one person all of whom are identified in the description of the records contained in the summons, then all such persons are notified persons entitled to notice under section 7609(a). Therefore, if the Service requests the records of a joint bank account of A and B both of whom are named in the summons, then both A and B are notified persons entitled to notice under section 7609(a).

(b) *Right to stay compliance.* Section 7609(b) grants a notified person the right to stay compliance with the summons to give a court of competent jurisdiction an opportunity to rule on the right of the Service to examine the summoned records. In order to stay compliance, the notified person (or the notified person's agent, nominee, or other person acting under the direction on control of the notified person) must give to the summoned person a written notice not to comply with the summons. In addition, the notified person (or the notified person's agent, nominee, or other person acting under the direction or control of the notified person) must send a copy of that notice by reigistered or certified mail to the Service employee and office designated to receive that copy in the notice of summons that was given to the notified person. The notice not to comply must be given to the summoned party, and a copy of the notice not to comply must be sent by mail to the Service not later than 14 days after the notified person is given notice of the issuance of the summons. Failure to give timely notice to either the summoned party or the Service or failure to give notice in the manner described in this paragraph means that compliance is not stayed. Thus, for example, if the notified person gives a copy of the notice to stay compliance to the summoned person but not to the designated Service employee and office, compliance is not stayed. Similarly, if the notified person gives a copy of such a notice to the summoned person but, instead of sending a copy of the notice by registered or certified mail to the designated employee and office, the notified person gives the designated employee and office the notice by some other means, compliance is not stayed.

(c) *Presumption no notice has been mailed.* Section 7609(b)(2)(B) permits a notified person to stay compliance by notifying the Service and the summoned person. If the notified person does not notify the Service in the appropriate manner, the summons must be obeyed, unless there are valid legal objections for noncompliance. If the copy of the notification not to comply has not been delivered to the person and office designated to receive the notice on behalf of the Service within 3 days from the close of the 14-day period allowed for the notice, it is presumed that the notification has not been timely mailed.

§ 301.7609-4 Summonses excepted from section 7609 procedures.

(a) *In aid of the collection of certain liabilities*—(1) *In general.* Section 7609(c)(2)(B) contains an exception to the general notice requirement when a summons is issued to a third-party recordkeeper. That section excepts summonses issued in aid of the collection of the liability of any person against whom an assessment has been made or judgment rendered or the liability at law or in equity of any transferee or fiduciary of such a person.

(2) *Examples.* Examples of summonses referred to in paragraph (a)(1) of this section are—

(i) Summonses issued to determine the amount held in a bank in the name of a person against whom an assessment has been made or judgment rendered;

(ii) Summonses issued for the purpose of ascertaining responsible corporate employees or officers for the 100 percent panalty under section 6672, so as to assist in collecting the amount of withheld taxes which have been assessed against the corporation; and

(iii) Summonses issued to enforce transferee or fiduciary liability for a tax which has been assessed.

(b) *Numbered account (or similar arrangement).* Under section 7609(c)(2), a summons solely to determine the identity of a person having a numbered account (or similar arrangement) with a bank or other institution is excepted from the requirements of section 7609. A "numbered account (or similar arrangement)" under section 7609(c)(2) is an account through which a person may authorize transactions solely through the use of a number, symbol, code name, or other device not involving the disclosure of the person's identity. A "person having a numbered account (or similar arrangement)" includes the person who opened the account and any person authorized to use the account or to receive records or statements concerning it.

§ 301.7609-5 Suspension of statutes of limitations.

(a) *Agent, nominee, etc.* Under section 7609(e), statutes of limitations are suspended if a notified person with respect to whose liability a summons is issued, or the notified person's agent, nominee, or other person acting under the direction or control of the notified person, takes any action as provided in section 7609(b). A person is a notified person's agent, nominee, or other person acting under the direction or control of a notified person for purposes of section 7609(e) if the person with respect to whose liability the summons is issued has the ability in fact or at law to cause the agent, etc., to take the actions permitted under section 7609(b). Thus, in the case of a corporation, direction or control by the notified person may exist even though less than 50 percent of the voting power of the corporation is held by the notified person.

(b) *Period during which a proceeding, etc., is pending.* Under section 7609(e), the statute of limitations may be suspended for the period during which a proceeding, and appeals therein, with respect to the enforcement of such summons is pending. This period begins on the date the action to enforce the summons is commenced, rather than the date a notified person takes any action as provided in section 7609(b). An action to enforce the summons is commenced upon the filing of the petition or complaint to enforce the summons. The period continues until all appeals are disposed of, or until the expiration of the period in which an appeal may be taken or a request for a rehearing may be made. Full compliance, partial compliance, and noncompliance have no effect on the suspension provisions. Of course, if the notified person takes no action provided in subsection (b) of section 7609, no suspension of the statutes of limitations takes place. The periods of limitations which are suspended under section 7609(e) are those which apply to the taxable periods to which the summons relates.

(c) *Taking of action as provided in section 7609(b).* Section 7609(b) allows intervention by a notified person as a matter of right upon compliance with the Federal Rules of Civil Procedure. The phrase "takes any action as provided in subsection (b)", found in section 7609(e), includes any intervention, whether or not section 7609(b) is specifically mentioned in the order of the court allowing intervention. The phrase also includes the fulfilling of only part of the requirements of section 7609(b)(2), relating to the right of a person to stay compliance. Thus, for instance, if a notified person notifies a person who has been summoned not to comply with the summons under section 7609(b)(2)(A) but does not mail a copy of that notice to the appropriate person and office under section 7609(b)(2)(B), the notified person has taken an action under section 7609(e).

§301.7610-1 Fees and costs for witnesses.

(a) *Introduction.* Section 7610 provides that the Internal Revenue Service may make payments to certain persons who are asked to give information to the Service. Under section 7610 witnesses generally will not be reimbursed for actual expenses incurred but instead will be paid in accordance with the payment rates established by regulations. Paragraph (b) of this section contains elaborations of certain terms found in section 7610 and definitions of other terms used in the regulations under section 7610(a)(b); and paragraphs (c) and (d) contain rules and rates applicable to payments under section 7610. Section 7610 and its regulations are effective for summonses issued after February 28, 1977, except as otherwise provided.

(b) *Definitions*—(1) *Directly incurred costs.* Directly incurred costs are costs incurred solely, immediately, and necessarily as a consequence of searching for, reproducing, or transporting records in order to comply with a summons. They do not include a proportionate allocation of fixed costs, such as overhead, equipment depreciation, etc. However, where a third party's records are stored at an independent storage facility that charges the third party a search fee to search for, reproduce, or transport particular records requested, these fees are considered to be directly incurred by the summoned third party.

(2) *Reproduction cost.* Reproduction costs are costs incurred in making copies or duplicates of summoned documents, transcripts, and other similar material.

(3) *Search costs.* Search costs include only the total-cost of personnel time directly incurred in searching for records or information and the cost of retrieving information stored by computer. Salaries of persons locating and retrieving summoned material are not includible in search costs. Also, search costs do not include salaries, fees, or similar expenditures for analysis of material or for managerial or legal advice, expertise, or research, or time spent for these activities.

(4) *Third party.* A third party is any person served with a summons, other than a person with respect to whose liability a summons is issued, or an officer, employee, agent, accountant, or attorney of that person.

(5) *Third party records.* Third party records are books, papers, records, or other data in which the person with respect to whose liability a summons is issued does not have a proprietary interest at the time the summons is served.

(6) *Transportation costs.* Transportation costs include only costs incurred to transport personnel to search for records or information requested and costs incurred solely by the need to transport the summoned material to the place of examination. These costs do not include the cost of transporting the summoned witness for appearance at the place of examination. See paragraph (c)(2) of this section for payment of travel expenses.

(c) *Conditions and rates of payments—(1) Basis for payment.* Payment for search, reproduction, and transportation costs will be made only to third parties served with a summons to produce third party records or information and only for material requested by the summons. Payment will be made only for these costs that are both directly incurred and reasonably necessary. Search, reproduction, and transportation costs must be considered separately in determining whether costs are reasonably necessary. No payment will be made until the third party has satisfactorily complied with the summons and has submitted an itemized bill or invoice showing specific details concerning the costs to the Internal Revenue Service employee before whom the third party was summoned. If a third party charges any other person for any

cost for which the third party is seeking payment from the Service, the amount charged to the other person must be subtracted from the amount the Internal Revenue Service must pay.

(2) *Payment rates.* The following rates are established.

(i) *Search costs.* (A) For the total amount of personnel time required to locate records or information, $8.50 per person hour for summonses issued after June 19, 1983. For summonses issued on or before such date, $5.00 per person hour.

(B) For retrieval of information stored by computer in the format in which it is normally produced, actual costs, based on computer time and necessary supplies, except that personnel time for computer search is payable only under subparagraph (2)(i)(A) of this paragraph.

(ii) *Reproductions costs.* (A) For copies of documents $.20 per page for summonses issued after July 19, 1983. For copies of documents issued on or before such date, $.10 per page.

(B) For photographers, films and other materials, actual cost, except that personnel time is payable only under subparagraph (2)(i)(A) of this paragraph.

(iii) *Transportation costs.* For transportation costs, actual cost, except that personnel time is payable only under subparagraph (2)(i)(A) of this paragraph.

(d) *Appearance fees and allowances*—(1) In general. Under section 7610(a)(1) and this paragraph, the Service shall pay a summoned person certain fees and allowances. No payments will be made until after the party summoned appears and has submitted any necessary receipts or other evidence of costs to the Service employee before whom the person was summoned. This paragraph is effective with respect to appearances made after October 26, 1978.

(2) *Attendance fees.* A summoned person shall be paid an attendance fee for each day's attendance. A summoned person shall also be paid the attendance fee for the time necessarily occupied in going to and returning from the place of attendance at the beginning and end of the attendance or at any time during the attendance. The attendance fee is the higher of $30 per day or the amount paid under 28 U.S.C. 1821(b) to witnesses in attendance at courts of the United States at the time of the summoned person's appearance.

(3) *Travel allowances.* A summoned person who travels by common carrier shall be paid for the actual expenses of travel on the basis of the means of transportation reasonably utilized and the distance necessarily traveled to and from the summoned person's residence by the shortest pratical route in going to and returning from the place of attendance. Such a summoned person shall utilize a common carrier at the most economical rate reasonably available. A receipt or other evidence of actual cost shall be furnished. A travel allowance equal to the mileage allowance which the Administrator of General Services has prescribed, under 5 U.S.C. 5704, for offical travel of employees of the Federal Government shall be paid to each summoned person who travels by privately owned vehicle. That rate is $.20 per mile as of April 20, 1980. Computation of mileage under this paragraph shall be made on the basis of a uniform table of distances adopted by the Administrator of General Services. Toll charges for toll roads, bridges, tunnels, and ferries, taxicab fares between places of lodging and carrier terminals, and parking fees (upon) presentation of a valid parking receipt) shall be paid in full to a summoned person incurring those expenses.

(4) *Subsistence allowances.* A subsistence allowance shall be paid to a summoned person (other than a summoned person who is incarcerated) when an overnight stay is required at the place of attendance because the place is so far removed from the residence of the summoned person as to prohibit return thereto from day to day. A subsistence allowance for a summoned person shall be paid in an amount not to exceed the maximum per diem allowance prescribed by the Administrator of General Services, under 5 U.S.C. 5702(a), for official travel in the area of attendance by employees of the Federal Government. As of April 30, 1979, that maximum per diem allowance is $35 per day. A subsistence allowance for a summoned person attending in an area designated by the Administrator, of General Services as a high-cost area shall be paid in an amount not to exceed the maximum actual subsistence allowance prescribed by the Administrator, under 5, U.S.C. 5702(c)(B), for official travel in that area by employees of the Federal Goverment. As of April 30, 1979, maximum rates of up to $50 per day have been prescribed by the Administrator for certain areas. An alien who has been paroled into the United States for prosecution, under section 212 (d)(5) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(5)), or an alien who either has admitted belonging to a class of aliens who are deportable or has been determined under section 242(b) of that Act (8 U.S.C. 1252(b)) to be deportable, shall be ineligible to receive the fees or allowances provided for under section 7610(a)(1).

This Treasury decision is issued under the authority contained in sections 7610(a) and 7805 of the Internal Revenue Code of 1954 (26 U.S.C. 7610(a) and 7805).

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: May 3, 1983.

John E. Chapoton,

Assistant Secretary of the Treasury.

[FR Doc. 83-19073 Filed 7-18-83; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

Outer Continental Shelf; Interpretation of Rules Concerning Oil Spill Containment and Cleanup Plans

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of interpretation.

SUMMARY: Multiple references to oil spill containment and cleanup plans or contingency plans in regulations and Outer Continental Shelf (OCS) Orders have led to some confusion as to the number of plans required to be filed. This notice sets out the policy of the Department of the Interior (DOI) with regard to the required number of oil spill containment and cleanup plans (also called oil spill contingency plans) and the status of such plans in connection with exploration and development and production plans.

FOR FURTHER INFORMATION CONTACT: Bill Cook, (703) 860-7564.

SUPPLEMENTARY INFORMATION: Language referring to oil spill containment and cleanup plans or contingency plans occurs several times in the regulations and Outer Continental Shelf (OCS) Orders implementing the Lands Act (OCSLA) requirements for exploration plans and development and production plans. The requirement occurs in 30 CFR 250.34 and OCS Order No. 7. These multiple references have led to some confusion as to the number of plans required to be filed. It is the policy of DOI that the least number of required plans is best and that a single plan is required for exploration and a single plan for development and production.

It is DOI's policy that oil spill containment and cleanup plans or contingency plans be considered an integral part of the exploration plan or development and production plan. This is in accord with DOI's interpretation of

the OCSLA provision for coastal zone concurrence. Sections 11 and 25 of the OCSLA prohibit the Secretary from granting any license or permit for any activity described in an exploration plan or development and production plan that affects the use of the coastal zone of a State with an approved coastal zone management program unless the State has concurred with the plan's consistency certification. The DOI understands the law to provide one opportunity for State concurrence on exploration activities and one for development and production activities. Therefore, exploration plan and development and production plan concurrence should cover as much of the relevant activities as possible. The oil spill plans are not considered a separate item for purposes of separate State concurrence.

It is therefore DOI's policy that the oil spill containment and cleanup plan (also called the oil spill contingency plan) is an integral part of an exploration plan or a development and production plan and that a single plan only is required for exploration and a single plan for development and production.

Dated: July 8, 1983.

David Russell,

Acting Director.

[FR Doc. 83-19363 Filed 7-18-83; 8:45 am]

BILLING CODE 4310-MR-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 3

[CGD 83-040]

Disestablishment of Marine Safety Office Mineapolis/St. Paul; Correction

AGENCY: Coast Guard, DOT.

ACTION: Final Rule; correction.

SUMMARY: This document corrects a description of the St. Louis Marine Inspection Zone and Captain of the Port Zone contained in a final rule disestablishing the Marine Safety Office Minneapolis/St. Paul which was published on June 30, 1983 (48 FR 30106). In the published description, a portion of the State of Wisconsin south of 46°20' N. latitude was inadvertently omitted.

FOR FURTHER INFORMATION CONTACT: LCDR D. E. HENRICKSON, Port and Environmental Safety Divison, (G-WPE-3/16), Room 1611, Coast Guard Headquarters, 2100 Second St., SW., Washington, D.C. 20593 (202-426-9578).

PART 3—[CORRECTED]

Accordingly, the Coast Guard is correcting 3 CFR 3.10-10(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; that part of Wisconsin 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.

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

Dated: July 14, 1983.

B. F. Hollingsworth,

Rear Admiral, U.S. Coast Guard Chief, Office of Marine Environment and Systems.

[FR Doc. 83-19615 Filed 7-18-83; 8:45 am]

BILLING CODE 4910-14-M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 202

[Docket RM 83-5]

Registration of Claims to Copyright; Full Term Retention of Copyright Deposits

AGENCY: Copyright Office, Library of Congress.

ACTION: Interim regulation.

SUMMARY: This notice is issued to inform the public that the Copyright Office of the Library of Congress is adopting a new regulation on an interim basis to implement section 704(e) of the Copyright Act. Section 704(e) directs the Register of Copyrights to issue regulations prescribing the conditions under which requests for full term retention of copyright deposits are to be made and granted, including the fees for this service.

The effect of the interim regulation is to provide a mechanism for requesting retention of copyright deposits, to establish the conditions under which such requests are granted or denied, and to fix the fee to be charged pursuant to section 708(a)(11), if the request is granted.

DATES: Effective July 19, 1983. Written comments should be received before August 30, 1983.

ADDRESSES: Ten copies of written comments should be addressed, if sent by mail to: Dorothy Schrader, Library of Congress, Department D.S., Washington, D.C. 20540.

If delivered by hand, copies should be brought to: Office of the General Counsel, Copyright Office, James Madison Memorial Building, Room 407, First and Independence Avenue, S.E., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, Copyright Office, Library of Congress, Washington, D.C. 20559; (202) 287-8380.

SUPPLEMENTARY INFORMATION: Copyright registration is a legal formality intended to make a public record of the basic facts of a particular copyright. In order to register a work, an appropriate application, fee, and copyright deposit must be submitted to the Copyright Office. The Copyright Act [title 17 of the United States Code] gives the Register of Copyrights the authority to issue regulations concerning the required copyright deposit. Existing regulations require or permit, for particular classes, the deposit of identifying material instead of copies or phonorecords, the deposit of only one copy or phonorecord where two would normally be required, and in some cases material other than complete copies of the best edition. See the deposit regulations, 37 CFR 202.20 and 202.21. The copies, phonorecords, or identifying material deposited under these deposit regulations and retained by the Copyright Office upon completion of registration of the copyright claim are hereafter referred to as "copyright deposits."

Under subsection (a) of section 704 of the Copyright Act, any copy, phonorecord, or identifying material deposited for registration, whether registered or not, becomes "the property of the United States Government."

With respect to published works, section 704(b) makes all deposits available to the Library of Congress "for its collections, or for exchange or transfer to any other library." Where the work is unpublished, the Library is authorized to select any deposit for its

own collections or for transfer to the National Archives of the United States or to a Federal records center, but the Copyright Office will first make a facsimile reproduction of the unpublished deposit. See 37 CFR 201.23.

For deposits not selected by the Library, subsection (d) provides that they, or "identifying portions or reproductions of them," are to be retained under Copyright Office control "for the longest period considered practicable and desirable" by the Register of Copyrights and the Librarian of Congress. When and if they ultimately decide that retention of certain deposited articles is no longer "practicable and desirable," the Register and the Librarian have joint discretion to order their "destruction or other disposition." Because of the unique value and irreplaceable nature of unpublished deposits, the Copyright Act prohibits their intentional destruction or disposition during their copyright term, unless a facsimile reproduction has been made a part of the records of the Copyright Office.

As stated in House Report 94–1476:

> A recurring problem in the administration of the copyright law has been the need to reconcile the storage limitations of the Copyright Office with the continued value of deposits in identifying copyrighted works. Aside from its indisputable utility to future historians and scholars, a substantially complete collection of both published and unpublished deposits, other than those selected by the Library of Congress, would avoid the many difficulties encountered when copies needed for identification in connection with litigation or other purposes have been destroyed. The basic policy behind section 704 is that copyright deposits should be retained as long as possible, but that the Register of Copyrights and the Librarian of Congress should be empowered to dispose of them under appropriate safeguards when they decide that it has become necessary to do so. [H.R. REP. NO. 94–1476, 94th Cong., 2d Sess. 171 (1976).]

In 48 FR 12862 the Copyright Office announced that the Register of Copyrights and the Librarian of Congress have made a determination pursuant to section 704(d) regarding retention of copyright deposits at government expense. They have determined that it is no longer practicable to retain published copyright deposits for more than five years from the date of deposit, except for works of the visual arts [Class VA], which will be retained for ten or more years, if possible.

Section 704 also recognizes that some copyright owners which to assure that the deposit for a registered work will be stored for the full term of the copyright, and they are willing to assume the cost of storage. Thus, subsection (e) of section 704 authorizes the Register to issue a regulation under which a copyright owner can request retention of deposited material for the full term of copyright. The Register of Copyrights is authorized to prescribe the fees for this service and the "conditions under which such requests are to be made and granted."

Section 708 contains a schedule of fees for specific services performed by the Copyright Office, and in subsection (a)(11) authorizes the Register to fix additional fees "for any other special services requiring a substantial amount of time or expense * * * on the basis of the cost of providing the service."

This interim regulation is generally self-explanatory but a few provisions deserve special comment:

1. *Copyright Office Storage Limitations and Costs.* This regulation attempts to balance the interest of copyright owners and the public in full term storage of copyright deposits against the limitations on storage space and the handling costs faced by the Copyright Office. Copies retained under the control of the Copyright Office serve to identify the work, and in many cases, establish prima facie the scope of the copyright, both in connection with litigation and commercial transactions. For many years the Copyright Office has recognized this need and supported it by retaining copyright deposits for as long as possible at public expense.

The Copyright Office currently faces a storage crisis. The storage space allotted by the Library of Congress to the Copyright Office is virtually filled, and growth projections estimate that receipts within the next ten years may double the deposit material now being held. There is no possibility of acquiring additional storage space in the foreseeable future. Within the next twelve months, the Copyright Office must eliminate a substantial amount of stored material merely to accommodate deposits now being processed.

Full term retention of deposit material upon request, and at the expense of the requestor, was authorized by Congress as one way of resolving, at least in part, the tension between the recognized need for full term retention on the one hand, and rising storage costs and limited storage space, on the other.

The fee for full term retention was calculated to take account both of inflationary increases in storage costs over a 75 year period and the reduced need of the Government to borrow funds because the fee for future storage has been paid in advance. Thus, the cost of storing an average deposit copy under Copyright Office control is currently $1.80 per year. In establishing a fee of $135.00 for full term retention, the Office has assumed an average interest rate of 6% and an average inflation rate between 5% and 7% for storage costs, both calculated over a 75 year period.

The Office expects that it may be necessary to revise the fee for full term retention from time to time. The public will be notified of any change by publication of a revised regulation, and the revised fee will of course apply only to requests for full term retention granted after the effective date of any revised regulation.

2. *Circumstances under which a request for a long-term storage can be denied.*

A request for full term retention will be denied if the unusual size, weight, or fragility of the deposit would place unreasonable costs or administrative burdens on the Copyright Office, or if the nature of the deposit could cause health or safety problems. However, we have also provided an option in the interim regulation for preparation of identifying reproductions, at the expense of the requestor, and subsequent retention of the identifying reproductions in lieu of oversize or otherwise unacceptable copies.

One of the general purposes of the deposit system is to enrich the collections of the Library of Congress. Therefore the deposit needs of the Library will prevail should they conflict with a request for full term retention under this regulation, unless the requestor deposits an extra copy, as provided in § 202.23(c)(2). If a published work has been exempted from deposit under section 407 or if the Library wants only one of two deposit copies or phonorecords, no conflict exists.

3. *Definition of "full term."*

The copyright term for words by individual authors created on or after January 1, 1978 is usually life of the author plus 50 years. However, under section 302(e) of the statute, after 75 years from the year of first publication of a work or one hundred years from the year of its creation, whichever expires first, if the Copyright Office records do not show that the author of the work is living or died less than 50 years before, a presumption exists that the author has been dead for at least 50 years.

In the case of works made for hire and anonymous or pseudonymous works, section 302(c) establishes a copyright term of 75 years from publication, or 100 years from creation, whichever is shorter. Requests for full term retention of copyright deposits will be made exclusively with respect to published works, since the Copyright Act already

mandates full term retention of unpublished works.

The 75 year period set by the Act was selected on the basis of statistical studies by the Copyright Office which suggested that 75 years was the average equivalent of a life-plus-50 term. [H.R. Rep. No. 94–1476, 94th Cong., 2d Sess. 135 (1976).]

The legislative history behind section 704(e) shows the intent that the Copyright Office use some rational means by which it can measure the necessary term of storage for deposits. For purposes of section 704(e), the Copyright Office has determined that "full term retention" means a period of 75 years from publication, and that period has been used in calculating the deposit retention fee.

4. *Under the Control of the Copyright Office.*

Section 704(e) specifies that deposit material retained for full term storage in response to a request will be kept "under the control of the Copyright Office."

Accordingly, deposit material retained under the interim regulation pursuant to section 704(e) will be kept within the confines of Copyright Office buildings or under the control of Copyright Office employees, and will not be transferred to the Library of Congress collections.

The Copyright Office will exercise normal due care in processing and maintaining copyright deposits in full term retention status, but the Office will not apply special preservation techniques. Moreover, full term deposits are open to public inspection pursuant to 17 U.S.C. 705(b).

5. *Interim effect.*

This regulation is being issued on an interim basis to allow eligible persons to request full term retention of copyright deposits immediately. The regulation extends a privilege to the public. The Office does invite public comment before the regulation is made final.

With respect to the Regulatory Flexibility Act, the Copyright Office takes the position this Act does not apply to Copyright Office rulemaking. The Copyright Office is a department of the Library of Congress and is part of the legislative branch. Neither the Library of Congress nor the Copyright Office is an "agency" within the meaning of the Administrative Procedure Act of June 11, 1946, as amended (title 5, Chapter 5 of the U.S. Code, Subchapter II and Chapter 7). The Regulatory Flexibility Act consequently does not apply to the Copyright Office since that Act affects only those entities of the Federal Government that are agencies as defined in the Administrative Procedure Act.[1]

Alternatively, if it is later determined by a court of competent jurisdiction that the Copyright Office is an "agency" subject to the Regulatory Flexibility Act, the Register of Copyrights has determined that this interim regulation will have no significant impact on small businesses.

List of Subjects in 37 CFR Part 202

Claims to copyright, Copyright, Registration requirements.

Interim Regulation

PART 202—[AMENDED]

In consideration of the foregoing, Part 202 of 37 CFR Chapter II is amended on an interim basis by adding a new § 202.23 to read as follows:

§ 202.23 Full term retention of copyright deposits.

(a) *General.* (1) This section prescribes conditions under which a request for full term retention, under the control of the Copyright Office, of copyright deposits (copies, phonorecords, or identifying material) of published works may be made and granted or denied pursuant to section 704(e) of Title 17 of the United States Code. Only copies, phonorecords, or identifying material deposited in connection with registration of a claim to copyright under Title 17 of the United States Code are within the provisions of this section. Only the depositor or the copyright owner of record of the work identified by the copyright deposit, or a duly authorized agent of the depositor or copyright owner, may request full term retention. A fee for this service is fixed by this section pursuant to section 708(a)(11) of Title 17 of the United States Code.

(2) For purposes of this section, "under the control of the Copyright Office" shall mean within the confines of Copyright Office buildings and under the control of Copyright Office employees, including retention in a Federal records center, but does not include transfer to the Library of Congress collections.

(3) For purposes of this section, "full term retention" means retention for a period of 75 years from the date of publication of the work identified by the particular copyright deposit which is retained.

(4) For purposes of this section, "copyright deposit" or its plural means the copy, phonorecord, or identifying material submitted to the Copyright Office in connection with a published work that is subsequently registered and made part of the records of the Office.

(b) *Form and content of request for full term retention.*—(1) *Forms.* The Copyright Office does not provide printed forms for the use of persons requesting full term retention of copyright deposits.

(2) Requests for full term retention must be made in writing, addressed to the Chief, Records Management Division of the Copyright Office, and shall: (i) Be signed by or on behalf of the depositor or the copyright owner of record, and (ii) clearly indicate that full term retention is desired.

(3) The request for full term retention must adequately identify the particular copyright deposit to be retained, preferably by including the title used in the registration application, the name of the depositor or copyright owner of record, the publication date, and, if registration was completed earlier, the registration number.

(c) *Conditions under which requests will be granted or denied.*—(1) *General.* A request that meets the requirements of subsection (b) will generally be granted if the copyright deposit for which full term retention is requested has been continuously in the custody of the Copyright Office and the Library of Congress has not, by the date of the request, selected the copyright deposit for its collections.

(2) *Time of request.* The request for full term retention of a particular copyright deposit may be made at the time of deposit or at any time thereafter; however, the request will be granted only if at least one copy, phonorecord, or set of identifying material is in the custody of the Copyright Office at the time of the request. Where the request is made concurrent with the initial deposit of the work for registration, the requestor must submit one copy or phonorecord more than the number specified in § 202.20 of 37 CFR for the particular work.

(3) *One deposit retained.* The Copyright Office will retain no more than one copy, phonorecord, or set of identifying material for a given registered work.

(4) *Denial of request for full term retention.* The Copyright Office reserves the right to deny the request for full term

[1] The Copyright Office was not subject to the Administrative Procedure Act before 1978, and it is now subject to it only in areas specified by section 701(d) of the Copyright Act (i.e., "all actions taken by the Register of Copyrights under this title [17]," except with respect to the making of copies of copyright deposits). [17 U.S.C. 706(b)]. The Copyright Act does not make the Office an "agency" as defined in the Administrative Procedure Act. For example, personnel actions taken by the Office are not subject to APA-FOIA requirements.

retention where: (i) The excessive size, fragility, or weight of the deposit would, in the sole discretion of the Register of Copyrights, constitute an unreasonable storage burden. The request may nevertheless be granted if, within 60 calendar days of the original denial of the request, the requestor pays the reasonable administrative costs, as fixed in the particular case by the Register of Copyrights, of preparing acceptable identifying materials for retention in lieu of the actual copyright deposit;

(ii) The Library of Congress has selected for its collections the single copyright deposit, or both, if two copies or phonorecords were deposited; or

(iii) Retention would result in a health or safety hazard, in the sole judgment of the Register of Copyrights. The request may nevertheless be granted if, within 60 calendar days of the original denial of the request, the requestor pays the reasonable administrative costs, as fixed in the particular case by the Register of Copyrights, of preparing acceptable identifying materials for retention in lieu of the actual copyright deposit.

(d) *Form of copyright deposit.* If full term retention is granted, the Copyright Office will retain under its control the particular copyright deposit used to make registration for the work. Any deposit made on or after September 19, 1978 shall satisfy the requirements of 37 CFR 202.20 and 202.21.

(e) *Fee for full term retention.*—(1) Pursuant to section 708(a)(11) of title 17 of the United States Code, the Register of Copyrights has fixed the fee for full term retention at $135.00 for each copyright deposit granted full term retention.

(2) A check or money order in the amount of $135.00 payable to the Register of Copyrights, must be received in the Copyright Office within 60 calendar days from the date of mailing of the Copyright Office's notification to the requestor that full term retention has been granted for a particular copyright deposit.

(3) The Copyright Office will issue a receipt acknowledging payment of the fee and identifying the copyright deposit for which full term retention has been granted.

(f) *Selection by Library of Congress*—(1) *General.* All published copyright deposits are available for selection by the Library of Congress until the Copyright Office has formally granted a request for full term retention. Unless the requestor has deposited the additional copy or phonorecord specified by paragraph (c)(2) of this section, the Copyright Office will not process a request for full term retention submitted concurrent with a copyright registration application and deposit, until the Library of Congress has had a reasonable amount of time to make its selection determination.

(2) A request for full term retention made at the time of deposit of a published work does not affect the right of the Library to select one or both of the copyright deposits.

(3) If one copyright deposit is selected, the second deposit, if any, will be used for full term retention.

(4) If both copyright deposits are selected, or, in the case where the single deposit made is selected, full term retention will be granted only if the additional copy or phonorecord specified by paragraph (c)(2) of this section was deposited.

(g) *Termination of full term storage.* Full term storage will cease 75 years after the date of publication of the work identified by the copyright deposit retained, and the copyright deposit will be disposed of in accordance with section 704, paragraphs (b) through (d), of title 17 of the United States Code.

(17 U.S.C. 408, 702, 704, and 708)

Dated: June 27, 1983.

David Ladd,

Register of Copyrights.

Approved by:

Daniel J. Boorstin,

The Librarian of Congress.

[FR Doc. 83-19460 Filed 7-18-83; 8:45 am]

BILLING CODE 1410-03-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[SW-9-FRL 2399-5]

Approval of State Hazardous Waste Management Program for Phase I and Phase II Components A and B Interim Authorization

AGENCY: Environmental Protection Agency.

ACTION: Approval of State Hazardous Waste Management Program for Phase I and Phase II Components A and B Interim Authorization.

SUMMARY: The State of Nevada has applied for Interim Authorization Phase I and Phase II Components A and B. EPA has reviewed Nevada's application for Interim Authorization and has determined that Nevada's hazardous waste program is substantially equivalent to the Federal program covered by Phase I and Phase II Components A and B. The State of Nevada is hereby granted Interim Authorization for Phase I and Phase II Components A and B to operate the State's hazardous waste program in lieu of Phase I and Phase II Components A and B of the Federal program.

EFFECTIVE DATE: July 19, 1983.

FOR FURTHER INFORMATION CONTACT: Gary Lance, Toxics & Waste Programs Branch, U.S. Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974-8125.

SUPPLEMENTARY INFORMATION:

I. Background

In the May 19, 1980, Federal Register (45 FR 33066) the Environmental Protection Agency (EPA) promulgated regulations, pursuant to Subtitle C of the Resource Conservation and Recovery Act of 1976, as amended [RCRA], to protect human health and the environment from hazardous waste. The Act [RCRA] includes provisions whereby a State agency may be authorized by EPA to administer the hazardous waste program in that State in lieu of a Federally administered program. For a State program to receive Final Authorization, its hazardous waste program must be fully equivalent to and consistent with the Federal program under RCRA. In order to expedite the authorization of State programs, RCRA allows EPA to grant a State agency Interim Authorization if its program is substantially equivalent to the Federal program. During Interim Authorization, a State can make whatever legislative or regulatory changes that may be needed for the State's hazardous waste program to become fully equivalent to the Federal program. The Interim Authorization program is being implemented in two phases corresponding to the two stages in which the underlying Federal program takes effect.

Phase I regulations were published on May 19, 1980, and became effective on November 19, 1980. The Phase I regulations include the identification and listing of hazardous waste, standards for generators and transporters of hazardous waste, standards for owners and operators of treatment, storage and disposal facilities, and requirements for State programs. The Phase II regulations cover the procedures for issuing permits under RCRA and the standards that will be applied to treatment, storage, and disposal facilities in preparing permits. In the January 26, 1981, Federal Register (46 FR 7965), the Environmental Protection Agency announced that States could apply for Components A

and B of Phase II of Interim Authorization. Component C was announced in the **Federal Register** July 26, 1982, (47 FR 32274). Component A, analogous to Federal regulations published in the **Federal Register** January 12, 1981, (46 FR 2802), contains standards for permitting containers, tanks, surface impoundments, and waste piles. Component B, analogous to Federal regulations published in the **Federal Register** January 23, 1981, (46 FR 7666), contains standards for permitting hazardous waste incinerators. Component C, analogous to Federal regulations published in the **Federal Register** July 26, 1982 (47 FR 32274), contains standards for permitting land disposal facilities.

A full description of the requirements and procedures for State Interim Authorization is included in 40 CFR Part 271, Subpart B as amended at 48 FR 14257, April 1, 1983.

II. Discussion

On February 4, 1983, the State of Nevada submitted its complete application for Interim Authorization Phase I and Phase II Components A and B. In the March 8, 1983 **Federal Register** (48 FR 9667), EPA announced the availability for public review of the Nevada application. EPA also indicated that if significant public interest was expressed, EPA would hold a public hearing on the application on April 22, 1983. However, no public comments were received on the State's application and on April 11, 1983, EPA determined that significant interest did not exist in holding the public hearing.

After detailed review of the final Nevada Interim Authorization application, EPA transmitted comments to the Nevada Division of Environmental Protection on April 13, 1983. These comments requested additions and revisions to the Program Description, Attorney General's statement, Memorandum of Agreement and Authorization Plan portions of the Interim Authorization application.

On May 20, 1983, the State of Nevada submitted amendments to the above mentioned portions of the Interim Authorization application. The following summarizes the most significant of these comments and the State's responses: (1) The Attorney General needed to clarify whether the State's statutes allow exemptions to any activity and/or substance subject to regulation under RCRA. The revised Attorney General's statement clarified that the provisions of NRS 444.724 exempt, in certain instances, activities and substances regulated under the Nevada Water Pollution Control Law, NRS 445.131 through 445.399 and under 459.010 through 459.290 which apply to certain radioactive materials; however, such exemption is narrower than that contained in Section 1006 of RCRA and does not apply to any activity or substance subject to regulation under RCRA. (2) The Attorney General needed to discuss whether the State's requirement that an owner sign the permit application provides the necessary nexus to hold the nonoperator owner liable for civil and criminal penalties. The revised Attorney General's statement indicated that NAC 444.8735(2) which requires the owner to sign the permit application provides the State with sufficient nexus to make him responsible for compliance with the permit conditions even if he takes no part in the facility's operation. In addition, refusal of an owner to sign the application would prohibit the issuance of a permit and NRS 444.772 would make injunctive relief available to compel compliance with NAC 444.8735(2). (3) The Attorney General needed to demonstrate that the State's regulations do not exempt the generator who treats, stores, or disposes of hazardous waste on site from the applicable facility and permit requirements. The revised Attorney General's statement clarified that NAC 444.8635 does not exempt the generator who treats, stores, or disposes of hazardous waste on site from the applicable facility and permit requirements included in NAC 444.8730 to 444.9335. Also, NAC 444.8635 only exempts such generators from the applicable facility and permit requirements if they meet the criteria of NAC 444.8865. (4) The Attorney General needed to provide an assurance that the appropriate State enforcement authority will not oppose intervention under the State analogue to Rule 24(a)(2) on the grounds that the applicants interest is adequately represented by the State. The revised Attorney General's statement included assurances that the Attorney General would not oppose intervention in a judicial proceeding on the grounds that the applicant's interest is adequately represented by the State. Furthermore, once intervention is obtained, any citizen would have the same status as any other party to obtain any available remedy specified.

III. Decision

EPA has reviewed the complete application for Phase I and Phase II Components A and B Interim Authorization from the State of Nevada and has determined that the State's program is "substantially equivalent" as defined in 40 CFR Part 271, Subpart B, to the Phase I and Phase II Components A and B of the Federal program. In accordance with Section 3006(c) of RCRA, the State of Nevada is hereby granted Interim Authorization to operate its hazardous waste program in lieu of the Phase I and Phase II Components A and B of the Federal program. The practical effect of this decision is that generators, transporters, and owners and operators of hazardous waste management facilities in Nevada except those involving land disposal will be subject to the State of Nevada's hazardous waste program in lieu of the Federal hazardous waste program (40 CFR Parts 260–264 and 265) and will not again be subject to Phase I and Phase II Components A and B of the Federal program unless: (1) the State fails to amend its Phase I and Phase II Components A and B submission to include all of the components of Phase II Interim Authorization by the deadline specified in 40 CFR 271.122(c), or (2) the State fails to obtain Final Authorization by the deadline specified in Section 3006(c) of RCRA and implementing regulations, or (3) authorization is withdrawn for good cause by EPA pursuant to Section 3006(e) of RCRA.

IV. Compliance With Executive Order 12291

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

V. Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. The authorization suspends the applicability of certain Federal regulations in favor of the State program, thereby eliminating duplicative requirements for handlers of hazardous wastes in the State of Nevada. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Hazardous materials, Indians—lands, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control, Water supply, Intergovernmental relations, Penalties, Confidential business information.

Authority

This notice is issued under the authority of Sections 2002(a), 3006, and

7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: June 20, 1983.

Charles W. Murray,

Deputy Regional Administrator.

[FR Doc. 83-19478 Filed 7-18-83; 8:45 am]

BILLING CODE 6560-50-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

41 CFR Ch. 18

[Procurement Regulation Directive 82-3 (dated June 25, 1982)]

Procurement Regulations; Miscellaneous Amendments

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: This document amends the NASA Procurement Regulation (41 CFR Ch. 18). It reflects amendments contained in Procurement Regulation Directive 82-3 concerning the following:

Subcontractor Kickbacks.

Administrative Matters.

EFFECTIVE DATE: July 19, 1983.

FOR FURTHER INFORMATION CONTACT: James H. Wilson, Procurement Policy Division (Code HP-1), Office of Procurement, NASA Headquarters, Washington, DC 20546, Telephone: 202-755-2237.

SUPPLEMENTARY INFORMATION:

1. In Part 1, editorial changes are made for clarification purposes and codification consistency.

2. In Part 20, § 20.5106 is amended to add the Master Buy Plan Format.

List of Subjects in 41 CFR Ch. 18

Government procurement.

Authority: The provisions of this document are issued under 42 U.S.C. 2473(6)(1).

L. E. Hopkins,

Deputy Assistant Administrator for Procurement.

PART 1—[AMENDED]

1. In Part 1, paragraph (a), (b), (c), and (d) of § 1.111 have been redesignated as paragraphs (a), (b), (c), and (d) of § 1.111-2 "Noncompetitive Practices," and § 1.111-1 is reserved for codification consistency.

PART 20—ADMINISTRATIVE MATTERS

2. In Part 20, § 20.5106 is amended by adding the Master Buy Plan Format.

20.5106 [Amended]

* * * * *

Master Buy Plan (Amendments)

Installation: _____

Date: _____

Cognizant HDQ program office (1)	Descriptive title of procurement (2)	Estimated dollar value	Proc plan	RFP	JNCP (3)	SEB	Pre-neg	Contract review	Current status (4)	Remarks (5)
FY 19. . . Documents Selected for Headquarters Review and Approval Not Yet Completed (6)										

(1) Include 3 digit Unique Project Number (UPN) as listed in PMM 9130.
(2) Include N or FO to indicate new or follow-on procurement.
(3) Include name of firm under Remarks.
(4) Indicate current status and scheduled date for next event.
(5) Include data considered pertinent by installation and indicate expected date for placement of contract.
(6) List procurements from prior fiscal year(s) Master Buy Plans and amendments to Master Buy Plans that have not been completed (20.5103.1).

(Form should be prepared on legal size paper. Use separate sheets as necessary.

[FR Doc. 83-19101 Filed 7-18-83; 8:45 am]

BILLING CODE 7510-01-M

41 CFR Ch. 18

[Procurement Regulations Directive 82-5 (dated August 27, 1982)]

Procurement Regulations; Miscellaneous Amendments

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: This document amends the NASA Procurement Regulation (41 CFR Ch. 18). It reflects amendments contained in Procurement Regulation Directive 82-5 concerning the following:

Subcontracting with Small Business and Small Disadvantaged Business Concerns.

EFFECTIVE DATE: July 19, 1983.

FOR FURTHER INFORMATION CONTACT: James H. Wilson, Procurement Policy Division (Code HP-1), Office of Procurement, NASA Headquarters, Washington, D.C. 20546, Telephone: 202-755-2237

SUPPLEMENTARY INFORMATION: 1. In Part 1, § 1.707 is revised to complete the NASA Procurement Regulation coverage of Section 211 of Pub. L. 95-507. The Act requires agencies to give small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals the maximum practicable opportunity to participate in the performance of Federal contracts. The principal means of implementing this policy is to require prime contractors to subcontract as much as possible with these firms. Eligible prime contracts reflect subcontracting plans that state, among other things, the percentage of the subcontracted effort that the firms will receive.

The requirement in § 3.501(b)C(41) for summary contract plans to be submitted with all applicable proposals is eliminated. Instead, new § 1.707-1(e) permits contracting officers to require subcontracting plans with initial proposals, where simultaneous negotiation of such plans is necessary, in the acquisition of major systems or other complex or sensitive procurements involving formal source selection procedures.

Prior NASA implementation of the Act has appeared in PRD 79-10 and in Procurement Notices No. 80-13 and 81-21. This PRD cancels the prior coverage.

2. In part 1, § 1.708 is revised to implement the Women-Owned Business Concerns Program. Prior coverage of this program appeared in Procurement Notice No. 80-12 which implemented Executive Order 12138 and OFPP Policy Letter 80-4. This PRD cancels the prior coverage.

3. In Part 1, § 1.709 is added to cover "Purchase under Federal Supply Schedule Contracts" which was previously covered under 1.708.

4. In Part 1, § 1.903-1(v) is added as an additional, general standard to be within the determination of responsible prospective contractors.

List of Subjects in 41 Ch. 18

Government procurement.

Authority: The provisions of this document are issued under 42 U.S.C. 2473(c)(1).

L. E. Hopkins,

Deputy Assistant Administrator for Procurement.

PART 1—[AMENDED]

1. In Part 1, Table of Contents, §§ 1.706–6 through 1.709, 1.903–1 through 1.904–3 are revised to read as follows:

* * * * *

1.706–7 Automatic Dissolution of Set-Asides 1–7.29

1.706–50 Small Business Class Set-Aside for Construction, Repair and Alteration Work 1–7.30

1.706–51 Maintenance of Records 1–7.30

1.707 Subcontracting With Small Business and Small Disadvantaged Business Concerns 1–7.30

1.707–1 General 1–7.30

1.707–2 Review Responsibilities 1–7.31

1.707–3 Required Clauses 1–7.34

1.708 Women Owned Business Concerns 1–7.45

1.709 Purchase under Federal Supply Schedule Contracts 1–7.46

* * * * *

1.903–1 General Standards 1–9.2

1.903–2 Additional Standards-Standards for Production, Maintenance, Construction, and Research and Development Contracts 1–9.2

1.903–3 Special Standards 1–9.2A

1.903–4 Ability to Meet Certain Minimum Standards 1–9.2A

1.904 Determinations of Responsibility and Nonresponsibility 1–9.2A

1.904–1 Requirement 1–9.2A

1.904–2 Affiliated Concerns 1–9.2A

1.904–3 Procurements from Canadian Sources of Supply 1–9.2B

* * * * *

1.707 [Amended]

2. In Part 1, §§ 1.707 through 1.708 are revised and § 1.709 is added to read as follows:

1.707 Subcontracting with Small Business and Small Disadvantaged Business Concerns.

1.707–1 General.

(a) Pursuant to section 8(d) of the Small Business Act (15 U.S.C. 637(d)), it is the policy of the United States that small business concerns, and small business concerns owned and controlled by socially and economically disadvantaged individuals, shall have the maximum practicable opportunity to participate in the performance of contracts let by any Federal agency. For purposes of this Subpart, the term "subcontract" means any agreement (other than one involving an employer-employee relationship) to be entered into by a Federal Government prime contractor or subcontractor calling for supplies or services required for the performance of the original contract or subcontract.

(b) Contract modifications (§ 1.205) to contracts which do not contain the clause in § 1.707–3(a) and which are within the scope of the contract do not require subcontracting plans. However, a modification which reflects the addition of work beyond the scope of the contract and which is made for administrative convenience when a separate contract would otherwise have been appropriate shall require a subcontracting plan if the criteria of 1.707 3(a) and (b) are met.

(c) The value of options and similar provisions shall be included in determining whether the contract may exceed the dollar threshold for subcontract plans. Such options shall be included in the subcontracting plan.

(d) Letter contracts and similar undefinitized instruments, which would otherwise meet the requirements of § 1.707–3 (a) and (b), shall contain at least a preliminary basic plan addressing the requirements of the clause in § 1.7073(b) and shall require the negotiation of the final plan within 90 days after award or before definitization, whichever occurs first.

(e) Contractors may establish, on a plant or division-wide basis, a master subcontracting plan which contains all the elements required by the clause in § 1.707–3 (b) or (c), except goals. Master plans shall be effective for a one-year period after approval; however, a master plan when incorporated in an individual plan shall apply to that contract throughout the life of the contract.

(f) Due to their unique circumstances, major system acquisition programs, as well as other complex or sensitive acquisitions involving formal source selection procedures, may necessitate the negotiation of subcontracting plans with all firms in a competitive range in order to afford the maximum practicable opportunity for small business and small disadvantaged business concerns participation and preserve the integrity of the competitive process. When the simultaneous negotiation of such plans is necessary, the solicitation (i) may require offerors to include proposed subcontracting plans in their initial proposals and (ii) may indicate that subcontracting plans will be negotiated concurrently with cost, technical, and management proposals.

1.707–2 Review Responsibilities.

(a) *General.* The clause specified in § 1.707 3(a) requires the contractor to afford small business concerns the maximum practicable opportunity to participate in contracts consistent with their efficient performance. The clauses specified in 1.707–3(b) and (c) require the submission of subcontracting plans regarding the contractor's obligation to award subcontracts to small business concerns.

(b) *Responsibilities*

(1) The contracting officer shall:

(i) Assure that a subcontracting plan is submitted when required;

(ii)(A) determine the adequacy of the subcontracting plan. All plans must include the six elements required by the clause. On negotiated contracts, the adequacy of the plan is determined by the contracting officer based on the negotiations of each of the six elements. The final plan must be acceptable to the contracting officer before the award can be made. If, under a formally advertised solicitation, a bidder submits a plan which does not cover each of the six elements, the contracting officer should advise him of the deficiency and request submission of a new plan by a specific date. If, after such notification, the bidder does not submit a complete and responsive plan within the time allotted, the bid should be rejected as nonresponsive. If the plan, although responsive, evidences the bidder's intention not to comply with its obligations under the clause at § 1.707–3(a), the contracting officer may find the bidder nonresponsible in accordance with § 1.903.

(B) when the offeror submits a plan incorporating an approved master subcontracting plan (see 1.702–1(e)), accept the plan without further review of the five elements covered by the master plan unless the contracting officer determines that the master plan does not afford small business and small disadvantaged business maximum practicable opportunity to participate in the performance of the contract. Responsibility for reviewing, evaluating, and approving master subcontracting plans may be delegated to the contract administration office.

(iii) consider the contractor's past compliance with the clause specified in 1.707–3(a) and with subcontracting plans as a factor in determining the contractor's responsibility;

(iv) determine any fee payable when an incentive is used in conjunction with the subcontracting plan.

(v) notify the SBA's resident Procurement Center Representative (PCR) of and provide him an opportunity to review solicitations for contracts which will include the clause at 1.707–3(a) and which may exceed $1 million in the case of contracts for construction and $500,000 in the case of all other contracts. The notice shall be issued in sufficient time to provide the resident PCR a reasonable time to review the soliciation prior to its public release.

(vi) notify the resident PCR of and provide him the opportunity to review all proposed subcontracting plans under negotiated contracts, including proposed contract modifications, prior to their

acceptance by the contracting officer. Additionally, the apparent successful offeror's proposal and its supporting documentation, if any, which has been furnished to the Government in the course of the negotiations, shall also be made available to the resident PCR upon request. The notice shall be issued in sufficient time to provide the resident PCR a reasonable time to review the subcontracting plan proposal and related documents and to submit advisory recommendations to the contracting officer. Failure of the PCR to respond to the contracting officer in a reasonable time shall not delay award of the contract.

(vii) upon award of a contract or other contractual action containing a subcontracting plan, provide (A) a copy of the award document (a copy of the NASA Form 507 will suffice) to the Assistant Regional Administrator for Regional Programs in the SBA region where the principal contract performance is to take place and (B) a copy of the plan to the resident PCR.

(viii) negotiate appropriate revisions to previously approved subcontracting percentage and dollar goals if subsequent modifications will have a major impact on the original planned volume or type of subcontracting effort.

(2) Upon contract completion, if the contractor did not comply in good faith with the subcontracting plan and/or the clause specified in 1.707–3(a), the contracting officer shall document the noncompliance in writing and include the reasons. A copy of this documentation shall be provided to the Director of Small and Disadvantaged Business Utilization.

(3) Unless specifically delegated, the contracting officer is responsible for monitoring, documenting, evaluating, and advising the Procurement Officer, as appropriate, as to the contractor's performance under the clause specified in 1.707–3(a) and any subcontracting plan included in the contract, as follows:

(i) the extent to which the contractor's goals for small business and small disadvantaged business participation are being met;

(ii) whether the contractor's efforts to assure such participation are in accordance with the efforts described in the subcontracting plan; and

(iii) whether the contractor is requiring its subcontractors to submit and carry out similar subcontracting plans.

(c) *Small Business Specialist.* The Small Business Specialist assigned to the contract office shall provide the contracting officer advice and assistance for use in determining the acceptability of a plan and shall provide the necessary information and advice to support the contracting officer, as appropriate, by furnishing:

(1) documentation on a contractor's performance and compliance with subcontract plans under previous contracts;

(2) information on the extent to which the contractor's goals for small business and small disadvantaged business participation are being met;

(3) information on whether the contractor's efforts to insure such participation are in accordance with the efforts described in the subcontracting plan;

(4) information on whether the contractor is requiring its subcontractors to adopt similar subcontracting plans; and

(5) immediate notice if, during performance, the contractor is failing to meet his commitments under the clause at 1.707–3(a) or the subcontracting plan.

(d) *Evaluation of Plans and Performance.* The clauses specified in 1.707–3 (b) and (c) require the minimum information goals and assurances that each subcontracting plan shall include. There are no detailed standards which apply to every situtation. The contracting officer's consideration of a plan must reflect the circumstances of the particular acquisition. Factors to consider include:

(1) previous involvement of small business concerns as prime or subcontractors in similar acquistions;

(2) methods of involving small business concerns as subcontractors in such acquisitions; and

(3) the type of records which contractors have maintained to demonstrate the methods by which they intend to meet the goals and requirements of the plan.

(e) *Involvement of the Small Business Administration.* The Small Business Administration is authorized to:

(1) assist both procurement offices and contractors in complying with their responsibilities with regard to subcontracting plans;

(2) review any solicitation for any contract which is to include the clause required by 1.707–3 (b) or (c) to determine whether maximum practicable opportunity has been afforded small and small disadvantaged businesses to participate as subcontractors in the performance of any contract resulting from any solicitation and to submit its findings, which shall be advisory in nature, to the contracting activity; and

(3) evaluate compliance with subcontracting plans, either on a contract-by-contract basis or, in the case of contractors having multiple contracts, on an aggregate basis. The SBA is not authorized to prescribe the extent to which any contractor or subcontractor shall subcontract; specify concerns to which subcontracts shall be granted; or exercise any authority regarding the administration of individual prime contracts or subcontracts. The Office of Minority Small Business and Capital Ownership Development, Small Business Administration, has final authority to determine the eligibility of a concern to be designated as a small disadvantaged business.

(f) *Evaluation of Subcontract Reports.* The Small Business Specialist shall support the contracting officer in evaluating a contractor's performance and compliance with its subcontract plans. The original of the Standard Form 294, Subcontracting Report for Individual Contacts, and a copy of the Standard Form 295, Summary Subcontract Report, and reports of periodic reviews of contractor performance shall be retained by the cognizant Small Business Specialist. These reports together with other pertinent information shall be used as a basis for advising the contracting officer as to contractor's compliance with subcontracting plans.

§ 1.707–3 Required Clauses.

In compliance with the requirements of the Small Business Act, the following clauses, as appropriate, shall be included in prime contracts.

(a) The Utilization of Small Business and Small Disadvantaged Business Concerns clause, as follows, shall be included in all contracts exceeding $10,000 except those which, including all subcontracts, will be performed entirely outside any State, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico or those which are for services personal in nature.

Utilization of Small Business and Small Disadvantage Business Concerns (August 1982)

(a) It is the policy of the United States that small business and small business concerns owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in the performance of contracts let by any Federal agency.

(b) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with the efficient performance of this contract. The term "subcontract" means any agreement (other than one involving an employer-employee relationship) to be entered into by a Federal Government prime contractor or subcontractor calling for

supplies or services required for the performance of the original contract or subcontract. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Contractor's compliance with this clause.

(c) As used in this contract, the term "small business concern" shall mean a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto. The term "small business concern owned and controlled by socially and economically disadvantaged individuals," hereafter referred to as disadvantaged business, shall mean a small business concern:

(1) Which is at least 51 per centum owned by one or more socially and economically disadvantaged individiuals; or, in the case of any publicly owned business, at least 51 per centum of the stock of which is owned by one or more socially and economically disadvantaged individuals; and

(2) Whose management and daily business operations are controlled by one or more of such individuals. The Contractor shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans (*i.e.*, American Indians, Eskimos, Aleuts and Native Hawaiians), Asian-Pacific Americans (*i.e.*, U.S. citizens whose origins are from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust Territories of the Pacific, Northern Marianas, Laos, Cambodia, and Taiwan,) and other minorites, or any individuals found to be disadvantaged by the Administration pursuant to Section 8(a) of the Small Business Act.

(d) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as either a small business concern or a small business concern owned and controlled by socially and economically disadvantaged individuals.

(End of clause)

(b) The Subcontracting Plan for Small Business and Small Disadvantaged Business Concerns (Negotiated) clause; as follows, shall be included in all solicitations for negotiated contracts or modifications (including contracts and modifications placed on a sole source basis) which (i) offer subcontracting possibilities (see 1.707–3(d)); (ii) are expected to exceed $500,000 or, in the case of contracts for the construction of any public facility, $1 million; and (iii) are required to include the clause in 1.707–3(a). However, the clause herein shall not be included in any solicitation which has been set aside for small business concerns or which requirement is to be procured through the Section 8(a) program. In accordance with the foregoing, the clause herein shall also be inserted in negotiated, prime contracts.

Subcontracting Plan for Small Business and Small Disadvantaged Business Concerns (Negotiated) (August 1982)

(a) This provision does not apply to small business concerns.

(b) The apparent successful offeror, upon request by the Contracting Officer, shall submit and negotiate a subcontracting plan which addresses separately subcontracting with small business concerns and small disadvantaged business concerns and which shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate the subcontracting plan shall make the offeror ineligible for award of a contract. As a minimum, the subcontracting plan shall include:

(1) Separate percentage goals (expressed in terms of percentage of total planned subcontracting dollars) for the utilization as subcontractors of small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals. For the purposes of the subcontracting plan, the Contractor shall include all subcontracts to be awarded for the specific purpose of performing this contract and may include a proportionate share of supplies and services whose costs are normally allocated as indirect or overhead costs when reasonably determined to be attributable to this contract.

a. A statement of: (i) Total dollars planned to be subcontracted; (ii) total dollars planned to be subcontracted to small business; and (iii) total dollars planned to be subcontracted to small disadvantaged business.

b. A description of the principal supply and service areas to be subcontracted and an identification of those areas where it is planned to use (i) small business subcontractors, and (ii) small disadvantaged business subcontractors.

c. A. statement of the method used in developing proposed subcontracting goals for small business and small disadvantaged business concerns.

d. If the offeror includes indirect and overhead costs as an element in establishing the goals in the subcontracting plan, the method used in determining the proportionate share of indirect and overhead costs incurred with (i) small business, and (ii) small disadvantaged business concerns.

e. A statement of the method used for solicitation purposes (*e.g.*, did the offeror use company source lists, the small business and disadvantaged small business source identification system provided by the Small Business Administration's Procurement Automated Source System, the National Minority Purchasing Council Vendor Information Service, or the services provided by the U.S. Department of Commerce Minority Business Development Agency's Research and Information Division, and the facilities of small business and disadvantaged business trade associations?).

(2) The name of an individual within the employ of the offeror who will administer the subcontracting plan of the offeror and a description of the duties of such individual;

(3) A description of the efforts the offeror will make to assure that small business and small disadvantaged business concerns will have an equitable opportunity to compete for subcontracts;

(4) Assurances that the offeror will include the clause entitled Utilization of Small Business and Small Disadvantaged Business Concerns in all subcontracts which offer further subcontracting possibilities in the United States and will require all subcontractors (except small business concerns) who receive subcontracts in excess of $500,000 or, in the case of a contract for the construction of any public facility, $1 million, to adopt a plan in consonance with this clause;

(5) Assurances that the offeror will submit such periodic reports and cooperate in any studies or surveys as may be required by the contracting agency or the Small Business Administration in order to determine the extent of compliance by the offeror with the subcontracting plan; and

(6) A recitation of the types of records the offeror will maintain to demonstrate procedures which have been adopted to comply with the requirements and goals set forth in the plan, including the establishment of source lists of small business and small disadvantaged business concerns; and efforts to identify and award subcontracts to such small business concerns. The records shall include at least the following (these records may be maintained on plant-wide or company-wide basis unless otherwise indicated):

a. Small and disadvantaged business source lists, guides, and other data identifying small and small disadvantaged business vendors.

b. Organizations contacted for small and disadvantaged business sources.

c. On a contract-by-contract basis, records on all subcontract solicitations over $100,000, indicating on each solicitation (i) whether small business was solicited and if not, why not; (ii) whether small disadvantaged business was solicited and if not, why not; and (iii) reasons for the failure of responding small businesses to receive the subcontract award.

d. Records to support such efforts as:

(i) contacts with disadvantaged and small business trade associations;

(ii) contacts with business development organizations; and

(iii) attendance at small and disadvantaged business procurement conferences and trade fairs.

e. Records to support internal activities to guide and encourage buyers such as:

(i) workshops, seminars, training programs, etc.; and

(ii) monitoring activities to evaluate compliance.

f. On a contract-by-contract basis, records to support award data submitted to the Government to include name, address, and size status of subcontractor.

(c) In order to effectively implement this plan the Contractor shall:

(1) Issue and promulgate company-wide policy statements in support of this effort, develop written procedures and work instructions, and assign specific

responsibilities regarding requirements of this clause.

(2) Demonstrate continuing management interest and involvement in support of this effort through such actions as regular reviews of progress and establishment of over-all corporate and divisional goals and objectives.

(3) Train and motivate contractor personnel regarding the support of small and small disadvantaged business firms.

(4) Assist small business and small disadvantaged business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor's lists of potential small business and disadvantaged subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

(5) Provide adequate and timely consideration of the potentialities of small business and small disadvantaged business concerns in all "make-or-buy" decisions.

(6) Counsel and discuss subcontracting opportunities with representatives of small and small disadvantaged business firms as are referred by the Small Business Specialist responsible for monitoring performance under this program and representatives of the SBA.

(d) The Contractor shall submit NASA Form 294, Subcontracting Report for Individual Contracts, and Standard Form 295, Summary Subcontract Report, in accordance with instructions provided on the forms.

(e) The offeror understands that:

(1) An acceptable plan must, in the determination of the Contracting Officer, provide the maximum practicable opportunity for small business and small disadvantaged business concerns to participate in the performance of the contract.

(2) The Contracting Officer shall notify the Contractor in writing of his reasons for determining a subcontracting plan to be unacceptable. Such notice shall be given early enough in the negotiation process to allow the Contractor sufficient time to modify the plan within the time limits prescribed.

(3) Prior compliance of the offeror with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the offeror for award of the contract.

(4) The failure of any Contractor or subcontractor to comply in good faith with (i) the clause entitled Utilization of Small Business and Small Disadvantaged Business Concerns or (ii) an approved plan required by this Small Business and Small Disadvantaged Business Subcontracting Plan (Negotiated) provision, will be a material breach of such contract or subcontract.

(5) A master subcontracting plan on a plant or division-wide basis which contains all the elements required by (b) above, except goals, may be incorporated by reference as a part of the subcontracting plan required of the offeror by this clause, *Provided:* (i) The master plan has been approved by the Contracting Officer or the Contractor's cognizant Contract Administration Offices; (ii) the offeror provides copies of the approved master plan and evidence of its approval to the Contracting Officer; and (iii) goals and any deviations from the master plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.

(f) In the acquisition of commercial products, the offeror further understands that:

(1) If a commercial product (defined below) is offered, the required subcontracting plan may cover the company's commercial production generally, both for Government contracts and for regular commercial sales, rather than just this acquisition. In such cases, the Contractor may request approval from the Contracting Officer to submit one company-wide, or division-wide, annual plan. If such request is deemed appropriate, the offeror shall submit a proposed company-wide, or division-wide, annual plan for acceptance.

(2) Upon approval by the Contracting Officer, the plan will remain in effect for the company's entire fiscal year. During this period, Government contracts for commercial products of the affected company or division will not be required to contain individual subcontracting plans relating only to the supply or services being acquired, unless the Contracting Officer determines for a particular contract that there are unforeseen possibilities for small business and small disadvantaged business subcontracting.

(3) At least 60 days before the scheduled termination of the company or division-wide plan, the Contractor may submit to the Contracting Officer a proposed company or division-wide subcontracting plan for its commercial products for the succeeding fiscal year. If the plan would otherwise terminate prior to approval of the succeeding fiscal year's plan, it will remain in effect until the succeeding plan is accepted or rejected, but no longer than 60 days after the end of the company's fiscal year.

(4) For the purpose of this program, the term "commercial product" means a product in regular production sold in substantial quantities to the general public and/or industry at established catalog or market prices. A product which, in the opinion of the Contracting Officer, differs only insignificantly from the Contractor's commercial product may be regarded for the purpose of this clause as a commercial product.

(End of clause)

(c) The Subcontracting Plan for Small Business and Small Disadvantaged Business Concerns (Formally Advertised) clause, as follows, shall be included in all solicitations for formally advertised contracts or modifications which (i) offer subcontracting possibilities (see 1.707–3(d)); (ii) are expected to exceed $500,000 or, in the case of contracts for the construction of any public facility, $1 million; and (iii) are required to include the clause in 1.707–3(a). However, the clause herein shall not be included in any solicitation which has been set aside for small business concerns or which requirement is to be procured through the Section 8(a) program. In accordance with the foregoing, the clause herein shall also be inserted in formally advertised prime contracts.

Subcontracting Plan for Small Business and Small Disadvantaged Business Concerns (Formally Advertised) (August 1982)

(a) This provision does not apply to small business concerns.

(b) The apparent low bidder, upon request by the Contracting Officer, shall submit a subcontracting plan which addresses separately subcontracting with small business concerns and small disadvantaged business concerns, and which shall be included in and made a material part of the resultant contract. The subcontracting plan shall be submitted within the time specified by the Contracting Officer. Failure to submit the subcontracting plan shall make the bidder ineligible for the award of a contract. As a minimum, the subcontracting plan shall include:

(1) Separate percentage goals (expressed in terms of percentage of total planned subcontracting dollars) for the utilization as subcontractors of small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals; for the purposes of the subcontracting plan, the Contractor shall include all subcontracts to be awarded for the specific purpose of performing this contract and may include a proportionate share of supplies and services whose costs are normally allocated as indirect or overhead costs when reasonably determined to be attributable to this contract.

a. A statement of: (i) total dollars planned to be subcontracted; (ii) total dollars planned to be subcontracted to small business; and (iii) total dollars planned to be subcontracted to small disadvantaged business.

b. A description of the principal supply and service areas to be subcontracted and an identification of those areas where it is planned to use (i) small business subcontractors, and (ii) small disadvantaged business subcontractors.

c. A statement of the method used in developing proposed subcontracting goals for small business and small disadvantaged business concerns.

d. If the offeror includes indirect and overhead costs as an element in establishing the goals in the subcontracting plan, the method used in determining the proportionate share of indirect and overhead costs incurred with (i) small business, and (ii) small disadvantaged business subcontractors shall be explained.

e. A statement of the method used for solicitation purposes (*e.g.*, did the offeror use company source lists, the small business and disadvantaged small business source identification system provided by the Small Business Administration's Procurement Automated Source System, the National Minority Purchasing Council Vendor Information Service, or the services provided by the U.S. Department of Commerce

Minority Business Development Agency's Research and Information Division, and the facilities of small business and disadvantaged business trade associations?).

(2) The name of an individual within the employ of the bidder who will administer the subcontracting plan of the bidder and a description of the duties of such individual;

(3) A description of the efforts the bidder will make to assure that small business and small disadvantaged business concerns will have an equitable opportunity to compete for subcontracts;

(4) Assurances that the bidder will include the clause entitled Utilization of Small Business and Small Disadvantaged Business Concerns in all subcontracts which offer further subcontracting possibilities in the United States, and that the bidder will require all subcontractors (except small business concerns) who receive subcontracts in excess of $1 million in the case of a contract for the construction of any public facility, or in excess of $500,000 in the case of all other contracts, to adopt a plan in consonance with this clause;

(5) Assurances that the bidder will submit such periodic reports and cooperate in any studies or surveys as may be required by the contracting agency or the Small Business Administration in order to determine the extent of compliance by the bidder with the subcontracting plan; and

(6) A recitation of the types of records the successful bidder will maintain to demonstrate procedures which have been adopted to comply with the requirements and goals set forth in the plan, including the establishment of source lists of small business concerns and small disadvantaged business concerns; and efforts to identify and award subcontracts to such small business concerns. The records shall include at least the following (these records may be maintained on a plant-wide or company-wide basis unless otherwise indicated):

a. Small and disadvantaged business source lists, guides, and other data identifying small and small disadvantaged business vendors.

b. Organizations contacted for small and disadvantaged business sources.

c. On a contract-by-contract basis, records on all subcontract solicitations over $100,000, indicating on each solicitation (i) whether small business was solicited and if not, why not; (ii) whether small disadvantaged business was solicited and if not, why not; and (iii) reasons for the failure of responding small businesses or small disadvantaged businesses to receive the subcontract award.

d. Records to support such efforts as:

(i) contacts with disadvantaged and small business trade associations;

(ii) contacts with business development organizations; and

(iii) attendance at small and disadvantaged business procurement conferences and trade fairs.

e. Records to support internal activities to guide and encourage buyers such as:

(i) workshops, seminars, training programs, etc., and

(ii) monitoring activities to evaluate compliance.

f. On a contract-by-contract basis, records to support award data submitted to the Government to include name, address, and size status of subcontractor.

(c) In order to effectively implement this plan, the Contractor shall:

(1) Issue and promulgate company-wide policy statements in support of this effort, develop written procedures and work instructions, and assign specific responsibilities regarding the requirements of this clause.

(2) Demonstrate continuing management interest and involvement in support of these programs through such actions as regular reviews of progress and establishment of overall corporate and divisional goals and objectives.

(3) Train and motivate Contractor personnel in support of these programs.

(4) Assist small business and small disadvantaged business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor's lists of potential small business and disadvantaged subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

(5) Provide adequate and timely consideration of the potentialities of small business and small disadvantaged business concerns in all "make-or-buy" decisions.

(6) Counsel and discuss subcontracting opportunities with representatives of small and small disadvantaged business firms as are referred by the Small and Disadvantaged Business Utilization Specialist responsible for monitoring performance under this program and representatives of the SBA.

(d) The Contractor shall submit Standard Form 294, Subcontracting Report for Individual Contracts, and Standard Form 295, Summary Subcontract Report, in accordance with instructions provided on the forms.

(e) The bidder understands that:

(1) Prior compliance of the bidder with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the bidder for award of the contract.

(2) The failure of any contractor or subcontractor to comply in good faith with (i) the clause entitled Utilization of Small Business Concerns and Small Disadvantaged Business Concerns, or (ii) the terms of any subcontracting plan required by this Small Business and Small Disadvantaged Business Subcontracting Plan (Advertised) provision, will be a material breach of the contract or subcontract.

(3) A master subcontracting plan on a plant or division-wide basis, which contains all the elements required by (b) above, except goals, may be incorporated by reference as part of the subcontracting plan required by the offeror by this clause, *Provided:* (i) the master plan was approved by the Contracting Officer or the Contractor's cognizant Contract Administration Office prior to bid opening; (ii) the offeror provides copies of the approved plan and evidence of its approval to the Contracting Officer; and (iii) goals and any deviations from the master plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.

(f) In the acquisition of commercial products the bidder further understands that:

(1) If a commercial product (defined below) is offered, the required subcontracting plan may cover the company's production generally, both for Government contracts and for regular commercial sales, rather than just this acquisition. In such cases, the Contractor may request approval from the Contracting Officer to submit one company-wide, or division-wide, annual plan. If such request is deemed appropriate, the offeror shall submit a proposed company-wide, or division-wide, annual plan for acceptance.

(2) Upon approval by the Contracting Officer, the plan will remain in effect for the company's entire fiscal year. During this period, Government contracts for commercial products of the affected company or division will not be required to contain individual subcontracting plans relating only to the supply or services being acquired, unless the Contracting Officer determines for a particular contract that there are unforeseen possibilities for small business and small disadvantaged business subcontracting.

(3) At least 60 days before the scheduled termination of the company or division-wide plan, the Contractor may submit to the Contracting Officer a proposed company or division-wide subcontracting plan for its commercial products for the succeeding fiscal year. If the plan would otherwise terminate prior to approval of the succeeding fiscal year's plan, it will remain in effect until the succeeding plan is accepted or rejected, but no longer than 60 days after the end of the company's fiscal year.

(4) For the purpose of this program, the term "commercial product" means a product in regular production sold in substantial quantities to the general public and/or industry at established catalog or market prices. A product which, in the opinion of the Contracting Officer, differs only insignificantly from the Contractor's commercial product may be regarded for the purpose of this clause as a commercial product.

(End of clause)

(d) In determining whether subcontracting possibilities exist, the contracting officer should consider whether firms which are engaged in the business of performing the work or supplying the items to be required under a contract customarily contract with third parties for the specific purpose of performing a part of such work rather than maintaining sufficient in-house capability to perform the work. The existence of subcontracting possibilities may also be affected, but not necessarily negated, by circumstances such as a potential contractor's long-standing contractual relationship with its suppliers or product prequalification requirements for various supplies or components. In those situations where

there is a determination that no subcontracting possibilities exist, such determination shall be approved by the Procurement Officer and placed in the contract file.

(e) The Small Business Act encourages Federal agencies to provide incentives to increase subcontracting opportunities for small business and small disadvantaged business concerns as may be commensurate with the efficient and economical performance of the contract. Various approaches may be used in the development of incentives. They can take many forms, from a fully quantified schedule of payments based on actual subcontract achievement to an award fee approach employing subjective evaluation criteria. In negotiated contracts for which a subcontract plan is required in accordance with 1.707–3(b), contracting officers may include provisions to effect these incentives. Such provisions should normally be negotiated subsequent to reaching agreement upon the subcontract plan. A sample incentive clause is set forth below. The use of any contractual incentive provision based upon rewarding the contractor monetarily for exceeding goals established in the subcontracting plan must ensure that (i) the goals are realistic and (ii) that any monetary rewards for exceeding the goals must be commensurate with the contractor's efforts which would not otherwise have been expended (*e.g.*, administrative reclassification by the SBA during performance or uneconomic and unnecessary subcontract decisions to take inappropriate advantage of the incentive).

Incentive Subcontracting Program for Small Business and Small Disadvantaged Business Concerns (August 1982)

(1) The Contractor has established, in his subcontracting plan, the following goals for awards to small business and small disadvantaged business concerns:

(i) —— percent of the total planned subcontract amount of $—— to small business concerns, and

(ii) —— percent of the total planned subcontract amount of $—— to small business concerns owned and controlled by socially and economically disadvantaged individuals.

(2) In recognition of any extraordinary efforts by the Contractor in exceeding the small business and small disadvantaged business concerns subcontracting goals established by (1) above, the Contracting Officer may, at his election and in his sole discretion, pay an award fee to the Contractor of not to exceed* of the total dollar value of all such subcontract awards in excess of each goal in (1) above. The Contracting Officer may determine that such excess was not due to efforts by the Contractor, *i.e.*, subcontractor cost overruns, or where the actual subcontract amount exceeds that estimated in the subcontract plan; or there were planned subcontracts not disclosed in the subcontract plan during contract negotiation. Determinations under this paragraph shall not be subject to the clause hereof entitled Disputes.

(3) If the contract is a cost-plus-a-fixed-fee type, the total of the fixed-fee and the incentive payments made pursuant to this clause is subject to the limitations set forth in the NASA Procurement Regulation § 3.405–6(c)(2).

(End of Clause)

(f) The small disadvantaged business concern representation in § 2.201–1B(14) shall be included in all solicitations and all contracts which are awarded without reference to a solicitation, other than those involving small purchases. Failure to execute the representation will be deemed a minor informality and the bidder or offeror shall be permitted to satisfy the requirement prior to award.

1.707-4 Reserved.

1.707-5 Reserved.

1.707-6 Reserved.

1.707-7 Reserved.

1.708 Women-Owned Business Concerns.

(a) Executive Order 12138 created a National Women's Business Enterprise Policy and prescribed arrangements for developing, coordinating, and implementing a national program for women's business enterprises.

(b) To encourage the use of women-owned businesses in subcontracting, the following clause shall be included in all contracts expected to exceed $10,000 except (i) contracts which, including all subcontracts thereunder, are to be performed entirely outside the United States, its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands; and (ii) contracts for services which are personal in nature.

Utilization of Women-Owned Business Concerns (Over $10,000) (August 1982)

(a) It is the policy of the United States Government that women-owned businesses shall have the maximum practicable opportunity to participate in the performance of contracts awarded by any Federal agency.

(b) The Contractor agrees to use its best efforts to carry out this policy in the award of subcontracts to the fullest extent consistent with the efficient performance of this contract. As used in this contract, a "women-owned business" concern means a business that is at least 51 percent owned by a woman or women who are U.S. citizens and who also control and operate the businesses and that is a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto. "Control" in this context means exercising the power to make policy decisions. "Operate" in this context means being actively involved in the day-to-day management.

(c) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as women-owned business concerns.

1.709 Purchase under Federal Supply Schedule Contracts.

Where orders are placed under Federal Supply Schedule contracts and one or more of the contractors for an item on a given Schedule are small business concerns, the orders shall be placed in accordance with the policies and procedures set forth in § 5.101–3.

3. In part 1, § 1.903–1 is amended by revising paragraph (v), as follows:

1.903–1 General standards.

* * * * *

(v) be otherwise qualified and eligible to receive an award under applicable laws and regulations, *e.g.*, § 1.707–2(b)(1)(iii); Part 12, Subparts 6 and 8 (in the case of a small business concern, see § 1.705–4(c)(vi)).

4. In Part 2, § 2.201–1, Section B(12) is added to read as follows:

2.201–1 Supply and service contracts, including construction.

* * * * *

Section B—Contract Form and Representations, Certifications and Other Statements of Offeror

* * * * *

(12) Insert the following provision in all solicitations except those made outside the United States.

Women-Owned Business (August 1982)

The offeror represents that the firm submitting this offer ( ) is, ( ) is not, a women owned business. A "women-owned" business is a business that (i) is at least 51 percent owned by a woman or women who are U.S. citizens and who also control and operate the business; and (ii) is a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto. "Control" in this context means exercising the power to make policy decisions. "Operate" in this context means being actively involved in the day-to-day management.

(End of provision)

* * * * *

5. In Part 2, § 2.201–1, Section C Paragraph (27) is added to read as follows:

*Exact percentage (not to exceed 10 percent) to be inserted into the contract document.

Section C—Instructions and Conditions, and Notice to Offerors

* * * * *

(27) in procurements estimated to result in a contract exceeding $500,000, or $1,000,000 in the case of a contract for the construction of any public facility, which will include the contract clause set forth in § 1.707–3(a), include in the solicitation the clause set forth in § 1.707–3(c) under the conditions set forth therein.

3.501 [Amended]

6. In Part 3, 3.501(b)(3), SECTION B Paragraph (16) is revised to read as follows:

* * * * *

Section B—Contract Forms and Representations, Certifications, and Other Statements of Offeror or Quoter

* * * * *

(16) insert the following provision in all solicitations except those made outside the United States.

Women-Owned Business (August 1982)

The offeror represents that the firm submitting this offer [ ] is, [ ] is not, a women owned business. A "women-owned business" is a business that (i) is at least 51 percent owned by a woman or women who are U.S. citizens and who also control and operate the business; and (ii) is a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto. "Control" in this context means exercising the power to make policy decisions. "Operate" in this context means being actively involved in the day-to-day management.

(End of clause)

* * * * *

7. In Part 3, § 3.501(b)(3), Section C, Paragraph (41) is revised to read as follows:

* * * * *

Section C—Instructions, Conditions and Notices to Offerors/Quoters

* * * * *

(41) in procurements estimated to result in a contract exceeding $500,000, or $1,000,000 in the case of a contract for the construction of any public facility, which will include the contract clause set forth in § 1.707–3(a), include in the solicitation the clause set forth in § 1.707–3(b) and, where appropriate, the clause in § 1.707–3(e), under the conditions set forth therein.

* * * * *

8. In Part 16, § 16.001 is revised as follows:

16.001 Index of Procurement Forms for NASA Use.

a. NASA Form Number 524, NASA Small Business Subcontracting Program Quarterly Report of Participating Large Company on Subcontract Commitments to Small Business Concerns (7–65) and GSA Form GSA–2084, Clearance To Acquire Correspondence Filing Cabinets; are deleted.

b. U.S. Standard Forms 294, Subcontracting Report for Individual Contracts (4–81) and 295, Summary Contract Report (4–81), are added.

9. Part 16, § 16.850 is revised to read as follows:

16.850 Standard Form 294, Subcontracting Report for Individual Contracts and Standard Form 295, Summary Subcontract Report.

Standard Form 294, Subcontracting Report for Individual Contracts, and Standard Form 295, Summary Subcontract Report, shall be used for the submission of reports by all NASA contractors and subcontractors who participate in the NASA subcontracting with Small Business and Small Disadvantaged Business Concern Program as required by the clauses in 1.707–3. Instructions for their use are printed on the forms.

10. In Part 21, Subpart 6 is revised to read as follows:

Subpart 6—Subcontracting Reports

21.600 Subcontracting Report.

Standard Form 294, Subcontracting Report for Individual Contracts, and 295, Summary Subcontract Report, will be used to obtain data to provide a basis for evaluating the effectiveness and extent of subcontracting programs involving small and small disadvantaged business concerns pursuant to the Small Business Act of 1958, as amended by Public Law 95–507.

[FR Doc. 83-19102 Filed 7-18-83; 8:45 am]
BILLING CODE 7510-01-M

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41 CFR Ch. 18

[Procurement Regulation Directive 82–6 (Dated August 30, 1982)

Procurement Regulations; Miscellaneous Amendments

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: This document amends the NASA Procurement Regulation (41 CFR Ch. 18). It reflects amendments contained in Procurement Regulation Directive 82–6 concerning the following: Debarment, Suspension, and Ineligibility.

EFFECTIVE DATE: July 19, 1983.

FOR FURTHER INFORMATION CONTACT: James H. Wilson, Procurement Policy Division (Code HP–1), Office of Procurement, NASA Headquarters, Washington, DC 29546, telephone: 202–755–2237.

SUPPLEMENTARY INFORMATION:

In Part 1, Subpart 6, is revised to implement Policy Letter 82–1, issued by the Office of Federal Procurement Policy. The following are the most important substantive changes that are made in this revision:

a. Debarment or suspension by one agency will apply throughout the entire Executive branch unless the head of another agency or his designee determines that there is a compelling reason for conducting business with a debarred or suspended contractor.

b. A uniform framework for debarment and suspension is established, setting forth due process requirements.

c. A consolidated list of all administrative debarments and suspensions and all determinations of ineligibility will be maintained by GSA and distributed on a quarterly basis to all agencies and the General Accounting Office.

List of Subjects in 41 CFR Ch. 18

Government procurement.

Authority: The provisions of this document are issued under 42 U.S.C. 2473(c)(1).

L. E. Hopkins,

Deputy Assistant Administrator for Procurement.

PART 1—GENERAL PROVISIONS

1. In Part 1, Subpart 6, Table of Contents, sections and page numbers are revised to read as follows:

* * * * *

Subpart 6—Debarment, Suspension, and Ineligibility

1.600	Scope of subpart	1–6.1
1.601	Policy	1–6.1
1.602	Definitions	1–6.1
1.603	Establishment and Maintenance of Records and Lists of Debarred, Suspended, and Ineligible Contractors	1–6.2
	1.603–1 Consolidated List of Debarred, Suspended, and Ineligible Contractors	1–6.2
	1.603–2 NASA Records	1–6.3
1.604	Effect of Listing	1–6.3
	1.604–1 General	1–6.3
	1.604–2 Continuation of Current Contracts	1–6.4
	1.604–3 Restrictions on Subcontracting	1–6.4
1.605	Debarment	1–6.4
	1.605–1 General	1–6.4
	1.605–2 Causes for Debarment	1–6.5
	1.605–3 Procedures	1–6.6
	1.605–4 Period of Debarment	1–6.8

1.605-5 Scope of Debarment ... 1-6.8
1.606 Suspension ... 1-6.9
1.606-1 General ... 1-6.9
1.606-2 Causes for Suspension ... 1-6.9
1.606-3 Procedures ... 1-6.10
1.606-4 Period of Suspension ... 1-6.12
1.606-5 Scope of Suspension ... 1-6.12
1.607 Interchange of Information ... 1-6.12
1.608 Reporting ... 1-6.13
1.608-1 Situations Where Reports Are Required ... 1-6.13
1.608-2 Contents of Reports ... 1-6.13
1.608-3 Addresses and Copies of Reports ... 1-6.14

* * * * *

2. In Part 1, Subpart 6, is revised to read as follows:

Subpart 6—Debarment, Suspension, and Ineligibility

1.600 Scope of subpart.

(a) This subpart:

(1) Prescribes policies and procedures governing the debarment and suspension of contractors for the causes given in 1.605 and 1.606;

(2) Provides for the listing of debarred and suspended contractors, and of contractors declared ineligible (see the definition of "ineligible" in 1.602(j)); and

(3) Sets forth the treatment to be accorded to contractors listed as debarred or suspended, as well as those listed as having been declared ineligible.

(b) This subpart does not govern or otherwise apply to the exclusion of contractors from Federal grant or assistance programs, or prescribe policies or procedures governing declarations of ineligibility.

(c) For the purpose of this subpart, the authorized representative of the Administrator is the Assistant Administrator for Procurement.

1.601 Policy.

(a) NASA shall solicit bids and proposals from, award contracts to, and approve or consent to subcontracts with, responsible business concerns and individuals only. Debarment and suspension are discretionary actions which, taken in accordance with this subpart, are appropriate means to effectuate this policy.

(b) The serious nature of debarment and suspension requires that they be imposed only in the public interest, for the Government's protection and not for purposes of punishment. Debarment and suspension shall be imposed to protect the Government's interest, and only for the causes and in accordance with the procedures set forth in this subpart.

1.602 Definitions.

(a) *"Adequate evidence"* means information sufficient to support the reasonable belief that a particular act or omission has occurred.

(b) *"Affiliates."* Business concerns or individuals are affiliates if, directly or indirectly, (1) either one controls or can control the other; or (2) a third controls or can control both.

(c) *"Authorized representative"* means the Assistant Administrator for Procurement who has been designated by and authorized to act on behalf of the Administrator for the purposes of this subpart (see 1.600(c)), including, but not limited to, acting as a debarring or suspending official.

(d) *"Consolidated List of Debarred, Suspended, and Ineligible Contractors"* means a list compiled, maintained and distributed by the General Services Administration (GSA), containing the names of contractors that have been debarred or suspended by a department or agency of the Government, as well as contractors that have been declared ineligible under other statutory or regulatory authority.

(e) *"Contractor,"* as used in this subpart, means any individual or other legal entity that: (1) submits bids or proposals for or is awarded, or reasonably may be expected to submit bids or proposals for or be awarded, a Government contract or a subcontract under a Government contract; or (2) conducts business with the Government as an agent or representative of another contractor.

(f) *"Conviction"* means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or plea, and includes a conviction entered upon a plea of *nolo contendere*.

(g) *"Debarment"* means action taken by a debarring official under 1.605 to exclude a contractor from Government contracting for a reasonable, specified period; a contractor so excluded is "debarred."

(h) *"Debarring Official"* means the Administrator or the Assistant Administrator for Procurement.

(i) *"Indictment"* means indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment.

(j) *"Ineligible,"* as used in this subpart, means excluded from Government contracting (and subcontracting, if appropriate) pursuant to statutory, Executive Order, or regulatory authority for causes other than those listed in 1.605 and 1.606 of this subpart. For example, contractors excluded pursuant to the Davis-Bacon Act and its related statutes and implementing regulations, the Service Contract Act, the Equal Employment Opportunity Acts and Executive Orders, the Walsh-Healey Public Contracts Act, the Buy American Act, and the Environmental Protection Acts and Executive Orders are "ineligible."

(k) *"Legal proceedings"* means any civil judicial proceeding to which the Government is a party or any criminal proceeding. The term also includes appeals from such proceedings.

(l) *"Preponderance of the evidence"* means proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

(m) *"Suspending Official"* means the Administrator or the Assistant Administrator for Procurement.

(n) *"Suspension"* means action taken by a suspending official under 1.606 to disqualify a contractor temporarily from Government contracting; a contractor so disqualified is "suspended."

1.603 Establishment and Maintenance of Records and Lists of Debarred, Suspended, and Ineligible Contractors.

1.603-1 Consolidated List of Debarred, Suspended, and Ineligible Contractors.

(a) GSA is responsible for—

(1) Compiling and maintaining a current, consolidated list of contractors debarred, suspended or declared ineligible by Federal agencies or by the General Accounting Office;

(2) Revising and distributing the list quarterly and issuing monthly supplements to Federal agencies and the General Accounting Office; and

(3) Providing with the list the name and telephone number of the official responsible for maintenance and distribution of the list.

(b) The Office of Procurement (Code HP-1) shall—

(1) notify GSA, within 5 working days after debarring or suspending a contractor, or modifying or rescinding such an action, of the information set forth in § 1.603-2;

(2) notify GSA of the names and addresses of the organizations within NASA that are to receive the consolidated list and the number of copies to be furnished to each; and

(3) direct inquiries concerning listed contractors to the agency or other Governmental authority that took the action.

1.603-2 NASA records.

The Office of Procurement (Code HP-1) shall maintain records relating to each contractor which NASA has debarred or suspended that contain the following information:

(i) The names and addresses of all debarred or suspended contractors;

(ii) The cause for the action (see 1.605 and 1.606);

(iii) The effective date of the action and, in the case of debarments, the termination date for each listing; and

(iv) The name and telephone number of the Office of Procurement's point of contact for the action.

1.604 Effect of listing.

1.604-1 General.

(a) NASA shall not solicit bids or proposals from, award contracts to, renew or otherwise extend the duration of an existing contract with, or approve or consent to subcontract(s), when such approval or consent is required, for a contractor known to have been debarred or suspended by NASA or any other Federal agency, unless the Administrator or his authorized representative decides that a compelling reason exists to grant an exception (see 1.604-1(a) (1) and (2) below). For the purpose of this Subpart, knowledge of the debarment or suspension of a contractor exists if there is actual knowledge of such status as, for example, when such status is ascertained from the Consolidated List of Debarred, Suspended, and Ineligible Contractors. Procurement Officers shall establish procedures which provide for the effective use of that list.

(1) Prior to initiating a pre-award survey or any of the procurement actions set forth in § 1.604-1(a), the Consolidated List of Debarred, Suspended, and Ineligible Contractors shall be reviewed. If a contractor is listed as having been debarred or suspended, the applicable procurement action shall not be taken unless the Administrator or his authorized representative states in writing the compelling reasons for such action.

(2) Requests for compelling reason determinations shall be forwarded to the Assistant Administrator for Procurement (Code HP-1). When that official makes such a determination, a notice describing the determination shall be forwarded to the GSA Office of Acquisition Policy. Some examples of circumstances that may constitute a compelling reason include: (a) The property or services to be acquired are available only from the listed contractor; (b) the urgency of the requirement dictates that NASA deal with the contractor; (c) the contractor and NASA have entered into an agreement covering the same events which resulted in the listing, and the agreement includes a decision by NASA not to debar or suspend the contractor; and (d) for such other reasons related to the national defense or program requirements which require continued business dealings with the listed contractor.

(b) Contractors that have been declared ineligible are excluded from receiving contracts and, if applicable, subcontracts, under the conditions and for the period set forth in the applicable statute, Executive Order, or regulation. NASA shall not solicit bids or proposals from, award contracts to, renew or otherwise extend an existing contract with, or approve or consent to subcontracts, when such approval or consent is required, for a contractor known to have been declared ineligible for the period of the ineligibility, to the extent the particular procurement action is prohibited by the terms of the declaration.

1.604-2 Continuation of current contracts.

Notwithstanding the listing of a contractor for the causes set forth in this Subpart, NASA may continue contracts or subcontracts in existence at the time the contractor was debarred or suspended, unless the Administrator or his authorized representative directs otherwise. However, payment of all or part of the funds due or to become due may be withheld when such action is determined to be in the best interest of the Government by the Procurement Officer with the concurrence of local counsel. A decision as to the type of termination action, if any, to be taken should be made only after review by contracting and technical personnel and by counsel to assure the propriety of the proposed action.

1.604-3 Restrictions on subcontracting.

When a debarred or suspended contractor is proposed as a subcontractor, for any subcontract subject to Government consent (see 7.104-23 and 7.203-8), approval shall not be given unless the Administrator or his authorized representative states in writing the compelling reasons for the approval.

1.605 Debarment.

1.605-1 General.

(a) The debarring official may, in the public interest, debar a contractor for any of the causes contained in § 1.605-2, using the procedures in § 1.605-3. The existence of a cause for debarment under § 1.605-2, however, does not necessarily require that the contractor be debarred; the seriousness of the contractor's acts or omissions and any mitigating factors should be considered in making any debarment decision.

(b) Debarment of a contractor constitutes debarment of all divisions or other organizational elements of the contractor, unless the debarment decision is limited by its terms to specific divisions, organizational elements, or commodities. The debarring official may extend the debarment decision to include any affiliates of the contractor, if they are (1) specifically named and (2) given written notice of the proposed debarment and an opportunity to respond (see § 1.605-3(c)).

(c) A contractor's debarment shall be effective throughout the executive branch of the Government, unless the Administrator or head of another Federal agency taking the procurement action, or his authorized representative, states in writing the compelling reasons justifying continued business dealings between his agency and the contractor.

(d) If no suspension is in effect under § 1.606 at the time debarment is proposed, no contracts shall be awarded, and no subcontracts shall be consented to or approved for the contractor by NASA, pending a debarment decision.

§ 1.605-2 Causes for Debarment.

The debarring official may debar a contractor for any of the causes listed in (a) through (c) following:

(a) Conviction of or civil judgment for:

(1) commission of fraud or a criminal offense in connection with: obtaining, attempting to obtain, or performing a public contract or subcontract;

(2) violation of Federal or State antitrust statutes relating to the submission of bids or proposals;

(3) commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; or

(4) commission of any other offense indicating a lack of business integrity or business honesty which seriously and directly affects the present responsibility of a Government contractor or subcontractor.

(b) Violation of the terms of a Government contract or subcontract so serious as to justify debarment, such as:—

(1) willful failure to perform in accordance with the terms of one or more contracts; or

(2) a history of failure to perform, or of unsatisfactory performance of, one or more contracts.

(c) Any other cause of so serious or compelling a nature that it affects the present responsibility of a Government contractor or subcontractor.

1.605-3 Procedures.

(a) *Investigation and referral.* Matters appropriate for the debarring official's consideration shall be reported promptly

to that official in accordance with the provisions of § 1.608.

(b) *Decisionmaking process.*

(1) The debarment decisionmaking process shall be as informal as practicable, consistent with principles of fundamental fairness. The contractor (and any specifically named affiliates) shall be afforded an opportunity to submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment.

(2) In actions not based upon a conviction or judgment, if it is found that the contractor's submission in opposition raises a genuine dispute over facts material to the proposed debarment, fact-finding shall be conducted. Normally, such fact-finding shall be conducted by the NASA Board of Contract Appeals (see 1.605–3(d)(2)(i)). The fact-finding may be conducted by a member or members of the NASA Board, assigned by the Chairman, or, in the discretion of the Chairman, arrangements may be made through another Government agency to obtain the services of an Administrative Judge to conduct such fact-finding. The fact-finding generally will be conducted in accordance with the procedures contained in the Rules of Procedure for the adjudication of contract appeals before the NASA Board of Contract Appeals. However, the Chairman may, in his discretion, modify such rules or prescribe such additional or supplementary rules of procedure as may be appropriate for debarment actions. The official conducting the fact-finding shall—

(i) afford the contractor an opportunity to appear with counsel, submit documentary evidence, present witnesses, and confront any person that NASA presents; and

(ii) ensure that a record of the fact-finding is transcribed and made available at cost to the contractor upon request, unless the contractor and NASA, by mutual agreement, waive the requirement for a transcript.

(c) *Notice of proposal to debar.* Debarment shall be initiated by advising the contractor and any specifically named affiliates, by certified mail, return receipt requested—

(1) That debarment is being considered;

(2) Of the reasons for the proposed debarment in terms sufficient to put the contractor on notice of the conduct or transaction(s) upon which it is based;

(3) Of the cause(s) relied upon under 1.605–2 for proposing debarment;

(4) That, within 30 days after the receipt of the notice, the contractor may submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment, including any additional specific information that raises a genuine dispute over the material facts;

(5) Of NASA's procedures governing debarment decisionmaking;

(6) Of the potential effect of the proposed debarment; and

(7) If no suspension is in effect under 1.606, that no contracts shall be awarded to, and no subcontracts shall be consented to or approved for the contractor by NASA, pending a debarment decision.

(d) *Debarring official's decision.*

(1) In actions based upon a conviction or judgment, or in which there is no genuine dispute over material facts, the debarring official shall make a decision on the basis of all the information in the administrative record including any submission made by the contractor. If no suspension is in effect under 1.606, the decision shall be made within 30 working days after receipt of any information and argument submitted by the contractor, unless the debarring official extends this period for good cause.

(2) In actions in which fact-finding is conducted as to disputed material facts, written findings of fact shall be prepared. The debarring official shall base the decision on the facts as found, together with any information and argument submitted by the contractor and any other information in the administrative record.

(i) The Administrator may refer matters involving disputed material facts to the NASA Board of Contract Appeals for findings of fact pursuant to Section 1209.103(a) of Attachment A, NMI 1152.1D (see 1.605–3(b)(2)). The debarring official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.

(ii) The debarring official's decision shall be made after the conclusion of fact-finding.

(3) In any action in which the proposed debarment is not based upon a conviction or civil judgment, the cause for debarment must be established by a preponderance of the evidence.

(e) *Notice of debarring official's decision.*

(1) If the debarring official decides to impose debarment, the contractor and any affiliates involved shall be given prompt notice by certified mail, return receipt requested—

(i) Referring to the notice of proposed debarment;

(ii) Specifying the reasons for debarment;

(iii) Stating the period of debarment, including effective dates (see 1.605–4); and

(iv) Advising that the debarment is effective throughout the Executive branch of the Government unless the Administrator or head of another Federal agency taking the procurement action, or his authorized representative, makes the statement called for by 1.605–1(c).

(2) If debarment is not imposed, the debarring official shall promptly notify the contractor and any affiliates involved of that decision, by certified mail, return receipt requested.

§ 1.605–4 Period of debarment.

(a) Debarment shall be for a period commensurate with the seriousness of the cause(s). Generally a debarment should not exceed 3 years. If suspension precedes a debarment, the suspension period shall be considered in determining the debarment period.

(b) The debarring official may extend the debarment for an additional period, if that official determines that an extension is necessary to protect the Government's interest. However, a debarment may not be extended solely on the basis of the facts and circumstances upon which the initial debarment action was based. If debarment for an additional period is determined necessary, the procedures of § 1.605–3 above shall be followed to extend the debarment.

(c) The debarring official may reduce the period or extent of debarment, upon the contractor's request, supported by documentation, for reasons such as—

(1) newly discovered material evidence;

(2) reversal of the conviction or judgment upon which the debarment was based;

(3) bona fide change in ownership or management;

(4) elimination of other causes for which the debarment was imposed; or

(5) other reasons the debarring official deems appropriate.

§ 1.605–5 Scope of debarment.

(a) The fraudulent, criminal, or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a contractor may be imputed to the contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the contractor, or with the contractor's knowledge, approval, or acquiescence. The contractor's acceptance of the benefits derived from the conduct shall

be evidence of such knowledge, approval, or acquiescence.

(b) The fraudulent, criminal, or other seriously improper conduct of a contractor may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the contractor who participated in, knew of, or had reason to know of, the contractor's conduct.

(c) The fraudulent, criminal, or other seriously improper conduct of one contractor participating in a joint venture or similar arrangement may be imputed to other participating contractors if the conduct occurred for or on behalf of the joint venture or similar arrangement or with the knowledge, approval, or acquiesence of these contractors. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

§ 1.606 Suspension.

§ 1.606-1 General.

(a) The suspending official may, in the public interest, suspend a contractor for any of the causes in § 1.606-2, using the procedures in § 1.606-3.

(b) Suspension is a serious action to be imposed on the basis of adequate evidence, pending the completion of investigation or legal proceedings, when it has been determined that immediate action is necessary to protect the Government's interest. In assessing the adequacy of the evidence, consideration should be given to how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result. This assessment should include an examination of basic documents such as contracts, inspection reports, and correspondence.

(c) Suspension constitutes suspension of all divisions or other organizational elements of the contractor, unless the suspension decision is limited by its terms to specific division, organizational elements, or commodities. The suspending official may extend the suspension decision to include any affiliates of the contractor if they are (1) specifically named and (2) given written notice of the suspension and an opportunity to respond (see § 1.606-3(c)).

(d) A contractor's suspension shall be effective throughout the Executive branch of the Government, unless the Administrator or head of another Federal agency taking the procurement action, or his authorized representative, states in writing the compelling reasons justifying continued business dealings between his agency and the contractor.

§ 1.606-2 Causes for suspension.

(a) The suspending official may suspend a contractor suspected, upon adequate evidence, of—

(1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public contract or subcontract;

(2) Violation of Federal or State antitrust statutes relating to the submission of bids or proposals;

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; or

(4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a Government contractor or subcontractor.

(b) Indictment for any of the causes in paragraph (a) above constitutes adequate evidence for suspension.

(c) The suspending official may, upon adequate evidence, also suspend a contractor for any other cause of so serious or compelling a nature that it affects the present responsibility of a Government contractor or subcontractor.

1.606-3 Procedures.

(a) *Investigation and referral.* Matters appropriate for the suspending official's consideration shall be reported promptly to that official in accordance with the provisions of § 1.608.

(b) *Decisionmaking process.*

(1) The suspension decisionmaking process shall be as informal as practicable, consistent with principles of fundamental fairness. The contractor (and any specifically named affiliates) shall be afforded an opportunity, following the imposition of suspension, to submit, in person, in writing or through a representative, information and argument in opposition to the suspension.

(2)(i) In actions not based on an indictment, and where it is found that the contractor's submission in opposition raises a genuine dispute over facts material to the suspension, a copy of the notice of suspension shall promptly be furnished to the Department of Justice with a request for advice as to whether fact-finding proceedings would prejudice the substantial interests of the Government in pending or contemplated legal proceedings. If the suspending official determines, based upon the advice received from the Department of Justice, that to conduct fact-finding would prejudice the substantial interests of the Government in pending or contemplated legal proceedings based on the same facts as the suspension, this determination shall be reduced to writing and made a part of the record. Notice of this determination shall promptly be furnished to the contractor.

(ii) In actions not based upon an indictment, if it is found that the contractor's submission in opposition raises a genuine dispute over facts material to the suspension and if no determination has been made, on the basis of Department of Justice advice, that substantial interests of the Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced, fact-finding shall be conducted. Normally, such fact-finding shall be conducted by the NASA Board of Contract Appeals (see § 1.606-3(d)(2)(i)). The fact-finding may be conducted by a member or members of the NASA Board, assigned by the Chairman, or, in the discretion of the Chairman, arrangements may be made through another Government agency to obtain the services of an Administrative Judge to conduct such fact-finding. The fact-finding generally will be conducted in accordance with the procedures contained in the Rules of Procedure for the adjudication of contract appeals before the NASA Board of Contract Appeals. However, the Chairman may, in his discretion, modify such rules or prescribe such additional or supplementary rules of procedure as may be appropriate for suspension actions. The official conducting the fact-finding shall—

(A) afford the contractor an opportunity to appear with counsel, submit documentary evidence, present witnesses and confront any person that NASA presents; and

(B) ensure that a record of the fact-finding is transcribed and made available at cost to the contractor upon request, unless the contractor and NASA, by mutual agreement, waive the requirement for a transcript.

(c) *Notice of Suspension.* When a contractor and any specifically named affiliates are suspended, they shall be immediately advised by certified mail, return receipt requested—

(1) That they have been suspended and that the suspension is based on an indictment or other adequate evidence that the contractor has committed irregularities (i) of a serious nature in business dealings with the Government, or (ii) seriously reflecting on the propriety of further Government dealings with the contractor; and such

irregularities shall be described in terms sufficient to place the contractor on notice without disclosing the Government's evidence;

(2) That the suspension is for a temporary period pending the completion of an investigation and such legal proceedings as may ensue;

(3) Of the cause(s) relied upon under § .606–2 for imposing suspension;

(4) Of the effect of the suspension (see § 1.606–1(d));

(5) That, within 30 days after receipt of the notice, the contractor may submit, in person, in writing or through a representative, information and argument in opposition to the suspension, including any additional specific information that raises a genuine dispute over material facts; and

(6) That fact-finding to determine disputed material facts will be conducted unless (i) the action is based on an indictment or (ii) a determination is made, on the basis of Department of Justice advice, that the substantial interests of the Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced.

(d) *Suspending official's decision.*

(1) In actions (i) based on an indictment, (ii) in which the contractor's submission does not raise a genuine dispute over material facts; or (iii) in which fact-finding to determine disputed material facts has been denied on the basis of Department of Justice advice, the suspending official's decision shall be based on all the information in the administrative record, including any submission made by the contractor.

(2) In actions in which fact-finding is conducted as to disputed material facts, written findings of fact shall be prepared. The suspending official shall base the decision on the facts as found, together with any information and argument submitted by the contractor and any other information in the administrative record.

(i) The Administrator may refer matters involving disputed material facts to the NASA Board of Contract Appeals for findings of fact pursuant to Section 1209.103(a) of Attachment A, NMI 1152.1D (see 1.606–3(b)(2)). The suspending official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.

(ii) The suspending official's decision shall be made after the conclusion of fact-finding.

(3) The suspending official may modify or terminate the suspension or leave it in force (for example, see paragraph 1.605–4(c) for the reasons for reducing the period or extent of debarment). However, a decision to modify or terminate the suspension shall be without prejudice to the subsequent imposition by any other agency or the imposition of debarment by any agency.

(4) Prompt written notice of the suspending official's decision shall be sent to the contractor by certified mail, return receipt requested.

1.606–4 Period of suspension.

(a) Suspension shall be for a termporary period pending the completion of investigation and any ensuing legal proceedings, unless sooner terminated by the suspending official or as provided in this paragraph 1.606–4.

(b) If legal proceedings are not initiated within 12 months after the date of the suspension notice, the suspension shall be terminated unless an Assistant Attorney General requests its extension, in which case it may be extended for an additional 6 months. In no event may a suspension extend beyond 18 months, unless legal proceedings have been initiated within that period.

(c) The suspending official shall notify the Department of Justice of the proposed termination of the suspension, at least 30 days before the 12-month period expires, to give that Department an opportunity to request an extension.

1.606–5 Scope of suspension.

The scope of suspension shall be the same as that for debarment (see § 1.605–5), except that the procedures of 1.606–3 shall be used in imposing suspension.

1.607 Interchange of information.

Debarment or suspension of a contractor by one Federal agency can have an adverse impact on the missions, programs or operations of other agencies with which the contractor does business. Accordingly, if it appears that there is the potential for such an adverse impact, the debarring or suspending official should solicit the comments of those agencies that could be affected before taking action. Should NASA believe that it could be affected by the action of another agency, it may comment directly to the cognizant debarring or suspending official thereof, so that the official may consider such comments prior to taking action. If several agencies independently are contemplating a debarment or suspension action against the same contractor, consideration should be given to designating one agency as the lead agency for making the decision.

1.608 Reporting.

1.608–1 Situations where reports are required.

A report incorporating the information required by 1.608–2 shall be prepared when:

(i) a contractor has committed, or is suspected of having committed, any of the acts described in 1.605–2 and 1.606–2; or

(ii) a contractor is suspected of attempting to evade the prohibitions of debarments or suspensions imposed under this Regulation by changes of address, multiple addresses, formation of new companies, or by other devices.

1.608–2 Contents of reports.

Each report prepared pursuant to 1.608 shall be coordinated with local counsel and shall include substantially the following information, where available:

(i) Name and address of contractor;

(ii) Names of the principal officers, partners, owners, or managers;

(iii) All known affiliates, subsidiaries, or parent firms, and the nature of the affiliation;

(iv) Description of the contract or contracts concerned, including the contract number, and office identifying numbers or symbols, the amount of each contract, the degree of completion, the amount paid the contractor and the amount still due, and the percentage of work to be completed;

(v) The status of vouchers;

(vi) Whether the contract has been assigned pursuant to the Assignment of Claims Act, and if so assigned, the name and address of the assignee and a copy of the assignment;

(vii) Whether any other contracts are outstanding with the contractor or any of his affiliates, and if so, the amount of such contracts, whether they are assigned pursuant to the Assignment of Claims Act, and the amounts paid or due on such contracts;

(viii) A complete summary of all pertinent evidence;

(ix) A recommendation as to the continuation of current contracts;

(x) An estimate of damages, if any, sustained by the Government as a result of the action of the contractor, including an explanation of the method used in making the estimate;

(xi) The comments and recommendations of the contracting officer and local counsel as to (A) whether the contractor should be suspended or debarred, (B) whether any limitations should be applied to such action, and (C) the period of any debarment; and

(xii) As an enclosure, a copy to the contract (or contracts) or pertinent excerpts therefrom, appropriate exhibits, testimony or statements of witnesses, copies of assignments, and other relevant documentation.

1.608-3 Addresses and copies of reports.

Reports, including enclosures, shall be submitted in duplicate to the Assistant Administrator for Procurement (Code HP-1) with an additional copy of the Office of General Counsel, NASA Headquarters (Code G).

[FR Doc. 83-19103 Filed 7-18-83; 8:45 am]
BILLING CODE 7510-01-M

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41 CFR Ch. 18

[Procurement Regulation Directive 82-8 (dated October 29, 1982)]

Procurement Regulations; Miscellaneous Amendments

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: This document amends the NASA Procurement Regulation (41 CFR Ch. 18). It reflects amendments contained in Procurement Regulation Directive 82-8 concerning the following:

1. Protest of Small Business Status.
2. Elimination of Use of Prompt Payment Discounts in Evaluation of Bids and Offers.
3. Delegation of Authority to Approve Advance Payment Determination and Findings (D&Fs).
4. Indirect Cost Monitoring Office (ICMO).
5. Format and Instructions for Submitting Equipment Requisitions.
6. Relocation Costs.
7. Report on College and University Projects.

EFFECTIVE DATE: July 19, 1983.

FOR FURTHER INFORMATION CONTACT: James H. Wilson, Procurement Policy Division (Code HP-1), Office of Procurement, NASA Headquarters, Washington, DC 20546, Telephone: 202-755-2237.

SUPPLEMENTARY INFORMATION: 1. In Part 1, § 1.703(b)(1) is revised to recognize telephonic protests of small business status of an offeror or bidder in connection with a contract involving a small business set-aside or otherwise involving small business preferential consideration. This revision brings the NASA PR into closer alignment with the DAR.

2. In Part 2, § 2.407-3 is revised to eliminate the use of prompt payment discounts in the evaluation of bids and offers. This action is taken in conjunction with similar DAR and FAR changes which will eventually result in revision to Clause 9, Discounts, of SF 33A. Until such time as the revised SF 33A is available, contracting officers shall delete paragraph 9(a) of SF 33A and use the revised solicitation notice set out at § 2.407-3. NASA PR §§ 16.101-2 and 16.102-3 are also revised to reflect this change.

It should be noted that this revision does not eliminate nor discourage the use of prompt payment discounts for obtaining consideration of invoices for earlier payment; it simply means that discounts will not be used for bid and offer evaluation purposes.

3. In Part 3, § 3.303(a)(ii) is revised to authorize installation Procurement Officers to make advance payment determinations for the basic contract under certain conditions and also to require periodic reports of the determinations made.

Appendix J is revised, also, to reflect this delegation of authority to Procurement Officers and to incorporate semi-annual reporting requirements (see J. 5002).

4. Defense Acquisition Circular No. 76-30, dated 30 September 1981, issued coverage with respect to the organization and function of the Indirect Cost Monitoring Office (ICMO) and its role in the DoD procurement process. NASA PR § 3.1403 is revised to officially include representation of other Federal agencies at ICMO Working Group meetings.

5. In Part 13, § 13.601-3 is revised for the purpose of reducing the paperwork burden on industry in connection with submittal of equipment requisitions (DD Form 1419).

6. In Part 15, § 15.205-25 is revised to recognize changes in the cost of relocating contractor's employees due to economic factors and changes in industry and Government practices. The limitation for costs covering the transition period has been increased to 60 days for the employee and 45 days for the spouse and dependents. The limitation on the allowability of closing costs on the residence owned by a transferred employee, combined with the continuing costs of ownership, has been increased to 14 percent of the sales price of the property sold. Concerning the costs incident to acquiring a home in a new location, an overall limitation of five percent of the new residence purchase price has been established. Payments to newly hired employees for the purchase or sale of residences are now treated in the same manner as payments to current employees. Further, payments to employees for mortgage interest and rental differential payments, as well as mortgage interest payments on vacated residences, are recognized as allowable costs, subject to stated limitations. The prior restriction placing a limitation on the costs of cancelling unexpired leases has been eliminated. With respect to miscellaneous expense incident to relocation, the flat limitation has been raised to $1,000. Related changes have been made to § 15.201-3(b)(3) and § 15.205-33(d).

7. In Part 21, § 21.700 is revised to update the title of NASA Form 1356 and to reflect the recent NASA Headquarters reorganization with respect to the NASA University Program.

List of Subjects in 41 CFR Ch. 18

Government procurement.

Authority: The provisions of this document are issued under 42 U.S.C. 2473(c)(1).

L. E. Hopkins,

Deputy Assistant Administrator for Procurement.

PART 1—GENERAL PROVISIONS

1. In Part 1, § 1.703(b)(1), the introductory paragraph is revised to read as follows:

1.703 Determination of Status on Small Business Concern.

* * * * *

(1) *Protest of Small Business Status.* Any bidder, offeror, or other interested party may, in connection with a contract involving a small business set-aside or otherwise involving small business preferential consideration, challenge the small business status of any bidder or offeror by sending or delivering a protest to the contracting officer responsible for the particular acquisition. As used in this paragraph, "protest" means a statement by telephone or in writing from any bidder or offeror on a particular acquisition (or from any other interested party) alleging that a bidder or offeror on such acquisition is not a small business concern. The statement shall contain the basis for the protest together with specific detailed evidence supporting the protestant's claim. In order to apply to the acquisition, such protest must be filed with and delivered to the contracting officer prior to the close of business on the fifth day exclusive of Saturday, Sunday, and legal holidays after bid opening date for formally advertised and small business restricted advertised acquisitions. In acquisitions requiring submission of proposals, the contracting officer shall, except under

the circumstances specified in 3.106-3(a)(iii), notify the apparently unsuccessful offerors in writing of the name and location of the apparently successful offeror(s) and establish a deadline date (five working days plus a reasonable time for the notice to reach the unsuccessful offerors) by which any size protest on the instant acquisition must be received. To be considered timely, a protest must be delivered to the contracting officer by hand, telegram, or mail, within the five day period allotted. A protest shall also be considered timely if made by telephone to the contracting officer within the five day period allotted, and the contracting officer thereafter receives a confirming letter (i) within such five day period, or (ii) postmarked no later than one day after the date of such telephone protest. The following procedures shall apply:

* * * * *

PART 2—PROCUREMENT BY FORMAL ADVERTISING

2. In Part 2, the Table of Contents is amended by changing the page numbers for § 2.407-2 through 2.407-8 to read as follows:

* * * * *

2.407-2	Responsible Bidder	2-4:7
2.407-3	Discounts	2-4:7
2.407-4	Economic Price Adjustment	2-4:8
2.407-5	Other Factors To Be Considered	2-4:8
2.407-6	Equal Low Bids	2-4:8A
2.407-7	Requirements in Lieu of Standard Form 1036	2-4:8A
2.407-8	Protests Against Award	2-4:8B

* * * * *

3. In Part 2, § 2.407-3 is revised to read as follows:

2.407-3 Discounts.

(a) Prompt payment discounts shall not be considered in the evaluation of offers. However, any discount offered will form a part of the award, and will be taken by the payment office if payment is made within the discount period specified by the offeror. As an alternative to indicating a discount in conjunction with the offer, offerors may offer discounts on individual invoices.

(b) Pending the issuance of a revised edition of Standard Form 33-A, "Solicitation Instructions and Conditions," the clause below shall be included in all solicitations to which this form is applicable.

Discounts (October 1982)

Paragraph 9(a) of Standard Form 33-A, "Solicitation Instructions and Conditions," is deleted, and prompt payment discounts will not be considered in the evaluation of offers. However, any offered discount will form a part of the award, and will be taken if payment is made within the discount period indicated in the offer by the offeror. As an alternative to offering a prompt payment discount in conjunction with the offer, offerors awarded contracts may include prompt payment discounts on individual invoices.

(End of clause)

(c) If Standard Form 33-A is not used in the solicitation, but the acquisition is one regarding which offerors may offer prompt payment discounts, the provision in the clause above shall be used, except that the words in the first sentence beginning with "Paragraph 9(a)" and ending with "is deleted, and" shall be omitted.

4. In Part 2, § 2.407-6(a) (1) and (2) and (b) are revised to read as follows:

2.407-6 Equal Low Bids.

(a)(1) When two or more low bids are equal in all respects, considering all factors except the priorities set forth in (2) below, award shall be made in accordance with the order of priorities therein. Only priority (ii) is applicable to construction contracts. When two or more low bids are equal in all respects, considering all factors including the priorities set forth in (2) below, award shall be made by a drawing by lot which shall be witnessed by at least three persons and which may be attended by the bidders or their representatives.

(2) For the purpose of (1) above, preference shall be given in the following order of priority:

(i) concerns which qualify as labor surplus area concerns and which are also small business concerns;

(ii) other small business concerns; and

(iii) other labor surplus concerns.

(b) When award is to be made by drawing by lot and the information available shows that the product of a particular manufacturer has been offered by more than one bidder, a preliminary drawing by lot shall be made to ascertain which of the bidders offering the product of a particular manufacturer will be included in the final drawing to determine the award.

* * * * *

PART 3—PROCUREMENT BY NEGOTIATION

5. In Part 3, the Table of Contents, §§ 3.302 through 3.305 are amended to read as follows:

3.302	Determinations and Findings by the Administrator	3-3.2
3.303	Determinations and Findings below the Administrator Level	3-3.2A
3.304	[Reserved]	3-3.2B
3.305	Formats for Determinations and Findings	3-3.2B

* * * * *

6. In Part 3, § 3.303(a)(ii) is revised to read as follows:

3.303 Determinations and Findings Below the Administrator Level.

(a) * * *

* * * * *

(ii) the determination required by 10 U.S.C. 2307(c) and 2310(b) for the basic contract when the advance payment amount equals or exceeds $1,000,000 or, when the advance payment is to a foreign entity or, when the organization receiving the advance payment is also receiving a fee for the effort involved. When the amount of the advance payment is under $1,000,000 for the basic contract and a foreign entity or organization receiving a fee is not involved, the Installation Procurement Officer may make the determination required, *provided*, That such action has been coordinated with the Installation Financial Management Officer;

* * * * *

3.501 [Amended]

7. In Part 3, § 3.501(b)(3) Section B Paragraph (19) is revised to read as follows:

Section B—Contract Forms and Representations, Certifications and Other Statements of Offeror or Quote

* * * * *

(19) the following representation and certification shall be inserted in all solicitations:

Contracts Between NASA and Former NASA Employees

The offeror represents that he ( ) is, or ( ) is not, an individual who was employed by NASA during the past two (2) years, or a firm in which such former employee is a partner, principal officer, majority shareholder, or which is otherwise controlled or predominantly staffed by such former employees. If the offeror/quoter intends to subcontract any of the work hereunder, he also represents that his first-tier subcontractor(s) ( ) is, or ( ) is not, an individual who was employed by NASA during the past two (2) years, or a firm in which such former employee is a partner, principal officer, majority shareholder, or which is otherwise controlled or predominantly staffed by such former employees.

8. In Part 3, § 3.1401(v) is revised to read as follows:

* * * * *

(v) Recommending to the Assistant Deputy Under Secretary of Defense for Acquisition (ADUSD(A)), OUSD(R&E), policy changes as needed;

* * * * *

9. In Part 3, § 3.1403 is revised to read as follows:

3.1403 ICMO Working Group.

The Working Group shall consist of representatives of each Military Department, DLA/DCAS, and DCAA. Representatives of OUSD(R&E) (C&SA) and OASD(C)DASD(Audit) will participate as consultants. Representatives of other Federal agencies (NASA, GSA, etc.) will be invited to attend meetings and to participate in Working Group functions. The Working Group shall be chaired by the ICMO designee. It shall meet at the call of the Chairman to coordinate actions and perform research. The Chairman shall specify task assignments, establish cases and assign case numbers, make case assignments to Working Group members, determine case priorities, and issue resulting guidance papers. Projects which require expenditure of significant DoD resources shall be approved by the DoD Director (C&SA), OUSD(R&E), prior to initiation.

PART 13—GOVERNMENT PROPERTY

10. In Part 13, § 13.601–3, Section I, Blocks 1, 3 and 8; Section II, Blocks 9, 12, 15, 16, 20 and 21; Section III, Introductory Text; and Section V, are revised to read as follows:

13.601–3 Format and instructions for submitting requisition—DD Form 1419.

* * * * *

Section I

Block 1. Not applicable.

* * * * *

Block 3. Enter the 4 digit Federal Supply Class (FSC).

* * * * *

Block 8. Enter the complete description of the item. Continue the item description in Block 51 if additional space is required to describe the item desired.

* * * * *

Section II

Block 9. Enter the contractor's name, street address, city, state and zip code from which the requisition is being initiated. The address should be the one to which inquiries of a technical nature are to be referred. Include the name and telephone number of the individual to be contacted concerning the item requested.

* * * * *

Block 12. Disregard the "Military" block. Show NASA contract number and program for which item is to be used.

* * * * *

Block 15. Enter the date by which NSAS must issue a Certificate of Non-Availability. The date will be developed by subtracting the procurement leadtime and 30 days administrative leadtime from the date shown in Block 14.

Block 16. Enter the Defense Material System Priority Rating that is assigned to the contract or anticipated purchase order, if applicable.

* * * * *

Blocks 20 and 21. In addition to the official" title and signature, enter the signing official's typed name, office symbol or name, and telephone number and extension. The signing official should be the company representative who prepares and submits the requirement to the cognizant NASA certifying office.

* * * * *

Section III

This section is for the EVS coordinator's certification of the requirement to DIPEC, when applicable.

* * * * *

Section V. To be completed by DIPEC or EVS Coordinator if equipment is not available.

* * * * *

11. In Part 13, § 13.301–3(c) is revised to read as follows:

13.601–3 Format and instructions for submitting requisitions—DD Form 1419.

* * * * *

(c) *Processing DD Form 1419.*

(1) The essential information, outlined in the above instructions, covering Sections I and II, is required to be completed prior to submission of DD Form 1419 to the EVS coordinator who will review each submission for completeness and authenticity. Incomplete or invalid requests will be returned for correction. The original and two (2) copies of the approved DD Form 1419 may be forwarded to DIPEC for screening of inventories. Upon completion of the screening process, DIPCE will annotate the results of the screening in Section IV or V. Certification of non-availability when cited in Section V is evidence that screening has been accomplished by NASA/DIPEC. The original and one (1) copy of the request will be returned by DIPEC to the EVS coordinator of the cognizant NASA installation indicated in Section III.

(2) When a suitable item is allocated in Section IV, inspection of the equipment is recommended. Notification of acceptance or rejection of the item offered must reach NASA/DIPEC within 30 days after allocation. A copy of the DD Form 1419 will serve as the clearance document to inspect the equipment at the storage site. Acceptance or rejection of item, without inspection or after inspection is to be noted in Section VI. If it is determined that the item is acceptable, Section VII is to be executed. The NASA appropriation symbol must be cited where applicable in Section VII. In either instance, acceptance or rejection, the original of the DD Form 1419 is to be returned to DIPEC by the EVS coordinator, when items have been offered by DIPEC.

PART 15—CONTRACT COST PRINCIPLES AND PROCEDURES

12. In Part 15, § 15.205–25, is revised to read as follows:

15.205–25 Relocation costs.

(a) Relocation costs are costs incident to the permanent change of duty assignment (for an indefinite period or for a stated period of not less than 12 months) of an existing employee or upon recruitment of a new employee. The following types of costs are allowable as noted, subject to paragraphs (b), (c), and (d) below.

(i) Costs of travel of the employee and members of his immediate family (see 15.205–46) and transportation of his household and personal effects to the new location.

(ii) Costs of finding a new home, such as advance trips by employees and spouses to locate living quarters, and temporary lodging during the transition periods, not exceeding separate cumulative totals of 60 days for employees and 45 days for spouses and dependents, including advance trip time.

(iii) Closing costs (i.e., brokerage fees, legal fees, appraisal fees, points, and finance charges, etc.) incident to the disposition of actual residence owned by the employee when notified of transfer; *provided,* That closing costs when added to the continuing costs described in (a)(6) below shall not exceed 14 percent of the sales price of the property sold.

(iv) Other necessary and reasonable miscellaneous expenses incident to relocation, such as disconnecting and connecting household appliances; automobile registration; drivers license and use taxes; cutting and fitting rugs, draperies, and curtains; forfeited utility fees and deposits; and purchase of insurance against damage to or loss of personal property while in transit.

(v) Costs incident to the acquisition of a home in a new location, except that these costs will not be allowable for existing employees or newly recruited employees who prior to the relocation were not homeowners and the total costs shall not exceed five percent of the purchase price of the new home.

(vi) Continuing costs of ownership of the vacant former actual residence being sold, such as maintenance of building and grounds (exclusive of fixing-up expenses), utilities, taxes, property insurance, mortgage interest, etc., after settlement date or lease date of new permanent residence; *provided*, That when added to the closing costs described in (a)(3) above, the costs shall not exceed 14 percent of the sales price of the property sold.

(vii) Mortgage interest differential payments, except that these costs are not allowable for existing or newly recruited employees who prior to the relocation were not homeowners, and the total payments are limited to an amount determined as follows:

(1) Difference between the mortgage interest rates of the old and new residences times the current balance of the old mortgage times three years; and

(2) When mortgage differential payments are made on a lump sum basis and the employee leaves or is transferred again in less than three years, the amount initially recognized shall be proportionately adjusted to reflect payments only for the actual times of the relocation.

(viii) Rental differential payments covering situations where relocated employees retain ownership of a vacated home in the old location and rent at the new location. The rented quarters at the new location must be comparable to those vacated, and the allowable differential payments may not exceed the actual rental costs for the new home, less the fair market rent for the vacated home times three years.

(ix) Cost of canceling an unexpired lease.

(b) The costs described in (a) above must also meet the following criteria to be considered allowable.

(i) The move is for the benefit of the employer.

(ii) Reimbursement must be in accordance with an established policy or practice that is consistently followed by the employer, and is designed to motivate employees to relocate promptly and economically.

(iii) The costs are not otherwise unallowable under the provisions of § 15.205–33, or any other paragraph of Part 2 (see § 15.107 as related to large-scale contractor relocation).

(iv) Amounts to be reimbursed shall not exceed the employee's actual expenses, except that for miscellaneous costs of the type discussed in (a)(4), a flat amount, not to exceed $1,000, may be allowed in lieu of actual costs.

(c) The following types of costs are not allowable:

(i) Loss on sale of a home.

(ii) Continuing mortgage principal payments on residence being sold.

(iii) Costs incident to the acquisition of a home in a new location as follows:

(1) Real estate brokers fees and commissions;

(2) Costs of litigation;

(3) Real and personal property insurance against damage or loss of property;

(4) Mortgage life insurance;

(5) Owner's title policy insurance when such insurance was not previously carried by the employee on the old residence (however, cost of a mortgage title policy is allowable); and

(6) Property taxes and operating or maintenance costs.

(iv) Payments for employee's income taxes or FICA (social security taxes) incident to reimbursed relocation costs.

(v) Payments for job counseling and placement assistance to employee spouses and dependents who were not employees of the contractor at the old location.

(vi) Costs incident to furnishing equity or nonequity loans to employees or making arrangements with lenders for employees to obtain lower-than-market rate mortgage loans.

(d) If relocation costs for an employee have been allowed either as an allocable indirect or direct cost, and the employee resigns within 12 months for reasons within the employee's control, the contractor shall refund or credit the relocation costs to the Government.

13. In Part 15, § 15.205–33(d) is revised to read as follows:

15.205–33 Recruitment costs.

* * * * *

(d) Relocation costs incurred incident to recruitment of new employees are subject to 15.205–25. However, costs of travel to an overseas location shall be considered travel costs in accordance with 15.205–46 and not relocation costs for the purpose of this subparagraph, if (i) dependents are not permitted at that location for any reason, and (ii) such costs do not include costs of transporting household goods.

PART 16—PROCUREMENT FORMS

14. In Part 16, the Table of Contents, §§ 16.102 through 16.104–3 are revised to read as follows:

* * * * * *

16.102 Forms for Negotiated Supply or Services Contracts (Standard Forms 18, 26, NASA 250, Standard Form 32, NASA Form 418, and Standard Forms 33, 33A, 36, and 30) 16–1.8
16.102–1 Request for Quotation (Standard Form 18) 16–1.8
16.102–2 Award/Contract (Standard Form 26) 16–1.8
16.102–3 Solicitation, Offer, and Award (Standard Form 33) 16–1.9
16.103 Amendment of Solicitation/Modification of Contract (Standard Form 30) 16–1.11
16.104 Instructions for Preparation of Forms for Advertised and Negotiated Supply and Services Contracts (Standard Forms 33, 26, and 30) 16–1.12
16.104–1 Solicitation, Offer, and Award (Standard Form 33) 16–1.12
16.104–2 Award/Contract (Standard Form 26) 16–1.12
16.104–3 Amendment of Solicitation/Modification of Contract (Standard Form 30) 16–1.13

* * * * * *

15. In Part 16, § 16.101–1(ii) is revised to read as follows:

16.101–1 General.

* * * * *

(ii) Solicitation Instructions and Conditions (Standard Form 33A); (See 16.101–2(a) below; and 2.407–3(c)).

* * * * *

16. In Part 16, § 16.101–2(a) is revised to read as follows:

16.101–2 Conditions for use.

(a) The Solicitation, Offer, and Award (Standard Form 33) shall be prepared in accordance with 2.201–1. One copy of Standard Form 33A shall accompany each copy of Standard Form 33. Paragraph 9(a) of Standard Form 33A shall be deleted and the clause set out in 2.407–3(c) shall be included in solicitations.

* * * * *

17. In Part 16, § 16.102–3(a)(ii) is revised to read as follows:

16.102–3 Solicitation, offer, and award (Standard Form 33).

(a) General.

* * * * *

(ii) Solicitation Instructions and Conditions (Standard Form 33A); (See 16.102–3(b) below; and 2.407–3(c)).

* * * * *

PART 21—INDIVIDUAL CONTRACT PROFIT/FEE PLAN REPORTING

18. In Part 21, § 21.301 is revised to read as follows:

21.301 Applicability and coverage.

The individual Procurement Action Report Supplement (NASA Form 507A), an addendum to the individual Procurement Action Report (NASA Form 507), is required to be completed for each new negotiated procurement action or each new work modification (modification requiring a D&F) with business firms and non-profit organizations (excluding educational institutions) when cost analysis is required or used. Complete instructions covering the preparation of this report are provided on the back of the report form.

19. In Part 21, § 21.700 is revised to read as follows:

21.700 Committee on Academic Science and Engineering (C.A.S.E.) Report.

The Committee on Academic Science and Engineering (C.A.S.E.) Report on College and University projects (NASA Form 1356) is designed to collect data (not appropriate for inclusion on Form 507) required for preparation of Government-wide reports on sponsored projects in universities. Information submitted with Form 1356 is used in conjunction with existing procurement and financial data to produce reports required by the National Science Foundation Act, the Office of Management and Budget, the Legislative Branch and private sector requestors. The preparation and utilization of NASA Form 1356 has been made an integral part of the information system for recording all activity with colleges and universities, regardless of the nature of the obligating instrument (grant, contract, cooperative agreement, purchase order) or type of proposal (solicited or unsolicited). Preparation of the Form is specified by NMI 5101.12. Detailed instructions for completion are on the form itself.

20. In Appendix I, § I.301(C), Block 19 is revised to read as follows:

Subpart 3—[Amended]

I.301 Preparation Instructions.

* * * * *

Block 19.—UNIT PRICE. Enter the unit price on all MIRR copies whenever the MIRR is used for voucher or receiving purposes.

* * * * *

21. In Appendix J, the Table of Contents, J.5002 is added to read as follows:

APPENDIX J—AUTHORIZATION FOR NEGOTIATION

* * * * *

Subpart 50—Advance Payments Under the Letter of Credit Procedure

* * * * *

J.5002 Reporting of Installation Advance Payment Approvals..... J–50:2

22. In Appendix J, J.5001 "Authorization" is revised to read as follows:

J.5001 Preparation of the D&F for Advance Payments.

* * * * *

Authorization

Advance payments in the amount of $——— are hereby authorized pursuant to 10 U.S.C. 2307. Outstanding payments may at no time exceed the unpaid contract price.

Date: ———

Instructions

1. A request for Headquarters approval of advance payment provisions in accordance with 3.303(a)(ii) will be prepared in final form (original and one official file copy, NASA Form 1267), and forwarded to the Assistant Administrator for Procurement, NASA Headquarters (Code HS–1). The request should include the following: (a) the name of the cognizant NASA Headquarters Program or Staff Office; (b) the negotiation exception to support the requirement, if it is other than 10 U.S.C. 2304(a)(5); (c) if a fee is contemplated, the estimated cost, amount and percent of fee, the total cost and fee, and the factors that were considered in determining the fee (see 3.808); and (d) the name and phone number of the contracting officer or negotiator.

2. A separate [Findings, Determination and Authorization for Advance Payments] will be prepared for each request for authorization of advance payments.

3. Insert the appropriate words and phrases in the form set forth above.

4. Modifications to adapt to special facts and circumstances are permitted provided that they do not conflict with the statutory requirements set forth in 10 U.S.C. 2307 or other cited statutory authority.

5. 10 U.S.C. 2307 will normally be the statutory authority cited for authorizing advance payments. When appropriate, advance payments are also authorized pursuant to 10 U.S.C. 2307, 42 U.S.C. 2473(c)(5) and pursuant to Public Law 85–804 as implemented by Executive Order 10789.

23. In Appendix J, J.5002 is added to read as follows:

J.5002 Reporting of Installation Advance Payment Approvals.

Each Installation shall report to Headquarters by the tenth of January and July each year, Attention: Code BF–6, a listing of Advance Payment amounts and recipients approved at the Installation during the prior six months' period.

[FR Doc. 83–19104 Filed 7–18–83; 8:45 am]
BILLING CODE 7510–01–M

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41 CFR Ch. 18

[Procurement Regulation Directive 82–7 (dated October 27, 1982)]

Procurement Regulations; Miscellaneous Amendments

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: This document amends the NASA Procurement Regulation (41 CFR Ch. 18). It reflects amendments contained in Procurement Regulation Directive 82–7 concerning the following:

1. Set-Asides for Small Business.
2. Labor Surplus Area Concerns.
3. Asian Indian Americans as Socially or Social and Economically Disadvantaged.
4. Equal Low Bids.
5. Defense of Fraud Proceedings.
6. Master Buy Plan Amendments.

EFFECTIVE DATE: July 19, 1983.

FOR FURTHER INFORMATION CONTACT: James H. Wilson, Procurement Policy Division (Code HP–1), Office of Procurement, NASA Headquarters, Washington, D.C. 20546, Telephone: 202–755–2237.

SUPPLEMENTARY INFORMATION: 1. In Part 1, § 1.706 and related paragraphs are revised to reflect changed policies and procedures on "set-aside" contracting with small business.

2. In Part 1, Subpart 8 and related paragraphs are revised to reflect changed policies and procedures on contracting with labor surplus area concerns.

Recent changes in legislation and in defense manpower policies have affected the operation of small business and labor surplus area set-asides.

3. In Part 1, § 1.707–3(a) is revised to include "Asian Indian Americans" as socially and economically disadvantaged individuals. Procurement Notice No. 82–13 is superseded.

4. In Part 2, § 2.201(B)(14) is revised to include "Asian Indian Americans" as socially and economically disadvantaged individuals.

5. In Part 2, § 2.207–6 is revised to conform the procedures to be followed upon the receipt of equal low bids to the changes made in the coverage of small business and labor surplus area set-asides.

6. In Part 15, § 15.205–52 is added specifically disallowing reimbursement of costs incurred by a contractor in the defense of criminal or civil fraud proceedings or administrative proceedings such as those leading to suspension or debarment when the action, brought by the Government, results in a conviction or judgment against the contractor, a decision to debar or suspend, or is resolved by consent or compromise.

7. In Part 20, § 20.5103–2 is revised to require the submittal of amendments of Master Buy Plans to NASA Headquarters sufficiently in advance of contract award date to allow Headquarters to select those procurement documents which will be subject to headquarters review and approval without creating an unacceptable delay in contract placement.

List of Subjects in 41 CFR Ch. 18

Government procurement.

Authority: The provisions of this document are issued under 42 U.S.C. 2473(c)(1).

L. E. Hopkins,

Deputy Assistant Administrator for Procurement.

PART 1—GENERAL PROVISIONS

1. In Part 1, Table of Contents §§ 1.706 through 1.707–1, and 1.801–2 through 1.806–2 are revised to read as follows:

* * * * *

1.706 Set-Asides (Except Small Business-Small Purchase Set-Asides) 1-7.22
1.706-1 General 1-7.22A
1.706-2 Contract Authority 1-7.22C
1.706-3 Review, Withdrawal, or Modification of Set-Asides or Set-Aside Proposals 1-7.22C
1.706-4 Reporting for Department of Commerce Procurement Synopsis 1-7.22E
1.706-5 Total Set-Asides 1-7.22E
1.706-6 Partial Set-Asides 1-7.22G
1.706-7 Combined Small Business-Labor Surplus Area Set-Aside 1-7.24H
1.706-8 Automatic Dissolution of Set-Asides 1-7.29
1.707 Subcontracting With Small Business and Small Disadvantaged Business Concerns 1-7.29
1.707-1 General 1-7.29
* * * * *
1.801-2 Labor Surplus Area 1-8.1
1.801-3 Small Business Concern 1-8.2
1.802 General Policy 1-8.2
1.803 Application of Policy 1-8.2
1.804 Partial Set-Asides for Labor Surplus Area Concerns 1-8.2
1.804-1 General 1-8.2
1.804-2 Set-Aside Procedures 1-8.4
1.804-3 Withdrawal of Set-Asides 1-8.14
1.804-4 Contract Authority 1-8.14
1.805 Subcontracting With Labor Surplus Area Concerns 1-8.14
1.805-1 General Policy 1-8.14
1.805-2 Labor Surplus Area Subcontracting Program 1-8.15
1.805-3 Required Clauses 1-8.15
1.806 Depressed Industries 1-8.17
1.806-1 General 1-8.17
1.806-2 Petroleum and Petroleum Products Industry (Notification No. 58) 1-8.17
* * * * *

2. In Part 1, § 1.704–3(viii) is amended to delete the reference "(see 1.707–4)."

3. In Part 1, §§ 1.706–1 through 1.706–8 are revised to read as follows:

1.706 Set-Asides (Except Small Business-Small Purchase Set-Asides (§ 1.702(c))

1.706–1 General

(a) Small business and labor surplus area (LSA) set-asides should be considered in the following order precedence:

(i) Combined small business/LSA set-aside (§ 1.706–7);

(ii) Partial set-aside for LSA firms (§ 1.804–2);

(iii) Total set-aside for small business (§ 1.706–6);

(iv) Partial set-aside for small business (§ 1.706–6);

(b) Subject to the order of precedence established in (a) above any individual procurement or class of procurements, or any appropriate part thereof, shall be set aside for the exclusive participation of small business concerns when such action is determined to be in the interest of (i) maintaining or mobilizing the Nation's full productive capacity, (ii) war or national defense programs, or (iii) assuring that a fair proportion of Government procurement is placed with small business concerns.

(c) Proposed procurements over $2,500 that are not subject to simplified small purchase procedures shall be specifically reviewed for set-aside for exclusive participation by small firms in accordance with § 1.706–5.

(d) The contracting officer is responsible for either setting aside a requirement or documenting why a set aside is inappropriate. The small business specialist is responsible for reviewing those procurements not set-aside and for taking action in accordance with § 1.706–3 as appropriate.

(e) The determination to make a set-aside may be unilateral or joint. A unilateral determination is one which is made by the contracting officer. A joint determination is one which is recommended by the SBA representative and concurred in by the contracting officer. Insofar as practicable, unilateral determinations rather than joint determinations shall be used as the basis for set-asides. SBA recommendations for set-asides will be limited to those proposed procurements over $2,500 and not reserved for small business under the procedures in § 1.702(c) which, after review by the small business specialist or the contracting officer, have been determined by either party not to meet the criteria for total or partial restriction to small business concerns.

(f) Once a product or service has been acquired successfully by a contracting office on the basis of a small business set-aside, all future requirements of that office for that particular product or service not subject to simplified small purchase procedures shall be acquired on the basis of a repetitive set-aside. This procedure will be followed unless the contracting officer determines that there is not a reasonable expectation that (i) offers will be obtained from at least two responsible small business concerns offering the products of different small business concerns and (ii) awards will be made at reasonable prices. Withdrawal of a repetitive set-aside will be in accordance with 1.706–3.

(g) If a proposed small business set-aside is estimated to exceed $1,000,000 in value and a bond is required, the contracting officer shall, to the extent practicable, place contracts so as to allow more than one concern to perform such work.

(h) To provide for SBA consideration of individual set-asides at the request of its representative, the procurement office shall make available to him for review at the office (to the extent that he has been granted security clearance) all proposed classified and unclassified procurements expected to exceed $2,500 on which unilateral set-asides have not been made by the contracting officer or otherwise reviewed for small business under the procedures of 1.702(c).

(i) In addition to individual procurement set-asides, classes of current and future procurements, or portions thereof, of selected items or services, may be set aside for exclusive small business participation. The determination to make a class set-aside may be either unilateral or joint. Unilateral set-asides, regardless of value will normally be initiated by the contracting officer, but may also be initiated by recommendation of the small business specialist. Class set-asides may be recommended by the SBA representative for only those items or services on which unilateral class set-asides have not previously been made by the contracting officer. The determination to make a class set-aside shall not depend on the existence of a current procurement if future procurements can be clearly foreseen. Class set-asides shall apply only to the procurement office making or participating in the agreement. A class set-aside agreement should specifically identify the items or services subject thereto. Copies of each class set-aside agreement shall be retained at the procurement office. Any class of procurements proposed to be totally set-aside shall satisfy the requirements of 1.706–5. The set-aside determination for any class of procurements proposed to be partially set-aside shall specify that it does not apply to any individual procurement not severable into two or more economic production runs or reasonable lots.

(j) None of the following is, in itself, sufficient cause for not making a set-aside:

(i) a large percentage of previous procurement of the item has been placed with small business concerns;

(ii) the item is on an established planning list under the Industrial Preparedness Program, except that a total set-aside shall not be authorized when one or more large business planned Emergency Producers of the item desires to participate in the procurement (but see 1.706–6 as to partial set-asides);

(iii) the item is on a Qualified Products List, except that a total set-aside shall not be authorized when the products of one or more large businesses are on the Qualified Products List unless it has been confirmed that none of such large businesses desires to participate in the procurement (but see 1.706–6 as to partial set-asides);

(iv) a period of less than 30 days from date of issuance of solicitations is prescribed for the submission of offers;

(v) the procurement is classified;

(vi) small business concerns are considered to be receiving a fair proportion of total contracts for supplies or services;

(vii) a class set-aside of the item or service concerned has been made at some other procurement office; or

(viii) the item will be described by "brand name or equal."

1.706–2 Contract Authority.

Contracts for total (including combined small business/LSA or partial set-asides entered into by conventional negotiation (see 1.706–5(b) and 1.706–6(d)) or by "Small Business Restricted Advertising" (see 1.706–5(b)) are negotiated procurements and shall cite as authority 10 U.S.C. 2304(a)(1) in the case of a unilateral determination (see 3.201–2(b)(ii) or 10 U.S.C. 2304(a)(17) and Section 15 of the Small Business Act in the case of a joint determination.

1.706–3 Review, Withdrawal, or Modification of Set-Asides or Set-Aside Proposals.

(a) Prior to issuing solicitations each individual procurement governed by a class set-aside shall be carefully reviewed to ensure that any changes in the magnitude of anticipated requirements, specifications, delivery requirements, or competitive market conditions, since the initial approval of the class set-aside are not of such material nature as to result in the probable payment of an unreasonable price by the Government or in a change in small business capability. If, prior to award of a contract involving an individual or class set-aside, the contracting officer considers that procurement of the set-aside from a small business concern would be detrimental to the public interest (*e.g.*, because of unreasonable price), he may withdraw a unilateral or joint set-aside determination by giving written notice to the small business specialist and the SBA representative, if available, stating the reasons for the withdrawal. In a similar manner, a unilateral or joint class set-aside may be modified to withdraw one or more individual procurement.

(b) Upon a recommendation of the small business specialist that an individual procurement or class of procurements, or portion thereof, be set-aside the contracting officer shall promptly either:

(i) concur in the recommendation, or

(ii) disapprove, stating in writing his reasons for disapproval.

(c) If the contracting officer disapproves the recommendation of the small business specialist, the case shall be promptly referred to the SBA representative (if one is assigned and available) for his review. No further appeal action will be taken by the small business specialist. If an SBA representative is not assigned or available, resolution of disagreements on set-asides between the small business specialist and the contracting officer shall be accomplished in accordance with the provisions of 1.706–3(h).

(d) All cases involving the noninitiation of a set-aside, whether resulting from a joint decision of the small business specialist and the contracting officer or a determination by the contracting officer alone, require referral to the SBA representative (if one is assigned and available) for his review. The SBA representative will either concur with the decision of the contracting officer or appeal the case in accordance with the provisions of 1.706–3(e).

(e) If the contracting officer disagrees with the recommendation of the SBA representative regarding a small business set-aside for an individual procurement (1.706–1(h)) or class of procurements or portion thereof (1.706–1(i)), he shall notify the SBA representative, in writing, within 5 working days. If the SBA representative disagrees with the contracting officer regarding a withdrawal or modification of a joint or unilateral set-aside determination, the SBA representative shall be allowed 2 working days to appeal, in writing, to the Procurement Officer for decision. The Procurement Officer shall be allowed 7 working days to provide the SBA representative his decision in writing, whether or not the procurement will be set-aside. Within 1 working day after receipt of a decision approving the action of the contracting officer, the SBA representative may request the contracting officer, in writing, to suspend contracting action pending a further appeal by the Administrator of the SBA to the Administrator of NASA. The SBA shall be allowed 15 working days after making such written request, within which the Administrator of SBA (i) may appeal to the Administrator of NASA, and (ii) shall notify the contracting officer whether the further appeal has, in fact, been taken. If notification is not received by the contracting officer within the 15 day period, it shall be deemed that the SBA request to suspend contracting action has been withdrawn and that an appeal to the Administrator of NASA was not taken. When an appeal to the Administrator of NASA has been taken and the contracting officer has been notified of that fact within the 15-day period, the matter shall be forwarded, with full justification of the action taken, through normal channels to the Administrator of NASA through the Office of Procurement, NASA Headquarters.

(f) Any procurement action which has been appealed by the SBA representative shall be suspended pending the decision of the Procurement Officer. If the decision sustains the contracting officer, and if the SBA representative requests further suspension in accordance with (e) above, the suspension shall continue until (i) the SBA appeal is deemed to have been withdrawn (as provided in (e) above), or (ii) the matter is determined by the Administrator of NASA. However, this procedure shall not apply to any particular procurement action which the contracting officer determines must be initiated without delay in order to protect the public interest, and as to which he inserts in the contract file a signed statement of justification approved at a level above the contracting officer. The contracting officer shall promptly give written notice to the SBA representative of any such contracting action initiated.

(g) The Administrator of NASA will have 30 working days to either sustain or deny the appeal for set-aside action. Should it be determined that a decision cannot be made within this time, a later date will be established in writing by the Administrator of NASA to the Administrator, SBA, citing the reasons why additional time is required. A copy of such correspondence will be provided to the Director of Small and Disadvantaged Business Utilization, NASA Headquarters.

(h) In those cases where an SBA representative is not assigned or available, and the contracting officer disagrees with the recommendation of the small business specialist regarding a small business set-aside for an individual procurement or class of procurements or a portion thereof and so notifies the small business specialist in writing, or if the small business specialist disagrees with the contracting officer regarding a withdrawal or

modification of a set-aside determination, the small business specialist may appeal in writing to the Procurement Officer (see 1.704–3) for decision. A memorandum of the decision by the Procurement Officer shall be placed in the contract file. After receipt of a decision from the Procurement Officer, which shall be final, and if the decision approves the action of the contracting officer, the small business specialist shall forward for information and management purposes complete documentation of the case to the Director of Small and Disadvantaged Business Utilization, NASA Headquarters.

(i) A signed memorandum of nonconcurrence in a recommended set-aside action or of any withdrawal or modification shall be made and retained in the contract file.

1.706–4 Reporting for Department of Commerce Procurement Synopsis. See 1.1003–9.

1.706–5 Total Set-Asides.

(a)(1) Subject to the order of precedence established in 1.706–1(a), the entire amount of an individual procurement or class of procurements, including contracts for architectural and engineering services, research, development, test and evaluation, maintenance, repair, and construction except small business-small purchase set-asides (1.702(c)), shall be set-aside for exclusive small business participation (1.701–1) if the contracting officer determines that there is a reasonable expectation that (i) offers will be obtained from at least two responsible small business concerns offering the products of different small business concerns and (ii) awards will be made at reasonable prices (1.706–3(a)). Total set-asides shall not be made unless such a reasonable expectation exists; (see 1.706–6 as to partial set-asides). Although past procurement history of the item or similar items is always important, it is not the only factor to be considered in determining whether a reasonable expectation exists. In making R&D small business set-asides, there must also be a reasonable expectation of obtaining from small business the best scientific and technological sources consistent with the demands of the proposed procurement for the best mix of cost, performance, and schedules.

(2) Every proposed procurement for construction, including maintenance and repairs, in excess of $2,500 and under $2 million (except dredging under $1 million) shall be considered individually, as though the small business specialist had initiated a set-aside request and the procedures of 1.706–3 shall apply.

(3) Every proposed procurement of $2 million or more for construction or $1 million or more for dredging, shall be considered on an individual procurement basis under (1) above.

(b) Contracts for total small business set-asides may be entered into by conventional negotiation or by a special method of procurement known as "Small Business Restricted Advertising." The latter method shall be used whenever possible. Solicitation shall be restricted to small business concerns. Small business restricted advertising, including awards, thereunder, shall be conducted in the same way as prescribed for formal advertising in Part 2 of this Regulation, except that bids and awards shall be restricted to small business concerns. Bids received from firms that do not qualify as small business concerns shall be considered as nonresponsive and shall be rejected.

(c) In procurements involving total set-asides for small business, each solicitation shall contain substantially the following notice. The applicable size standard shall be set forth in Section C of the solicitation.

Notice of Total Small Business Set-Aside (October 1982)

(a) *Restriction.* Offers under this procurement are solicited from small business concerns only and this procurement is to be awarded only to one or more small business concerns. This action is based on a determination by the Contracting Officer, alone or in conjuction with a representative of the Small Business Administration, that it is in the interest of maintaining or mobilizing the Nation's full productive capacity, in the interest of war or national defense programs or in the interest of assuring that a fair proportion of Government procurement is placed with small business concerns. Offers received from firms which are not small business concerns shall be considered nonresponsive and shall be rejected.

(b) *Definition.* A *"small business concern"* is a concern, including its affiliates, which is independently owned and operated, is not dominant in the field of operation in which it is offering on Government contracts, and can further qualify under the criteria set forth in regulations of the Small Business Administration (CFR, Title 13, Section 121.3–8). In addition to meeting these criteria, a manufacturer or a regular dealer submitting offers in his own name must agree to furnish in the performance of the contract end items manufactured or produced by small business concerns: *provided* that this additional requirement does not apply in connection with construction or service contracts.

(End of clause)

1.706.6 Partial Set-Asides.

(a) Subject to the order of precedence established in 1.706–1(a), a portion of a procurement, not including construction, shall be set-aside for exclusive small business participation when:

(i) the procurement exceeds $10,000; and

(ii) the procurement is severable into two or more economic production runs or reasonable lots (see 1.804–1(a)(2)(i)–(v)); and

(iii) one or more small business concerns are expected to have the capability to furnish a severable portion of the procurement at a reasonable price, except that a partial set-aside shall not be made if there is a reasonable expectation that only two concerns (one large and one small) with capability will respond with offers unless authorized by the Procurement Officer on a case-by-case basis. Before reaching this conclusion the contracting officer shall consult with the small business specialist and may make advanced inquiries to determine the number of interested concerns. Similarly, a class of procurements, not including construction, may be partially set aside in accordance with 1.706–1(d).

(b) When a portion of a procurement is to be set aside for small business pursuant to (a) above, the procurement shall be divided into a set-aside portion and a non-set-aside portion, each of which shall be not less than an economic production run or reasonable lot. Insofar as practical, the set-aside portion will be such as to make the maximum use of small business capacity. Delivery and other terms applicable to the set-aside portion of an item and those applicable to the non-set-aside portion of that item shall be comparable.

(c)(1) In procurements involving partial set-asides for small business, each solicitation shall contain the clause set forth herein (except see (c)(2) below). The applicable size standards shall be set forth in Section C of the solicitation.

Notice of Partial Small Business Set-Aside (October 1982)

(a) *General.* A portion of this procurement, identified in the Schedule as the "set-aside portion," has been set aside for award only to small business concerns. Award of the set-aside portion will be made after awards have been made on the non-set-aside portion.

(b) Procedures.

(1) *Determining Eligibility.*

(A) To be eligible to participate in the set-aside portion of this procurement, a small business concern must submit a responsive offer on the non-set-aside portion.

(B) The Government reserves the right not to award to any concern submitting a token offer on the non-set-aside portion or attempting by any other device to secure an unfair advantage over the other offerors.

(2) *Determining Priority for Award.* Small business concerns eligible under (1) above will participate in the set-aside in the following order of priority:

Group 1. Small business concerns which are also labor surplus area concerns.

Group 2. Small business concerns which are not labor surplus area concerns.

Within each of the above groups, offers on the set-aside portion will be requested from concerns in the order of their offers on the non-set-aside portion, beginning with the lowest responsive offer. Concerns may offer less than the total set-aside portion.

(3) *Determining the Set-Aside Award Price.*

(A) *General Rule.*

Subject to the exceptions listed in (B) and (C) below, awards under the set-aside shall be made at the highest unit price for each item awarded on the non-set-aside, adjusted to reflect transportation, rent free use of Government property and other factors considered in evaluating offers on the non-set-aside portion. The set-aside award price shall be subject to the same discount terms used in the evaluation of the highest non-set-aside award price.

(B) *Award Price Involving Foreign End Products (See NASA PR Part 6).*

(i) When the highest award price on the non-set-aside is established by an award for a foreign end product, the award price for the set-aside portion shall be the award price on the non-set-aside as adjusted in evaluating the offer submitting the foreign end product for award under applicable Buy American procedures, except for awards on the set-aside to concerns submitting foreign end products in which case the general rule applies.

(ii) Award under the set-aside to a concern offering a foreign end product, when the highest award price on the non-set-aside portion is established by a domestic source end product, shall be at a price which, after application of the evaluation factors used under Buy American procedures for determining eligibility of a foreign end product for award, is equal to the highest award price on the non-set-aside portion, adjusted to reflect transportation and other factors considered in evaluating the offers.

(C) *Obtaining Offers and Processing Set-Aside Awards.*

(i) When an unaccepted low offer is not involved; if there is no unaccepted low offer meeting the criteria in (ii) below, eligible concerns in the order of priority in (2) above will be requested to offer on the set-aside quantity at the highest unit price awarded on the non-set-aside portion. Concerns may offer less than the total set-aside portion. If any part of the set-aside portion is not taken by eligible small business concerns, the partial set-aside is automatically dissolved as to the unawarded portion. Such unawarded portion may be procured by advertising or negotiation, as appropriate, in accordance with existing regulations.

(ii) When an unaccepted low offer is involved; if (I) a responsive offer is submitted on the non-set-aside portion at a unit price which, when adjusted, is lower than the adjusted highest unit price awarded on the non-set-aside portion but cannot be accepted (*e.g.*, because of "all-or-none" or other quantity limitations, or because the offeror is nonresponsible), and (II) at the time of negotiation for the set-aside portion, the offer could be accepted (*e.g.*, because the set-aside quantity is large enough that the quantity limitations could be complied with, or because the offeror has now become responsible), then the following procedures shall be followed:

Step One. Eligible concerns (in the order of priority in (2) above) will be requested to offer at the adjusted unit price of the unaccepted offer, a quantity of the set-aside portion equal to the quantity of the unaccepted offer.

Step Two. If no eligible concern is willing to take the entire quantity of the unaccepted offer, then all eligible concerns (in the order of priority in (2) above) shall be requested to make offers on any lesser portion at the same price, until either the entire quantity is awarded or all eligible concerns refuse any further portions of such quantity.

Step Three.

Case 1. If the unaccepted offer was submitted by a concern not eligible to participate in the set-aside, and if any of the quantity under Step Two is not awarded, then it and all other remaining quantities of the set-aside portion must be withdrawn and resolicited. If the entire quantity under Step Two is awarded among eligible concerns, Steps Four, Five and Six are applicable to the remaining set-aside portion.

Case 2. If the unaccepted offer was submitted by a concern eligible to participate in the set-aside, Steps Four, Five and Six are applicable to the remaining set-aside portion regardless of whether any quantity under Step Two is not awarded after all eligible concerns have been afforded an opportunity to offer on the unaccepted quantity. However, the concern which submitted the unaccepted offer shall be eliminated from consideration under Step Four and Step Five, for award at higher prices, unless that concern first accepts a quantity of the set-aside portion equal to the entire quantity of its unaccepted offer, at the adjusted price of its offer.

Step Four. In case there is more than one unaccepted offer which meets the conditions of (I) and (II) above, Steps One, Two and Three above shall be applied with respect to the quantities of each such offer, in turn from lowest to highest.

Step Five. Eligible concerns in the order of priority in (2) above will be requested to offer at the highest unit price awarded on the non-set-aside portion of any quantity of the set-aside portion remaining after Steps One, Two, Three and Four have been completed.

Step Six. If the entire set-aside portion is not taken by eligible small business concerns pursuant to Steps One through Five above, the partial set-aside is automatically dissolved as to the unawarded portion and such unawarded portion may be procured by advertising or negotiation as appropriate, in accordance with existing regulations.

(c) *Definitions.*

(1) A *"small business concern"* is a concern, including its affiliates, which is independently owned and operated, is not dominant in the field of operation in which it is making an offer on Government contracts, and can further qualify under the criteria set forth in regulations of the Small Business Administration (CFR Title 13, Section 121.3-8). In addition to meeting these criteria, a manufacturer or a regular dealer submitting offers in his own name must agree to furnish in the performance of the contract, end items manufactured or produced by small business concerns: *provided*, that this additional requirement does not apply in connection with construction or service contracts.

(2) *Labor Surplus Area.* The term "labor surplus area" means a geographic area which at the time of award is classified as such by the Secretary of Labor in the Department of Labor "Listing of Eligible Labor Surplus Areas Under Defense Manpower Policy 4A and Executive Order 10582."

(3) *Labor Surplus Area Concerns.* The term "labor surplus area concern" means a concern that agrees to perform or cause to be performed a substantial proportion of a contract in labor surplus areas. A concern shall be deemed to perform a substantial proportion of a contract in labor surplus areas if the aggregate costs that will be incurred by the concern or its first tier subcontractors on account of manufacturing or production performed in labor surplus areas amount to more than 50% of the contract price.

(d) *Agreement.* The offeror agrees that if awarded a contract as a small business LSA concern under the set-aside portion of this procurement, he will perform or cause to be performed a substantial proportion of the contract in areas classified at the time of award or at the time of performance of the contract as LSA.

(e) *Identification of Areas of Performance.* Each offeror desiring to be considered for award as a small business LSA concern on the set-aside portion of this procurement shall identify in Section B of his offer the geographical areas in which he proposes to perform, or cause to be performed, a substantial proportion of the contract. If the Department of Labor classification of any such area changes after the offeror has submitted his offer, the offeror may change the areas in which he proposes to perform, *provided*, that he so notifies the Contracting Officer before award of the LSA set-aside portion. Such offerors are instructed to insert in the clause entitled "Preference for Labor Surplus Area Concerns" set forth in Section B of the solicitation, the address(es) where costs incurred on account of manufacturing or production (by offeror or first tier subcontractor) will amount to more than fifty percent (50%) of the contract price.

CAUTION: Failure to list the location of manufacture or production and the percentage of cost to be incurred at each location in the space provided in the clause entitled "Preference for Labor Surplus Area Concerns" set forth in Section B of the solicitation will preclude consideration of the offeror as a LSA concern.

(f) *Requirements Contract.* Only one award will be made for each item or sub-item of the non-set-aside portion and only one award will be made for each item or sub-item of the set-aside portion. For the purpose of distributing orders in accordance with this "Notice of Partial Small Business Set-Aside," the Government will apportion the quantities to be ordered as equally as possible between the non-set-aside Contractor and the set-aside Contractor to whom the awards are made.

(End of clause)

(2) When experience indicates that token bidding, block bidding, tie-in bidding, or similar devices may occur, the alternate clause set forth herein may be used.

Notice of Partial Small Business Set-Aside—Alternate (October 1982)

(a) *General.* Part of this procurement identifed in the Schedule as the "set-aside portion," has been set aside for award only to small business concerns. Award of the set-aside portion will be made after awards have been made on the non-set-aside portion.

(b) Procedures.

(1) Determining Eligibility.

(A) To be eligible to participate in the set-aside portion of this procurement, a small business concern must submit a responsive offer on the non-set-aside portion.

(B) The Government reserves the right not to award to any concern submitting a token offer on the non-set-aside portion or attempting by any other device to secure an unfair advantage over the other offerors.

(2) *Determining Priority for Award.* Small business concerns eligible under (1) above will participate in the set-aside in the following order of priority:

Group 1. Small business concerns which are also LSA. A concern in this group which has received an award on the non-set-aside portion of an item shall first be requested to offer the same percentage of the set-aside portion. If a percentage of the set-aside portion of the item remains to be awarded, a drawing by lot shall determine the order of priority within this group for negotiations for the balance of the item.

Group 2. Small business concerns which are not LSA concerns. If a quantity of the item remains unawarded after negotiations with concerns in Group 1, the same procedure shall be followed for Group 2.

(3) Determining the Set-Aside Award Price.

(A) *General Rule.* Subject to the exceptions listed in (B) and (C) below, awards under the set-aside shall be made at the highest unit price for each item awarded on the non-set-aside, adjusted to reflect transportation, rent free use of Government property and other cost factors considered in evaluating offers on the non-set-aside portion. When any one of separate quantities offered on an item cannot be accepted without awarding other quantities of that item at higher prices, the weighted average price shall be used to determine the highest unit price for award if the highest award of the non-set-aside portion of an item was made on such a conditioned offer. When offers on the non-set-aside portion tie-in two or more items so that an award cannot be made for a quantity on one item without a concurrent award of a quantity on another item, such tie-in conditions will be disregarded and the price offered for each quantity under each item shall be considered separately. The set-aside award price shall be subject to the same discount terms used in the evaluation of the highest non-set-aside award price.

(B) *Award Price Involving Foreign End Products (See NASA PR Part 6).*

(i) When the highest award price on the non-set-aside is established by an award for a foreign end product, the award price for the set-aside portion shall be the award price on the non-set-aside as adjusted in evaluating the offer submitting the foreign end product for award under applicable Buy American procedures, except for awards on the set-aside to concerns submitting foreign end products in which case the general rule applies.

(ii) Award under the set-aside to a concern offering a foreign end product, when the highest award price on the non-set-aside portion is established by a domestic source end product shall be at a price which, after application of the evaluation factors used under Buy American procedures for determining eligibility of a foreign end product for award is equal to the highest award price on the non-set-aside portion, adjusted to reflect transportation and other factors considered in evaluating the offers.

(C) *Obtaining Offers and Processing Set-Aside Awards.*

(i) When an unaccepted low offer is not involved; if there is no unaccepted low offer meeting the criteria in (ii) below, eligible concerns in the order of priority in (2) above will be requested to offer on the set-aside quantity at the highest unit price awarded on the non-set-aside portion. Concerns may offer less than the total set-aside portion. If any part of the set-aside portion is not taken by eligible small business concerns, the partial set-aside is automatically dissolved as to the unawarded portion. Such unawarded portion may be procured by advertising or negotiation, as appropriate, in accordance with existing regulations.

(ii) When an unaccepted low offer is involved; if (I) a responsive offer is submitted on the non-set-aside portion at a unit price which, when adjusted, is lower than the adjusted highest unit price award on the non-set-aside portion, but cannot be accepted *e.g.*, because of "all-or-none" or other quantity limitations, or because the offeror is nonresponsible), and (II) at the time of negotiation for the set-aside portion, the offer could be accepted *(e.g.*, because the set-aside quantity is large enough that the quantity limitations could be complied with, or because the offeror has now become responsible), then the following procedures shall be followed:

Step One. Eligible concerns (in the order of priority in (2) above) will be requested to offer at the adjusted unit price equal to the quantity of the unaccepted offer.

Step Two. If no eligible concern is willing to take the entire quantity of the unaccepted offer, then all eligible concerns (in the order of priority in (2) above) shall be requested to make offers on any lesser portion at the same price, until either the entire quantity is awarded or all eligible concerns refuse any further portions of such quantity.

Step Three.

Case 1. If the unaccepted offer was submitted by a concern not eligible to participate in the set-aside, and if any of the quantity under Step Two is not awarded, then it and all other remaining quantities of the set-aside portion must be withdrawn and resolicited. If the entire quantity under Step Two is awarded among eligible concerns, Steps Four, Five and Six are applicable to the remaining set-aside portion.

Case 2. If the unaccepted offer was submitted by a concern eligible to participate in the set-aside, Steps Four, Five and Six are applicable to the remaining set-aside portion regardles of whether any quantity under Step Two is not awarded after all eligible concerns have been afforeded an opportunity to offer on the unaccepted quantity. However, the concern which submitted the unaccepted offer shall be eliminated from consideration under Step Four and Step Five, for award at higher prices, unless that concern first accepts a quantity of the set-aside portion equal to the entire quantity of its unaccepted offer, at the adjusted price of its offer.

Step Four. In case there is more than one unaccepted offer which meets the conditions of (I) and (II) above, Steps One, Two and Three above shall be applied with respect to the quantities of each offer, in turn from lowest to highest.

Step Five. Eligible concersn in the order of priority in (2) above will be requested to offer at the highest unit price awarded on the non-set-aside portion of any quantity of the set-aside portion remining after Steps One, Two, Three and Four have been completed.

Step Six. If the entire set-aside portion is not taken by eligible small business concerns pursuant to Steps One through Five, above, the partial set-aside is automatically dissolved as to the unawarded portion and such unawarded portion may be procured by advertising or negotiation as appropriate, in accordance with existing regulations.

(4) *Determining the Set-Aside Quantity.*

(A) The maximum quantity of an item which may be awarded to any eligible small business concern shall be determined by applying the percentage of the total non-set-aside portion of an item on which an offer was made to the total quantity of the set-aside portion of that item.

(B) If a concern offers on two or more items on the non-set-aside portion, but conditions its offer in such a manner that the total of all these quantities may not be awarded or offers a quantity which, at the option of the Government, may be applied to one or more items, the overall maximum which can be offered on the set-aside portion of the items affected will be determined by applying the percentage of the total quantities of these items on the set-aside portion that could have been awarded to the total of these items on the set-aside portion.

(C) Notwithstanding the foregoing, if the entire set-aside portion of an item is not awarded after completion of the above steps, then the unawarded balance shall be offered

to those concerns who were previously awarded quantities on the set-aside portion but who were prevented from accepting additional quantities because of the quantity limitations stated above. The unawarded quantity will first be offered to that concern in the first priority which has received the largest quantity of the item. If two or more offerors in the first priority received an identical quantity, a drawing by lot shall determine their priority. If a balance still remains, this procedure shall be repeated with the offerors in each of the original groups in turn, to dispose of any balance of the item still remaining.

(c) Definitions.

(1) A *"small business concern"* is a concern, including its affiliates which is independently owned and operated, is not dominant in the field of operation in which it is making an offer on Government contracts, and can further qualify under the criteria set forth in the regulations of the Small Business Administration (CFR Title 13, Section 121.3–8). In addition to meeting these criteria, a manufacturer or a regular dealer submitting offers in his own name must agree to furnish in the performance of the contract, end items manufactured or produced by small business concerns *provided* that this additional requirement does not apply in connection with construction or service contracts.

(2) *Labor Surplus Area.* The term "labor surplus area" means a geographic area which at the time of award is classified as such by the Secretary of Labor in the Department of Labor "Listing of Eligible Labor Surplus Areas Under Defense Manpower Policy 4A and Executive Order 10582."

(3) *Labor Surplus Area Concerns.* The term "labor surplus area concern" means a concern that agrees to perform or cause to be performed a substantial proportion of a contract in labor surplus areas. A concern shall be deemed to perform a substantial proportion of a contract in labor surplus areas if the aggregate costs that will be incurred by the concern or its first tier subcontractors on account of manufacturing or production performed in labor surplus areas amount to more than 50% of the contract price.

(d) *Agreement.* The offeror agrees that if awarded a contract as a small business LSA concern under the set-aside portion of this procurement, he will perform or cause to be performed a substantial proportion of the contract in areas classified at the time of award or at the time of performance of the contract as LSA.

(e) *Identification of Areas of Performance.* Each offeror desiring to be considered for award as a LSA concern on the set-aside portion of this procurement shall identify in Section B of his offer the geographical areas in which he proposes to perform, or cause to be performed, a substantial proportion of the contract. If the Department of Labor classification of any such area changes after the offeror has submitted his offer, the offeror may change the area in which he proposes to perform, *provided* that he so notifies the Contracting Officer before award of the LSA set-aside portion. Such offerors are instructed to insert in the clause entitled "Eligibility for Preference for Labor Surplus Area Concern" in Section B of the solicitation, the address(es) where costs incurred on account of manufacturing or production (by offeror or first tier subcontractor) will amount to more than fifty percent (50%) of the contract price.

CAUTION: Failure to list the location of manufacture or production and the percentage of cost to be incurred at each location in the space provided in the clause entitled "Eligibility for Preference for Labor Surplus Area Concern" set forth in Section B of the solicitation will preclude consideration of the offeror as a LSA concern.

(f) *Requirements Contract.* Only one award will be made for each item or sub-item of the non-set-aside portion and only one award will be made for each item or sub-item of the set-aside portion. For the purpose of equitably distributing orders in accordance with this "Notice of Partial Small Business Set-Aside," the Government will apportion the quantities to be ordered as equally as possible between the non-set-aside Contractor and the set-aside Contractor to whom the awards are made.

(End of clause)

(d)(1) After the award price for the non-set-aside portion has been determined, negotiations may be conducted for the set-aside portion. Procurement on the set-aside portion shall in all instances be effected by negotiation. Negotiations shall be conducted only with those offerors who have submitted responsive offers on the non-set-aside portion. Negotiations shall be conducted with small business concerns in the order of priority as indicated in the foregoing notices; *provided* that, when equal low bids are received on the non-set-aside portion from concerns which are equally eligible for the set-aside portion, the concern which is awarded the non-set-aside portion (under the equal low bid procedure of 2.407–6) shall have first priority with respect to negotiations for the set-aside portion. The set-aside portion shall be awarded as provided in the clause. An offeror entitled to receive an award for quantities of an item under the non-set-aside portion and who accepts the award of additional quantities under the set-aside portion shall not be requested to accept a lower price because of the increased quantities of the award, nor shall negotiation be conducted with a view to obtaining such a lower price based solely upon receipt of award of both portions of the procurement. This does not prevent acceptance by the contracting officer of voluntary reductions in price from the low eligible offeror prior to award, acceptance of voluntary refunds (see 1.312), or the change of prices after award by negotiation of a contract modification.

(2) Offers obtained under the provisions of the set-aside clause from firms eligible for the set-aside portion of the requirement shall be in writing and shall include (i) agreement as to the established set-aside price for the available set-aside quantity, (ii) agreement as to the required delivery, (iii) agreement that all other terms and conditions of the solicitation will apply to the set-aside award, and (iv) agreement to inclusion of the clause *"Examination of Records by the Comptroller General"* in 7.104–15 and *"Audit by National Aeronautics and Space Administration"* in 7.104–42.

(3) When the award of the non-set-aside portion has been made to a small business concern and the same concern is entitled to receive the set-aside portion of the solicitation, the set-aside portion may be added to the basic contract by supplemental agreement utilizing Standard Form 30. The supplemental agreement shall (i) include a reference to the contractor's letter offering on the set-aside quantity, (ii) state the price and delivery schedule applicable to the set-aside quantity, and (iii) include the clause *"Examination of Records by Comptroller General"* in 7.104–15 and *"Audit by National Aeronautics and Space Administration"* in 7.104–42, applicable to the set-aside portion only, copies of all pertinent documents, including the signed offer, shall be attached. The supplemental agreement shall be signed by the contracting officer but need not be signed by the contractor since his signature on the attached offer will be deemed sufficient.

(4) When the award for the non-set-aside portion has been made to a firm other than the concern entitled to receive the set-aside portion of the solicitation, award of the set-aside portion will be made utilizing Standard Form 26. The offers obtained and the award utilized shall reference and include the same data indicated in paragraphs (2) and (3) above. Also, the award shall reference in Block 26 of Standard Form 26, the applicable solicitation and the contractor's written offer, and copies of the solicitation and offer shall be attached. The Standard Form 26 shall be signed by the contracting officer but need not be signed by the contractor. The contractor's signature on the attached offer will be deemed sufficient.

For purposes of Part 21, Subpart 1, the non-set-aside and set-aside portions shall be reported separately.

1.706–7 Combined Small Business-Labor Surplus Area Set-Aside.

(a) In the procurement of certain items, the objectives of both the Small Business Act and Defense Manpower

Policy (DMP) No. 4A may be attained in a single procurement. Under this procedure, the total required quantity of an item would be set-aside for exclusive participation by small business firms and a portion of that total quantity would be further set-aside for award to small business concerns which are also LSA firms.

(b) For procurements exceeding $10,000, the use of this combined small business-LSA set-aside procedure shall be considered. This procedure shall be used in preference to all others when the proposed procurement meets the criteria for:

(i) total small business set-aside (1.706–5(a)(1)); and

(ii) a partial LSA set-aside (1.804–1(a)(1).

(c) Contracts utilizing this procedure may be entered into by "Small Business Restricted Advertising," the preferred method (see 3.201–3), or by conventional negotiation. Solicitations shall provide that offers may be submitted by small business firms only and that a part of the total requirement is further set-aside for LSA firms which are also small business concerns. Offers received from firms which do not qualify as small business concerns shall be considered nonresponsive and shall be rejected.

(d)(i) In combined small business LSA set-asides each solicitation shall contain the clause set forth herein (except see (d)(2) below).

Notice of Combined Small Business-Labor Surplus Area Set-Aside (October 1982)

(a) *General.*

(1) Offers under this procurement are solicited from small business concerns only and the procurement is to be awarded only to one or more small business concerns. This action is based on a determination by the Contracting Officer, alone or in conjunction with a representative of the Small Business Administration, that it is in the interest of maintaining or mobilizing the Nation's full productive capacity, in the interest of war or national defense programs, or in the interest of assuring that a fair proportion of the Government procurement is placed with small business concerns. Offers received from firms which are not small business concerns shall be considered nonresponsive and shall be rejected.

(2) Part of this procurement, identified in the solicitation as the "labor surplus area (LSA) set-aside portion," has been further set aside for award only to one or more LSA concerns, which are also small business concerns, and to a limited extent, to small business concerns which do not qualify as LSA concerns. Award of the LSA set-aside portion will be made after awards have been made on the non-LSA set-aside portion.

(b) *Definitions.*

(1) A "small business concern" is a concern, including its affiliates which is independently owned and operated, is not dominant in the field of operation in which it is making an offer on Government contracts, and can further qualify under the criteria set forth in the regulations of the Small Business Administration, CFR Title 13, Section 121.3–8. In addition to meeting these criteria, a manufacturer or a regular dealer submitting offers in his own name must agree to furnish in the performance of the contract, end items manufactured or produced by small business concerns *provided* that this additional requirement does not apply in connection with construction or service contracts.

(2) *Labor Surplus Area.* The term "labor surplus area" means a geographic area which at the time of award is classified as such by the Secretary of Labor in the Department of Labor "Listing of Eligible Labor Surplus Areas Under Defense Manpower Policy 4A and Executive Order 10582."

(3) *Labor Surplus Area Concerns.* The term "labor surplus area concern" means a concern that agrees to perform or cause to be performed a substantial proportion of a contract in labor surplus areas. A concern shall be deemed to perform a substantial proportion of a contract in labor surplus areas if the aggregate costs that will be incurred by the concern or its first tier subcontractors on account of manufacturing or production performed in labor surplus areas amount to more than 50% of the contract price.

(c) *Procedures.*

(1) *Determining Eligibility:*

(i) To be eligible to participate in the LSA set-aside portion of this procurement, a labor surplus area concern which is also small business concern (or a small business concern to the extent indicated below) must submit a responsive offer on the non-LSA set-aside portion.

(ii) The Government reserves the right not to award to any concern submitting a token offer on the non-LSA set-aside portion or attempting by any other device to secure an unfair advantage over other offerors.

(2) *Determining Priority for Award:* Labor surplus concerns which are also small business concerns and other small business concerns eligible under (1) above will participate in the set-aside in the following order of priority:

Group 1. Small business concerns which are also labor surplus area (LSA) concerns.

Group 2. Small business concerns which are not labor surplus area (LSA) concerns.

Within each of the above groups, offers on the LSA set-aside portion will be requested from concerns in the order of their offers on the non LSA set-aside portions, beginning with the lowest responsive offer. Concerns may offer less than the total LSA set-aside portion.

(3) *Determining the LSA set-aside award price:*

(i) *General Rule.* Subject to the exceptions listed in (ii) and (iii) below, awards under the LSA set-aside shall be made at the highest unit price for each item awarded on the non LSA set-aside, adjusted to reflect transportation, rent free use of Government property and other cost factors considered in evaluation of offers on the non LSA set-aside portion. The LSA set-aside award price shall be subject to the same discount items used in the evaluation of the highest non LSA set-aside award price.

(ii) *Award Price Involving Foreign End Products (See NASA PR Part 6).*

(A) When the highest award price on the non LSA set-aside is established by an award for a foreign end product, the award price for the LSA set-aside portion shall be the award price on the non LSA set-aside as adjusted in evaluating the offer submitting the foreign end product for award under applicable Buy American procedures, except for awards on the LSA set-aside to concerns offering foreign end products, in which case the general rule applies.

(B) Award under the LSA set-aside to a concern offering a foreign end product, when the highest award price on the non LSA set-aside portion is established by an award to a firm offering a domestic source end product, shall be at a price which after application of the evaluation factors used under Buy American procedures for determining eligibility of a foreign end product for award is equal to the highest award price on the non LSA set-aside portion adjusted to reflect transportation and other factors considered in evaluating the offers.

(iii) *Obtaining Offers and Processing LSA Set-aside Awards.*

(A) *When an unaccepted low offer is not involved:* if there is no unaccepted low offer meeting the criteria in (B) below, eligible concerns in the order of priority in (2) above will be required to offer on the LSA set-aside quantity at the highest unit price awarded on the non LSA set-aside portion. Concerns may offer less than the total LSA set-aside portion. If any part of the LSA set-aside portion is not taken by eligible concerns, the partial LSA set-aside is automatically dissolved as to the unawarded portion. Such unawarded portion may be procured by advertising or negotiation as appropriate, in accordance with existing regulations.

(B) *When an unaccepted low offer is involved:* if (I) a responsive offer is submitted on the non LSA set-aside portion at a unit price which, when adjusted, is lower than the adjusted highest unit price awarded on the non LSA set-aside portion, but cannot be accepted (*e.g.* because of "all-or-none" or other quantity limitations, or because the offeror is nonresponsible), and (II) at the time of negotiation for the LSA set-aside portion, the offer could be accepted (*e.g.* because the LSA set-aside quantity is large enough that the quantity limitations could be complied with, or because the offeror has now become responsible), then the following procedures shall be followed.

Step One. Eligible concerns (in the order of priority in (2) above) will be requested to offer at the adjusted unit price of the unaccepted offer, a quantity of the LSA set-aside portion equal to the quantity of the unaccepted offer.

Step Two. If no eligible concern is willing to take the entire quantity of the unaccepted offer, then all eligible concerns (in the order of priority in (2) above) shall be requested to make offers on any lesser portion at the same price, until either the entire quantity is awarded or all eligible concerns refuse any further portions of such quantity.

Step Three.

Case 1. If the unaccepted offer was submitted by a concern not eligible to participate in the LSA set-aside, and if any of the quantity under Step Two is not awarded, then it and all other remaining quantities of the LSA set-aside portion must be withdrawn and resolicited. If the entire quantity under Step Two is awarded among eligible concerns, Steps Four, Five and Six are applicable to the remaining LSA set-aside portion.

Case 2. If the unaccepted offer was submitted by a concern eligible to participate in the LSA set-aside, Steps Four, Five and Six are applicable to the remaining LSA set-aside portion regardless of whether any quantity under Step Two is not awarded after all eligible concerns have been afforded an opportunity to offer on the unaccepted quantity. However, the concern which submitted the unaccepted offer shall be eliminated from consideration under Step Four and Step Five, for award at higher prices, unless that concern first accepts a quantity of the LSA set-aside portion equal to the entire quantity of its unaccepted offer at the adjusted price of its offer.

Step Four. In case there is more than one unaccepted offer which meets the conditions of (I) and (II) above, Steps One, Two and Three above shall be applied with respect to the quantities of each such offer in turn, from lowest price to highest.

Step Five. Eligible concerns in the order of priority in (2) above will be requested to offer, at the highest unit price awarded on the non LSA set-aside portion on any quantity of the LSA set-aside portion remaining after Steps One, Two, Three and Four have been completed.

Step Six. If the entire LSA set-aside portion is not taken by eligible concerns pursuant to Steps One through Five above, the partial LSA set-aside is automatically dissolved as to the unawarded portion and such unawarded portion may be procured by advertising or negotiation as appropriate, in accordance with existing regulations.

(d) *Agreement.* The offeror agrees that if awarded a contract as a small business LSA concern under the set-aside portion of this procurement, he will perform or cause to be performed a substantial proportion of the contract in areas classified at the time of award or at the time of performance of the contract as LSA.

(e) *Identification of Areas of Performance.* Each offeror desiring to be considered for award as a LSA concern on the set-aside portion of this procurement shall identify in Section B of his offer the geographical areas in which he proposes to perform or cause to be performed a substantial proportion of the contract. If the Department of Labor classification of any such area changes after the offeror has submitted his offer, the offeror may change the areas in which he proposes to perform, *provided* that he so notifies the Contracting Officer before award of the LSA set-asides portion. Such offerors are instructed to insert in the clause entitled "Preference for Labor Surplus Area Concerns" in Section B of the solicitation, the address(es) where costs incurred on account of manufacturing or production (by offeror or first tier subcontractor) will amount to more than fifty percent (50%) of the contract price.

CAUTION: Failure to list the location of manufacture or production and the percentage of cost to be incurred at each location in the space provided in the clause entitled "Preference for Labor Surplus Area Concerns" set forth in Section B of the solicitation will preclude consideration of the offeror as a LSA concern.

(f) *Requirement Contract.* Only one award will be made for each item or sub-item of the non LSA set-aside portion and only one award will be made for each item or sub-item of the LSA set-aside portion. For the purpose of equitably distributing orders in accordance with this "Notice of Combined Small Business—Labor Surplus Area Set-Aside," the Government will apportion the quantities to be ordered as equally as possible between the non LSA set-aside Contractor and the LSA set-aside Contractor to whom the awards are made.

(End of clause)

(2) When experience indicates that token bidding, block bidding, tie-in bidding or similar devices may occur, the alternate clause set forth herein may be used.

Notice of Combined Small Business-Labor Surplus Area Set-Aside—Alternate (October 1982)

(a) *General.*

(1) Offers under this procurement are solicited from small business concerns only and the procurement is to be awarded only to one or more small business concerns. This action is based on a determination by the Contracting Officer, alone or in conjunction with a representative of the Small Business Administration, that it is in the interest of maintaining or mobilizing the Nation's full productive capacity, in the interest of war or national defense programs, or in the interest of assuring that a fair proportion of the Government procurement is placed with small business concerns. Offers received from firms which are not small business concerns shall be considered nonresponsive and shall be rejected.

(2) Part of this procurement identified in the solicitation as the "labor surplus area (LSA) set-aside portion," has been further set-aside for award only to one or more LSA concerns, which are also small business concerns, and to a limited extent to small business concerns which do not qualify as LSA concerns. Award of the LSA set-aside portion will be made after awards have been made on the non LSA set-aside portion.

(b) *Definitions.*

(1) A *"small business concern"* is a concern, including its affiliates, which is independently owned and operated, is not dominant in the field of operation in which it is making an offer on Government contracts and can further qualify under the criteria set forth in the regulations of the Small Business Administration (CFR Title 13, section 121.3-8). In addition to meeting these criteria, a manufacturer or a regular dealer submitting offers in his own name must agree to furnish in the performance of the contract, end items manufactured or produced by small business concerns; *provided*, that this additional requirement does not apply in connection with construction or service contracts.

(2) *Labor Surplus Area.* The term "labor surplus area" means a geographic area which at the time of award is classified as such by the Secretary of Labor in the Department of Labor "Listing of Eligible Labor Surplus Areas Under Defense Manpower Policy 4A and Executive Order 10582".

(3) *Labor Surplus Area Concern.* The term "labor surplus area concern" means a concern that agrees to perform or cause to be performed a substantial proportion of a contract in labor surplus areas. A concern shall be deemed to perform a substantial proportion of a contract in labor surplus areas if the aggregate costs that will be incurred by the concern or its first tier subcontractors on account of manufacturing or production performed in labor surplus areas amount to more than 50% of the contract price.

(c) *Procedures*

(1) *Determining Eligibility:*

(i) To be eligible to participate in the LSA set-aside portion of this procurement, a labor surplus area concern which is also a small business concern (or a small business concern to the extent indicated below) must submit a responsive offer on the non LSA set-aside portion.

(ii) The Government reserves the right not to award to any concern submitting a token offer on the non LSA set-aside portion or attempting by any other device to secure an unfair advantage over other offerors.

(2) *Determining Priority for Award:* Labor surplus concerns eligible under (I) above will participate in the LSA set-aside in the following order of priority:

Group 1. Small business concerns which are also LSA concerns. A concern in this group which has received an award on the non LSA set-aside portion of an item shall first be requested to offer the same percentage of the LSA set-aside portion. If a percentage of the LSA set-aside portion of the item remains to be awarded, a drawing by lot shall determine the order of priority within this group for negotiations of the balance of the item.

Group 2. Small business concerns which are not LSA concerns. If a quantity of the item remains unawarded after negotiations with concerns in Group 1, the same procedure shall be followed for Group 2.

(3) *Determining the LSA set-aside award price:*

(i) *General Rule.* Subject to the exceptions listed in (ii) and (iii) below, awards under the LSA set-aside shall be made at the highest unit price for each item awarded on the non LSA set-aside, adjusted to reflect transportation, rent free use of Government property and other cost factors considered in evaluating offers on the non LSA set-aside portion. When any one of separate quantities offered on an item cannot be accepted without awarding other quantities of that item at higher prices, the weighted average price shall be used to determine the highest unit price for award if the highest award of the non LSA set-aside portion of an item was made on such a conditioned offer. When

offers on the non LSA set-aside portion tie-in two or more items so that an award cannot be made for a quantity on one item without a concurrent award of a quantity on another item, such tie-in conditions will be disregarded and the price offered for each quantity under each item shall be considered separately. The LSA set-aside award price shall be subject to the same discount terms used in the evaluation of the highest non LSA set-aside award price.

(ii) *Award Price Involving Foreign End Products (see NASA PR Part 6).*

(A) When the highest award price on the non LSA set-aside is established by an award for a foreign end product, the award price for the LSA set-aside portion shall be the award price on the non LSA set-aside as adjusted in evaluating the offer submitting the foreign end product for award under applicable Buy American procedures, except for awards on the LSA set-aside to concerns offering foreign end products, in which case the general rule applies.

(B) Award under the LSA set-aside to a concern offering a foreign end product, when the highest award price on the non LSA set-aside portion is established by an award to a firm offering a domestic source end product, shall be at a price which, after application of the evaluation factors used under Buy American procedures for determining eligibility of a foreign end product for award, is equal to the highest award price on the non LSA set-aside portion, adjusted to reflect transportation and other factors considered in evaluating the offers.

(iii) *Obtaining Offers and Processing LSA Set-aside Awards.*

(A) *When an unaccepted low offer is not involved:* if there is no unaccepted low offer meeting the criteria in (B) below, eligible concerns in the order of priority in (2) above will be requested to offer on the LSA set-aside quantity at the highest unit price awarded on the non LSA set-aside portion. Concerns may offer less than the total LSA set-aside portion. If any part of the LSA set-aside portion is not taken by eligible concerns, the partial LSA set-aside is automatically dissolved as to the unawarded portion. Such unawarded portion may be procured by advertising or negotiation, as appropriate, in accordance with existing regulations.

(B) *When an unaccepted low offer is involved:* if (1) a responsive offer is submitted on the non LSA set-aside portion at a unit price which, when adjusted, is lower than the adjusted highest unit price awarded on the non LSA set-aside portion, but cannot be accepted (*e.g.*, because of "all-or-none" or other quantity limitations, or because the offeror is nonresponsible), and (II) at the time of negotiation for the LSA set-aside portion, the offer could be accepted (*e.g.*, because the LSA set-aside quantity is large enough that the quantity limitations could be complied with, or because the offeror has now become responsible), then the following procedures shall be followed.

Step One. Eligible concerns (in the order of priority in (2) above) will be requested to offer at the adjusted unit price of the unaccepted offer, a quantity of the LSA set-aside portion equal to the quantity of the unaccepted offer.

Step Two. If no eligible concern is willing to take the entire quantity of the unaccepted offer, then all eligible concerns (in the order of priority in (2) above) shall be requested to make offers on any lesser portion at the same price, until either the entire quantity is awarded or all eligible concerns refuse any further portions of such quantity.

Step Three.

Case 1. If the unaccepted offer was submitted by a concern not eligible to participate in the LSA set-aside, and if any of the quantity under Step Two is not awarded, then it and all other remaining quantities of the LSA set-aside portion must be withdrawn and resolicited. If the entire quantity under Step Two is awarded among eligible concerns, Steps Four, Five and Six are applicable to the remaining LSA set-aside portion.

Case 2. If the unaccepted offer was submitted by a concern eligible to participate in the LSA set-aside, Steps Four, Five and Six are applicable to the remaining LSA set-aside portion regardless of whether any quantity under Step Two is not awarded after all eligible concerns have been afforded an opportunity to offer on the unaccepted quantity. However, the concern which submitted the unaccepted offer shall be eliminated from consideration under Step Four and Step Five, for award at higher prices, unless that concern first accepts a quantity of the LSA set-aside portion equal to the entire quantity of its unaccepted offer at the adjusted price of its offer.

Step Four. In case there is more than one unaccepted offer which meets the conditions of (I) and (II) above, Steps One, Two and Three above shall be applied with respect to the quantities of each offer in turn, from lowest price to highest.

Step Five. Eligible concerns in the order of priority in (2) above will be requested to offer, at the highest unit price awarded on the non LSA set-aside portion on any quantity of the LSA set-aside portion, remaining after Steps One, Two, Three and Four have been completed.

Step Six. If the entire LSA set-aside portion is not taken by eligible concerns pursuant to Steps One through Five above, the partial LSA set-aside is automatically dissolved as to the unawarded portion and such unawarded portion may be procured by advertising or negotiation as appropriate, in accordance with existing regulations.

(4) *Determining the LSA Set-Aside Quantity:*

(i) The maximum quantity of an item which may be awarded to any eligible concern shall be determined by applying the percentage of the total non LSA set-aside portion of an item on which an offer was made to the total quantity of the LSA set-aside portion of that item.

(ii) If a concern offers on two or more items on the non LSA set-aside portion, but conditions its offer in such a manner that the total of all these quantities may not be awarded, or offers a quantity which, at the option of the Government, may be applied to one or more items, the overall maximum which can be offered on the LSA set-aside portion of the items affected will be determined by applying the percent of the total quantities of these items on the LSA set-aside portion.

(iii) Notwithstanding the foregoing, if the entire LSA set-aside portion of an item is not awarded after completion of the above steps, then the unawarded balance shall be offered to those concerns who were previously awarded quantities on the LSA set-aside portion but who were prevented from accepting additional quantities because of the quantity limitations stated above. The unawarded quantity will first be offered to that concern in the first priority which has received the largest quantity of the item. If two or more offerors in the first priority received an identical quantity a drawing by lot shall determine their priority. If a balance still remains, this procedure shall be repeated with the offerors in each of the original priority groups in turn, to dispose of any balance of the item still remaining.

(d) *Agreement.* The offeror agrees that if awarded a contract as a small business LSA concern under the set-aside portion of this procurement, he will perform or cause to be performed a substantial proportion of the contract in areas classified at the time of award or at the time of performance of the contract as LSA.

(e) *Identification of Areas of Performance.* Each offeror desiring to be considered for award as a LSA concern on the LSA set-aside portion of this procurement shall identify in Section B of his offer the geographical areas in which he proposes to perform, or cause to be performed, a substantial proportion of the contract. If the Department of Labor classification of any such area changes after the offeror has submitted his offer, the offeror may change the areas in which he proposes to perform, *provided*, that he so notifies the Contracting Officer before award of the LSA set-aside portion. Such offerors are instructed to insert in the clause entitled *"Preference for Labor Surplus Area Concerns" in Section B of the solicitation, the address(es) where costs incurred on account of manufacturing or production (by offeror or first tier subcontractor) will amount to more than fifty percent (50%) of the contract price.*

CAUTION: Failure to list the location of manufacture or production and the percentage of cost to be incurred at each location in the space provided in the clause entitled *"Preference for Labor Surplus Area Concerns"* set forth in Section B of the solicitation will preclude consideration of the offeror as a LSA concern.

(f) *Requirements Contract.* Only one award will be made for each item or sub-item of the non LSA set-aside portion and only one award will be made for each item or sub-item of the LSA set-aside portion. For the purpose of equitably distributing orders in accordance with this "Notice of Combined Small Business—Labor Surplus Area Set-Aside-Alternate" the Government will apportion the quantities to be ordered as equally as possible between the non LSA set-aside Contractor and the LSA set-aside Contractor to whom the awards are made.

(End of clause)

(e)(1) After the award price for the non LSA set-aside portion has been

determined, negotiations may be conducted for the LSA set-aside portion. Procurement on the LSA set-aside portion shall in all instances be effected by negotiation. Negotiations shall be conducted only with those offerors who have submitted responsive offers on the non LSA set-aside portion. Negotiations shall be conducted in the order of priority as indicated in the foregoing clause; provided that, when equal low offers are received on the non LSA set-aside portion from concerns which are equally eligible for the LSA set-aside portion, the concern which is awarded the non LSA set-aside portion (under the equal low bid procedure of 2.407–6) shall have first priority with respect to negotiations for the LSA set-aside portion. The LSA set-aside portion shall be awarded as provided in the clause. An offeror entitled to receive the award for quantities of an item under the non LSA set-aside portion and who accepts the award of additional quantities under the LSA set-aside portion shall not be requested to accept a lower price because of the increased quantities of the award, nor shall negotiation be conducted with a view to obtaining such a lower price based solely upon receipt of award of both portions of the procurement. This does not prevent acceptance by the contracting officer of voluntary reductions in price from the low eligible offeror prior to award, acceptance of voluntary refunds (see 1.312), or the changes of prices after award by negotiation of a contract modification.

(2) Offers obtained under the provisions of the set-aside clause from firms eligible for the set-aside portion of the requirement shall be in writing and shall include (i) agreement as to the established set-aside price for the available set-aside quantity, (ii) agreement as to the required delivery, (iii) agreement that all other terms and conditions of the solicitation will apply to the set-aside award, and (iv) agreement to inclusion of the clauses *"Examination of Records by the Comptroller General"* in 7.104–15 and *"Audit by National Aeronautics and Space Administration"* in 7.104–42.

(3) When the award of the non-set-aside portion has been made to a small business concern and the same small business concern is entitled to receive the set-aside portion of the solicitation, the LSA set-aside portion may be added to the basic contract by supplemental agreement utilizing Standard Form 30. The supplemental agreement shall (i) include a reference to the contractor's letter offering on the set-aside quantity, (ii) state the price and delivery schedule applicable to the set-aside quantity, and (iii) include the clause *"Examination of Records by the Comptroller General"* in 7.104–15 *"Audit by National Aeronautic Space Administration"* in 7.104–42, applicable to the LSA set-aside portion only. Copies of all pertinent documents, including the signed offer, shall be attached. The supplemental agreement shall be signed by the contracting officer but need not be signed by the contractor since his signature on the attached offer will be deemed sufficient.

(4) When the award for the non-set-aside portion has been made to a firm other than the concern entitled to receive the set-aside portion of the solicitation, award of the set-aside portion will be made utilizing Standard Form 26. The offers obtained and the award utilized shall reference and include the same data indicated in paragraphs (2) and (3) above. Also, the award shall reference in Block 26 of Standard Form 26, the applicable solicitation and the contractor's written offer, and copies of the solicitation and offer shall be attached. The Standard Form 26 shall be signed by the contracting officer but need not be signed by the contractor. The contractor's signature on the attached offer will be deemed sufficient.

1.706–8 Automatic Dissolution of Set-Asides.

If the entire set-aside portion is not procured by the method(s) set forth in 1.707–6, 1.706–6, or 1.706–7, the determination referred to in 1.706–1 is automatically dissolved as to the unawarded portion of the set-aside, and such unawarded portion may be procured by advertising or negotiation as appropriate in accordance with existing regulations (see 3.201–2(b)(ix) and 3.210–3 as to negotiation). Since a considerable time may have elapsed since the initiation of the requirement, contracting officers, prior to issuing a new solicitation, shall review the required delivery schedule (see 1.305–2) to insure that it is realistic in the light of all relevant factors including the capabilities of small business concerns.

1.707 Subcontracting With Small Business and Small Disadvantaged Business Concerns.

1.707–1 General.

(a) Pursuant to Section 8(d) of the Small Business Act (15 U.S.C. 637(d)), it is the policy of the United States that small business concerns, and small business concerns owned and

4. In Part 1, the date of the clause "Utilization of Small Business and Small Disadvantaged Business Concern" is revised to read "(October 1982)" in place of "(August 1982)."

5. In Part 1, 1.707–1 is amended by revising paragraph (c)(2) of the "Utilization of Small Business and Small Disadvantaged Business Concerns" clause to read as follows:

1.707.1 General.

* * * * *

(c) * * *

(2) Whose management and daily business operations are controlled by one or more of such individuals. The Contractor shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans (*i.e.*, American Indians, Eskimos, Aleuts and Native Hawaiians), Asian-Pacific Americans (*i.e.*, U.S. citizens whose origins are from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust Territories of the Pacific, Northern Marianas, Laos, Cambodia, and Taiwan), Asian Indian Americans (*i.e.*, U.S. citizens whose origins are from India, Pakistan, and Bangladesh) and other minorities, or any individuals found to be disadvantaged by the Administration pursuant to Section 8(a) of the Small Business Act.

* * * * *

6. In part 1, § 1.800 through 1.806–2 are revised to read as follows:

1.800 Scope of Subpart.

This Subpart sets forth NASA policy and procedures with respect to aiding labor surplus areas in the United States, its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands. This Subpart implements Defense Manpower Policy No. 4A, October 27, 1977 (32A CFR Part 134), and the Small Business Act as amended (15 U.S.C. 631), and U.S. Department of Labor Regulations (20 CFR Part 654). Defense Manpower Policy No. 4A states the policy of the Government to encourage the placing of contracts and facilities in labor surplus areas and to assist such areas in making the best use of their available resources.

1.801 Definitions.

1.801–1 Labor Surplus Area Concerns.

The term "labor surplus area concern" means a concern that agrees to perform or cause to be performed a substantial proportion of a contract in labor surplus areas. A concern shall be deemed to perform a substantial proportion of a contract in labor surplus areas if the aggregate costs that will be incurred by the concern or its first tier subcontractors, on account of manufacturing or production performed

in labor surplus areas amount to more than 50% of the contract price.

Example A. ABC Company, manufacturing in a labor surplus area, bids on a contract at $1,000. ABC Company will incur the following costs:

Direct labor	$230
Overhead	$275

Purchase of materials from RST Company which manufactures the materials in a full employment area ..... $425 ABC Company qualifies as a substantial labor surplus area concern since it will incur costs in a labor surplus area amounting to more than 50% of the contract price.

Example B. DEF Company, manufacturing in a surplus area bids on a contract at $1,000. DEF Company will incur the following costs:

Direct labor	$200
Overhead	$200

Purchase of materials from UVW Company, which is located in a labor surplus area but which merely distributes the materials from stocks on hand (the materials having been manufactured by UVW's supplier) $550

DEF Company does not qualify as a labor surplus area concern since its manufacturing and production costs do not exceed 50% of the contract price regardless of whether UVW's supplier manufactures in a labor surplus area.

1.801-2 Labor Surplus Area.

The term "labor surplus area" means a geographic area which at the time or award is classified as such by the Department of Labor and listed as such by that Department in its publication "Listing of Eligible Labor Surplus Areas under DMP No. 4A and Executive Order 10582".

1.801-3 Small Business Concern.

See 1.701.

1.802 General Policy.

Except as provided in 1.806 with respect to depressed industries, it is the policy of NASA to aid labor surplus areas (LSA) by placing contracts with LSA concerns, to the extent consistent with procurement objectives and when such contracts can be awarded at prices no higher than those obtainable from other concerns and by encouraging prime contractors to place subcontracts with LSA concerns. In carrying out this policy, and to accommodate the small business policies of Part 1, Subpart 7, preference shall be given in the following order of priority to (i) LSA concerns which are also small business concerns, (ii) other LSA concerns, and (iii) small business concerns which are not labor surplus area concerns. In no case will price differentials be paid for the purpose of carrying out this policy. Heads of installations and procurement offices are responsible for the effective implementation of the labor surplus area program within their respective offices. Responsibility for administration of the program may be assigned to small business specialists appointed pursuant to 1.704-3.

1.803 Application of Policy.

(a) Within the policy set forth in 1.802, the following shall be applied to procurements which are estimated to exceed $10,000:

(i) negotiated procurement shall, where procurement objectives permit, be awarded to labor surplus area concerns; *provided*, that in no case shall price differentials be paid for the purpose of carrying out this policy;

(ii) when appropriate, procurements shall be made from LSA concerns by partial set-aside procedures, in accordance with 1.706-7 or 1.804 (but no total set-aside shall be made for LSA concerns) and such set-asides shall be given preference over any small business set-aside;

(iii) information identifying LSA shall be disseminated promptly to procurement personnel;

(iv) when less than a complete bidders list is to be used pursuant to 2.205-4, at least a pro rata number of prospective LSA concerns shall be solicited.

(v) subcontracting with concerns in LSA shall be encouraged in accordance with 1.805.

(b) Procurements placed in labor surplus areas as a result of preference procedures shall be reported on NASA Form 507, Individual Procurement Action Report, in accordance with procedures prescribed in Part 21, Subpart 1.

1.804 Partial Set-Asides for Labor Surplus Area Concerns.

1.804-1 General.

(a)(1) In accordance with the policies and procedures set forth in 1.802 and 1.803 (see also 1.706-7), a portion of each procurement shall be set aside for labor surplus area concerns if:

(i) the procurement is severable into two or more economic production runs or reasonable lots; and

(ii) one or more labor surplus area concerns are expected to qualify as LSA concerns and to have the capability to furnish a severable portion of the procurement at a reasonable price, except that a partial set-aside shall not be made if there is a reasonable expectation that offers will be received from only two concerns with capability (one concern which will not qualify as a LSA concern and one concern which will qualify as a LSA concern) unless authorized by the Procurement Officer on a case-by-case basis. Before reaching this conclusion the contracting officer shall consult with the small business specialist and may made advance inquiries to determine the number and expected classification of interested concerns.

(2) In determining whether a proposed procurement is susceptible to division into two or more economic production runs or reasonable lots, consideration should be given to the following factors and any others deemed appropriate:

(i) price and procurement history of the items;

(ii) open industry capacity;

(iii) startup cost including special tooling requirements;

(iv) delivery schedule; and

(v) nature of item and quantity being procured.

Before a portion or portions constituting more than 50 percent of the total requirement may be set-aside, a determination must be made that there is a reasonable expectation the action proposed will not result in the payment of a price differential. The determination and supporting information will be made part of the contract file.

(3) In furtherance of the policy to assure that a fair proportion of procurement is placed with small business concerns, each LSA set-aside shall provide that, in addition to LSA concerns, small business, concerns not performing in such areas are also eligible for participation in the set-aside for such quantities thereof as are not awarded to LSA concerns. In this respect, see the provisions of 1.804-2(b) for notice to offerors, and 1.804-2(c) for conduct of set-aside negotiations.

(b) None of the following is, in itself, sufficient cause for not making a set-aside:

(i) a large part of previous procurements of the item in question has been placed with LSA concerns;

(ii) the item to be purchased is on an established planning list under the Industrial Readiness Planning Program;

(iii) the item to be purchased is on a Qualified Products List;

(iv) a period of less than 30 days from the date of issuance of invitations for bids or requests for proposals is prescribed for the submission of offers;

(v) the procurement is classified; or

(vi) labor surplus area concerns are receiving a fair proportion of contracts.

1.804-2 Set-Aside Procedures.

(a) When a portion of a procurement is to be set-aside pursuant to 1.804-1, the procurement shall be divided into a non-set-aside portion and a set-aside portion, each of which shall be not less than an economic production run or

reasonable lot. Insofar as practical, the set-aside portion will be such as to make the maximum use of the capacity of LSA concerns. Delivery terms and other terms applicable to the set-aside portion of an item and those applicable to the non-set-aside portion of that item shall be comparable.

(b)(1) In procurements involving set-asides pursuant to this Subpart, each solicitation and resulting contract shall contain the clause set forth herein except see (b)(2) below.

Notice of Labor Surplus Area Set-Aside (October 1982)

(a) *General.* A portion of this procurement, as identified in the Schedule as the "set-aside portion," has been set aside for preferential award to one or more labor surplus area (LSA) concerns, and, to a limited extent, to other business concerns which do not qualify as (LSA) concerns. Award of the set-aside portion will be made after awards have been made on the non-set-aside portion.

(b) *Procedures.*

(1) *Determining Eligibility.*

(A) To be eligible to participate in the set-aside portion of this procurement, a concern must submit a responsive offer on the non-set-aside portion.

(B) The Government reserves the right not to award to any concern submitting a token offer on the non-set-aside portion or attempting by any other device to secure an unfair advantage over other offerors.

(2) *Determining Priority for Award.* Labor surplus concerns and other business concerns eligible under (1) above will participate in the set-aside in the following order of priority:

Group 1. LSA concerns which are also small business concerns.

Group 2. Other LSA concerns.

Group 3. Small business concerns which are not LSA concerns.

Group 4. Other business concerns which are not LSA concerns.

Within each of the above groups, offers on the set-aside portion will be requested from concerns in the order of their offers on the non-set-aside portion, beginning with the lowest responsive offer. Concerns may offer less than the total set-aside portion.

(3) *Determining the Set-Aside Award Price.*

(A) *General Rule.* Subject to the exceptions listed in (B) and (C) below, awards under the set-aside shall be made at the highest unit price for each item awarded on the non-set-aside, adjusted to reflect transportation, rent free use of Government property and other cost factors considered in evaluating bids on the non-set-aside portion. The set-aside award price shall be subject to the same discount terms used in the evaluation of the highest non-set-aside award price.

(B) *Award Price Involving Foreign End Products, see NASA PR Part 6.*

(i) When the highest award price on the non-set-aside is established by an award for foreign end product, the award price for the set-aside portion shall be the award price on the non-set-aside as adjusted in evaluating the offer submitting the foreign end product for award under applicable Buy American procedures, except for awards on the set-aside to concerns offering foreign end products in which case the general rule applies.

(ii) Award under the set-aside to a concern offering a foreign end product when the highest award price on the non-set-aside portion is established by a domestic source end product shall be at a price which, after application of the evaluation factors used under Buy American procedures for determining eligibility of a foreign end product for award is equal to the highest award price on the non-set-aside portion, adjusted to reflect transportation and other factors considered in evaluating the offers.

(C) *Obtaining Offers and Processing Set-Aside Awards.*

(i) When an unaccepted low offer is not involved: if there is no unaccepted low offer meeting the criteria in (ii) below, eligible concerns in the order of priority in (2) above will be requested to offer on the set-aside quantity at the highest unit price awarded on the non-set-aside portion. Concerns may offer less than the total set-aside portion, *provided* that if any part of the set-aside portion is not taken by eligible concerns in the first 3 groups, awards will be made in Group 4 at prices no higher than the lowest price awarded on the non-set-aside portion.

(ii) When an unaccepted low offer is involved: if (1) a responsive offer is submitted on the non-set-aside portion at a unit price which, when adjusted, is lower than the adjusted highest unit price awarded on the non-set-aside portion, but cannot be accepted (*e.g.*, because of "all-of-none", or other quantity limitations, or because the bidder is nonresponsible), and (I) at the same time of negotiation for the set-aside portion, the offer could be accepted (*e.g.*, because the set-aside quantity is large enough that the quantity limitations could be complied with, or because the bidder has now become responsible). Then the following procedures shall be followed:

Step One. Eligible concerns (in the order of priority in (2) above), excluding Group 4 firms, will be requested to offer at the adjusted unit price of the unaccepted bid, a quantity of the set-aside portion equal to the quantity of the unaccepted offer.

Step Two. If no eligible concern will offer to take the entire quantity of the unaccepted offer, then all eligible concerns (in the order of priority in (2) above), excluding Group 4 firms, shall be requested to offer to any lesser portion at the same price, until either the entire quantity is awarded or all eligible concerns refuse any further portions of such quantity.

Step Three. Steps Four, Five, and Six are applicable to the remaining set-aside portion regardless of whether any quantity under Step Two is not awarded after all eligible concerns have been afforded an opportunity to offer on the unaccepted quantity. *However,* the concern which submitted the unaccepted offer shall be eliminated from consideration under Step Four and Step Five, for award at higher prices, unless that concerns first accepts a quantity of the set-aside portion equal to the entire quantity of its unaccepted offer, at the adjusted price of its offer.

Step Four. In case there is more than one unaccepted offer which meets the conditions of (I) and (II) above, Steps One, Two and Three above shall be applied with respect to the quantities of each such offer in turn, from lowest price to highest.

Step Five. Eligible concerns in the order of priority in (2) above will be requested to offer at the highest unit price awarded on the non-set-aside portion on any quantity of the set-aside portion remaining after Steps One, Two, Three and Four have been completed, *provided,* that if any part of the set-aside portion is not taken by eligible concerns in the first 3 groups, awards will be made in Group 4 beginning with the lowest offeror on the non-set-aside portion at prices no higher than the lowest price awarded on the non-set-aside portion.

Step Six. If the entire set-aside portion is not taken by eligible concerns pursuant to Steps One through Five above, the partial set-aside is automatically dissolved as to the unawarded portion and such unawarded portion may be procured by advertising or negotiation as appropriate, in accordance with existing regulations.

(c) Definitions.

(1) *Labor Surplus Area.* The term "labor surplus area" means a geographic area which at the time of award is classified as such by the Secretary of Labor in the Department of Labor "Listing of Eligible Labor Surplus Areas Under Defense Manpower Policy 4A and Executive Order 10582".

(2) *Labor Surplus Area Concerns* means a concern that agrees to perform or cause to be performed a substantial proportion of a contract in labor surplus areas. A concern shall be deemed to perform a substantial proportion of a contract in labor surplus areas if the aggregate costs that will be incurred by the concern or its first tier subcontractors on account of manufacturing or production performed in labor surplus areas amount to more than 50 percent of the contract price.

(3) A *"Small Business Concern"* is a concern, including its affiliates, which is independently owned and operated, is not dominant in the field of operation in which it is offering on Government contracts, and can further qualify under the criteria set forth in regulations of the Small Business Administration (CFR Title 13, Section 121.3–6). In addition to meeting these criteria, a manufacturer or a regular dealer submitting offers in his own name must agree to furnish in the performance of the contract end items manufactured or produced by small business concerns: *provided,* that this additional requirement does not apply in connection with construction or service contracts.

(d) *Agreement.* The offeror agrees that if awarded a contract as a LSA concern under the set-aside portion of this procurement, he will perform or cause to be performed a substantial proportion of the contract in areas classified at the time of award or at the time of performance of the contract as LSA.

(e) *Identification of Areas of Performance.* Each offeror desiring to be considered for award as a LSA concern on the LSA set-aside portion of this procurement shall identify in Section B of his offer the geographical areas in which he proposes to perform, or cause to be performed, a substantial proportion of the

contracts. If the Department of Labor classification of any such area changes after the offeror has submitted his offer, the offeror may change the areas in which he proposes to perform, *provided*, that he so notifies the Contracting Officer before award of the LSA set-aside portion. Such offerors are instructed to insert in the clause entitled *"Preference for Labor Surplus Area Concerns"* in Section B of the solicitation, the address(es) when costs incurred on account of manufacturing or production (by offeror or first tier subcontractor) will amount to more than fifty percent (50%) of the contract price.

CAUTION: Failure to list the location of manufacture or production and the percentage of cost to be incurred at each location in the space provided in the clause entitled *"Preference for Labor Surplus Area Concerns"* set forth in Section B of the solicitation will preclude consideration of the offeror as a LSA concern.

(f) *Requirements Contract.* Only one award will be made for each item or sub-item of the non-set-aside portion and only one award will be made for each item or sub-item of the set-aside portion. For the purpose of equitably distributing orders in accordance with this "Notice of Labor Surplus Area Set-Aside," the Government will apportion the quantities to be ordered as equally as possible between the non-set-aside Contractor and the set-aside Contractor to whom the awards are made.

(End of clause)

(2) When experience indicates that token bidding, block bidding, tie-in bidding, or similar devices may occur, the alternate clause set forth herein may be used.

Notice of Labor Surplus Area Set-Aside-Alternate (October 1982)

(a) *General.* Part of this procurement, identified in the Schedule as the "set-aside portion" has been set aside for preferential award to one or more labor surplus area (LSA) concerns, and, to a limited extent, to other business concerns which do not qualify as LSA concerns. Award of the set-aside portion will be made after awards have been made on the non-set-aside portion.

(b) *Procedures.*

(1) *Determining Eligibility.*

(A) To be eligible to participate in the set-aside portion of this procurement, a concern must submit a responsive offer on the non-set-aside portion.

(B) The Government reserves the right not to award to any concern submitting a token offer on the non-set-aside portion or attempting by any other devices to secure an unfair advantage over other offerors.

(2) *Determining Priority for Award.* Labor surplus concerns and other business concerns eligible under (1) above will participate in the set-aside in the following order of priority:

Group 1. LSA concerns which are also small business concerns. A concern in this group which has received an award on the non-set-aside portion of an item shall first be requested to offer the same percentage of the set-aside portion. If a percentage of the set-aside portion of the item remains to be awarded, a drawing by lot shall determine the order of priority within this group for negotiations for the balance of the item.

Group 2. Other LSA concerns. If a quantity of an item remains unawarded after negotiations have been completed with concerns in Group 1, the same procedure shall be followed for Group 2.

Group 3. Small business concerns which are not LSA concerns. If a quantity of an item remains unawarded after negotiations with concerns in Group 2, the same procedure shall be followed for Group 3.

Group 4. Other business concerns which are not LSA concerns. If a quantity of the item remains unawarded after negotiations with concerns in Group 3, the same procedure shall be followed for Group 4.

(3) *Determining the Set-Aside Award Price.*

(A) *General Rule.* Subject to the exceptions listed in (B) and (C) below, awards under the set-aside shall be made at the highest unit price for each item awarded on the non-set-aside, adjusted to reflect transportation, rent free use of Government property and other cost factors considered in evaluating bids on the non-set-aside portion. When any one of separate quantities offered on an item cannot be accepted without awarding other quantities of that item at higher prices, the weighted average price shall be used to determine the highest unit price for award if the highest award of the non-set-aside portion of an item was made on such a conditioned offer. When offers on the non-set-aside portion tie-in two or more items so that an award cannot be made for a quantity on one item without a concurrent award of a quantity on another item, such tie-in conditions will be disregarded and the price offered for each quantity under each item shall be considered separately. The set-aside award price shall be subject to the same discount terms used in the evaluation of the highest non-set-aside award price.

(B) *Award Price Involving Foreign End Products. (see NASA PR Part 6).*

(i) When the highest award price on the non-set-aside is established by an award for a foreign end product, the award price for the set-aside portion shall be the award price on the non-set-aside as adjusted in evaluating the offer submitting the foreign end product for award under applicable Buy American procedures, except for awards on the set-aside to concerns offering foreign end products in which case the general rule applies.

(ii) Award under the set-aside to a concern offering a foreign end product when the highest award price on the non-set-aside portion is established by a domestic source end product shall be at a price which, after application of the evaluation factors used under Buy American procedures for determining eligibility of a foreign end product for award, is equal to the highest award price on the non-set-aside portion, adjusted to reflect transportation and other factors considered in evaluating the offers.

(C) *Obtaining Offers and Processing Set-Aside Awards.*

(i) *When an unaccepted low offer is not involved:* if there is no unaccepted low offer meeting the criteria in (ii) below, eligible concerns in the order of priority in (2) above will be requested to offer on the set-aside quantity at the highest unit price awarded on the non-set-aside portion. Concerns may offer less than the total set-aside portion, *provided* that if any part of the set-aside portion is not taken by eligible concerns in the first 3 groups, awards will be made in Group 4 at prices no higher than the lowest price awarded on the non-set-aside portion.

(ii) *When an unaccepted low offer is involved:* if (I) a responsive offer is submitted on the non-set-aside portion at a unit price which, when adjusted, is lower than the adjusted highest unit price awarded on the non-set-aside portion, but cannot be accepted (*e.g.*, because of "all-or-none," or other quantity limitations, or because the bidder is nonresponsible), and (II) at the time of negotiation for the set-aside quantity is large enough that the quantity limitations could be complied with, or because the bidder has now become responsible), then the following procedures shall be followed:

Step One. Eligible concerns (in order of priority in (2) above), excluding Group 4 firms, will be requested to offer at the adjusted unit price of the unaccepted bid, a quantity of the set-aside portion equal to the quantity of the unaccepted offer.

Step Two. If no eligible concern will offer to take the entire quantity of the unaccepted offer, then all eligible concerns (in the order of priority in (2) above), excluding Group 4 firms, shall be requested to offer on any lesser portion at the same price, until either the entire quantity is awarded or all eligible concerns refuse any further portions of such quantity.

Step Three. Steps Four, Five and Six are applicable to the remaining set-aside portion regardless of whether any quantity under Step Two is not awarded after all eligible concerns have been afforded an opportunity to offer on the unaccepted quantity. *However*, the concern which submitted the unaccepted offer shall be eliminated from consideration under Step Four and Step Five, for award at higher prices, unless that concern first accepts a quantity of the set-aside portion equal to the entire quantity of its unaccepted offer, at the adjusted price of its offer.

Step Four. In case there is more than one unaccepted offer which meets the conditions of (I) and (II) above, Steps One, Two and Three above shall be applied with respect to the quantities of each such offer in turn, from lowest price to highest.

Step Five. Eligible concerns in the order of priority in (2) above will be requested to offer at the highest unit price awarded on the non-set-aside portion on any quantity of the set-aside portion remaining after Steps One, Two, Three and Four have been completed, *provided* that if any part of the set-aside portion is not taken by eligible concerns in the first 3 groups, awards will be made in Group 4 at prices no higher than the lowest price awarded on the non-set-aside portion.

Step Six. If the entire set-aside portion is not taken by eligible concerns pursuant to Steps One through Five above, the partial set-aside is automatically dissolved as to the unawarded portion and such unawarded portion may be procured by advertising or negotiation as appropriate, in accordance with existing regulations.

(4) *Determining the Set-Aside Quantity.*

(A) The maximum quantity of an item which may be awarded to any eligible concern shall be determined by applying the percentage of the total non-set-aside portion of an item on which an offer was made to the total quantity of the set-aside portion of that item.

(B) If a concern offers on two or more items on the non-set-aside portion, but conditions its offer in such a manner that the total of all these quantities may not be awarded, or offers a quantity which, at the option of the Government, may be applied to one or more items, the overall maximum which can be offered on the set-aside portion of the items affected will be determined by applying the percent of the total quantities of these items on the non-set-aside portion that could have been awarded to the total of these items on the set-aside portion.

(C) Notwithstanding the foregoing, if the entire set-aside portion of an item is not awarded after completion of the above steps, then the unawarded balance shall be offered to those concerns who were previously awarded quantities on the set-aside portion but who were prevented from accepting additional quantities because of the quantity limitations stated above. The unawarded quantity will first be offered to that concern in the first priority which has received the largest quantity of the item. If two or more offerors in the first priority received an identical quantity, a drawing by lot shall determine their priority. If a balance still remains, this procedures shall be repeated with the offerors in each of the original priority groups in turn, to dispose of any balance of the item shall still be remaining.

(c) *Definitions*

(1) *Labor Surplus Area.* The term "labor surplus area" means a geographic area which at the time of award is classified as such by the Secretary of Labor in the Department of Labor "Listing of Eligible Labor Surplus Areas Under Defense Manpower Policy 4A and Executive Order 10582."

(2) *Labor Surplus Area Concerns.* The term "labor surplus area concern" means a concern that agrees to perform or cause to be performed a substantial proportion of a contract in labor surplus areas. A concern shall be deemed to perform a substantial proportion of a contract in labor surplus areas if the aggregate costs that will be incurred by the concern or its first tier subcontractors on account of manufacturing or production performed in labor surplus areas amount to more than 50 percent of the contract price.

(3) A *"Small Business Concern"* is a concern, including its affiliates, which is independently owned and operated, is not dominant in the field of operation in which it is offering on Government contracts, and can further qualify under the criteria set forth in regulations of the Small Business Administration (CFR Title 13, Section 121.3–8). In addition to meeting these criteria, a manufacturer or a regular dealer submitting offers in his own name must agree to furnish in the performance of the contract and items manufactured or produced by small business concerns: *provided*, that this additional requirement does not apply in connection with construction or service contracts.

(d) *Agreement.* The offeror agrees that if awarded a contract as a LSA concern under the set-aside portion of this procurement, he will perform or cause to be performed a substantial proportion of the contract in areas classified at the time of award or at the time of performance of the contract as LSA.

(e) *Identification of Areas of Performance.* Each offeror desiring to be considered for award as a LSA concern on the LSA set-aside portion of this procurement shall identify in Section B of his offer the geographical area in which he proposes to perform, or cause to be performed, a substantial proportion of the contract. If the Department of Labor classification of any such area changes after the offeror has submitted his offer, the offeror may change the areas in which he proposes to perform *provide*, that he so notifies the Contracting Officer before award of the LSA set-aside portion. Such offerors are instructed to insert in the clause entitled "Preference for Labor Surplus Area Concerns" in Section B of the solicitation, address(es) where costs incurred on account of manufacturing or production (by offeror or first tier subcontractor) will amount to more than fifty percent (50 percent) of the contract price.

CAUTION: Failure to list the location of manufacture or production and the percentage of cost to be incurred at each location in the space provided in the clause entitled *"Preference for Labor Surplus Area Concerns"* set forth in Section B of the solicitation will preclude consideration of the offeror as a LSA concern.

(f) *Requirements Contract.* Only one award will be made for each item or sub-item of the non-set-aside portion and only one award will be made for each item or sub-item of the set-aside portion. For the purpose of equitably distributing orders in accordance with this "Notice of Labor Surplus Area Set-Aside-Alternate," the Government will apportion the quantities to be ordered as equally as possible between the non-set-aside Contractor and the set-aside Contractor to whom the awards are made.

(End of clause)

(c)(1) After the award price for the non-set-aside portion has been determined, negotiations may be conducted for the set-aside portion. Procurement of the set-aside portion shall in all instances be effected by negotiation. Negotiations shall be conducted only with those offerors who have submitted responsive offers on the non-set-aside portion. Negotiations shall be conducted in the order of priority as indicated in the clauses required by 1.804–2(b) (1) and (2) above; *provided* that, when equal low offers are received on the non-set-aside portion from concerns which are equally eligible for the set-aside portion, the concern which is awarded the non-set-aside portion (under the equal low bid procedures of 2.407–6) shall have first priority with respect to negotiations for the set-aside portion. The set-aside portion shall be awarded as provided in the clause. An offeror entitled to receive the award for quantities of an item under the non-set-aside portion and who accepts the award of additional quantities under the set-aside portion shall not be requested to accept a lower price because of the increased quantities of the award, nor shall negotiation be conducted with a view to obtaining such a lower price based solely upon receipt of award of both portions of the procurement. This does not prevent acceptance by the contracting officer of voluntary reductions in price from the low eligible offeror prior to award, acceptance of voluntary refunds (1.312), or the change of prices after award by negotiation of a contract modification. If the entire set-aside portion cannot be awarded by the method described herein, any unawarded portion may be procured by advertising or negotiation, as appropriate, in accordance with existing regulations (see 3.201–2(b)(i) and 3.210–3 as to negotiation). Since a considerable time may have elapsed since the initiation of the requirement, contracting officers, prior to issuing a new solicitation, shall review the required delivery schedule (see 1.305–2) to insure that it is realistic in the light of all relevant factors including the capabilities of LSA concerns.

(2) Offers obtained under the provisions of the set-aside clause from firms eligible for the set-aside portion of the requirement shall be in writing and shall include (i) agreement as to the established set-aside price for the available set-aside quantity, (ii) agreement as to the required delivery, (iii) agreement that all other terms and conditions of the original solicitation will apply to the set-aside award, and (iv) agreement to inclusion of the clause *"Examination of Records by the Comptroller General"* in 7.104–15 and *"Audit by National Aeronautics and Space Administration"* 7.104–42.

(3) When the award of the non-set-aside portion has been made to a concern which is entitled to receive the set-aside portion of the solicitation, the set-aside portion may be added to the basic contract by supplemental agreement utilizing Standard Form 30. The supplemental agreement shall (i) include a reference to the contractor's letter offering on the set-aside quantity, (ii) state the price and delivery schedule applicable to the set-aside quantity, and (iii) include the clauses *"Examination of Records by Comptroller General"* in 7.104–15 and *"Audit by National Aeronautics and Space Administration"* in 7.104–42, applicable to the set-aside portion only. Copies of all pertinent documents, including the signed offer should be attached. The supplemental

agreement shall be signed by the contracting officer but need not be signed by the contractor since his signature on the attached offer will be deemed sufficient.

(4) When the award for the non-set-aside portion has been made to a firm other than the concern entitled to receive the set-aside portion of the solicitation, award of the set-aside portion will be made utilizing Standard Form 26. The offers obtained and the award utilized shall reference and include the same data indicated in paragraphs (2) and (3) above. Also, the award shall reference in Block 26 of Standard Form 26, the applicable solicitation and the contractor's written offer, and copies of the solicitation and offer shall be attached. The Standard Form 26 shall be signed by the contracting officer but need not be signed by the contractor. The contractor's signature on the attached offer will be deemed sufficient.

For purpose of Part 21, Subpart 1, the non-set-aside and set-aside portion shall be reported separately.

1.804–3 Withdrawal of Set-Asides.

If, prior to the award of a contract involving a labor surplus set-aside, the contracting officer considers that the set-aside is detrimental to the public interest, *e.g.*, because of unreasonable prices, the contracting officer shall withdraw the set-aside and complete the procurement by advertising or negotiation as appropriate in accordance with existing regulations. A signed memorandum setting forth the basis of the withdrawal of any set-aside shall be made and retained.

1.804–4 Contract Authority.

Contracts for set-aside made under this Subpart 8 shall cite as authority 10 U.S.C. 2304(a)(1). For reporting purposes, see 3.201–2(b)(i) for contracts awarded to labor surplus area concerns and 3.201–2(b)(ii) for contracts awarded to small business concerns which are not labor surplus area concerns.

1.805 Subcontracting With Labor Surplus Area Concerns.

1.805–1 General Policy.

(a) It is the policy of the Government to promote equitable opportunities for labor surplus area concerns to compete for subcontracts and to encourage placement of subcontracts with concerns which will perform such contracts substantially in labor surplus areas in the order of priority described in 1.802 where this can be done, consistent with efficient performance of contracts, at prices no higher than are obtainable elsewhere.

(b) To more effectively carry out the Government's policy objectives stated in (a) above, prime contractors and subcontractors having labor surplus area subcontracting programs must be informed of (1) the Government's evaluation of their efforts in carrying out an effective labor surplus area subcontracting program, (2) any specific noted deficiencies in their Labor Surplus Area Subcontracting Programs, and (3) any areas of outstanding achievement where they may have exceeded contractual requirements. To motivate a contractor to improve his program, he should be advised in general terms as to the type of actions which will result in a reward, penalty, or no impact on profit or fee (see 3.808–5(d)). Any evaluation and remarks to the contractor, including areas of suggested improvement and areas where the contractor has exceeded contractual requirements, must be documented to furnish a basis for evaluation in connection with future awards.

1.805–2 Labor Surplus Area Subcontracting Program.

The Government's labor surplus area subcontracting program requires Government prime contractors to asume an affirmative obligation with respect to subcontracting with labor surplus area concerns. These obligations are in addition to those required by the small business subcontracting program (1.707). In contracts which range from $10,000 to $500,000, the contractor undertakes the simple obligation of using his best efforts to place his subcontracts with concerns which will perform such subcontracts substantially in labor surplus areas where this can be done, consistent with the efficient performance of the contract, at prices no higher than are obtainable elsewhere. This undertaking is set forth in the contract clause prescribed in 1.805–3(a). In contracts which may exceed $500,000, the contractor is required, pursuant to the clause set forth in 1.805–3(b), to undertake a number of specific responsibilities designed to insure achievement of the objectives referred to above and to impose similar responsibilities on major subcontractors.

1.805–3 Required Clauses.

(a) The Utilization of Labor Surplus Area Concerns clause set forth below shall be inserted in all contracts which may exceed $10,000, except—

(1) contracts with foreign contractors which, including all subcontracts thereunder, are to be performed entirely outside the United States, its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands;

(2) contracts for services which are personal in nature;

(3) contracts for construction; and

(4) contracts with the petroleum and petroleum products industry.

Utilization of Labor Surplus Area Concerns (October 1982)

(a) It is the policy of the Government to award contracts to labor surplus area concerns which have agreed to perform substantially in labor surplus areas, where this can be done consistent with the efficient performance of the contract and at prices no higher than are obtainable elsewhere. The Contractor agrees to use his best efforts to place his subcontracts in accordance with this policy.

(b) In complying with paragraph (a) of this clause and with paragraph (b) of the clause of this contract entitled "Utilization of Small Business and Small Disadvantaged Business Concerns," the Contractor in placing his subcontracts shall observe the following order of preference: (i) labor surplus area concerns which are also small business concerns, (ii) other small business concerns, and (iii) other labor surplus area concerns.

(End of clause)

(b) The Labor Surplus Area Subcontracting Program clause set forth below shall be included in all contracts which may exceed $500,000, but which contain the clause required by (a) above and which, in the opinion of the contracting officer, offer substantial subcontracting possibilities. Prime contractors who are to be awarded contracts that do not exceed $500,000, which in the opinion of the contracting officer offer substantial subcontracting possibilities, shall be urged to accept the following clause:

Labor Surplus Area Subcontracting Program (October 1982)

(a) The Contractor agrees to establish and conduct a program which will encourage labor surplus area concerns to compete for subcontracts within their capabilities. In this connection, the Contractor shall—

(1) Designate a liaison officer who will (i) maintain liaison with duly authorized representatives of the Government on labor surplus areas matters, (ii) supervise compliance with the "Utilization of Labor Surplus Area Concerns" clause, and (iii) administer the Contractor's Labor Surplus Area Subcontracting Program;

(2) Provide adequate and timely consideration of the potentialities of labor surplus area concerns in all "make-or-buy" decisions;

(3) Assure that labor surplus area concerns will have an equitable opportunity to compete for subcontracts, particularly by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation of labor surplus area concerns;

(4) Maintain records showing procedures which have been adopted to comply with the policies set forth in this clause; and

(5) Include the "Utilization of Labor Surplus Areas Concerns" clause in subcontracts which offer substantial labor surplus area subcontracting opportunities.

(b) For subcontracting purposes, a "labor surplus area concern" is a concern that has agreed to perform substantially in labor surplus areas. A concern shall be deemed to perform a substantial proportion of a contract in a labor surplus area, if the costs that the concern will incur on account of manufacturing or production in such areas amount to more than 50% of the price of such contract.

(c) The Contractor further agrees, with respect to any subcontract hereunder which is in excess of $500,000 and which contains the clause entitled "Utilization of Labor Surplus Area Concerns" that he will insert provisions in the subcontract which will conform substantially to the language of this clause, including this paragraph (c), and that he will furnish the names of such subcontractors to the Contracting Officer.

PART 2—PROCUREMENT BY FORMAL ADVERTISING

7. In Part 2, § 2.201–1, Section B(14), the date of the clause "Small Disadvantaged Business Concern" is changed to read "(October 1982)" in place of "(September 1979)."

8. In Part 2, § 2.202–1, Section B(14) is amended by revising paragraph (b) to read as follows:

2.201–1 [Amended]

* * * * *

Section B—Contract Form and Representations, Certifications and Other Statements of Offeror.

* * * * *

(b) The offeror shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans (such as American Indians, Eskimos, Aleuts, and Native Hawaiians) (*i.e.*, American Indians, Eskimos, Aleuts, and Native Hawaiians), Asian-Pacific Americans (*i.e.*, U.S. citizens whose origin are from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust Territories of the Pacific, Northern Marianas, Laos, Cambodia, and Taiwan), Asian Indian Americans (*i.e.*, U.S. citizens whose origins are from India, Pakistan, and Bangladesh), and other minorities, or any individuals found to be disadvantaged by the Administration pursuant to Section 8(a) of the Small Business Act.

* * * * *

9. In Part 2, Subpart 201–1, Section B (16) is amended to add a provision to be inserted into invitations for bids that do not involve set-asides for labor surplus area concern, as follows:

* * * * *

2.201 Section B—Contract Form and Representations, Certifications and Other Statements of Offeror.

* * * * *

(16) Include the following provision in the invitations for bids that do not involve set-asides for labor surplus area concerns:

Preference for Labor Surplus Area Concerns (October 1982)

This procurement is not set aside for labor surplus area concerns. However, the offeror's status as such a concern may affect entitlement to award in case of tie offer evaluation in accordance with the Buy American clause of this solicitation. In order to have his entitlement to a preference determined if those circumstances should apply, the offeror must identify below the labor surplus area in which the costs he will incur on account of manufacturing or production (by himself or his first-tier subcontractors) amount to more than fifty percent (50%) of the contract price.

_____ _____

_____ _____

Failure to identify the location as specified above will preclude consideration of the offeror as a labor surplus area concern. Offeror agrees that if, a labor surplus area concern, he is awarded a contract for which he would not have qualified in the absence of such status, he will perform the contract or cause it to be performed, in accordance with the obligations which such status entails.

* * * * *

10. In Part 2, § 2.407–6 (a)(2) is revised to read as follows:

2.407–6 Equal Low Bids.

(a) * * *

* * * * *

(2) For the purpose of (1) above, preference shall be given in the following order of priority:

(i) concerns which qualify as labor surplus area concerns and which are also small business concerns;

(ii) other small business concerns;

(iii) other labor surplus area concerns.

* * * * *

PART 3—PROCUREMENT BY NEGOTIATION

11. In Part 3, the Table of Contents is amended by changing the page numbers for §§ 3.203–2 through 3.205–1 and §§ 3.211 through 3.212–3, to read as follows:

* * * * *

	3.203–2	Application	3–2.2A
3.204	Personal or Professional Services		3–2.2A
	3.204–1	Authority	3–2.2A
	3.204–2	Application	3–2.2A
	3.204–3	Limitation	3–2.2B
3.205	Services of Educational Institutions		3–2.2B
	3.205–1	Authority	3–2.2B
*	*	*	*
	3.211–3	Limitation	3–2.5
	3.211–4	Reports	3–2.6
3.212	Classified Purchases		3–2.6
	3.212–1	Authority	3–2.6
	3.212–2	Application	3–2.6
	3.212–3	Limitation	3–2.7

* * * * *

12. In Part 3, § 3.201–3 is revised to read as follows:

3.201–3 Limitation.

(a) The authority of this paragraph 3.201 shall not be used when negotiation is authorized by the provisions of 3.206 except that, in the event of a labor surplus or small business set-aside, this authority shall be used in preference to any other authority in this Subpart 2 (see 1.706–2 and 1.804–4). The authority of this paragraph shall not be to negotiate a reasonable price with a low responsible small business bidder whose bid has been determined by the contracting officer to be an unreasonable bid under Small Business Restricted Advertising procedures. When such an unreasonable bid is received, the set-aside shall be dissolved and the requirement procured on an unrestricted basis by the use of formal advertising or where appropriate by other negotiation authority in accordance with existing regulations.

(b) Each procurement negotiated pursuant to the determination referred to in 3.201–2 shall be supported by a memorandum for the contract file, signed by the contracting officer, specifying the pertinent provision of the determination used as authority for negotiating the contract.

13. In Part 3, § 3.210–3 is revised to read as follows:

3.210–3 Limitation.

The authority of this paragraph 3.210 shall not be used when negotiation is authorized by any other authority set forth in 3.201 through 3.217, except that this authority shall be used in preference to 3.212. The authority illustrated in 3.210–2 (iii) and (iv) shall not be used in cases where "Small Business Restricted Advertising" has been used. However, the authority may be used in the case of partial set-asides unless in the judgment of the contracting officer the failure to obtain sufficient responsive bids was caused by the existence of the set-aside. Every contract that is negotiated under the authority of this paragraph 3.210 shall be accompanied with a determination and findings justifying its use, signed by the contracting officer and prepared in accordance with the requirements of Subpart 3 of this Part 3.

3.501 [Amended]

14. In Part 3, § 3.501(b)(3), Section B—Contract Forms and Representations, Certifications, and Other Statements of Offeror or Quoter, paragraph (16) is revised and paragraph (20) is added to read as follows:

* * * * *

(16) Insert the following provision in all solicitations except those made outside the United States.

Woman-Owned Business (August 1982)

The offeror represents that the firm submitting this offer [ ] is, [ ] is not, a woman-owned business. A "woman-owned business" is a business that (i) is, at least 51 percent owned by a woman or women who are U.S. citizens and who also control and operate the business; and (ii) is a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto. "Control" in this context means exercising the power to make policy decisions. "Operate" in this context means being actively involved in the day-to-day management.

* * * * *

(20) Include the following provision in requests for proposals that do not involve set-asides for labor surplus area concerns:

Preference for Labor Surplus Area Concerns (October 1982)

This procurement is not set aside for labor surplus area concerns. However, the offeror's status as such a concern may affect entitlement to award in case of tie offers or offer evaluation in accordance with the Buy American clause of this solicitation. In order to have his entitlement to a preference determined if those circumstances should apply, the offeror must identify below the labor surplus area in which the costs he will incur on account of manufacturing or production (by himself or his first-tier subcontractors) amount to more than fifty percent (50%) of the contract price.

_____ _____

_____ _____

Failure to identify the locations as specified above will preclude consideration of the offeror as a labor surplus area concern. Offeror agrees that if, as a labor surplus area concern, he is awarded a contract for which he would not have qualified in the absence of such status, he will perform the contract or cause it to be performed, in accordance with the obligations which such status entails.

* * * * *

PART 5—INTERDEPARTMENTAL PROCUREMENT

15. In Part 5, the Table of Contents is amended by changing the page number for § 5.102 to read as follows:

* * * * *

5.102 Mandatory Federal Supply Schedules 5-1:2

16. In Part 5, § 5.101–3 is revised to read as follows:

5.101–3 Labor Surplus Area and Small Business Considerations.

In furtherance of NASA's policy of fostering labor surplus area and small business opportunities to the maximum extent possible; where two or more items at the same delivered price will meet the requiring activity's needs equally well, selection should be made when ordering against Federal Supply Schedule Contracts, on the basis of preference for the item(s) of a labor surplus area concern or a small business concern. In making the selection on this basis, the order of priority shall be as follows:

(i) small business concerns in labor surplus areas;

(ii) other small business concerns; and

(iii) other labor surplus area concerns.

PART 6—FOREIGN PURCHASE

6.602 [Amended]

17. In Part 6, § 6.602(b) is amended by changing "CFR 701" to read "CFR 301."

PART 15—CONTRACT COST PRINCIPLES AND PROCEDURES

18. In Part 15, the Table of Contents is amended by changing the page number for 15.205–18 and adding an entry for 15.205–52 as follows:

* * * * *

15.205–17 Interest and Other Financial Costs 15-2:14A

* * * * *

15.205–52 Defense of Fraud Proceedings 15-2:29

* * * * *

18a. Section 15.205–52 is added to read as follows:

15.205–52 Defense of Fraud Proceedings.

(a) Costs incurred in connection with defense of any (i) criminal or civil investigation, grand jury proceeding or prosecution, (ii) civil litigation, or (iii) suspension, debarment or other administrative proceedings, or any combination of the foregoing, brought by the Government against a contractor, its agent or employee, are unallowable when the charges, which are the subject of the investigation, proceedings, or prosecution, involve fraud on the part of the contractor, its agent or employee, as defined in (b) below, and result in conviction (including conviction entered on a plea of nolo contendere), judgment against the contractor, its agent or employees, or decision to debar or suspend, or are resolved by consent or compromise.

(b) Fraud, as used in this paragraph, includes (i) acts of fraud or corruption or attempts to defraud the Government or to corrupt its agents, (ii) acts which constitute a cause for debarment or suspension under NASA PR 1.605–2(a) and 1.606–2(a) and (iii) acts which violate the False Claims Act, 31 U.S.C., sections 231–235, or the Anti-Kickback Act, 41 U.S.C., sections 51 and 54.

(c) Costs, as used in this paragraph, include, but are not limited to, administrative and clerical expenses; the costs of legal services, whether performed by in-house or private counsel; the costs of the services of accountants, consultants, or others retained by the contractor to assist it; the salaries and wages of employees, officers, and directors; and any of the foregoing costs incurred prior to the commencement of the formal judicial or administrative proceedings which bear a direct relationship to the proceedings.

(d) In circumstances where the charges of fraud are resolved by consent or compromise, the parties may agree as to the extent of allowability of such costs as a part of such resolution.

(e) Costs which may be unallowable under (a)–(d) above shall be differentiated and accounted for by the contractor so as to be separately identifiable. During the pendency of any proceeding or investigation covered by (a) above, the contracting officer should generally withhold payment of such costs. However, the contracting officer may in appropriate circumstances provide for conditional payment upon provision of adequate security, or other adequate assurance, and agreement by the contractor to repay all unallowable costs, plus interest, if a conviction or judgment is rendered against it.

PART 20—ADMINISTRATIVE MATTERS

19. Part 20, § 20.5103–2 is revised to read as follows:

20.5103–2 Submission of Amendments to the Master Buy Plan.

Procurements identified by installations after submission of their Master Buy Plan for a fiscal year, which meet one of the criteria in 20.5102, will be submitted to Headquarters in the

same manner as the original Master Buy Plan. Such amendments will be submitted sufficiently in advance of contract award date to allow Headquarters to select those procurement documents which will be subject to Headquarters review and approval without creating an unacceptable delay in contract placement. When timely submittal is not possible, the installation will provide with the amendment, a narrative explaining the circumstances leading to the late submittal.

[FR Doc. 83-19106 Filed 7-18-83; 8:45 am]
BILLING CODE 7510-01-M

41 CFR Ch. 18

[Procurement Regulation Directive 82-9 (dated December 30, 1982)]

Procurement Regulations; Miscellaneous Amendments

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: This document amends the NASA Procurement Regulation (41 CFR Ch. 18). It reflects amendments contained in Procurement Regulation Directive 82-9 concerning the following:

1. Prompt Payment Act, Pub. L. 97-177.
2. Contract Financing.

EFFECTIVE DATE: July 19, 1983.

FOR FURTHER INFORMATION CONTACT: James H. Wilson, Procurement Policy Division (Code HP-1), Office of Procurement, NASA Headquarters, Washington, DC 20546, Telephone: 202-755-2237.

SUPPLEMENTARY INFORMATION: 1. The Prompt Payment Act, Pub. L. 97-177, was recently enacted and requires Federal Agencies to pay interest penalties when certain payments are made late, and to pay similar penalties when prompt payment discounts are taken after the offered discount period has lapsed. The Office of Management and Budget has issued OMB Circular A-125, dated August 19, 1982, to provide guidance to the Heads of Executive Departments to be followed in payment for supplies and services acquired under Federal Contracts.

2. In Part 7, § 7.103-30 is amended to add a new "Invoices" clause for use only in fixed-price supply or services contracts and purchase orders.

This provision provides a contractual understanding as to what describes a proper invoice. Other changes provide for the inclusion of this clause in appropriate solicitations. Installations are reminded that acceptance of supplies and services is to be accomplished as promptly as possible. These changes implement both the Prompt Payment Act and OMB Circular A-125.

We have also revised various payment provisions throughout the NASA PR to insure consistency between these provisions and sound cash management practices and related Treasury regulations now in effect and unrelated to implementation of the Prompt Payment Act.

3. In Appendix E, Subpart 2 is revised to delete references to "advance payments" which is not discussed in the Appendix; and to delete language which could lead to misinterpretation of NASA's payment policies.

4. This PRD supersedes Procurement Notice 82-11 and Amendment No. 1 thereto. This PRD also cancels the statement issued by the Administrator on August 8, 1980, entitled *NASA Policy on Contract Payment Terms.*

List of Subjects in 41 CFR Ch. 18

Government procurement.

Authority: The provisions of this document are issued under 42 U.S.C. 2473(C)(1).

L. E. Hopkins,

Deputy Assistant Administrator for Procurement.

PART 1—GENERAL PROVISIONS

1. In Part 1, Table of Contents, § 1.314-9 "Claims for Interest Penalties Under the Prompt Payment Act" is added as follows:

1.314-9 Claims for Interest Penalties Under the Prompt Payment Act..... 1—3:16

* * * * *

2. In Part 1, § 1.314-9 is added as follows:

1.314-9 Claims for Interest Penalties Under the Prompt Payment Act.

(a) The Prompt Payment Act (Public Law 97-177) provides that a contractor will be paid interest penalties when certain payments by the Government are not made on time or when discounts are taken for payments that are not made within the discount period. The Act applies to payments made on contracts awarded on or after October 1, 1982.

Under the Act, interest penalties are due if the contractor is not paid for delivery of complete items of supplies or services within 15 days after the required payment date (within 3 days for meat or meat food products and within 5 days for perishable agricultural commodities). Interest penalties are also due on the unpaid portion of discount payments made after the discount period. Claims for interest penalties not paid may be made under the Contract Disputes Act.

(b) The required payment date for purposes of the Prompt Payment Act is the date on which payment is due under the terms of the contract or, if a specific date on which payment is due is not established by the contract, 30 days after the later of the date on which a proper invoice is received in the designated paying office or the date on which the supplies or services are accepted. The required payment date for meat and meat food products is not later than the 7th day after delivery, and perishable agricultural commodities is not later than the 10th day after delivery, unless another date is specified in the contract. The required payment date for improperly taken discounts is the last day of the discount period.

(c) Interest penalties begin to accrue on the day after the required payment date and end on the date on which payment of the amount due is made. Interest penalties do not continue to accrue under the Prompt Payment Act after the filing of a claim for such penalties under the Contract Disputes Act or for more than one year. Interest penalties also do not accrue under the Prompt Payment Act when payment is not made within the prescribed period after the required payment date because of a dispute over the amount of the payment or other allegations concerning compliance with the contract.

PART 7—CONTRACT CLAUSES

1. In Part 7, Table of Contents, the page numbers for §§ 7.203-16 through 7.203-22, 7.302-5 through 7.302-53, 7.350-1 through 7.350-22, 7.452-11 through 7.452-24, 7.607-12 through 7.607-14, 7.702-11 and 7.702-12, 7.703-10 through 7.703-22, and 7.703-27 through 7.704-2, are revised as follows:

* * * * *

7.203-16 Contract Work Hours Standards Act—Overtime Compensation... 7-2:8A
7.203-17 Walsh-Healey Public Contracts Act 7-2:8A
7.203-18 Equal Opportunity 7-2:8A
7.203-19 Officials Not To Benefit 7-2:8A
7.203-20 Covenant Against Contingent Fees 7-2:8A
7.203-21 Government Property 7-2:8A
7.203-22 Insurance—Liability to Third Persons 7-2:8A

* * * * *

7.302-5 Assignment of Claims 7-3:2A
7.302-6 Examination of Records by Comptroller General 7-3:2A
7.302-7 Federal, State, and Local Taxes 7-3:2A
7.302-8 Utilization of Small Business and Small Disadvantaged Business Concerns 7-3:2A
7.302-9 Default 7-3:2A
7.302-10 Termination for the Convenience of the Government 7-3:2A
7.302-11 Disputes 7-3:2A
7.302-12 [Reserved] 7-3:2A
7.302-13 Buy American Act 7-3:2A
7.302-14 Convict Labor 7-3:2A

7.302-15 Walsh-Healey Public Contracts Act 7-3:2A
7.302-16 Contract Work Hours Standards Act—Overtime Compensation 7-3:2A
7.302-17 Equal Opportunity 7-3:2A
7.302-18 Officials Not To Benefit 7-3:2A
7.302-19 Covenant Against Contingent Fees 7-3:2B
7.302-20 Clean Air and Water 7-3:2B
7.302-21 Authorization and Consent 7-3:2B
7.302-22 Notice and Assistance Regarding Patent and Copyright Infringement 7-3:2B
7.302-23 New Technology or Property Rights in Inventions 7-3:2B
7.302-24 Rights in Data 7-3:2B
7.302-25 Security Requirements 7-3:2B
7.302-26 Utilization of Labor Surplus Area Concerns 7-3:2B
7.302-53 Interest 7-3:2B
* * * * *
7.350-1 Definitions 7-3:8
7.350-2 Payment 7-3:8
7.350-3 Rights in Data 7-3:8
7.350-4 Government-Furnished Property 7-3:8
7.350-5 Release of Information 7-3:8
7.350-6 Security 7-3:8
7.350-7 Patent Rights 7-3:9
7.350-8 Disputes 7-3:9
7.350-9 Termination at the Option of the Government 7-3:9
7.350-10 Authorization and Consent 7-3:9
7.350-11 Notice and Assistance Regarding Patent and Copyright Infringement 7-3:9
7.350-12 Buy American Act and Trade Agreements Act 7-3:9
7.350-13 Examination of Records by Comptroller General 7-3:9
7.350-14 Equal Opportunity 7-3:9
7.350-15 Covenant Against Contingent Fees 7-3:9
7.350-16 Officials Not To Benefit 7-3:9
7.350-17 Convict Labor 7-3:9
7.350-18 Audit By National Aeronautics and Space Administration 7-3:9
7.350-19 Cost Accounting Standards 7-3:10
7.350-20 Additional Clauses 7-3:10
7.350-21 Clean Air and Water 7-3:10
7.350-22 Notice of Intent to Disallow or Not Recognize Costs 7-3:10
* * * * *
7.452-11 Subcontractor Cost or Pricing Data 7-4:12B
7.452-12 Limitation on Withholding of Payments 7-4:12B
7.452-13 Price Reduction for Defective Cost or Pricing Data 7-4:12C
7.452-14 Changes to Make-or-Buy Program 7-4:12C
7.452-15 Frequency Authorization 7-4:12C
7.452-16 Required Source for Jewel Bearings and Related Items 7-4:12C
7.452-17 Waiver of Facilities Capital Cost of Money 7-4:12C
7.452-18 through 7.452-22 [Reserved] 7-4:12C
7.452-23 General Services Administration Supply Sources 7-4:12C
7.452-24 Labor Surplus Area Subcontracting Program 7-4:12C
* * * * *
7.607-12 Convict Labor 7-6:4
7.607-13 Equal Opportunity Clause 7-6:4
7.607-14 Method of Payment 7-6:4B
* * * * *
7.702-11 Limitation of Cost 7-7:4A
7.702-12 Use and Charges 7-7:4B
* * * * *
7.703-10 Limitation of Cost 7-7:16
7.703-11 Examination of Records 7-7:16
7.703-12 Title 7-7:16
7.703-13 Access 7-7:16
7.703-14 Liability for the Facilities 7-7:16
7.703-15 Insurance-Liability to Third Persons 7-7:16
7.703-16 Indemnification of the Government 7-7:16
7.703-17 Stop Work Orders 7-7:16
7.703-18 Termination of Work 7-7:16
7.703-19 Failure to Perform 7-7:16
7.703-20 Disputes 7-7:16
7.703-21 Security Requirements 7-7:16
7.703-22 Authorization and Consent 7-7:16
7.703-27 Utilization of Labor Surplus Area Concerns 7-7:16A
7.703-28 Buy American Act and Trade Agreements Act 7-7:16A
7.703-29 Assignment of Claims 7-7:16A
7.703-30 [Reserved] 7-7:16A
7.703-31 Officials Not To Benefit 7-7:16A
7.703-32 [Reserved] 7-7:16A
7.703-33 Covenant Against Contingent Fees 7-7:16A
7.703-34 Payment for Overtime Premiums 7-7:16A
7.703-35 Convict Labor 7-7:16A
7.703-36 Equal Opportunity 7-7:16A
7.703-37 Walsh-Healey Public Contracts Act 7-7:16A
7.703-38 Contract Work Hours Standards Act—Overtime Compensation 7-7:16A
7.703-39 Supersedure 7-7:16A
7.703-40 Subcontractor Cost or Pricing Data 7-7:16A
7.703-41 Audit by National Aeronautics and Space Administration 7-7:16A
7.703-42 Price Reduction for Defective Cost or Pricing Data 7-7:16A
7.703-43 Competition in Subcontracting 7-7:16A
7.703-44 Interest 7-7:16A
7.703-45 Notice to the Government of Labor Disputes 7-7:16B
7.703-46 General Services Administration Supply Sources 7-7:16B
7.703-47 Limitation on Withholding of Payments 7-7:16B
7.703-48 Payment of Royalties 7-7:16B
7.703-49 [Reserved] 7-7:16B
7.703-50 Report on NASA Subcontracts 7-7:16B
7.703-51 Notice of Intent to Disallow or Not Recognize Costs 7-7:16B
7.703-52 License for Subsequent Use 7-7:16B
7.704 Required Clauses for Facilities Use Contracts 7-7:16B
7.704-1 Definitions 7-7:16B
7.704-2 Use and Charges 7-7:16B
* * * * *

2. In Part 7, § 7.103–7 is amended by revising the clause to read as follows:

7.103–7 Payments.

* * * * *

Payments (December 1982)

The Contractor shall be paid, within thirty (30) days after receipt of proper invoices, as determined under the clause of this contract entitled "Invoices," the prices stipulated herein for supplies delivered and accepted or services rendered herein and accepted, less deductions, if any, as herein provided. Unless otherwise specified, payment will be made on partial deliveries accepted by the Government.

* * * * *

3. In Part 7, § 7.103–30 is added as follows:

7.103–30 Invoices.

Invoices (December 1982)

(a) An invoice is a written request for payment under the contract for supplies delivered or for services rendered. In order to be proper, an invoice must include as applicable the following:

(i) invoice date;

(ii) name of Contractor;

(iii) contract number (including order number, if any), contract line item number, contract description of supplies or services, quantity, contract unit of measure and unit price, and extended total;

(iv) shipment number and date of shipment (bill of lading number and weight of shipment will be shown for shipments on Government bills of lading);

(v) name and address to which payment is to be sent (which must be the same as that in the contract or on a proper notice of assignment);

(vi) name (where practicable), title, phone number and mailing address of person to be notified in event of a defective invoice; and

(vii) any other information or documentation required by other provisions of the contract (such as evidence of shipment).

Invoices shall be prepared and submitted in quadruplicate (one copy shall be marked "original") unless otherwise specified.

(b) For purposes of determining if interest begins to accrue under the Prompt Payment Act (Public Law 97–177):

(i) a proper invoice will be deemed to have been received when it is received by the office designated in the contract for receipt of invoices and acceptance of the supplies delivered or services rendered has occurred;

(ii) payment shall be considered made on the date on which a check for such payment is dated;

(iii) progress payments, if authorized under this contract, are solely for financing purposes and shall not accrue interest under the Prompt Payment Act;

(iv) payment terms (e.g., "net 20") offered by the Contractor will not be deemed a "required payment date;" and

(v) the following periods of time will not be included:

(A) after receipt of an improper invoice and prior to notice of any defect or impropriety, but not to exceed 15 days (or any lesser period established by this contract); and

(B) between the date of a notice of any defect or impropriety and the date a proper invoice is received. When the notice is in writing, it shall be considered made on the date shown on the notice.

7.203–4 [Amended]

4. In part 7, § 7.203–4, the date of the clause "Allowable Cost, Fixed Fee and Payment" is revised to read "(December 1982)" in place of "(May 1980)."

5. In Part 7, § 7.203–4(a) is amended by revising paragraphs (b), (c), and (e) of the "Allowable Cost, Fixed Fee and Payment" clause to read as follows:

7.203–4(a) "Allowable Cost, Fixed Fee and Payment" Clause.

* * * * *

(b) The Contractor may submit to an authorized representative of the Contracting Officer, as work progresses, a proper invoice or voucher in such form and reasonable detail as such representative may require supported by a statement of cost for the performance of this contract and claimed to constitute allowable cost. For this purpose, except as provided herein with respect to pension, deferred profit sharing, and employee stock ownership plan contributions, the term "*costs*" shall include only those recorded costs

which result, at the time of the request for reimbursement, from payment by cash, check, or other form of actual payment for items or services purchased directly for the contract, together with (when the Contractor is not delinquent in payment of costs of contract performance in the ordinary course of business) costs incurred, but not necessarily paid, for materials which have been issued from the Contractor's stores inventory and placed in the production process for use on the contract, for direct labor, for direct travel, for other direct inhouse costs, and for properly allocable and allowable indirect costs, as is shown by records maintained by the Contractor for purposes of obtaining reimbursement under Government contracts plus the amount of progress payments which has been paid to Contractor's subcontractors under similar cost standards. In addition, when the aforementioned contributions are paid by the Contractor to the pension, profit sharing, or employee stock ownership plan funds less frequently than quarterly, accrued costs therefor shall be excluded from indirect costs for payment purposes until such costs are paid. If such contributions are paid on a quarterly or more frequent basis, accruals therefor may be included in indirect costs for payment purposes *provided* that they are paid to the fund within thirty (30) days after the close of the period covered. If payments are not made to the fund within such thirty-day period, these contributions shall be excluded from indirect cost for payment purposes until payment has been made. *(See NASA Procurement Regulation 15.205-6(f)).* The requirement of prior payment for items or services purchased directly for the contract shall not apply where the Contractor is a small business concern.

(c) Within thirty (30) days after receipt of each proper invoice or voucher except as provided in (e) below, the Government shall, except as otherwise provided in this contract, subject to the provisions of (d) below, make payment thereon as approved by the Contracting Officer. Payment of the fixed fee, if any, shall be made to the Contractor as specified in the Schedule; *provided,* however, that after payment of eighty-five percent (85%) of the fixed fee set forth in the Schedule, the Contracting Officer may withhold further payment of fee until a reserve shall have been set aside in an amount which he considers necessary to protect the interests of the Government, but such reserve shall not exceed fifteen percent (15%) of the total fixed fee or one hundred thousand dollars ($100,000), whichever is less.

* * * * *

(e) Upon compliance by the Contractor with all the provisions of this contract (including without limitation, the provisions relating to patents and the provisions of (f) below) and on receipt and approval of the invoice or voucher designated by the Contractor as the "completion invoice" or "completion voucher" the Government shall pay within thirty (30) days to the Contractor any balance of allowable costs, and any part of the fixed fee, which has been withheld pursuant to (c) above or otherwise not paid to the Contractor. The completion invoice or voucher shall be submitted by the Contractor promptly following completion of the work under this contract but in no event later than one (1) year (or such longer period as the Contracting Officer may in his discretion approve in writing) from the date of such completion.

* * * * *

6. In Part 7, § 7.203–4(b), the date of the clause "Allowable Cost, Incentive Fee, and the Payment" is revised to read "(December 1982)" in place of "(May 1980)."

7. In Part 7, § 7.203–4(b) is amended by revising paragraphs (b), (c) and (e) of the "Allowable Cost, Incentive Fee, and Payment" clause to read as follows:

7.203–4(b) "Allowable Cost, Incentive Fee and Payment" Clause.

* * * * *

(b) The Contractor may submit to an authorized representative of the Contracting Officer, as work progresses, a proper invoice or voucher in such form and reasonable detail as such representative may require supported by a statement of cost for the performance of this contract and claimed to constitute allowable cost. For this purpose, except as provided herein with respect to pension, profit sharing, and employee stock ownership plan contributions, the term *"costs"* shall include only those recorded costs which result, at the time of the request for reimbursement, from payment by cash, check, or other form of actual payment for items or services purchased directly for the contract, together with (when the Contractor is not delinquent in payment of costs of contract performance in the ordinary course of business) costs incurred, but not necessarily paid, for materials which have been issued from the Contractor's stores inventory and placed in the production process for use on the contract, for direct labor, for direct travel, for other direct inhouse costs, and for properly allocable and allowable indirect costs, as is shown by records maintained by the Contractor for purposes of obtaining reimbursement under Government contracts plus the amount of progress payments which have been paid to Contractor's subcontractors under similar cost standards. In addition, when the aforementioned contributions are paid by the Contractor to the pension, profit sharing, or employee stock ownership plan funds less frequently than quarterly, accrued costs therefor shall be excluded from indirect costs for payment purposes until such costs are paid. If such contributions are paid on a quarterly or more frequent basis, accruals therefor may be included in indirect costs for payment purposes *provided* that they are paid to the fund within thirty (30) days after the close of the period covered. If payments are not made to the fund within such thirty-day period, these contributions shall be excluded from indirect cost for payment purposes until payment has been made. (See NASA Procurement Regulation 15.205–6(f)). The requirement of prior payment for items or services purchased directly for the contract shall not apply where the Contractor is a small business concern.

(c) Within thirty (30) days after receipt of each proper invoice or voucher except as provided in (e) below, the Government shall, except as otherwise provided in this contract, subject to the provisions of (d) below, make payment thereon as approved by the Contracting Officer. Payment of fee shall be made to the Contractor as specified in the Schedule; provided, however, that whenever in the opinion of the Contracting Officer, the Contractor's performance or cost then incurred indicates that target fee will not be achieved, payment of fee will be based on such lesser fee, not lower than the minimum fee, as the Contracting Officer may determine to be appropriate. After payment of eighty-five percent (85%) of the applicable fee, the Contracting Officer may withhold further payment of fee until a reserve shall have been set aside in an amount which he considers necessary to protect the interests of the Government, but such reserve shall not exceed fifteen percent (15%) of the total applicable fee or one hundred thousand dollars ($100,000) whichever is less. When the Contracting Officer has ordered that fee payment be reduced in accordance with the foregoing, he may increase the basis for payment to an amount not to exceed the target fee upon an affirmative showing by the

Contractor that such action is justified and equitable.

* * * * *

(e) Upon compliance by the contractor with all the provisions of this contract (including without limitation, the provisions relating to patents and the provisions of (f) below) and on receipt and approval of the invoice or voucher designated by the Contractor as the "completion invoice" or "completion voucher" the Government shall pay within thirty (30) days to the Contractor any balance of allowable cost, and any part of the fee which has been withheld pursuant to (c) above or otherwise not paid to the Contractor. The completion invoice or voucher shall be submitted by the Contractor promptly following completion of the work under this contract but in no event later than one (1) year (or such longer period as the Contracting Officer may in his discretion approve in writing) from the date of such completion.

* * * * *

7.302-2 [Amended]

8. In Part 7, § 7.302-2, the clause "Payments" is revised to read as follows:

Payments (December 1982)

The Contractor shall be paid within thirty (30) days after receipt of proper invoices or vouchers, the prices stipulated herein for work delivered or rendered and accepted, less deductions, if any, as herein provided. Unless otherwise specified, payment will be made upon acceptance of any portion of the work delivered or rendered for which a price is separately stated in the contract.

9. In Part 7, § 7.350-2, the date of the clause "Payment" is revised to read "(December 1982)" in place of "(March 1969)."

10. In Part 7, § 7.350-2 is amended by revising paragraph (a) of the clause to read as follows:

7.350-2 "Payment" clause.

(a) Payment will be made to the Contractor as set forth in the Schedule within thirty (30) days after receipt of a proper invoice, upon submission of status reports indicating the portion of the work which has been performed and after acceptance by the Contracting Officer. The status reports shall also contain a concise statement of the work which has been performed.

* * * * *

11. In Part 7, § 7.607-14, the date of the clause "Method of Payment" is revised to read "(December 1982)" in place of "(November 1974)."

12. In Part 7, § 7.607-14 is amended by revising paragraph (b) of the clause "Method of Payment" to read as follows:

7.607-14 "Method of Payment" clause.

* * * * *

(b) Upon approval of such estimate by the Contracting Officer and receipt of properly certified vouchers payment of 90 percent of the amount as determined above, less all previous payments; shall be made to the Architect-Engineer within thirty (30) days *provided,* however, that if the Contracting Officer determines that the work is substantially complete and that the amount of retained percentages is in excess of the amount considered by him to be adequate for the protection of the Government, he may at his discretion release to the Architect-Engineer such excess amount.

* * * * *

13. In Part 7, § 7.702-10, the date of the clause "Allowable Cost and Payment" is revised to read "(December 1982)" in place of "(October 1967)."

14. In Part 7, § 7.702-10 is amended by revising paragraph (d) of the "Allowable Cost and Payment" clause as follows:

7.702-10 "Allowable Cost and Payment" clause.

* * * * *

(d) Within thirty (30) days after receipt of each proper invoice or voucher and statement of cost, the Government shall, except as otherwise provided in this contract, subject to the provisions of paragraph (e) below, make payment thereof as approved by the Contracting Officer.

* * * * *

15. In Part 7, § 7.703-9(f), is amended by revising the first sentence to read as follows:

7.703-9 Allowable Cost and Payment.

* * * * *

(f) Upon compliance by the Contractor with all the provisions of this contract (including, without limitation, the provisions relating to patents and the provisions of (g) below) and on receipt and approval of the invoice or voucher designated by the Contractor as the "completion invoice" or "completion voucher" the Government shall pay within thirty (30) days to the Contractor any balance of allowable cost. * * *

* * * * *

PART 16—PROCUREMENT FORMS

16. In Part 16, Table of Contents is amended by changing the page number for § 16.102-3 to read as follows:

* * * * *

16.102-3 Solicitation, Offer, and Award (Standard Form 33)..... 16-1:9A

* * * * *

17. In Part 16, § 16.101-1(ii) is revised to read as follows:

16.101-1 General.

* * * * *

(ii) Solicitation Instructions and Conditions (Standard Form 33A). In both supply and services contracts, substitute the "Invoices" provision in 7.103-30 for paragraph 13.

* * * * *

18. In Part 16, § 16.102-3(a)(ii) is revised to read as follows:

16.102-3 Solicitation, Offer, and Award (Standard Form 33).

(a) General. * * *

* * * * *

(ii) Solicitation Instructions and Conditions (Standard Form 33A) in both supply and services contracts substitute the Invoices provision in 7.103-30 for paragraph 13 of Standard Form 33A;

* * * * *

19. In Part 16, § 16.302(b) is revised to read as follows:

16.302 Purchase Order Forms (Standard Forms 44, 147; NASA Form 1379).

* * * * *

(b) Standard Form 147 (Order for Supplies or Services) and NASA Form 1379 (Order for Supplies or Services) are authorized for use as purchase orders for small purchases and as delivery orders for ordering and scheduling deliveries against an established contract. Full instructions on the use of these forms are contained in Part 3, Subpart 6. Pending revision of these forms, the "Invoice" provision in 7.103-30 shall be substituted for paragraph 1 of the "Payments and Billing Instructions" on Standard Form 147, page 2, and for paragraph 3, "Payments" on NASA Form 1379. Contracting officers shall also ensure that these forms specify a payment due date which shall be within thirty (30) days after receipt of a proper invoice.

* * * * *

20. In Part 16, § 16.859-4(a) is amended by revising the text of "Priority Rating" to read as follows:

16.859-4 Letter Contract Forms.

(a) *Format cover page for Letter Contracts (NASA Form 551, April 1962).*

* * * * *

Priority Rating ——— is certified for national defense use, under DMS Regulation No. 1 or DPS Reg. 1 (as appropriate).

* * * * *

21. In Part 16, § 16.859-4(d) 4.(a) is amended to read as follows:

16.859-4 Letter Contract Forms.

* * * * *

(d) * * *

* * * * *

4. Payments

(a) If this Letter Contract is on a fixed-price basis, and is governed generally by the provisions of a fixed-price contract form (SF–32 and NASA Form 250, or NASA Form 247), the Government will pay to the Contractor, not to exceed the maximum amount specified in Article IIIa of the Schedule, within thirty (30) days of receipt of proper invoices or vouchers, the prices, if any, specified in Article III of the Schedule for supplies delivered and accepted or services rendered and accepted, less deductions, if any, provided for in this Letter Contract. Unless otherwise specified, payment will be made on partial deliveries accepted by the Government.

* * * * *

APPENDIX E—CONTRACT FINANCING

22. In Appendix E, Table of Contents, paragraph E.204 is revised to read as follows:

* * * * *

E.204 Small Business..... E–2:2

* * * * *

23. In Appendix E, paragraphs E.200, E.201 and the introductory text of paragraph E.202 are revised to read as follows:

E.200 Scope of Subpart.

This Subpart sets forth basic policies applicable to progress payments. Policies and procedures more particularly pertaining to the specific methods of contract financing are contained in the Parts of these regulations relating to each method of financing. Paragraphs E.201 and E.202 also deal with other payments to contractors.

E.201 Acceleration of Payments.

Payments must be made promptly on all contracts when due. Undue delays by the Government in determining amounts due to the contractors or in making timely payment of amounts earned by contractors would impose financing burdens on contractors and may amount to extensions of credit by contractors to the Government.

E.202 Timely Action.

In connection with requests for provision of progress payments, there must be timely action, no unwarranted delay, and no hesitation to make proper contract financing provisions. Likewise, with regard to other payments to contractors, not constituting contract financing, amounts properly payable to contractors must be ascertained promptly and paid expeditiously. Whenver it appears that it will be necessary to provide additional funds on contracts, it is of great importance that there be appropriate early action to assure the availability of funds for payment of amounts earned by contractors. Significant examples of situations in which it is of particular importance that there be timely and effective action, and no unnecessary Government delay, include:

* * * * *

24. In Appendix E, E.505 is amended by changing "Director of Financial Management" to read "Director, Financial Management Division."

[FR Doc. 83–19107 Filed 7–19–83; 8:45 am]

BILLING CODE 7510–01–M

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41 CFR Ch. 18

[Procurement Regulation Directive 82–1 (dated March 31, 1982)]

Procurement Regulations; Miscellaneous Amendments

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: This document amends the NASA Procurement Regulation (41 CFR Ch. 18). It reflects amendments contained in Item XX of Procurement Regulation Directive 82–1 concerning the following:

1. Appendix A, "Rules of Procedure for the Adjudication of Contract Appeals Before the NASA Board of Contract Appeals."

2. Supplement Annex I, "Categories, Functional Areas, Characteristics."

3. Change of title from Director of Procurement to Assistant Administrator for Procurement.

EFFECTIVE DATE: July 19, 1983.

FOR FURTHER INFORMATION CONTACT: James H. Wilson, Procurement Policy Division (Code HP–1), Office of Procurement, NASA Headquarters, Washington, DC 20546, Telephone: 202–755–2237.

SUPPLEMENTARY INFORMATION: 1. Appendix A, "Rules of Procedure for the Adjudication of Contract Appeals Before the NASA Board of Contract Appeals" was published in 14 CFR Part 1241 and it was subsequently published in NASA PRD 81–3. This Appendix is now incorporated into the 1981 edition of the NASA Procurement Regulation.

2. Cateogory 8, paragraph 8, "Physical Inventories" of Annex I to Supplement 3.4 is amended to revise "Class II, Characteristic (1)" and to delete "Class II, Characteristic 7."

3. Due to a reorganization, "Director of Procurement" should be revised to read "Assistant Administrator for Procurement" wherever it appears in the 1981 edition of the NASA Procurement Regulation.

List of Subjects in 41 CFR Ch. 18

Government procurement.

Authority: The provisions of this document are issued under 42 U.S.C. 2473(c)(1).

L. E. Hopkins,

Deputy Assistant Administrator for Procurement.

APPENDIX A—RULES OF PROCEDURE FOR THE ADJUDICATION OF CONTRACT APPEALS BEFORE THE NASA BOARD OF CONTRACT APPEALS

1. Appendix A contains rules and procedures for (1) contract appeals filed pursuant to the Contract Disputes Act of 1978 (41 U.S.C. 601–613), or, where pursuant to the Act, an appellant elects to proceed in accordance with the Act, and (2) contract appeals for which an election under the Act is not available or is not made.

The Appendix A text incorporated into the NASA Procurement Regulation (NPR) is a reprint of that material previously published at 14 CFR Part 1241. In the NPR, the order of appearance of Subparts 1241.1 and 1241.2 has been reversed since the latter rules and procedures will, as time passes, be applicable in most cases. See 14 CFR Part 1241.

* * * * *

Annex I—Categories, Functional Areas, Characteristics

1. In Annex I, Category 8 is amended to read as follows:

8. *Physical Inventories* * * *

(a) Functional Area: Performance.

Class	Characteristic
II.....	(1) Periodic physical inventories are performed for all Government property except work in process.

* * * * *

2. In Annex I, Category 8 is amended by deleting the following:

"II..... (7) [Removed.]

3. Change the title "Director of Procurement" to read "Assistant Administrator for Procurement" wherever it appears.

[FR Doc. 83–19108 Filed 7–18–83; 8:45 am]

BILLING CODE 7510–01–M

41 CFR Ch. 18

[Procurement Regulation Directive 83-1 (dated February 17, 1983)]

Procurement Regulations; Miscellaneous Amendments

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: This document amends the NASA Procurement Regulation (41 CFR Ch. 18). It reflects amendments contained in Procurement Regulation Directive 83-1 concerning the following:

1. Cost Accounting Standards—Administration by NASA Offices.

2. Procurement Under the Economy Act.

3. Clauses for Fixed-Price R&D Contracts.

EFFECTIVE DATE: July 19, 1983.

FOR FURTHER INFORMATION CONTACT: James H. Wilson, Procurement Policy Division (Code HP-1), Office of Procurement, NASA Headquarters, Washington, DC 20546, Telephone: 202-755-2237.

SUPPLEMENTARY INFORMATION: 1. In Part 3, in accordance with § 3.1208(c), a listing is published to show those contractor profit centers assigned to NASA offices for the administration of Cost Accounting Standards requirements.

2. In Part 5, § 5.701(b) is amended to reflect changes made by Pub. L. 97-332 which authorizes NASA procurement offices to place delivery orders on other Federal agencies for supplies and services that such agency may be in a position to furnish or perform or to obtain by contract from a commercial source of supply.

List of Subjects in 41 CFR Ch. 18

Government procurement.

Authority: The provisions of this document are issued under 42 U.S.C. 2473(c)(1).

L. E. Hopkins,

Deputy Assistant Administrator for Procurement.

PART 2—PROCUREMENT BY FORMAL ADVERTISING

1. In Part 2, § 2.201 Section B(16), the first sentence of the clause "Preference for Labor Surplus Area Concerns" is amended to read as follows:

* * * * *

This procurement is not set aside for labor surplus area concerns. However, the offeror's status as such a concern may affect entitlement to award in case of tie offers or offer evaluation in accordance with the Buy American clause of this solicitation.

* * * * *

PART 3—PROCUREMENT BY NEGOTIATION

2. In Part 3, in accordance with § 3.1208(c), the following list is added to show those contractor profit centers assigned to NASA offices for the administration of Cost Accounting Standards requirements:

Contractor profit center	NASA administration office
Boeing Services International, Inc., subsidiary of the Boeing Company, P.O. Box 220, Cocoa Beach, FL 32931.	John F. Kennedy Space Center (same as above).
EG&G Florida, Inc., 950 N. Cocoa Blvd., Suite 105, Cocoa, FL 32922-7596.	John F. Kennedy Space Center (same as above).
Jet Propulsion Laboratory, a division of California Institute of Technology, 4800 Oak Grove Drive, Pasadena, CA 91103.	NASA Resident Office/JPL, 4800 Oak Grove Drive, Pasadena, CA 91103, Telephone: (213) 354-6052.
Rockwell International Corporation, Space Transportation and Systems Group, Downey, CA 90241.	NASA Contract Administration Office, Mail Code AA36, Rockwell International Corporation, Space Transportation and Systems Group, Downey, CA 90241, Telephone: (213) 922-2605.
Teledyne Isotopes, Inc., Division of Teledyne, Inc., Plum Brook Operations, P.O. Box 2304, Sandusky, OH 44870.	Lewis Research Center, Code 1440, Cleveland, OH 44135, Telephone: (216) 433-4000, Extension 5523.
Weckenhut Services, Inc., 3280 Ponce de Leon Blvd., Coral Gables, FL 33134.	John F. Kennedy Space Center (same as above).

PART 5—PROCUREMENT UNDER THE ECONOMY ACT

3. In Part 5, § 5.701(b) is revised to read as follows:

5.701 Authorization and Policy Relating to Placing and Filling Orders.

* * * * *

(b) Each procurement office, when it is in the interest of the Government to do so, may place delivery orders on NASA Form 1379 or Standard Form 147 (see 3.608-6) with any Government agency other than the Department of Defense (for policies and procedures governing procurements from or through the Military Departments (see 5.752 and 5.1000-5.1005)) for supplies or services that any such requisitioned agency may be in a position to furnish or perform or to obtain by contract. Generally, an order for supplies or services will not be placed with an agency which is not in a position to furnish the supplies or is not equipped to perform the services, except that an order may be filled by means of an outside contract with a commercial source of supply. An order for services shall not be placed with an agency when such services can be performed as conveniently or more economically by private contractors.

PART 7—CONTRACT CLAUSES

4. In Part 7, the Table of Contents, the page numbers applicable to §§ 7.703-31 through 7.704-2 are revised to read as follows:

* * * * *

7.703-31 Officials Not To Benefit 7-7:16A
7.703-32 [Reserved] 7-7:16A
7.703-33 Covenant Against Contingent Fees 7-7:16A
7.703-34 Payment for Overtime Premiums 7-7:16A
7.703-35 Convict Labor 7-7:16A
7.703-36 Equal Opportunity 7-7:16A
7.703-37 Walsh-Healey Public Contracts Act 7-7:16A
7.703-38 Contract Work Hours Standards Act-Overtime Compensation 7-7:16A
7.703-39 Supersedure 7-7:16A
7.703-40 Subcontractor Cost or Pricing Data 7-7:16A
7.703-41 Audit by National Aeronautics and Space Administration 7-7:16A
7.703-42 Price Reduction for Defective Cost or Pricing Data 7-7:16A
7.703-43 Competition in Subcontracting 7-7:16A
7.703-44 Interest 7-7:16A
7.703-45 Notice to the Government of Labor Disputes 7-7:16B
7.703-46 General Services Administration Supply Sources 7-7:16B
7.703-47 Limitation on Withholding of Payments 7-7:16B
7.703-48 Payment of Royalties 7-7:16B
7.703-49 [Reserved] 7-7:16B
7.703-50 Report on NASA Subcontracts 7-7:16B
7.703-51 Notice of Intent to Disallow or Not Recognize Costs 7-7:16B
7.703-52 License for Subsequent Use 7-7:16B
7.704 Required Clauses for Facilities Use Contracts 7-7:16B
7.704-1 Definitions 7-7:16B
7.704-2 Use and Charges 7-7:16B

5. In Part 7, the clause in § 7.302-54 is revised to read as follows:

7.302-54 Reports of Work.

* * * * *

Reports of Work (February 1983)

(a) *Monthly Progress Reports.* The Contractor shall submit separate monthly progress reports of all work accomplished during each month of contract performance. Reports shall be in narrative form, and brief and informal in content. Monthly reports shall include:

(i) a quantitative description of overall progress;

(ii) an indication of any current problems which may impede performance, and proposed corrective action; and

(iii) a discussion of the work to be performed during the next monthly reporting period.

Monthly reports shall be submitted in ——— copies.

(b) *Quarterly Progress Reports.* The Contractor shall submit separate quarterly reports of all work accomplished during each three-month period of contract performance. In addition to factual data, these reports shall include a separate analysis section which

interprets the results obtained, recommends further action, and relates occurrences to the ultimate objectives of the contract work. Sufficient diagrams, sketches, curves, photographs, and drawings shall be included to convey the intended meaning. Quarterly reports shall be submitted in———copies.

(c) *Final Report.* The Contractor shall submit a final report which documents and summarizes the results of the entire contract work, including recommendations and conclusions based on the experience and results obtained. The final report shall include tables, graphs, diagrams, curves, sketches, photographs, and drawings in sufficient detail to comprehensively explain the results achieved under the contract. The final report shall be submitted in——— copies.

(d) *Submission.* The quantities of reports specified in (a)–(c) shall be submitted to the technical monitor of the contract. In addition, a reproducible copy and a printed (or reproduced) copy shall be sent to: NASA Scientific and Technical Information facility, Attn.: Accessioning Department, P.O. Box 8757; Baltimore/Washington International Airport, MD 21240.

* * * * *

6. In Part 7, the introductory paragraph in § 7.302–55 is revised to read as follows:

7.302–55 Scientific and Technical Information Service.

In conformance with Section 203(a) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2473), and in the interest of conserving time and funds, and to avoid unnecessary duplication of effort, it is NASA policy to encourage contractors to use scientific and technical information in the possession of NASA in direct support of all NASA contracts involving research and development work. This information, includes past and current reports on research, development, test and evaluation. Certain information (*e.g.*, Scientific and Technical Aerospace Reports (STAR), which announces current publications covering aeronautics, space, and supporting disciplines) is available to contractors free of charge; other types of information (*e.g.*, automatic distribution of reports on a specific subject) or services (*e.g.*, searches of the NASA data base or on-line access to the NASA data base through NASA/RECON) may be subject to charges for a contractor. In order that such scientific and technical information may be provided in a timely manner, it is necessary for the contractor to furnish NASA the information specified in the clause set forth below. Accordingly, the following cause shall be inserted in all research and development contracts.

* * * * *

7. In part 7, § 7.302–55, the cause "Scientific and Technical Information Service" is amended to read as follows:

Scientific and Technical Information Service (February 1983)

(a) The Contractor, if not already registered with the NASA Scientific and Technical Information Facility, is encouraged to register by requesting registration forms from: NASA Scientific and Technical Information Facility, Attn.: Registration, P.O. Box 8757, Baltimore/Washington International Airport, MD 21240.

* * * * *

PART 15—CONTRACT COST PRINCIPLES AND PROCEDURES

8. In Part 15, § 15.205–25(a), (a)(i), (a)(iii), (a)(vi), and (b)(iv) are revised to read as follows:

15.205–25 Relocation Costs.

(a) Relocation costs are costs incident to the permanent change of duty assignment (for an indefinite period or for a stated period of not less than 12 months) of an existing employee or upon recruitment of a new employee. The following types of costs are allowable as noted, subject to paragraphs (b), (c), and (d) below.

(i) Costs of travel of the employee and members of his immediate family (see 15.205–46) and transportation of his household and personal effects to the new location.

* * * * *

(iii) Closing costs (i.e., brokerage fees, legal fees, appraisal fees, points, and finance charges, etc.) incident to the disposition of actual residence owned by the employee when notified of transfer; *provided* that closing costs when added to the continuing costs described in (a)(vi) below shall not exceed 14 percent of the sales price of the property sold.

* * * * *

(vi) Continuing costs of ownership of the vacant former actual residence being sold, such as maintenance of building and grounds (exclusive of fixing-up expenses), utilities, taxes, property insurance, mortgage interest, etc., after settlement date or lease date of new permanent residence; *provided* that when added to the closing costs described in (a)(iii) above, the costs shall not exceed 14 percent of the sales price of the property sold.

* * * * *

(b) The costs described in (a) above must also meet the following criteria to be considered allowable.

* * * * *

(iv) Amounts to be reimbursed shall not exceed the employee's actual expenses, except that for miscellaneous costs of the type discussed in (a)(iv), a flat amount, not to exceed $1,000, may be allowed in lieu of actual costs.

* * * * *

PART 16—PROCUREMENT FORMS

9. In Part 16, the Table of Contents, § 16.103 is amended to read as follows:

* * * * *

16.103 Amendment of Solicitation/ Modification of Contract (Standard Form 30)..... 16–1:12

* * * * *

PART 20—ADMINISTRATIVE MATTERS

10. In Part 20, § 20.401–1(b) is revised to read as follows:

20.401–1 General.

* * * * *

(b) For research or research and development projects one copy plus a copy of the contractor's technical proposal and/or Statement-of-Work will be furnished to the Scientific and Technical Information Branch, Code NIT–44, NASA Headquarters, Washington, DC 20546.

* * * * *

[FR Doc. 83–19100 Filed 7–18–83; 8:45 am]
BILLING CODE 7510–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

41 CFR Part 3–4

Procurement Under Buy Indian Act

AGENCY: Office of the Secretary, HHS.

ACTION: Final rule.

SUMMARY: The Office of the Secretary, Department of Health and Human Services is amending the Department's procurement regulations by revising the subpart on procurement under the Buy Indian Act.

The amendment is being made as a result of the issuance of the "Indian preference" regulation in the **Federal Register** (48 FR 16265) on April 15, 1983, and to clarify and simplify the subpart.

EFFECTIVE DATE: This amendment is effective July 19, 1983.

FOR FURTHER INFORMATION CONTACT: E. S. Lanham, Division of Procurement Policy, OPAP–OPAL–OASMB–OS, Department of Health and Human Services, Room 539H, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, D.C. 20201 (202–245–8791).

SUPPLEMENTARY INFORMATION: In § 3–4.5703 *Requirements*, a new paragraph (d) *Indian preference in employment, training, and subcontracting* has been added to replace the existing paragraph (c) *Indian employment*, and, as a result, paragraph (d) *Bonds* has been relettered as paragraph (c). In addition, the clause "Use of Indian Business Concerns" in paragraph (e) has been deleted. These changes result from the recently issued "Indian preference" regulation.

Section 3–4.5702–5 *Buy Indian restricted advertising* is added to § 3–4.5702 *Definitions* to clarify the technique used in making a Buy Indian procurement.

Various editorial changes have been made throughout the subpart to clarify and simplify the meaning and intent of the regulation. For example, several changes have been made to § 3–4.5703 *Requirements* and § 3–4.5704 *Competition* for these purposes.

The title of § 3–4.5705 has been changed to *Responsibility determinations* from *Evaluation criteria* because it is more precise in its description of the contents.

It is the policy of the Department of Health and Human Services to allow time for interested parties to participate in the rulemaking process. However, since the revisions being made in this amendment are administrative in nature and are of primary interest only to departmental personnel, the public rulemaking process was deemed unnecessary in this instance.

The Department of Health and Human Services has determined that this rule will not have a significant economic impact on a substantial number of small entities, and, therefore, does not require the preparation of a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980, Pub. L. 96–354.

The Department of Health and Human Services has determined that this rule is not a "major rule" as defined under Executive Order 12291, and hence, a regulatory impact analysis is not required.

The Department of Health and Human Services has determined that this rule does not contain collections of information subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

List of Subjects in 41 CFR Part 3–4

Government procurement, special types and methods of procurement.

The provisions of this amendment are issued under 5 U.S.C. 301; 40 U.S.C. 468(c).

Therefore, Title 41 CFR Chapter 3 is amended as set forth below.

Dated: July 14, 1983.

Henry G. Kirschenmann, Jr.,

Deputy Assistant Secretary for Procurement, Assistance and Logistics.

PART 3–4—SPECIAL TYPES AND METHODS OF PROCUREMENT

Under Part 3–4, Special Types and Methods of Procurement, Subpart 3–4.57 is revised to read as set forth below. In addition, the table of contents for Part 3–4 is amended by revising the entries for Subpart 3–4.57 to read as follows:

* * * * *

Subpart 3–4.57—Procurement Under the Buy Indian Act

Sec.
3–4.5700 Scope of subpart.
3–4.5701 Policy.
3–4.5702 Definitions.
3–4.5702–1 Indian.
3–4.5702–2 Indian firm.
3–4.5702–3 Product of Indian industry.
3–4.5702–4 Buy Indian contract.
3–4.5702–5 Buy Indian restricted advertising.
3–4.5703 Requirements.
3–4.5704 Competition.
3–4.5705 Responsibility determinations.

* * * * *

Subpart 3–4.57—Procurement Under the Buy Indian Act

§ 3–4.5700 Scope of subpart.

This subpart sets forth the policy on preferential acquisition from Indians under the negotiation authority of the Buy Indian Act. Applicability of this subpart is limited to acquisitions made by or on behalf of the Indian Health Service of the Public Health Service.

§ 3–4.5701 Policy.

(a) The Indian Health Service will utilize the negotiation authority of the Buy Indian Act to give preference to Indians whenever the use of that authority is authorized and is practicable. The Buy Indian Act was enacted as a proviso to section 23 of the Act of June 25, 1910, Chapter 431, Pub. L. 313, 61st Congress, 36 Stat. 861, and prescribes the application of the advertising requirements of section 3709 of the Revised Statutes to the acquisition of Indian supplies. As set out in 25 U.S.C. 47, the Buy Indian Act provides as follows:

> So far as may be practicable Indian labor shall be employed, and purchases of the products of Indian industry may be made in open market in the discretion of the Secretary of the Interior.

(b) The functions, responsibilities, authorities, and duties of the Secretary of the Interior for maintenance and operation of hospital and health facilities for Indians and for the conservation of the health of Indians were transferred to the Secretary of Health, Education, and Welfare, on July 1, 1955 by Pub. L. 568, 83rd Congress, 42 U.S.C. 2001 et seq. Accordingly, the Secretary of Health and Human Services is authorized to use the Buy Indian Act in the acquisition of products of Indian industry in connection with the maintenance and operation of hospital and health facilities for Indians and for the conservation of the health of Indians. This authority has been delegated exclusively to the Indian Health Service and is not available for use by any other HHS component (unless that component is making an acquisition on behalf of the Indian Health Service).

(c) Section 303 of the Indian Health Care Improvement Act (Pub. L. 94–437) calls for the use of the Buy Indian Act in the construction and renovation of facilities pursuant to section 301 of that Act and in the construction of safe water and sanitary waste disposal facilities pursuant to section 302 of that Act.

§ 3–4.5702 Definitions.

§ 3–4.5702–1 Indian.

Indian means a member of any tribe, pueblo, band, group, village or community that is recognized by the Secretary of the Interior as being Indian or any individual or group of individuals that is recognized by the Secretary of the Interior or the Secretary of Health and Human Services. The Secretary of Health and Human Services in making such determination may take into account the determination of the tribe with which affiliation is claimed.

§ 3–4.5702–2 Indian firm.

Indian firm means a sole enterprise, partnership, corporation, or other type of business organization owned, controlled, and operated by one or more Indians (including, for the purpose of sections 301 and 302 of Pub. L. 94–437, former or currently federally recognized Indian tribes in the State of New York) or by an Indian firm; or a nonprofit firm organized for the benefit of Indians and controlled by Indians (see § 3–4.5703(a)).

§ 3–4.5702–3 Product of Indian industry.

Product of Indian industry means anything produced by Indians through physical labor or by intellectual effort involving the use and application of skills by them.

§ 3–4.5702–4 Buy Indian contract.

Buy Indian contract means any contract involving activities covered by the Buy Indian Act that is negotiated under the provisions of 41 U.S.C.

252(c)(15) and 25 U.S.C. 47 between an Indian firm and a contracting officer representing the Indian Health Service.

§ 3-4.5702-5 Buy Indian restricted advertising.

Buy Indian restricted advertising is a special method of negotiated procurement conducted in the same manner as a formally advertised procurement except that competition and award are restricted to Indian firms (see § 1-1.701-9).

Thus, a Buy Indian procurement may be considered a procurement set-aside for Indian firms in the manner that some procurements are set-aside for small business concerns (see § 1-1.701-8). Set-aside procurements are, technically, negotiated procurements but should be conducted as if they were formally advertised procurements in instances where the formal advertising method would be used if the set-aside was not in effect.

§ 3-4.5703 Requirements.

(a) *Indian ownership.* The degree of ownership that is called for by § 3-4.5702-2 shall be 100 percent during the period covered by a Buy Indian contract unless a deviation from that 100 percent requirement is approved on an individual basis by the cognizant Area or Program Office Director of the Indian Health Service. Such a deviation, which may be to not less than 51 percent, must be accompanied by an appropriate justification for the deviation.

(b) *Joint ventures.* An Indian firm may enter into a joint venture with other entities for specific projects as long as the Indian firm is the managing partner. However, the joint venture must be approved by the contracting officer prior to the award of a contract under the Buy Indian Act.

(c) *Bonds.* In the case of contracts for the construction, alteration, or repair of public buildings or public works, performance and payment bonds are required by the Miller Act (40 U.S.C. 270a) and §§ 1-10.104 and 1-10.105. In the case of contracts with Indian tribes or public nonprofit organizations serving as governmental instrumentalities of an Indian tribe, bonds are not required. However, bonds are required when dealing with private business entities which are owned by an Indian tribe or members of an Indian tribe. Bonds may be required of private business entities which are joint ventures with, or subcontractors of, an Indian tribe or a public nonprofit organization serving as a governmental instrumentality of an Indian tribe. A bid guarantee or bid bond is required only when a performance or payment bond is required.

(d) *Indian preference in employment, training and subcontracting.* Contracts awarded under the Buy Indian Act are subject to the requirements of section 7(b) of the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638), which requires that preference be given to Indians in employment, training, and subcontracting. Section 3-1.360 and the contract clauses in §§ 3-7.5015 and 3-7.5016 represent the Department's implementation of section 7(b). The Indian Preference clause set forth in § 3-7.5015 shall be included in all Buy Indian solicitations and resultant contracts. The Indian Preference Program clause set forth in § 3-7.5016 shall be used as specified in § 3-1.360(b)(2). All requirements set forth in § 3-1.360 which are applicable to the instant Buy Indian procurement shall be followed by the contracting officer, e.g., § 3-1.360 (d) and (e).

(e) *Subcontracting.* Not more than 50 percent of the work to be performed under a prime contract awarded pursuant to the Buy Indian Act shall be subcontracted to other than Indian firms. For this purpose, work to be performed does not include the provision of materials, supplies, or equipment.

(f) *Wage rates.* A determination of the minimum wage rates by the Secretary of Labor as required by the Davis-Bacon Act (40 U.S.C. 276a-276a-5) shall be included in all contracts awarded under the Buy Indian Act for over $2,000 for construction, alteration, or repair, including painting and decorating, of public buildings and public works, except contracts with Indian tribes or public nonprofit organizations serving as governmental instrumentalities of an Indian tribe. The wage rate determination is to be included in contracts with private business entities even if they are owned by an Indian tribe or members of an Indian tribe and in connection with joint ventures with, or subcontractors of, an Indian tribe or a public nonprofit organization serving as a governmental instrumentality of an Indian tribe.

§ 3-4.5704 Competition.

(a) Contracts to be awarded under the Buy Indian Act shall be subject to competition among Indians or Indian firms to the maximum extent that competition is determined by the contracting officer to be practicable, pursuant to §§ 1-1.301-1 and 1-3.101(d). When competition is determined not to be practicable, a Justification for Noncompetitive Procurement shall be prepared in accordance with Subpart 3-3.53 and subsequently retained in the contract file.

(b) Notwithstanding the provisions of Subpart 3-3.53, requests for approval of noncompetitive procurements to be negotiated under the Buy Indian Act may, if $25,000 or less, be approved by the chief of the contracting office, or, if over $25,000, by the cognizant Area or Program Office Director. Approvals shall be in the form of Justifications or Noncompetitive Procurement.

(c) Solicitations must be synopsized and publicized in the Commerce Business Daily (see § 1-1.1003-1), and copies of the synopses sent to the tribal office of the Indian tribal government directly concerned with the proposed procurement as well as to Indian firms and others having a legitimate interest. The synopses should state that, to the extent provided for pursuant to the Buy Indian Act, qualified Indian firms will be given preference in the award of contracts.

§3-4.5705 Responsibility determinations.

(a) A contract may be awarded under the Buy Indian Act only if it is first determined that the project or function to be contracted for is likely to be satisfactorily performed under such a contract and that the project or function is likely to be properly completed or maintained under that contract.

(b) The determination called for by paragraph (a) to be made prior to the award of a contract under the Buy Indian Act will be made by the contracting officer. Such determinations are to be in writing and are to reflect a consideration of the following criteria:

(1) Whether there is ownership of a business organization, and control of such a business organization or of a nonprofit firm, as is called for by § 3-4.5702-2;

(2) Whether the Indian firm has the equipment, buildings and facilities necessary to assure the efficient and orderly performance of the contract or whether it has reasonable access thereto for that purpose;

(3) Whether the Indian firm has established bookkeeping and accounting procedures which are adequate to assure the efficient and orderly performance of the contract, including compliance with labor requirements and timely compliance with reporting requirements;

(4) Whether the Indian firm has substantive knowledge of the project or function to be contracted for, based either upon satisfactory performance of a similar project under a prior contract or upon demonstrated experience in

managing, or being otherwise intimately involved in, a similar project;

(5) Whether the Indian firm has an adequate number of employees who are, or has reasonably available to it sufficient personnel who will be, under a reasonable on-the-job training program, adequately trained to satisfactorily perform the contract; and

(6) Whether the Indian firm has the experience and financial ability to adequately perform a contract of the proposed scope and magnitude, considering its present and potential commitments to other projects.

[FR Doc. 83-19456 Filed 7-18-83; 8:45 am]
BILLING CODE 4110-12-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6404

[CA-2196]

California; Powersite Restoraton No. 736 Revoking Powersite Reserve Nos. 270 and 307 and Partially Revoking Powersite Reserve Nos. 85, 248, 316, 401, 428; Powersite Cancellation No. 327; Partially Revoking Powersite Classification Nos. 72, 83, and 122

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order partially and totally revokes certain Executive and Secretary orders which withdrew lands for powersite purposes. The lands affected total 13,130.40 acres of public, national forest and privately owned lands. This action opens a total of 8,510.56 acres to surface entry. These lands are already open to mining and mineral leasing. The privately owned lands will be relieved of the restriction imposed on those lands by Section 24 of the Federal Power Act and 80 acres remain segregated by an outstanding withdrawal.

EFFECTIVE DATE: August 16, 1983.

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

By virtue of the authority contained in Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, and Section 24 of the Federal Power Act of June 10, 1920, as amended, 41 Stat. 1075, 16 U.S.C. 818, and pursuant to the determination of the Federal Energy Regulatory Commission in DA-1116 California, it is ordered as follows:

1. The Executive Orders of July 2, 1910, February 17, 1912, November 18, 1912, November 19, 1912, September 25, 1913, March 21, 1914, and Secretarial Orders of June 6, 1912, July 26, 1924, December 18, 1925, June 3, 1924, creating Powersite Reserve Nos. 85, 248, 307, 316, 401, 428, 270 and Powersite Classification Nos. 83, 122 and 72, are hereby cancelled and revoked insofar as they affect the following described lands:

Mount Diablo Meridian

Powersite Reserve No. 85

T. 36 N., R. 6 E.,
Sec. 3, SE¼NW¼;
Sec. 24, W½NW¼, SE¼NW¼, S½SW¼, and NE¼SE¼;
Sec. 25, N½NE¼.
T. 36 N., R. 7 E.,
Sec. 3, lots 5, 6, 11, 12, 13, 14, and 20;
Sec. 4, NE¼SE¼, and S½SE¼;
Sec. 8, lots 9, 10, 14, 15, and 16;
Sec. 9, NE¼, SE¼NW¼, NE¼SW¼, and N½SE¼;
Sec. 17, lots 1, 2, 3, 4, 5, 6, 7, 10, 11, 12, 14, and 15;
Sec. 19, lot 4, S½NE¼, E½SW¼, and SE¼;
Sec. 20, lots 2, 3, 4, 5, 6, 7, 11, and 12;
Sec. 30, lot 1, NW¼NE¼, and NE¼NW¼.
T. 35 N., R. 1 W.,
Sec. 22, NW¼SE¼ and W½.

The area aggregates 2,919.72 acres.

Powersite Reserve No. 248

T. 35 N., R. 1 E.,
Sec. 6, SW¼NE¼.
T. 36 N., R. 1 E.,
Sec. 8, NE¼;
Sec. 28, E½NE¼.
T. 37 N., R. 1 E.,
Sec. 31, NW¼SE¼, and SE¼SE¼.
T. 35, N., R. 1 W.,
Sec. 1, NE¼SE¼;
Sec. 2, Lot 10 (formerly SW¼NE¼), and NE¼SE¼;
Sec. 4, NE¼SW¼, NW¼SW¼, and S½SW¼;
Sec. 10, SW¼NE¼, and SE¼SE¼;
Sec. 11, SE¼SW¼, and SE¼;
Sec. 12, SW¼;
Sec. 14, N½NE¼, SW¼NE¼, SE¼NE¼, NE¼NW¼, NW¼NW¼, S½NW¼, and W½SW¼.
T. 36 N., R. 1 W.,
Sec. 2, Lot 4;
Sec. 10, NW¼NW¼.
T. 37 N., R. 1 W.,
Sec. 26, SE¼SE¼.

The area aggregates 1,599.59 acres.

Powersite Reserve No. 270

T. 36 N., R. 1 E.,
Sec. 6, Lot 5 (formerly the SW¼NW¼), Lots 6, 7, and E½SW¼ (formerly the SW¼), and SE¼SE¼;
Sec. 8, S½NW¼.
T. 36 N., R. 1 W.,
Sec. 2, Lot 3, and SE¼NE¼.
T. 37 N., R. 1 W.,
Sec. 35, S½SW¼.

The area aggregates 479.42 acres.

Powersite Reserve No. 307

T. 36 N., R. 2 E.,
Sec. 1, S½SE¼.
T. 36 N., R. 3 E.,
Sec. 6, Lots 2, 3, 5, 6, and SE¼NW¼.
T. 37 N., R. 3 E.,
Sec. 30, Lots 1, 2, NW¼NE¼, and NE¼NW¼.
T. 36 N., R. 4 E.,
Sec. 7, Lot 1;
Sec. 12, Lot 2;
Sec. 13, SE¼NE¼, SE¼NW¼, and SW¼SE¼;
Sec. 14, NW¼NW¼.
T. 36 N., R. 5 E.,
Sec. 6, Lots 13 and 14;
Sec. 7, NW¼ Lot 5, SW¼ Lot 5, Lots 6, 7, 8 9, 10, 11, and 12.

The area aggregates 1,424.00 acres.

Powersite Reserve No. 316

T. 36 N., R. 5 E.,
Sec. 6, Lots 2, 10, and 15;
Sec. 7, Lot 1.
T. 36 N., R. 7 E.,
Sec. 3, Lot 3.
T. 37 N., R. 7 E.,
Sec. 34, W½NW¼, and SW¼SE¼.

The area aggregates 302.19 acres.

Powersite Reserve No. 401

T. 36 N., R. 1 W.,
Sec. 1, Lot 4, and S½NW¼.

The area aggregates 119.12 acres.

Powersite Reserve No. 428

T. 37 N., R. 4 E.,
Sec. 26, S½SW¼, and SW¼SE¼;
Sec. 33, SE¼SE¼;
Sec. 34, E½NE¼, SW¼NE¼, SE¼NW¼, NE¼SW¼, and SE¼SW¼;
Sec. 35, N½NW¼, and SW¼NW¼.

The area aggregates 520.00 acres.

Powersite Classification No. 72

T. 35 N., R. 4 E.,
Sec. 8, S½NE¼;
Sec. 28, S½SW¼;
Sec. 29, W½NE¼, and NW¼NW¼;
Sec. 33, E½NW¼, W½NW¼, NW¼SW¼, and S½SW¼;
T. 36 N., R. 4 E.,
Sec. 29, W½NW¼, NW¼SW¼, and SW¼SW¼.
T. 33 N., R. 5 E.,
Sec. 7, Lot 1;
Sec. 8, SW¼NE¼, N½SE¼, and SE¼SE¼;
Sec. 16, SW¼NE¼, W½, and W½SE¼;
Sec. 17, NE¼;
Sec. 21, All;
Sec. 28, N½, SW¼, and W½SE¼;
Sec. 29, SE¼SE¼;
Sec. 32, NE¼, and NW¼SE¼.
T. 34 N., R. 1 W.,
Sec. 2, Lots 1, 4, and SE¼NE¼
T. 35 N., R. 1 W.,
Sec. 34, SE¼NW¼, NE¼SW¼, and SE¼.

The area aggregates 3,376.83 acres.

Powersite Classification No. 83

T. 36 N., R. 1 E.,
Sec. 15, W½NW¼, W½SW¼, and E½SE¼;
Sec. 22, SW¼NE¼, NW¼, and S½.
T. 36 N., R. 1 W.,
Sec. 20, NE¼NE¼, W½NE¼, and NW¼SE¼.

The area aggregates 920.00 acres.

Powersite Classification No. 122

T. 36 N., R. 1 E.,
Sec. 6, Lots 6, 7, and E½SW¼;
Sec. 16, N½NE¼, and NE¼NW¼;
Sec. 28, E½SW¼, and W½SE¼;
Sec. 32, SE¼NW¼.
T. 35 N., R. 1 W.,
Sec. 1, NE¼SE¼;
Sec. 2, lots 10 and 12;
Sec. 4, lots 1, 2, 3, 4, 5, 6, 11, 12, NE¼SW¼, NE¼SE¼, and SW¼SE¼;
Sec. 14, NE¼NW¼.
T. 36 N., R. 1 W.,
Sec. 2, S½SE¼;
Sec. 10, NE¼, SE¼NW¼, SW¼, N½SE¼, and SW¼SE¼;
Sec. 14, NE¼NW¼;
Sec. 28, W½W½.

The area aggregates 1,789.53 acres.

2. Of the lands listed in paragraph 1, the following are privately owned and not subject to disposition under the public land laws. The effect of this order is to relieve the restriction imposed on these lands by Section 24 of the Federal Power Act by Powersite Reserve Nos. 85, 248, 270, 307, 306, 401, 428 and Powersite Classification Nos. 72 and 122.

Mount Diablo Meridian

T. 35 N., R. 1 E.,
Sec. 6, SW¼NE¼.
T. 36 N., R. 1 E.,
Sec. 6, lot 5 (formerly SW¼NW¼), and SE¼SE¼;
Sec. 8, NE¼, and S½NW¼;
Sec. 16, N½NE¼, and NE¼NW¼;
Sec. 28, E½SW¼, and W½SE¼;
Sec. 32, SE¼NW¼.
T. 37 N., R. 1 E.,
Sec. 31, NW¼SE¼, and SE¼SE¼.
T. 36 N., R. 2 E.,
Sec. 1, S½SE¼.
T. 36 N., R. 3 E.,
Sec. 6, lots 2, 3, 5, 6, and SE¼NW¼.
T. 37 N., R. 3 E.,
Sec. 30, lots 1, 2, NW¼NE¼, and NE¼NW¼.
T. 35 N., R. 4 E.,
Sec. 8, S½NE¼.
T. 36 N., R. 4 E.,
Sec. 12, Lot 2;
Sec. 13, SE¼NE¼;
Sec. 29, W½NW¼, and NW¼SW¼.
T. 37 N., R. 4 E.,
Sec. 34, SE¼NE¼, SW¼NE¼, SE¼NW¼, and NE¼SW¼.
T. 36 N., R. 5 E.,
Sec. 6, Lots 2, 10, 13, 14, and 15;
Sec. 7, Lots 1, 6, 7, 8, 9, 10, 11, 12, and NW¼ Lot 5.
T. 36 N., R. 6 E.,
Sec. 3, SE¼NW¼.
T. 36 N., R. 7 E.,
Sec. 3, Lot 3.
T. 35 N., R. 1 W.,
Sec. 1, NE¼SE¼;
Sec. 2, Lots 10, 12, and NE¼SE¼;
Sec. 4, Lots 1, 2, 3, 4, 5, 6, 11, 12, NW¼SW¼, and S½SW¼;
Sec. 10, SW¼NE¼, and SE¼SE¼;
Sec. 11, SE¼SW¼, and SE¼;
Sec. 12, SW¼;
Sec. 14, N½NE¼, SW¼NE¼, SE¼SE¼ SW¼NE¼NW¼, SW¼SW¼SE¼NE¼ NW¼, NW¼NW¼, S½NW¼, and W½SW¼.
T. 36 N., R. 1 W.,
Sec. 1, Lot 4, and S½NW¼;
Sec. 2, Lots 3, 4, and SE¼NE¼;
Sec. 10, NW¼NW¼, SE¼NW¼, SW¼, N½SE¼, and SW¼SE¼.
T. 37 N., R. 1 W.,
Sec. 26, SE¼SE¼;
Sec. 35, S½SW¼.

The area aggregates 4,619.84 acres in Shasta and Lassen Counties.

3. At 10:00 a.m. on August 16, 1983, the following described national forest lands which lie within Lassen and Shasta National Forests, shall be open to such forms of disposition as may by law be made of national forest lands, subject to valid existing rights and the requirements of applicable regulations.

Mount Diablo Meridian

T. 36 N., R. 1 E.,
Sec. 15, W½NW¼, W½SW¼, and E½SE¼;
Sec. 22, SW¼NE¼, NW¼, and S½.
T. 35 N., R., 4 E.,
Sec. 28, S½SW¼;
Sec. 33, E½NW¼, W½NW¼, NW¼SW¼, and S½SW¼;
Sec. 34, SW¼SW¼.
T. 33 N., R. 5 E.,
Sec. 7, Lot 1;
Sec. 8, SW¼SE¼, N½SE¼, and SE¼SE¼;
Sec. 16, SW¼NE¼, W½, and W½SE¼;
Sec. 17, NE¼;
Sec. 21, All;
Sec. 28, N½, SW¼, and W½SE¼;
Sec. 29, SE¼SE¼;
Sec. 32, NE¼, and NW¼SE¼.
T. 36 N., R. 7 E.,
Sec. 3, Lots 13, 14, and 20.
T. 35 N., R. 1 W.,
Sec. 22, NW¼SE¼, and W½.
T. 36 N., R. 1 W.,
Sec. 20, NE¼NE¼, W½NE¼, and NW¼SE¼.

The area aggregates 4,044.17 acres in Shasta and Lassen Counties.

4. Of the lands described in paragraph 1, of the following described public lands shall at 10:00 a.m. on August 16, 1983, be open to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10:00 a.m. on August 16, 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. 36 N., R. 1 E.,
Sec. 6, Lots 6, 7, and E½SW¼ (formerly the SW¼);
Sec. 28, E½NE¼.
T. 35 N., R. 4 E.,
Sec. 29, W½NE¼, and NW¼NW¼.
T. 36 N., R. 4 E.,
Sec. 7, Lot 1;
Sec. 13, SE¼NW¼, and SW¼SE¼;
Sec. 14, NW¼NW¼;
Sec. 29, SW¼SW¼.
T. 37 N., R. 4 E.,
Sec. 26, S½SW¼, and SW¼SE¼;
Sec. 33, SE¼SE¼;
Sec. 34, NE¼NE¼, and SE¼SW¼;
Sec. 35, N½NW¼, and SW¼NW¼.
T. 36 N., R. 5 E.,
Sec. 7, SW¼ Lot 5.
T. 36 N., R. 6 E.,
Sec. 24, W½NW¼, SE¼NW¼, S½SW¼, and NE¼SE¼;
Sec. 25, N½NE¼.
T. 36 N., R. 7 E.,
Sec. 3, Lots 5, 6, 11, and 12;
Sec. 4, NE¼SE¼, and S½SE¼;
Sec. 8, Lots 9, 10, 14, 15, and 16;
Sec. 9, NE¼, SE¼NW¼, NE¼SW¼, and N½SE¼;
Sec. 17, Lots 1, 2, 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, and 15;
Sec. 19, Lot 4, S½NE¼, E½SW¼, and SE¼;
Sec. 20, Lots 2, 3, 4, 5, 6, 7, 11, and 12;
Sec. 30, Lot 1, NW¼NE¼, and NE¼NW¼.
T. 37 N., R. 7 E.,
Sec. 34, W½NW¼, and SW¼SE¼.
T. 34 N., R. 1 W.,
Sec. 2, Lots 1, 4, and SE¼NE¼.
T. 35 N., R. 1 W.,
Sec. 4, NE¼SW¼, NE¼SE¼, and SW¼SE¼;
Sec. 14, SE¼NE¼, N½NE¼NW¼, N½S½NE¼, NW¼, SE¼SE¼ NE¼NW¼, SW¼SW¼NE¼NW¼, E½SW¼SE¼NE¼NW¼, NW¼SW¼ SE¼NE¼NW¼, W½SE¼SW¼NE¼ NW¼, and NE¼SE¼SW¼NE¼NW¼;
Sec. 34, SE¼NW¼, NE¼SW¼, and SE¼.
T. 36 N., R. 1 W.,
Sec. 2, S½SE¼;
Sec. 10, NE¼;
Sec. 14, NE¼NW¼;
Sec. 28, W½W½.

The area aggregates 4,466.39 acres in Shasta and Lassen Counties.

5. The State of California has waived its preference right of application for highway rights-of-way or material sites as provided by the Federal Power Act of June 10, 1920, 16 U.S.C. 818.

6. Of the lands described in paragraph 4, the SE¼NW¼ and SW¼SE¼ Section 13, T. 36 N., R. 4 E., M.D. Mer., remain withdrawn from disposition under the nonmineral public land laws and from disposition under the desert land law by Public Land Order No. 2460, dated August 11, 1961. The surface estate of the SE¼SE¼SW¼NE¼NW¼ and SW¼SW¼SE¼NE¼NW¼, Section 14, T. 35 N., R. 1 W., M.D. Mer., described in paragraph 1, has been conveyed from United States ownership pursuant to the Act of June 1, 1938 (52 Stat. 609); therefore, unless and until appropriate regulations are issued, the lands will not be open to location under the United States Mining laws (30 U.S.C. Ch. 2).

The public and national forest lands have been open to applications and offers under the mineral leasing laws, and to location under the United States mining laws subject to provisions of the act of August 11, 1955 (69 Stat. 682; 30 U.S.C. 621).

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: July 11, 1983.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

[FR Doc. 83-19411 Filed 7-18-83; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 6405

[CA 13084]

California; Partial Revocation of Reclamation Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order partially revokes a Secretarial Order of October 19, 1920, which withdrew public lands for reclamation purposes. This action will restore 40 acres of land to surface entry and mining. It is already open to mineral leasing.

EFFECTIVE DATE: August 16, 1983.

FOR FURTHER INFORMATION CONTACT: Ronald Morrison, 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. Secretarial Order dated October 19, 1920, which withdrew public lands for the Bureau of Reclamation's All American Canal Project is hereby revoked insofar as it affects the following described land:

San Bernardino Meridian

T. 15 S., R. 12 E.,
Sec. 1, NE¼SW¼.

The area described contains 40 acres in Imperial County.

2. At 10 a.m. on August 16, 1983 the land shall be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on August 16, 1983, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 10 a.m. on August 16, 1983, the land will be open to location under the United States mining laws. Appropriation of lands under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 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.

The land has been and continues to be open to applications and offers under the mineral leasing laws.

Inquiries concerning the land should be addressed to the State Director, Bureau of Land Managment, Room E-2841, Federal Office Building, 2800 Cottage Way, Sacramento, California 95825.

Dated: July 11, 1983.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

[FR Doc. 83-19412 Filed 7-18-83; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 6406

[A-026009, F-011042]

Partial Revocation of Public Land Order No. 1699: Classification and Opening of Lands for Selection by the State of Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: The purpose of this order is to partially revoke Public Land Order No. 1699, and to classify and open approximately 217 acres of land for selection by the State of Alaska, if such lands are otherwise available.

EFFECTIVE DATE: July 19, 1983.

FOR FURTHER INFORMATION CONTACT: Beaumont C. McClure, Washington, D.C., (202) 343-6511,
or
Robert W. Faithful, IV, Alaska State Office, (907) 271-5768.

By virtue of the authority vested in the Secretary of the Interior by Subsection 204(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701, 1714(a)), and by Subsection 17(d)(1) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1616(d)(1)), it is ordered as follows:

1. Public Land Order No. 1699, of July 30, 1958, which withdrew lands for use by the Bureau of Land Management as administrative sites, is hereby revoked as to the following described lands, which are hereby classified as suitable for and opened to selection by the State of Alaska:

Fairbanks Meridian

Buffalo Center Administrative Site

(F-011042)

U.S. Survey No. 2777

Containing 4.76 acres.

2. In addition, the following descibed lands, withdrawn by Public Land Order No. 5180, as amended, are also hereby classified as suitable for and opened to selection by the State of Alaska:

Seward Meridian

Sheep Mountain Repeater Site (A-026009)

T. 20 N., R. 10 E., (Partly Unsurveyed)
Sec. 29, E½W½SE¼SW¼, E½SE¼SW¼, E½SE¼SE¼, and those portions lying south of the centerline of the Glenn Highway of: S½SW¼NE¼SE¼, S½S½NW¼SE¼, S½SE¼NE¼SW¼, SE¼SW¼NE¼SW¼.
Sec. 32, NE¼NE¼NE¼, S½NW¼NE¼NE¼, S½NE¼NE¼, S½N½NW¼NE¼, S½NW¼NE¼, N½S½NE¼, E½NE¼NW¼, E½W½NE¼NW¼, E½NW¼SE¼NW¼, NE¼SE¼NW¼.

Containing approximately 212 acres.

3. Subject to valid existing rights, the lands described in this order are hereby classified as suitable for and open to selection by the State of Alaska pursuant to either the Alaska Statehood Act (72 Stat. 339 et seq.; 48 U.S.C. Prec. section 21) or Subsection 906(b) of the Alaska National Interest Lands Conservation Act (94 Stat. 2371, 2437-2438), if such lands are otherwise available. As provided by Subsection 6(g) of the Alaska Statehood Act, the State of Alaska is provided a preferred right of selection for the lands herein described until 10:00 a.m., Alaska Daylight Saving Time, on October 11, 1983. After that time and date, any of the above described lands not selected by the State of Alaska will immediately become subject to the terms and conditions of Public Land Order No. 5180 of March 9, 1972, as amended, and Public Land Order No. 6092 of November 16, 1981.

Inquiries concerning the lands should be addressed to the State Director, Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513.

Dated: July 11, 1983.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

[FR Doc. 83-19407 Filed 7-18-83; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 6407

[A-048797]

Revocation of Public Land Order No. 1982; Classification of Land for Selection by the State of Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order totally revokes Public Land Order No. 1982 and classifies and opens 0.41 acres of land to selection by the State of Alaska under either the Alaska Statehood Act of July 7, 1958, or Subsection 906(b) of the Alaska National Interest Lands Conservation Act of December 2, 1980, if such lands are otherwise available.

EFFECTIVE DATE: July 19, 1983.

FOR FURTHER INFORMATION CONTACT:

Beaumont C. McClure, Washington, D.C. (202) 343-6511,

or

Robert W. Faithful, IV, Alaska State Office, (907) 271-5768.

By virtue of the authority vested in the Secretary of the Interior by Subsection 204(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701, 1714(a)), and by Subsection 17(d)(1) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1616(d)(1)), it is ordered as follows:

1. Public Land Order No. 1982 of September 17, 1959, which withdrew land for the Department of the Army for use as an armory site, is hereby revoked in its entirety:

Lot 2 of U.S. Survey No. 2382, Alaska, situated near Dillingham, Alaska, formerly known as Snag Point, Territory of Alaska.

Containing 0.41 acres.

2. Subject to valid existing rights, the above described land is hereby classified as suitable for and opened to selection by the State of Alaska under either the Alaska Statehood Act of July 7, 1958 (72 Stat. 339 et seq.; 48 U.S.C. prec. Section 21), or Subsection 906(b) of the Alaska National Interest Lands Conservation Act of December 2, 1980 (94 Stat. 2371, 2437-2438), if such lands are otherwise available. Under the provision of Subsection 6(g) of the Alaska Statehood Act, the State of Alaska is provided a preferred right of selection for the lands herein described until 10:00 a.m., Alaska Daylight Saving Time, on October 11, 1983. After that time and date, the land not selected by the State of Alaska will immediately become subject to all the terms and conditions of Public Land Order No. 5187 of March 9, 1972, which withdrew lands for classification and protection of the public interest.

Inquiries concerning the land should be addressed to the State Director, Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513.

Dated: July 11, 1983.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

[FR Doc. 83-19410 Filed 7-18-83; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 6408

[U-50851]

Utah; Partial Revocation of Reclamation Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order partially revokes a Secretarial Order establishing the Castle Peak Project as it effects 20 acres described below. This action will open the land to such forms of disposition as may by law be made of national forest land, including mineral location and entry under the mining laws. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: August 16, 1983.

FOR FURTHER INFORMATION CONTACT: Deen Bowden, Utah State Office, 801-524-4245.

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

1. Secretary's First Form Reclamation Withdrawal Order of October 18, 1918, which withdrew public lands for the Castle Peak Projects, and from all forms of appropriation under the public land laws, including the mining laws, for use by the Bureau of Reclamation is hereby revoked as to the following described lands:

Uintah Meridian, Utah

T. 2 N., R. 9 W.,
Sec. 28, W½W½SW¼NE¼, W½W½NW¼SE¼.

The areas described aggregate 20 acres in Duchesne County.

2. At 10:00 a.m. on August 16, 1983, the land will be open to such forms of disposition as may by law be made of national forest land, including mineral location and entry under the United States mining laws. Appropriation of land under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. Section 28, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

The land is subject to valid and existing rights and the requirements of applicable regulations. The land has been and will remain open to mineral leasing.

Inquiries concerning the lands should be addressed to the Chief, Branch of Land and Minerals Operations, Bureau of Land Management, University Club Building, 136 East South Temple, Salt Lake City, Utah 84111.

Dated: July 1, 1983.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

[FR Doc. 83-19413 Filed 7-18-83; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 6409

[C-27574]

Colorado; Powersite Restoration 758; Revocation of Powersite Reserve 192

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes in its entirety the Executive Order of July 2, 1911, which withdrew 40 acres of public land for powersite reserve purposes. This action opens all except a 37.5 foot strip of the land, withdrawn for Federal Power Project No. 1863, to surface entry. The entire acreage has been and remains open to mining and mineral leasing.

EFFECTIVE DATE: August 16, 1983.

FOR FURTHER INFORMATION CONTACT: Richard D. Tate, Colorado State Office, 303-837-2535.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, and the determination of the Federal Energy Regulatory

Commission by DA-511-Colorado, it is ordered as follows:

1. The Executive Order of July 2, 1911, which withdrew certain public land for Powersite Reserve purposes is hereby revoked in its entirety:

Sixth Principal Meridian

Powersite Reserve No. 192

T. 6 S., R. 94 W.,
Sec. 29, SW¼NW¼.

The area described aggregates 40 acres.

2. The State of Colorado has waived its right to select lands for highway rights-of-way or material sites as provided by the Federal Power Act of June 10, 1920, 16 U.S.C. 818.

3. At 10:00 a.m. on August 16, 1983, the land, except that portion lying within 37.5 feet of the center line survey of the Shoshone-Palisade Transmission Line which remains withdrawn for Federal Power Project No. 1863, shall be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10:00 a.m. on August 16, 1983, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

4. The land has been and remains open to applications and offers under the mineral leasing laws, and to location and entry under the United States mining laws subject to the provisions of the Act of August 11, 1955, 69 Stat. 682; 30 U.S.C. 621.

Inquiries concerning this land should be addressed to the State Director, Bureau of Land Management, 1037 20th Street, Denver, Colorado 80202.

Dated: July 11, 1983.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

[FR Doc. 83-19420 Filed 7-18-83; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 6410

[M-19697]

Montana; Revocation of Executive Order No. 3948

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes an Executive order which withdrew 40 acres of land as an administrative site for use by the Forest Service. This action will restore the land to surface entry and nonmetalliferous mining. It is already open to metalliferous mining and mineral leasing.

EFFECTIVE DATE: August 16, 1983.

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

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

1. Executive Order No. 3948, dated January 25, 1924, which withdrew land for use by the Forest Service as the Roberts Lookout Station Administrative Site is hereby revoked in its entirety:

Principal Meridian

Kootenai National Forest

T. 34 N., R. 26 W.,
Sec. 3, SE¼NE¼.

The area described contains 40 acres in Lincoln County.

2. At 8 a.m. on August 16, 1983, the land shall be open to such forms of disposition as may by law be made of national forest lands, including nonmetalliferous mineral location and entry under the United States mining laws, subject to valid existing rights, and the requirements of applicable regulations. Appropriation of lands under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. Section 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

The land has been open to metalliferous mining and mineral leasing.

Inquiries concerning the land should be addressed to the State Director, Bureau of Land Management, Granite Tower, 222 N. 32nd Street, P. O. Box 30157, Billings, Montana 59107.

Dated: July 11, 1983.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

[FR Doc. 83-19414 Filed 7-18-83; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 6411

[CA-4926]

California; Partial Revocation of Public Land Order No. 2260

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order partially revokes a public land order which withdrew land for use of the Department of the Army, Corps of Engineers, New Hogan Lake Project. It will simultaneously restore the 19.05 acres to operation of the public land laws, including mining and mineral leasing.

EFFECTIVE DATE: August 16, 1983.

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

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

1. Public Land Order No. 2260 dated February 6, 1961, is hereby revoked insofar as it affects the following described land:

Mount Diablo Meridian

T. 4 N., R. 11 E.,
Sec. 13, lot 1, excepting therefrom that portion of Patented Survey No. 5956 known as the Never Sweat Lode, lying within said lot 1. Also excepting therefrom that portion of lot 1 lying south of the northerly right-of-way line of State Highway 12.

The area contains approximately 19.05 acres in Calaveras County.

2. At 10 a.m. on August 16, 1983, the land shall be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on August 16, 1983, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. The land will be open to location under the United States mining laws at 10 a.m. on August 16, 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.

4. The land will be open to applications and offers under the mineral leasing laws at 10 a.m. on August 16, 1983.

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

Dated: July 11, 1983.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

[FR Doc. 83-19419 Filed 7-18-83; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 6412

[OR-03644]

Oregon; Partial Revocation of Reclamation Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order partially revokes a Bureau of Land Management order as to 237.50 acres of national forest land withdrawn for reclamation purposes. This action will restore the land to such forms of disposition as may by law be made of national forest lands, including location and entry under the mining laws. It has been and remains open to mineral leasing.

EFFECTIVE DATE: August 16, 1983.

FOR FURTHER INFORMATION CONTACT: Champ C. Vaughan, Jr., Oregon State Office, 503-231-6905.

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

1. The Bureau of Land Management Order of January 24, 1956, which withdrew certain national forest land for use by the Bureau of Reclamation in connection with the Rogue River Project is hereby revoked insofar as it affects the following described land:

Willamette Meridian

Rogue River National Forest

Rogue River Project

T. 39 S., R. 3 W.,
Sec. 10, lot 6, and SW¼SE¼;
Sec. 14, lot 1;
Sec. 22, NW¼NE¼, N½SW¼NE¼, N½S½SW¼NE¼; W½W½NW¼, NW¼NW¼SW¼, E½NW¼SE¼, and E½W½NW¼SE¼.

The area described contains 237.50 acres in Jackson County.

2. At 9:30 a.m. on August 16, 1983, the land will be open to such forms of disposition as may by law be made of national forest lands including location and entry under the United States mining laws, subject to valid existing rights and the requirements of applicable regulations. Appropriation of lands under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. Section 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determination in local courts.

The land has been and remains open to applications and offers under the mineral leasing laws.

Inquiries concerning the land should be addressed to the State Director, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

Dated: July 11, 1983.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

[FR Doc. 83-19415 Filed 7-18-83; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 6413

[I-15311]

Idaho; Revocation of Stock Driveway Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a Secretarial order affecting 367.4 acres of public land withdrawn for use as a stock driveway. This action will restore the land to surface entry. The land has been and will remain open to mining and mineral leasing.

EFFECTIVE DATE: August 16, 1983.

FOR FURTHER INFORMATION CONTACT: Nicholas G. Kleng, Idaho State Office, 208-334-1736.

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

1. The Secretarial Order of July 8, 1932, which withdrew the following described public land for Stock Driveway No. 231 is hereby revoked in its entirety:

Boise Meridian, Idaho

T. 6 S., R. 8 E.,
Sec. 1, lot 11;
Sec. 2, lot 7;
Sec. 11, E½E½;
Sec. 12, SW¼NW¼, W½SW¼.

The area described aggregates 367.4 acres in Elmore County.

2. At 9:00 a.m. on August 16, 1983, the lands described will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 9:00 a.m. on August 16, 1983, shall be considered simultaneously filed at that time. Those received thereafter shall be considered in the order of filing. The land has been and will remain open to the mining and mineral leasing laws.

Inquiries concerning the lands should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, Federal Building, Box 042, Boise, Idaho 83724.

Dated: July 11, 1983.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

[FR Doc. 83-19416 Filed 7-18-83; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 6414

[OR-05261]

Oregon; Partial Revocation of Umatilla Ordnance Depot

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order partially revokes a public land order as to 280 acres of public land withdrawn for use by the Department of the Army for ordnance depot purposes. The land has been conveyed from United States Ownership and will not be restored to surface entry, mining or mineral leasing, except for oil and gas.

EFFECTIVE DATE: August 16, 1983.

FOR FURTHER INFORMATION CONTACT: Champ C. Vaughan, Jr., Oregon State Office, 503-231-6905.

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

1. Public Land Order No. 1789 of February 10, 1959, which withdrew certain lands for use by the Department of the Army for ordnance depot purposes, is hereby revoked insofar as it affects the following described land:

Willamette Meridian

T. 4 N., R. 27 E.,
Sec. 24, NW¼NE¼, S½NE¼, and SE¼.
The area described contains 280 acres in Umatilla County.

2. At 9:30 a.m., on August 16, 1983, the land will be open to applications and offers under the mineral leasing laws for oil and gas only.

3. The land has been conveyed from United States ownership and except as provided in paragraph 2, it will not be restored to operation of the public land laws, including the mining and mineral leasing laws.

Inquiries concerning the land should be addressed to the State Director, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

Dated: July 11, 1983.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

[FR Doc. 83-19418 Filed 7-18-83; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 6415

[OR-19181]

Oregon; Opening of Land Subject to Section 24 of the Federal Power Act

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order opens 40 acres of land in Powersite Classification No. 383, subject to the provisions of Section 24 of the Federal Power Act. This action is necessary to facilitate a land exchange with the State of Oregon.

EFFECTIVE DATE: August 16, 1983.

FOR FURTHER INFORMATION CONTACT: Champ C. Vaughan, Jr., Oregon State Office, 503-231-6905.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, and pursuant to the determination by the Federal Energy Regulatory Commission in DA-569-Oregon, it is ordered as follows:

1. The U.S. Geological Survey Order of August 15, 1947, creating Powersite Classification No. 383 is hereby modified to permit disposal by land exchange, subject to the provisions of Section 24 of the Federal Power Act of June 10, 1920, as amended (16 U.S.C. 818) as to the following described land:

Willamette Meridian

Powersite Classification No. 383

T. 7 S., R. 19 E.,
Sec. 33, SW¼NW¼.
The area described contains 40 acres in Wheeler County.

2. At 9:30 a.m. on August 16, 1983, the land will be opened to disposal by land exchange, subject to the provisions of Section 24 of the Federal Power Act.

3. The land has been and remains open to location and entry under the United States mining laws, subject to the provisions of the Act of August 11, 1955 (69 Stat. 682; 30 U.S.C. 621), and to applications and offers under the mineral leasing laws.

Inquiries concerning the land should be addressed to the State Director, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

July 11, 1983.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

July 11, 1983.

[FR Doc. 83-19417 Filed 7-18-83; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 6416

[AR-011033]

Arizona; Public Land Order No. 6365: Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This document will correct an omission of two land descriptions in Public Land Order No. 6365 of March 18, 1983.

EFFECTIVE DATE: July 19, 1983.

FOR FURTHER INFORMATION CONTACT: Mario L. Lopez, Arizona State Office, (602) 261-4774.

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

A description of lands in Public Land Order 6365 of March 18, 1983, in FR Doc. 83-7696 appearing at pages 12371-2 in the issue of Thursday, March 24, 1983, in the first column under T. 10 N., R. 22 E., the fifth and sixth lines read "SE¼ SW¼, SW¼SE¼SW¼,SW¼S W¼SE¼SE¼SW¼," and should read "SE¼SW¼, SW¼SE¼SW¼, W½SW¼NW¼SE¼SE¼SW¼, W½NW¼SW¼SE¼SE¼SW¼, SW¼SW¼SE¼SE¼SW¼."

Dated: July 11, 1983.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

[FR Doc. 83-19409 Filed 7-18-83; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 6417

[W-58830]

Wyoming; Public Land Order No. 6377, Correction Partial Revocation of Phosphate Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order corrects a typographical error in Public Land Order No. 6377, which partially revoked an Executive Order withdrawing land for phosphate classification.

EFFECTIVE DATE: July 19, 1983.

FOR FURTHER INFORMATION CONTACT: W. Scott Gilmer, Wyoming State Office, 307-778-2220, extension 2336.

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:

Public Land Order No. 6377 of May 9, 1983, in FR Doc. 83-13169, appearing at pages 22149 and 22150 in the issue of Tuesday, May 17, 1983, is hereby corrected as follows:

Page 22150, column 1, line 16, is corrected to read, "Land Management will not intervene in."

Dated: July 11, 1983.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

[FR Doc. 83-19408 Filed 7-18-83; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 6418

[OR-21904]

Oregon; Revocation of an Air Navigation Site Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a Secretarial order which withdrew 40 acres of land for use by the Federal Aviation Administrative for maintenance of air navigation facilities. This action will restore the land to surface entry and mining. It has been and remains open to mineral leasing.

EFFECTIVE DATE: August 16, 1983.

FOR FURTHER INFORMATION CONTACT: Champ C. Vaughan, Jr., Oregon State Office, 503–231–6905.

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

1. The Secretarial Order of November 21, 1930, which withdrew the following described land use by the Federal Aviation Administration for maintenance of air navigation facilities is hereby revoked in its entirety:

Willamette Meridian

T. 3 N., R. 21 E.,
Sec. 28, NE¼NE¼.

The area described contains 40 acres in Gilliam County.

2. At 10 a.m. on August 16, 1983, the land will be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on August 16, 1983, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 10 a.m. on August 16, 1983, the land will be open to location under the United States mining laws. Appropriation of lands under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. Section 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

The land has been and remains open to applications and offers under the mineral leasing laws.

Inquiries concerning the land should be addressed to the State Director, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

Dated: July 11, 1983.

Garry E. Carruthers,

Assistant Secretary of the Interior.

[FR Doc. 83-19421 Filed 7-18-83; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[RM-4243]

Private Land Mobile Radio Services; Amendment of the Commission's Rules To Relax the Training and Testing Limitations on Disaster Response (SECURE) Communications

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission amends its rules to relax the limitation on the duration of testing and training exercise using Disaster Response (SECURE) Communications Systems. This amendment is necessary to permit licensees to maintain their systems in a state of operational readiness.

EFFECTIVE DATE: Effective July 19, 1983.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Keith Plourd, Private Radio Bureau, Washington, D.C., (202) 634–2443.

List of Subjects in 47 CFR Part 90

Administrative practice and procedure, Business and industry, Industrial radio services, Land transportation radio services, Private land mobile radio services, Public safety radio services, Radiolocation radio service, Special emergency radio service.

Order

In the matter of amendment of Part 90 of the Commission's rules and regulations to relax the training and testing limitations on Disaster Response (SECURE) Communications. RM–4243.

Adopted: June 29, 1983.

Released: July 6, 1983.

By the Managing Director.

1. This Order relaxes a restriction placed upon testing and training in the State Disaster Response Communications program (Operation SECURE). A petition filed by the Associated Public-Safety Communications Officers, Inc. requested an amendment of the rule currently limiting such operation to 1 hour per week, except in emergencies, to permit testing and training of SECURE systems for up to 420 minutes (7 hours) per week. (See 47 CFR 90.264(h).) Comments filed in response to the petition unanimously supported the proposal.

2. We conclude that the adoption of the amendments set forth in the Appendix will serve the public interest, and inasmuch as these amendments impose no additional burdens and raise no issue upon which comments would serve any useful purpose, we conclude that notice and public procedure thereon are unnecessary and contrary to the public interest. We also conclude that the effective date of these rule changes shall be the date on which they are published in the **Federal Register.** Authority for this action is set forth in the Administrative Procedure and Judicial Review Act provisions of 5 U.S.C. 553(b)(3)(B) and (d).

3. Inasmuch as a general notice of proposed rule making is not required, the Regulatory Flexibility Act does not apply.

4. Therefore, it is ordered, That pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, and the authority delegated to the Managing Director by § 0.231 of the Commission's Rules and Regulations, 47 CFR 0.231, the Commission's Rules and Regulations are amended as set forth in the attached Appendix effective upon publication in the **Federal Register.**

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Edward J. Minkel,

Managing Director.

Appendix

PART 90—[AMENDED]

The Federal Communications Commission revises § 90.264(h) as follows:

§ 90.264 Disaster communications between 2 and 10 MHz.

* * * * *

(h) Training exercises which require use of these frequencies for more than 420 minutes per week, cumulative, are not authorized without prior written approval from the Commission.

[FR Doc. 83-19528 Filed 7-18-83; 8:45 am]

BILLING CODE 6712-01-M

GENERAL SERVICES ADMINISTRATION

48 CFR Ch. I [1]

Federal Acquisition Regulation; Ordering Procedure for Federal Agencies

AGENCY: General Services Administration, Federal Acquisition Regulation Project Office.

[1] Reserved for Federal Acquisition Regulation.

ACTION: Notice of Procedure for Federal Departments/Agencies to Order FAR Looseleaf Version.

SUMMARY: This notice sets forth the procedures for Federal departments/agencies to order looseleaf copies of the initial printing of the Federal Acquisition Regulation (FAR) from the Government Printing Office (GPO). The FAR which will replace the Federal Procurement Regulation, the Defense Acquisition Regulation, and the NASA Procurement Regulation, will become effective on April 1, 1984. The General Services Administration (GSA), the Department of Defense, and the National Aeronautics and Space Administration (NASA) are now in the final stages of completing the document that will become the operative regulation for the executive agencies. This regulation will be published in the **Federal Register** during September 1983. In addition, the looseleaf version will be printed by GPO and will be available prior to January 1, 1984. Departments/agencies wishing to order looseleaf copies of the initial printing of the FAR are required to coordinate this with the FAR Project Office by:

(1) Notifying the FAR Project Office by telephone of their anticipated quantity not later than August 15, 1983;

(2) Directing the department/agency printing officer to submit a printing and binding requisition (SF–1) to the Central Office, GPO not later than September 23, 1983; and

(3) Providing written verification to the FAR Project Office of the quantity ordered not later than September 23, 1983.

The rider requisition must cite GPO jacket number 410–819 and GSA requisition number 3–00650 in addition to specifying quantity and delivery address. Each department/agency is limited to one delivery address. All production costs will be pro-rated to Federal departments and agencies who participate. Bureaus, commissions, and regional offices of agencies must submit requisitions through their headquarters office only. GPO will bill each agency directly in accordance with existing procedures.

Departments/agencies will determine the number of copies necessary for their organization. It is recommended that each contracting officer, contract specialist, small purchase specialist, and any other category of personnel involved in the procurement process be provided a copy.

ADDRESS: General Services Administration, Office of Acquisition Policy, FAR Project, Room 4010, 18th & F Streets, NW, Washington, D.C. 20405.

FOR FURTHER INFORMATION CONTACT: Rusty Olshine, FAR Project Office, (202) 696–5180.

Lawrence J. Rizzi,

Director, GSA FAR Project.

[FR Doc. 83-19526 Filed 7-18-83; 8:45 am]

BILLING CODE 6820-61-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1201

[No. 38770]

Railroad Map Specifications; Correction

AGENCY: Interstate Commerce Commission.

ACTION: Final rule; correction.

SUMMARY: At 47 FR 50266, November 5, 1982, the Commission eliminated Part 1263, Map Specifications, from the Code of Federal Regulations and transferred significantly reduced map specifications to the property account instructions in the Uniform System of Accounts for Railroads, Part 1201. The number given the new Instruction for Property accounts concerning map specifications was in error. This notice corrects that error.

FOR FURTHER INFORMATION CONTACT: Bryan Brown, Jr., (202) 275–7448.

SUPPLEMENTARY INFORMATION: At 47 FR 50267, amendatory instruction 1. and the heading of the instruction that follows are corrected to read as follows:

PART 1201—[CORRECTED]

1. 49 CFR Part 1201 shall be amended by adding instruction 2–22, *Map Specifications,* to the Instructions for Property accounts.

2–22 *Map Specifications.*

* * * * *

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-19399 Filed 7-18-83; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 281

[Docket No. 30712–128]

Restrictions on Tuna Imports

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

ACTION: Rule-related notice.

SUMMARY: The embargo of all yellowfin tuna products from Spain, imposed by the United States in 1975, is lifted as of this day. The 1975 action was taken in accordance with the Tuna Conventions Act of 1950. The criterion for lifting the embargo, as specified in the Act, has been met.

EXECUTE DATE: July 19, 1983.

FOR FURTHER INFORMATION CONTACT: Barbara K. Rothschild, 202–634–7257.

SUPPLEMENTARY INFORMATION: The United States imposed an embargo on eastern Pacific yellowfin tuna products from Spain on November 1, 1975. The embargo was imposed pursuant to a finding that Spanish fishing vessels were conducting activities contrary to the conservation recommendations of the Inter-American Tropical Tuna Commission (IATCC). The action, which was published in the **Federal Register** of October 14, 1975 (40 FR 48159), was taken in accordance with the Tuna Conventions Act of 1950, as amended (16 U.S.C. 951).

The Act provides that such embargoes, once imposed, "shall continue until the Secretary of Commerce is satisfied that the condition warranting the prohibition no longer exists * * *" (16 U.S.C. 955(c)). Since January 1, 1980, the IATTC has had no conservation program in effect for member countries in the eastern Pacific Ocean. Therefore, since that time, Spain's activities have not been contrary to any effective IATTC recommendations.

Finding that the Secretary of Commerce is satisfied that the condition which warranted the U.S. embargo on eastern Pacific yellowfin tuna products from Spain no longer exists, the United States therefore lifts the embargo

effective today. The one-year transition period and certification referred to in the last sentence of 50 CFR 281.8 do not apply because this species is no longer "under regulation."

Other Matters

This action is taken under authority of 50 CFR 281.8 and is consistent with the provisions of E.O. 12291. Because this action relieves a restriction, the 30-day delayed effectiveness provision of the Administrative Procedure Act does not apply.

List of Subjects in 50 CFR Part 281

Administrative practice and procedure, Customs duties and inspection, Fish, imports, International organizations.

(Sec. 6, 64 Stat. 778, as amended; 16 U.S.C. 955)

Dated: July 12, 1983.

Carmen J. Blondin,

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

[FR Doc. 83-19453 Filed 7-18-83; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 48, No. 139
Tuesday, July 19, 1983

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

DEPARTMENT OF ENERGY

Office of the Secretary

10 CFR Part 1017

Identification and Protection of Unclassified Controlled Nuclear Information

AGENCY: Department of Energy.

ACTION: Notice of hearing on proposed rule.

SUMMARY: The Department of Energy (DOE), in response to requirements set forth in Section 148 of the Atomic Energy Act of 1954, as amended, (42 USC 2168), issued proposed regulations to prohibit the unauthorized dissemination of certain unclassified but sensitive information—Unclassified Controlled Nuclear Information (UCNI)—with respect to atomic energy defense programs. The proposed rulemaking was published on April 1, 1983 (48 FR 13988), and the public comment period was extended for an additional thrity days beginning May 4, 1983 (48 FR 20091). In response to a number of requests for public hearings and to ensure that a broad range of public viewpoints is provided, the DOE will hold public hearings on the proposed rulemaking. Listed below are the dates, locations, and points of contact for the hearings.

DATES: Hearings will be held in Washington, D.C. on August 16, 1983, from 9:00 a.m. to 12:00 p.m. and from 5:00 p.m. to 9:00 p.m. Hearings will be held in Denver, Colorado on August 18, 1983 from 9:00 a.m. to 12:00 p.m. and from 5:00 p.m. to 9:00 p.m.

ADDRESSES: The Washington, D.C. hearing will be held at the U.S. Department of Energy, 1000 Independence Avenue, SW., Room GE-086, Washington, D.C. 20585. The Denver, Colorado hearing will be held at the Regency Inn, Winston #1 Room, 3900 Elati Street, Denver, Colorado 80216.

FOR FURTHER INFORMATION CONTACT:

Concerning the Washington, D.C. hearing: Ms. Trisha Dedik Chico, Office of Policy, Planning and Coordination, Office of the Assistant Secretary for Defense Programs, Room 4B-014, U.S. Department of Energy, Washington, DC 20585; (202) 252-1870, or

Concerning the Denver, Colorado hearing: J. L. Bellows, U.S. Department of Energy, Rocky Flats Area Office, P.O. Box 928, Golden, Colorado 80401, telephone: 303/497-2026.

SUPPLEMENTARY INFORMATION:

Procedures for Participation

Any person or representative of a group may make a written or oral request for an opportunity to make an oral presentation at the public hearings. Such requests must be received no later than August 5, 1983. Requests should be directed to the appropriate hearing contact at the address given above and should be in accordance with the procedures set forth below. Written requests should be labeled "Identification and Protection of UCNI" both on the document and on the envelope. No oral requests for presentation will be scheduled until after all written requests are scheduled.

Those who register in advance will be heard first or at times reserved for them. Those present at the hearing who would like to speak but who have not preregistered will be accommodated if time permits.

It would be helpful if the person making the request would describe briefly the interest concerned, if applicable, indicate why she or he is a proper representative of the group having such an interest and provide a phone number where she or he may be contacted during working hours.

Persons scheduled to appear at the hearings will be notified by DOE before 4:30 p.m. on August 10, 1983. You should submit 10 copies of your statement to the address given above for requests to speak before 4:30 p.m. on August 12, 1983. While an attempt will be made to accommodate all who wish to be heard, it may not be practical to do so, and DOE reserves the right to select the persons to be heard at these hearings, to schedule their respective presentations, and to establish the procedures governing the conduct of the hearings. Time allotted to each presentation may be limited based on the number of persons requesting to be heard.

A presiding officer will be designated to conduct the hearings. These hearings will not be judicial or evidentiary-type hearings. Questions may be asked only by those conducting the hearings. As a rule, oral presentations shall be limited to 10 minutes. Any additional testimony may be submitted in writing. Any further procedural rules needed for the proper conduct of the hearings will be announced by the presiding officer.

Verbatim transcripts of the hearings will be made and the entire record of the hearings, including the transcripts, will be retained by DOE and made available for inspection at the DOE Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, between the hours of 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Any person may purchase a copy of the transcript from the reporter.

Issued in Washington, D.C., on July 7, 1983.

Herman E. Roser,

Assistant Secretary for Defense Programs.

[FR Doc. 83-19327 Filed 7-18-83; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 981

Licensing of Ocean Thermal Energy Conversion Facilities and Plantships

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

ACTION: Review of existing rules with request for comments, extension of comment period.

SUMMARY: NOAA is issuing this notice to advise the public that it is extending the comment period on the review of its existing rules on the licensing, ownership and construction of ocean thermal energy conversion plantships and facilities. The original request for comments was published in the Federal Register on May 11, 1983, and can be found on pages 21154-6.

DATES: Comments must be received by Monday, August 1, 1983. Comments received after that date may be

considered if it is practical to do so, but assurance of consideration cannot be given.

ADDRESS: Submit comments to Richard D. Norling, OTEC Program Manager, Ocean Minerals and Energy Division, Office of Ocean and Coastal Resources Management, NOAA, National Ocean Service, Page 1 Building, Room 410, 2001 Wisconsin Avenue, N.W., Washington, D.C. 20235.

FOR FURTHER INFORMATION CONTACT: James B. Rucker, Ocean Minerals and Energy Division, NOAA at the address listed above. Telephone: (202) 254–3483.

K. E. Taggart,

Acting Assistant Administrator, Ocean Services and Coastal Zone Management.

[FR Doc. 83-19503 Filed 7-18-83; 8:45 am]

BILLING CODE 3510-12-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 33

Domestic Exchange Traded Commodity Options

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed amendment to Commission regulations.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is proposing an amendment to Commission Regulation § 33.4(a)(6) which would allow each commodity exchange to be designated as a contract market for either two options on futures contracts, two options on physical commodities, or one option on a futures contract and one option on a physical commodity. The Commission believes that the above proposed limited extension of the pilot options program would provide the boards of trade with greater flexibility in allocating the permitted number of options contracts between options on futures and options on physicals.

DATE: Comments must be received on or before August 18, 1983.

ADDRESS: Comments should be sent to: Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581. Attention: Secretariat.

FOR FURTHER INFORMATION CONTACT: George L. Garrow, Jr., Attorney, Division of Trading and Markets, at the address listed above. Telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION: Current Commission Regulation § 33.4(a)(6) was adopted in conjunction with other regulations governing a three-year pilot program under which commodity options on certain commodity futures contracts would be traded on domestic boards of trade. The Commission originally proposed to limit the scope of the pilot program to only one commodity from each of three major groups—metals and other natural resources, financial instruments, and agricultural commodities which are not enumerated in Section 2(a)(1) of the Act (7 U.S.C. 2). This restriction in the scope of the program was advanced by the Commission as a result of its concern that such a limitation might be necessary to ensure the continued protection of the public from abuses which, in the past, often were associated with the offer and sale of commodity options. The Commission further stated in its proposal that such a restriction might be useful to test the extent and nature of commercial use of commodity options by different industrial categories, whether options on different types of commodities would provide any (or different) price discovery information, and whether the effects of options trading on the underlying futures markets would be discernibly different for different types of commodities.

The Commission nonetheless specifically invited comments as to whether it should expand the pilot options program to permit the inclusion of options on futures contracts in other commodities. Based upon its analysis and the comments received, the Commission rejected the more restrictive approach originally proposed and determined at that time to allow each board of trade to apply for designation as a contract market to trade options on only one contract for future delivery for which it was already designated as a contract market. At that time, the Commission also stated in the **Federal Register** notice announcing the final rules for the pilot program in options on pictures that the Commission might consider expanding the pilot program to permit exchanges to trade more than one option contract should the participants adequately fulfill their responsibilities under Commission regulations and otherwise satisfactorily monitor options trading. 46 FR 54501 (November 3, 1981).

When the Commission proposed regulations to incorporate options on physicals within the scope of the pilot program, it proposed to limit each exchange to no more than one option on a futures contract and no more than one option on a physical commodity. Again the Commission thought this restriction may be useful in helping it to assess the merits of trading options on physicals. In seeking to determine the appropriate scope of the pilot program, however, the Commission specifically requested comments as to whether it should allow each exchange to trade any two option contracts, regardless of whether those option contracts would involve options on futures contracts, options on physicals, or one of each type of option.

The Commission received a wide range of comments on this question. Of the comments received, a number of commentators urged the Commission to allow each exchange to be designated as a contract market for either two options on futures contracts, two options on physicals, or one option on a futures contract and one option on a physical. These commentators maintained that the regulatory burdens on the Commission and on the exchanges would not be significantly greater if the Commission were to allow such an election rather than to limit expansion of the pilot program by limiting each exchange to one option of each type. Other commentators urged the Commission to adhere to its original proposal of allowing each exchange only one option of each type. 47 FR at 56997 (December 22, 1982).

After careful consideration of all comments, the Commission decided to broaden the pilot program no further than was necessary to allow each qualifying exchange to be designated solely for one option on a futures contract and one option on a physical. Given the short period of time that options had been trading, the Commission chose to strictly limit the pilot program until both the Commission and the exchanges had more experience with the trading of commodity options.

For the reasons enumerated below, the Commission is now soliciting comments on expanding the option program by amending § 33.4(a)(6) to permit designation of an exchange in two options of any type currently permitted under the Act.[1] First, the Commission is not aware of any problems to date with the trading of options on futures which raise any serious questions concerning continuation of the pilot program. As previously mentioned, one of the Commission's primary concerns regarding expansion of the pilot program was the Commission's ability to protect the public from abuses which have

[1] This proposal is not designed to authorize any exchange to trade options on domestic agricultural commodities, as permitted by recent amendments to the Act which authorize the Commission to establish a pilot program for such trading. Futures Trading Act of 1982, Pub. L. No. 97-444, Section 206(3), 96 Stat. 2294 (1983). *See also* 48 FR 26508 (June 8, 1983) re the Commission's establishment of an Agricultural Options Advisory Committee.

occurred with off-exchange options trading in the past. Trading in options on futures under the Commission's pilot program commenced nine months ago on October 1, 1982. Trading in the options contracts which began trading in October, 1982 and in two additional contracts which began trading in January, 1983[2] have not resulted in any customer complaints to the Commission nor any apparent evidence to date of sales practice abuses. Because of the lack of any apparent problems, the Commission believes that it is appropriate to consider the modest expansion of the program that would result from amendment of § 33.4(a)(6) at this time.

Second, as stated by commentators during the Commission's revision of its proposal to adopt regulations to permit the trading of options on physicals, the Commission also believes that it may now be appropriate to permit each exchange to determine how it will allocate the permitted number of options contracts between options on futures and options on physicals in order that the exchange may best develop the contracts that it believes will be economically useful. This flexibility to choose among economic alternatives may also provide the Commission with important data which may be helpful in the evaluation of the pilot program upon its conclusion.[3]

Third, the Commission recently has received letters from both the Chicago Board of Trade and the Chicago Mercantile Exchange which support the Commission's belief, as stated above, that the current regulation is unnecessarily restrictive at this stage of the pilot program. Both exchanges therefore have recommended that the Commission expand the pilot program to allow each exchange to be designated as a contract market for either two options on futures contracts, two options on physical commodities, or one option on a futures contract and one option on a physical commodity.

Finally, the exchanges to date have adequately met their regulatory responsibilities in this area, while the National Futures Association is now also contributing to the self-regulatory oversight of option market participants. Therefore, the Commission's concerns regarding the continued ability of exchanges to comply with Commission regulations in the event of limited expansion of the pilot program have been diminished.

In preparing comments on this rule proposal, the Commission specifically requests that comments address whether the boards of trade would benefit from greater flexibility in allocating the permitted number of options contracts between options on futures and options on physicals. Interested parties should address how the proposed rule would affect the Commission's pilot program and whether, if adopted, the pilot program will continue to contribute the type of data and information which will be most helpful in deciding under what conditions options trading should be allowed to continue after the pilot program has been terminated. The Commission also is interested in comments regarding any problems with current options trading practices or options sales practices which the Commission should take into account in evaluating the merits of the proposed amendments. Interested persons also are invited to submit any other information which will assist Commission review of the pilot program to date. Comment letters will be publicly available except to the extent that they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9.

Regulatory Flexibility Statement

When the Commission proposed regulations to permit and govern the trading of options on physicals on domestic exchanges, the Chairman certified, on behalf of the Commission and pursuant to the Regulatory Flexibility Act, that if the regulations were promulgated as proposed, there would not be a significant economic impact on a substantial number of small entities. In this connection, the Commission noted its previous determination that contract markets are not "small entities" for purposes of that Act (47 FR 18618 (April 30, 1982)) and that the requirements of the Regulatory Flexibility Act therefore did not apply to those entities.

For the reasons indicated above, and pursuant to Section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Chairman, on behalf of the Commission hereby certifies that this amendment to § 33.4(a)(6) will not have a significant economic impact on a substantial number of small entities. The Commission, however, particularly invites comments from any firm which believes that this proposal would have a significant economic impact on it.

List of Subjects in 17 CFR Part 33

Commodity options, commodity exchange designation procedures.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, Sections 4c(b), 4c(c), 8a and 15 thereof, 7 U.S.C. 6c(b), 6c(c), 12a and 19, the Commission hereby proposes to amend Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 33—REGULATION OF DOMESTIC EXCHANGE-TRADED COMMODITY OPTION TRANSACTIONS

1. Section 33.4 is proposed to be amended by revising paragraph (a)(6) to read as follows (the introductory test has not been changed but is included for the convenience of the reader):

§ 33.4 Designation as a contract market for the trading of commodity options.

The Commission may designate any board of trade located in the United States as a contract market for the trading of options on contracts of sale for future delivery or options on physicals when the applicant complies with and carries out the requirements of the Act (as provided in § 33.2), these regulations, and the following conditions and requirements with respect to the commodity option for which the designation is sought:

(a) Such board of trade—

* * * * *

(6) Is not designated as a contract market for more than one other commodity option.

* * * * *

Issued in Washington, D.C. by the Commission on July 12, 1983.

Jane K. Stuckey,

Secretary of the Commission.

[FR Doc. 83-19457 Filed 7-18-83; 8:45 am]

BILLING CODE 6351-01-M

[2] The Commission has designated seven exchanges to trade options on futures. The MidAmerica Commodity Exchange has not initiated trading in its gold futures option while the Kansas City Board of Trade's options contract on the Value Line Average Index futures contract currently is dormant, following very limited trading of that option in March and April, 1983.

[3] The Commission notes that it has received to date only two applications requesting designation as contract markets to trade options on physicals, an indication that exchanges may believe that there is less interest in options on physicals than in options on futures and that therefore options on futures are the more viable contracts.

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 635

Trade Adjustment Assistance for Workers; Extension of Comment Period on Proposed Regulations

AGENCY: Employment and Training Administration, Labor.

ACTION: Extension of comment period for proposed rule.

SUMMARY: This document extends until July 28, 1983, the period for filing comments regarding a proposed rule to revise the regulations (20 CFR Part 635) for implementing the program of Trade Adjustment Assistance for Workers (TAA program). This action is taken to permit additional time for comments from interested persons.

DATE: Comments must be received on or before July 28, 1983.

ADDRESS: Send comments on these proposed regulations to the U.S. Department of Labor, Employment and Training Administration, Room 7000, Patrick Henry Building, 601 "D" Street, NW., Washington, D.C. 20213. All comments received will be available for public inspection during normal business hours in Room 7000 at the above address.

FOR FURTHER INFORMATION CONTACT: Carolyn M. Golding, Director, Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, 601 "D" Street, N.W., Washington D.C. 20213; telephone (202) 376–7032. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In the Federal Register of March 4, 1983 (48 FR 9444) the Department of Labor published a proposed rule, 20 CFR Part 635, to revise the regulations for the TAA program. Interested persons were requested to submit comments on or before April 4, 1983.

Because of continuing interest in this proposal, the agancy believes that it is desirable to grant an extension of the comment period for all interested persons. Therefore, the comment period for the proposed rule, 20 CFR Part 635 (Trade Adjustment Assistance for Workers), is extended to July 28, 1983.

Signed at Washington, D.C., on July 13, 1983.

Albert Angrisani

Assistant Secretary of Labor, Employment and Training Administration.

[FR Doc. 83-19471 Filed 7-18-83; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 349

[Docket No. 80-0145]

Ophthalmic Drug Products for Over-the-Counter Human Use; Tentative Final Monograph

Correction

In FR Doc. 83–17150, beginning on page 29788, in the issue of Tuesday, June 28, 1983, make the following corrections:

1. On page 29788 under the **"DATES"** heading, line 6, correct "August 28, 1983" to read "August 28, 1984".

2. On page 29791, third column, last paragraph, line 5, after the word "indication" insert the word "statements".

3. On page 29792, third column, first full paragraph, fourth line from the end of that paragraph, "smog or air quality" should read "smog or poor air quality".

4. On page 29793, first column, first full paragraph, line 4, insert the word "rebound" after the word "produce".

5. On page 29799, middle column, § 349.70(c)(1), line 4, "contained" should read "continued".

6. On page 29800, middle column, first full paragraph, lines 1 and 2, "June 28, 1983" should read "June 28, 1984"; in line 7, "August 28, 1983" should read "August 28, 1984"; and in the third column, first full paragraph, lines 4 and 5, "August 28, 1983" should read "August 28, 1984".

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

Oil and Gas and Sulfur Operations in the Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Extension of comment period.

SUMMARY: On June 10, 1983 (48 FR 26837) the Minerals Management Service (MMS) published in the Federal Register a notice of proposed rulemaking requesting comments on proposed amendments to the regulations on air quality requirements found at 30 CFR 250.57. The comment period closed on July 11, 1983. The comment period is hereby extended to August 10, 1983.

DATE: Comment must be postmarked or delivered by August 10, 1983.

ADDRESSES: Comments may be mailed to Mr. David A. Schuenke, Minerals Management Service, Mail Stop 646, Room 6A110, 12203 Sunrise Valley Drive, Reston, Virginia 22091.

FOR FURTHER INFORMATION CONTACT: Mr. David A. Schuenke, (703) 860–7916, (FTS) 928–7916.

Dated: July 12, 1983.

Andrew V. Bailey,

Acting Associate Director for Offshore Minerals Management.

[FR Doc. 83-19197 Filed 7-18-83; 8:45 am]

BILLING CODE 4310-MR-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 35

[OA-7-FRL 2400-2]

Intent To Approve Reduction in Non-Federal Match for Clean Air Act Grant to State of Missouri Solicitation of Comments; Opportunity for Public Hearing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Solicitation of comments, opportunity for public hearing.

SUMMARY: The Environmental Protection Agency Region VII (EPA) invites comments on and announces an opportunity for public hearing on EPA's intent to allow a reduction in the non-federal matching share to the Section 105 (Clean Air Act) Air Programs Grant to the State of Missouri's Department of Natural Resources. This reduction is a result of the Governor's request for uniform reductions in State spending and does not affect the State's ability to meet the minimum matching requirements for receiving Federal grants support.

DATE: Public comments and/or requests for public hearings must be received by August 18, 1983.

ADDRESS: Comments and hearing requests should be sent to Mr. Ray Hurley, Environmental Protection Agency, 324 East Eleventh Street, Kansas City, Missouri 64106, telephone (816) 374–2921, FTS 758–2921. Information relating to this notice is available at this address.

SUPPLEMENTARY INFORMATION:

Background Information

For several years, EPA has provided financial assistance to the Missouri State Department of Natural Resources (MDNR) to aid in the development and implementation of its air pollution

control program and the programs of five local agencies. This financial assistance has been in the form of a section 105 Clean Air Act grant. The Clean Air Act prevents award of such grants if, among other considerations, the grantee's "Expenditures of non-federal funds for other than non-recurrent expenditures for air pollution control programs will be less than its expenditures were for such programs during the preceding fiscal year, unless the (Regional) Administrator, after notice and opportunity for public hearing, determines that a reduction in expenditures is attributable to a nonselective reduction in expenditures in the programs of all executive branch agencies of the applicable unit of government." (42 U.S.C. 7405(b))

Due to a shortfall in revenues, the Governor of Missouri has instituted a cumulative 27.7 percent reduction in the general fund biennium budget for the State of Missouri. MDNR has provided EPA with information indicating that (1) the general fund budgets of all Missouri executive branch agencies have been scheduled for reductions and that the average is no less than 27.7 percent and (2) that the general fund budget of the air pollution control program has been scheduled for a 27.7 percent reduction (and therefore the reduction in air is non-selective).

Based on the information received from MDNR, EPA is prepared to determine that the reduction in non-federal funding for the air program is non-selective. EPA is prepared to approve the $755,900 in match for the MDNR fiscal year 1983 Section 105 air grant. Further, this reduction will not affect the State's ability to meet the minimum matching requirements for receiving Federal grant support.

Invitation of Comments-Opportunity for Public Hearing

Any person who desires to comment on this intended action may do so by writing to the above listed contact person. If no timely request for a public hearing is received, no hearing will be held. A public hearing will be held if (and only if) a request for a public hearing is received at the office listed above on or before August 18, 1983. The purpose of such a hearing would be to take testimony regarding whether the reduction in expenditures for the MDNR air program is or is not attributable to a non-selective reduction in expenditures in the programs of all Missouri executive branch agencies. If a request for a public hearing is received, the time and place will be announced in the **Federal Register.** It is suggested that anyone wishing to verify whether the public hearing is to be held should call the above listed office.

List of Subjects in 40 CFR Part 35

Air pollution control, Grant programs—environmental protection, Hazardous waste, Indians, pesticides and Pests, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control, Water supply.

Authority: This notice is issued under the authority of Section 105 of the Clean Air Act. 42 U.S.C. 7405.

Dated: July 1, 1983.

Morris Kay,

Regional Administrator.

[FR Doc. 83-19201 Filed 7-15-83; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 799

[OPTS 42030; TSH-FRL 2343-6]

Mesityl Oxide; Proposed Test Rule

Correction

In FR Doc. 83-17817, beginning on page 30699, in the issue of Tuesday, July 5, 1983, make the following corrections:

1. On page 30703, in the second column, in the second complete paragraph, in the second line, "testing will" should read "testing".

2. On page 30705, in the third column, in § 799.2500(c)(3)(i)(D), in the second line, "does" should read "dose".

3. On page 30705, in the third column, in § 799.2500(c)(3)(iii), in the first line, "(iii) Information" should read "(ii) Information".

BILLING CODE 1505-01-M

GENERAL SERVICES ADMINISTRATION

National Archives and Records Service

41 CFR Part 105-61

Public Use of Records, Donated Historical Material, and Facilities in the National Archives and Records Service

AGENCY: National Archives and Records Service, General Services Administration.

ACTION: Proposed rule.

SUMMARY: This proposed rule will change procedures for the use of microfilm records and clarify procedures for using agency records stored in Federal records centers. Current procedures for use of microfilm reading rooms are unnecessarily burdensome on both NARS and researchers. The current regulation also does not provide information on how to obtain access to records in the Federal records centers that have not been transferred to the National Archives of the United States. These proposed changes are intended to simplify procedures for researchers who wish to use only microfilm reading rooms and assist those who wish to use non-accessioned records.

DATE: Comments must be received on or before August 18, 1983.

ADDRESS: Comments should be addressed to the General Services Administration (NAA), Attn: Adriene C. Thomas, Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT: Mary Ann Wallace (202-523-3081).

SUPPLEMENTARY INFORMATION: Researchers using microfilm record, but not textual records, in microfilm reading rooms that are physically separate from textual research rooms would no longer be required to obtain research identification cards. Microfilm reading room attendents will assist researchers to identify rolls containing desired information, but the researcher will be responsible for locating the designated roll. The use of microfilm readers may be restricted to ensure equitable availability of equipment. Records in Federal records centers which have not been transferred to the National Archives of the United States remain in the legal custody of the creating agency, and researchers may be required to obtain permission of that agency before using the records. The General Services Administration has determined that this rule is not a major rule for the purpose of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. The General Services Administration has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 105-61

Archives and records, Researcher identification cards, Research room conduct, Classified information, Freedom of information, Government property management, Privacy.

GSA proposes to amend 41 CFR Part 105-61 as follows:

PART 105-61—PUBLIC USE OF RECORDS, DONATED HISTORICAL MATERIAL, AND FACILITIES AT THE NATIONAL ARCHIVES AND RECORD SERVICE

1. The table of contents for Part 105-61 is amended by revising pertinent entries for Subpart 105-61.1 as follows:

Sec.
105-61.001-1 Record.
105-61.101-2 Location of records and hours of use.
105-61.101-3 Research procedures.
105-61.101-4 Research identification cards.
105-61.102 Research room rules.
105-61.102-1 Registration.
105-61.102-2 Researcher's responsibility for records.
105-61.102a Restrictions on the use of microfilm readers.
105-61.102-3 Prevention of damage to records.
105-61.102-4 Removal or mutilation or records.
105-61.102-5 Conduct.
105-61.102-6 Keeping records in order.

2. Sections 105-61.001-1, 105.61.101-2(a), 105-61.101-3 through 105-61.102-4, 105-61.102-5(b) and 105-61.102-6 are revised as follows:

§ 105-61.001-1 Records.

"Records" means records, or microfilm copies of records, that have been transferred to the National Archives and Records Service in accordance with 44 U.S.C. 2103, 3103; namely archives and Federal records centers as those terms are defined in § 105-61.001. The term "records" does not include current operating records of the National Archives and Records Service, the public availability of which is governed by Part 105-60, or donated historical materials, as defined in this part.

§ 105-61.101-2 Location of records and hours of use.

(a) Researchers should first identify the location of the records desired. Inquiries may be addressed to the General Services Administration (NNIR), Washington, DC 20408.

* * * * *

§ 105-61.101-3 Research procedures.

(a) Before applying to use records, a researcher should inquire with the appropriate depository as to whether the records are available, whether their volume is sufficient to warrant a visit, or whether reproductions would be more practical.

(b) Researchers shall apply in person at the depository that has custody of the records.

(c) Researchers wishing to use records that are not on microfilm in a dispository where the microfilm research room is physically separate from textual research areas, must register and provide information necessary to determine which records will be made available. Applicants must furnish proper identification. If applying for access to large quantities of records or to records that are especially fragile or valuable, researcher must upon request furnish a letter of reference or introduction. A researcher identification card will be issued to each person whose application is approved as described in § 105-61.101-4.

(d) Researchers using only microfilm, where the microfilm research room is physically separate from textual research areas, will not be issued a researcher identification card but must register as described in § 105-61.102-1.

(e) In addition to the procedures prescribed in this § 105-61.101-3, researchers desiring to apply for the use of archives that contain national security classified information must follow precedures prescribed in § 105-61.104.

(f) The legal custody and control over access to records that are in the physical custody of the records centers, but not yet accessioned into the National Archives of the United States, remains with the agency of origin. Researchers wishing to use such records may need to obtain permission from that agency before they can be granted access to such records.

§ 105-61.101-4 Research identification card.

A researcher identification card will be issued to each person whose application is approved and who wishes to use records other than microfilm. The card will be valid for the use of records at each depository (except the Presidential Libraries which will continue to issue their own cards valid only at the issuing library) for a period of not more than 2 years, but it may be renewed upon application. Cards are not transferable and must be produced when requested by a guard or research room attendant.

§ 105-61.102 Research room rules.

§ 105-61.102-1 Registration.

Researchers must register each day they enter a research facility, furnishing the information specified on the registration form, and may be asked to provide positive personal identification.

§ 105-61.102-2 Researcher's responsiblity for records.

(a) The research room attendant may limit the quantity of records to be delivered at one time to a researcher. When requested, a researcher must acknowledge receipt of records by signature. A researcher is responsible for all records delivered to him/her until he/she returns them. When a researcher has finished using the records, the records should be returned to the research room attendant. The reference service slip that accompanies all records to the research room must not be removed. When requested, a researcher shall return records as much as 10 minutes before closing time. Before leaving a research room, even for a short time, a researcher must notify the research room attendant and place all records in their proper containers.

(b) Most microfilm is available on a self-service basis. Research room attendants will assist researchers in identifying which roll(s) of film contains the information of interest. The researcher is responsible for locating the roll(s). Unless specifically directed, a researcher is limited to one roll at a time. When through with each roll, the researcher must place the roll on top of the cabinet from which the roll was removed, unless otherwise instructed.

§ 105-61.102-2a Restrictions on the use of microfilm readers.

Occasionally, because of the number of researchers wishing to use microfilm readers, use may be limited to 2 hours per day. Other procedures regarding use of the readers may also be instituted by a director to ensure the equitable availability of equipment. These restrictions will be instituted at the direction of the director.

§ 105-61.102-3 Prevention of damage to records.

Researchers must exercise all possible care to prevent damage to records. Records must not be used at a desk where there is a container of liquid or where a fountain pen is being used. Records must not be leaned on, written on, folded anew, traced, or handled in any way likely to cause damage. Records will be fastened with paper clips or rubber bands only in cases where records cannot be otherwise identified for reproduction. Microfilm must be carefully removed from and returned to the proper microfilm boxes. Care must be taken loading and unloading microfilm from microfilm readers. Damaged microfilm must be reported to the research room attendant as soon as it is discovered. The use of records of exceptional value or in fragile condition will be subject to any conditions specified by the research room attendant.

§ 105-61.102-4 Removal or mutilation of records

Researchers may not remove records from a research room. The removal or mutilation of records is forbidden by law and is punishable by fine or imprisonment or both (18 U.S.C. 2071). Researchers are required to check personal belongings, including briefcases, folders, coats, newspapers, or containers of any kind before entering a research room. Upon leaving, researchers must present for examination any article that could contain records. To ensure that records are not unlawfully removed or mutilated, a director may issue and post at the entrance of a research room instructions supplementing the rules in § 105-61.102.

§ 105-61.102-5 Conduct.

* * * * *

(b) *Revocation of a researcher identification card.* When researchers who have been issued researcher identification cards have refused to comply with the rules and regulations of a NARS facility, or by their actions have demonstrated that they present a danger to the records or a danger or annoyance to other researchers or employees, they may have their researcher identification cards revoked by a NARS facility director. A researcher whose card has been revoked will immediately be denied research privileges at all NARS facilities and shall be given written notification of the reasons for the revocation within 3 work days of that action. A researcher having his/her researcher identification card revoked shall have 30 days after the revocation in which to make a written appeal to the Archivist of the United States, General Services Administration (N), Washington, DC 20408, for reinstatement of research privileges. The Archivist of the United States shall, upon receipt of an appeal, have 30 days in which to decide whether or not research privileges should be reinstated. If the revocation is upheld or if no appeal is made, the researcher will be prohibited from applying for another research identification card for a period of 6 months from the date of the revocation, and all NARS facilities will be so notified. At the end of 6 months, a researcher who has had his/her NARS identification card revoked may reapply for research privileges. Upon application, a new researcher identification card will be issued for a probationary period of 2 months. However, if based on the reasons for the revocation of research privileges, the probationary reinstatement of a researcher poses a substantial threat to the safety of persons or property, the facility director will deny probationary reinstatement and so advise the applicant in writing within 3 working days of receiving the reinstatement application. At the end of the probationary period the researcher may apply for a standard researcher identification card valid for 2 years. The NARS facility director will review the researcher's conduct in NARS facilities during the probationary period and determine whether a regular 2-year researcher identification card will be issued. If the researcher's conduct during the probationary period is determined to have been unsatisfactory by the NARS facility director, or if the facility director has denied a reinstatement application, research privileges will again be denied for 6 months. This second and any subsequent revocation of research privileges may be appealed to the Archivist of the United States pursuant to the procedures specified in this section.

§ 105-61.102-6 Keeping records in order.

A researcher must keep unbound records in the order in which they are delivered to him/her. Records appearing to be in disorder must not be rearranged by a researcher, but should be referred to the research room attendant. Researchers will not be allowed to remove records from more than one container at a time. Researchers shall bring to the attention of the research room attendant microfilm located in the wrong box or file cabinet.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

Dated: June 9, 1983.

Robert M. Warner,

Archivist of the United States.

[FR Doc. 83-19470 Filed 7-18-83; 8:45 am]

BILLING CODE 6820-26-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 402

Interagency Cooperation; Endangered Species Act of 1973, As Amended

Correction

In FR Doc. 83-17494, beginning on page 29990 in the issue of Wednesday, June 29, 1983, make the following changes:

1. The headings of the document should read as set forth above.

2. All references to §§ 402.01 through 402.90 in the preamble of the document should read §§ 402.1 through 402.9, respectively.

3. On page 29995, first column, insert the words, "species will be considered at that time and need not be included in the cumulative" between the words "particular" and "effects" in the twenty-second line of the last complete paragraph.

4. On page 30001, second column, the second paragraph (a) in § 402.13 should be designated paragraph (b).

5. On page 30002, first column, the paragraph designated (9) in § 402.14 should be designated (g)

BILLING CODE 1505-01-M

Notices

Federal Register
Vol. 48, No. 139
Tuesday, July 19, 1983

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

Pilot Test for Prototype Funds Receipt and Disbursement System (FRADS) for Disbursing Loan and Grant Funds; Extension to Whole of Florida

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice

SUMMARY: A pilot implementation of the prototype Funds Receipt and Disbursement System (FRADS) will be extended to the entire State of Florida. The pilot implementation was previously announced in a notice published in the **Federal Register** on June 9, 1982, (47 FR 25037). For the length of the pilot all Farmers Home Administration (FmHA) loan/grant disbursements from the State of Florida will be handled by this system rather than under the corresponding provisions of Subpart A of Part 1902, Chapter XVIII, Title 7 of the Code of Federal Regulations. FRADS involves only the method by which funds are disbursed from the U.S. Treasury to FmHA field offices and will not directly affect FmHA borrowers. The FRADS pilot will continue until adequate information for evaluation has been effectiveness of the prototype system in reducing FmHA's and the Government's interest expense for financing FmHA programs. The catalog of Federal Domestic Assistance numbers and titles are:

10.404 Emergency Loans.
10.405 Farm Labor Housing Loans and Grants.
10.406 Farm Operating Loans.
10.407 Farm Ownership Loans.
10.408 Grazing Association Loans.
10.409 Irrigation, Drainage and Other Soil and Water Conversation Loans.
10.410 Low to Moderate Income Housing Loans.
10.411 Rural Housing Site Loans.
10.413 Recreation facility Loans.
10.414 Resource Conservation and Development Loans.
10.415 Rural Rental Housing Loans.
10.416 Soil and Water Loans.
10.417 Very Low-Income Housing Repair Loans and Grants.
10.418 Water and Waste Disposal Systems for Rural Communities.
10.419 Watershed Protection and Flood Prevention Loans.
10.420 Rural Self-Help Housing Technical Assistance.
10.421 Indian Tribes and Tribal Corporation Loans.
10.422 Business and Industrial Loans.
10.423 Community facilities Loans.
10.424 Industrial Development Grants.
10.425 Emergency Livestock Loans.
10.426 Area Development Assistance Planning Grants.
10.427 Rural Rental Assistance Payments.
10.428 Economic Emergency Loans.
10.429 Above Moderate Income Housing Loans.
10.430 Energy Impacted Area Development Assistance Program.
10.431 Technical and Supervisory Assistance Grants.
10.432 Biomass Energy and Alcohol Fuels Loans and Guarantees.

EFFECTIVE DATE: August 7, 1983.

FOR FURTHER INFORMATION CONTACT: Mr. Paul R. Kugler, Director, Finacial and Productivity Analysis Division, South Agriculture Building, Washington, D.C. 20250, telephone (202) 447–2573.

Dated: July 13, 1983.

Michael E. Brunner,

Acting Administrator, Farmers Home Administration.

[FR Doc. 83-19406 Filed 7-18-83; 8:45 am]
BILLING CODE 3410-07-M

Food and Nutrition Service

National Average Minimum Value of Donated Foods for the Period July 1, 1983, Through June 30, 1984

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the value of donated foods or, where applicable, cash in lieu thereof, to be given in the 1984 school year for each lunch served by schools participating in the National School Lunch Program or as commodity schools and for each lunch and supper served by institutions participating in the Child Care Food Program.

EFFECTIVE DATE: July 1, 1983.

FOR FURTHER INFORMATION CONTACT: Gwena Kay Tibbits, Chief, Program Administration Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, Alexandria, Virginia 22303, (703) 756–3660.

SUPPLEMENTARY INFORMATION: This action, which implements mandatory provisions of sections 6(e), 14(f), and 17(h) of the National School Lunch Act (the Act), has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1512. It has been classified as "nonmajor," because it meets none of the three criteria in the Executive Order; the action will not have an annual effect on the economy of $100 million or more, will not cause a major increase in costs, and will not have a significant impact on competition, employment, productivity, innovation, or the ability of U.S. enterprises to compete.

The action has also been reviewed with regard to the requirements of Pub. L. 96–354, the Regulatory Flexibility Act of 1980. Robert E. Leard, Administrator, Food and Nutrition Service, has determined that it will not have a significant economic impact on a substantial number of small entities. The purpose of the action is to notify States of the level of donated-food assistance to be provided during the 1984 school year.

This notice imposes no new reporting or recordkeeping provisions that are subject to Office of Management and Budget review.

Section 6(e) of the Act establishes the national average value of donated-food assistance to be given to States for each lunch served in the National School Lunch Program at 11.0 cents per meal. This amount is subject to annual adjustment as of July 1 of each year to reflect changes in the Price Index for Food Used in Schools and Institutions. Section 17(h) of the Act provides that the same value of assistance in donated foods for school lunches shall also be established for lunches and suppers served in the Child Care Food Program. Notice is hereby given that the national average minimum value of donated foods, or cash in lieu thereof, per lunch under the National School Lunch Program (7 CFR Part 210) and per lunch and supper under the Child Care Food Program (7 CFR Part 226) shall be 11.50

cents for the period July 1, 1983, through June 30, 1984. This constitutes no change from the rate in effect for the 1983 school year.

The Price Index for Food Used in Schools and Institutions is computed on the basis of five major food components in the Bureau of Labor Statistics' Producer Price Index (cereal and bakery products; meats, poultry and fish; dairy products; processed fruits and vegetables; and fats and oil). Each component is weighed using the same relative weight as determined by the Bureau of Labor Statistics. The value of food assistance is adjusted each July 1 by the annual percentage change in a three-month simple average value of this Price Index for March, April and May. The three-month average of the Price Index increased by only 0.5 percent, from a revised value of 254.6 for March, April and May of 1982 to an initial value of 255.9 for the same three months in 1983. When computed on the basis of unrounded data and rounded to the nearest one-quarter cent, the resulting national average for the period July 1, 1983 through June 30, 1984 remains unchanged at 11.50 cents per meal.

Section 14(f) of the Act provides that commodity-only schools shall be eligible to receive donated foods equal in value to the sum of the national average value of donated foods established under section 6(e) of the Act and national average payment established under section 4 of the Act. Such schools are eligible to receive up to 5 cents of this value in cash for processing and handling expenses related to the use of such foods. Commodity-only schools are defined in section 12(d)(8) of the Act as "schools which do not participate in the school lunch program under this Act, but which receive commodities made available by the Secretary for use in nonprofit lunch programs." In interim regulations published on April 15, 1982 (47 FR 15978–86) to implement the provisions of section 14(f), it was indicated that the term "commodity schools" will be used for such schools instead of "commodity-only schools."

For the 1984 school year, commodity schools shall be eligible to receive donated-food assistance valued at 23.0 cents for each lunch served. This amount is based on the sum of the section 6(e) level of assistance announced in this notice and the adjusted section 4 minimum national average payment factor for school year 1984 announced by the Department on July 6, 1983 (47 FR 31058). The section 4 factor for commodity schools does not include the two-cents per lunch increase for lunches served in the second preceding year free or at reduced prices, since that increase is applicable only to schools participating in the National School Lunch Program.

(Catalog of Federal Domestic Assistance Nos. 10.550, 10.555, and 10.558)

Authority: Sections 6, 14 and 17 of the National School Lunch Act, as amended, 42 U.S.C. 1755, 1766.

Dated: July 12, 1983.

Robert E. Leard,

Administrator, Food and Nutrition Service.

[FR Doc. 83-19404 Filed 7-18-83; 8:45 am]

BILLING CODE 3410-30-M

Funding Formula Information for the Special Supplemental Food Program for Women, Infants, and Children (WIC)

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice of available information.

SUMMARY: The Food and Nutrition Service (FNS) is providing information on the development of formuals for distribution of program (food) funds and administrative funds to State agencies participating in the special Supplemental Food Program for Women, Infants, and Children.

DATE: Comments must be submitted on or before August 18, 1983.

ADDRESS: Send comments to: Barbara P. Sandoval, Director, Supplemental Food Programs Division, Food and Nutrition Service, 3101 Park Center Drive, Alexandria, VA 22302.

FOR FURTHER INFORMATION CONTACT: Barbara P. Sandoval, director, Supplemental Food Programs Division, Telephone (703) 756–3746

SUPPLEMENTARY INFORMATION: Public Law 95–627 requires the Department to allocate program (food and administrative) funds at the beginning of each fiscal year to participating State agencies using a formula determined by the Secretary. The resulting allocations constitute the State agencies' operational level for the fiscal year.

Over the years, numerous food and administrative formulas have been used to give each State agency its fair share of funding, while at the same time minimizing program disruption. In determining what formulas to allocate WIC Program grants and how to apply the formulas, many considerations had to be taken into account. The law states that funds shall be allocated to "areas most in need of supplemental foods" and that 20 percent be allocated to administrative funding. Administrative funding shall have a minimum amount for each State agency, and respond to the varying needs of States. The interpretation of the law has yielded formulas reflecting the degree of need based on population, poverty, and health indices. The adequacy and availability of the indicies' data base and their degree of relevancy to legislativew manadates have been key concerns. Appropriation levels, past State Agency performance and grant levels were other important factors.

The Department believed that a fresh look at funding formulas was needed. In March 1983, State agency and FNS staff discussed varying opinions on program funding for the future. The objectives were to a) discuss funding goals and objectivies for the program, and b) discuss principles and applications to reach these goals and objectives. Based on these discussions, the Department noted several principles to use as guides in funding for Fiscal Year 1984 and beyond:

1. *Equity.* Each State agency should have an equal opportunity to serve those potentially eligible for the program.

2. *Stability.* There should be a) a gradual transition towards equity among all State agencies to minimize program disruption and allow for responsible growth, and b) the use of the same funding formula for several years.

3. *Simplicity.* Conceptually and mathematically, the formulas should be straightforward.

4. *Operational Considerations.* Special considerations, particularly in administrative funding, should be given to Indian State Agencies, those States and territories outside the continental United States, and those with special food delivery systems.

5. *Funding Consistency.* Any reallocations that are necessary should support overall funding principles and transition toward equity goals.

In summary, the goal of the WIC Program is to provide intervention of a preventive nature to women, infants, and children, with resources directed to the most vulnerable within that population. State agencies should have the flexibility to take reasonable steps to meet the needs of their populations' high risk participants, designing services as appropriate. The key factor should be program service to those most in need within the framework of an accountable program. Necessarily, the move toward equity will mean program expansion for those State agencies now with less of an opportunity to meet the needs of their potential eligibles, and program stability or possibly reduced services for those with more than equitable funding.

With that in mind, State agency and FNS staff discussed specific formula

applications, to serve as guides to the Department, to meet the overall principles. The formulas should:

1. Establish a guaranteed level of the previous year's funding to recognize stability and lessen any severe program disruption in the movement over the years toward equity.

2. Use both economic and nutritional risk need factors. Consistent with the legislative income eligibility level, the economic factor should be derived from the WIC target population under 185 percent of the poverty level. Nutritional risk should consider factors such as low weight birth and infant mortality statistics.

3. Use a statistical procedure for administrative funding which would recognize economies of scale.

4. Continue allocating some funds to Regional Offices for discretion in meeting individual State agency needs not met by the national formula.

The Department considered the above principles during its formulation of alternative food and administrative funding formulas. The Department has prepared a comprehensive document providing various formula options, databases, fit-line graphics and formula results. It has been sent to WIC State Agencies, FNS Regional Offices and other groups interested in the program for comment. Copies of the document are available to other interested parties upon request from either the Supplemental Food Programs Division (3101 Park Center Drive, Alexandria, Virginia 22302) or the FNS Regional Offices.

Comments which the public would like considered are welcome. To allow sufficient time to consider all opinions prior to the allocation of Fiscal Year 1984 grants, the comments should be received within 30 days from the publication of this notice.

This notice does not contain reporting and recordkeeping requirements subject to approval by OMB under the Paperwork Reduction Act of 1980, Pub. L. 96-511.

Dated: July 12, 1983.

Robert E. Leard,

Administrator.

[FR Doc. 83-19241 Filed 7-18-83; 8:45 am]

BILLING CODE 3410-30-M

Office of the Secretary

Privacy Act of 1974; System of Records

Notice is hereby given that the Department of Agriculture, in accordance with 5 U.S.C. 552a(e) (4) and (11), intends to adopt this notice of a new system of records as set forth below. Although the Privacy Act requires only that the portion of the system which describes the "routine uses" of that system be published for public comment, USDA invites such comment on all portions of this notice. A report of this system of records was sent to the Office of Management and Budget and Congress on June 8, 1983.

Interested persons may submit written comments on this notice to: Acting Director, Office of Administrative Systems, U.S. Department of Agriculture, Washington, D.C. 20250, on or before August 18, 1983. All comments submitted will be available for public inspection during business hours in Room 118-W of the Administration Building, USDA, 12th and Independence Avenue SW. This notice will be adopted without further publication as set forth below 30 days after the date of its publication in the **Federal Register** (August 18, 1983), unless modified by a subsequent notice to incorporate comments received from the public.

Dated: July 8, 1983.

John R. Block,

Secretary.

USDA/OAS-5

SYSTEM NAME:

SF-1099 Reporting System, USDA/OAS

SYSTEM LOCATION:

USDA, Office of Administrative Systems, National Finance Center (NFC), New Orleans, Louisiana 70160.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals (excluding USDA employees) who receive payments in the form of rents, royalties, prizes or awards; individuals (excluding USDA employees) who receive payments for non-personal service contracts, commissions, or compensation for services which are subject to SF-1099 reporting requirements.

CATEGORIES OF RECORDS IN THE SYSTEM:

The automated system establishes a master file containing the individual's name, address, social security number (or employer identification number), ZIP code, amount of payment, and other information necessary to accurately identify covered payment transactions applicable to SF-1099 reporting requirements.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

26 U.S.C. 6011 and 6109, and 26 CFR 301.6109-1.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Information from this system of records will be forwarded to the Internal Revenue Service for income tax purposes; (2) Information will be used for internal processing purposes by NFC; (3) Information will also be referred to the General Accounting Office for review in cases involving fraud.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on tape files, disk files, and in file folders at the National Finance Center addressed above.

RETRIEVABILITY:

Records are indexed by social security number or employee identification number.

SAFEGUARDS:

Magnetic tape files and disk files are in a locked computer room and tape library which can be accessed by authorized personnel only. File folders are maintained in secured areas with access by authorized personnel only. Disk files are password protected to limit access to authorized personnel only.

RETENTION AND DISPOSAL:

Master history tape files are retained indefinitely. Manual records are transferred for storage and disposition by the Federal Records Center in accordance with General Services Administration regulations.

SYSTEM MANAGER AND ADDRESS:

Director, National Finance Center, Office of Administrative Systems, USDA, New Orleans, Louisiana 70160.

NOTIFICATION PROCEDURE:

Any individual may request information regarding this system of records or information as to whether the system contains records pertaining to him/her from the System Manager. A request for information pertaining to an individual should be in writing and should contain: Name, address, social security number or employee identification number and particulars involved (i.e., transaction dates, copies of relevant transaction documentation, etc.).

RECORD ACCESS PROCEDURES:

Any individual may obtain information as to the procedure for gaining access to a record in the system

which pertains to him/her by submitting a written request to the System Manager.

CONTESTING RECORD PROCEDURES:

Any individual may obtain information as to the procedures for contesting a record in the system which pertains to him/her by submitting a written request to the System Manager.

RECORD SOURCE CATEGORIES:

Information in this system comes primarily from individuals who provide covered goods or services to agencies of the USDA.

[FR Doc. 83-19459 Filed 7-18-83; 8:45 am]
BILLING CODE 3410-KP-M

Rural Electrification Administration

North Carolina Electric Membership Corp., Raleigh, North Carolina; Proposed Loan Guarantee

AGENCY: Rural Electrification Administration (REA), USDA.

ACTION: Proposed Loan Guarantee.

SUMMARY: Under the authority of Pub. L. 93-32 (87 Stat. 65) and in conformance with applicable agency policies and procedures as set forth in REA Bulletin 20-22 (Guarantee of Loans for Bulk Power Supply Facilities), notice is hereby given that the Administrator of REA will consider providing a guarantee supported by the full faith and credit of the United States of America for a loan in the approximate amount of $568 million to North Carolina Electric Membership Corporation, (NCEMC), Raleigh, North Carolina. This loan guarantee will provide supplemental funds needed to finance NCEMC's 56.25 percent undivided ownership interest in the 1145 MW Catawba Nuclear Generating Station Unit No. 1. The Catawba project is being constructed by Duke Power Company in York County, South Carolina.

FOR FURTHER INFORMATION CONTACT: Mr. James M. Hubbard, Executive Vice President and General Manager, North Carolina Electric Membership Corporation, P.O. Box 27306, Raleigh, North Carolina 27611.

SUPPLEMENTARY INFORMATION: Legally organized lending agencies capable of making, holding and servicing the loan proposed to be guaranteed may obtain information on the proposed program, including the engineering and economic feasibility studies and the proposed schedule for advances to the borrower of the guaranteed loan funds from Mr. Hubbard at the address given above.

In order to be considered, proposals must be submitted on or before August 18, 1983 to Mr. Hubbard. The right is reserved to give such consideration and to make such evaluation or other disposition of all proposals received as NCEMC and REA deem appropriate. Prospective lenders are advised that the guaranteed financing for this project is available from the Federal Financing Bank under a standing agreement with the Rural Electrification Administration.

Copies of REA Bulletin 20-22 are available from the Director, Public Information Office, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250.

This program is listed in the Catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees.

Dated: July 13, 1983.

Harold V. Hunter,

Administrator.

[FR Doc. 83-19493 Filed 7-18-83; 8:45 am]
BILLING CODE 3410-15-M

Vermont Electric Generation and Transmission Cooperative, Inc., Johnson, Vermont; Proposed Loan Guarantee

AGENCY: Rural Electrification Administration (REA), USDA.

ACTION: Proposed Loan Guarantee.

SUMMARY: Under the authority of Pub. L. 93-32 (87 Stat. 65) and in conformance with applicable agency policies and procedures as set forth in REA Bulletin 20-22 (Guarantee of Loans for Bulk Power Supply Facilities), notice is hereby given that the Administrator of REA will consider providing a guarantee supported by the full faith and credit of the United States of America for a loan in the approximate amount of $24 million to Vermont Electric Generation and Transmission Cooperative, Inc., (VEG&T), Johnson, Vermont. This loan guarantee will provide supplemental funds needed to finance VEG&T's 0.41 percent undivided ownership interest in the Seabrook Nuclear Generating Station, Units 1 and 2 (2-1150 MW units) and a 0.35 percent undivided ownership interest in the 1150 MW Millstone Nuclear Generating Station Unit No. 3. The lead owners of the Seabrook and Millstone projects are The Public Service Company of New Hampshire and Northeast Utilities, respectively.

FOR FURTHER INFORMATION CONTACT: Mr. William Gallagher, Manager, Vermont Electric Generation & Transmission Cooperative, Inc., School Street, Johnson, Vermont 05656.

SUPPLEMENTARY INFORMATION: Legally organized lending agencies capable of making, holding and servicing the loan proposed to be guaranteed may obtain information on the proposed program, including the engineering and economic feasibility studies and the proposed schedule for advances to the borrower of the guaranteed loan funds from Mr. Gallagher at the address given above.

In order to be considered, proposals must be submitted on or before (within 30 days from the date of the **Federal Register** publication of this notice) to Mr. Gallagher. The right is reserved to give such consideration and to make such evaluation or other disposition of all proposals received as VEG&T and REA deem appropriate. Prospective lenders are advised that the guaranteed financing for this project is available from the Federal Financing Bank under a standing agreement with the Rural Electrification Administration.

Copies of REA Bulletin 20-22 are available from the Director, Public Information Office, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250.

This program is listed in the Catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees.

Dated: July 11, 1983.

Harold V. Hunter,

Administrator.

[FR Doc. 83-19492 Filed 7-18-83; 8:45 am]
BILLING CODE 3410-15-M

Soil Conservation Service

Little Cedar River Agriculture-Related Pollutant Control RC&D Measure, Michigan

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines, (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an evironmental impact statement is not being prepared for the Little Cedar River RC&D Measure, Menominee County, Michigan.

FOR FURTHER INFORMATION CONTACT: Mr. Homer R. Hilner, State Conservationist, Soil Conservation Service, 1405 South Harrison Road, East Lansing, Michigan 48823, telephone 517-337-6702.

SUPPLEMENTARY INFORMATION: The environmental assessment of this

federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. A contact has been made with the State Historical Preservation officer and concludes that it will have no effect on any cultural resources either eligible for or listed on the National Register of Historic Places. The State Archaeologist will be contacted if any land disturbances associated with this project and archaeological sites, features, or materials are encountered during actual construction. As a result of these findings, Mr. Homer R. Hilner, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

This measure concerns a plan for the installation of practices for agriculture-related pollutant control. Practices will include: 700 ft. of diversions, 250 rds. of fence, 6 waste collection and storage facilities and 3 acres of critical area treatment. Total construction cost is estimated to be $303,000; $209,800 RC&D funds and $93,200 locals funds.

The Notice of a Finding of No Significant Impact (FONSI) as been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Homer R. Hilner. The FONSI has been sent to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address.

Implementation of the proposal will not be initiated until 30 days after the date of this publication in the **Federal Register**

(Catalog of Federal Domestic Assistance Program No. 10.901, Watershed Protection and Flood Prevention Program. Office of Management and Budget Circular A-95 regarding state and local clearinghouse review of federal and federally assisted programs and projects is applicable)

Dated: July 6, 1983.

Jerry L. Keller,

Deputy State Conservationist.

[FR Doc. 83-19360 Filed 7-18-83; 8:45 am]

BILLING CODE 3410-16-M

Mansfield Township Farm Irrigation RC&D Measure, Michigan

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines, (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Mansfield Township Farm Irrigation RC&D Measure, Iron County, Michigan.

FOR FURTHER INFORMATION CONTACT: Mr. Homer R. Hilner, State Conservationist, Soil Conservation Service, 1405 South Harrison Road, East Lansing, Michigan 48823, telephone 517-337-6702.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. A contact has been made with the State Historical Preservation Officer and concludes that it will have no effect on any cultural resources either eligible for or listed on the National Register of Historic Places. The State Archaeologist will be contacted if any land disturbance associated with this project and archaeological sites, features, or materials are encountered during actual construction. As a result of these findings, Mr. Homer R. Hilner, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

This measure concerns a plan to collect and store runoff from a watershed and stabilize the water level of a small inland lake for agricultural purposes. The planned works of improvement include installing a low head earthen dam and outlet structure along with five acres of critical area seeding. Total installation costs are approximately $30,300; $17,600 RC&D funds and $12,700 local funds.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Homer R. Hilner. The FONSI has been sent to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address.

Implementation of the proposal will not be initiated until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.901, Watershed Protection and Flood Prevention Program. Office of Management and Budget Circular A-95 regarding state and local clearinghouse review of federal and federally assisted programs and projects is applicable)

Dated: July 6, 1983.

Jerry L. Keller,

Deputy State Conservationist.

[FR Doc. 83-19359 Filed 7-18-83; 8:45 am]

BILLING CODE 3410-16-M

CIVIL AERONAUTICS BOARD

[Order 83-7-49]

Application for Certificate Authority of Audi Air, Inc.

AGENCY: Civil Aeronautics Board.

ACTION: Notice of order to show cause (order 83-7-49).

SUMMARY: The Board proposes to find Audi Air, Inc. fit, willing, and able to issue it a certificate under section 401 of the Act 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 scheduled all-cargo service between Prudhoe Bay/Deadhorse and Nuiqsut, Alaska. The complete text of this order is available, as noted below.

DATES: All interested persons wishing to respond to the Board's issuance of the proposed certificate shall file, and serve upon all persons listed below no later than August 13, 1983, a statement of objections, together with a summary of the testimony, statistical data, and other material expected to be relied upon to support the objections.

ADDRESSES: Responses should be filed in Docket 41448 and addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428, and should be served on all persons listed in Attachment B to the order.

FOR FURTHER INFORMATION CONTACT: Mr. Nicholas Lowry, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, (202) 673-5345.

SUPPLEMENTARY INFORMATION: The complete text of Order 83-7-49 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 83-7-49 to that address.

By the Civil Aeronautics Board, July 14, 1983.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 83-19487 Filed 7-18-83; 8:45 am]

BILLING CODE 6320-01-M

[Docket No. 41512]

McClain Airlines Inc.; Fitness Investigation; Prehearing Conference

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to commence on August 4, 1983, at 9:30 a.m. (local time) in Room 1027, Universal Building, 1825 Connecticut Avenue, N.W., Washington, D.C., before the undersigned Chief Administrative Law Judge.

Dated at Washington, D.C., July 13, 1983.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 83-19488 Filed 7-18-83; 8:45 am]

BILLING CODE 6320-01-M

[Docket 40813]

Regent Air Corp.; Fitness Investigation; Change of Date of Prehearing Conference

Notice is hereby given that the prehearing conference in the above-entitled matter scheduled to begin on July 18, 1983, is changed to July 26, 1983, at 10:00 a.m. (local time) in Room 1027, Universal Building, 1825 Connecticut Avenue, N.W., Washington, D.C., before the undersigned administrative law judge.

Dated at Washington, D.C., July 13, 1983.

John M. Vittone,

Administrative Law Judge.

[FR Doc. 83-19485 Filed 7-18-83; 8:45 am]

BILLING CODE 6320-01-M

[Order 83-7-46]

Fitness Determination of Caribbean Express, Inc.

AGENCY: Civil Aeronautics Board

ACTION: Notice of commuter air carrier fitness detemination—order 83-7-46, order to show cause.

SUMMARY: The Board is proposing to find that Caribbean Express, Inc. is fit, willing, and able to provide commuter air carrier service under section 419(c)(2) of the Federal Aviation Act, as amended, and that the aircraft used in this service conform to applicable safety standards. The complete text of this order is available, as noted below.

DATES: Responses: All interested persons wishing to respond to the Board's tentative fitness determination shall serve their responses on all persons listed below no later than August 12, 1983, together with a summary of the testimony, statistical data, and other material relied upon to support the allegations.

ADDRESSES: Responses or additional data should be filed with the Special Authorities Divison, Room 915, Civil Aeronautics Board, Washington, D.C. 20428, and with all persons listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: James F. Ransom, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, (202) 673-5088.

SUPPLEMENTARY INFORMATION: The complete text of Order 83-7-46 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 83-7-46 to that address.

By the Civil Aeronautics Board, July 14, 1983

Phyllis T. Kaylor

Secretary.

[FR Doc. 83-19490 Filed 7-18-83; 8:45 am]

BILLING CODE 6320-01-M

[Order No. 83-7-47]

Fitness Determination of National Aviation, a Division of Delta Aircraft Corp.

AGENCY: Civil Aeronautics Board.

ACTION: Notice of commuter air carrier fitness determination—Order 83-7-47, order to show cause.

SUMMARY: The Board is proposing to find that National Aviation, a Division of Delta Aircraft Corporation is fit, willing, and able to provide commuter air carrier service under section 419(c)(2) of the Federal Aviation Act, as amended, and that the aircraft used in this service will conform to applicable safety standards. The complete text of this order is available, as noted below.

DATES: Responses: All interested persons wishing to respond to the Board's tentative fitness determination shall serve their responses on all persons listed below no later than August 2, 1983, together with a summary of the testimony, statistical data, and other material relied upon to support the allegations.

ADDRESSES: Responses or additional data should be filed with the Special Authorities Division, Room 915, Civil Aeronautics Board, Washington, D.C. 20428, and with all persons listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Barbara P. Dunnigan, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428, (202) 673-5918.

SUPPLEMENTARY INFORMATION: The complete text of Order 83-7-47 is available from the Distribution Section, Room 100, 1825 Connecticut Avenue NW., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 83-7-47 to that address.

By the Civil Aeronautics Board, July 14, 1983.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 83-19486 Filed 7-18-83; 8:45 am]

BILLING CODE 6320-01-M

[Order 83-7-48]

Fitness Determination of Omniflight Helicopter Services, Inc.

AGENCY: Civil Aeronautics Board.

ACTION: Notice of commuter air carrier fitness determination—order 83-7-48, order to show cause.

SUMMARY: The Board is proposing to find that Omniflight Helicopter Services, Inc. is fit, willing, and able to provide commuter air carrier service under section 419(c)(2) of the Federal Aviation Act, as amended, and that the aircraft used in this service will conform to applicable safety standards. The complete text of this order is available, as noted below.

DATES: Responses: All interested persons wishing to respond to the Board's tentative fitness determination shall serve their responses on all persons listed below no later than August 3, 1983, together with a summary of the testimony, statistical data, and other material relied upon to support the allegations.

ADDRESSES: Responses or additional data should be filed with the Special Authorities Division, Room 915, Civil Aeronautics Board, Washington, D.C. 20428, and with all persons listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Anne W. Stockvis, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, (202) 673-5088.

SUPPLEMENTARY INFORMATION: The complete text of Order 83–7–48 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 83–7–48 to that address.

By the Civil Aeronautics Board, July 14, 1983.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 83-19489 Filed 7-18-83; 8:45 am]

BILLING CODE 6320-01-M

[Order 83–7–45]

Fitness Determination of Phillips Michigan City Flying Service, Inc., d.b.a. Phillips Airlines

AGENCY: Civil Aeronautics Board.

ACTION: Notice of commuter air carrier fitness determination—order 83–7–45, order to show cause.

SUMMARY: The Board is proposing to find that Phillips Michigan City Flying Service, Inc., d/b/a Phillips Airlines, is fit, willing, and able to provide commuter air carrier service under section 419(c)(2) of the Federal Aviation Act, as amended, and that the aircraft used in this service conform to applicable safety standards. The complete text of this order is available, as noted below.

DATES: Responses: All interested persons wishing to respond to the Board's tentative fitness determination shall serve their responses on all persons listed below no later than August 2, 1983, together with a summary of the testimony, statistical data, and other material relied upon to support the allegations.

ADDRESSES: Responses or additional data should be filed with the Special Authorities Division, Room 915, Civil Aeronautics Board, Washington, D.C. 20428, and with all persons listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: James F. Ransom, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, (202) 673–5088.

SUPPLEMENTARY INFORMATION: The complete text of Order 83–7–45 is available from the Distribution Section, Room 100, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 83–7–45 to that address.

By the Civil Aeronautics Board, July 14, 1983.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 83-19491 Filed 7-18-83; 8:45 am]

BILLING CODE 6320-01-M

Application of Florida Express, Inc., for a Certificate of Public Convenience and Necessity; Fitness Investigation

AGENCY: Civil Aeronautics Board.

ACTION: Notice of order instituting the *Florida Express, Inc. Fitness Investigation* to determine whether the applicant is fit, willing, and able to provide the scheduled interstate and overseas air transportation it proposes.

DATES: Persons wishing to file requests for additional evidence or petitions to intervene in the *Florida Express, Inc., Fitness Investigation* shall file their requests and petitions in Docket 41509 by July 28, 1983 and serve such filings on all persons listed below.

ADDRESSES: Requests for additional evidence and petitions to intervene should be filed in the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428, in Docket 41509.

In addition, copies of such filings should be served on all persons listed in paragraph 7 of the order.

Service will also be required on any other person filing petitions.

FOR FURTHER INFORMATION CONTACT: Peter Bloch, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, (202) 673–5333.

SUPPLEMENTARY INFORMATION: The complete text of Order 83–7–43 is available from our 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 83–7–43 to that address.

By the Bureau of Domestic Aviation, July 13, 1983.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 83-19521 Filed 7-18-83; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 30526–95]

Habitat Conservation; Proposed Policy for National Marine Fisheries Service (NMFS)

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

ACTION: Notice of proposed NMFS habitat conservation policy and request for comment.

SUMMARY: NOAA proposes a policy for the National Marine Fisheries Service (NMFS) which will provide a focus for NMFS' habitat conservation activities, while at the same time integrating habitat conservation considerations throughout the major programs and activities of the Agency; comments are requested on this proposed policy. This action is necessary in order to allow NMFS to focus its habitat conservation activities on those species for which NMFS is primarily responsible or which are the subject of a NMFS program. The effect of his policy will be to make NMFS' habitat conservation activities more responsive to the goals and objectives of the Agency as set forth in the NMFS Strategic Plan.

DATE: Comments must be received on or before September 16, 1983.

ADDRESS: Comments should be sent to William G. Gordon, Assistant Administrator for Fisheries, National Marine Fisheries Service (NMFS), Washington, D.C., 20235.

FOR FURTHER INFORMATION CONTACT: Herbert L. Blatt, Chief, Policy Group, NMFS, 202–653–7551, or Kenneth R. Roberts, Chief, Habitat Conservation Division, NMFS, 202–634–7490.

SUPPLEMENTARY INFORMATION:

Background

The National Marine Fisheries Service (NMFS) has primary responsibility for the conservation, management, and development of living marine resources and for the protection of certain marine mammals and endangered species under numerous Federal laws. The Agency also has responsibilities to the U.S. commercial and marine recreational fishing industry, including fishermen, and to the States and the general public. These responsibilities are inherent in NMFS' mission which is "To achieve a continued optimum utilization of living marine resources for the benefit of the Nation." NMFS is vitally concerned

about the habitats that support living marine resources since the well-being of these resources and the fishing industry depends upon healthy and productive habitats.

The U.S. commercial and marine recreational fishing industry makes an important contribution to the Nation's economy. The commercial fishing segment of the industry produces food and industrial goods tht contribute $7 billion annually to the gross national product. Including fishing vessels and shoreside businesses, the commercial fishing segment employs nearly 300,000 persons. Marine recreational fishing provides opportunities for recreation as well as a substantial quantity of food for 15 to 20 million anglers in the United States. Catch by marine recreational fishermen accounts for an estimated 30 to 35 percent of the total U.S. finfish harvest used for food. Expenditures by these fishermen, the value of associated industries (such as tackle, boat, and trailer manufacturers, and the party and charter boat industries), and the value of the recreational fishing experience itself are significant components of the U.S. economy. Direct expenditures by marine recreational fishermen are estimated to be at least $5 billion annually, not to mention the indirect economic impacts generated from these expenditures.

Marine mammals and endangered species are also important to the Nation in terms of their domestic and international significance—aesthetic, recreational, ecological and economic.

Coastal and estuarine areas and their associated wetlands are vitally important as spawning and nursery grounds for both commercial and marine recreational fishery resources. Approximately two-thirds of our important fishery resources depend upon these areas which also serve as habitat for many species of marine mammals and endangered species. However, population shifts to coastal areas and associated industrial and municipal expansion have accelerated competition for use of the same habitats. By 1990, 75 percent of the U.S. population will live within 50 miles of the coastlines. Increasing efforts to develop new or alternate sources of energy are further stressing important living marine resource habitats. As a result, these habitats have been substantially reduced and continue to suffer the adverse effects of dredging, filling, ccastal construction, energy development, pollution, waste disposal, and other human-related activities. In the case of wetlands, from 1954 to 1978 there was an average annual loss of 104,000 acres which was a ten-fold annual increase in acreage lost between 1780 and 1954.

Policy Framework

Traditionally, the habitat conservation activities of NMFS have been based primarily on the policies developed in response to the Fish and Wildlife Coordination Act (FWCA) and the National Environmental Policy Act (NEPA). These laws give NMFS and important advisory role, primarily with respect to reviewing and commenting on proposed Federal projects, licenses, permits etc. which could affect living marine resources. Because of this advisory role, NMFS' habitat conservation activities have been determined largely by the policies, actions, and deadlines of others. For the most part, these activities have dealt primarily with general concerns of habitat loss and degradation and not with specific habitat problems relating to the species of living marine resources for which NMFS has primarily management responsibilities i.e. species (1) covered or to be covered under Fishery Management Plans (FMPs) developed under the Magnuson Fishery Conservation and Management Act (Magnuson Act) and (2) assigned to NMFS under the Marine Mammal Protection Act (MMPA) and the Endangered Species Act (ESA). Within this framework these activities have been successful in carying out the objectives of the FWCA and NEPA. However, evolving mission and programs require the Agency to focus its activities on habitats important to the species referred to above.

In addition to the need for a change resulting from the foregoing, a number of events have occurred that give NMFS the opportunity to enhance substantially its overall role in habitat conservation. These include opportunities to use all of NMFS' legislative authorities to take an active role in habitat conservation and to ensure that it is appropriately considered in all of NMFS' programs, and opportunities to make the program more effective through strategic planning. Additional events include changing Federal and State roles under Administration policies and reduced Federal budgets.

Although NMFS' past role in habitat conservation was largely determined by the FWCA and NEPA, significant recent legislation, particularly the Magnuson Act gives NMFS borader authroity and more opportunities for achieving habitat conservation objectives. This Act also provides comprehensive authority to integrate habitat conservation throughout the Agency's conservation, management, and development programs. This can be accomplished through the Agency's strategic planning process which is the mechanism for setting priorities based on NMFS's resources and responsibilities.

Changes in traditional Federal and State roles are expected to occur as a result of sorting out responsibilities among Federal, State, and local governments and shifting decisionmaking and responsibility for a variety of policy, budgetary, and regulatory matters to State and lcoal governments. Implementation of this policy will give State and local governments more control over activities that may be more appropriately conducted at those levels and, as a consequence, reduce direct Federal expenditures and involvement.

With respect to living marine resources and their habitats, the sorting out of responsibilities between State and Federal goverments is complex. Generally, the States have overall responsibility within their inland and coastal waters (0–3 miles from shore) for management of living marine resources with the exception of marine mammals and endangered species. NMFS has been assigned the Federal management responsibility for fishery resources in the U.S. Fishery Conservation Zone (generally 3–200 miles). However, the Magnuson Act recognizes a need for management throughout the range of the species. Moreover, many of the species of living marine resources for which NMFS is responsible spend a portion of their life cycles in habitats primarily located in State waters such as rivers, wetlands, and estuaries. Many of these common property resources cross State as well as international boundaries. Therefore, consistent with the Magnuson Act, NMFS clearly has a role with respect to certain living marine resource habitats located in State, interstate and international waters. NMFS also has a long history of cooperation and interaction with the States on State/Federal fisheries activities under numerous authorities other than the Magnuson Act.

Policy

Habitat conservation activities will be responsive to the mission and programs of NMFS. The goal of NMFS' habitat conservation activities will be to maintain or enhance the capability of the environment to ensure the survival of marine mammals and endangered species and to maintain fish and shellfish populations which are used by or important to individuals and industries for both public and private

benefits—jobs, food, products, and recreation.

NMFS will direct its habitat conservation activities to assist the Agency in (1) meeting its resource management, conservation, protection, or development responsibilities contained in the Magnuson Fishery Conservation and Management Act (Magnsuson Act), the Marine Mammal Protection Act, and the Endangered Species Act; and (2) carrying out its responsibilities to the U.S. commercial and marine recreational fishing industry, including fishermen, and the States pursuant to programs carried out under other authorities.

Since most of NMFS's programs under its broad mandates are influenced by habitat considerations, habitat conservation will be considered and included in the Ageny's decisionmaking in all of its programs. NMFS will bring all of its authorities to bear in habitat conservation. These authorities include those which give NMFS an active, participatory role and those, particularly the Fish and Wildlife Coordination Act, which give NMFS an advisory role.

In carrying out its programs, NMFS' activities will be conducted in a fashion designed to achieve necessary, orderly coastal development in a timely fashion, while the renewability and productivity of the Nation's living marine resources are maintained or, where possible, enhanced.

Also NMFS will use its scientific capabilities to carry out the research necessary to support its habitat conservation objectives.

Implementation

Implementation of the policy will be governed by general Federal policies such as the multiple use of coastal areas. Also, implementation will be governed by the principle that the Federal Government has an obligation to conserve the habitats of living marine resources for which it has primary management responsibility or which are the subject of NMFS program, whether such habitats are under State or Federal jurisdiction. This will require close cooperation and coordination by NMFS with other NOAA elements, Federal and State agencies, the Regional Fishery Management Councils, and the commercial and recreational fishing constituencies. It is particularly important that NMFS and the States work cooperatively to define their respective roles with each directing its habitat conservation activities according to its responsibilities and capabilities.

While this policy emphasizes NMFS' domestic habitat conservation responsibilities, it does not preclude NMFS' participation in international habitat activities in support of obligations of the U.S. under international agreements. International habitat issues will continue to be addressed on a case-by-case basis depending upon the demands of the United States under the provisions of the governing treaty or convention.

Implementation Strategies

In consultation with its Regions and Centers, NMFS' Central Office will prepare guidance for the policy implementation recognizing that each Region has unique resource and/or development issues that require flexibility in addressing particular problems. The following implementation strategies will be used.

1. Each Region, working with the appropriate Center, and the Central Office, will establish a formal planning and coordinating mechanism to implement this policy on a continuing basis. At a minimum, this mechanism will be used to: (1) Identify the living marine resources of importance and the major habitat threats to these resources; (2) enumerate the identified habitat issues in order of priority; (3) develop strategies to address these issues; and (4) oversee the integration of habitat considerations throughout all NMFS' programs. To accomplish the purposes of this planning and coordinating mechanism, NMFS will call on the Assistant Administrators of other elements of NOAA (e.g., Office of Ocean and Coastal Resource Management, Office of Oceanography and Marine Services), the States, the Regional Fishery Management Councils and others, as appropriate. The results of this mechanism will be incorporated into the objectives and subobjectives of NMFS' Strategic Plan as well as the performance contracts of its employees.

2. NMFS Research Centers will conduct environmental and ecological research including long-term studies necessary to implement this policy. Research efforts will be coordinated with other elements of NOAA (e.g., National Ocean Service), the States and others, as appropriate. Research results will provide an integral part of the informational basis for NMFS' activities related to its conservation, management, protection, and/or development responsibilities. The needs of NMFS' decisionmakers will be the essential consideration in determining research priorities. Specific research objectives and activities will be determined through Regional and Center collaboration using the planning and coordinating mechanism described previously.

3. Since the opportunities afforded by the Magnuson Act are important factors in developing and adopting this policy, in the future NMFS will rely to a greater degree on its partnership with the Regional Fishery Management Councils in habitat conservation as it affects those fisheries subject to Fishery Management Plans developed by the Councils. The Councils provide a unique mix of representatives from the commercial and recreational fishing industries, conservation groups, State and Federal Governments, and the general public. Under this partnership, NMFS will assist the Councils to the extent possible.

(a) The Regional Fishery Management Councils should address habitat considerations in their FMPs, where applicable, based on the best available information from all sources which can be coordinated by NMFS/NOAA. While threats to fishery habitat posed by sources other than fishermen are not subject to regulation under the Magnuson Act, an adequate description of the fishery, its maximum sustainable yield, or its optimum yield may require singificant discussion of important habitat and threats to it.

At a minimum, FMPs should include identification and descriptions of habitat requirements and habitats of the stock(s) comprising the management unit; assessment of the condition of these habitats, to the extent possible, as they relate to the continued abundance and distribution of the species; identification, where possible, of causes of pollution and habitat degradation; description of programs to protect, restore, preserve and enhance the habitat of stock(s) from destruction or degradation; and proposal of measures intended to preserve, protect, and restore habitat determined to be necessary for the life functions of the stock(s). Failure to describe adequately the condition of the fishery habitat and any likely changes to it may raise questions under several of the national standards and under section 303(a)(1) of the Magnuson Act. Where appropriate, existing FMPs will be amended to meet these standards.

(b) NMFS, must be prepared to respond to the Councils in an agreed upon time when support or information is requested. Section 304(e) of the Magnuson Act authorizes NMFS to acquire the basic knowledge necessary to meet the Councils' needs. Equally important, NMFS will establish a mechanism to systematically consider and follow up on the Councils'

recommendations for habitat conservation. If Councils' recommendations are not accepted, NMFS will notify them of the reasons. If Councils' recommendations are accepted, NMFS will adopt them and keep the Councils informed on a continuing basis regarding the results of actions taken to implement the recommendations. If the Secretary does not have the authority to carry out the Councils' recommendations, the Secretary will submit the recommendations to the authorities having jurisdiction over the matter.

4. NMFS will continue to use procedures and options available under the FWCA and other advisory authorities to influence decisions about important habitats identified by NMFS. These activities will include addressing decisions regarding dredge and fill projects, OCS oil and gas development, ocean dumping, water diversion, energy facility siting, water quality degradation, and removal or degradation of tidal and intertidal wetlands.

5. NMFS will work closely with the States, the Interstate Marine Fisheries Commissions, and the Regional Fishery Management Councils to ensure that State/Federal Fishery Management Plans and the Councils' Fishery Management Plans are fully coordinated with regard to living marine resource habitat conservation. This coordination can be served through the Coastal Zone Management, or State/Federal Action plan process which could also provide mechanisms for sharing responsibilities and costs.

6. Since other Federal, State and local agencies are involved in living marine resource habitat matters, NMFS will support existing or new interagency operating arrangements to help define and assign appropriate roles and responsibilities. These arrangements may be informal or formal.

7. NMFS will focus its freshwater habitat activities on anadromous species. This does not preclude NMFS' involvement in a freshwater project if the project could adversely affect living marine resources for which NMFS has primary management responsibility or which are the subject of a NMFS program.

8. Where possible, NMFS will become more actively involved with governmental agencies and private developers during preapplication or early planning stages. This involvement will allow NMFS to better anticipate problems, identify alternatives for achieving objectives, reduce possibility of conflict, and minimize adverse effects on living marine resources and their habitats. In the case of essential public interest projects where practical alternatives are unavailable, NMFS will recommend measures to mitigate habitat losses. Also, when appropriate, NMFS will recommend habitat enhancement measures including rehabilitation.

9. As habitat considerations are integrated across all program lines, each major program office of NMFS will review its authorizing legislation and implementing regulations in conjunction with the Office of General Counsel to determine if these adequately provide for consideration of habitat. Legislative or regulatory changes will be recommended as needed.

10. Recognizing NOAA's broad responsibilities for ocean managment, NMFS will continue to cooperate with other NOAA program elements in environmental activities conducted by these elements and will emphasize those activities affecting living marine resources for which NMFS has primary responsibility. NMFS will also seek assistance from other NOAA elements with expertise in areas relating to living marine resources and their habitats.

11. During the implementation of the Federal regulatory reform processes, NMFS, particularly its Central Office, will actively review and participate in the development of evolving Federal and State laws, regulations, policies and actions (e.g. Section 404 of the Clean Water Act) that affect habitats of species for which NMFS has primary management responsibility or which are the subject of a NMFS Program to ensure that habitat conservation is appropriately considered.

12. To generate greater interest in perpetuating healthy living marine resource habitats, NMFS will emphasize greater communication of its habitat conservation activities to its constituency. This includes commercial and marine recreational fishing interests, academia, environmental groups, coastal residents, marine-oriented industries, the general public, and the Congress.

Dated: July 14, 1983.

William G. Gordon,

Assitant Administrotor for Fisheries, National Marine Fisheries Service.

[FR Doc. 83-19515 Filed 7-18-83; 8:45 am]

BILLING CODE 3510-22-M

New England Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

SUMMARY: The New England Fishery Management Council, established by Section 302 of the Magnuson Fishery Conservation and Management Act (Pub. L. 94-265, as amended), will meet to discuss Mid-Atlantic Council actions regarding surf clams; National Marine Fisheries Service actions on lobster; reports of the oversight committee on groundfish and the inter-Council swordfish/billfish committee meeting, as well as other fishery management and administrative matters.

DATES: The public meetings will convene on Tuesday, August 9, 1983, at approximately 10 a.m., and will adjourn on Wednesday, August 10, 1983, at approximately 5 p.m. The meetings may be lengthened or shortened or agenda items rearranged, depending upon progress on the agenda.

ADDRESS: The public meetings will take place at King's Grant Inn, Danvers, Massachusetts.

FOR FURTHER INFORMATION CONTACT: New England Fishery Management Council, Suntaug Office Park, 5 Broadway (Route One), Saugus, Massachusetts 01906, Telephone: (617) 231-0422.

Dated: July 14, 1983.

Ann D. Terbush,

Acting Chief, Operations Coordination Group, National Marine Fisheries Service.

[FR Doc. 83-19514 Filed 7-18-83; 8:45 am]

BILLING CODE 3510-22-M

Western Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: The Western Pacific Fishery Management Council, established by Section 302 of the Magnuson Fishery Conservation and Management Act (Pub. L. 94-265, as amended), will hold public meetings to review and discuss the status of the Billfish Fishery Management Plan (FMP); Spiny Lobster FMP Amendment #1, and trap size emergency regulations; the Precious Corals FMP; status of fiscal year 1983 administrative and programmatic budgets and consider and vote on the fiscal year 1984 administrative budget; status of foreign fishing and foreign and domestic enforcement of Billfish Preliminary Management Plan and Spiny Lobster FMP, in the same way as changed by the spiny lobster emergency trap size regulations.

DATES: July 27-28, 1983 (9 a.m. to 4 p.m., July 27, 1983, in Pago Pago; 8 a.m. to noon on Manua Island, July 28, 1983).

ADDRESS: The public meetings will take place at the Conference Center at the Rainmaker Hotel, Pago Pago, American

Samoa and Ta'u High School Building on Manua Island, American Samoa.

FOR FURTHER INFORMATION CONTACT: Western Pacific Fishery Management Council, Room 1608, 1164 Bishop Street, Honolulu, Hawaii 96183, Telephone: (808) 523–1368.

Dated: July 14, 1983.

Ann D. Terbush,

Acting Chief, Operations Coordination Group, National Marine Fisheries Service.

[FR Doc. 83–19513 Filed 7–18–83; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF DEFENSE

Department of the Army

National Board for the Promotion of Rifle Practice; Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting:

Name of committee: EXECUTIVE COMMITTEE OF THE NATIONAL BOARD FOR THE PROMOTION OF RIFLE PRACTICE (NBPRP).

Date of meeting: 7 August 1983.

Place: Club House, Camp Perry, Ohio.

Time: 0900 Hours.

Proposed agenda:

1. Executive Officer's Report
2. Budget Report
3. Report by Ad Hoc Committee on Recommendations for Appointment to the National Board for the Promotion of Rifle Practice.
4. Report by AD Hoc Committee for Selection of Trophies for Civilian Club Teams.
5. Report by Ad Hoc Committee on Recommended DCM Funding of Juniors to the U.S. International Shooting Championships.
6. Revision of Army Regulation 920–30.
7. Revision of Army Regulation 920–15.
8. Status of DCM Procurement of Remote Scoring Rifle Target System.
9. Possible Modification of the .22 Caliber M–12 Target Rifle Manufactured by Harrington and Richardson Company.
10. Use of "SLED" Device for Slow Fire with the M–1 Rifle.
11. Possible further clarification of Army Regulation 920–30.

This meeting is open to the public.

Individuals desiring to attend the meeting should contact the office of the Director of Civilian Marksmanship (202) 272–0810 prior to 7 August 1983.

Lawrence E. Enterkin,

LTC, USA (Ret) Assistant Executive Officer.

[FR Doc. 83–19381 Filed 7–18–83; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[Docket PP–79EA & PP–68EA]

Application for Electricity Export Authorization (Docket PP–79EA) and Application To Amend Electricity Export Authorization (Docket PP–68EA); San Diego Gas & Electric Co.

AGENCY: Economic Regulatory Administration (ERA), DOE.

ACTION: Notice of receipt of two applications from the San Diego Gas & Electric Company (SDG&E) to authorize the export of electricity in Docket PP–79EA and to amend the existing electrical Export Authorization (Docket PP–68A) in Docket PP–68EA.

SUMMARY: DOE received two applications from SDG&E. The first, Docket PP–79EA, requests authorization to export up to 400 Megawatts (MW) of electrical power to Mexico over SDG&E's proposed 230 kilovolt (kV) transmission line connecting its proposed Imperial Valley Substation in California with the La Rosita Substation of the Commission Federal de Electricidad (CFE) in Mexico. An application for authority to construct that transmission line was filed on September 24, 1982, in Docket PP–79 (47 FR 52745).

The second application requests that an amendment be made to the existing Export Authorization in Docket PP–68A which presently allows the export of up to 125 MW of electrical power to Mexico over the existing 230 kV transmission line connecting SDG&E's Miguel Substation in California with CFE's Tijuana Substation in Mexico. The application requests that the limitation on the maximum amount of electrical power that may be exported over this line be increased to 400 MW.

FOR FURTHER INFORMATION CONTACT:

Garet Bornstein, Division of Petroleum and Electricity (RG–44), Office of Fuels Programs, Economic Regulatory Administration, Department of Energy, Forrestal Building, Room GA–017, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252–5935.

Lise Courtney M. Howe, Office of Assistant General Counsel, International Trade and Emergency Preparedness (GC–11), Department of Energy, Forrestal Building, Mail Stop 6F–094, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–2900.

SUPPLEMENTARY INFORMATION: Pursuant to § 202(e) of the Federal Power Act, DOE received two applications from SDG&E on June 22, 1983. The first application (Docket PP–79EA) seeks authority to export a maximum of 400 MW of power to Mexico, utilizing the proposed 230 kV transmission line connecting SDG&E's proposed Imperial Valley Substation with CFE's La Rosita Substation. On September 24, 1982, SDG&E applied for a Presidential Permit, pursuant to Executive Order 10485, as amended, to construct, connect, operate, and maintain the proposed Imperial Valley-La Rosita international interconnection in Docket PP–79 (47 FR 52745).

The second application (Docket PP–68EA) requests that the existing export authorization in Docket PP–68A be amended to increase the export limitation from 125 MW to 400 MW on SDG&E's existing Miguel-Tijuana 230 kV transmission line. The applicant has indicated that no more than 400 MW will be exported at any one time over the two lines.

Any person desiring to be heard or to protest this application should file a petition to intervene or protest with the Petroleum and Electricity Division (RG–44), Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA–017, 1000 Independence Avenue, SW., Washington, D.C. 20585, in accordance with § 1.8 or § 1.10 of the Rules of Practice and Procedure (18 CFR 1.8 or 1.10).

Any such petitions or protests should be filed by 30 days from the issuance of this Federal Register Notice. Protests will be considered by DOE in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene.

Copies of this application are on file with DOE and will, upon request, be made available for public inspection and copying at the Petroleum and Electricity Division (RG–44), Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA–017, 1000 Independence Avenue, S.W., Washington, D.C.

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

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 83-19306 Filed 7-18-83; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 82-16-NG]

Natural Gas Imports—Pacific Gas Transmission Co.; Application To Amend Authorization To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application to amend authorization to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of the receipt on October 28, 1982, of two applications by Pacific Gas Transmission Company (PGT) to amend its current authorization to import certain volumes of natural gas purchased from Alberta and Southern Gas Co. Ltd. (Alberta and Southern) by extending the term of that authorization and by increasing the total volume available for import. By these applications, PGT requested authorization to import additional volumes of Canadian natural gas in order to be able to import natural gas at PGT's currently authorized level of 1023 MMcF per day on an average day basis, 1126 MMcF per day on a maximum day basis and an annual quantity of 373,500 MMcF, for the period November 1, 1985 through October 31, 2000. On June 7, 1983, PGT amended these applications to request authorization to import natural gas at PGT's currently authorized level only through October 31, 1993, the present date by which all of the Canadian export licenses issued to Alberta and Southern will have expired. PGT also requested that the two filings be consolidated.

The applications are filed with ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-54. Protests or petitions to intervene are invited.

DATE: Protests or petitions to intervene are to be filed no later than 4:30 p.m on August 18, 1983.

FOR FURTHER INFORMATION CONTACT:

Stanley C. Vass (Natural Gas Division, Office of Fuels Programs), Economic Regulatory Administration, U.S. Department of Energy, Forrestal Building, Room GA-007, RG-43, 1000 Independence Avenue, S.W., Washington, D.C. 20585; 202-252-9482, or

Michael T. Skinker (Office of General Counsel Natural Gas and Mineral Leasing), U.S. Department of Energy, Forrestal Building, Room 6E-042, Washington, D.C. 20585; 202-252-6667.

SUPPLEMENTARY INFORMATION: By a decision issued August 5, 1960, Docket Nos. G-17350, G-17351, and G-17352, the Federal Power Commission (FPC) authorized PGT to import from Canada an average daily volume of 418 MMcF of natural gas for the term January 31, 1961, through October 31, 1986, or twenty-five years from date of first delivery, whichever is earlier. This authorization was amended by a decision issued June 14, 1966, in Docket Nos. CP65-213, CP65-214 and CP65-215, in which the FPC authorized PGT to import an additional average daily volume of 207 MMcF for the period November 1, 1967 to October 31, 1989. Next, by a decision issued October 30, 1968, in Docket Nos. CP67-187 and CP67-188, the FPC authorized PGT to import an additional average daily volume of 213 MMcF for the period November 1, 1969 to October 31, 1993. Thereafter, in a decision issued March 13, 1970, in Docket Nos. CP69-346 and CP69-347, the FPC authorized PGT to import an additional average daily volume of 185 MMcF for the period November 1, 1970 to October 31, 1985. Combined together with the original import authorization, these amendments curently permit PGT to import Canadian natural gas through October 31, 1993, as follows:

TABLE A

Period	Annual volume [1] (MMcf)	Average daily volume (MMcf/d)
Present to 10/31/85	373,395	1,023
11/1/85 to 10/31/86	305,870	838
11/1/86 to 10/31/89	153,300	420
11/1/89 to 10/31/93	77,745	213

[1] Annual volumes were determined by multiplying average daily volumes by 365.

Table B below, derived from tables prepared by PGT, summarizes the volumes available for export to PGT under export licenses held by Alberta and Southern.

TABLE B [1]

Date	Yearly average (MMcf)	Daily maximum (MMcf/d)	Daily average [2] (MMcf/d)
Present to 10/31/90	373,500	1126.0	1023.3
11/1/90 to 10/31/91	274,766	826.7	753.0
11/1/91 to 10/31/92	154,117	465.2	422.0
11/1/92 to 10/31/93	44,600	135.4	[3] 122.0

[1] Table B includes additional exports granted by the National Energy Board (NEB) through January 1983. Although Alberta and Southern applied for authorization to export additional volumes of natural gas through October 31, 2000, none of the additional volumes requested for export after October 31, 1992, were granted by the NEB in its January 1983 decision.

[2] The daily average volume was determined by dividing the yearly average by 365.

[3] Reduced volumes had been authorized for export by the NEB through 1993 prior to its January 1983 decision. For the period 11/1/92 through 10/31/93, volumes currently authorized for import of 213 MMcf per day of natural gas exceed the volumes authorized for export and the volumes which PGT has agreed to purchase for that period.

By a letter agreement between PGT and Alberta and Southern dated May 20, 1983, PGT asserts that it has agreed to purchase from Alberta and Southern for the period November 1, 1985, through October 31, 1993, the same quantities of gas that Alberta and Southern are authorized to export for that period.

In order to be able to continue to import natural gas at the currently authorized level for the period November 1, 1985, through October 31, 2000, PGT filed two applications with the ERA on October 28, 1982, for authorization to import additional volumes of natural gas. In one application, PGT requested authorization to import an additional 88.9 Bcf of natural gas during the period November 1, 1985 through October 31, 1987, which corresponds to the additional volumes authorized for export by the NEB in December, 1979, by amendment of NEB licenses GL-3 and GL-35. In the other application, PGT requested authorization to import an additional 4.5 Tcf of natural gas and to extend the term of its import authorization from October 31, 1993 to October 31, 2000. The additional 4.5 Tcf of natural gas requested for import by PGT corresponds to additional volumes which, on June 17, 1982, Alberta and Southern requested authorization to export through amendment of existing NEB licenses GL-3, GL-35, GL-16 and GL-24. However, as noted in Table B, none of the additional volumes requested for export after October 31, 1992, were granted by the NEB in its January, 1983 decision. On June 7, 1983, PGT filed an amendment to these applications with ERA requesting authorization to import natural gas at the currently authorized import level through October 31, 1993, the present date by which all the Canadian export licenses issued to Alberta and Southern will have expired. The currently authorized import level equals the volumes licensed for export only through October 31, 1990, after which authorized export volumes decline (see Table B). PGT also requested consolidation of its applications as amended.

Accordingly, as requested by PGT, ERA has consolidated PGT's applications, as amended, into one request for an increase in authorized volumes totaling 1.9 Tcf in order to be able to continue to import natural gas at the currently authorized level through

October 31, 1993 (ERA Docket No. 82–16–NG). The additional volumes needed by PGT for this purpose are:

TABLE C

Period	Average daily volumes (MMcf/d)	Annual volumes (MMcf)
Present to 11/1/85		
11/1/85 to 10/31/86	185	67,525
11/1/86 to 10/31/89	603	220,095
11/1/89 to 10/31/93	810	295,650

PGT's consolidated application also incorporates a request to continue the annual averaging and daily natural gas import flexibility which PGT is currently authorized and which corresponds to the flexibility which Alberta and Southern is permitted under its natural gas export licenses.

PGT notes that the NEB amended the export licenses issued to Alberta and Southern to reflect the reduction in the border price for exports of Canadian natural gas to the United States from $4.94 per MMBtu to $4.40 per MMBtu, effective April 11, 1983.

Under the gas sale contract between PGT and Alberta and Southern, PGT is required to take or otherwise pay for a minimum average daily volume equal to ninety (90) percent of the daily contract quantity during each contract year. As a result of amendments to this contract in March, 1981 and in June, 1982, the daily contract quantity was reduced from 1023 MMcf of natural gas to 869.79 MMcf of natural gas, effective July 1, 1980 through June 30, 1984, thereby reducing PGT's minimum purchase requirements by about 15 percent for that period. PGT may recover take or pay gas during any contract year by taking delivery of additional volumes over and above the required minimum average daily volume but not in excess of daily maximum volumes.

In support of its consoidated application, PGT states that the natural gas would continue to be imported at a point near Kingsgate, British Columbia, and that all of the additional volumes would be sold to its parent company, the Pacific Gas and Electric Company (PG and E). PGT asserts that the additional Canadian natural gas supplies for which import authorization is requested is needed by PG and E to continue to provide reliable service to gas customers in northern and central California and that continued access to additional canadian natural gas supplies must be provided to assure the adequacy of future gas supplies to PGT's California market. PGT asks for expedited consideration of its application inasmuch as the NEB has conditioned the export authorization granted to Alberta and Southern in January, 1983, upon receipt of proof by January 31, 1984, of ERA's import authorization for the additional volumes.

Other information: Any person wishing to become a party to the proceeding and, thus, to participate as a party in any conference or hearing which might be convened, must file a petition to intervene. Any person may file a protest with respect to this application. The filing of a protest will not serve to make the protestant a party to the proceeding. Protests will be considered in determining the appropriate action to be taken on the application.

All protests and petitions to intervene must meet the requirements specified by the regulations that were in effect on October 1, 1977 in 18 CFR 1.8 and 1.10. They should be filed with the Natural Gas Division, Economic Regulatory Administration, Room GA–007, RG–43, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585. All protests and petitions to intervene must be filed not later than 4:30 p.m., August 18, 1983.

A hearing will not be held unless a motion is made by a party or person seeking intervention and granted by the ERA, or if the ERA on its own motion believes that a hearing is necessary or required. A person filing a motion must demonstrate how a hearing will advance the proceedings. If a hearing is scheduled, the ERA will provide notice to all parties and persons whose petitions to intervene are pending.

A copy of PGT's application is available for inspection and copying in the Natural Gas Division Docket Room, located in Room GA–007, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., July 13, 1983.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 83-19406 Filed 7-18-83; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. ER81-141-001]

Allegheny Power System; Compliance

July 14, 1983.

Take notice that on June 24, 1983, Allegheny Power System ("APS"), in compliance with the Commission's Order of April 19, 1983, submitted for filing a Potomac Edison Company cost-of-service study and FERC Electric Tariff Original Volume No. 3, Original Sheet Nos. 17–1, 17–1A, 17–1B, 17–2, 17–2A and 17–2B. These are new Schedules WS–LV(M) and WS–HV(M) which are prepared in conformity with the cost-of-service study and the change in the fuel calculation.

APS also tendered for filing a description of the changes made to the cost-of-service study.

APS states that the rates developed include an additional 0.921¢ per kilowatt-hour in the base energy charges in both schedules.

Copies of the filing were served upon the public utility's jurisdictional customers and upon the other parties on the service list.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before July 29, 1983. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-19426 Filed 7-18-83; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6585-001]

Arizona Public Service Co.; Surrender of Preliminary Permit

July 13, 1983.

Take notice that Arizona Public Service Company, Permittee for the New Waddell Pumped Storage Project No. 6585 located on the Aqua Fria River in Maricopa County, Arizona, has requested that its preliminary permit be terminated. The preliminary permit was issued on December 22, 1982, and would have expired on January 1, 1985. The Permittee states that economic feasibility comparisons between the proposed project and alternative energy sources dissuade further studies pursuant to the preliminary permit.

Arizona Public Company's request was filed June 14, 1983. The surrender of the permit for Project No. 6585 is in the public interest and will become effective thirty days from the date of issuance of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-19440 Filed 7-18-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-337-000]

Columbia Gulf Transmission Co.; Application

July 14, 1983.

Take notice that on June 23, 1983, Columbia Gulf Transmission Company (Applicant), P.O. Box 683, Houston, Texas 77001, filed in Docket No. CP83-387-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation for Chevron U.S.A. Inc. (Chevron) on an interruptible, best-efforts basis of up to 10,000 Mcf of natural gas per day; pursuant to a gas transportation agreement, dated June 1, 1983, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that Chevron is purchasing natural gas from Mountain Fuel Resources, Inc. (Mountain Fuel), to be used by Chevron as emergency fuel to operate its natural gas processing plant located in Carter Creek, Uinta County, Wyoming. Applicant states that it would transport such gas for Chevron through Applicant's available capacity in its line and redeliver to Chevron a thermally equivalent quantity of gas at its measurement facilities adjacent to the plant. The redelivered volumes would be reduced to reflect the retention by Applicant of 1.05 percent of the total volume of gas received as fuel and unaccounted-for volumes.

Applicant states that Chevron would pay Applicant a rate of 6.16¢ per Mcf of gas for gas received for transportation.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 4, 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 385.414 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-19427 Filed 7-18-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-403-000]

Consolidated Gas Supply Corp.; Application

July 14, 1983.

Take notice that on July 1, 1983, Consolidated Gas Supply Corporation (Applicant), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP83-403-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale of natural gas in interstate commerce, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that Applicant seeks certificate authorization to sell natural gas to The Brooklyn Union Gas Company, Connecticut Light & Power Company, Granite State Gas Company, and New Jersey Natural Gas Company under the following terms and conditions, for a primary term of ten years: (1) From September 1, 1983, through October 31, 1984, the volumes listed below in Column 1 on an interruptible basis at a rate equivalent to the calculated 100 percent load factor rate for Rate Schedule RQ of its FERC Gas Tariff, Third Revised Volume No. 1; (2) from November 1, 1984, through October 31, 1985, the same volumes on a firm basis, at a rate equivalent to that contained in its Rate Schedule RQ; and (3) from November 1, 1985, through the end of the ten-year term and thereafter until the parties terminate the sales, the volumes listed in Column 2 below, also on a firm basis at a rate equivalent to Applicant's Rate Schedule RQ rate.

Applicant states that certificate authorization is requested to sell natural gas to the remaining ten customers listed below under the following terms and conditions, for a primary term of ten years: (1) From September 1, 1983, through October 31, 1985, the volumes listed in Column 2 on an interruptible basis at a rate equvalent to the calculated 100 percent load factor rate for its Rate Schedule RQ; and (2) from November 1, 1985, through the end of the ten-year term and thereafter until the parties terminate the sales, the same volumes on a firm basis at a rate equivalent to that contained in its Rate Schedule RQ.

	Column 1 dt per day	Column 2 dt per day
The Brooklyn Union Gas Company	14,721	29,970
Connecticut Light & Power Company	4,907	9,460
Granite State Gas Company	9,814	12,500
New Jersey Natural Gas Company	10,558	10,760
Berkshire Gas Company		1,050
Boston Gas Company		10,460
Consolidated Edison Company of New York, Inc		5,000
Essex County Gas Company		1,610
Fitchburg Gas & Electric Light Company		530
Gas Service Inc.		1,550
Long Island Lighting Company		2,500
Manchester Gas Company		1,550
National Fuel Gas Supply Corporation		4,500
Valley Gas Company		1,080
Total	40,000	92,500

Applicant further states that the proposed sales will be made pursuant to gas sales agreements signed between Consolidated and its fourteen customers.

It is explained that Applicant's proposal is structured to compete with the proposal currently pending before the Commission in Docket No. CP81-107-000, *et al.*

Any person desiring to be heard or to make any protest with reference to said application should on or before August 1, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-19428 Filed 7-18-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL83-30-000]

Elkem Metals Co.; Petition for Waiver of Regulations

July 14, 1983.

Take notice that on July 7, 1983, Elkem Metals Company submitted for filing a petition for waiver of Commission Regulations under the following regulations:

Subchapter B—Regulations under the Federal Power Act
Part 33—Application for Sale, Lease, or other Disposition, Merger or Consolidation of Facilities, or for Purchase or Acquisition of Securities of a Public Utility
Part 34—Application for Authorization of the Issuance of Securities or the Assumption of Liabilities
Section 35.15—Notices of Cancellation or Termination
Section 36.1—Annual Charges
Part 41—Accounts, Records and Memoranda
Part 45—Application for Authority to Hold Interlocking Positions
Part 46—Public Utility Filing Requirements and Filing Requirements for Persons Holding Interlocking Positions
Part 50—Filing of Company Procurement Policies and Practices
Subchapter C—Accounts, Federal Power Act (all provisions)
Subchapter D—Approved Forms, Federal Power Act
Part 141—Statements and Reports (Schedules)

Elkem is an industrial company that manufactures and sells ferroalloys and calcium carbide. Electricity which is produced by Elkem at its powerplant at Marietta, Ohio, and which is not required for its manufacturing operations is sold to Monongahela Power Company for resale to Atlantic City Electric Company.

Elkem states that the Commission should waive these requirements because it would relieve Elkem of regulatory burdens inconsistent with its status as an industrial enterprise engaged in ferroalloy manufacturing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before July 29, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-19429 Filed 7-18-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-599-000]

GPU Service Corp.; Filing

July 14, 1983.

The filing Company submits the following:

Take notice that on July 6, 1983, GPU Service Corporation (GPU) tendered for filing the following rate agreements:

(1) Power Supply Agreement, dated as of July 1, 1983 among Ohio Edison Company (Ohio Edison), Pennsylvania Power Company (Penn Power) and the Cleveland Electric Illuminating Company (CEI).

(2) Power Resale Agreement, dated as of July 1, 1983 among CEI and GPU, as agent for Jersey Central Power & Light Company (Jersey Central), Metropolitan Edison Company (Met Ed) and Pennsylvania Electric Company (Penelec).

GPU states that the agreements set forth terms pursuant to which Ohio Edison and Penn Power will deliver to CEI 200 megawatthour per hour of power for resale to GPU for the period July 1, 1983 through May 31, 1993.

The parties have requested a waiver to permit the proposed sale to become effective in less than 60 days.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 1, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-19430 Filed 7-18-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL8329-000]

The Town of Highlands, North Carolina; Haywood Electric Membership Corp.; North Carolina Electric Membership Corp.; Complaint

July 14, 1983.

Take notice that on June 30, 1983, the Town of Highlands, North Carolina ("Highlands"), Haywood Electric Membership Corporation ("HEMC"); and North Carolina Electric Membership Corporation ("Coops") submitted for filing a complaint regarding the justness and reasonableness of the rates being charged by Nantahala Power & Light Company ("Nantahala") under its PL-(COSAC) Tariff.

The Complainants state that under Article III, § 3 of the Settlement Agreement in Docket No. ER82-574, Nantahala's wholesale customers (Complainants) must file a complaint regarding the rates currently charged by Nantahala pursuant to its PL-(COSAC) Tariff.

The Complainants also state that under Nantahala's PL-(COSAC) Tariff, the costs of the company's power purchases from TVA flowed directly to wholesale customers. Thus, Highlands, NEMC and Coop request that the Commission hold this complaint in abeyance until final action has been taken in Docket No. ER82-774-000, *et al.*, which concern agreements among Nantahala, Tapoco and/or TVA currently under investigation by the Commission.

Any person desiring to be heard or to make any protest with reference to said filings should on or before July 28, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-19435 Filed 7-18-83; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 4907-002]

J-3 Lumber Co.; Surrender of Preliminary Permit

July 13, 1983.

Take notice that J-3 Lumber Company, Permittee for the Grouse Creek, Sims Mountain Project, FERC No. 4907, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 4907 was issued on April 20, 1982, and would have expired on April 30, 1984. The project would have been located on Grouse Creek in Humboldt County, California.

J-3 Lumber Company filed the request on March 22, 1983, and the surrender of the preliminary permit for Project No. 4907 is deemed accepted as of March 22, 1983, and effective as of 30 days after the date of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-19442 Filed 7-18-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-616-000]

Kansas Power & Light Co.; Filing

July 14, 1983.

The filing Company submits the following:

Take notice that on July 5, 1983, Kansas Power and Light Company (KP&L) tendered for filing Exhibit 1 dated June 1, 1983 to Addendum No. 2 to the Electric Interconnection Agreement dated January 18, 1972, by and between KP&L and the City of McPherson, Kansas, Board of Public Utilities McPherson and designated KP&L Rate Schedule FPC No. 127.

KP&L states that Exhibit 1 dated June 1, 1983, to Addendum No. 2 replaces Exhibit 1 dated May 1980. This change includes the Jeffrey Energy Center and the removal of certain other generating units from base load service.

KP&L requests waiver of the Commission's notice requirements to allow an effective date prior to the 60 day filing requirement.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR §§ 385.211, 385.214). All such motions or protests should be filed on or before August 1, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-19431 Filed 7-18-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-617-000]

Kansas Power & Light Co.; Filing

July 14, 1983.

The filing Company submits the following:

Take notice that on July 5, 1983, Kansas Power and Light Company (KP&L) tendered for filing a new Rate Schedule for Service Schedule K-Participation Power Service dated June 1, 1983, which constitutes a change in its FPC Electric Service Tariff No. 123, between KP&L and Midwest Energy, Inc. The proposed change would increase revenues from jurisdictional sales and service by approximately $2,795,805, based on the 12 month period ending April 30, 1984.

The proposed tariff change arises primarily from the dedication of Jeffrey Energy Center Unit #3 and certain additional transmission facilities to commercial service.

KP&L requests waiver of the Commission's notice requirements to allow an effective date prior to the 60 day filing requirements

Copies of the filing were served upon Midwest Energy, Inc. and the State Corporation Commission of the State of Kansas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed in or before August 1, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-19432 Filed 7-18-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-619-000]

Pennsylvania Power & Light Co.; Filing

July 14, 1983.

The filing Company submits the following:

Take notice that on July 6, 1983, Pennsylvania Power & Light Company (PP&L) tendered for filing as an initial rate schedule an executed Power Supply Agreement dated May 25, 1983 between PP&L and the Borough of Kutztown, Pennsylvania (Kutztown). Under the proposed rate schedule, PP&L will provide full requirements service to Kutztown. PP&L rates and charges for service to Kutztown will be the same as those charged by PP&L for service to its present customers receiving service at 66 kV or higher.

PP&L requests an effective date of September 11, 1983, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served on Kutztown and the Pennsylvania Public Utility Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 1, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to

intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-19434 Filed 7-18-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP83-39-001]

Tennessee Natural Gas Lines, Inc., Motion To Place Suspended Rates Into Effect

July 13, 1983.

Take notice that on June 29, 1983, Tennessee Natural Gas Lines, Inc. (TNGL) tendered for filing, pursuant to section 4 of the Natural Gas Act and Section 154.67 of the Commission's Regulations thereunder, a motion to place into effect on August 1, 1983, the sheets,[1] as revised, to its FERC Gas Tariff, First Revised Volume No. 1, which, by Commission Order issued in this proceeding on March 3, 1983, were suspended until August 1, 1983.

TNGL filed and the Commission's Order suspended Forty-second Revised Sheet No. PGA-1, Eleventh Revised Sheet No. 4-A, Eighth Revised Sheet No. 4-B, and Third Revised Sheet No. 8-I. The corresponding sheets hereby moved to be made effective are revised to reflect in TNGL's base tariff rates its supplier's rates which have been revised since the initial filing.

Forty-fifth Revised Sheet No. PGA-1 sets forth TNGL's rates as filed January 28, 1983, revised to reflect Tennessee Gas Pipeline Company's (a Division of Tenneco, Inc.) rates which will be in effect on August 1, 1983.

As required by § 154.67 of the Commission's Regulations under the Natural Gas Act, TNGL attaches an undertaking to comply with the provisions of said Section, together with a certified copy of resolution of TNGL's Board of Directors authorizing the same.

TNGL states that a copy of the motion and the attachments is being served upon TNGL's jurisdictional customer and upon the affected state commission, the Tennessee Public Service Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before July 21, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-19445 Filed 7-18-83; 8:45 am]

BILLING CODE 6717-01-M

[1] Forty-fifth Revised Sheet No. PGA-1, Eleventh Revised Sheet No. 4-A, Eighth Revised Sheet No. 4-B, and Third Revised Sheet No. 8-I.

[Docket No. RP83-35-000]

Texas Eastern Gas Pipline Corp.; Motion To Place Revised Tariff Sheets Into Effect

July 13, 1983.

Take notice that on June 30, 1983, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing a motion to place into effect revised tariff sheets. Accompanying this motion are three alternative proposed sets of revised tariff sheets. The first set of revised tariff sheets (Proposal 1) sets forth rates based on the *Seaboard* method of cost classification, and reflects the *South Georgia* method of amortizing Texas Eastern's future unfunded income tax liability. Texas Eastern requests that the revised tariff sheets included in Proposal 1 be placed into effect as of July 1, 1983.

Alternatively, Texas Eastern requests that the Proposal 2 set of revised tariff sheets be placed into effect as of July 1, 1983. Such revised tariff sheets reflect rates based on the *Seaboard* method of cost classification, but do not use the *South Georgia* method of amortizing Texas Eastern's future unfunded tax liability. The reasons in favor of accepting revised tariff sheets reflecting the *Seaboard* method of cost classification are set forth in the filing.

If neither of the foregoing alternatives are acceptable, Texas Eastern moves to place into effect the revised tariff sheets included in Proposal 3. The revised tariff sheets included in Proposal 3 reflect the *United* method of cost classification, but do not reflect the *South Georgia* method of amortizing Texas Eastern's future unfunded income tax liability. These revised tariff sheets, with the adjustments indicated in the filing, were those accepted by the Commission in its January 18, 1983 order.

Texas Eastern requests waiver of the regulation to the extent necessary to permit the revised tariff sheets included in Proposals 1, 2, or 3, as appropriate, to become effective July 1, 1983.

Texas Eastern states that a copy of the filing and enclosures are being served on the parties in these proceedings.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before July 21, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-19446 Filed 7-18-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP83-101-000]

Transcontinental Gas Pipe Line Corp.; Tariff Filing

July 13, 1983.

Take notice that on June 29, 1983, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing Thirteenth Revised Sheet No. 351 and First Revised Sheet No. 351-A to its FERC Gas Tariff, Original Volume No. 2. The proposed effective date of the revised tariff sheets is August 1, 1983.

Transco states that the purpose of this filing is to revise the rate charged Southern Natural Gas Company (Southern) for interruptible transportation service performed under Rate Schedule X-47, as amended August 27, 1982. Such amendment provides that Southern shall pay the Production Area to Zone 1 rate contained in Transco's Rate Schedule T.

Transco states that copies of the filing are being mailed to each of its customers and to interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before July 1, 1983. Protests will be considered by the Commission in determining the

appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-19449 Filed 7-18-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP77-426-006]

Transcontinental Gas Pipe Line Corp; Petition To Amend

July 14, 1983.

Take notice that on June 29, 1983, Transcontinental Gas Pipe Line Corporation (Petitioner), P. O. Box 1396, Houston, Texas 77251, filed in Docket No. CP77-426-006 a petition pursuant to Section 7(c) of the Natural Gas Act to amend further the order of August 29, 1977,[1] in Docket No. CP77-426, as amended November 15, 1979, March 25, 1981, and September 30, 1982, so as to authorize Petitioner to extend the transportation service for Owen-Corning Fiberglas Corporation (Owens-Corning) for an additional 2-year period ending August 28, 1985, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that it is presently authorized to transport up to 1,000 Mcf of natural gas per day for Owens-Corning, its only direct industrial customer, for use at Owens-Corning's Anderson, South Carolina, plant. It is stated that Owens-Corning purchases the gas from Kilroy Properties Incorporated and Exploration, Inc., from production of the Racca well, Woodlawn Field, Jefferson Davis Parish, Louisiana. Moreover, it is asserted that Texas Gas Transmission Corporation receives the transportation quantities in the field and delivers them to Petitioner for ultimate delivery to the Anderson plant.

Petitioner requests authority to continue the transportation service for Owens-Corning for an additional two-year term expiring on August 28, 1985.

Petitioner proposes to charge an initial rate of 25.9 cents per dekatherm (dt) equivalent of gas delivered including 0.7 cent per dt equivalent for GRI General R&D Funding Unit. Petitioner states that it would initially retain 4.6 percent of the quantities received for transportation as make-up for compressor fuel and line loss.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before August 4, 1983, file with the Federal Energy Regulatory Commission, Washington, D. C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-19436 Filed 7-18-83; 8:45 am]

BILLING CODE 6717-01-M

[1] This proceeding was commenced before the FPC. By joint regulation of October 1, 1977 (10 CFR 1000.1), it was transferred to the Commission.

[Docket No. RP83-106-000, RP83-100-000]

Transwestern Pipeline Co., El Paso Natural Gas Co.; Petition To Institute Proceedings for Consolidation and Stay

July 13, 1983.

Take notice that on July 1, 1983, Transwestern Pipeline Company (Transwestern), pursuant to Sections 4, 5, and 16 of the Natural Gas Act, 15 U.S.C. 717c, 717d, 717o (1976), and Rules 207 and 503 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207 and 385.503, petitioned the Federal Energy Regulatory Commission (Commission) to consolidate its consideration of those minimum bill issues currently pending before it in *Transwestern Pipeline Company*, Docket No. RP81-130-000 and in the "Notice of Tariff Filing to Revise Minimum Bill Provision in Rate Schedule G Applicable to California Customers" filed by El Paso Natural Gas Company (El Paso) on June 17, 1983.

Transwestern also petitions the Commission to institute, in connection with the requested consolidated proceedings, a proceeding under Section 5 of the Natural Gas Act, 15 U.S.C. § 717d, to inquire into the terms and conditions (including the minimum bill provisions) of service rendered by all affiliates of Pacific Lighting Gas Supply relating to the California market.

Transwestern also requests a stay of proceedings pending in Transwestern Pipeline Company, Docket Nos. RP81-130-000, *et al.*, relating to the minimum bill provisions of Transwestern's tariff in order to permit consideration of these minimum bill issues on a consolidated bases. Transwestern maintains that the consolidation and investigation it seeks are essential for the just resolution of currently pending proceedings concerning Transwestern's minimum bill. Transwestern contends that it will be materially injured if its petition is not granted, and that the public interest will be impaired.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211, 385.214). All such petitions or protests should be filed in or before July 21, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-19450 Filed 7-18-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EC83-13-000]

Union Electric Co., et al.; Joint Application

July 14, 1983.

Take notice that on July 5, 1983, Union Electric Company ("UE") Missouri Utilities Company ("MU"), Missouri Power & Light Company ("MPL"), and Missouri Edison Company ("ME") submitted for filing a supplemental Joint Application.

The Utility Companies state that this Supplemental Joint Application is being filed to advise the Commission of actions, relating to the merger, taken subsequent to the filing of the Joint Application.

The Utility Companies also state that the Illinois Commerce Commission authorized the mergers of MU, MPL, ME into UE in Docket No. 83-0138. In addition, the Utility Companies state that the stockholders of UE, ME and MPL approved the merger. Approval of ME stockholders is not required by Missouri State Law.

Any person desiring to be heard or to make any protest with reference to said

filings should on or before July 29, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed with the commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-19437 Filed 7-18-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP78-58-001]

Valero Interstate Transmission Co. (formerly South Texas) Natural Gas Gathering Co. Rate Schedule Filing

July 13, 1983.

Take notice that on June 30, 1983, Valero Interstate Transmission Company (Vitco) tendered for filing pursuant to the terms of the August 3, 1979 order of the Federal Energy Regulatory Commission (Commission) in *South Texas Natural Gas Gathering Company*, Docket No. RP78-58, in supplement No. 41 to Vitco's Rate Schedule No. 1 a notice of change in rate for the transportation of gas for Natural Gas Pipeline Company of America and in Supplement No. 4 to each of Vitco's Rate Schedule Nos. 10, 11, 12 and 13 and a notice of change in rate for the transportation of liquefiable hydrocarbons for shell Oil Company, Conoco, Inc., Tenneco Oil Company and Shell Oil Company, respectively. Under the terms of the settlement approved by the Commission on August 3, 1979, in Docket No. RP78-58 Vitco proposes to increase effective on August 3, 1983, the above transportation rates from 5.321¢ per Mcf at 14.65 psia (5.35¢ per mcf at 14.73 psia) to 5.570¢ per Mcf at 14.65 psia (5.60¢ per Mcf at 14.73 psia).

Any person desiring to be heard or to protest said filing should file a petition to intervene of protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before July 21, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-19438 Filed 7-18-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-618-000]

Virginia Electric and Power Co.; Filing

July 14, 1983.

The filing Company submits the following:

Take notice that on July 1, 1983, the Virginia Electric and Power and Company (VEPCO) tendered for filing a proposed change in the rate level of its electric resale schedules presently on file with the Commission.

VEPCO is proposing rates that would reflect the inclusion in rate base of 50% of construction work in progress (CWIP) in addition to CWIP (already included in rate base) related to pollution control facilities and fuel conversion facilities. VEPCO had proposed to include the effect of such rate base treatment as a "phase-three" of its rates filed in Docket No. ER83-430-000.

VEPCO requests an effective date of October 31, 1983, and therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR §§ 385.211, 385.214). All such motions or protests should be filed on or before August 1, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-19438 Filed 7-18-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA82-1-52-002]

Western Gas Interstate Co.; Proposed PGA Rate Adjustment

July 13, 1983.

Take notice that on July 1, 1983, Western Gas Interstate Company (Western) tendered for filing Second Substitute Eighteenth Revised Sheet No. 3A to its FERC Gas Tariff, Original Volume No. 1. Said tariff sheet is proposed to become effective on November 1, 1981.

Western states that the filing is in compliance with Ordering Paragraph (B) of the Commission's June 24, 1982 Order issued in Docket No. TA82-1-000 (PGA82-1, IPR82-1) and that Second Substitute Eighteenth Revised Sheet No. 3A reflects a reduction of 21.74 cents per Mcf to Rate Schedule G-N, an 8.58 cent reduction to Rate Schedule G-R and a .65 cent reduction to Rate Schedule G-S.

Western states that copies of this filing were served upon Western's transmission system customers and the interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practices and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before July 21, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-19452 Filed 7-18-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-2569-001, et al.]

Aminoil USA, Inc., et al.; Applications for Certificates, Abandonment of Service and Petitions To Amend Certificates[1]

July 13, 1983.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to Section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before July 27, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure a hearing will be held without further notice before the Commission on all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates or the authorization for the proposed abandonment is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
G-2569-001, D, June 22, 1983	Aminoil USA, Inc., P.O. Box 94193, Houston, Tex. 77292	Northwest Central Pipeline Corp., Fox Plant, Carter County, Okla.	(1)	
G-4949-000, D, June 22, 1983	Sun Exploration & Production Co., P.O. Box 20, Dallas, Tex. 75221.	United Gas Pipe Line Co., Brandt Field, Goliad County, Tex.	(2)	
G-7167-002, D, July 1, 1983	Gulf Oil Corp., P.O. Box 2100, Houston, Tex. 77001	United Gas Pipe Line Co., J. N. Seller No. 1 Well, Abbeville Field, Vermilion Parish, La.	(3)	
G-10122-004, D, June 20, 1983	Conoco Inc., P.O. Box 2197, Houston, Tex. 77252	Tennessee Gas Pipeline Co., OCS G-4678, West Delta Area, Offshore La.	(4)	
G-12244-000, D, June 30, 1983	Texaco Inc., P.O. Box 2420, Tulsa, Okla. 74102	Northwest Central Pipeline Corp., N.E. Waynoka Field, Woods County, Okla.	(5)	
G-12455-000, D, June 24, 1983	Texaco Inc	Panhandle Eastern Pipe Line Co., Greenough Field, Beaver County, Okla.	(6)	
G-20146-000, C, June 17, 1983	ARCO Oil & Gas Co., Division of Atlantic Richfield Co., P.O. Box 2819, Dallas, Tex. 75221.	Transcontinental Gas Pipe Line Corp., San Miguel Creek Field, McMullen County, Tex.	(7)	14.65
CI62-435-000, D, June 30, 1983	do	Trunkline Gas Co., Esthar Field, Vermilion Parish, La.	(8)	
CI64-612-001, D, June 22, 1983	Aminoil USA, Inc	Northwest Central Pipeline Corp., Fox Plant, Carter County, Okla.	(1)	
CI69-495-000, D, June 17, 1983	Texaco Inc	Natural Gas Pipeline Co., of America, Lorena West Field, Texas County, Okla.	(10)	
CI70-995-000, C, June 20, 1983	Mobile Oil Corp., Nine Greenway Plaza Suite 2700, Houston, Tex. 77046.	Transwestern Pipeline Co., Guyman Field, Cimarron County, Okla.	(11)	14.65
CI78-792-001, D, June 23, 1983	Cotton Petroleum Corp., P.O. Box 3501, Tulsa, Okla. 74102	Northern Natural Gas Co., Frazier "A" #1 Well, S1140-T43-H&TC Survey, Lipscomb County, Tex.	(12)	
CI83-267-000, F, June 15, 1983	Texaco Producing Inc. (Partial Succ. in Interest to Texaco Inc.), P.O. Box 52332, Houston, Tex. 77052.	Southern Natural Gas Co., Eugene Island Area, Block 260, SE¼, Offshore La.	(13)	15.025
CI83-268-000, B, June 15, 1983	Horizon Oil & Gas Co. of Texas, P.O. Box 1020, Dallas, Tex. 75221.	Northern Natural Gas Pipeline Co., Hansford (Upper Morrow) Field, Hansford County, Tex.	(14)	
CI83-270-000, F, June 16, 1983	Texaco Producing Inc. (Partial Succ. in Interest to Texaco Inc.), P.O. Box 52332, Houston, Tex. 77052.	Consolidated Gas Supply Corp., Eugene Island Area, Block 205 Field, Block 196, Offshore La.	(15)	15.025
CI83-272-000 (CI70-385), B, June 17, 1983.	Conoco Inc., P.O. Box 2197, Houston, Tex 77252	Kansas-Nebraska Natural Gas Co., Inc., N.W. Tyrone Field, Texas County, Okla.	(16)	
CI83-273-000, A, June 20, 1983	Hamilton Brothers Oil Co., as agent for H. B. Joint Venture (1973), 1600 Broadway, Suite 2600, Denver, Colo. 80202.	Michigan Wisconsin Pipe Line Co., Blocks A-351/368, High Island Area, Offshore Tex.	(17)	14.65
CI83-274-000, A, June 20, 1983	Conoco Inc	Tennessee Gas Pipeline Co., West Cameron Block 66 "E" Platform, Offshore La.	(18)	15.025
CI83-275-000, B, June 20, 1983	E. I. du Pont de Nemours & Co., P.O. Box 2197, Houston, Tex. 77252.	Warren Petroleum Co., Scharb State Lease (SW/4 Sec. 2, T19S, R34E), Lea County, N. Mex.	(19)	
CI83-276-000 (G-4311), B, June 20, 1983	Shell Oil Co., One Shell Plaza, P.O. Box 2463, Houston, Tex. 77001.	Texas Gas Pipe Line Corp., Nome Field, Jefferson County, Tex.	(20)	
CI83-277-000 (G-4945), B, June 20, 1983	Sun Exploration & Production Co., P.O. Box 20, Dallas, Tex. 75221.	United Gas Pipe Line Co., Slick-Wilcox Field, Goliad and Dewitt Counties, Tex.	(21)	
CI83-279-000, A, June 22, 1983	Tenneco Oil Co., P.O. Box 2511, Houston, Tex. 77001	Florida Gas Transmission Co., Sabine Pass, Block 13 "A" & "B", Offshore La.	(22)	15.025
CI83-280-000 (G-12784), B, June 27, 1983.	Sun Exploration & Production Co	Texas Eastern Transmission Co., Yoward Field, Bee County, Tex.	(23)	
CI83-281-000 (CI65-802), B, June 27, 1983.	Sohio Petroleum Co., P.O. Box 4587, Houston, Tex. 77210	Texas Gas Transmission Corp., West Gueydan Field, Vermilion Parish, La.	(24)	
CI83-282-000 (G-19457), B, June 27, 1983.	do	Columbia Gas Transmission Corp., Calcasieu Pass Field, Cameron Parish, La.	(25)	
CI83-283-000 (CI74-320), B, June 27, 1983.	Sohio Petroleum Co., P.O. Box 4587, Houston, Tex 77210	Texas Gas Transmission Corp., West Gueyday Field, Vermilion Parish, La.	(26)	
CI83-284-000, B, June 27, 1983	Paramount Producing Inc., P.O. Box 1581, Pampa, Tex. 79065.	Northern Natural Gas Co., Upper Morrow Field, Ochiltree County, Tex.	(27)	
CI83-285-000, F, June 27, 1983	Texaco Production Inc. (Partial Succ. in Interest to Texaco Inc.), P.O. Box 52332, Houston, Tex. 77052.	Sea Robin Pipeline Co., Eugene Island Area, Block 205 Field, Block 196, Offshore La.	(15)	15.025
CI83-286-000 (G-9960), B, June 27, 1983	Goldking Production Co., P.O. Box 4394, Houston, Tex. 77210.	Florida Gas Transmission Co., Grosse Tete Field, West Baton Rouge Parish, La.	(28)	
CI83-288-000, A, June 29, 1983	Shell Offshore Inc., One Shell Plaza, P.O. Box 4480, Houston, Tex. 77001.	Transcontinental Gas Pipe Line Corp., South Timbalier Blocks 300/301, Offshore La.	(29)	15.025
CI83-289-000 (CI72-89), B, June 24, 1983	Getty Oil Co., P.O. Box 1404, Houston, Tex. 77251	Texas Eastern Transmission Corp., Northeast Nada Field, Colorado County, Tex.	(30)	
CI83-290-000, B, June 30, 1983	Hummon Corp., 400 One Main Place, Wichita, Kans. 67202-1394.	Northern Natural Gas Co., Harper Ranch Field, Clark County, Kans.	(31)	
CI83-291-000, B, July 1, 1983	Bolin Oil Co., 1120 Oil & Gas Building, Wichita Falls, Tex. 76301-3354.	Northern Natural Gas Co., Wildcat Field, Hill County, Mont.	(32)	

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
CI83-292-000, B, July 1, 1983	Hummon Corp	Northern Natural Gas Co., Harper Ranch Field, Clark County, Kans.	(23)	
CI83-293-000 (CI75-266), B, July 1, 1983	Sun Exploration & Production Co., P.O. Box 20, Dallas, Tex. 75221.	Arkansas Louisiana Gas Co., Haynesville Field, Claiborne Parish, La.	(24)	
CI83-287-000, A, June 28, 1983	Tenneco Oil Co., P.O. Box 2511, Houston, Tex. 77001	Tennessee Gas Pipeline Co., Vermilion Block 122 "A" Platform and East Cameron Block 129, Offshore La.	(25)	14.73
CI83-294-000, A, July 1, 1983	Eugene Shoal Oil Co., P.O. Box 7600, Los Angeles, Calif. 90051.	Texas Gas Transmission Corp., Blocks A-595 and A-596 High Island Block A-573 Field, South Addition, High Island Area, Offshore Tex.	(26)	14.65
G10146-000, D, July 5, 1983	Getty Oil Co., P.O. Box 1404, Houston, Tex. 77251	Tennessee Gas Pipeline Co., West Delta Area, Offshore La.	(27)	
CI67-153-000, D, July 5, 1983	Sun Exploration & Production Co., P.O. Box 20, Dallas, Tex. 75221.	Panhandle Eastern Pipe Line Co., Tangier and Gage Fields, Ellis and Woodward Counties, Okla.	(28)	
CI75-19-003, C, June 20, 1983	Texas Eastern Exploration Co., P.O. Box 2521, Houston, Tex. 77252.	Texas Eastern Transmission Corp., Block 513, West Cameron Area, Offshore La.	(29)	15.025
CI77-586-001, C, June 20, 1983	do	Texas Eastern Transmission Corp., Block 593, West Cameron Area, South Addition, Offshore La.	(40)	15.025
CI83-295-000, B, July 1, 1983	Robert Mosbacher, *et al.*, 1300 Main Street, Suite 2100, Houston, Tex. 77002.	Texas Eastern Transmission Corp., Melrose (Slick-Wilcox) Field, Goliad County, Tex.	(41)	
CI83-296-000 (CI67-1354), B, July 5, 1983	Diamond Shamrock Corp. (Succ. to the Shamrock Oil & Gas Corp. and Diamond Alkali Co.), P.O. Box 631, Amarillo, Tex. 79173.	Northern Natural Gas Co., Sections 27 and 33, T33S, R26W, Meade County, Kans.	(42)	
CI83-297-000, B, July 5, 1983	Eastern American Energy Corp., 14001 East Iliff Avenue, Suite 600, Aurora, Colo. 80014.	Equitable Gas Co., Gilmer County, W. Va	(43)	
CI83-298-000, B, July 6, 1983	Michel T. Halbouty Energy Co., The Halbouty Center, 5100 Westheimer Road, Houston, Tex. 77056.	Michigan Wisconsin Pipeline Co. (Formerly: American Louisiana Pipeline Co.), Bayou Hebert Field, Vermilion Parish, La.	(44)	

[1] Aminoil has notified Northwest Central of its ability to deliver a certain quantity of gas. To the extent Northwest Central will not take the full amount available, the gas would be released from the gas sales contract.
[2] Lease released November 28, 1979. Expired by its own terms December 27, 1979.
[3] Uneconomical to connect well.
[4] OCS G-4678 expired on June 6, 1982.
[5] Leases have been released.
[6] Cessation of production lease has expired.
[7] Applicant is filing amend certificate to include additional working interest acquired under sole risk provision of operating agreement.
[8] Partial release of LA-9685 covering lands lying in Section 65, T14S, R3E, Vermilion Parish, La.
[9] Not used.
[10] Fuel to Lessor for agricultural irrigation.
[11] By assignment dated October 16, 1980 NABOB Production Co. assigned this acreage back to Mobil, therefore, Applicant is requesting that the Certificate be further amended so that the Gas Sales Contract dated April 16, 1970, as amended, may be further affected by the amendment dated October 16, 1980.
[12] The reserves attributable to the Frazier "A" #1 Well were depleted and the well was plugged and abandoned.
[13] Applicant has acquired by assignment an interest of Texaco Inc., Assignor, of certain properties in the Eugene Island Area, Offshore Louisiana.
[14] No longer commercially productive.
[15] Applicant has acquired by assignment an interest of Texaco Inc., Assignor, of certain properties in the Eugene Island Area, Block 205 Field, Offshore Louisiana.
[16] All leases have expired.
[17] Applicant is willing to accept a certificate of public convenience and necessity conditioned in price to the applicable ceiling rates as established by the Natural Gas Policy Act of 1978.
[18] Applicant is filing under Gas Purchase Contract dated May 25, 1982.
[19] Du Pont's interest in the lease subject to the March 4, 1974 gas contract has terminsted. The Scharb 2 State Well No. 1 was plugged on December 10, 1976.
[20] Shell assigned its right, title and interest under the Nome Field contract to the Coalinga Corporation of Long Beach, Calif., effective March 1, 1983.
[21] All Sun's leasehold rights released. Depletion of gas reserves.
[22] Applicant is filing under Gas Purchase Contract dated June 17, 1983.
[23] The leases and acreage committed have either expired and released or have been depleted of gas reserves.
[24] The Camerina Sand Unit A has ceased to produce and was plugged and abandoned. The committed lease included in said Unit was terminated when the only well on the lease terminated production.
[25] The only unit delivering gas under this contract was the Stine Unit "A", Well No. 1. After production from the well ceased the well was plugged and abandoned. Columbia has informed Sohio that it intends to remove its metering facilities.
[26] The Camerina Sand Unit A has ceased to produce and was plugged and abandoned. The committed lease included in said Unit was terminated upon the plugged of the only well in the Unit.
[27] Lack of economical production of commercial quantities of Natural Gas.
[28] The 19,000 foot pipeline, originally constructed by Sohio Petroleum Co. in the early 1950's has deteriorated to the point that it is no longer useable and in order to continue deliveries of gas to Florida Gas Transmission Co., other arrangements must be made by Goldking Production Co.
[29] Applicant is filing under Gas Purchase Contact dated May 10, 1983.
[30] All properties have been released by Getty and wells have been plugged and abandoned.
[31] Well water out—No gas volume.
[32] Water encroachment.
[33] Non-economical.
[34] The R. P. Bond Unit Well No. 1, operated by Tenneco Oil Co., ceased producing gas from the Smackover "C" Sand in 1975 and was plugged and abandoned January 19, 1978.
[35] Applicant is filing under Gas Purchase and Sales Agreement dated May 26, 1983.
[36] Applicant is filing under Gas Purchase Contract Purchase dated June 27, 1983.
[37] Expiration of lease.
[38] Lease terminated upon P&A of Sutter Unit 1-29 on July 31, 1980.
[39] Applicant is filing under Gas Purchase Contract dated August 24, 1973, amended by Letter Agreement dated April 12, 1983.
[40] Applicant is filing under Gas Purchase Contract dated May 31, 1977, amended by Letter Agreement dated April 12, 1983.
[41] Reservoir cannot be economically produced, compressed and delivered into Texas Eastern's line at the pressure in such line, well has been plugged and abandoned, Mosbacher lease has expired.
[42] The only well covered by the rate schedule has been plugged, and the oil and gas leases have been released.
[43] Equitable has released Eastern American for a period of 15 years from its contractual commitment to sell its production to Equitable. The wells do not produce large volumes of gas. Columbia Gas Transmission Corp. has agreed to purchase from Eastern American the gas released by Equitable and has entered into a gas purchase contract for a term of 15 years, continuing from year to year unless terminated by either Eastern American or Columbia.
[44] Well plugged and abandoned, leases were released and Applicant has picked up new leases and wants to sell to an alternate buyer.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 19439 Filed 7-18-83; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CI80-160-002]

Fraley Energy Co., In Behalf of Itself and Coastal Oil & Gas Corp.; Application for Abandonment of Service

July 12, 1983.

Take notice that the Applicant listed herein has filed an application pursuant to Section 7 of the Natural Gas Act for authorization to abandon service as described herein, all as more fully described in the application which is on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 20, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20428, a petition to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding.

Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure a hearing will be held without further notice before the Commission on the application in the event no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that authorization for the proposed abandonment is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
CI80-160-002, D, July 11, 1983	Fraley Energy Co., in behalf of Itself and Coastal Oil & Gas Corp., 8009 Fouts, Amarillo, Texas 79121.	Colorado Interstate Gas Co., West Panhandle Field, Potter County, Tex.	(1)	

[1] There are no casinghead gas wells located on such land and no production of casinghead gas from such land and Coastal does not desire to drill such casinghead gas rights and has farmed out such rights to Fraley to sell to an alternate buyer.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 83-19441 Filed 7-18-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP83-36-000]

State of New Mexico, Mobil Producing Texas and New Mexico, Inc., Brunson Argo #9 Well, FERC J.D. No. 82-21685; Petition To Reopen Final Well Category Determination and Request for Withdrawal

July 13, 1983.

On June 30, 1983, Mobil Producing Texas and New Mexico, Inc. (Mobil) filed with the Federal Energy Regulatory Commission (Commission) a petition to reopen and a request to withdraw its application for a final well category determination pursuant to § 275.202 of the Commission's Regulations (18 CFR 275.202 (1982)), that natural gas from the Brunson Argo #9 Well, located in Lea County, New Mexico, qualifies as stripper well natural gas pursuant to section 108 of the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3301-3432 (Supp. V 1982). This affirmative determination made by the New Mexico Oil Conservation Division (New Mexico) became a final determination on April 18, 1983, pursuant to section 503(d) of the NGPA and § 275.202(a) of the Commission's regulations.

Mobil requests reopening of this final determination so that it can withdraw its application for said determination, on the basis of production records which indicate that the Brunson Argo #9 Well produced in excess of the 60 Mcf per day limit during the initial qualifying period from September to November of 1981, as set forth by 18 CFR 271.804 (1982).

Mobil states that its request to reopen and vacate the Brunson Argo #9 Well is the result of Mobil's ongoing examination of section 108 wells. On examination, Mobil avers that the Brunson Argo #9 Well revealed two producing zones, the Drinkard at 6332 to 6591 feet and the Paddock at 5187 to 5196 feet. The Drinkard Zone is considered to be non-associated gas (gas well gas) and the Paddock Zone associated gas (casinghead). Mobil contends that its section 108 qualification was based only on production from the Drinkard Zone. When production from the Paddock Zone is considered along with the Drinkard Zone production, Mobil's section 108 application was inappropriate since the allowable production rate was exceeded.

Further, Mobil avers that it uses a computer routinely to check monthly all volumes for wells qualified under section 108. Part of the monthly routine is to identify dual completion wells and to consolidate the respective volumes for NGPA compliance purposes. Mobil contends that it recently discovered that through a programming defect, production volumes from the Drinkard Zone and the Paddock Zone were not being combined. Thus Mobil has initiated a manual procedure to identify all multiple zone producing wells and to consolidate respective volumes while corrective computer programming is undertaken. Therefore, Mobil requests that the Commission reopen the Brunson Argo #9 Well category determination under section 108 and of the NGPA, and allow Mobil to withdraw its application.

Mobil states that it received section 108 payments from the purchaser Northern Natural Gas Company for the period January 1982 through April 1983. A refund of the section 108 payments in excess of the otherwise applicable NGPA section 104 rate was made to the purchaser on June 13, 1983. A refund report will be submitted to the Commission when the purchaser concurs with Mobil Producing Texas & New Mexico Inc.'s calculations. Notwithstanding these assertions, the Commission hereby gives notice that the question of whether refunds, plus interest as computed under § 154.102(c) (18 CFR 154.102(c) (1983)), will be required is a matter which is subject to the review and final determination of the Commission.

Any person desiring to be heard or to make any protest to the requested reopening and withdrawal should file, within 30 days after this notice is published in the **Federal Register**, with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of Rules 214 or 211 of the Commission Rules of Practice and Procedure (18 CFR 385.214 or .211 (1982)). All protests filed will be considered but will not make the protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene in accordance with the Commission's rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-19444 Filed 7-18-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP83-35-000]

Southern Natural Gas Co.; Petition for Declaratory Order

July 13, 1983.

On June 30, 1983, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202, filed a Petition for Declaratory Order pursuant to § 385.207 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure (18 CFR 385.207 (1982)). Such petition requests the Commission to issue an order to remove uncertainty and settle a controversy that exists with regard to § 270.207 of the Commission's regulations (18 CFR 270.207 (1982)). More specifically, Southern requests a declaration of whether § 270.207 prohibits it from paying Joseph F. Fritz and three co-owners (Fritz) a deregulated price for certain natural gas subject to section 107(c)(1) of the Natural Gas Policy Act of 1978 (NGPA) (15 U.S.C. 3301–3432 (Supp. V 1982)) purchased by Southern from Fritz.

Southern states in its application that a gas purchase contract was executed October 26, 1951 between Southern ands Exxon Corporation. The contract covered, *inter alia*, gas produced from the Sandy Hook Gas Unit 27 Well No. 1, and was amended on October 5, 1979 to include a deregulated pricing provision. The amendment was in consideration of Exxon's commitment to Southern of gas produced from the Mississippi Canyon area, offshore Louisiana. On January 24, 1983, Exxon assigned its interest in the Sandy Hook Gas Unit 27 Well No. 1 to Joseph F. Fritz. Southern states that Joseph F. Fritz subsequently assigned a certain undivided interest in the will to three co-owners.

Further, Southern avers that Fritz's interest in gas produced from the Sandy Hook Gas Unit 27 Well No. 1 and delivered to Southern was determined to be deregulated high-cost natural gas under section 107(c)(1) of the NGPA and § 272.103 of the Commission's regulations (18 CFR 272.103 (1982)) on January 30, 1983. The gas delivered by Exxon to Southern from the Mississippi Canyon Area, offshore Louisiana, qualifies for maximum lawful prices under section 102 of the NGPA.

Southern's query is whether Southern's payment of a section 107(c)(1) deregulated price to Fritz in a "first sale" for high-cost gas produced from the Sandy Hook Gas Unit 27 Well No. 1 represents consideration for the sale of natural gas which is not deregulated high-cost gas, but is section 102 gas, as is prohibited under § 270.207 of the Commission's regulations.

Any person desiring to be heard or to protest Southern's request for a declaratory order should file, within 30 days after publication of this notice in the **Federal Register**, with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, a protest or petition to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214 (1982)). All protests filed with the Commission will be considered but will not make the protestants parties to the proceeding. Any party wishing to become a party to the proceeding or to participate as a party in any hearing must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-19443 Filed 7-18-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP83-29-000]

Texas Railroad Commission, Section 103 NGPA Determination, C. J. Wofford, Parker Higginbottom #1 Well, FERC JD. No. 83-26112 Petition To Reopen Final Well Category Determination

July 13, 1983.

On May 31, 1983, C. J. Wofford filed with the Federal Energy Regulatory Commission (Commission) a petition to reopen and a request to withdraw its application for a final well category determination, that natural gas from the C. J. Wofford-Parker Higginbottom #1 Well, located in Erath County, Texas, qualifies as gas produced from a new, onshore production well pursuant to section 103 of the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3301–3432 (Supp. V 1982). This determination made by the Texas Railroad Commission (Texas) became final on April 21, 1983, pursuant to NGPA section 503(d) and § 275.202 (a) of the Commission's regulations (18 CFR 275.202 (a) (1982)), forty-five days after the Commission received notice of the determination.

C. J. Wofford requests a reopening of this final determination so that it can withdraw its application for said determination under NGPA section 103 in order to resubmit it under NGPA section 103 and have it placed under a docket created by an application previously filed for the same well. C. J. Wofford states that this request is made pursuant to a request by Texas.

C. J. Wofford states that the initial deliveries from the Parker-Higginbottom #1 Well were made in October 1980. An application for NGPA section 102 eligibility was filed with Texas on November 24, 1980, and was assigned Docket #F-7B-029643. Refunds have been made for monies received between the initial delivery date and the date the application was filed for amounts that exceeded the otherwise applicable NGPA rate under section 109. Production from the initial formation was not in commercial quantities, and the NGPA section 102 application was withdrawn on June 25, 1981. The well was recompleted shortly thereafter. An NGPA section 103 application for eligibility for the recompletion was not filed until December 21, 1982, at which time it was assigned Docket #F-7B-063357. Subsequent to this application, it was brought to C. J. Wofford's attention that the section 103 eligibility application should have been filed under the docket created by the original section 102 application, Docket #F-7B-029643 which was effective November 24, 1980, rather than under an entirely new proceeding.

With respect to the issue of refunds, the Commission hereby gives notice that the question of whether refunds, plus interest as computed under § 154.102 (c), will be required is a matter which is subject to the review and final determination of the Commission.

Any person desiring to be heard or to make any protest to the requested reopening and withdrawal should file, within 30 days after this notice is published in the **Federal Register** with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of Rules 214 or 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211 (1982)). All protests filed will be considered but will not make the protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene in accordance with the Commission's rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-19447 Filed 7-18-83 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP83-30-000]

Texas Railroad Commission, Section 103 NGPA Determination, C. J. Wofford, H. G. Higginbottom #1 Well, FERC JD. No. 83-26111; Petition To Reopen Final Well Category Determination

July 13, 1983.

On May 31, 1983, C. J. Wofford filed with the Federal Energy Regulatory Commission (Commission) a petition to reopen and a request to withdraw its application for a final well category determination, that natural gas from the H. G. Higginbottom #1 Well, located in Erath County, Texas, qualifies as natural gas produced from a new, onshore production well pursuant to section 103 of the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3301—3432 (Supp. V 1982). This determination made by the Texas Railroad Commission (Texas) became final on April 21, 1983, pursuant to NGPA section 503(d) and § 275.202(a) of the Commission's regulations (18 CFR 275.202(a)(1982)), forty-five days after the Commission received notice of the determination.

C. J. Wofford requests a reopening of this final determination so that it can withdraw its application for said determination under NGPA section 103 in order to resubmit it under NGPA section 103 and have it placed under a docket created by an application previously filed for the same well. C. J. Wofford states that this request is made pursuant to a request by Texas.

C. J. Wofford states that the H. G. Higginbottom #1 Well was originally completed in the DeLeon (Duffer Lime) Formation for which a section 102 application for eligibility was filed with Texas on July 31, 1980, and assigned Docket #F-7B-025821.

It was determined that the well was not producing in commercial quantities, and the section 102 application was withdrawn on March 17, 1981. The well was recompleted in another formation. An application for eligibility under NGPA section 103 was made for this well on December 21, 1982, and was assigned Docket #F-7B-063356. Subsequent to this application, it was brought to C. J. Wofford's attention that the section 103 application for eligibility for the recompletion should have been filed under the docket created by the original section 103 application, Docket #F-7B-025821 which was effective July 31, 1980, rather than under an entirely new proceeding.

With respect to the issue of refunds, the Commission hereby gives notice that the question of whether refunds, plus interest as computed under § 154.102(c), will be required is a matter which is subject to the review and final determination of the Commission.

Any person desiring to be heard or to make any protest to the requested reopening and withdrawal should file, within 30 days after this notice is published in the **Federal Register**, with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of Rules 214 or 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211 (1982)). All protests filed will be considered but will not make the protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene in accordance with the Commission's rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-19448 Filed 7-18-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF82-231-001]

Kenvil Energy Co.; Application for Commission Recertification of Qualifying Status of a Small Power Production Facility

July 14, 1983.

On June 22, 1983, Kenvil Energy Company (Applicant), 400 Morris Avenue, Denville, New Jersey 07834, filed with the Federal Energy Regulatory Commission (Commission) an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's rules.

Kenvil Energy Corporation was granted qualifying status for a 15 megawatt small power production facility, in an order issued April 22, 1983. In its final design, the facility will have a capacity of 21 megawatts. Additionally, the Applicant name should be amended from Kenvil Energy Corporation to Kenvil Energy Company.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-19433 Filed 7-18-83; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL MARITIME COMMISSION

[Agreements Nos. 10355-1 and 10402-1]

Availability of Finding of No Significant Impact

Upon completion of an environmental assessment, the Federal Maritime Commission's Office of Energy and Environmental Impact has determined that the Commission's decisions on Agreements Nos. 10355-1 and 10402-1 will not constitute major Federal actions significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and that preparation of an environmental impact statement is not required.

The parties to these agreements, the Bank & Savill Line, Ltd. and the Shipping Corporation of New Zealand, operate a single joint service (Agreement No. 10355). Amendment No. 10355-1 enables the joint service to institute direct call service between Australia/New Zealand and ports on the East Coast of the United States. Agreement No. 10402-1 modifies the basic agreement, which is a joint venture between Bank Line, Ltd. and Shaw Savill & Albion Co., Ltd. creating the Bank & Savill Line, Ltd., so that it agrees with the terms of the proposed amendment of Agreement No. 10355 (the joint service).

The Finding of No Significant Impact (FONSI) will become final within 20 days unless petitions for review are filed pursuant to 46 CFR 547.6(b).

The FONSI and related environmental assessment are available for inspection upon request from the Office of the Secretary, Room 11101, Federal Maritime Commission, Washington, D.C. 20573, telephone (202) 523-5725.

Francis C. Hurney,

Secretary.

[FR Doc. 83-19479 Filed 7-18-83; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Acquisition of Bank Shares by a Bank Holding Company; Sun Banks of Florida, Inc., et al.

The company listed in this notice has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire voting shares or assets of a bank. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated. With respect to the application, interested persons may express their views in writing to the address indicated. Any comment on the application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. **Board of Governors of the Federal Reserve System** (William W. Wiles, Secretary) Washington, D.C. 20551:

1. *Sun Banks of Florida, Inc.*, Orlando, Florida; to acquire 100 percent of the voting shares of Port Charlotte Bank and Trust Company, Port Charlotte, Florida. This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Atlanta. Comments on this application must be received not later than August 12, 1983.

Board of Governors of the Federal Reserve System, July 13, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-19400 Filed 7-18-83; 8:45 am]

BILLING CODE 6210-01-M

Bank Holding Companies; Proposed de Novo Nonbank Activities BankAmerica Corp., et al.

The organizations identified in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to these applications, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any comment that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

The applications may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated. Comments and requests for hearing should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than the date indicated.

A. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 400 Sansome Street, San Francisco, California 94120:

1. *BankAmerica Corporation*, San Francisco, California (retail discount securities brokerage; all fifty states and the District of Columbia): To engage, through its indirect subsidiary, Charles Schwab & Co., Inc., in the activities of retail discount securities brokerage, consisting principally of buying and selling securities solely upon the order and for the account of customers, extending margin credit in conformity with Regulation T, and other incidental activities. These activities will be conducted from two *de novo* offices located in Menlo Park and Walnut Creek, California, serving all fifty states and the District of Columbia. Comments on this application must be received not later than August 9, 1983.

2. *Security Pacific Corporation*, Los Angeles, California (commercial financing and factoring activities; United States): To engage through its subsidiary, Security Pacific Business Credit Inc., in making or acquiring, for its own account or for the account of others, asset based business loans and other commercial or industrial loans and extensions of credit, such as would be made by a factoring, rediscount or commercial finance company and engaging generally in the factoring business. These activities would be conducted from an office of Security Pacific Business Credit Inc. in Irvine, California, and would serve the United States. Comments on this application must be received not later than August 12, 1983.

Board of Governors of the Federal Reserve System, July 13, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-19401 Filed 7-18-83; 8:45 am]

BILLING CODE 6210-01-M

Formation of Bank Holding Companies; Luana Bancorporation et al.

The companies listed in this notice have applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become bank holding companies by acquiring voting shares or assets of a bank. The factors that are considered in acting on the applications are set forth in 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Luana Bancorporation*, Luana, Iowa; to become a bank holding company by acquiring 80 percent or more of the voting shares of Luana Savings Bank, Luana, Iowa. Comments on this application must be received not later than August 10, 1983.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *American Banc Corporation*, Fremont, Nebraska; to become a bank holding company by acquiring 100 percent of the voting shares of American National Bank of Fremont, Fremont, Nebraska. Comments on this application must be received not later than August 10, 1983.

Board of Governors of the Federal Reserve System, July 13, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-19398 Filed 7-18-83; 8:45 am]

BILLING CODE 6210-01-M

Proposed Acquisition of Colonial Mortgage Corporation; Midlantic Banks, Inc.

Midlantic Banks, Inc., Edison, New Jersey, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to acquire voting shares of Colonial Mortgage Corp., Melville, New York.

Applicant states that the proposed subsidiary would engage in the activities of mortgage banking, including the origination, purchase, sale, and servicing of residential mortgage loans and the issuance of GNMA mortgage-backed securities. These activities would be performed from offices of Applicant's subsidiary in Melville, Fishkill and Newburgh, New York, and Winter Park, Florida, and the geographic areas to be served are New York, New Jersey and Florida. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be resented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspectd at the offices of the Board of Governors or at the Federal Reserve Bank of New York.

Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than August 15, 1983.

Board of Governors of the Federal Reserve System, July 13, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-19309 Filed 7-18-83; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 83M-0217]

Abbott Laboratories; Premarket Approval for Abbott AFP-EIA To Aid in the Management of Testicular Cancer

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application for premarket approval under the Medical Device Amendments of 1976 of the Abbott AFP-EIA To Aid In The Management of Testicular Cancer, sponsored by Abbott Laboratories, North Chicago, IL. After reviewing the recommendation of the Immunology Device Section of the Immunology and Microbiology Devices Panel, FDA notified the sponsor that the application was approved because the device had been shown to be safe and effective for use as recommended in the submitted labeling.

DATE: Petitions for administrative review by August 18, 1983.

ADDRESS: Requests for copies of the summary of safety and effectiveness data and petitions for administrative review may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Charles H. Kyper, National Center for Devices and Radiological Health (HFK-402), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7445.

SUPPLEMENTARY INFORMATION: On August 13, 1982, Abbott Laboratories, North Chicago, IL 60064, submitted to FDA an application for premarket approval of the Abbott AFP-EIA To Aid In The Management Of Testicular Cancer. This in vitro device is an enzyme immunoassay for the quantitative measurement of alphafetoprotein (AFP) in human serum to aid in the management of patients with nonseminomatous testicular cancer. Test results used in conjunction with information available from the patient evaluation and other clinical procedures are effective in monitoring the response to treatment of patients with nonseminomatous testicular cancer. The Abbott AFP-EIA To Aid In The Management Of Testicular Cancer is not indicated for use in the measurement of AFP levels in maternal serum or amniotic fluid to aid in the detection of fetal neural tube defects. The application was reviewed by the Immunology Device Section of the Immunology and Micorbiology Devices Panel, an FDA advisory committee, which recommended approval of the application for premarket approval. On June 21, 1983, FDA approved the application by a letter to the sponsor from the Associate Director for Device Evaluation of the Office of Medical Devices.

A summary of the safety and effectiveness data on which FDA's approval is based is on file in the Dockets Management Branch (address above) and is available upon request from that office. A copy of all approved final labeling is available for public inspection at the Office of Medical Devices—contact Charles H. Kyper (HFK-402), address above. Requests should be identified with the name of the device and docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition under section 515(g) of the act (21 U.S.C. 360e(g)) for administrative review of FDA's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and of FDA's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration of FDA action under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish notice of its decision in the **Federal Register.** If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before August 18, 1983, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device

and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 12, 1983.

William F. Randolph,

Acting Associate Commissioners for Regulatory Affairs.

[FR Doc. 83-19224 Filed 7-18-83; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 83M-0226]

Boehringer Mannheim Diagnostics, Inc.; Premarket Approval of MICUR®-MIC System

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application for preemarket approval under the Medical Device Amendments of 1976 of the MICUR®-MIC System, sponsored by Boehringer Mannheim Diagnostics, Inc., Houston, TX. After reviewing the recommendation of the Microbiology Device Section of the Immunology and Microbiology Devices Panel, FDA notified the sponsor that the application was approved because the device had been shown to be safe and effective for use as recommended in the submitted labeling.

DATE: Petitions for administrative review by August 18, 1983.

ADDRESS: Requests for copies of the summary of safety and effectiveness data and petitions for administrative review may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Charles H. Kyper, National Center for Devices and Radiological Health (HFK-402), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7445.

SUPPLEMENTARY INFORMATION: On October 7, 1982, Boehringer Mannheim Diagnostics, Inc., Houston, TX 77036, submitted to FDA an application for premarket approval of the MICUR®-MIC System, an in vitro diagnostic device intended for the quantitative determination (minimum inhibitory concentration, MIC) of the susceptibility of nonfastidious aerobic and facultative anaerobic bacteria to various antimicrobial agents. The application was reviewed by the Microbiology Device Section of the Immunology and Microbiology Devices Panel, and FDA advisory committee, which recommended approval of the application. On June 29, 1983, FDA approved the application by a letter to the sponsor from the Associate Director for Device Evaluation of the Office of Medical Devices.

A summary of the safety and effectiveness data on which FDA's approval is based is on file in the Dockets Management Branch (address above) and is available upon request from that office. A copy of all approved final labeling is available for public inspection at the Office of Medical Devices—contact Charles H. Kyper (HFK-402), address above. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition under section 515(g) of the act (21 U.S.C. 360e(g)) for administrative review of FDA's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and of FDA's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration of FDA's action under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register.** If FDA grants the petition, the notice will state the issues to be reviewed, the form of the review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before August 18, 1983, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 12, 1983.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 83-19227 Filed 7-18-83; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 83M-0216]

Cabot Medical Corp.; Premarket Appoval of Lamicel

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application for premarket approval under the Medical Device Amendments of 1976 of Lamicel™, sponsored by Cabot Medical Corp., Langhorne, PA (formerly Cooper Medical Devices Corpl, Langhorne, PA). After reviewing the recommendation of the Obstetrics-Gynecology Devices Panel, FDA notified the sponsor that the application was approved because the device had been shown to be safe and effective for use as recommended in the submitted labeling.

DATE: Petitions for administrative review by August 18, 1983.

ADDRESS: Request for copies of the summary of safety and effectiveness data and petitions for administrative review may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Charles H. Kyper, National Center for Devices and Radiological Health (HFK-402), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7445.

SUPPLEMENTARY INFORMATION: On October 7, 1982, Cabot Medical Corp., Langhorne, PA 19047 (formerly Cooper Medical Devices Corp., Langhorne, PA 19047), submitted to FDA an application for premarket approval of Lamicel™, an osmotic cervical dilator, for use in the dilation or ripening of the cervix uteri for the introduction of a hysteroscope through the cervix uteri and for the termination of pregnancy up to 24 weeks gestation. The application was reviewed by the Obstetrics-Gynecology Devices Panel, an FDA advisory committee, which recommended approval of the application. On June 21, 1983, FDA approved the application by a letter to the sponsor from the Associate Director for Device Evaluation of the Office of Medical Devices.

A summary of the safety and effectiveness data on which FDA's

approval is based is on file with the Dockets Management Branch (address above) and is available upon request from that office. A copy of all approved final labeling is available for public inspection at the Office of Medical Devices—contact Charles H. Kyper (HFK–402), address above. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of FDA's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and FDA's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration of FDA's action under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issues to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before August 18, 1983, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 12, 1983.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 83-19228 Filed 7-18-83; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 83M-0221]

CooperVision, Inc.; Premarket Approval of HeatCase™ Disinfection Unit

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application for premarket approval under the Medical Device Amendments of 1976 of the HeatCase™ Disinfection Unit, sponsored by CooperVision, Inc., Mountain View, CA. After reviewing the recommendation of the Ophthalmic Device Section of the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel, FDA notified the sponsor that the application was approved because the device had been shown to be safe and effective for use as recommended in the submitted labeling.

DATE: Petitions for administrative review by August 18, 1983.

ADDRESS: Requests for copies of the summary of safety and effectiveness data and petitions for administrative review may be sent to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Charles H. Kyper, National Center for Devices and Radiological Health (HFK–402), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7445.

SUPPLEMENTARY INFORMATION: On December 22, 1982, CooperVision, Inc., Mountain View, CA, submitted to FDA an application for premarket approval of the HeatCase™ Disinfection Unit for use with all heat (thermal) disinfected soft (hydrophilic) contact lenses. The application was reviewed by the Ophthalmic Device Section of the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel, and FDA advisory committee, which recommeded approval of the application. On June 27, 1983, FDA approved the appliciation by letter to the sponsor from the Associate Director for Device Evaluation of the Office of Medical Devices.

Before enactment of the Medical Device Amendments of 1976 (the amendments) (Pub. L. 94–295, 90 Stat. 539–583), soft contact lens accessories were regulated as new drugs. Because the amendments broadened the definition of the term "device" in section 201(h) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(h)), soft (hydrophilic) contact lens accessories are now regulated as class III devices (premarket approval). As FDA explained in a notice published in the **Federal Register** of December 16, 1977 (42 FR 63472), the amendments provide transitional provisions to ensure continuation of premarket approval requirements for class III devices formerly regulated as new drugs. Furthermore, FDA requires, as a condition to approval, that sponsors of applications for premarket approval of soft (hydrophilic) contact lenses or accessories comply with the records and reports provisions of Subpart D of Part 310 (21 CFR Part 310) until these provisions are replaced by similar requirements under the amendments.

A summary of the safety and effectiveness data on which FDA's approval is based is on file with the Dockets Management Branch (address above) and is available upon request from that office. A copy of all approved draft labeling is available for public inspection at the Office of Medical Devices—contact Charles H. Kyper (HFK–402), address above. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of FDA's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and FDA's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration of FDA's action under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administration review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issues to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before August 18, 1983, file with the Dockets Management Branch (address above) two copies of each petition and

supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 12, 1983.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 83-19229 Filed 7-18-83; 8:45 am]

BILLING CODE 4160-1-M

[Docket No. 83M-0222]

Eaton Medical Corp.; Premarket Approval of EASY EYES SALTABS™

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application for premarket approval under the Medical Device Amendments of 1976 of EASY EYES SALTABS™ (250-milligram (mg) salt tablets) for all soft (hydrophilic) contact lenses, sponsored by Eaton Medical Corp., Memphis, TN. EASY EYES SALTABS™ is intended for use in the preparation of 27.7 milliliters (mL) of normal saline (0.9 percent) solution to be used in heat disinfection of all soft (hydrophilic) contact lenses. After reviewing the recommendation of the Ophthalmic Device Section of the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel, FDA notified the sponsor that the application was approved because the device had been shown to be safe and effective for use as recommended in the submitted labeling.

DATE: Petitions for administrative review by August 18,1983.

ADDRESS: Requests for copies of the summary of safety and effectiveness data and petitions for administrative review may be set to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Charles H. Kyper, National Center for Devices and Radiological Health (HFK-402), Food and Drug Administration, 8757 Geogia Ave., Silver Spring, MD 20910, 301-427-7445.

SUPPLEMENTARY INFORMATION: On May 3, 1983, Eaton Medical Corp., Memphis, TN, submitted to FDA an application for premarket approval of EASY EYES SALTABS™ (250-mg salt tablets) for all soft (hydrophilic) contact lenses. The application was reviewed by the Ophthalmic Device Section of the Opthalmic; Ear, Nose and Throat; and Dental Devices Panel, an FDA advisory committee, which recommended approval of the application. On June 27, 1983, FDA approved the application by a letter to the sponsor from the Associate Director for Device Evaluation of the Office of Medical Devices.

Before enactment of the Medical Device Amendments of 1976 (the amendments) Pub. L. 94-295, 90 Stat. 539-583), salt tablets for preparing solutions for use in heat disinfection of soft (hydrophilic) contact lenses were regulated as new drugs. Because the amendments broadened the definition of the term "device" in section 201(h) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321 (h)), such salt tablets are now regulated as class III devices (premarket approval). As FDA explained in a notice published in the **Federal Register** of December 16, 1977 (42 FR 63472), the amendments provide transitional provisions to ensure continuation of premarket approval requirements for class III devices formerly regulated as new drugs. Furthermore, FDA requires, as a condition for approval,that sponsors of applications for premarket approval of soft contact lenses and lens care solutions for the use above comply with the records and reports provisions of Subpart D of Part 310 (21 CFR Part 310) until these provisions are replaced by similar requirements under the amendments.

A summary of the safety and effectiveness data on which FDA's approval is based is on file with the Dockets Management Branch (address above), and is available upon request from that office. A copy of all approved final labeling is available for public inspection at the Office of Medical Devices—contact Charles H. Kyper (HFK-402), address above. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

The labeling of EASY EYES SALTABS™ states that the solution prepared from the salt tablets is designed for use in heat distinfection of all soft (hydrophilic) contact lenses. Sponsors of any soft (hydrophilic) contact lenses that have been approved for marketing are advised that whenever FDA publishes a notice in the **Federal Register** of the agency's approval of a new solution for use with an approved soft contact lens, the sponsor of each lens shall correct its labeling to refer to the new solutions at the next printing or at such other time as FDA prescribes by letter to the sponsor. A sponsor who fails to update the restrictive labeling may violate the misbranding provisions of section 502 of the act (21 U.S.C. 352) as well as the Federal Trade Commission Improvement Act (15 U.S.C 41-58), as amended by the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act (Pub. L. 93-637). Furthermore, failure to update the restrictive labeling to refer to new salt tablets that may be used with an approved lens may be grounds for withdrawing approval of the application for the lens under section 515(e)(1)(F) of the Act (21 U.S.C. 360e(e)(1)(F)).

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of FDA's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and FDA's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration of FDA's action under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issues to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before (August 18, 1983), file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 12, 1983.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 83-19230 Filed 7-18-83; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 83M-0218]

National Patent Development Corp.; Premarket Approval of LENS PLUS™

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application for premarket approval under the Medical Device Amendments of 1976 LENS PLUS ™ for use in the rinsing, heat disinfection, and storage of soft (hydrophilic) contact lenses, sponsored by the National Patent Development Corp., New Brunswick, NJ. LENS PLUS ™ is a sterile saline (0.9 percent) solution in a pressurized container to be used in the rinsing, heat disinfection, and storage of soft (hydrophilic) contact lenses. After reviewing the recommendation of the Ophthalmic Device Section of the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel, FDA notified the sponsor that the application was approved because the device had been shown to be safe and effective for use as recommended in the submitted labeling.

DATE: Petitions for administrative review by August 18, 1983.

ADDRESS: Requests for copies of the summary of safety and effectiveness data and petitions for administrative review may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Charles H. Kyper, National Center for Devices and Radiological Health (HFK-402), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7445.

SUPPLEMENTARY INFORMATION: On July 20, 1982, National Patent Development Corp., New Brunswick, NJ, submitted to FDA an application for premarket approval of LENS PLUS ™ for use in rinsing, heat disinfection, and storage of soft (hydrophilic) contact lenses. The application was reviewed by the Ophthalmic Device Section of the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel, an FDA advisory committee, which recommended approval of the application. On June 22, 1983, FDA approved the application by a letter to the sponsor from the Associate Director for Device Evaluation of the Office of Medical Devices.

Before enactment of the Medical Device Amendments of 1976 (the amendments) (Pub. L. 94-295, 90 Stat. 539-583), soft contact lens solutions were regulated as new drugs. Because the amendments broadened the definition of the term "device" in section 201(h) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(h)), soft contact lens solutions are now regulated as class III devices (premarket approval). As FDA explained in a notice published in the **Federal Register** of December 16, 1977 (42 FR 63472), the amendments provide transitional provisions to ensure continuation of premarket approval requirements for class III devices formerly considered new drugs. Furthermore, FDA requires, as a condition to approval, that sponsors of applications for premarket approval of soft contact lenses or solutions comply with the records and reports provisions of Subpart D of Part 310 (21 CFR Part 310) until these provisions are replaced by similar requirements under the amendments.

A summary of the safety and effectiveness data on which FDA's approval is based is on file in the Dockets Management Branch (address above) and is available upon request from that office. A copy of all approved draft final labeling is available for public inspection at the Office of Medical Devices—contact Charles H. Kyper (HFK-402), address above. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

The labeling of LENS PLUS ™ states that the solution is indicated for use in the rinsing, heat disinfection, and storage of soft (hydrophilic) contact lenses. Sponsors of any soft (hydrophilic) contact lenses that have been approved for marketing and whose approved labeling provides for the use of heat disinfection are advised that whenever FDA publishes a notice in the **Federal Register** of the agency's approval of a new solution for use with an approved soft contact lens, the sponsor of each lens shall correct its labeling to refer to the new solution at the next printing or at such other time as FDA prescribes by letter to the sponsor. A sponsor who fails to update the restrictive labeling may violate the misbranding provisions of section 502 of the act (21 U.S.C. 352) as well as the Federal Trade Commission Act (15 U.S.C. 41-58), as amended by the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act (Pub. L. 93-637). Furthermore, failure to update the restrictive labeling to refer to new solutions that may be used with an approved lens may be grounds for withdrawing approval of the application for the lens under section 515(e)(1)(F) of the act (21 U.S.C. 360e(e)(1)(F)).

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of FDA's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and FDA's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration of FDA action under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish notice of its decision in the **Federal Register.** If FDA grants the petition, the notice will state the issues to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before August 18, 1983, file with the Dockets Management (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the Office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 12, 1983.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 83-19225 Filed 7-18-83; 8:45 am]

BILLING CODE 4160-01-M

Advisory Committee Meeting and Summary of Procedures and Participation Guidelines

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also sets forth a summary of the procedures governing committee meetings and methods by which interested persons may participate in open public hearings conducted by the

committees and is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and FDA regulations (21 CFR Part 14) relating to advisory committees. The following advisory committee meeting is announced:

Immunology Device Section of the Immunology and Microbiology Devices Panels

Date, time, and place. August 8 and 9, 9 a.m., Rm. 703A, 200 Independence Ave. SW., Washington, DC.

Type of meeting and panel section leader. Open public hearing, August 8, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 12 m.; closed presentation of data, 1 p.m. to 3 p.m.; closed committee deliberations, 3 p.m. to 5 p.m.; closed committee deliberations, August 9, 9 a.m. to 12 m.; open committee discussion, 1 p.m. to 5 p.m.; Dr. Srikrishna Vadlamudi, National Center for Devices and Radiological Health (HFK-440), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7550.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the panel section leader before July 25 and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss a premarket approval application (PMAA) for alpha-fetoprotein as an aid in the detection of neural tube defects.

Closed presentation of data. Representatives of the manufacturer will present information to the committee containing trade secret data regarding the PMAA. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Closed committee deliberations. The committee will review and discuss trade secret information regarding the PMAA. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be requested from the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday. The FDA regulations relating to public advisory committees may be found in 21 CFR Part 14.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA), as amended by the Government in the Sunshine Act (Pub. L. 94-409), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

Dated: July 12, 1983.

Arthur Hull Hayes, Jr.,

Commissioner of Food and Drugs.

[FR Doc. 83-19386 Filed 7-18-83; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 83M-0215]

Precision-Cosmet Co., Inc.; Premarket Approval of SOFTMARK ™

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application for premarket approval under the Medical Device Amendments of 1976 of SOFTMARK ™, sponsored by Precision-Cosmet Co., Inc., Minnetonka, MN. After reviewing the recommendation of the Ophthalmic Device Section of the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel, and after listing, by regulation, the color additive contained in the device, FDA notified the sponsor that the application was approved because the device had been shown to be safe and effective for use as recommended in the submitted labeling.

DATE: Petitions for administrative review by August 19, 1983.

ADDRESS: Request for copies of the summary of safety and effectiveness data and petitions for administrative review may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Charles H. Kyper, National Center for Devices and Radiological Health (HFK-402), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7445.

SUPPLEMENTARY INFORMATION: On April 28, 1982, Precision-Cosmet Co., Inc, Minnetonka, MN, submitted to FDA an application for premarket approval of SOFTMARK ™, an identification marker containing the color aditive 2-[[2,5-diethoxy-4[(4-methylphenyl]thio]phenyl]-azo]-1,3,5-benzenetriol, for use to mark soft (hydrophilic) contact lenses with an "R" or an "L" to distinguish the right lens from the left and to aid in determining whether the lens is inverted. The application was reviewed by the Ophthalmic Device Section of the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel, an FDA advisory committee, which recommended approval of the application. In the **Federal Register** of May 20, 1983 (48 FR 22705), FDA published a regulation (21 CFR 73.3115) listing the color additive 2-[[2,5-diethoxy-4-[(4methylphenyl)thio]phenyl]azo]-1-3-5-benzenetriol for use in marking all soft (hydrophilic) contact lenses. The regulation became effective June 21, 1983. The use of 2-[[2,5-diethoxy-4[(4-methylphenyl)thio]phenyl]-azo]-1,3,5-benzenetriol in SOFTMARK ™ conforms to the color additive requirements in 21 CFR 73.3115. On June 22, 1983, FDA approved the application for premarket approval of this device by a letter to the sponsor from the Associate Director for Device Evaluation of the Office of Medical Devices.

Before enactment of the Medical Device Amendments of 1976 (the amendments) (Pub. L. 94-295, 90 Stat. 539-583), soft contact lens accessories were regulated as new drugs. Because the amendments broadened the definition of the term "device" in section 201(h) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(h)), soft contact lens accessories are now regulated as class III devices (premarket approval). As FDA explained in a notice published in the **Federal Register** of December 16, 1977 (42 FR 63472), the amendments provide transitional provisions to ensure continuation of premarket approval requirements for class III devices formerly regulated as new drugs. Furthermore, FDA requires, as a condition to approval, that sponsors of applications for premarket approval of soft contact lenses or accessories comply with the records and reports provisions of Subpart D of Part 310 (21 CFR Part 310) until these provisions are replaced by similar requirements under the amendments.

A summary of the safety and effectiveness data on which FDA's approval is based is on file with the Dockets Management Branch (address above), and is available upon request from that office. A copy of all approved final labeling is available for public inspection at the Office of Medical Devices—contact Charles H. Kyper (HFK-402), address above. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of FDA's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and FDA's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration of FDA's action under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register.** If FDA grants the petition, the notice will state the issues to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before August 19, 1983, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 13, 1983.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 83-19084 Filed 7-18-83; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 82N-0166]

Orally Administered Drug Products for Relief of Symptoms Associated With Overindulgence in Alcohol and Food for Over-the-Counter (OTC) Human Use; Decision on Ingredients Intended To Minimize or Prevent Inebriation

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its determination that fructose or any other ingredient intended to minimize or prevent inebriation is a new drug and as such is required to be the subject of an approved new drug application (NDA).

EFFECTIVE DATE: July 19, 1983.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, National Center for Drugs and Biologics (HFN-510), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4960.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 1, 1982 (47 FR 43540), FDA published under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking to establish a monograph on OTC orally administered drug products for relief of symptoms associated with overindulgence in alcohol and food, together with the recommendations of

the Advisory Review Panel on OTC Miscellaneous Internal Drug Products, which was the advisory review panel responsible for evaluating data on active ingredients in this drug class.

In preparing its recommendations to the agency, the Panel reviewed the available data relating to the use of fructose as an ingredient intended to minimize inebriation from alcoholic beverages. The Panel concluded, however, that there was insufficient evidence to make a final determination as to whether fructose was effective for this purpose and recommended that fructose be placed in Category III (insufficient data to determine whether the ingredient is generally recognized as safe and effective). The Panel also recommended that all claims for drug products intended for the prevention of inebriation be classified in Category II (not generally recognized as safe and effective or misbranded).

FDA is not aware of the marketing in the United States of any drug product containing fructose or any other ingredients for the claim "to minimize or prevent inebriation" prior to adoption of the Panel's report in August 1981, although at least one such product has entered the market since that time. The agency is concerned that such products may present a potential health hazard, particularly when motorists rely on unsubstantiated claims that the products will prevent or minimize an inebriated state. The National Highway Traffic Safety Administration has indicated that 25,000 of the highway deaths that occur annually, about 50 percent, involve an intoxicated driver (NHTSA Technical Report DOT-HS-806-269, May 1982). Products that claim to prevent or minimize inebriation could give persons who consume alcoholic beverages and then drive a motor vehicle a false sense of security, convincing them that they are capable of driving when in fact they are not.

The agency has determined that products containing fructose or any other ingredient claimed "to minimize or prevent inebriation" are new drugs within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 312(p)). A new drug is defined in the act as one not generally recognized by qualified experts as safe and effective for its intended uses or, if so recognized, one that has not been used to a material extent or for a material time. An indication that a drug is not generally recognized among qualified experts as effective for its intended use is the lack of a body of published or publicly available medical and scientific literature on the drug, including literature describing adequate and well-controlled studies demonstrating the safety and effectiveness of the drug. *United States* v. *41 Cases . . . Naremco*, 420 F.2d 1126 (5th Cir. 1970); *United States* v. *An Article of Drug . . . Mykocert*, 345 F. Supp. 571 (D.D.C. 1972); *United States* v. *An Article of Drug . . . Asper Sleep* CCH F. D. and Cosm. L. Rep., paragraph 40,821 Civil No. 70-C-196 (N.D. Ill. 1971); *United States* v. *An Article of Drug . . . Furestrol Vaginal Suppositories*, 294 F. Supp. 1307 (N.D. Ga. 1968). As noted above, the Panel found the available evidence insufficient to determine general recognition of safety and effectiveness. In addition, products claiming "to minimize or prevent inebriation" have not been marketed to a material extent and for a material time. For these reasons, the agency considers products claiming to minimize or prevent inebriation to be new drugs within the meaning of section 201(p) of the act. Such products may not be marketed until FDA has approved an NDA for such use (21 U.S.C. 355). The agency will initiate appropriate enforcement actions against drug products intended to prevent or minimize inebriation that are marketed without an approved NDA.

This action does not affect other marketed products containing ingredients reviewed by the Panel, including ingredients in drug products intended for the relief of symptoms of upset stomach due to overindulgence in the combination of alcohol and food, for the relief of hangover symptoms, or to minimize hangover symptoms.

Arthur Hull Hayes, Jr.,

Commissioner of Food and Drugs.

Margaret M. Heckler,

Secretary of Health and Human Services.

Dated: July 7, 1983.

[FR Doc. 83-19537 Filed 7-15-83; 8:45 am]

BILLING CODE 4160-01-M

Office of Human Development Services

Reallotment of Funds

AGENCY: Office of Human Development Services, HHS.

ACTION: Notice of reallotment of funds.

SUMMARY: The Administration on Developmental Disabilities in the Office of Human Development Services proposes to reallot funds which will not be utilized by American Samoa, Commonwealth of the Northern Marianas, and the Trust Territory of the Pacific Islands to forty-six of the States, the District of Columbia, Puerto Rico, Guam and the Virgin Islands.

DATE: Effective August 18, 1983.

ADDRESS: 200 Independence Avenue, S.W., Room 348F.5, Washington, D.C. 20201.

SUMMARY: Consideration will be given to any comments on this proposed reallotment of funds if received on or before August 18, 1983. Comments must be in writing and submitted to Jean K. Elder, Ph. D., Commissioner, Administration on Developmental Disabilities, Department of Health and Human Services, 200 Independence Avenue, S.W., Room 348F.5, Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT: Nancy J. Stipa, Director, Division of Management and Administrative Services, Administration on Developmental Disabilities, Department of Health and Human Services, 200 Independence Avenue, S.W., Room 348F.5, Washington, D.C. 20201, telephone (202) 245-2904.

SUPPLEMENTARY INFORMATION: Section 132(d) of the Developmental Disabilities Assistance and Bill of Rights Act, Pub. L. 95-602, as amended, provides that the amount of a State's fiscal year allotment (as determined in accordance with 132(a)(1)) which will not be required by the State shall be available for reallotment to other States. Any reallotment shall be in proportion to the original allotments of such States for such fiscal year. The additional reallotment shall be reduced to the extent it exceeds the sum the Secretary estimates such State needs and will be able to use during such period; and the total of such reductions shall be similarly reallotted among the States whose proportionate amounts were not so reduced.

Notice is hereby given that the following allotments reserved for American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Marianas for Basic Support and Protection and Advocacy will not be required:

Basic support fiscal year 1983 allotment	$405,000
Protection and advocacy fiscal year 1983 allotment	82,500

It is the intention of the Secretary that the above amounts will be reallotted as follows:

FISCAL YEAR 1983 ALLOTMENTS

	Basic support	Protection and advocacy
Alabama	$8,911	$1,796
Alaska	2,525	616
Arizona	4,079	839
Arkansas	5,083	1,026
California	32,805	6,621
Colorado	4,214	863
Connecticut	5,107	1,031
Delaware	2,525	616
District of Columbia	2,525	616
Florida	14,878	3,003
Georgia		2,100
Guam	1,365	370
Hawaii	2,525	616
Idaho	2,525	616
Illinois	18,134	
Indiana	10,191	2,057
Iowa	5,648	1,140
Kansas	4,202	848
Kentucky	8,328	1,681
Louisiana	8,488	1,713
Maine	2,555	616
Maryland		1,328
Massachusetts	10,372	2,093
Michigan	16,301	3,290
Minnesota	7,349	1,483
Mississippi	6,264	
Missouri	9,594	1,936
Montana		616
Nebraska	3,020	622
Nevada	2,525	616
New Hampshire	2,525	616
New Jersey	11,848	2,391
New Mexico	2,600	616
New York	32,224	6,502
North Carolina	12,305	2,483
North Dakota	2,525	
Ohio	20,143	4,065
Oklahoma	5,540	1,118
Oregon	4,192	846
Pennsylvania	23,169	4,676
Puerto Rico	10,434	2,105
Rhode Island	2,525	616
South Carolina	6,535	1,319
South Dakota		616
Tennessee	9,649	1,947
Texas	22,766	4,595
Utah	2,823	616
Vermont		616
Virginia	9,563	1,930
Virgin Islands	1,365	370
Washington	6,037	1,219
West Virginia	5,016	
Wisconsin	9,178	1,852
Wyoming		616

(Catalog of Federal Domestic Assistance Program No. 13.630 Developmental Disabilities-Basic Support and Advocacy Grants)

Date: June 28, 1983.

Jean K. Elder,

Commissioner, Administration on Developmental Disabilities.

Approved: July 14, 1983.

Dorcas R. Hardy,

Assistant Secretary for Human Development Services.

[FR Doc. 83-19505 Filed 7-18-83; 8:45 am]

BILLING CODE 4130-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Utah; Proposed Wilderness Inventory Decisions on the Reassessment of Units Set Aside and Remanded by IBLA

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice

SUMMARY: As directed by the Interior Board of Land Appeals (IBLA) in a decision date April 18, 1983 the Utah BLM has made a reassessment of the wilderness characteristics, as remanded, within the intensive inventory units listed below. The reassessment of all or parts of these units was conducted in accord with the instructions by IBLA in that pertinent information relating to those items or factors on remand was reassessed. Where IBLA affirmed or upheld certain aspects of the earlier decision those factors were not reassessed, except where an interrelationship exists, with other factors. No conclusiions of fact upheld by IBLA have been reconsidered upon reassessment.

Unit No.	Unit name	Proposed decision on portion of unit remanded
UT-020-037	Newfoundland Mtns.	Drop from further study.
UT-020-129/ 050-130A.	Dugway Mtns.	Do.
UT-040-075	Horse Spring Canyon.	Do.
UT-040-076	Carcass Canyon	Do.
UT-040-077	Mud Springs Canyon.	Do.
UT-040-078	Death Ridge	Identify 62,870 acres as WSAS.
UT-040-079	Burning Hills	Identify 61,550 acres as WSA.
UT-040-204B	Central Wah Wah	Drop from further study.
UT-040-275 [1]	The Cockscomb	Identify 10,0060 acres as WSA.
UT-040-248	Wahwaap	Identify 134,400 acres as WSA.
UT-050-236	Mt. Ellen/Blue Hills	Drop from further study.
UT-050-241	Fiddler Butte	Add approx. 33,000 acres to existing WSA.
UT-050-248	Mt. Pennell	Drop from further study.
UT-060-068A	Desolation Canyon	Add 41,600 acres to existing WAS and also create a new WSA of 7,500 acres. [2]
UT-060-068B	Floy Canyon	Identify 75,220 acres as WSA.
UT-060-100B	Flume Canyon	Add 3,250 acres to existing WSA.
UT-060-100C	Coal Canyon	Add 17,615 acres to existing WSA.
UT-060-181	Mancos Mesa	Identify 51,440 acres as WSA.
UT-080-730	Winter Ridge	Identify 40,049 acres as WSA.

[1] This is a new unit, originally considered part of UT-040-247 (Paria-Hackberry).
[2] New WSA created—UT-060-068C (Jack Canyon).

Copies of each inventory unit reassessment may be obtained from any BLM District Office in Utah or at the State Office (Public Room). The addresses are:

Utah State Office, University Club Building, 136 East South Temple, Salt Lake City, Utah 94111
Salt Lake District Office, 2370 South 2300 West, Salt Lake City, Utah 84119
Cedar City District Office, 1579 North Main, Cedar City, Utah 84720
Richfield District Office, 150 East 900 North, Richfield, Utah 84701
Moab District Office, 125 West 2nd South, Moab, Utah 84532
Vernal District Office, 170 South 500 East, Vernal, Utah 84078

Persons are invited to submit information to BLM by COB September 2, 1983, on the above described intensive inventory units or portions as to the presence or absence of the wilderness characteristics as required by the Wilderness Inventory Handbook, Policy, Direction, Procedures and Guidance for Conducting Wilderness Inventory on the Public Lands, published on September 27, 1978. After examination and consideration of the information received the final decision on the above units will be announced. Information should be sent to: State Director, BLM Utah State Office, University Club Building, 136 East South Temple, Salt Lake City, Utah 84111.

FOR FURTHER INFORMATION CONTACT: Kent Biddulph, BLM Utah State Office, (801) 524-4257.

Dated: July 12, 1983.

Roland G. Robison,

State Director.

[FR Doc. 83-19357 Filed 7-18-83; 8:45 am]

BILLING CODE 4310-84-M

Bureau Form Submitted for Reinstatement of Approval

The request for reinstatement of approval for the collection of information listed below has been submitted to the Office of Management and Budget under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone listed below. Comments and suggestions on the requirement should be made directly to the Bureau's clearance officer and the Office of Management and Budget at 202-395-7340.

Title: Application for Transportation and Utility Systems and Facilities on Federal Lands, Pub. L. 96-487 (Also

applicable for 43 CFR Parts 2800 and 2880).

Bureau Form Number: SF–299.

Frequency: On Occasion.

Description of Respondents: Applicants for right-of-way use of Federal lands.

Annual Responses: 4300.

Annual Burden Hours: 8900.

Bureau Clearance Officer (Alternate): Linda Gibbs 202–653–8853.

Dated: June 28, 1983.

James M. Parker,

Acting Director.

[FR Doc. 83–19824 Filed 7–18–83; 8:45 am]

BILLING CODE 4310–84–M

[A–17000–P]

Arizona; Order Providing for Opening of Public Lands

July 12, 1983.

1. In **Federal Register** Volume 47, Number 14, Pages 3036–3037, dated January 21, 1982, approximately 22,796 acres were proposed as suitable for classification for transfer to the State of Arizona under the State Indemnity Selection Program. All the lands have been transferred to the State of Arizona with the exception of 160 acres, which have been deleted from the State's application and are described as follows:

T. 29 N., R. 21 W., GSR Mer., Arizona
Section 1, S½NE¼, SE¼SE¼;
Section 12, E½NE¼, N½NE¼SE¼.

The areas described aggregate 160 acres in Mohave County.

2. Subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law, the lands described in paragraph 1 are hereby open to the operation of the public land laws including the mining laws (Ch. 2, Title 30 U.S.C.).

All valid applications under the public land laws received at or prior to 10:00 a.m. on August 26, 1983 shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Appropriation of lands under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. Section 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such detemination in local courts.

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

4. Inquiries concerning the lands should be addressed to the Bureau of Land Management, Department of the Interior, 2400 Valley Bank Center, Phoenix, Arizona 85073 (602–261–4774).

Mario L. Lopez,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 19422 Filed 7–18–83; 8:45 am]

BILLING CODE 4310–84–M

[N–1881]

Nevada; Classification Vacated

July 5, 1983.

1. Pursuant to the authority delegated by Bureau Order 701 and amendments thereto, the Bureau of Land Management multiple use classification N–1881, was published in the **Federal Register** on January 15, 1970 (FR Doc 70–541). Pursuant to the Classification and Multiple Use Act of September 19, 1964 (43 U.S.C. 1411–18) and the 43 CFR 2460 regulations, this action classified approximately 1,612,209 acres of public land in Mineral County, Nevada, for multiple use management. The land was segregated from appropriation under the agricultural land laws and sale under R.S. 2455. Approximately 2,640 acres plus an undetermined acreage of relicted land was further segregated from all forms of appropriation including the mining laws, but not the Recreation and Public Purposes Act (44 Stat. 741) as amended, nor the mineral leasing and material sale laws.

2. Pursuant to 43 CFR 2461.5(c)(2), the classification is hereby vacated with the exception of the following described area together with any land therein that may become public land due to shoreline reliction:

Mount Diablo Meridian, Nevada

Those lands on the west shore of Walker Lake lying between the centerline of U.S. Highway 95 as depicted on R/W No. N–043867 and N–053822 and the existing shoreline of Walker Lake, beginning at a point where the centerline intersects the north section line of sec. 17, T. 11 N., R. 29 E., and ending at a point where the centerline intersects the north section line of sec. 5, T. 9 N., R. 29 E., and, those lands on the east shore of Walker Lake lying between the centerline of the Southern Pacific Railroad as depicted on R/W No. CC–015259 and the existing shoreline of Walker Lake, beginning at a point where the centerline intersects the north section line of sec. 35, T. 11 N., R. 29 E., and ending at a point where the centerline intersects the south section line of sec. 22, T. 9 N., R. 30 E.

The area described above comprises approximately 2580 acres plus an undetermined acreage of relicted land.

This area has high potential recreational value and will remain classified for a period of 5 years from the date of this publication at which time the classification will again be reviewed. The land will remain open to the Recreation and Public Purposes Act but will be segregated from all other forms of appropriation, including the general mining laws but not the Recreation and Public Purposes Act, as amended, nor the mineral leasing or material sales laws.

3. At 9:00 a.m. on July 19, 1983, all the land except that described in paragraph 2 above is hereby open to the operation of all the public land laws, subject to valid existing rights. All valid applications received prior to or at 9:00 a.m. on July 19, 1983 will be considered as simultaneously filed. All other applications received will be considered in the order of filing.

4. At 9:00 a.m. on July 19, 1983, the following described land will also be open to the operation of the mining laws.

Mount Diablo Meridian, Nevada

T. 1 N., R. 37 E.,
Sec. 5, SW¼SW¼;
Sec. 8, N½NW¼NW¼.

This area comprises approximately 60 acres.

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 determination in local courts.

Inquiries concerning this land should be addressed to the Deputy State Director, Operations, Bureau of Land Management, P.O. Box 12000, Reno, Nevada 89520.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 83–19361 Filed 7–18–83; 8:45 am]

BILLING CODE 4310–84–M

[N-815]

Nevada; Classification Vacated

July 5, 1983.

1. Pursuant to the authority delegated by Bureau Order 701 and amendments thereto, the Bureau of Land Management multiple use classification N-815 was published in the **Federal Register** on June 29, 1967 (FR Doc. 67-7344). Pursuant to the Classification and Multiple Use Act of September 19, 1964 (43 U.S.C. 1411-18) and the 43 CFR Part 2460 regulations, this action classified approximately 173,590 acres of public land in Lyon and Mineral Counties, Nevada, for multiple use management. The land was segregated from appropriation under the agricultural land laws, sales under Section 2455 of the Revised Statutes, sales under the Public Land Sale Act of September 19, 1964, exchanges under the Taylor Grazing Act and lease or sale under the Recreation and Public Purposes Act. One area (3,586.80 acres) was further segregated from all forms of appropriation including the mining laws but not the mineral leasing and material sale laws.

2. Pursuant to 43 CFR 2461.5(c)(2), the classification is hereby vacated as it pertains to land within Tps. 6, 7, 9, 10, R. 26 E., Tps. 5 thru 10, R 27 E., Tps. 4 thru 9, R. 28 E, with the exception of the 3,586.80 acres mentioned above and described as follows:

Mount Diablo Meridian, Nevada

T. 7 N., R. 26 E.,
Sec. 25, NE¼SE¼, S½SE¼;
Sec. 36, N½NE¼.
T. 7 N., R. 27 E.,
Sec. 3, lot 4, SW¼NW¼, NW¼SW¼;
Sec. 4, lots 1 and 2, S½NE¼, E½SW¼, SE¼;
Sec. 5, S½SW¼, SE¼;
Sec. 7, E½E½;
Sec. 8, N½NE¼, NW¼, W½SW¼;
Sec. 9, NW¼NE¼, N½NW¼;
Sec. 17, W½NW¼, NW¼SW¼;
Sec. 18, lots 3 and 4, NE¼NE¼, S½NE¼, SE¼NW¼, E½SW¼, N½SE¼, SW¼SE¼;
Sec. 19, NE¼NE¼;
Sec. 30, lot 4, N½NE¼, SW¼NE¼.
T. 8 N., R. 27 E.,
Sec. 5, NE¼SW¼;
Sec. 8, NE¼NE¼;
Sec. 9, SW¼NW¼, NE¼SW¼, N½SE¼, SE¼SE¼;
Sec. 15, NE¼NW¼;
Sec. 22, N½NE¼;
Sec. 27, NW¼, W½SW¼;
Sec. 28, E½E½;
Sec. 33, E½;
Sec. 34, W½W½.

The area described above comprises approximately 3,586.80 acres in Lyon and Mineral Counties, Nevada. This area has high potential recreational value and will remain classified for a period of 5 years from the date of this publication at which time the classification will again be reviewed. This land will continue to be segregated from all forms of appropriation including the mining laws, but not the mineral leasing and material sale laws.

3. At 9:00 a.m. on July 19, 1983, all the land except that described in paragraph 2 above is hereby open to the operation of all the public land laws, subject to valid existing rights. All valid applications received prior to or at 9:00 a.m. on July 19, 1983 will be considered as simultaneously filed. All other applications received will be considered in the order of filing.

Inquiries concerning this land should be addressed to the Deputy State Director, Operations, Bureau of Land Management, P.O. Box 12000, Reno, Nevada 89520.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 83-19365 Filed 7-18-83; 8:45 am]

BILLING CODE 4310-84-M

Minerals Management Service

Information Collection Submitted for Review

The proposal 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 information collection requirement and supporting documentation may be obtained by contracting Lloyd M. Tracey at (703) 860-7916. Comments and suggestions on the collection of information should be made directly to the Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior—Minerals Management Service, Office of Management and Budget, Washington, D.C. 20503, with copies to David A. Schuenke; Chief, Branch of Rules, Orders, and Standards; Offshore Rules and Operations Division; Mail Stop 646; Room 6A110; Minerals Management Service; U.S. Department of the Interior; 12203 Sunrise Valley Drive; Reston, Virginia 22091.

Title: Well-Completion or Recompletion Report and Log.

Bureau Form Number: MMS-330 (Formerly 9-330).

Frequency: On occasion.

Description of Respondents: Federal oil and gas lessees on the Outer Continental Shelf (OCS), performing operations under OCS Order No. 5, "Production Safety Systems," proposed OCS Order No. 6, "Well-Completion and Workover Operations," 30 CFR 250.38, Well records, and 30 CFR 250.95, Well completion or recompletion report and log.

Annual Responses: 2,500.

Annual Burden Hours: 2,500.

Dated: June 27, 1983.

John B. Rigg,

Associate Director for Offshore Minerals Management.

[FR Doc. 83-19425 Filed 7-18-83; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 8, 1983. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of Interior, Washington, DC 20243. Written comments should be submitted by August 3, 1983.

Beth Grosvenor,

Acting Chief of Registration; National Register.

ARKANSAS

Calhoun County

Calion vicinity, *Ouachita River Lock and Dam No. 8*, SE of Calion

CALIFORNIA

Santa Cruz County

Ben Lomond vicinity, *Phillipshurst/Riverwood*, CA 9

DELAWARE

New Castle County

Christiana, *Old Fort Church (White Clay Creek Hundred MRA)*, Old Baltimore Pike
Christina vicinity, Allen, Charles, House *(White Clay Creek Hundred MRA)*, 855 Canoe Rd.
Christina vicinity, *Stewart, James, Jr., House* (White Clay Creek Hundred MRA), Whitten Rd.
McClellandville, *Lindsey, Samuel, House (White Clay Creek Hundred MRA)*, New London Rd.
McClellandville, *Wesley M.E. Church (White Clay Creek Hundred MRA)*, DE 896
Newark vicinity, *England House and Mill Amendment*, 81 Red Mill Rd.
Newark, *Head of Christiana United Presbyterian Church (White Clay Creek Hundred MRA)*, 1100 Church Rd.
Newark, *Kerr, Andrew, House (White Clay Creek Hundred MRA)*, 812 Elkton Rd.
Newark, *Morrow, James, House (White Clay Creek Hundred MRA)*, 1210 Ogletown Rd.

Newark, *Phillips, Thomas, Mill Complex (White Clay Creek Hundred MRA)*, 708 and 712 Nottingham Rd.
Newark, *Steel James, House (White Clay Creek Hundred MRA)*, 1016 W. Church St.
Wilmington, *Eighth Street Park Historic District*, Roughly bounded by 6th, 10th, Harrison, and Broom Sts.

GEORGIA

Chatham County

Savannah, *Laurel Grove-North Cemetery*, W. Anderson St.

Floyd County

Rome, *Oakdene Place*, Roughly bounded by the Etowah River, Queen, and E. 6th Sts.

MARYLAND

Allegany County

Cumberland, *Downtown Cumberland Historic District*, Roughly bounded by Mechanic, Bedford, George, and Harrison Sts.

Charles County

Bryantown vicinity, *Oakland*, MD 5

Kent County

Chestertown vicinity, *Brampton*, MD 20

MISSISSIPPI

Hinds County

Edwards, *Lewis, A.J., House*, S. Magnolia and Lewis Sts.

MISSOURI

Jackson County

Kansas City, *Continental Hotel (Hotels in Downtown Kansas City TR)*, 106 W. 11th St.
Kansas City, *District I (Hotels in Downtown Kansas City TR)*, Roughly bounded by Baltimore Ave., W. 12th, W. 13th, and Wyandotte Sts.
Kansas City, *President Hotel (Hotels in Downtown Kansas City TR)*, 1327—1335 Baltimore Ave.

NEVADA

Clark County

Boulder City, *Boulder City Historic District*, Roughly bounded by Nevada Hwy., Avenue L, Date, and 5th Sts.

Douglas County

Minden, *Carson Valley Improvement Club Hall*, 1606 Esmeralda Ave.

Humboldt County

Winnemucca, *Humboldt County Courthouse*, 5th and Bridge Sts.

Lyon County

Yerington, *I.O.O.F. Building, Mason Valley*, 1 S. Main St.

RHODE ISLAND

Kent County

Warwick, *Apponaug Historic District (Warwick MRA)*, 3376, 3384, 3387, 3391, 3397—3399, and 3404 Post Rd.
Warwick, *Budlong Farm (Warwick MRA)*, 595 Buttonwoods Ave.
Warwick, *Buttonwoods Beach Historic District (Warwick MRA)*, Roughly bounded by Brush Neck Cove, Greenwich Bay, Cooper and Promenade Aves.
Warwick, *Elizabeth Spring (Warwick MRA)*, Off Forge Rd.
Warwick, *Forge Road Historic District (Warwick MRA)*, Forge Rd. from Ives Rd. to the Potowomut River
Warwick, *Gardiner, Capt. Oliver, House (Warwick MRA)*, 4451 Post Rd.
Warwick, *Gorton, Caleb, House (Warwick MRA)*, 987 Greenwich Ave.
Warwick, *Greene, Moses, House (Warwick MRA)*, 11 Economy Ave.
Warwick, *Greene, Peter, House (Warwick MRA)*, 1124 W. Shore Rd.
Warwick, *Greene, Richard Wickes, House (Warwick MRA)*, 27 Homestead Ave.
Warwick, *Greene-Durffee House (Warwick MRA)*, 1272 W. Shore Rd.
Warwick, *Hopelands (Rocky Hill School) (Warwick MRA)*, Wampanoag Rd.
Warwick, *Indian Oaks (Warwick MRA)*, 836 Warwick Neck Ave.
Warwick, *Knight Estate (Warwick MRA)*, 488 East Ave.
Warwick, *Rhode Island State Airport Terminal (Warwick MRA)*, 572 Occupasstuxet Rd.
Warwick, *Russell Estate Outbuildings (Warwick MRA)*, Ives Rd.
Warwick, *Sprague, Amasa, Estate Stone Wall (Warwick MRA)*, Post Rd. at Cowesett Rd. and Valentine Circle
Warwick, *Waterman, John R., House (Warwick MRA)*, 100 Old Homestead Rd.
Warwick, *Wickes, Oliver A., House (Warwick MRA)*, 794 Major Potter Rd.

Newport County

Newport, *Seamen's Church Institute of Newport*, 18 Market Square

Providence County

Pawtucket, *Leroy Theatre*, 66 Borad St.
Providence, *Providence Telephone Company Building*, 112 Union St.
Providence, *Wanskuck Historic District*, Roughly bounded by Branch Ave., Louisquisset Pike, and town boundary

Washington County

New Shoreham, *U.S. Weather Bureau Station*, Beach Ave.
Shannock, *Shannock Historic District*, Main St., N. Shannock and W. Shannock Rds.
South Kingstown, *Wakefield Mill*, 10 High St.

SOUTH CAROLINA

Greenwood County

Ninety Six vicinity, *Moore-Kinard House*, US 178 and S-24-44

Orangeburg County

Orangeburg, *Tingley Memorial Hall, Claflin College*, College Ave.

[FR Doc. 83-19469 Filed 7-18-83; 8:45 am]
BILLING CODE 4310-70-M

Indiana Dunes National Lakeshore Advisory Commission; Meeting

Notice is hereby given, in accordance with the Federal Advisory Committee Act, 86 Stat. 770, 5 U.S.C. App. 1, as amended by the Act of September 13, 1976, 90 Stat. 1247, that a meeting of the Indiana Dunes National Lakeshore Advisory Commission will be held at 9 a.m., CDT, on Wednesday, August 10, 1983, at the Indiana Dunes National Lakeshore Visitor Center at U.S. Highway 12 and Kemil Road, Chesterton, Indiana.

The Commission was established by the Act of November 5, 1966, 80 Stat. 1309, 16 U.S.C. 460u-7, as amended by the Act of October 18, 1976, 90 Stat. 2530, 2533, to meet and consult with the Secretary of the Interior on matters related to the administration and development of the Indiana Dunes National Lakeshore.

The members of the Commission are as follows:

Mr. John R. Schnurlein (Chairperson)
Mr. Ronald Bensz
Ms. Anna R. Carlson
Mr. R. M. Gacki
Mr. James Holland
Ms. Lynne Kaser
Mr. James H. Lahey
Mr. William L. Lieber
Ms. Celia Nealon
Ms. Gail H. Harris
Dr. John A. Rackauskas
Dr. John Tucker
Mr. Norman E. Tufford

Matters to be discussed at this special meeting include:

1. Chairman's Quarterly Report.
2. Report by the Little Calumet River Basin Development Commission on the status of improvements to Burns Ditch and the Little Calumet River.
3. Status of land protection.
4. Quarterly Status Report of 1983 Operations.

The meeting will be open to the public. Any member of the public may file with the Commission prior to the meeting a written statement concerning the matters to be discussed. Persons wishing further information concerning the meeting, or who wish to submit written statements, may contact Dale B. Engquist, Superintendent, Indiana Dunes National Lakeshore, 1100 North Mineral Springs Road, Porter, Indiana 46304, telephone 219-926-7561.

Minutes of the meeting will be available for public inspection 4 weeks after the meeting at the office of the Indiana Dunes National Lakeshore located at 1100 North Mineral Springs Road, Porter, Indiana.

Dated: July 8, 1983.

Randall R. Pope,

Acting Regional Director, Midwest Region

[FR Doc. 83-19468 Filed 7-18-83; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-129]

Certain Limited-Charge Cell Culture Microcarriers; Commission Decision To Review Initial Determination, Commission Hearing, and Schedule for Filing Written Submissions; Notice of More Complicated Designation

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has determined to review a portion of the presiding officer's initial determination that there is no violation of section 337 in the above-captioned investigation.

Authority: The authority for the Commission's disposition of this matter is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in sections 210.53-.56 of the Commission's Rules of Practice and Procedure (47 FR 25134, June 10, 1982 and 48 FR 9242, March 4, 1983; to be codified at 19 CFR 210.52-.56).

SUPPLEMENTARY INFORMATION: On June 6, 1983, the presiding officer issued an initial determination that there is no violation of section 337 in the importation and sale of certain limited-charge cell culture microcarriers. Complainants and respondents have petitioned for review of various parts of the initial determination pursuant to § 210.54(a) of the Commission's rules.

After examining the petitions for review and the responses thereto, the Commission has concluded that there are issues that warrant review. Specifically, the Commission will review the following questions:

1. Validity of U.S. Letters Patent Nos. 4,293,654 and 4,189,534 (the patents) under 35 U.S.C. 112, 35 U.S.C. 102 (Sephadex A-50 only), and 35 U.S.C. 103.

2. Infringement of the patents by respondents' Cytodex 3 product.

3. Whether there is an "industry * * * in the United States", within the meaning of section 337.

4. Whether the importation or sale of respondents' Cytodex products which are found to be involved with unfair practices have the effect or tendency to destroy or substantially injure such an industry.

The Commission's review will be limited to the above issues. No other issues will be considered.

More Complicated Investigation

Because of the complex nature of the issues in this case and the relatively short period remaining before expiration of the original one year deadline, the Commission under section 337(b)(1) and § 210.15 of the Commission's Rules of Practice and Procedure, 19 CFR 210.15, has designated this investigation more complicated and extended the deadline for completion of the investigation by two months.

Commission Hearing

The Commission will hold a public hearing on August 25, 1983, in the Commission's Hearing Room, 701 E Street, NW., Washington, D.C. 20436, beginning at 11:00 a.m. The hearing will be divided into two parts. First, the Commission will hear oral arguments on that portion of the presiding officer's initial determination selected for review. Second, the Commission will hear presentations concerning appropriate relief, the effect that such relief would have upon the public interest, and the proper amount of the bond in the event that the Commission determines that there is a violation of section 337 and that relief should be granted. These matters will be heard on the same day in order to facilitate the completion of this investigation within time limits established under law and to minimize the burden upon the parties.

Oral Arguments

Parties to the investigation and interested Government agencies may present oral arguments concerning that portion of the presiding officer's initial determination being reviewed. That portion of a party's or an agency's total time allocated to oral argument may be used in any way the party or agency making argument sees fit, i.e., a portion of the time may be reserved for rebuttal or devoted to summation. The oral arguments will be held in the following order: complainants, respondents, Government agencies, and the Commission investigative attorney. Persons making oral argument are reminded that such argument must be limited to the issues being reviewed by the Commission and must be based upon the evidentiary record certified to the Commission by the presiding officer.

Oral Presentations on Relief, Bonding, and the Public Interest

Following the oral arguments on the presiding officer's initial determination, parties to the investigation, Government agencies, public-interest groups, and interested members of the public may make oral presentations on the issues of relief, bonding, and the pubic interest. This portion of the hearing is quasi-legislative in nature; presentations need not be confined to the evidentiary record certified to the Commission by the presiding officer, and may include the testimony of witnesses. Oral presentations on relief, bonding, and the public interest will be heard in this order: complainants, respondents, Government agencies, the Commission investigative attorney, public-interest groups, and interested members of the public.

If the Commission finds that a violation of section 337 has occurred, it may issue (1) an order which could result in the exclusion of the subject articles from entry into the United States and/or (2) cease and desist orders which could result in one or more respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in hearing presentations which address the form of relief, if any, which should be ordered.

If the Commission finds that violation of section 337 has occurred and orders some form of relief, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in hearing presentations concerning the amount of the bond, if any, which should be imposed.

Public Interest Consideration

If the Commission concludes that a violation of section 337 has occurred and comtemplates some form of relief, it must consider the effect of that relief upon the public interest. The factors which the Commission will consider include the effect that an exclusion order and/or a cease and desist order would have upon (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) the U.S. production of articles which are like or directly competitive with those which are the subject of the investigation, and (4) U.S. consumers.

Time Limit for Oral Argument and Oral Presentation

Complainants, respondents, the Commission investigative attorney, and Government agencies will be limited to

a total of 30 minutes (exclusive of time consumed by questions from the Commission or its advisory staff) for making both oral argument on violation and oral presentations on remedy, bonding, and the public interest. Persons making presentations solely on remedy, bonding, and the public interest will be limited to 10 minutes (exclusive of time consumed by questions from the Commission and its advisory staff). The Commission may in its discretion expand the aforementioned time limits upon receipt of a timely request to do so.

Written Submissions

In order to give greater focus to the hearing, the parties to the investigation and interested Government agencies are encouraged to file briefs on the issues on review and on the issued of remedy, bonding, and the public interest. The complainants and the Commission investigative attorney are also requested to submit a proposed exclusion order and/or a proposed cease and desist order for the Commission's consideration. Persons other than the parties and Government agencies may file written submissions addressing the issues of remedy, bonding, and the public interest. Written submissions on the issues selected for review must be filed not later than the close of business on August 5, 1983, and submissions on remedy, bonding, and the public interest must be filed not later than the close of business on August 12, 1983. During the course of the hearing, the parties may be asked to file posthearing briefs.

Notice of Appearance

Written requests to appear at the Commission hearing must be filed with the Office of the Secretary by August 18, 1983.

Additional Information

Persons submitting briefs and/or written submissions must file the original document and 14 true copies thereof with the Office of the Secretary on or before the deadlines stated above. Any person desiring to submit a document (or a portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment by the presiding officer. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. Documents containing confidential information approved by the Commission for confidential treatment will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Secretary's Office.

Notice of this investigation was published in the **Federal Register** of August 25, 1982, 47 FR 37312.

Copies of the nonconfidential version of the presiding officer's initial determination and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

FOR FURTHER INFORMATION CONTACT: Wayne W. Herrington, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0480.

Issued: July 14, 1983.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 19517 Filed 7–18–83; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. MC–43]

Motor Carriers; Lease and Interchange of Vehicles

Decided: July 12, 1983.

Kansas City Southern Transport Co., Inc. (MC–61438, MC–52666), Landa Motor Lines, Inc. (MC–88370), and Louisiana, Arkansas, and Texas Transportation Co. (MC–57435) petition for waiver of Subpart B, Section 1057.11 (except (c)), and § 1057.12 of the *Lease and Interchange of Vehicles* regulations (49 CFR Part 1057).

We Find:

Petitioners are all regulated carriers commonly controlled as originally established in Finance Docket No. 21979 (317 I.C.C. 1, (1962)). The safety programs of all petitioners are under common management.

The petition indicates that carriers are seeking waivers of specific regulations which they believe to be burdensome and restrictive in the frequent interchange of vehicles between themselves. The petition clearly indicates that this interchange is partially of a trip-lease nature, saying in pertinent part:

> * * * they will in the near future be required to transfer equipment between each other on a regular and frequent basis both on a trip base and a longer term lease basis.

Since the vehicle leasing being conducted is between regulated carriers, the governing regulations are those of 49 CFR Part 1057, Subpart C, § 1057.22. The applicability of this section is clearly indicated by the Commission in Ex Parte No. MC–168, served February 4, 1983, at page 6 of the decision, which says:

> The trip-lease exemption (49 CFR 1057.22) permits authorized carriers to reposition their equipment in a financially productive manner, in accord with the conditions set forth therein * * *.

The decision further points out, at page 7, that the general leasing requirements of § 1057.11 and 1057.12 apply only to the leases between carrires and owner-operators, saying:

> * * * our research has not revealed, conditions that exist in carrier/carrier relationships which are similiar to those that chronically exist in carrier/owner-operator relationships * * *. That dissimilarity is essentially why the protections for owner-operators appear in a carrier/owner-operators rule (general leasing requirements) rather than a carrier/carrier rule (trip-lease exemption).

There has been some confusion in regard to 49 CFR Part 1057 which has led various petitioners to seek waiver of § 1057.11 and 1057.12 although they are not appliacable to the interchange of equipment between regulated carriers. For this reason, rather than deny this petition as improper, we have accepted its as seeking waiver of those conditions in the appropriate regulations which petitioners, by implication, indicate are burdensome to the interchange of equipment between the commonly controlled companies. Should our interpretation of their need for relief from § 1057.22 be inaccurate or inappropriate we invite petitioners to seek further relief.

We further find that a denial of the requested relief, as modified, would offer no more protection to the public and would prevent greater efficiency, fuel economy, and costs savings.

It is Ordered:

1. The petition of Kansas City Southern Transport Co., Inc. (MC–61438, MC–52666), Landa Motor Lines, Inc. (MC–88320), and Louisiana, Arkansas, Texas Transportation Co. (MC–57435) for waiver of Subpart B, § 1057.11 (except (c)), and Section 1057.12 of the *Lease and Interchange of Vehicles* regulations (49 CFR Part 1057) is denied as filed.

2. Waivers are granted, however, to the following conditional provisions of 49 CFR Part 1057, Subpart C, § 1057.22, as determined by the Board to be those appropriate to the needs of the petitioners: § 1057.22(d) limited

directional return of equipment and (e)(2) insofar as it requires the issuance of interchange receipts. In lieu of such receipts however, times of equipment possession must be identifiable by normal dispatch records of the involved carriers.

3. All provisions of § 1057.22, other than those waived above, will be applicable to the exchange of equipment between the petitioners, as long as they remain regulated carriers under common control.

4. Contractural relationships between owner-operators and the individual carriers will be governed by the complete leasing regulations of 49 CFR Part 1057, Subpart B §§ 1057.11 and 1057.12.

By motor Carrier Leasing Board, Board Members J. Warren McFarland, Bernard Gaillard, and John H. O'Brien. Member J. Warren McFarland Not paticipating.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-19394 Filed 7-18-83; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. MC-43]

Motor Carriers; Lease and Interchange of Vehicles

Decided: July 12, 1983.

Stoops Express, Inc., MC-144630, MC-141740 and B & R Drayage, Inc., MC-135895, petition for waiver of Subpart B, § 1057.11 (except (c)), § 1057.12 and Subpart C, § 1057.22 (except (a)), of the *Lease and Interchange of Vehicles* regulations (49 CFR Part 1057).

We Find:

Petitioners are regulated carriers and under authorized common control (Docket MC-F-14920). Maintenance and management of the equipment is under common supervision.

The petition indicates that the carriers are seeking waivers of specific regulations which they believe to be burdensome and restrictive in the frequent interchange of vehicles between themselves. The petition clearly indicates that this interchange is of a trip-lease nature, saying in pertinent part:

> In order to economically and effectively utilize the equipment of the two companies, it must be freely interchangeable between the two corporations.

Since the vehicle leasing being conducted is between regulated carriers, the governing regulations are those of 49 CFR Part 1057, Subpart C, § 1057.22. The applicability of this section is clearly indicated by the Commission in Ex Parte No. MC-168, served February 4, 1983, at page 6 of the decision, which says:

> The trip-lease exemption (49 CFR 1057.22) permits authorized carriers to reposition their equipment in a financially productive manner, in accord with the conditions set forth therein * * *.

The decision further points out, at page 7, that the general leasing requirements of § 1057.11 and 1057.12 apply only to the leases between carriers and owner-operators, saying:

> * * * our research has not revealed, conditions that exist in carrier/carrier relationships which are similiar to those that chronically exist in carrier/owner-operator relationships * * *. That dissimilarity is essentially why the protections for owner-operators appear in a carrier/owner-operators rule (general leasing requirements) rather than a carrier/carrier rule (trip-lease exemption).

There has been some confusion in regard to 49 CFR Part 1057 which has led various petitioners to seek waiver of §§ 1057.11 and 1057.12 although they are not applicable to the interchange of equipment between regulated carriers. For this reason, rather than deny this petition as improper, we have accepted it as seeking waiver of those conditions in the appropriate regulations which petitioners by implication, indicate are burdensome to the interchange of equipment between the commonly controlled companies. Should our interpretation of their need for relief from § 1057.22 be inaccurate or inappropriate we invite petitioners to seek further relief.

We further find that a denial of the requested relief, as modified, would offer no more protection to the public and would prevent greater efficiency, fuel economy, and costs savings.

It is Ordered:

1. The petition of Stoops Express, Inc. (MC-144630, MC-141740), and B & R Drayage, Inc. (MC-135895), for waiver of Subpart B, § 1057.11 (except (c)), Section 1057.12 and Subpart C, § 1057.22 (except (a)), of the *Lease and Interchange of Vehicles* regulations (49 CFR Part 1057) is denied as filed.

2. Waivers are granted, however, to the following conditional provisions of 49 CFR Part 1057, Subpart C, § 1057.22, as determined by the Board to be those appropriate to the needs of the petitioners: § 1057.22(d) limited directional return of equipment and (e)(2) insofar as it requires the issuance of interchange receipts. In lieu of such receipts however, times of equipment possession must be identifiable by normal dispatch records of the involved carriers.

3. All provisions of § 1057.22, other than those waived above, will be applicable to the exchange of equipment between the petitioners, as long as they remain regulated carriers under common control.

4. Contractural relationships between owner-operators and the individual carriers will be governed by the complete leasing regulations of 49 CFR Part 1057, Subpart B, § 1057.11 and 1057.12.

By the Motor Carrier Leasing Board, Board Members J. Warren McFarland, Bernard Gaillard, and John H. O'Brien. Member J. Warren McFarland not participating.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-19395 Filed 7-18-83; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions

Motor Common and Contract Carriers of Property (except fitness-only); Motor Common Carriers of Passengers (public interest); Freight Forwarders; Water Carriers; Household Goods Brokers. The following applications for motor common or contract carriers of property, water carriage, freight forwarders, and household goods brokers are governed by Subpart A of Part 1160 of the Commission's General Rules of Practice. See 49 CFR Part 1160, Subpart A, published in the **Federal Register** on November 1, 1982, at 47 FR 49583, which redesignated the regulations at 49 CFR 1100.251, published in the **Federal Register** December 31, 1980. For compliance procedures, see 49 CFR 1160.19. Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart B.

The following applications for motor common carriage of passengers, filed on or after November 19, 1982, are governed by Subpart D of 49 CFR Part 1160, published in the **Federal Register** on November 24, 1982 at 47 FR 53271. For compliance procedures, see 49 CFR 1160.86. Carriers operating pursuant to an intrastate certificate also must comply with 49 U.S.C. 10922(c)(2)(E). Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart E. In addition to fitness grounds, these applications may be opposed on the 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(a)(2)(B) to operate in intrastate commerce over regular routes as a motor common carrier of passengers are duly noted.

Please direct status inquiries to Team 2 (202) 275–7030.

Volume No. OP–2–310

Decided: July 7, 1983.

By the Commission, Review Board Members Dowell, Krock, and Williams.

MC 107012 (Sub-831), filed June 14, 1983. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Highway 30 West, Fort Wayne, IN 46818. Representative: Margaret S. Vegeler (same address as applicant), 219–429–2213. Transporting *general commodities* (except classes A and B explosives and commodities in bulk), between points in the U.S., under continuing contract(s) with GTE Service Corporation, of Stamford, CT, and its following affiliates: GTE Telephone Operating Group, GTE Satellite Corporation, and GTE Business Communication Systems, of Stamford, CT, GTE Data Services, Tampa, FL, GTE Directories Corporation, Des Plaines, IL, GTE Communications Products Group and GTE Automatic Electric, Inc., Northlake, IL, GTE Lenkurt, Inc., San Carlos, CA, Sylvania Systems Group and GTE Laboratories, Waltham, MA, GTE Microcircuits, Tempe, AZ, GTE Electrical Products Group, GTE Lighting Products, GTE Precision Materials, and GTE Electrical Equipment, Danvers, MA, and GTE Telenet Communications Group, GTE Telenet Information Services, and GTE Telenet Systems, Vienna, VA.

MC 139843 (Sub-22), filed June 24, 1983. Applicant: VERNON SAWYER, Drawer B, Bastrop, LA 71220. Representative: Barry Weintraub, Suite 403, 7700 Leesburg Pike, Falls Church, VA 22043, 703–442–8330. Transporting *food and related products*, between points in the U.S. (except AK and HI).

MC 145312 (Sub-7), filed June 20, 1983. Applicant: SUNBELT SYSTEMS TRANSPORT, INC., 1256 La Quinta Dr., Orlando, FL 32809. Representative: M. Craig Massey, 1701 South Florida Ave., P.O. Drawer 2787, Dixieland Station, Lakeland, FL 33806–2787, 813–682–1178. 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 Xerox Corporation, of Webster, NY.

MC 168802 filed June 21, 1983. Applicant: CURRY DELIVERY SERVICE, INC., 4601 Roundhill Rd., Alexandria, VA 22310. Representative: Orville E. Curry, Sr. (same address as applicant), 703–971–9237. Transporting (1) *such commodities* as are used by motion picture theatres, and (2) *newspapers, magazines, and periodicals*, between points in MD, VA, WV, and DC.

MC 168822, filed June 21, 1983. Applicant: HUNT CONCRETE COMPANY, INC., P.O. Box 98, Warrenton, MO 63383. Representative: J. Paul Hunt (same address as applicant), 314–456–2551. Transporting (1) *building and road construction materials, equipment, and supplies*, and (2) *grain, coal, and aggregates*, between points in MO, on the one hand, and, on the other, points in AR, IL, IA, KS, LA, OK, NE, and TN. 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(a), submit an affidavit indicating why such approval is unnecessary, or file a petition seeking exemption under 49 U.S.C. 11343(e), 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) for common control to Team 2, Room 2379.

MC 168823, filed June 21, 1983. Applicant: LOGISTICS, INC., 613 Clara St., Dover DE 19901. Representative: George V. Evans, P.O. Box 466, Experiment, GA 30121, 404–228–0930. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except AK and HI), under continuing contract(s) with (a) International Playtex, Inc., of Dover, DE, (b) Metal Masters Foodservice Equipment Co., of Smyrna, DE, and (c) Reichhold Chemicals, Inc., of Dover, DE. Condition: The person or persons who appear to be engaged in common control and another regulated carrier must either file an application under 49 U.S.C 11343(a), submit an affidavit indicating why such approval is unnecessary, or file a petition seeking exemption under 49 U.S.C 11343(e). In order to expedite issuance of any authority please submit a copy of the petition for exemption, the affidavit, or proof of filing the

application(s) for common control to Team 2, Room 2379.

MC 168843, filed June 23, 1983. Applicant: WISCONSIN BAG & CHEMICAL, INC., P.O. Box 126, 236 Mill St., Plainfield, WI 54966. Representative: David R. Binkley (same address as applicant), (715) 335–6383. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in Waushara County, WI, on the one hand, and, on the other, points in the U.S. (except AK and HI), under continuing contract(s) with Walter Bailey Truck Service, Inc., of Plainfield, WI.

MC 168852, filed June 21, 1983. Applicant: OCILLA TRUCK AND IMPLEMENT COMPANY, Perry House Rd., P.O. Box 914, Fitzgerald, GA 31750. Representative: P. Guy White, Jr. (same address as applicant), 912–423–9364. Transporting *general commodities* (except classes A and B explosives and household goods), between points in Ben Hill, Houston, and Irwin Counties, GA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 168862, filed June 21, 1983. Applicant: J.P.D. CONTRACT CARRIERS, ., 8321 Lesplanade St., Montreal, Quebec, Canada H2P2R6. Representative: Robert J. Gallagher, 1435 G St., NW, Ste. 848, Washington, DC 20005, (202) 628–1642. Transporting *general commodities* (except classes A and B explosives and household goods, and commodities in bulk), between points in the U.S., under continuing contract(s) with Bay State National Corp., of Springfield, MA.

Volume No. OP–2–311

Decided: July 8, 1983

By the Commission, Review Board Members Williams, Parker, and Joyce.

MC 107012 (Sub-841), filed June 24, 1983. Applicant: NORTH AMERICAN VAN LINES, ., 5001 U.S. Hwy 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop (same address as applicant), 219–429–2110. Transporting *general commodities* (except classes A and B explosives and commodities in bulk), between points in the U.S., under continuing contract(s) with Johnson Controls, Inc., of Milwaukee, WI.

MC 107012 (Sub-842), filed June 24, 1983. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop (same address as applicant), 219–429–2110. Transporting *household goods*, between points in the U.S., under continuing contract(s) with Commercial Union Insurance Companies, of Boston, MA.

MC 140902 (Sub-26), filed June 24, 1983. Applicant: DPD, INC., 3600 N.W. 82nd Ave., Miami, FL 33166. Representative: Dale A. Tibbets (same address as applicant), 305–593–3204. 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 (a) South Atlantic Distributing Co., of Melbourne, FL; (b) Peyton's Southeastern, Inc., of Cleveland, TN; (c) Peyton's Northern Distribution, Inc., of Bluffton, IN; and (d) Peyton's Inc., of Louisville, KY.

MC 168882, filed June 24, 1983. Applicant: M.D.B. LIMOUSINE SERVICE, INC., 152–65 Jewel Ave., Flushing, NY 11367. Representative: Ronald I. Shapss, 450 Seventh Ave., New York, NY 10123, 212–239–4610. Transporting *passengers*, (I) over regular routes: Between Creskill, NJ and Queens, NY: (1)(a) from junction County Rd. and Hillside Ave., over Hillside Ave. to junction U.S. Hwy 9W, then over U.S. 9W to NJ Hwy 505, then over NJ Hwy 505 to access road to the Lincoln Tunnel, then via the Lincoln Tunnel to New York, NY, then over city streets to the Queens Midtown Tunnel, then via the Queens Midtown Tunnel to the Long Island Expressway, then over the Long Island Expressway to Queens, and return over the same route, and (b) from junction County Rd. and Hillside Ave., over County Rd. (NJ Hwy 501) and Engle St. to intersection NJ Hwy 505, then over NJ Hwy 505 to access road to the Lincoln Tunnel, then via the Lincoln Tunnel to New York, NY, then over city streets to the Queens Midtown Tunnel, then via the Queens Midtown Tunnel to the Long Island Expressway, then over the Long Island Expressway to Queens, and return over the same route, and (2) serving all intermediate points in interstate, foreign, and intrastate commerce, on routes (1) (a) and (b) above; and (II) over irregular routes: in special and charter operations, between points in the U.S. (except HI).

Note.—Under part (I) above, applicant seeks to provide regular-route service in interstate or foreign commerce and in intrastate commerce under 49 U.S.C. 10922(c)(B) over the same routes; (2) under part (II) above, applicant seeks to provide privately-funded charter and special transportation; (3) part (I) above is being published in the **Federal Register**, this issue, under the preface with the "regular" applications; and (4) part (II) above is being published in the **Federal Register**, this issue, under the preface with the "fitness-only" applications.

Please direct status inquiries about the following to Team Three (3) at (202) 275–5223.

Volume No. OP3–320

Decided: July 8, 1983.

By the Commission, Review Board Members Carleton, Parker, and Fortier.

FF 714, filed June 24, 1983. Applicant: EXECUTIVE INTERNATIONAL, INC., 7903 Indian Head Hwy 104–C, Oxon Hill, MD 20745. Representative: Robert H. Swingle (same address as applicant), (301) 839–4448. As a *freight forwarder* in connection with the transportation of *general commodities* (except classes A and B explosives), between points in the U.S.

MC 2934 (Sub-160), filed June 27, 1983. Applicant: AERO MAYFLOWER TRANSIT COMPANY, INC., 9998 North Michigan Road, Carmel, IN 46032. Representative: W. G. Lowry (same address as applicant), (317) 875–1142. Transporting *household goods*, between points in the U.S. (except AK and HI), under continuing contract(s) with Energy Incorporated, of Idaho Falls, ID.

MC 15735 (Sub-86), filed June 24, 1983. Applicant: ALLIED VAN LINES, INC., 2120 S. 25th Ave., P.O. Box 4403, Broadview, IL 60153. Representative: Joseph P. Tuohy (same address as applicant), (312) 681–6377. Transporting *household goods*, between points in the U.S. (except AK and HI), under continuing contract(s) with Mobil Corporation and its subsidiaries, of Fairfax, VA.

MC 123254 (Sub-13), filed June 22, 1983. Applicant: PITZER BROTHERS, INC., P.O. Box 633, Jeannette, PA 15644. Representative: Jeremy Kahn, Suite 733 Investment Bldg., 1511 K St., NW., Washington, DC 20005, (202) 783–3525. Transporting (1) *food and related products*, between points in Forsyth and Rockingham Counties, NC, and Shelby County, TN, on the one hand, and, on the other, points in OH, WV, and those points in PA in and west of Tioga, Lycoming, Union, Snyder, Juniata, Perry, Cumberland, and York Counties, PA, and (2) *clay, concrete, glass, or stone products*, between points in Allegheny, Beaver, Fayette, Lawrence, and Westmoreland Counties, PA, Harrison County, WV, and Fairfield County, OH, on the one hand, and, on the other, points in FL, GA, IL, IN, KY, MD, MI, MO, NJ, NY, NC, OH, SC, TN, VA, WV, WI, and DC, and (3) *general commodities* (except classes A and B explosives and household goods), between points in Allegheny and Westmoreland Counties, PA, on the one hand, and, on the other, points in FL,

GA, IL, IN, KY, MD, MI, MO, NJ, NY, NC, OH, SC, TN, VA, WV, WI, and DC.

MC 148414 (Sub-7), filed June 23, 1983. Applicant: UNIDYNE COROPRATION, 3835 E. Princess Anne Rd., Norfolk, VA 23502. Representative: Joseph L. Steinfeld, Jr., 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).

MC 154965 (Sub-1), filed June 30, 1983. Applicant: P&H TRANSPORTATION, INC., 6939 O'Clinton Rd., Houston, TX 77220–5906. Representative: William Sheridan, 1025 Metker, 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 Dallas, Harris, and Tarrant Counties, TX, on the one hand, and, on the other, points in TX.

MC 167554, filed June 20, 1983. Applicant: SANBORN'S MOTOR EXPRESS OF QUEBEC, INC., 550 Forest Ave., Portland, ME 04101. Representative: Zoe P. Hopkins, 387 Park Ave., So., New York, NY 10016, (212) 532–1800. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in ME, VT, MA, RI, CT, NY, PA, NH, NJ, DE, MD, VA, WV, and DC.

MC 168864, filed June 23, 1983. Applicant: BARAJAS, INC., 1302 East Second, Roswell, NM 88201. Representative: Michael T. Worley, P.O. Box 550, Roswell, NM 88201, (505) 622–5440. Transporting *Mercer commodities*, between points in AZ, NM, and TX.

MC 168885, filed June 24, 1983. Applicant: MR'S EXPRESS, Route 1, Box 99G, Strafford, MO 65757. Representative: Orval E. Smith (same address as applicant), (417) 736–2462. Transporting *general commodities* except classes A and B explosives, household goods and commodities in bulk), between points in AR, MO, IL, IN, KS, and OK.

MC 168894, filed June 23, 1983. Applicant: ROBERT J. KILLION, d.b.a., KILLION ENTERPRISES, P.O. Box 486, Corinne Hwy, Brigham City, UT 84302. Representative: Jack H. Molgard, 102 South First West, P.O. Box 461, Brigham City, UT 84302, (801) 723–8569. Transporting *mobile homes*, between points in WA, OR, CA, ID, NV, UT, AZ, MT, WY, CO, NM, ND, SD, NE, KS, OK and TX

Volume No. OP3–324

Decided: July 12, 1983.

By the Commission, Review Board Members Carleton, Fortier, and Krock.

MC 2934 (Sub-161), filed June 30, 1983. Applicant: AERO MAYFLOWER TRANSIT COMPANY, INC., 9998 North Michigan Rd., Carmel, IN 46032. Representative: W. G. Lowry (same address as applicant), (317) 875–1142. Transporting *household goods*, between points in the U.S. (except AK and HI), under continuing contract(s) with shippers of household goods.

MC 41915 (Sub-51), filed June 23, 1983. Applicant: MILLER'S MOTOR FREIGHT, INC., 1100 Lafayette St., York, PA 17405. Representative: Christian V. Graf, 407 N. Front St., Harrisburg, PA 17101, (717) 236–9318. Transporting *food and related products*, between points in Lowndes County, GA, and Bristol County, MA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 114194 (Sub-226), filed June 23, 1983. Applicant: KREIDER TRUCK SERVICE, INC., P.O. Box 147, Madison, IL 62060. Representative: Marshall Kragen, 1919 Pennsylvania Ave., NW., Suite 300, Washington, DC 20006, (202) 466–3778. Transporting (1) *food and related products*, (2) *chemicals and related products*, and (3) *such commodities* as are used in the mining industry, between points in the U. S. (except AK and HI), under continuing contract(s) with manufacturers, dealers, and distributors, and users, or (1) food and related products, (2) chemicals and related products, and (3) such commodities as are used in the mining industry.

MC 149195 (Sub-23), filed June 23, 1983. Applicant: ARCADIAN MOTOR CARRIERS, INC., P.O. Box 456, Kingsburg, CA 93631. Representative: Richard A. Peterson, P.O. Box 81849, Lincoln, NE 68501, (402) 476–1144. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI).

MC 151975 (Sub-7), filed June 24, 1983. Applicant: DIRECT DELIVERY, INC., 1239 Willingham Dr., East Point, GA 30344. Representative: Frank D. Hall, Suite 202, 1750 Old Springhouse Lane, Atlanta, GA 30338, (404) 451–0401. Transporting *such commodities* as are dealt in or used by manufacturers of glass containers, between points in GA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 168944, filed June 27, 1983. Applicant: JOE JONES TRUCKING, INC., 13180 Foley, Detroit, MI 48227. Representative: Martin J. Leavitt, 22375 Haggerty Rd., P.O. Box 400, Northville, MI 48167, (313) 349–3980. 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 the National Steel Group, of National Steel Corporation, of Pittsburgh, PA.

Please direct status inquiries to Team 1, (202) 275–7030.

VOLUME NO. OP–1–283 (N)

Decided: July 6, 1983.

By the Commission, Review Board Members Carleton, Krock, and Dowell.

MC 123640 (Sub-42), filed June 29, 1983. Applicant: SUMMIT CITY ENTERPRISES, INC., 3200 Maumee Ave., Fort Wayne, IN 46803. Representative: Irving Klein, 1205 Franklin Ave., Garden City, NY 11530, (516)–746–3050. Transporting *metal cabinets, chests and boxes*, between points in the U.S. (except AK and HI), under continuing contract(s) with Kennedy Manufacturing Co., Van Wert, OH.

MC 151940 (Sub-3), filed June 27, 1983. Applicant: CONTRACT TRANSPORT SERVICES, INC., 3 Grocery Way, Lawrence, MA 01843. Representative: Joseph M. Klements, 89 State St., Boston, MA 02109, (617)–523–0800. Transporting *general commodities* (except classes A and B explosives, household good, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with DeMoulas Supermarkets, Inc., of Tewksbury, MA and Consolidated Distribution Services Corp., of Lawrence, MA.

MC 156000 (Sub-1), filed 28, 1983. Applicant: FLOR-DRI SUPPLY COMPANY, INC. 4629 West Fort St. Detroit, MI 48209. Representative: Ralls & Latterman, 118 West Ottawa, Suite B, Lansing, MI 48933, (517)-372–6622. 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 163431 (Sub-1), filed June 28, 1983. Applicant: HERBERT N. MITCHELL, dba. H & P ENTERPRISE, 2940 E. Broadway, Des Moines, IA 50317. Representative: Herbert N. Mitchell (same address as applicant) (515)-263–1167. Transporting *food and related products*, between points in AL, AR, AZ, CA, CO, IL, IN, IA, KS, KY, LA, MI, MN, MS, MO, NE, NV, OH, OK, TN, TX, UT and WI.

MC 168920, filed June 27, 1983. Applicant: S & J LEASING, P.O.Box 578, Medford, OR 97501. Representative: William F. Sanders, Jr. (same address as applicant), (503)-773-7761. Transporting *general commodities* (except classes A and B explosives, and household goods), between points in the U.S., under continuing contract(s) with R & R Truck Brokers, Inc., of Medford, OR and Siskiyou West, Inc., of Yreka, CA.

MC 168990, filed June 30, 1983. Applicant: JAMES STULTS, dba. STULTS LUMBER & SUPPLY, Route #6, Box 188, Haleyville, AL 45565. Representative: James Stults (same address as applicant), (205)-486-4649. Transporting *lumber and wood products*, and (2) *metal products*, between points in AL, TN, KY, IL, WI, TX, LA, NC, PA, WV, FL, IN, MI, GA, MS and OH.

[FR Doc. 83-19092 Filed 7-18-83 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions

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 applicannt has demonstrated that it is fit, willing, and able to perform the sevice proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication, (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Agatha L. Mergenovich,

Secretary.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce, over irregular routes unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract."

Please direct status inquiries to Team 1, (202) 275-7030.

Volume No. OP-1-282(F)

Decided: July 6, 1983.

By the Commission, Review Board Members Carleton, Krock, and Dowell.

MC 156640 (Sub-1), filed June 27, 1983. Application: L & M TRUCKING, INC., 9153 Wicker (P.O. Box 121, St. John, IN 46373. Representative: Donald S. Mullins & T. M. Schlechter, 1033 Graceland Ave., Des Plaines, IL (312)-298-1094. As a *broker* of *general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 168910, filed June 27, 1983. Applicant: SMALL BUSINESS ENTERPRISES & INVESTORS, INC. d.b.a. DISTRIBUTION SYSTEMS, 2386 Morris Ave., Union, NJ 07083. Representative: Barry S. Zall, 2386 Morris Ave., Union, NJ 07083 (201)-6874600. As a *broker* of *general commodities* (except household goods), between points in the U.S. (except AK and HI).

Please direct status inquiries to Team 2 (202) 275-7030.

Volume No. OP-2-312

Decided: July 8, 1983.

By the Commission, Review Board Members Williams, Parker, and Joyce.

MC 164923 (Sub-1), filed June 29, 1983. Applicant: HOWARD TRANSPORTATION, INC., Airport Industrial Pk., Laurel, MS 39440. Representative: Michael F. Morrone, 1150 17th St., NW., Suite 1000, Washington, DC 20036, 202-457-1124. Transporting, for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S. (except AK and HI).

MC 168882, filed June 24, 1983. Applicant: M.D.B. LIMOUSINE SERVICE, INC., 152-65 Jewel Ave., Flushing, NY 11367. Representative: Ronald I. Shapss, 450 Seventh Ave., New York, NY 10123, 212-239-4610. Transporting *passengers*, (I) over regular routes: Between Creskill, NJ and Queens, NY: (1)(a) from junction County Rd. and Hillside Ave., over Hillside Ave. to Junction U.S. Hwy 9W, then over U.S. 9W to NJ Hwy 505, then over NJ Hwy 505 to access road to the Lincoln Tunnel, then via the Lincoln Tunnel to New York, NY, then over city streets to the Queens Midtown Tunnel, then via the

Queens Midtown Tunnel to the Long Island Expressway, then over the Long Island Expressway, to Queens, and return over the same route, and (b) from junction County Rd. and Hillside Ave., over County Rd. (NJ Hwy 501) and Engle St. to intersection NJ Hwy 505, then over NJ Hwy 505 to access road to the Lincoln Tunnel, then via the Lincóln Tunnel to New York, NY, then over city streets to the Queens Midtown Tunnel, then via the Queens Midtown Tunnel to the Long Island Expressway, then over the Long Island Expressway to Queens, and return over the same route, and (2) serving all intermediate points in interstate, foreign, and intrastate commerce, on routes (1)(a) and (b) above; and (II) over irregular routes: in special and charter operations, between points in the U.S. (except HI).

Note.—(1) Under part (I) above, applicant seeks to provide regular-route service in interstate or foreign commerce and in intrastate commerce under 49 U.S.C. 10922(c)(B) over the same routes; (2) under part (II) above, applicant seeks to provide privately-funded charter and special transportation; (3) part (I) above is being published in the **Federal Register**, this issue, under the preface with the "regular" applications; and (4) part (II) above is being published in the **Federal Register**, this issue, under the preface with the "fitness-only" applications.

MC 168943, filed June 27, 1983. Applicant: ASSOCIATED FREIGHT CONSULTING, LTD., 4150 Elkhart Lake Rd., St. Charles, MO 63301. Representative: Rudy A. Lehnig (same address as applicant), (314) 441–0188. As a broker of *general commodities* (except household goods), between points in the U.S.

MC 168982, filed June 29, 1983. Applicant: BLOSSOM HILL, INC., R.D. 3, Box 12A, Blossom Hill Rd., Lebanon, NJ 08833. Representative: Barry Weintraub, Suite 403, 7700 Leesburg Pike, Falls Church, VA 22043, (703) 442–8330. As a broker of *general commodities* (except household goods), between points in the U.S. (except AK and HI).

Please direct status inquiries about the following to Team Three (3) at (202) 275–5223

Volume No. OP3–325

Decided: July 12, 1983.

By the Commission, Review Board Members Carleton, Fortier, and Krock.

MC 152144 (Sub-4), filed June 30, 1983. Applicant: COMBINED TRANSPORT, INC., P.O. Box 3667, Central Point, OR 97502. Representative: David C. White, 2400 SW Fourth Ave., Portland, OR 97201, (503) 226–6491. As a *broker general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 168984, filed June 29, 1983. Applicant: SUNSHINE CHRISTIAN OUTREACH MINISTRIES, INC., d.b.a. SCOM, INC., 2202 E. Broad St., Gadsden, AL 35903. Representative: Gene Lewis, P.O. Box 4111, Gadsden, AL 35904, (205) 543–3404. transporting *passengers*, in charter and special operations, between points in AL, on the one hand, and on the other, points in the U.S. (except AK and HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

Please direct status inquires about the following to Term Four at (202) 275–7669.

Volume No. OP4–444

Decided: July 13, 1983.

By the Commission, Review Board, Members: Joyce, Dowell, and Carleton.

MC 168816, filed June 22, 1983, previously noticed in the **Federal Register** issue of July 8, 1983, and republished in this issue. Applicant: BLUE BIRD LINES, INC., 1418 Main St., Vincennes, IN 47591. Representative: Robert E. Vincent (same address as applicant), (812) 882–2796. Transporting *passengers*, in charter and special operations, between points in the U.S. (except AK and HI). The purpose of this republication is to show the proper protest standards for this proceeding.

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 168876, filed June 24, 1983, previously noticed in the **Federal Register** issue of July 8, 1983, and republished this issue. Applicant: JERRY LANDRUM, HUGO STOCKSTILL, CHARLES DUNHURST, AND T. F. PEARSON, d.b.a. SUNBELT TRUCK BROKERS, P.O. Box 727, Picayune, MS 39466. Representative: Jerry Landrum (same address as applicant) (601) 798–0672. As a broker of *general commodities* (except household goods), between points in the U.S.

Note.—The purpose of this republication is to show that this application is subject to the protest standards under the rules in 49 CFR Part 1160 Subpart B.

[FR Doc. 83-19393 Filed 7-18-83; 8:45 am]
BILLING CODE 7035-01-M

Motor Carriers; Proposed Exemptions

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed exemptions.

SUMMARY: The motor carriers shown below seek exemptions pursuant to 49 U.S.C. 11343(e), and the Commission's regulations in Ex Parte No. 400 (Sub-No. 1), *Procedures for Handling Exemptions Filed by Motor Carriers of Property Under 49 U.S.C. 11343*, 367 I.C.C. 113 (1982), 47 FR 53303 (November 24, 1982).

DATE: Comments must be received within 30 days after the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Warren C. Wood, (202) 275–7977.

SUPPLEMENTARY INFORMATION: Please refer to the petition for exemption, which may be obtained free of charge by contacting petitioner's representative. In the alternative, the petition for exemption may be inspected at the offices of the Interstate Commerce Commission during usual business hours.

Decided: July 12, 1983.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

Agatha L. Mergenovich,

Secretary.

Volume OP2–308

Gene F. Lacaeyse, d.b.a. G. F. Lacaeyse Transport—Purchase Exemption—J. H. Ware Trucking, Inc.

[No. MC–F–15319]

G. F. Lacaeyse Transport (Lacaeyse Transport) MC–150999 seeks an exemption from the requirement under section 11343 of prior regulatory approval for its purchase of a portion of the operating rights of J. H. Ware Trucking, Inc., (Ware), a motor carrier (i.e. Certificate No. MC–139973 Sub-Nos. 78F and 101X paragraph 17). Additionally, Lacaeyse Transport proposes to tack the irregular route authority in Sub-101X, paragraph 17 with its existing irregular route authority. A purchase of the proposed certificates will allow petitioner to transport food and related products between points in Saline, Lancaster, Douglas, Sarpy, Dakota, and Washington Counties, NE, Pottawattamie, Mills, Crawford, Carroll, Hardin, Webster, Polk, Warren, Dallas, Woodbury, and Plymouth Counties, IA, and Union County, SD, on the one hand, and, on the other, points in Arizona, New Mexico, Louisiana, Texas, California, Washington, Oregon, Colorado, Arkansas, Oklahoma, and Tennessee.

Send comments to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

and

(2) Larry D. Knox, 600 Hubbell Building, Des Moines, IA 50309–3596

Volume OP2–309

[No. MC–F–15325]

Nickell Trucking Co.—Purchase Exemption—Pipeco, Inc.

Nickell Trucking Co. (MC–155536) seeks an exemption from the requirement under section 11343 of prior regulatory approval of its purchase of all of the operating rights of Pipeco, Inc. (MC–154222), specifically the lead certificate which authorizes the transportation of oilfield equipment and petroleum equipment between points in NM, CO, TX, UT, WY, KS, and OK.

Send comments to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Fred Rahal, Jr., Suite 305 Reunion Center, 9 East Fourth Street, Tulsa, OK 74103

Comments should refer to No. MC–F–15325.

Note.—The exemption request was previously docketed as FC–81249 with a temporary authority request granted, served April 14, 1983. The FC proceeding has since been withdrawn and the TA has been redesignated under MC–F–15325.

Volume OP3–328

[No. MC–F–15353]

Gordon F. Laramie and Donald F. Laramie—Continuance in Control Exemption—Laramie, Inc., and M C Trucking, Inc.

Gordon F. Laramie and Donald F. Laramie seek an exemption from the requirement under section 11343 of prior review and approval for their continuance in control of Laramie, Inc. (MC–98184) and M C Trucking, Inc., which presently has an application pending in No. MC–168335, upon the latter becoming a motor carrier subject to the jurisdiction of the Commission.

Send comments to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, D.C. 20423

and

(2) Petitioners' representative: Mr. Martin J. Leavitt, Sullivan and Leavitt P.C., 22375 Haggerty Road, P.O. Box 400, Northville MI 48167

Comments should refer to No. MC–F–15353

[FR Doc. 83–19397 Filed 7–18–83; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Agency Forms Under Review

July 13, 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 Office (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 Office 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

Existing Collection in Use Without an OMB Control Number

• Justice Management Division
Department of Justice
Procurement Blanket Clearance
On Occasion
Businesses and other for-profit
Blanket clearance for procurement documents prescribed in 41 CFR, Subtitle A for commercial organizations; 500 respondents; 20,000 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. 83–19091 Filed 7–18–83; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

[Docket No. 83–14]

Robert D. Capell, M.D., Fresno, Calif., Hearing

Notice is hereby given that on March 7, 1983, the Drug Enforcement Administration, Department of Justice, issued to Robert D. Capell, M.D., an Order To Show Cause as to why the Drug Enforcement Administration should not revoke his DEA Certificate of Registration, AC9793642.

Thirty days having elapsed since the said Order To Show Cause was received by Respondent and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Friday, August 5, 1983, commencing at 9:30 a.m. in the U.S. Claims Court Courtroom, 8th Floor, 300 N. Los Angeles Street, Los Angeles, California.

Dated: July 13, 1983.

Francis M. Mullen, Jr.,

Acting Administrator, Drug Enforcement Administration.

[FR Doc. 83–19464 Filed 7–18–83; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 82–1]

Leonard F. Faymore, D.O. et al.; Revocation of Registration

On December 11, 1981, the Acting Administrator of the Drug Enforcement Administration (DEA) issued Orders to Show Cause, seeking to revoke DEA Certificates of Registration AF2936738 issued to Leonard F. Faymore, D.O.; AD5494795 issued to Doctors' Clinic Incorporated; AD7573187 issued to Doctors' Clinic Pharmacy Incorporated; and PD0123682 issued to Doctors' Clinic Methadone Program, all at 38251 Butternut Ridge Road, Elyria, Ohio 44035. Simultaneously, the Acting Administrator ordered the immediate suspension of those Certificates of Registration. On December 29, 1981, the Acting Administrator issued an Order to Show Cause seeking to revoke registration AF1128001 issued to Dr. Faymore at 13 Tilton Street, Greenwich,

Ohio 44837 and immediately suspended that registration as well.

The statutory ground under 21 U.S.C. 824(a)(3) for the Orders to Show Cause was the entry of a judgment abating a public nuisance in *State of Ohio ex rel. White v. Leonard Faymore, D.O. et al*, Case No. 87292–81, Court of Common Pleas, Lorain County, Ohio. In that judgment the court permanently prohibited, restrained, and enjoined Dr. Faymore from either practicing medicine or operating a pharmacy, and dispensing controlled substances, in the State of Ohio. The Acting Administrator found that Dr. Faymore's continued possession of these registrations posed an imminent and unacceptable danger to the public health and safety.

Respondent Faymore, through counsel, requested a hearing on the issues raised by the Orders to Show Cause and the matter was placed on the docket of Administrative Law Judge Francis L. Young. Respondent and the Government agreed not to pursue the administrative action while Respondent was appealing the judgment of the Lorain County Court of Common Pleas. In the interim, the registrations remained suspended.

Subsequently, the Court of Appeals for the Ninth Judicial District, State of Ohio, found that the indiscriminate prescribing, dispensing and administering of controlled substances by Respondent and his clinics constituted a public nuisance. The court stated that the activities carried out at Respondent's clinics resulted in the diversion of controlled substances into the illicit drug traffic; resulted in the premises being used by felons, fugitives from justice and others in the illegal sale of controlled substances as well as thefts, robberies and other crimes; and interfered with the enjoyment of life and the health, safety and morals of neighbors of the clinics. The appellate court permanently prohibited, restrained and enjoined Dr. Faymore and the clinics from prescribing, dispensing and administering controlled substances, or operating a pharmacy, or both, in the State of Ohio. Based on the action of the appellate court, the Government moved for termination of proceedings, which Judge Young granted after Respondent was given an oppotunity to respond to the motion.

On November 5, 1982, during the pendency of these proceedings Dr. Faymore was convicted in the United States District Court for the Northern District of Ohio of 11 counts of distribution of controlled substances in violation of 21 U.S.C. 841(a)(1). On December 22, 1982, the Honorable Ann Aldrich, U.S.D.J., sentenced Dr. Faymore to 49 years incarceration. Dr. Faymore is currently incarcerated.

This agency has long and consistently held that it cannot register a practitioner under 21 U.S.C. 823 and 824 if he lacks state authorization to handle controlled substances. See *Jess B. Caderao, M.D., Docket No. 81–15, 46 FR 50866 (1981); James Waymon Mitchell, M.D.*, Docket No. 79–16, 44 FR 71466 (1979); *David Sachs, M.D.*, Docket No. 77–22, 42 FR 29112 (1977). These cases involve actions by state medical boards or controlled substances licensing agencies. The effect of their actions on those practitioners is the same as that of the Ohio appellate court on Dr. Faymore and his clinics: denial of state authorization to handle controlled substances.

The Acting Administrator feels constrained to note that the practices described in the judgment of the Court of Common Pleas are among the most egregious and flagrantly unprincipled he has seen. The court releated in its opinion that individuals who had frequent access to Dr. Faymore would call themselves "ministers" and recruit groups of "patients" to go to the clinics. These "ministers", who sometimes assumed the title of "Reverend", arranged the transportation of the "patients" to the clinics. The "ministers" received all the drugs prescribed and doled out a few tablets to the "patients" in exchange for the use of their name, thus creating an incentive for "patients" to recruit more "patients."

Having examined the record in this case, it is the decision of the Acting Administator to revoke the Certificates of Registration issued to the Respondents. Accordingly, pursuant to the authority vested in the Attorney General by 21 U.S.C. 824, and redelegated to the Acting Administrator of the Drug Enforcement Administration, the Acting Administrator hereby orders that DEA Certificates of Registration AF2936738; AO5494795; AD7573187; PD0123682; and AF1128001 be, and they hereby are revoked, effective immediately.

Dated: July 11, 1982.

Francis M. Mullen, Jr.,

Acting Administrator.

[FR Doc. 83-19467 Filed 7-18-83; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 83-15]

Robert P. Foresman, M. D., Casey, Illinois; Hearing

Notice is hereby given that on April 15, 1983, the Drug Enforcement Administration, Department of Justice, issued to Robert P. Foresman, M.D., an Order To Show Cause as to why the Drug Enforcement Administration should not revoke his DEA Certificate of Registration, AF8206080.

Thirty days having elapsed since the said Order To Show Cause was received by Respondent and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Tuesday, August 2, 1983, commencing at 9:30 a.m., in the St. Louis University School of Law Moot Courtroom, 1st Floor, 3700 Lindell Boulevard, St. Louis, Missouri.

Dated: July 13, 1983.

Francis M. Mullen, Jr.,

Acting Administrator, Drug Enforcement Administration.

[FR Doc. 83-19462 Filed 7-18-83; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 82-36]

Philip E. Kirk, M.D.; Revocation of Registration

On November 9, 1982, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) directed an Order to Show Cause to Philip E. Kirk, M.D., 3408 West Broadway, Louisville, Kentucky, 40211 (Respondent) seeking to revoke Respondent's DEA Certificate of Registration, AK1370612. The statutory predicate under 21 U.S.C. 824 for the Order to Show Cause was Repondent's conviction on May 9, 1977, in the United States District Court for the Western District of Kentucky. Respondent was convicted of conspiracy, in violation of 21 U.S.C. 846, and 47 counts of unlawful distribution, in violation of 21 U.S.C. 841(a)(1), felony offenses relating to controlled substances. Respondent, through counsel, submitted a position statement wherein he stated that DEA's action in proceeding against his registration violated the *ex post facto* clause of the Constitution since DEA knew of his 1977 conviction when it registered him. The matter was placed on the docket of Admininstrative Law Judge Francis L. Young, who ordered the Government to respond to Respondent's argument.

Subsequently, Judge Young found that DEA issued a Certificate of Registration to Dr. Kirk erroneously and that DEA is seeking in this action to correct a clerical mistake. The Acting Administrator adopts Judge Young's finding that the registration of Respondent was accidential and erroneous. DEA issues over 640,000

registrations annually. Clerical mistakes of this type will happen in any organization processing such a large volume of applications. DEA must be able to take appropriate steps to correct such mistakes through the administrative process.

Judge Young also found that Respondent's *ex post facto* arguments are without merit. The *ex post facto* clause is based on the notion that persons have a right to fair warning of what conduct will give rise to criminal penalties. Judge Young found that DEA was not attempting to apply standards or regulations which did not exist at the time Respondent was convicted in 1977. Judge Young also rejected another argument Respondent appeared to be making, that of a plea in bar in the nature of estoppel. He found no assertion or hint of harm resulting to Respondent based on DEA's mistake. The Acting Administrator adopts Judge Young's findings.

Judge Young gave Respondent an opportunity to raise any issues on which he desired to be heard. Instead, he repeated his *ex post facto* argument and submitted a copy of an Order of the Kentucky State Board of Medical Licensure in which the Board placed Respondent on probation until 1985. Judge Young concluded there was no need for an evidentiary hearing. The applicable statutes and regulations require only that DEA grant Respondent an opportunity for a hearing. Such an opportunity has been provided and Respondent has failed to avail himself of it. Therefore, DEA need not go to the useless and wasteful exercise of convening an evidentiary hearing when Respondent has failed to show there are factual issues to be heard. See *National Independent Coal Operators' Assoc. v. Kleppe*, 423 U.S. 388 (1976); *Costle v. Pacific Legal Foundation*, 445 U.S. 1098 (1980); *United States v. Consolidated Mines & Smelting Co., Ltd.*, 455 F. 2d 432 (9th Cir. 1971).

Judge Young required DEA counsel to make a submission with sufficient information for him to come to a reasoned decision. Agency counsel submitted a summary of the relevant facts as set out in the opinion of the Court of Appeals affirming Respondent's conviction, *United States v. Kirk*, 584 F. 2d 773 (6th Cir. 1978).

From the appellate decision, Judge Young found that Respondent was convicted of conspiring with Charlene White, his employee, and Robert Forrester, an amphetamine dealer, to unlawfully distribute controlled substances. Respondent was also convicted of 47 counts of prescribing controlled substances, notably Desoxyn and Preludin, without legitimate medical purpose and not in the course of professional practice. Dr. Kirk regularly sold prescriptions for controlled substances to individuals with track marks on their arm using false names. These people appeared several times a week. One young man obtained Preludin from Respondent daily under a variety of fictitious names. Charlene White, Respondent's receptionist, aided in the conspiracy by suggesting to the "patient" that she use false names and helped the "patient" think these names up. Another "patient" obtained prescriptions for "speed" from Dr. Kirk 25 or 30 times in about 18 months and Dr. Kirk never checked his heart or asked him about the nature or extent of his weight problem. When Respondent "turned him down" once for a methamphetamine prescription, this individual returned to Respondent's office wearing platic angle weights. A DEA Compliance Investigator testified that Respondent wrote 5,373 Preludin and 1,827 Desoxyn prescriptions from May 1973 to May 1976.

An undercover police detective testified that he went to Respondent's office to obtain Preludin prescriptions from him. Charlene White recognized his false identification, and the detective later discovered next to the fictitious name on an index card kept by Respondent, written in red letters, "Do Not admit. Narc." Two physicians testified for the Government the Respondent's method of supposed treatment for obesity by prescribing Preludin fell far below the minimum standard of medical practice. Four physicians testified for Respondent that, with qualifications, they approved of Respondent's standard of medical practice. The Acting Administrator adopts all the findings of the Administrative Law Judge.

Judge Young concluded that the facts set forth in the Court of Appeals decision provide ample justification for the Acting Adminstrator to revoke Respondent's registration in the exercise of his discretion. Judge Young recommends the revocation of Respondent's Certificate of Registration. Upon examination of the record, the Acting Administrator concurs in this recommendation. The Administrator of DEA has denied applications or revoked registrations based on similar egregious sets of facts. See *David W. Warren, D.O.*, Dk. No. 8012, 46 FR 8799 (1981); *Herbert Webster Voorhies, M.D.*, Dk. No. 80-37, 46 FR 34859 (1981); *Thomas W. Moore, Jr. M.D.*, Dk. No. 79-13, 45 Fr 40743 (1980); *Ivan Czornyj, M.D.*, Dk. No. 79-22, 45 FR 67477 (1980). There can be no question that Dr. Kirk did not maintain a legitimate medical practice but rather used his DEA registration to sell large numbers of controlled substances to persons obviously abusing them.

Respondent has offered no evidence in explanation or mitigation but has filed an exception to the recommended ruling of the Admininstrative Law Judge. Respondent states that DEA's revocation of his registration violates Respondent's right to due process of law in that DEA is relying upon circumstances that existed when DEA registered him. Respondent complains that DEA seeks to revoke the registration without a showing that Respondent violated "a single term of that registration." Were DEA to accept this contention, the entire weight of case law and precedent developed under 21 U.S.C. 823 would be turned on its head. DEA is not obligated to register a practitioner as unfit to handle controlled substance as Dr. Kirk, and then await the outcome. The public health and safety will not be served by registering Respondent merely because he has not "violated a single term" of his registration.

Dr. Kirk's past experience with controlled substances speaks eloquently of his future ability to handle them. The public should not bear the risk that Respondent might again choose to violate the law and once again illegally distribute controlled substances. Clearly the Administrator of DEA can look to the underlying facts of a conviction and weigh them in deciding how to exercise his discretion in a particular case. See *Sokoloff v. Saxbe*, 501 F.2d 571 (2nd Cir. 1974); *River Forest Pharmacy, Inc. v. Drug Enforcement Administration*, 501 F. 2d 1202 (7th Cir. 1874); *Noell v. Bensinger*, 586 F.2d 554 (5th Cir. 1978).

Respondent's second contention is that DEA is acting inequitably in revoking his registration while the Kentucky State Board of Medical Licensure merely put him on probation and limited his controlled substances prescribing abilities. Dr. Kirk contends further that since four physicians testified at trial that they approved, with qualifications, of his medical practice, DEA's decision to revoke is "severe and unfounded." DEA can, and must, make its own decision with respect to the registration which it issues. DEA cannot rely on the Kentucky medical board or any similar tribunal to make its decision for it. *Ray Roya, M.D.*, Dk. No. 80-22, 46 FR 45842 (1981). In light of the overwhelming evidence of Dr. Kirk's past illegal actions with regard to controlled substances, revocation is not

"severe and unfounded" but adequate and proper in this case.

Having reviewed the record in this matter, the Acting Administrator concludes that Respondent's registration should be revoked. Accordingly, pursuant to the authority vested in the Attorney General by sections 303 and 304 of the Controlled Substances Act, 21 U.S.C. 8233 and 824, and redelegated to the Administrator of the Drug Enforcement Administration, the Acting Administrator hereby orders the revocation of DEA Certificate of Registration AK13270612 previously issued to Philip E. Kirk, M.D., effective August 18, 1983.

Dated: July 11, 1983.

Francis M. Mullen, Jr.

Acting Administrator.

[FR Doc. 83-19401 Filed 7-18-83; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 83-9]

James Dell Potter, M.D., Henderson, Nevada; Hearing

Notice is hereby given that on March 7, 1983, the Drug Enforcement Administration, Department of Justice, issued to James Dell Potter, M.D., an Order To Show Cause as to why the Drug Enforcement Administration should not revoke his DEA Certificate of Registration, AP1576214.

Thirty days having elapsed since the said Order To Show Cause was received by Respondent and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Thursday, August 4, 1983, commencing at 9:30 a.m. in the U.S. Claims Court Courtroom, 8th Floor, 300 N. Los Angeles Street, Los Angeles, California.

Dated: July 13, 1983.

Francis M. Mullen, Jr.,

Acting Administrator, Drug Enforcement Administration.

[FR Doc. 83-19465 Filed 7-18-83; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period July 4, 1983–July 8, 1983.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subsdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–14,013; Warwood Tool Co., Wheeling, WV

TA–W–14,005; Tennessee Forging Steel Corp. Harriman TN

TA–W–14,006; The Triplett Corp., Holgate, OH Plant

TA–W–14,007; The Triplett Corp., Weston, OH Plant

TA–W–14,008; The Triplett Corp., Bluffton, OH plant

TA–W–14,224; Interlake, Inc., Globe Metallurgical Div., Beverly, OH

TA–W–14,376; Aegis Textiles (Formerly Aegis Print Works, Inc.,) Woodridge, NJ

In the following cases the investigation revealed that criterion (3) has not been met. Increased imports did not contribute importantly to workers separations at the firm.

TA–W–14,568; Phelps Dodge Corp., Safford Branch, Safford, AZ

TA–W–14,551; Anamax Mining Co., Sahuarita, AZ

TA–W–14,012; International Harvester, Linden, NJ

TA–W–14,422; Reed Tubular Products Co., Sugar Land, TX and Houston, TX

TA–W–14,428; Cyprus Pima Mining Co., Tucson, AZ

TA–W–14,065; Ford Motor Co., Body & Assembly Div., Wixom Assembly, Wixon, MI

TA–W–14,067; Ford Motor Co., Body & Assembly Div., St. Louis Assembly, St. Louis, MO

TA–W–14,070; Ford Motor Co., Body & Assembly Div., Lorain Assembly, Lorain, OH

TA–W–14,071; Ford Motor Co., Body & Assembly Div., Chicago Assembly, Chicago, IL

TA–W–14,075; Ford Motor Co., Body & Assembly Div., Louisville Assembly, Louisville, KY

TA–W–14,076; Ford Motor Co., Body & Assembly Div., Kentucky Truck Assembly, Louisville, KY

TA–W–14,077; Ford Motor Co., Body & Assembly Div., Twin Cities Assembly, St. Paul, MN

TA–W–14,079; Ford Motor Co., Body & Assembly Div., Wayne Assembly, Wayne, MI

TA–W–14,080; Ford Motor Co., Body & Assembly Div., Michigan Truck Assembly, Wayne, MI

TA–W–14,081; Ford Motor Co., Body & Assembly Div., Ohio Truck Assembly, Avonlake, OH

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA–W–14,554; Island Creek Coal Co., #10 Elk Creek Mine, Emmett, WV

Aggregate U.S. imports of coal did not increase as required for certification.

TA–W–14,542; The Durwick Co., Ridgefield Park, NJ

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–14,603; B.F. Walker, Inc., Pueblo, CO

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974

TA–W–14,566; Ohio Ferro-Alloys Corp., Powhatan Point, OH

The investigation revealed that criterion (1) has not been met.

Affirmative Determinations

TA–W–14,537; U.S. Steel Corp., Atlantic City Oil Mine, Lander, WY

A certification was issued covering all workers separated on or after March 23, 1982.

TA–W–13,923; American Color & Chemical Corp., Lock Haven, PA

A certification was issued covering all workers separated on or after October 28, 1981.

TA–W–13,870; Federal Mogul Corp., Malden, MO

A certification was issued covering all workers separated on or after January 1, 1982.

TA–W–14,412; Max Rubin Industries, Baltimorte, MD

A certification was issued covering all workers separated on or after January 31, 1982.

TA–W–14,413; Carteret Novelty Co., Carteret, NJ

A certification was issued covering all workers separated on or after January 31, 1982.

TA–W–14,414; Carteret Novelty Co., Newark, NJ

A certification was issued covering all workers separated on or after January 31, 1982.

TA–W–14,412; Process & Systems Engineering Co., Inc., Mobile, AL

A certification was issued covering all workers separated on or after February 10, 1982.

TA–W–14,390; Carborundum Co., Vancouver, WA

A certification was issued covering all workers separated on or after July 1, 1982.

TA–W–14,210; Armco Tubular Div. of National Supply Co., Logan, OH

A certification was issued covering all workers separated on or after May 1, 1982.

TA–W–14,386; NL Bariod, Fountain Farm, MO

A certification was issued covering all workers separated on or after June 1, 1982.

TA–W–14,379; Armco, Inc., Zanesville, OH

A certification was issued covering all workers separated on or after January 13, 1982.

TA–W–14,000; Kinney Shoe Corp., Perry Novell Plant, Huntington, WV

A certification was issued covering all workers separated on or after May 30, 1982.

TA–W–14,228; RCA Corp., Consumer Electronics Div., Indianapolis, IN

A certification was issued covering all workers separated on or after January 7, 1982 and before February 1, 1983.

TA–W–14,184; Cresco Outerwear, Cresco-Pollak Sportswear, Inc., Ashland, OH

A certification was issued covering all workers separated on or after December 3, 1981.

TA–W–14,066; Ford Motor Co., Body & Assemby Div., Kansas City, Assembly, Kansas City, MO

A certification was issued covering all workers separated on or after April 17, 1982 and before October 1, 1983.

TA–W–14,073; Ford Motor Co., Body & Assembly Div., Dearborn Assembly, Dearborn, MI

A certification was issued covering all workers separated on or after April 17, 1982, and before October 1, 1982.

TA–W–14,078; Ford Motor Co., Body & Assembly Div., Atlanta Assembly, Atlanta, GA

A certification was issued covering all workers separated on or after April 17, 1982 and before October 1, 1982.

TA–W–14,072; Ford Motor Co., Body & Assembly Div., San Jose Assembly, San Jose, CA

A certification was issued covering all workers separated on or after August 1, 1982.

TA–W–13,982; Standex Electronics Camberwell Road Plant, Cincinnati, OH

A certification was issued covering all workers separated on or after January 1, 1982.

TA–W–13,946; Howard Industries, Div. of MSL Industries, Inc., Brinkley, AR

A certification was issued covering a–1 workers separated on or after November 3, 1981 and before December 31, 1982.

TA–W–14,167; Uniroyal, Inc., Opelika, AL

A certification was issued covering all workers separated on or after December 2, 1981.

TA–W–13,857; Bethlehem Steel Corp., Lebanon Plant, Lebanon, PA

A certification was issued covering all workers separated on or after October 12, 1981.

I hereby certify that the aforementioned determinations were issued during July 4, 1983–July 8, 1983. Copies of these determinations are available for inspection in Room 9120, U.S. Department of Labor, 601 D Street, NW., Washington, D.C. 20213 during normal business hours or will be mailed to persons who write to the above address.

Dated: July 12, 1973.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance

[FR Doc. 83–19282 Filed 7–18–83; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 29, 1983.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 29, 1983.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, D.C. 20213.

Signed at Washington, D.C. this 11th day of July 1983.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Jade Handbag, Inc. (workers and LGPHNW)	New York, NY	4/13/83	4/6/83	TA–W–14,804	Handbags.
Armco Steel Corp., National Supply Division (USWA)	Gainesville, TX	7/5/83	6/30/83	TA–W–14,805	Oil field equipment.
Cooper Industries, Portable Rig Division (USWA)	Dallas, TX	7/5/83	6/30/83	TA–W–14,806	Mud pumps, rotary tables, boom type cranes.
Dresser Industries, Inc., Illinois Avenue Plant (USWa)	Dallas, TX	7/5/83	6/30/83	TA–W–14,807	Drilling bits.
Dresser Industries, Inc., Forest Avenue Plant (USWA)	Dallas, TX	7/5/83	6/30/83	TA–W–14,808	Oil tool equipment, oil well inspection and servicing tools.
General Electric-Carboloy Systems Department (IUE)	Warrensville, Hts, OH	7/7/83	6/29/83	TA–W–14,809	Tungsten carbide cutting tools.

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Harley-Davidson Co., Inc. (ALWA)	Milwaukee, WI (Juneau Avenue).	6/30/83	6/15/83	TA-W-14,810	Headquarters office, research laboratory, ship finished parts and accessories to dealerships.
Harley-Davidson Co., Inc. (AIWA)	Milwaukee, WI (Capitol Drive).	6/30/83	6/15/83	TA-W-14,811	Engines and transmissions.
Harley-Davidson Co., Inc. (AIWA)	Tomahawk, WI	6/30/83	6/15/83	TA-W-14,812	Fiberglass parts and windshield fairings (ship these parts along with engines and transmissions to Pennsylvania for assembly).
McInnes Steel Co. (workers)	Corry, PA	7/7/83	6/30/83	TA-W-14,813	Steel forgings, compressors, turbines, generators and speed reducers.
Mesta Machine Co. (USWA)	W. Homestead, PA	6/30/83	6/29/83	TA-W-14,814	Steel making machinery.
Wheeling-Pittsburgh Steel Corp., Executive Office (company).	Pittsburgh, PA	7/7/83	6/29/83	TA-W-14,815	Executive office.
Wheeling-Pittsburgh Steel Corp., Atlanta District Sales Office (company).	Atlanta, GA	7/7/83	6/29/83	TA-W-14,816	District sales office.
Wheeling-Pittsburgh Steel Corp., Chicago District Sales Office (company).	Hillside, IL	7/7/83	6/29/83	TA-W-14,817	District sales office.
Wheeling-Pittsburgh Steel Corp., Cleveland District Sales Office (company).	Cleveland, OH	7/7/83	6/29/83	TA-W-14,818	District sales office.
Wheeling-Pittsburgh Steel Corp., Detroit District Sales Office (company).	Southfield, MI	7/7/83	6/29/83	TA-W-14,819	District sales office.
Wheeling-Pittsburgh Steel Corp., Houston District Sales Office (company).	Houston, TX	7/7/83	6/29/83	TA-W-14,820	District sales office.
Wheeling-Pittsburgh Steel Corp., New York District Sales Office (company).	Saddle Brook, NJ	7/7/83	6/29/83	TA-W-14,821	District sales office.
Wheeling-Pittsburgh Steel Corp., Philadelphia District Sales Office (company).	Newton Square, PA	7/7/83	6/29/83	TA-W-14,822	District sales office.
Wheeling-Pittsburgh Steel Corp., St. Louis District Sales Office (company).	St. Louis, MO	7/7/83	6/29/83	TA-W-14,823	District sales office.
Wheeling-Pittsburgh Steel Corp., Pittsburgh District Sales Office (company).	Pittsburgh, PA	7/7/83	6/29/83	TA-W-14,824	District sales office.

[FR Doc. 19283 Filed 7-18-83; 8:45 am]
BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-14,015]

American Motors Corporation, Milwaukee, Wisconsin; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on December 13, 1982 in response to a worker petition received on November 30, 1982 which was filed by the United Automobile, Aerospace and Agricultural Implement Workers of America on behalf of workers at the Milwaukee, Wisconsin stamping plant of American Motors Corporation. The workers produce stampings for AMC passenger automobiles and four-wheel drive vehicles.

The petitioning group of workers are subject to an ongoing investigation for which a determination has not yet been issued (TA-W-13,969). Consequently further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, D.C., this 11th day of July 1983.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 83-19473 Filed 7-18-83; 8:45 am]
BILLING CODE 4510-30-M

[TA-W-13,932]

Ames Coal Company, Logan County, West Virginia; Affirmative Determination Regarding Application for Reconsideration

By an application dated June 17, 1983, the United Mine Workers of America (UMWA) requested administrative reconsideration of the Department of Labor's Negative Determination Regarding Eligibility to Apply for Adjustment Assistance on behalf of workers and former workers of Ames Coal Company, Logan County, West Virginia. The determination was published in the **Federal Register** on May 3, 1983 (48 FR 19958).

The UMWA in its application for reconsideration argues that: the Wheeling-Pittsburgh Coal Company (W-P) exercised considerable control over Ames' daily mining operations; Ames should be considered an appropriate subdivision of W-P Coal within the meaning of 29 CFR 90.2; coal mined by Ames from W-P owned land under a contractual relationship was used by W-P Steel Company in the manufacture of steel; and since workers at W-P Steel's Steubenville, Ohio and Allenport, Pennsylvania mills were certified as eligible to apply for adjustment assistance, former workers of Ames Coal should also be eligible under the integrated production principle.

Conclusion

After considering the arguments presented in the application, I conclude that they are of sufficient weight and relevance to justify reconsideration of the Department's decision. Reconsideration is granted.

Signed at Washington, D.C., this 11th day of July 1983.

Harold A. Bratt,

Deputy Director, Office of Program Management, UIS.

[FR Doc. 83-19472 Filed 7-18-83; 8:45 am]
BILLING CODE 4510-30-M

Additions to Annual List of Labor Surplus Areas; Florida

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

DATE: The additions to the annual list are effective on July 1, 1983.

SUMMARY: The purpose of this notice is to announce changes to the annual list of labor surplus areas.

FOR FURTHER INFORMATION CONTACT: James W. Higgins, United States Employment Service (Attention: TEEPA), 601 D Street, NW., Washington, D.C. 20213, Telephone: 202-376-6700.

SUPPLEMENTARY INFORMATION: Executive Order 12073 requires executive agencies to emphasize procurement set-asides in labor surplus areas. The Secretary of Labor is responsible under that Order for classifying and designating areas as labor surplus areas.

Under Executive Order 10582 executive agencies may reject bids or offers of foreign materials in favor of the lowest offer by a domestic supplier, provided that the domestic supplier undertakes to produce substantially all of the materials in areas of substantial unemployment as defined by the Secretary of Labor. The preference given to domestic suppliers under Executive Order 10582 has been modified by Executive Order 12260. Federal Procurement Regulations Temporary Regulation 57 (41 CFR Chapter 1, Appendix), issued by the General Services Administration on January 15, 1981 (46 FR 3519), implements Executive Order 12260. Executive agencies should refer to Temporary Regulation 57 in procurements involving foreign businesses or products in order to assess its impact on the particular procurements.

The Department of Labor's regulations implementing Executive Orders 12073 and 10582 are set forth at 20 CFR Part 654, Subparts A and B. Subpart A requires the Assistant Secretary of Labor to classify jurisdictions as labor surplus areas pursuant to the criteria specified in the regulations and to publish annually a list of labor surplus areas. Pursuant to those regulations the Assistant Secretary of Labor published the annual list of labor surplus areas on June 4, 1982 (47 FR 24474).

Subpart B of Part 654 states that an area of substantial unemployment for purposes of Executive Order 10582 is any area classified as a labor surplus area under Subpart A. Thus, labor surplus areas under Executive Order 12073 are also areas of substantial unemployment under Executive Order 10582.

The areas described below have been classified by the Assistant Secretary of Labor as labor surplus areas pursuant to 20 CFR 654.5(b) (48 FR 15615 April 12, 1983) and are added to the annual list of labor surplus areas, effective July 1, 1983. The following additions to the annual list of labor surplus areas are published for the use of all Federal agencies in directing procurement activities and locating new plants or facilities.

Signed at Washington, D.C. on July 8, 1983.

Albert Angrisani,

Assistant Secretary of Labor.

ADDITIONS TO THE ANNUAL LIST OF LABOR SURPLUS AREAS, JULY 1, 1983

Labor surplus area	Civil jurisdiction included
Florida: Hialeah City	Hialeah City in Dade County.
Louisiana: Balance of Jefferson Parish.	Jefferson Parish less Kenner City.

ADDITIONS TO THE ANNUAL LIST OF LABOR SURPLUS AREAS, JULY 1, 1983—Continued

Labor surplus area	Civil jurisdiction included
Oklahoma: Beckham County.	Beckham County.
West Virginia: Harrison County.	Harrison County.

[FR Doc. 83-19475 Filed 7-18-83; 8:45 am]

BILLING CODE 4510-30-M

Addition to List of High Unemployment Areas; Oklahoma

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

DATE: The addition to the list is effective on July 1, 1983.

SUMMARY: The purpose of this notice is to announce an addition to the list of high unemployment areas.

FOR FURTHER INFORMATION CONTACT: James W. Higgins, U.S. Employment Service (Attention: TEEPA), 601 D Street, NW., Washington, D.C. 20213, Telephone: 202-376-6700.

SUPPLEMENTARY INFORMATION: Section 101(a)(3) of Pub. L. 98-8 Stat. 13 (March 24, 1983) (the "Act") requires the Assistant Secretary for employment and Training, U.S. Department of Labor, to classify civil jurisdictions as having high unemployment and to publish a list of these jurisdictions together with descriptions thereof no later than 30 days after enactment of the Act. That list was published on April 22, 1983 (48 FR 17456).

The Act also requires that the list of high unemployment areas be updated on a monthly basis thereafter, by adding civil jurisdictions that the Assistant Secretary deems to meet the criteria necessary for classification. The area described below has been classified by the Assistant Secretary as a high unemployment area and added to the list of high unemployment areas, effective July 1, 1983.

Signed at Washington, D.C. on July 8, 1983.

Albert Angrisani,

Assistant Secretary of Labor.

ADDITION TO THE LIST OF HIGH UNEMPLOYMENT AREAS, JULY 1, 1983

High unemployment area	Civil jurisdiction included
Oklahoma: Beckham County	Beckham County.

[FR Doc. 83-19474 Filed 7-18-83; 8:45 am]

BILLING CODE 4510-30-M

Office of Pension and Welfare Benefit Programs

Grant of Individual Exemptions; Gilmore Steel Corp. Pension Plan and Trust et al.

AGENCY: Pension and Welfare Benefit Programs Office, Labor

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the Federal Register of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Gilmore Steel Corp. Pension Plan and Trust (the Plan) Located in Portland, Oregon

[Exemption Application D-2866; Prohibited Transaction Exemption 83-110]

Exemption

The restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the lease (the Lease) by the Plan of certain property (the Property) which consists of 4.64 acres of land improved with a building to the Gilmore Steel Corp., (the Employer), the sponsor of the Plan, provided the terms and conditions of the Lease are at least as favorable to the Plan as those which the Plan could have received in a similar transaction with an unrelated party at the time the Lease was entered into.

In granting this exemption, the Department expresses no opinion as to the appropriateness or prudence of the decision by the trustees of the Plan to invest assets of the Plan in the Property. The Department notes, however, that as a condition for granting exemptive relief, the Employer has agreed to indemnify and save and hold the Plan free and harmless against any losses resulting from the sale of the Property by the Plan for an amount lower than the sum of the price of the land paid by the Plan and the cost of the Plan of constructing the metallurgical processing building and accompanying improvements.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on December 11, 1981 at 46 FR 60686.

EFFECTIVE DATE: The exemption will be effective October 9, 1981.

FOR FURTHER INFORMATION CONTACT: Richard Small of the Department, telephone (202) 523-7222. (This is not a toll-free number.)

The Western Growers Pension Trust (the Plan) Located in Irvine, California

[Exemption Application No. D-40634; Prohibited Transaction Exemption 83-111]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the loan by the Plan to WGA Service Corp. of the lesser of 12½% of the Plan's assets on the date of the loan or $2,500,000, unde the terms described in the notice of proposed exemption, provided such terms are not less favorable to the Plan than those obtainable in an arms-length transaction with an unrealted party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on May 10, 1983 at 48 FR 21025.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

The Drs. Krumholtz and Lunsfor, P.A. Employees' Profit Sharing Plan and Drs. Krumholtz and Lunsford, P.A. Employees' Pension Plan (together, the Plans Located in Boca Raton, Florida

[Exemption Application No. D-4281; Prohibited Transaction Exemption 83-112]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sales by the Plans to Drs. Krumholtz and Lunsford of each Plan's 14.03065 percent interest in the KLMR partnership for $55,670.95, provided such amount is not less than the fair market value of each Plan's interest on the date of the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on May 10, 1983 at 48 FR 21028.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 af the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 14th day of July 1983.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 83-19510 Filed 7-18-83; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-3485]

Nassau County Carpenters' Vacation Fund (the Vacation Plan) Located in Westbury, New York

AGENCY: Pension and Welfare Benefit Programs Office, Department of Labor.

ACTION: Notice of hearing.

SUMMARY: This document contains a notice of public hearing with respect to an application filed on behalf of the Vacation Plan. The application is for an exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act). The public hearing will allow persons who would be affected by the proposed exemption to present oral comments to the Department of Labor (the Department).

DATES: The hearing will be held on Monday, October 3, 1983, at 10 a.m. Persons who wish to present oral comments at the hearing shall submit a statement to that effect, which must be received by the Department on or before September 23, 1983.

ADDRESS: The hearing will be held in Room N-5437A and B of the Department

of Labor Building, 200 Constitution Avenue NW., Washington, D.C. 20216.

Statements and any written comments on the proposed exemption should be sent to: Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, 200 Constitution Avenue NW., Washington, D.C. 20216. Attention: Hearing for Application No. D-3485. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue NW., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, (202) 523-8971. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of a public hearing to be held before the Department with respect to a proposed exemption from the restrictions of section 406(b)(2) of the Act. The proposed exemption was requested in an application filed on behalf of the Vacation Plan, pursuant to section 408(a) of the Act, and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975).

The proposed exemption, if granted, would permit transfers by the Vacation Plan of: (1) $200,000 in uncommitted reserves to the Nassau County Carpenters' Welfare Fund; and (2) $100,000 in uncommitted reserves to the Nassau County Carpenters' Pension Fund.

A Notice of Pendency of the proposed exemption was published in the **Federal Register** on Tuesday, November 30, 1982 (47 FR 53968). By means of the Notice of Pendency, interested persons were invited to submit written comments and requests for a public hearing with respect to the proposed exemption. Three comments containing requests for a public hearing have been received by the Department. Based on the requests, the Department has determined that a public hearing regarding the proposed exemption will be held on Monday, October 3, 1983, beginning at 10 a.m. in Room N-5437A and B of the Department of Labor Building, 200 Constitution Avenue NW., Washington, D.C. 20216.

Any person who desires to present oral comments at the hearing and who wishes to be asssured of being heard, shall submit a statement to that effect, indicating the amount of time he wishes to devote to his oral comments. Such statement and any written comments that such person wishes to be considered in conjunction with his presentation should be submitted to the address specified in **"ADDRESS"** above, within the time period set forth in **"DATES"** above.

An agenda will be prepared by the Department, containing the order of presentation of oral comments. Copies of the agenda will be available at the hearing. Information concerning contents of the agenda may be obtained on or after September 27, 1983, by telephoning the person whose name and number are shown above.

Ordinarily, ten minutes will be allowed each person for making an oral presentation. In addition, persons presenting such oral comments should be prepared to answer questions relating to proposed exemption. At the conclusion of presentation of comments by persons listed on the agenda, other comments will be received to the extent time permits. The public hearing will be transcribed.

Notice to Interested Persons

Within thirty days after the notice of hearing is published in the **Federal Register**, notice will be given to all Plan participants and beneficiaries by mail, personal delivery or posting such notices at locations where participants work which are customarily used for providing information to employees. The notice will include a copy of the notice of heairng as it appears in the **Federal Register**.

Signed at Washington, D.C. this 14th day of July 1983.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 83-19511 Filed 7-18-83; 8:45 am]

BILLING CODE 4510-29-M

DEPARTMENT OF LABOR

Employee Benefit Plans; Prohibited Transaction Exemptions

AGENCY: Pension and Welfare Benefit Programs Office, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests. All interested persons are invited to submit written comments or requests for a hearing on the pending exemption, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of the **Federal Register** notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216. Attention: Application NO. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

Notice to Interested Persons. Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Trowel Trades Industry Fund (the Plan) Located in West Palm Beach, Florida

[Application No. L-3787]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act shall not apply to the proposed sale of certain real property (the Property) by the Plan to certain parties in interest (the Purchasers) with respect to the Plan, provided the sales price is at least the fair market value of the Property at the time of sale.

Summary of Facts and Representations

1. The Plan is an employee welfare benefit plan maintained to provide training and other services to employees of employers contributing to the Plan. As of November 19, 1982, the Plan had 650 participants and total assets of approximately $900,000. The Property is an unimproved parcel of real property located in Airport Industrial Park, West Palm Beach, Florida and consists of four contiguous lots. Lots 1 and 2 were purchased by the Plan in October of 1972 from W. G. Lassiter, Jr., (Lassiter), an unrelated third party for $29,700. Lots 3 and 4 were purchased by the Plan in July of 1971 from Lassiter for $26,000.

2. The Property was originally purchased by the Plan with the intent to expand the apprenticeship school maintained by the Plan. In 1974, the apprenticeship school was expanded without the use of the Property and the additional space provided, at the time, proved adequate. The Property is not utilized by the Plan and is currently a non-income producing asset. The expenses with respect to the holding of the Property by the Plan have been approximately $1,000 per year. It is proposed that the Property be sold by the Plan to the Purchasers who are Jack Clerici, Richard Cate, Greg Hall, Perry Diamond, Robert Anderson, Ken Peters and Jack Vogel. The Purchasers are all persons controlling 50 % or more of contributing employers to the Plan. In addition, Messrs. Perry Diamond, Jack Clerici and Robert Anderson are trustees of the Plan. On August 31, 1982, the Plan and the Purchasers entered into a contract (the Contract) for the sale of the Property. The Purchasers deposited $7,000 toward the purchase price and placed it in escrow with Ralph J. Nittolo (Nittolo), an unrelated third party. The proposed sale is conditioned upon the grant of the exemption by the Department. The Contract provided for a sales price of $180,000 which was the fair market value of the Property, as of October 5, 1981, as determined by N. J. Orr, M.A.I., (Orr) an independent appraiser from West Palm Beach, Florida. On the date of the sale the Plan will receive the $7,000 which was deposited with Nittolo and cash in the amount of $173,000 from the Purchasers. An additional appraisal will be performed on the Property prior to the date of sale by Theodore Morgan, SRA, an independent appraiser located in West Palm Beach, Florida. If the fair market value of the Property is then determined to be greater than $180,000, the Plan will receive an additional cash sum representing the excess. No expenses of any kind will be charged the Plan with respect to the sale. The Property is located approximately one block from property owned by one of the Purchasers, Richard Cate. Orr represents that there is no special or unique value to the Purchasers or Mr. Cate. The trustees of the Plan have examined the proposed sale of the Property and represent that it is in the best interests of the Plan. The trustees represent that the sale of the Property will convert a non-liquid asset to cash.

3. The applicant represents that the transactions satisfy the statutory criteria of section 408(a) of the Act because: (1) The sale of the Property is a one-time transaction for cash; (2) no expenses of any kind will be charged the Plan with respect to the sale; (3) the trustees represent that the sale is in the best interests of the Plan; and (4) the Property is an illiquid asset which provides no income to the Plan.

For further information contact: Louis Campagna of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

Notice of Proposed Exemption for Certain Transactions Involving Servisco Employees' Retirement Pension Plan (the Plan) Located in Hillside, New Jersey

[Application No. D–4062]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to: (1) The purchase by the Plan of a Model 9020 NCR computer equipment (the Computer Equipment), from an unrelated person for the benefit of Servisco (the Employer), a party in interest with respect to the Plan; (2) the transfer by the Employer of a trade in allowance on certain equipment it owns to the Plan in order for the Plan to purchase the Computer Equipment; and (3) the subsequent leasing (the Lease) of the Computer Equipment by the Plan to the Employer, provided the terms and conditions of the Lease are and will remain at least as favorable to the Plan as an arm's-length transaction would be with an unrelated party.

Summary of Facts and Representations

1. The Plan is a defined benefit plan that had total assets of $1,488,130 and 600 participants as of December 31, 1981. The investment decisions for the Plan are made by the trustees (the Trustees), who are Bruce L. Cohen, vice president of the Employer and Carl G. Coben, secretary of the Employer. The Employer is a public corporation whose stock is traded on the American Stock Exchange. It is engaged in four principal lines of business: rental of work clothes and other materials; manufacturing; building maintenance; and guard services.

2. The applicant is requesting an exemption which would allow: (1) The purchase (the Purchase) by the Plan of the Computer Equipment for approximately $75,686 from NCR Corporation (NCR); (2) the transfer by the Employer of a $2,758 trade-in allowance credit on certain equipment it owns to the Plan in order for the Plan to purchase the Computer Equipment at a discount; and (3) the Lease. The Purchase represents less than 5% of the Plan's assets as of December 31, 1983.

3. The Lease would be for 5 years and would call for monthly rental payments. The payments on the Lease will provide the Plan with the return of its capital plus a rate of return of 17.25% on its investment. The transaction is based upon an offer received by the Employer from NCR. If, at the end of any twelve month period, it is determined that a better rate of return is capable of being received by the Plan, the Lease will be amended and such higher rate will be paid.

4. The Plan would use lease documents similar to those currently used by NCR. The Lease would provide that the Employer will incur all costs necessary to obtain and preserve the Computer Equipment, including, but not limited to, paying license fees, taxes, assessments, insurance premiums, repairs, and rent. The Employer will warrant to keep throughout the term of the Lease, the Computer Equipment free

of any adverse claims, security, interests, or encumbrances. The Computer Equipment will be fully insured throughout the term of the Lease and the Plan will be the loss payee of such insurance policies. In addition, the Lease will provide that in the event of default by the Employer, for any reason, all payments shall become due and owing immediately upon such default. If the Employer fails to make the payment, the Plan would sell the Computer Equipment and hold the Employer liable for any deficiency resulting from the sale. The Employer will also be required to bear costs (direct or indirect) of such sale.

5. Jerry J. Amiano (Amiano) of Adler, Lowengrub and Amiano, a certified public accountant firm, located in Union, New Jersey, has agreed to serve as an independent fiduciary with respect to the proposed transactions. Amiano is independent of the parties to the transactions and has experience as an independent fiduciary with respect to certain similar employee benefit plans. Amiano represents that after reviewing the proposed transactions he believes that the proposed transactions are in the best interests of the Plan participants and their beneficiaries and protective of their rights. Amiano states, that: (1) The life of the Computer Equipment is purported to have a life expectancy of five years and recognizing both its engineering qualities and the ever changing technology, a five year period appears both reasonable and conversative; (2) the Employer has the option to purchase the Computer Equipment at a reasonable price established within the terms of the Lease agreement and if not purchased the Plan could lease or sell the Computer Equipment elsewhere; [1] (3) the Plan's overall rate of return will be 17.25% and such return is appropriate; and (4) the depreciated value of the Computer Equipment could be recovered at any time in event of default. Amiano further represents that the Employer according to its latest financial report is fiscally sound and the possibility of default appears remote. Amiano will monitor all the terms and conditions of the Lease and will enforce collection in the event of a default. Amiano will also review the rate of return on an annual basis to determine whether the rate of return is favorable to the Plan. If Amiano should determine that such a rate is not favorable to the Plan, he will inform the Plan of such and require, as stated above, that the Employer pay the higher rate. In addition, Amiano represents that Norman E. Schlesinger, an attorney familiar with the Act, with the firm of Saiber, Schlesinger, Satz & Goldstein, has given him advice with respect to the carrying out of the above duties and has made him fully aware of the responsibilities assumed by him as an independent fiduciary to the proposed transactions.

6. In summary, the applicant represents that the proposed transaction satisfies the statutory criteria of section 408(a) of the Act because: (a) Amiano has determined that the proposed transaction is in the best interests of the Plan participants and beneficiaries and protective of their rights; (b) The Plan would use lease documents similar to those currently used by NCR; (c) the Employer will incur all costs necessary to obtain and preserve the Computer Equipment, including, but not limited to paying license fees, taxes, assessments, etc; (d) the Employer will warrant to keep throughout the term of the Lease, the Computer Equipment free of any adverse claims, security interests or encumbrances; (e) the Computer Equipment will be fully insured throughout the term of the Lease and the Plan will be the loss payee of such insurance policies; and (f) Amiano will monitor all terms and conditions of the Lease and will enforce the rights of the Plan in the event of a default.

For further information contact: Horace C. Green of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Office Equipment Company Revised Profit Sharing Trust (the Trust) Located in Canton, Ohio

[Application No. D-4069]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed loan from the Trust of $185,490 to Industrial Realty Company (Industrial), a party in interest with respect to the Trust, provided that the terms and conditions of the loan are not less favorable to the trust than those obtainable is a similar transaction with an unrelated party.

Summary of Facts and Representations

1. The Trust holds assets of the Office Equipment Company Revised Profit Sharing Plan (Office Equipment Plan) and the Youngstown Office Products Company Profit Sharing Plan (Youngstown plan; collectively, the Plans). The assets in the Trust are commingled for investment purposes with the exception of certain life insurance policies and participant loans. As of March 31, 1983, the Trust had total assets of $741,961, of which 92.4% of the assets are held for the benefit of the Office Equipment Plan. Plan committees appointed by Office Equipment Company (Office), and Youngstown Office Products Company (Youngstown, collectively, the Employers), the sponsors of the Plans, direct the trustee of the Trust, National City Bank, Akron (national City), as to Trust investments. As of June, 1982, the Office Equipment Plan had 29 participants, and the Youngstown Plan had 14 participants.

2. The Employers are Ohio corporations engaged in the business of retailing office equipment. Industrial is an Ohio partnership engaged in the business of purchasing and leasing real property. The toal profits and capital interest of Industrial is equally owned by six partners who together own 100% of the oustanding shares of voting common stock of Office. The lineal descendants of three of the above six partners, Eugene Buffo, Joseph Buffo, and Paul R. Skolmutch, own 100% of the stock of Youngstown. As of March 31, 1982, Industrial had a net partners' equity of $429,015.

3. The applicant is requesting an exemption to allow the Plans to loan $185,490 to Industrial (the Loan) to be used by Industrial as a return of capital contributions to three partners of Industrial, and to repay an existing loan between Office and Industrial. The Loan will be for a term of ten years with equal monthly payments of principal, plus interest on the outstanding balance payable at the greater of 10%, or 1% over the floating prime rate as quoted by the Harter Bank & Trust Company (the Bank) located in Canton, Ohio. The Loan will represent less than 25% of the Trust's assets.

4. The Loan will be secured by a duly recorded second mortgage on an improved parcel of real property located at 7579 Freedom Avenue, N.W., North Canton, Ohio (the Property). The Property is leased by Industrial to Office and constitutes the principal facility of Office. Mr. George E. Conroy, Jr., SRA, ASA, CRA, located in Tallmadge, Ohio, appraised the Property, and determined

[1] The Department is not proposing an exemption for the sale of the Computer Equipment by the Plan to the Employer.

that, as of October 23, 1981, the Property had a fair market value of $1,227,000. The Property is subject to a first mortgage to National City, which, as of March 26, 1982, had an outstanding principal balance of $586,666. Therefore, the value of the Property is approximately 150% in excess of the total outstanding balances of the first mortgage and the proposed second martgage.

5. The Property will be insured at no expense to the Plans in an amount not less than the outstanding balance of the first and second mortgage liabilities, and the Plans will be the named insured of such policies. Additional security will be provided by the personal guarantees of the six partners of Industrial, Eugene H. Buffo, Jo Ann H. Buffo, Joseph A. Buffo, Sally L. Buffo, Paul R. Skolmutch, and Marilyn C. Skolmutch. The combined net worth of the partners, as of December 31, 1981, is approximately $2,557,440.

6. The Bank will serve as the fiduciary of the Plans with regard to the Loan. Various of the partners of Industrial have checking and/or savings accounts with the Bank which constitute a very small percentage of the Bank's respective total accounts. There is also an existing mortgage loan to Mr. Eugene H. Buffo in the amount of $3,951.

7. The Bank has reviewed the proposed Loan and has determined that the proposed Loan is appropriate and suitable for the Plans. The Bank has specifically determined that the terms of the Loan, including the proposed interest rate, are reasonable and of a nature typically granted by a bank in such a transaction. The Bank will render the same determination immediately prior to the consummation of the the transaction. In reviewing the appropriateness and suitability of the Loan, the Bank has: (1) Examined the overall investment portfolio and investment funding policy of the Plans; (2) considered the ongoing cash flow and liquidity needs of the Plans and their participants and beneficiaries; (3) considered the need to sell any of the assets of the Plans in relationship to the Loan as part of the portfolio of the Plans; (4) examined the diversification requirements of the Plans' assets in light of the proposed Loan; and (5) reviewed the terms of the proposed transaction as such terms comport with the overall investment performance and funding policy of the Plans.

8. The Bank will be empowered and directed to enforce the terms of the Loan agreement, including making demand for timely payment, bringing suit, or other appropriate process against Industrial in the event of default. The Bank will maintain accurate records and report at least annually on the performance of the Loan, and ensure that the value of the collateral securing the Loan remains equal to at least 150 percent of the outstanding balance of the first and second mortgages.

9. In summary, the applicant represents that the proposed Loan will satisfy the statutory criteria of section 408(a) of the Act because: (a) The Loan will be secured by a duly recorded second mortgage in insured collateral which has a value greater than 150 percent of the amount of the Loan and an existing first mortgage; (b) the Bank, an independent, qualified party, has examined the transaction and has determined that the Loan is appropriate, suitable, and in the best interests of the Plans; and (c) the Bank will completely monitor the Loan and enforce the obligations of Industrial under the Loan.

For further information contact: Mr. David Stander of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Tugendhaft, Robson & Green, P.C. Profit Sharing Plan (the Plan) Located in Lindenhurst, New York

[Application No. D-4105]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to: (1) The proposed loan of $215,000 (the Loan) by the Plan to TRG Associates (TRG), a party in interest with respect to the Plan; and (2) the guarantee of the repayment of the Loan by the individual partners of TRG, provided that the terms and conditions of the transactions are not less favorable to the Plan than those obtainable in similar transactions with an unrelated third party.

Summary of Facts and Representations

1. The Plan is a profit sharing plan with eleven participants. As of February 28, 1983, the Plan had total assets of $860,149. Messrs. Robert Tugendhaft and Stanley L. Green are the trustee of the Plan, and along with consultation from an investment advisor, Mr. Stephen Green, make investment decisions for the Plan.

2. Tugendhaft, Robson & Green, P.C. (the Employer) is the sponsor of the Plan and is engaged in the practice of medicine. The five individual shareholders of the Employer, Messrs. Tugendhaft, Green, Leslie A. Kory, Frederic J. Bertino, and Senhao Fong each own 20 percent of the outstanding capital stock of the Employer, and equal shares of TRG. TRG is a real estate partnership organized to own real property. As of September 30, 1982, the Employer had a net worth of approximately $65,000.

3. The applicant seeks an exemption to allow the Plan to enter into the Loan. The proceeds of the Loan will be used by TRG to repay certain financing extended to it by the individual members of TRG. The Loan will represent 24.9 percent of the Plan's assets.

4. The Loan will bear a rate of interest at the greater of 12 percent, or 1½ percent above the prime rate as quoted by the Chemical Bank of New York (Chemical Bank), and will be repaid in equal monthly payments over a period of 15 years. The Loan's interest rate will be adjusted semi-annually to remain 1½ percent above the prime rate as quoted by the Chemical Bank. In addition, TRG will pay a one point origination fee to the Plan at the time of the Loan's execution.

5. The Loan will be secured by a duly recorded first mortgage on an improved parcel of real property owned by TRG (the Property). The Property is improved by a two story building, the major portion of which will be leased to the Employer for use in its professional practice. The Property is located at 20 West John Street, Lindenhurst, New York. The Property was appraised by real estate appraisers, Messrs. Michael J. Vignola and F. Larry Pisorski, located in Oceanside, New York, as having, as of December 10, 1982, a fair market value of $325,000. The Property will be insured at no expense to the Plan, and the Plan will be the named insured under such policy. If the value of the collateral falls below 150 percent of the outstanding balance of the Loan, additional collateral will be provided.

6. The partners of TRG will individually guarantee the repayment of the Loan by TRG. The aggregate net worth of the partners is in excess of $2,000,000.

7. Mr. Allan Gross, CPA, will serve as the fiduciary for the Plan with regard to the Loan. Mr. Gross is a junior partner in the certified public accounting firm of Putterman, Rush & Shapiro (the Firm). The Employer has been an accounting client of the Firm since 1973. Fees paid

to the Firm in calendar year 1982 amounted to approximately $4,000 which represents approximately .2 percent of the Firm's gross billings. Mr. Gross does not presently have or intend to personally engage in any business and/or other relationships with the Employer or any of its principals.

8. Mr. Gross has had extensive experience with the Act and is knowledgeable with respect to his duties, liabilities, and responsibilities as a fiduicary for the Plan. Mr. Gross has reviewed the terms of the Loan and the current investment portfolio of the Plan, and has determined that the proposed transaction will be appropriate, suitable, and in the best interests of the Plan and its participants and beneficiaries. Mr. Gross has specifically considered the Loan's interest terms, and has determined that such terms are appropriate and suitable, and representative of current market conditions.

9. Mr. Gross will monitor the repayment of the Loan, and will take all necessary legal steps to enforce the rights of the participants of the Plan in the event of a default by the borrower and/or the individual guarantors. Mr. Gross will ensure that the collateral for the Loan remains at least 150 percent of the outstanding balance of the Loan, and will take other actions as necessary to perfect the Plan's mortgage interest in the Loan.

10. In summary, the applicant represents that the Loan will satisfy the criteria of section 408(a) of the Act because: (a) The Loan will be secured by a duly recorded first mortgage in insured real property which has an appraised value in excess of 150 percent of the amount of the Loan; (b) Mr. Gross, a qualified, independent fiduciary has examined the transaction and has determined that the Loan is appropriate, suitable, and in the best interests of the Plan; and (c) Mr. Gross will monitor the Loan and enforce the obligations of TRG under the Loan.

For further information contact: Mr. David Stander of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

The Eleanor Z. Rabin & Associates, Inc. Employees' Pension Trust (the Plan) Located in Miami, Florida

[Application NO. D-4270]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in Rev. Proc. 75-26, 1975-1 C.B. 722. If the exemption is granted the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the sale of an office condominium located at 9012 S.W. 152nd Street, Miami, Florida (the Property) by the Plan to Mrs. Eleanor Z. Rabin, for $192,000 in cash, provided such amount is not less than the fair market value of the Property at the time of the sale.[1]

Summary of Facts and Representations

1. The Plan is a defined benefit plan with one participant, Eleanor Rabin. The trustees of the Plan are Mrs. Rabin and her husband Leonard, who are responsible for the investment decisions of the Plan.

2. The Property was purchased for $192,000 on January 19, 1982 by the Plan from S&K Development, Inc., an unrelated party, for investment purposes and with the specific intent of leasing the Property for a profit. On March 1, 1982, the Plan entered into a lease with the Employer for the Property.

3. The lease provides for a tenancy for three years. The Plan is to receive $30,000 per year in rent from the Employer. Mr. Lee H. Waronker (Waronker) of Property Consultants, Inc., an independent appraiser in Miami, Florida, has represented that the fair market rental value of the Property as of February 15, 1982, was $24,000 per year.

4. The applicant acknowledges that the leasing of the Property by the Plan to the Employer constitutes a prohibited transaction. In order to end the prohibited transaction, Mrs. Rabin has offered to purchase the Property from the Plan at its fair market value. Waronker has appraised the Property as having a value of $192,000 as of May 13, 1983. The sale is to be for cash, and no commission will be paid on the sale. The sale will enable the Plan to better diversify the investment of its assets and to improve liquidity. The Property is encumbered by a first mortgage of approximately $130,000, held by Biscayne Federal Savings and Loan Association. Mrs. Rabin will assume the mortgage when the Property is sold.

5. The applicant represents that within 60 days of the granting of the exemption proposed herein, the Employer will pay any and all excise taxes due as a result of its prohibited lease with the Plan for the Property.

6. In summary, the applicant represents that the proposed transaction meets the statutory criteria for an exemption under section 4975(c)(2) of the Code because: (1) The sale is to be a one-time transaction for cash, and no commission will be paid on the sale; (2) the Plan will receive the fair market value of the Property as determined by an independent appraiser; (3) with respect to the past prohibited lease of the Property, the Employer will fully comply with the excise tax provisions of section 4975 of the Code; and (4) Eleanor Z. Rabin as the sole Plan participant is the only person to be affected by the proposed transaction, and as Plan trustee she has determined that the sale of the Property is in the best interests of the Plan.

Notice to Interested Persons

Because Mrs. Rabin is the sole shareholder of the Employer and the only participant in the Plan, it has been determined that there is no need to distribute the notice of pendency to interested persons. Comments and requests for a hearing must be received by the Department within 30 days of the date of publication of this notice of proposed exemption.

For further information contact: Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Allied Bancshares, Inc. (Allied) Located in Houston, Texas

[Application No. D-4387]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408 (a) of the Act and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406 (a) and (b) of the Act shall not apply to the reinsurance of risks and the receipt of premiums therefrom by Allied Life Insurance Company of Texas (ALIC) from the insurance contracts sold by the Prudential Insurance Company of American (Prudential) to provide benefits to various employee benefit plans (the Plans) maintained by Allied, provided the following conditions are met:

(a) ALIC—

(1) Is a party in interest with respect to the Plans by reason of a stock or partnership affiliation with Allied that is described in section 3(14) (E) or (G) of the Act,

(2) Is licensed to sell insurance in at least one of the United States or in the District of Columbia,

[1] Since Eleanor Z. Rabin is the sole stockholder of EZR Properties, Inc. (the Employer) and the only participant in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510-3-3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

(3) Has obtained a Certificate of Compliance from the Insurance Commissioner of its domiciliary state, Texas, which has neither been revoked nor suspended; and

(4)(A) Has undergone an examination by an independent certified public accountant for its last completed taxable year immediately prior to the taxable year of the reinsurance transaction; or

(B) Has undergone a financial examination (within the meaning of the law of its domiciliary state, Texas) by the Texas Commissioner of Insurance within 5 years prior to the end of the year preceding the year in which the reinsurance transaction occurred.

(b) The Plans pay no more than adequate consideration for the insurance contracts;

(c) No commissions are paid with respect to the direct sale of the contract, or the reinsurance thereof; and

(d) For each taxable year of ALIC, the gross premiums and annuity considerations received in that taxabale year by ALIC for life and health insurance or annuity contracts for all employee benefit plans (and their employers) with respect to which ALIC is a party in interest by reason of a relationship to such employer described in section 3(14) (E) or (G) of the Act does not exceed 50 percent of the gross premiums and annuity considerations received for all lines of insurance (whether direct insurance or reinsurance) in that taxabale year by ALIC. For purposes of this condition (d):

(1) The term "gross premiums and annuity considerations received" means as to the numerator the total of premiums and annuity considerations received, both for the subject reinsurance transactions as well as for any direct sale or other reinsurance of life insurance, health insurance or annuity contracts to such plans (and their employers) by ALIC. This total is to be reduced (in both the numerator and denominator of the fraction) by experience refunds paid or credited in that taxable year by ALIC.

(2) All premium and annuity considerations written by ALIC for plans which it alone maintains are to be excluded from both the numerator and denominator of the fraction.

Preamble

On August 7, 1979, the Department published a class exemption (Prohibited Transaction Exemption 79–41 (PTE 79–41), 44 FR 46365) which permits insurance companies that have substantial stock or partnership affiliations with employers establishing or maintaining employee benefit plans to make direct sales of life insurance, health insurance or annuity contracts which fund such plans, if certain conditions are satisfied.

In PTE 79–41, the Department stated its view that if a plan purchases an insurance contract from a company that is unrelated to the employer pursuant to an arrangement or understanding, written or oral, under which it is expected that the unrelated company will subsequently reinsure all or part of the risk related to such insurance with an insurance company which is a party in interest with respect to the plan, the purchase of the insurance contract would be a prohibited transaction.

The Department further stated that as of the date of publication of PTE 79–41, it had received several applications for exemption under which a plan or its employer would contract with an unrelated company for insurance, and that unrelated company would, pursuant to an arrangement or understanding, reinsure part of all of the risk with (and cede part or all of the premiums to) an insurance company affiliated with the employer maintaining the plan. The Department felt that it woud not be appropriate to cover the various types of reinsurance transactions for which it had received applications within the scope of the class exemption, but would instead consider such applications on the merits of each individual case.

Summary of Facts and Representations

1. Allied is a multiple bank holding company incorporated in the State of Texas on November 26, 1971, with its headquarters located in Houston, Texas. As of April 15, 1983, the Allied group consisted of 47 member banks and four bank-related subsidiaries having more than $6 billion in consolidated assets.

2. The Plans are insured welfare benefit plans which provide benefits to employees of Allied and certain of its member banks. The Plans include four types of group insurance: (1) Term life; (2) major medical expense; (3) dental; and (4) long-term disability. Under each type of benefit, employee coverage is non-contributory, while dependent coverage is contributory (shared by the employer and employee). There are approximately 3,250 participants covered under the Plans.

3. ALIC is a wholly-owned subsidiary of Allied. ALIC was incorporated in the State of Texas on June 24, 1974 and commenced business on August 1, 1975. Its principal place of business is Houston, Texas. ALIC is licensed to do business in the State of Texas. ALIC is generally engaged in the business of underwriting cedit-life and accident-and-health insurance. As of December 31, 1982, it had total assets of $13 million, stockholders equity of $4.8 million, net gain from operations after federal income taxes of $2.1 million and insurance in force exceeding $300 million.

4. The benefits under the Plans have been funded since September 1, 1972 through the purchase of group insurance contracts at competitive rates from Prudential. Prudential is a mutual life insurance company owned by its policyholders and is not related to Allied or ALIC. Prudential proposes to enter into a reinsurance contract with ALIC with respect to risks Prudential insures. Under the proposed reinsurance agreement, Prudential would initially cede to ALIC 50 percent of the term life insurance, from 10 percent to 75 percent of the medical and dental insurance and 0 percent of the long-term disability insurance. Prudential will continue, after the execution of the reinsurance contract, to remain directly and primarily liable to the Plans for all the benefits due under the contracts. The Plans are not parties to the reinsurance agreement. It is contemplated that, in the future, additional amounts of insurance under one or more of the Plans may be ceded by Prudential to ALIC, or the percentage of such insurance ceded may be changed.

5. The applicant represents that the subject reinsurance transactions will meet all of the conditions of PTE 79–41 covering direct insurance transactions:

(a) ALIC is a party in interest with respect to the Plans as described in section 3(14)(G) of the Act by reason of its stock affiliation with Allied.

(b) ALIC is licensed to sell insurance in the States of Texas and Louisiana.

(c) ALIC has obtained a Certificate of Compliance from the Commissioner of Insurance of the State of Texas dated March 18, 1983, and expects to receive an annual renewal of such certificate in the future.

(d) ALIC has undergone a financial examination by the Commissioner of Insurance of the State of Texas as of December 31, 1981, and expects to undergo such financial examinations every three years in the future. During the course of future examinations, it is anticipated that the proposed reinsurance contracts with Prudential will also be examined.

(e) The Allied group, of which ALIC is a part, has undergone in the past, and will continue to undergo in the future, an annual examination by an independent certified public accounting firm.

(f) The Plans pay no more than adequate consideraton for the insurance contracts. Moreover, the proposed

reinsurance contracts will not in any way affect premium costs.

(g) No commissions will be paid with respect to either the insurance contracts with prudential or the reinsurance contract between Prudential and ALIC.

(h) The gross premiums received by ALIC during any taxable year from the reinsurance transactions, when considered along with any other premiums or annuity considerations received by ALIC from employee benefit plans (and their employers) with respect to which ALIC is a party in interest by reason of a 50% or more ownership affiliation, will not exceed 50% of the total premiums and annuity considerations received by ALIC during such taxable years.

6. In summary, the applicant represents that the subject transactions meet the criteria of section 408(a) of the Act because: (1) The insurance could not be purchased directly from ALIC more economically then it is purchased from Prudential; (2) participants and beneficiaries of the Plans are afforded insurance protection by prudential, one of the largest and most experienced group insurers in the United States, at competitive rates arrived at through arm's-length negotiations; (3) ALIC is a sound, viable insurance company which has been in business for many years, and which does a substantial amount of business outside its affiliated group of companies; and (4) each of the protections provided by PTE 79–41 to the Plans will be met under the subject reinsurance transactions.

Notice to interested persons: Notice will be provided to interested persons in the manner agreed upon by the Department and the applicant within 30 days of the date of publication of this proposed exemption, and comments and requests for a public hearing must be received by the Department within 60 days of the date of publication.

For further information contact: Gary H. Lefkowitz of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 14th day of July, 1983.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 83-19512 Filed 7-18-83; 8:45 am]

BILLING CODE 4210-29-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 83-65]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Informal Task Force for the Study of the Mission of NASA.

DATE AND TIME: August 10, 1983, 8:30 a.m. to 5 p.m., August 11, 1983, 8:30 a.m. to noon, and August 12, 1983, 8:30 a.m. to 4 p.m.

ADDRESS: Woods Hole Oceanographic Institution, Quissett Campus, Carriage House Conderence Room, Woods Hole, MA 02543.

FOR FURTHER INFORMATION CONTACT: Mr. Nathaniel B. Cohen, Code LB–4, National Aeronautics and Space Administration, Washington, DC 20546 (202/755–8383).

SUPPLEMENTARY INFORMATION: The NASA Advisory Council Informal Task Force for the Study of the Mission of NASA was established under the NASA Advisory Council to conduct a study of the directions NASA should take in the future (including goals, programmatic objectives, and possible missions) and to report its findings and recommendations to the council. The Task Force is chaired by Dr. George E. Solomon, and has a total of 14 members.

Visitors will be admitted to the meeting room up to its capacity, which is approximately 40 persons including Task Force members and other participants. Visitors will be requested to sign a visitor's register.

Type of Meeting

Open

Agenda

August 10, 1983

8:30 a.m.—Plenary session, introduction, and discussion of issues.
10 a.m.—Subgroup working sessions.
4 p.m.—Plenary session, status reports.
5 p.m.—Adjourn.

August 11, 1983

8:30 a.m.—Plenary session.
9 a.m.—Subgroup working sessions.
12 noon—Adjourn.

August 12, 1983

8:30 a.m.—Plenary session, verbal reports and discussion.
4 p.m.—Adjourn.

Richard L. Daniels,

Director, Management Support Office, Office of Management.

[FR Doc. 83-19388 Filed 7-18-83; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Council on the Humanities Advisory Committee; Meeting

July 6, 1983.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended) notice is hereby

given that a meeting of the National Council on the Humanities will be held in Washington, D.C. on August 4–5, 1983.

The purpose of the meeting is to advise the Chairman of the National Endowment for the Humanities with respect to policies, programs, and procedures for carrying out his functions, and to review applications for financial support and gifts offered to the Endowment and to make recommendations thereon to the Chairman.

The meeting will be held in the Old Post Office Building, 1100 Pennsylvania Avenue, NW., Washington, D.C. A portion of the morning and afternoon sessions on August 4th and the afternoon session on August 5, 1983 will not be open to the public pursuant to subsections (c)(4), (6) and (9) (B) of section 552b of Title 5, United States Code because the Council will consider information that may disclose: Trade secrets and commercial or financial information obtained from a person and privileged or confidential; information of a personal nature the disclosure of which will constitute a clearly unwarranted invasion of personal privacy; and information the disclosure of which would significantly frustrate implementation of proposed agency action. I have made this determination under the authority granted me by the Chairman's Delegation of Authority dated January 15, 1978.

The agenda for the sessions on August 4, 1983 will be as follows:

(Open to the Public)

8:30—9:30—Coffee for Council Members—Room 502
9:30—10:30—Committee Meetings—Policy Discussion
Education and State Programs—Room M–07 (West)
Fellowship Programs—Room M–07 (East)
General Programs—Room 415
Research and Planning—Room 315
10:30—adjourn—(Closed to the Public for the reasons stated above)
Consideration of specific applications

The morning session on August 5, 1983 will convene at 8:30 a.m. in the 1st Floor Council Room M–04 and will be open to the public. The agenda for the morning session will be as follows: (Coffee for Staff and Council Attending Meeting will be served from 8:30 a.m.—9:00 a.m.)

Minutes of the Previous Meeting

Reports
A. Introductory Remarks
B. Introduction of New Staff
C. Contracts Awarded in the Previous Quarter
D. Committee Reports on Policy and General Matters
a. Research Programs
b. Planning and Assessment Studies
c. Fellowship Programs
d. Education Programs
e. State Programs
f. General Programs.
E. Application Report
F. Gifts and Matching Report
G. Study of Treasury Funds
H. FY 1983 Program Funds
I. FY 1984 Appropriations Request
J. FY 1985 Budget Planning

The remainder of the proposed meeting will be given to the consideration of specific applications (closed to the public for the reasons stated above).

Further information about this meeting can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer, Washington, D.C. 20506, or call area code 202–786–0322.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 83-19476 filed 7-18-83; 8:45 am]

BILLING CODE 7536-01-M

OFFICE OF PERSONNEL MANAGEMENT

Proposed Extension of Form for OMB Review

AGENCY: Office of Personnel Management.

ACTION: Notice of a proposed extension of a form.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (Title 44 U.S.C. Chapter 35) this notice announces a proposed extension of a form which collects information from the public. Standard Form 2814–A, Medicare Part B Certification, is used by OPM, Compensation Group, to collect information from annuitants and survivor annuitants covered under the Retired Federal Employees Health Benefit Program to determine whether they are eligible to receive Government contributions for Part B of Medicare. For copies of this proposal, call John P. Weld, Agency Clearance Officer, on (202) 632–7720.

DATE: Comments on this proposal should be received in ten working days from July 19, 1983.

ADDRESSES: Send or deliver comments to:

John P. Weld, Agency Clearance Officer, U.S. Office of Personnel Management, 1900 E Street, NW, Room 6410, Washington, DC 20415

and

Frank Reeder, Information Desk Officer Office of Information and Regulatory Affairs Office of Management and Budget, Room 3235, Washington, DC 20503

FOR FURTHER INFORMATION CONTACT: William J. Washington on (202) 632–5472.

Office of Personnel Management.

Donald J. Devine,

Director.

[FR Doc. 83-19369 Filed 7-18-83; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 23001; 70-6849]

Central and South West Corporation; Supplemental Notice of Proposed Issuance and Sale of Common Stock

July 12, 1983.

Central and South West Corporation ("CSW"), 2700 One Main Place, Dallas, Texas 75202, a registered holding company, has filed a declaration and amendments thereto with this Commission pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50 thereunder.

On March 11, 1983 (HCAR No. 22878), the Commission issued a notice regarding the proposed issuance and sale by CSW, in one or more transactions by December 31, 1984, of up to 10 million shares of its common stock, par value $3.50 per share. It is now proposed that of said 10 million shares of common stock, CSW will issue and sell up to 2 million shares ("Additional Shares") through a primary shelf registration program in accordance with Rule 415 under the Securities Act of 1933. CSW will enter into a Sales Agency Agreement ("Agreement") with Goldman, Sachs & Co. ("Agent") by which CSW will appoint the Agent its exclusive agent for the purpose of offering and selling the Additional Shares by one or more of the following methods: (1) In ordinary regular-way transactions in the auction market on the floor of the New York Stock Exchange, or any regional exchange on which CSW's common stock may be admitted to trading privileges; (2) in block transactions (which may involve crosses) on such exchanges or in the over-the-counter market, in which the Agent may act as a principal for its own account; and (3) in "fixed-price offerings" off the floor of such exchanges, or "special offerings" and "exchange distributions" in accordance with the rules of such exchanges.

Sales of Additional Shares will be made at market prices prevailing at the time of sale in the case of transactions on exchanges and at prices negotiated

by the Agent and related to prevailing market prices in the case of over-the-counter transactions. The terms of any offering pursuant to (3) above will be subject to the prior approval of CSW. CSW will comply with the requirements of Rule 50, as modified by HCAR No. 22623, in accordance with the sales of the Additional Shares pursuant to the methods outlined in (1) and (2) above, and either will so comply or by further amendment hereto will request an exception from such requirements in connection with sales pursuant to (3) above.

The net proceeds from the sale of the stock will be used to retire short-term debt incurred to finance capital contributions to CSW's wholly owned subsidiaries.

The declaration, as now amended and as it may be further amended, is available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by August 8, 1983, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the declarant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as filed or as it may be amended, may be permitted to become effective.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 83-19507 Filed 7-18-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 23000; 70-6772]

Consolidated Natural Gas Company et al.; Proposed Sale of Common Stock by Non-Utility Subsidiary To Parent; Loans by Parent To Subsidiary

July 12, 1983.

Consolidated Natural Gas Company ("Consolidated"), 100 Broadway, New York, New York 10005, a registered holding company, CNG Energy Company ("CNG Energy"), Four Gateway Center, Pittsburgh, Pennsylvania 15222 and Consolidated Gas Supply Corporation ("Supply"), 445 West Main Street, Clarksburg, West Virginia 26301, two of its wholly-owned subsidiaries, have filed post-effective amendments to the application-declaration, as amended, filed in this proceeding. Applicants-declarants cite Sections 6(a), 7, 9(a), and 10 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(3) thereunder as applicable, and state that no other federal or state commission has jurisdiction.

Supply's West Virginia facilities include a fractionation plant, at Hastings, West Virginia ("Hastings Plant") with a capacity of approximately 300,000 gallons a day. The Hastings Plant was designed to extract and fractionate the heavier hydrocarbons passing through Supply's pipeline at that point. Only about 80 percent of the capacity of that plant is required for that purpose. Approximately 60,000 gallons is unused capacity. Fuller use depends on obtaining extracted liquids from other sources. Approximately 17,000 gallons of liquids are expected from Gulf Energy Marketing daily which would leave a balance of 43,000 gallons of unused plant capacity. Utilization of the unused capcity to process the liquids required the addition of about $1.2 million of facilities adjacent to the present plant for truck unloading, measurement, prefractionation storage, piping, pumping, and flow control. By order dated January 21, 1983 (HCAR No. 22832), Consolidated was authorized to invest up to $1.2 million in CNG Energy which would, in turn, be applied to install such additional facilities.

Applicants-declarants state that due to an increase in fractionation operations, it is necessary to install additional facilities, principally a 210,000 gallon storage tank and appurtenant facilities. Authorization is being sought by CNG Energy to sell to, and by Consolidated to acquire, 3,000 additional shares of CNG Energy's capital stock, $100 par value, at par, through and including May 31, 1984. Authorization is also being sought by CNG Energy to borrow up to $200,000 from Consolidated on a long-term basis and for Consolidated to acquire notes evidencing such loans. These loans would be funded by Consolidated through the sale of debentures, subject to further Commission authorization, and/or internal cash generation. Prior to completion of Consolidated's long-term financing, the loans would be in the form of interim construction advances, payable on or before May 31, 1984, with interest at the prime commercial rate in effect from time to time at Chase Manhattan. After conversion, the maturity of the long-term notes will coincide with the maturity of the 11⅛ percent debentures due April 1, 2008 sold by Consolidated in April 1983. The rate of interest on the long-term notes would be substantially equal to the effective cost of money to Consolidated through the sale of such debentures. The proceeds from these financings would be used by CNG Energy to finance the additional facilities.

The application-declaration, as amended by the post-effective amendment and any further amendments thereto, is available for public inspection through the Commission's Office of Public Reference. Any interested persons wishing to comment or request a hearing should submit their views in writing by August 4, 1983, to the Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants-declarants at the addresses specified above and proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration as now amended or as it may be further amended, may be permitted to become effective.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 83-19506 Filed 7-18-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 19953 File No. S7-787]

Summary Effectiveness and Temporary Approval of Proposed Amendment to the Plan for the Designation of National Market System Securities Submitted by National Association of Securities Dealers, Inc.

July 11, 1983.

On July 7, 1983, the National Association of Securities Dealers, Inc. ("NASD") filed with the Commission

[1] 17 CFR 240.11Aa2-1 ("Rule"). Pursuant to the Rule, certain actively-traded over-the-counter ("OTC") securities have been or will be designated as National Market System ("NMS") Securities. Upon designation, a NMS Security is deemed a "reported" security, as that term is defined in Rule 11Ac1-1(a)(6) under the Act, and becomes subject to, among other things, the Commission's last sale reporting rule, Rule 11Aa3-1 under the Act. The

pursuant to Rule 11Aa2–1 under the Securities Exchange Act of 1934 ("Act") [1] a proposed amendment to its "National Market System Securities Designation Plan with respect to NASDAQ Securities" ("Designation Plan").[2] The Designation Plan provides for the phased designation of those securities meeting the Tier 2 voluntary designation criteria.[3]

The proposed amendment would allow a security which formerly was eligible for reporting in the consolidated transaction reporting system, [4] and which meets the Tier 2 designation criteria at the time of application, to be designated an NMS Security immediately upon application. Under the present Designation Plan, such a security would be required to wait until the other securities with earlier applications were designated pursuant to the temporary phasing procedures before it could be designated as an NMS Security. The proposed amendment is designed to ensure continuity in the last sale reporting with respect to a security priviously reported in the consolidated transaction reporting system, but no longer reported in that manner, as a result of delisting from an exchange, for example. The amendment allows the NASD to accelerate effective designation of these securities so that last sale reporting in the OTC market can commence immediately on transfer to the OTC MARKET. The Amendment would have no effect on the timing of designation of other issues awaiting designation; these securities will continue to be designated at the same rate of 50 per month, regardless of the number of securities that receive accelerated effectiveness.

The Commission regards the proposed amendment as a reasonable and desirable adjustment to the Designation Plan, ensuring a minimum of disruption in last sale reporting as securities eligible for designation transfer between exchange and OTC markets. The Commission also notes that at present one eligible security anticipates moving from an exchange to the OTC market, and consequently would be benefited by immediate application of this amendment's procedures. Accordingly, pursuant to Section (d)(4) of Rule 11Aa2–1, the Commission has granted the proposed amendment summary effectiveness, determining that such action is necessary in the public interest, for the protection of investors and the maintenance of fair and orderly markets, and to remove impediments to, and perfect the mechanism of, a national market system.

Conclusion

In accordance with the above, it is ordered, pursuant to Section 11A of the Act, and paragraph (d)(4) of Rule 11Aa2–1 thereunder, that the NASD's amendment to the Designation Plan be, and hereby is, effective for a period not exceeding 120 days from the publication of notice of this release. In order to assist the Commission in determining whether to approve permanently the amendment before or upon the expiration of the 120 day period, interested persons are invited to submit their views to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C. 20549, within 21 days from the date of publication of this notice in the **Federal Register.** The amendment to the Designation Plan will be available for public inspection in the Commission's public reference room. All communications should refer to File No. S7–787.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 83–19606 Filed 7–18–83; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 19967; File No. SR–Phlx–83–12]

Philadelphia Stock Exchange, Inc.; Filing and Order Granting Accelerated Approval of Proposed Rule Change

July 13, 1983.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 11, 1983, the Philadelphia Stock Exchange, Inc. ("Phlx"), 1900 Market Street, Philadelphia, PA 19103, filed with the Securities and Exchange Commission the proposed rule change described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The Phlx proposes to extend temporary Rules 933 and 941 until August 31, 1983. Both these rules terminated by their own terms on July 13, 1983.[1] Rule 933 requires Phlx members who lease their seats to execute a sale and subordination agreement under which the Exchange may sell the membership upon termination of the lease and apply the proceeds of such sale to the satisfaction of the priority claims specified in Phlx By-law XV. Rule 941 requires Phlx member organizations and members who are parties to a-b-c agreements to execute a similar sale and subordination agreement. The Phlx states in its filings that the purpose of extending these two rules is to keep them effective until their principal provisions are incorporated in the Phlx rules on a permanent basis under a pending Phlx proposed rule change contained in File No. SR–Phlx–82–4.[2] The Phlx states that the statutory

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Rule employs a two-tiered approach to determine which OTC securities are designated as NMS Securities. In this respect, Tier 1, which became effective on April 1, 1982, automatically requires that the most actively traded OTC Securities be designated as NMS Securities and the trading activity with respect to potential NMS Securities be reviewed quarterly to determine if additional securities have become subject to the Rule. In addition, Tier 2, which became effective on February 8, 1983, permits issuers of less actively traded OTC securities to become NMS designated if the issuers so elect. For further information concerning the Rule, *see* Securities Exchange Act Release No 17549 (February 17, 1981), 46 FR 13992, and Securities Exchange Act Release No. 18397 (January 7, 1982), 45 FR 2079.

[2] The Commission approved the NASD's Designation Plan on January 7, 1982. Securities Exchange Act Release No. 18399 (January 7, 1982), 47 FR 2226. Generally, the Designation Plan provides: (1) Procedures for the designation of NMS Securities; (2) procedures for determining substantial compliance with the Tier 2 criteria established in the Rule; (3) procedures and criteria for terminating or suspending the NMS status of securities; and (4) procedures for publishing lists of NMC Securities.

[3] The phase-in feature of the Designation Plan was included in the Plan as a method of minimizing administraitve burdens in connection with the potential designation of a large number of securities pursuant to the Tier 2 designation criteria. *See* Securities Exchange Act Release No. 19288, (December 1, 1982), 47 FR 55357.

[4] The consolidated transaction reporting system, administered on behalf of a number of self-regulatory organizations (including the NASD) by the Consolidated Tape Association, disseminates transaction reports and last sale data from various markets on a consolidated basis in certain listed securities. These securities include, generally, stocks and long-term warrants traded on the American and New York Stock Exchanges on April 30, 1976, and stock and long-term warrants traded on an exchange thereafter that substantially meet American or New York Stock Exchange standards for original listing.

[5] 17 CFR 200.30–3(a)(37).

[1] The Commission approved adoption of Rule 933 for a one year period on December 21, 1981 (Securities Exchange Act Release No. 18356, December 21, 1981; 46 FR 63434 December 31, 1981). The Commission approved the adoption of temporary Rule 941 on October 21, 1982 (Securities Exchange Act Release No. 19335, October 21, 1982; 47 FR 49503, November 1, 1982). Most recently the Commission approved the extension of both rules through July 13, 1983 (Securities Exchange Act Release No. 19771, May 16, 1983; 48 FR 23013 May 23, 1983).

[2] Notice of SR–Phlx–82–4 has been given by Commission Release (Securities Exchange Act Release No. 19163, October 21, 1982); and by publication in the **Federal Register** (47 FR 49515,

basis for the proposed rule changes is Sections 6(b)(1), 6(b)(5), and 6(c)(3)(A) of the Act.

Interested persons are invited to submit written data, views and arguments concerning the proposed rule change within 21 days after the date of publication in the **Federal Register.** Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549. Reference should be made to File No. SR–Phlx–83–12.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes which are filed with the Commission and all written communications relating to the proposed rule changes between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 5th Street, NW., Washington, D.C. Copies of the filings and of any subsequent amendments also will be available for inspection and copying at the Phlx.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges and, in particular, the requirements of Section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof, in that the proposed rule change merely keeps in effect two Phlx rules that currently are operative. Both rules terminated on July 13, 1983, and an extension is necessary in order to allow time for consideration of their proposed adoption as permanent rules as part of SR–Phlx–82–4. The Commission believes it is appropriate to extend the effectiveness of these rules for an additional 49 days pending final Commission action on SR–Phlx–82–4.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule changes referenced above be, and hereby are approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 83-19509 Filed 7-18-83; 8:45 am]

BILLING CODE 8010-01-M

November 1, 1982). On July 11, 1983, Phlx granted an extension of time to August 31, 1983, for Commission action on this filing.

SMALL BUSINESS ADMINISTRATION

[License No. 03/03–5157]

Salween Financial Services Inc.; Issuance of License To Operate as a Small Business Investment Company

On June 2, 1983, a notice was published in the **Federal Register** (F.R. 24826), stating that Salween Financial Services Inc., located at 228 North Pottstown Pike, Exton, Pennsylvania 19341, had filed an application with the Small Business Administration (SBA), pursuant to 13 CFR 107.102 (1983), for a license to operate as a small business investment company under the provisions of Section 301(d) of the Small Business Investment Act of 1958, as amended.

Interested parties were given until the close of business June 17, 1983, to submit their comments to SBA. No comments were received.

Notice is hereby given that having considered the application and all other pertinent information, SBA issued License No. 03/03–5157 to Salween Financial Services Inc. on July 1, 1983, to operate as a small business investment company, pursuant to Section 301(d) of the Act.

(Catalog of Federal Domestic Assistance Program No. 50.011, Small Business Investment Companies)

Dated: July 13, 1983.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 83-19520 Filed 7-18-83; 8:45 am]

BILLING CODE 8025-01-M

[Application N. 09/09–0322]

Wesco Capital, Ltd.; Applicaton for a License To Operate as a Small Business Investment Company.

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to Section 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1983)), for a license to operate as a small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958, as amended (the Act), (15 U.S.C. 611 *et seq.*), and the Rules and Regulations promulgated thereunder.

Applicant: Wesco Capital, Ltd.

Address: 3471 Via Lido, Suite 204, Newport Beach, California 92663.

Proposed Private Capital: $500,000.

Area of Operations: State of California.

The General Partners of the Applicant are as follows:

Peter J. Madigan, General Partner, 1.8 percent, 938 Via Lido Sound, Newport Beach, California 92663.

Lido Financial, Inc., Corporate General Partner, 0.2 percent

Peter J. Madigan, President, Vice President and Director, 938 Via Lido Sound, Newport Beach, California 92663.

T. James Herrman, Director, 601 E. Promontary Drive, Newport Beach, California 92660.

Freda D. Wilt, Secretary and Treasurer and Director, 1027 East Angeleno, Burbank, California 91502

Limited Partners owning 10 or more percent partnership interest:

Orville L. Marlett, 20 percent, 4639 Tremont Lane, Corona Del Mar, California 96625.

Peter J. Madigan 58.2 percent, 938 Via Lido Sound, Newport Beach, California

Peter J. Madigan, a Professional Corporation, Employees Retirement Trust, 938 Via Lido Sound, Newport Beach, California 92663.

No other persons, corporations, partnerships, trusts or other entities will own directy or indirectly 10 or more percent of the Applicant's Private Capital.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and probability of successful operations of the applicant under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is hereby given that any person may, not later than 15 days from the date of publication of this Notice, submit written comments to the Deputy Associate Adminstrator for Investment, Small Business Adminstration, 1441 "L" Street, NW., Washington, D.C. 20416.

A copy of this notice should be published once in a newspaper of general circulation in the Newport Beach, California area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: July 13, 1983.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 83-19518 Filed 7-18-83; 8:45 am]

BILLING CODE 8025-01-M

[License No. 09/14-0039]

Westland Capital Corp.; Notice of Surrender of License

Notice is hereby given that, pursuant to Section 107.105 of the Small Business Administration (SBA) Rules and Regulations governing Small Business Investment Companies (13 CFR 107.105 (1983)). Westland Capital Corporation, 100 West Grove Street, Reno, Nevada 89509, incorporated under the laws of the State of California, has surrendered its License No. 09/14-0039, issued by the SBA on December 6, 1961.

Westland Capital Corporation, has complied with all conditions set forth by SBA for surrender of its license. Therefore, under the authority vested by the Small Business Investment Act of 1958, as amended, and pursuant to the above-cited Regulation, the license of Westland Capital Corporation is hereby accepted and it is no longer licensed to operate as a Small Business Investment Company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies).

Dated: July 13, 1983.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 83-19519 Filed 7-18-83; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Rulemaking, Research and Enforcement Programs; Public Meetings; Change of Date

The NHTSA/Industry Public meeting previously scheduled for Thursday, July 21, 1983, *has been changed to Friday, July 29, 1983.* The meeting will begin at 10:30 a.m., run until 1:00 p.m., and reconvene at 2:00 p.m., if necessary. It will be held in the Conference Room of the Environmental Protection Agency's Laboratory Facility, 2565 Plymouth Road, Ann Arbor, Michigan.

Issued in Washington, D.C., on July 14, 1983.

Kennerly H. Digges,

Acting Associate Administrator for Rulemaking.

[FR Doc. 83-19516 Filed 7-18-83; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Department Circular—Public Debt Series; No. 21-83]

Treasury Notes of July 31, 1985; Series W-1985

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $8,000,000,000 of United States securities, designated Treasury Notes of July 31, 1985, Series W-1985 (CUSIP No. 912827 PT 3). The securities will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the bid yield of each accepted tender. The interest rate on the securities and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of these securities may be issued to Government accounts and Federal Reserve Banks for thier own account in exchange for maturing Treasury securities. Additional amounts of the new securities may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The securities will be dated August 1, 1983, and will bear interest from that date, payable on a semiannual basis on January 31, 1984, and each subsequent 6 months on July 31 and January 31 until the principal becomes payable. They will mature July 31, 1985, and will not be subject to call for redemption prior to maturity. In the event an interest payment date or the maturity date is a Saturday, Sunday, or other nonbusiness day, the interest or principal is payable on the next-succeeding business day.

2.2. The income derived from the securities is subject to all taxes imposed under the Internal Revenue Code of 1954. The securities are subject to estate, inheritance, gift, or other excise taxes, whether Federal or State, but are exempt from all taxation now or hereafter imposed on the principal or interest thereof by any State, any possession of the United States, or any local taxing authority.

2.3. The securities will be acceptable to secure deposits of public monies. They will not be acceptable in payment of taxes.

2.4. Securities registered as to principal and interest will be issued in denominations of $5,000, $10,000, $100,000, and $1,000,000. Book-entry securities will be available to eligible bidders in multiples of those amounts. Interchanges of securities of different denominations and of registered and book-entry securities, and the transfer of registered securities will be permitted. Bearer securities will not be available, and the interchange of registered or book-entry securities for bearer securities will not be permitted.

2.5. The Department of the Treasury's general regulations governing United States securities apply to the securities offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D. C. 20226, up to 1:30 p.m., Eastern Daylight Saving time, Wednesday, July 20, 1983. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, July 19, 1983, and received no later than Monday, August 1, 1983.

3.2. The face amount of securities bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Common fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender from in lieu of a specified yield. No bidder may submit more than one noncompetitive tender, and the amount may not exceed $1,000,000.

3.3. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions in and borrowings on such securities, may submit tenders for account of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.4. Tenders will be received without deposit for their own account from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or intrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foregin central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from others must be accompanied by full payment for the amount of securities applied for (in the form of cash, maturing Treasury securities, or readily collectible checks), or by a payment guarantee of 5 percent of the face amount applied for, from a commercial bank or a primary dealer.

3.5. Immediately after the closing hour, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, on the basis of a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.750. That rate of interest will be paid on all of the securities. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g. 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.6. Competitive bidders will be advised of the acceptance or rejection of their tenders. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of securities specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for allotted securities must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on securities allotted to institutional investors and to others whose tenders are accompanied by a payment guarantee as provided in Section 3.4., must be made or completed on or before Monday, August 1, 1983. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds (with all coupons detached) maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, July 28, 1983. When payment has been submitted with the tender and the purchase price of allotted securities is over par, settlement for the premium must be completed timely, as specified in the preceding sentence. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder. Payment will not be considered complete where registered securities are requested if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (an individual's social security number or an employer identification number) is not furnished. When payment is made in securities, a cash adjustment will be made to or required of the bidder for any difference between the face amount of securities presented and the amount payable on the securities allotted.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the face amount of securities allotted, shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered securities tendered in payment for allotted securities are not required to be assigned if the new securities are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new securities are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (securities offered by this circular) in the name of (name and taxpayer identifying number)." Specific instructions for the issuance and delivery of the new securities, signed by the owner or authorized representatives, must accompany the securities presented. Securities tendered in payment should be surrendered to the Federal Reserve Bank or Branch or to the Bureau of the Public Debt, Washington, D.C. 20226. The securities must be delivered at the expense and risk of the holder.

5.4. Delivery of securities in registered form will be made after the requested form of registration has been validated, the registered interest account has been established, and the securities have been inscribed.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive tenders, to make allotments as directed by the Secretary of the Treasury, to issue such notices as may be necessary, and to receive payment for and make delivery of securities on full-paid allotments.

6.2. The Secretary of the Treasury may at any time issue supplemental or amendatory rules and regulations governing the offering. Public announcement of such changes will be promptly provided.

Carole J. Dineen,

Fiscal Assistant Secretary.

[FR Doc. 83-19523 Filed 7-15-83; 9:39 am]

BILLING CODE 4810-40-M

UNITED STATES INFORMATION AGENCY

Reporting and Recordkeeping Requirement Under OMB Review

AGENCY: United States Information Agency.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission. USIA is requesting a generic clearance of its public opinion surveys which are conducted abroad. We are also requesting clearance of an internal form IAP-90, which is used to collect information on the availability of performing artists for appearances overseas on behalf of the United States.

DATE: Comments must be received on or before August 15, 1983.

Copies: Copies of the request for clearance (S.F. 83), supporting statement, instructions, transmittal letters, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer: Charles N. Canestro, U.S. Information Agency, M/N, 400 C Street SW., Washington, D.C. 20547, Telephone (202) 485-8676, and OMB Reviewer: David S. Reed, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503, Telephone (202) 395-7231.

SUPPLEMENTARY INFORMATION: Title: USIA Surveys.

Form Number: No form used for this information collection. Abstract: Executive Order 12048 of March 27, 1978, requires the Director of the U.S. Information Agency to be the principal advisor within the U.S. Government on international educational, informational and cultural matters. The scope of the USIA Director's advice includes assessments of the impact of U.S. foreign policy on public opinion abroad. USIA conducts public opinion surveys overseas as a means of obtaining such information. The agency seeks clearance from OMB for these foreign opinion surveys. USIA will provide OMB a quarterly report of surveys conducted.

Title: Fact Sheet for Performing Artists Touring Privately. Form Number: IAP-90.

Abstract: Under the requirements of Pub. L. 87-256, The Mutual Educational and Cultural Exchange Act of 1961, The U.S. Information Agency tries to strengthen the understanding and respect of the United States by foreign people through the sponsorship of performing artists and groups. This is done at minimal cost to the U.S. Government by our program of selecting artists on private tours overseas to schedule performances, in countries they are visiting, under the sponsorship of the United States Government. The purpose of these programs is to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States, and the contributions being made toward a peaceful and more fruitful life for people throughout the world.

Dated: July 15, 1983.

Charles N. Canestro,

Management Analyst, Federal Register Liaison.

[FR Doc. 83-18956 Filed 7-18-83; 8:45 am]

BILLING CODE 8230-01M

Sunshine Act Meetings

Federal Register
Vol. 48, No. 139
Tuesday, July 19, 1983

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL COMMUNICATIONS COMMISSION

Deletion of Agenda Item From July 14th Open Meeting

July 14, 1983.

The following item has been deleted at the request of the Chairman from the list of agenda items scheduled for consideraiton at the July 14, 1983 Open Meeting and previously listed in the Commission's Notice of July 7, 1983.

Agenda, Item No., and Subject

Video—1—*Title:* Application for review of staff action filed by Mountain TV Network, Inc. *Summary:* Mountain TV Network, Inc., filed an applicaiton for review of the action of the Chief of the Mass Media Bureau which directed it to submit evidence of its financial ability to construct and operate the 2,379 low power television facilities for which it has filed applications for construction permits.

Deletion of Agenda Item From July 14th Closed Meeting

The following item has been deleted at the request of the office of the General Counsel from the list of agenda items scheduled for consideraiton at the July 14, 1983 Closed Meeting and previously listed in the Commission's Notice of July 7, 1983.

Agenda, Item No., and Subject

Hearing—3—Petition for Special Relief seeking approval of a distress sale and related pleadings in the Hartford, Connecitcut, television renewal proceeding (BC Docket No. 80-730).

Issued: July 14, 1983.

William J. Tricarico,

Secretary, Federal Communications Commission.

[S-1040-83 Filed 7-15-83; 10:49 am]

BILLING CODE 6717-01-M

2

FEDERAL MARITIME COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 48 FR 32253, July 14, 1983.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 9 a.m., July 19, 1983.

CHANGE IN THE MEETING: Addition of the following item to the open session:

4. Agreements Nos. 9648A-22 and 10122-11: Amendments to the Inter-American Freight Conference, Section A, and the Inter-American Freight Area River Plate/Puerto Rico and U.S. Virgin Islands Conference, respectively, to prohibit Conference members from acting as agents.

[S-1042-83 Filed 7-15-83; 11:33 am]

BILLING CODE 6730-01-M

3

FEDERAL RESERVE SYSTEM

(Board of Governors)

TIME AND DATE: 10 a.m., Monday, July 25, 1983.

PLACE: 20th Street and Constitution Avenue NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting:

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board (202) 452-3204.

Dated: July 15, 1983.

James McAfee,

Associate Secretary of the Board.

[S-1044-83 Filed 7-15-83; 3:28 pm]

BILLING CODE 6210-01-M

4

NATIONAL TRANSPORTATION SAFETY BOARD

[NM-83-16]

TIME AND DATE: 9 a.m., Tuesday, July 26, 1983.

PLACE: NTSB Board Room, eighth floor, 800 Independence Ave. SW., Washington, D.C. 20594.

STATUS: The first three items will be open to the public; the remaining items will be closed under Exemption 10 of the Government in the Sunshine Act.

MATTERS TO BE CONSIDERED:

1. *Pipeline Accident Report*—Mississippi River Transmission Corporation Natural Gas Overpressure and Fire, Pine Bluff, Arkansas, October 1, 1982, and Recommendations.
2. *Update* of Safety Objectives Plan.
3. *Notice of Proposed Rulemaking* to amend Part 821, the Safety Board's Rules of Practice in Air Safety Proceedings; revised.
4. *Order on Petitions for Reconsideration:* Application of Catskill Airways, Inc., Stephen C. Low, and Granville C. Bentley for attorney fees and other expenses, NTSB No. 2-EAJA; disposition of petitions for reconsideration filed by Catskill Airways and the Administrator.
5. *Opinion and Order:* Administrator v. Gaugler, Docket SE-4910; disposition of respondent's appeal.

CONTACT PERSON FOR MORE INFORMATION: Sharon Flemming (202) 382-6525.

July 15, 1983.

[S-1043-83 Filed 7-15-83; 3:23 pm]

BILLING CODE 4910-58-M

5

POSTAL RATE COMMISSION

Notice of Visit

July 15, 1983.

Notice is hereby given that Commission Staff Members will visit the Main Post Office, Washington, D.C., on Thursday, July 21, 1983, to observe the automated sorting equipment used as part of the ZIP + 4 program.

A report of the visit will be on file in the Commission's Docket Section.

Cyril J. Pattack,

Acting Secretary.

[S-1041-83 filed 7-15-83; 11:33 am]

BILLING CODE 7715-01-M

federal register

Tuesday
July 19, 1983

Part II

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

Surface Coal Mining and Reclamation Operations Permanent Regulatory Program; Excess Spoil Fills; Final Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 701, 816, and 817

Surface Coal Mining and Reclamation Operations Permanent Regulatory Program; Excess Spoil Fills

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

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is amending its rules dealing with the requirements for disposal of excess spoil from surface and underground mining activities. The final rules set out four sections to cover general requirements, head-of-hollow/valley fills, durable rock fills, and preexisting benches. They eliminate the information that was duplicated in each previous section, allow more flexibility in the design of excess spoil fills, and remove those provisions that are excessive, unnecessary and burdensome.

EFFECTIVE DATE: August 18, 1983.

FOR FURTHER INFORMATION CONTACT: Robert A. Wiles, Division of Engineering Analysis, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; 202–343–7881.

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion of Comments and Rules Adopted
III. Procedural Matters

I. Background

Spoil disposal practices in surface mining over the years have had a major impact on the environment. Prior to the passage of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.* (the Act), mine operators in steep slope areas often disposed of overburden material by pushing it downslope of the bench. The practice destroyed vegetation and caused erosion, slides and increased sedimentation of streams. To rectify this problem, Section 515(b)(22) of the Act required the controlled placement of all excess spoil material from surface coal mining operations using sound engineering practices to ensure the long term stability of the fill.

Rules concerning the disposal of excess spoil were proposed on September 13, 1978 (43 FR 41890–41892 and 41910–41912) and promulgated as final on March 13, 1979 (44 FR 15406–15408 and 15432–15434). These previous rules included general requirements on the disposal of excess spoil in §§ 816.71 and 817.71, and more specific requirements for valley fills, head-of-hollow fills and durable rock fills, respectively, in §§ 816.72 and 817.72, 816.73 and 817.73, and 816.74 and 817.74.

Since the publication of the permanent program rules on excess spoil material in 1979, there have been two additions to the rules. First, §§ 816.71(o) and 817.71(o) were added as final rules on July 17, 1981 (43 FR 37231–37235) to allow the controlled gravity transport of excess spoil from an actively mined upper bench to an existing lower bench. Second, §§ 816.75 and 817.75, which allow the disposal of excess spoil on preexisting benches, were proposed in the **Federal Register** on July 20, 1981, (46 FR 37286) and promulgated as final on April 29, 1982 (47 FR 18553–18555).

These final rules set out four sections to cover general requirements, head-of-hollow/valley fills, durable rock fills, and preexisting benches. They eliminate the information that was duplicated in each previous section, allow more flexibility in the design of excess spoil fills, and remove those provisions that are excessive, unnecessary and burdensome. All engineering designs, however, will still have to meet the requirements of the Act and the approved regulatory program, and be approved by the appropriate regulatory authority.

On June 8, 1982 (47 FR 24954), OSM published a notice of proposed rulemaking to amend 30 CFR Parts 701, 816 and 817 relating to disposal of excess spoil. No public hearings were requested. A public meeting was held in Washington, D.C. on July 28, 1982. The comments received at the meeting are addressed in this preamble. During the comment period, June 8, 1982, to August 25, 1982, OSM received numerous comments from State agencies, industry and environmental groups. The comment period was extended through September 10, 1982, primarily for admission of comments received at congressional hearings.

II. Discussion of Comments and Rules Adopted

A. General Comments

Elimination of design requirements. The majority of commenters agreed with OSM's efforts to remove burdensome and excessive requirements and the stringent design standards in the previous rules to allow greater flexibility and more innovative designs by the professional engineering community. Some commenters characterized OSM's effort as being realistic and cognizant of the diversity of environmental conditions, the varying characteristics of the materials to be disposed, the ability of engineers to develop functional, economical designs and the inherent responsibility of the State to regulate.

In support of the concept to remove restricting design standards, one commenter quoted an OSM sponsored study, "Disposal of Excess Spoil from Coal Mining and the Surface Mining Control and Reclamation Act of 1977," produced in 1981 by the National Academy of Sciences' Commission on Natural Resources. This study questioned the previous rules for failing to recognize the diversity and complexities of the environmental systems, for creating design standards that are impractical to enforce, for producing inequity of economic impact, for raising reclamation costs beyond what is necessary and for being more stringent than the Act.

Two commenters voiced a contrary opinion and strongly rejected the idea of eliminating design standards. One of the commenters warned that placing too much reliance on performance standards may result in an operator's failure to perform not being identified until environmental damage has occurred. The commenter said the operator could also find correcting the problem unnecessarily costly. In certain instances, the commenter said, a design requirement may have prevented the damage from occurring.

The other commenter felt many adverse impacts would be caused by elimination of design standards especially for excess spoil fills. The commenter felt that unstable excess spoil fills would be constructed using the end dumping technique and that certification by a registered professional engineer would not protect the health and safety of the public. The commenter said the need for specific design standards to achieve uniformity and assure long-term stability, as well as protection of streams and the public, is becoming even more evident as the increased sizes of excess spoil fills complicates the engineering requirements.

These final rules emphasize the use of performance standards rather than design standards. Certain design criteria, however, have continued to be used where deemed appropriate. The use of design standards alone cannot ensure the construction of a safe and environmentally sound fill. In fact, design standards generally fail to consider site-specific conditions and thus are often as likely to result in under design as over design of the fill.

The intent of these rules is to not constrain the engineer with a design standard that may be totally inappropriate for the site-specific environmental conditions, or that is unnecessary or unworkable. With the safeguards of performance standards, certification by qualified engineers, design and foundation analyses prior to permitting, regular inspection during construction and at completion by the engineer and the State, performance bonds, and OSM oversight of the State's regulatory performance, an excess spoil fill can be properly and safely designed and constructed to protect the public and the environment. These rules emphasize those considerations necessary for proper design and construction of the fill rather than imposing arbitrary design stardards that cannot be expected to cover every extenuating circumstance or every evironmental situation. Individual State regulatory authorities may supplement these regulations with additional design standards should they find them desirable to their particular environmental conditions. A further discussion of the use of performance standards rather than design criteria appears in the "Final Environmental Impact Statement OSM EIS–1: Supplement, " Volume I, pp. II 7–8 and IV 5–7.

The majority of commenters agreed with the proposal to revise the excess spoil rules. While the renumbering and combining of sections in the new excess spoil rules may cause some initial confusion, in most cases the new rules will not cause the design and construction of excess spoil facilities to differ much from previous operations. This final rule adopts the proposed rule with some modifications for clarity. These changes are discussed further in this preamble.

Two commenters objected to OSM's proposed rules for excess spoil fills because in their opinion they failed to be supported by enough data and lacked research on the environmental and economical impact of their adoption. One of these commenters opposed the proposed rules because they failed to correct a number of problems with the previous rules that were examined in the National Academy of Sciences' 1981 study and because the proposed rules left the operators totally at the "mercy" of the regulatory authority.

An industry commenter wanted the previous rules for excess spoil fills to be retained because he felt the proposed rules would create additional costs for his company and the public without improving the protection of the environment. The commenter did not elaborate as to how this might occur.

Several other commenters felt the OSM proposal confused the rules for disposal of excess spoil and recommended retention of the previous rules. The commenters said although there were a few things they would like changed, the previous rules were acceptable to the States, industry and the environmentalists and were proven in the field to be environmentally and operationally sound. Several commenters also noted that the previous excess spoil rules had never been challenged in court by industry or the environmental community.

These commenters all had one similar objection regarding the proposed rules–OSM's apparent elimination of a separate section on durable rock fills.

It was not OSM's intention to eliminate, outlaw or prohibit disposal of durable rock by controlled gravity placement. OSM recognizes that the manner in which the previous durable rock fill rules of § 816.74 were consolidated into the proposed section was confusing. OSM has made changes to correct the misunderstanding and discussion of these changes is found in the preamble for final § 816.73 *Durable rock fills.*

B. Definitions

Excess spoil. Before spoil can be moved from the mined-out area to an excess spoil fill, the operator must meet the approximate original contour (AOC) restoration and highwall elimination requirements, or fall within variances thereto, in Sections 515 and 516 of the Act and in §§ 816.102–816.107 and 817.102–817.107. The excess spoil is then subject to the requirements of Section 515(b)(22) of the Act and the provisions of §§ 816.71–816.74 and 817.71–817.74. This final rule defines excess spoil and provides standards for its disposal.

Proposed § 701.5 would have defined "excess spoil" to mean "spoil material disposed of in a location other than the mined out area, except material used to blend spoil from the mined out area with the surrounding terrain after achieving the approximate original contour (AOC) in nonsteep slope areas." In the preamble to the proposed rule, OSM also requested comments on whether excess spoil should simply be defined as any spoil not required to return the mined-out area to AOC, without regard to "where" the spoil is deposited.

One commenter felt these two defining phrases should be combined and offered the following version: "Excess spoil means spoil material which is not required to achieve the approximate original contour or used to achieve the approved postmining land configuration and is disposed of in a location other than the mined out area, except * * *" Another commenter felt that "where" the spoil is deposited should be the primary concern. A third commenter preferred defining excess spoil as "that not required for AOC." The proposed definition, the commenter said, was vague and open to potential abuse.

OSM agrees with the commenter who felt that the location of the disposal site was the most important factor and has retained the language of the proposed definition with minor revision, in the final rule. In recognition of the fact that Congress has authorized variances from the AOC restoration requirement the final rule does not specify that excess spoil be spoil in excess of that required to achieve the approximate original contour. Authorized variances from AOC would make the spoil, normally required to restore AOC, excess spoil (*e.g.*, mountaintop removal mining). The final rule specifically recognizes, however, that spoil used to achieve AOC is not excess spoil.

In the final rule, spoil used to merely blend the mined out area with the surrounding terrain need not be treated as excess spoil. Thus, spoil from box cuts or first cuts in nonsteep slope areas would not be excess spoil when it is used to achieve approximate original contour, *i.e.*, to blend the mined-out area into the surrounding terrain according to § 816.102 of the backfilling and grading rules. Even though the spoil in these cases is disposed of in a location other than the mined out area, specifically around the box cut or first cut to blend it into the terrain, the rules for excess spoil would not be applicable. Rather, the standards for backfilling and grading would govern. The reference to the standards of § 816.102 has been added to the definition in the final rule for clarity. If, however, the spoil from a box cut or a first cut is deposited on slopes with angles defined as steep slopes, the box cut or first cut spoil must be handled as excess spoil in accordance with §§ 816.71 and 817.71. This complies with Section 515(d) of the Act.

Several commenters agreed with OSM's decision to exclude spoil used to blend the mined out area into the surrounding terrain from being considered as excess spoil.

One commenter suggested an editorial change that would delete the terms "spoil from" from the definition of excess spoil to prevent the possibility of a misinterpretation between excess spoil and material used to backfill the mined-out area. The commenter's

suggestion would have the definition read: "Spoil material used to blend the mined out area with the surrounding terrain." OSM is accepting this comment and the definition has been changed accordingly.

Head-of-hollow fills/Valley fills. This final rule revises the definition of head-of-hollow fill by deleting the special exemption for fills less than 250,000 cubic yards and the restrictions in the definitions of head-of-hollow fill and valley fill prohibiting placement of coal mine waste in fills.

One commenter asserted that by deleting the exemption for fills of less than 250,000 cubic yards from the definition of head-of-hollow fills, OSM eliminated the performance requirements for fills less than 250,000 cubic yards of material. The commenter further asserted that this change would result in a proliferation of small fills that fail to meet any comprehensive permitting and performance standards.

The previous definition of "head-of-hollow" fills gave an exemption to fills less than 250,000 cubic yards, allowing these smaller volume fills to be built to the level of the coal seam and not the top of the ridge. The exemption is discussed in detail in the **Federal Register** preamble dated March 13, 1979 (44 FR 15207). The final definition deletes this exemption and defines all head-of-hollow fills, regardless of volume, as fills that reach the top of the ridge. The commenter is incorrect in asserting that this then leaves no standards that will apply to fills that do not reach the ridgelines. Under the revised rule all fills in a drainage course in steep slope areas that do not reach the top of the ridge, regardless of their location, will be considered valley fills. Further, all excess spoil fills must meet the performance standards in § 816.71 regardless of their size and/or location.

One commenter suggested that the term "point" be changed to "profile" in the definitions for head-of-hollow and valley fills. The commenter felt the term "profile" is more appropriate and consistent with the measuring method.

OSM believes the term "point" is properly used in this definition. The term "profile" is included in the definition with respect to slope of the valley from the toe of the fill to the top of the fill. To include the term "profile" as suggested by the commenter may lead to misunderstandings. "Profile" is used to mean a generally continuous topographic cross-section; while "point" is used in the head-of-hollow/valley fill definitions to refer to the angle of the slope at a particular location along that profile.

Underground development waste. Final § 701.5 revises the definition of underground development waste by deleting the previous reference to surface excavations and applying the term solely to material extracted from underground workings. The definition of underground development waste will include only rock mixtures that come from the excavation of underground workings associated with this definition and the proposed definition has been adopted with the exception that the wording is revised to more clearly reflect the intent to apply to material excavated in the development of underground workings. The definition includes material excavated in the development of drifts, shafts, and adits.

C. Final Rules for the Disposal of Excess Spoil

Sections 816.71–816.74 and 817.71–817.74

Previous §§ 816.71–816.75 and §§ 817.71–817.75 read essentially the same, except that the sections from Part 816 referred to surface mining and the sections from Part 817 referred to underground mining. Under this rulemaking the final sections of Parts 816 and 817 on disposal of excess spoil will continue to read essentially the same.

To simplify this preamble, OSM will discuss the comments and rules of final §§ 816.71–816.74 with the understanding that the discussion will also apply to final §§ 817.71–817.74. The only difference to be noted between final §§ 816.71 and 817.71 is an additional paragraph (k) in § 817.71. Section 817.71(k), formerly the first sentence of proposed § 817.71(a), is discussed later in the preamble under the heading, *§ 817.71 Underground mining activities.*

In response to comments, the final excess spoil rules have been reorganized and clarified to eliminate the confusion over durable rock fills, rock core chimney drains and the requirement to qualify engineering experience. It was also decided that for clarity the excess spoil rules should be set out in several sections rather than consolidated into one section (§ 816.71) as was proposed.

The final excess spoil rules are contained in the following four sections: Section 816.71 *General requirements*, § 816.72 *Valley fills/Head-of-hollow fills*, § 816.73 *Durable rock fills*, and § 816.74 *Preexisting benches*. This new organization will make it easier for the reader to find the appropriate subject.

To assist the reader in understanding the changes in the final rules, the following Derivation Table shows the relationship of the final rules to the previous sections and the proposed sections. The same changes apply for Part 817–Underground mining activities.

DERIVATION TABLE—EXCESS SPOIL RULES

Final rule	Previous sections	Proposed section § 816.71
(a)	816.71(a)	(a)(1).
(a)(1)	816.71(a)(1)	(a)(1)(i).
(a)(2)	816.71(a)(2), (f); 816.72(c); 816.74(a)(1).	(a)(3).
(a)(3)	816.71(a)(3)	(a)(1)(ii).
(b)(1)	816.71(b)	(a)(2).
(b)(2)	816.71(f), (m)	(a)(1)(ii), (a)(2).
(c)	816.71(e)	(b)(3).
(d)(1)	816.71(m)	(a)(2).
(d)(2)	816.71(i)	(b)(4).
(e)(1)	816.71(c)	(a)(5).
(e)(2)	816.71(f); 816.72(c); 816.74(a)(1).	(a)(3).
(e)(3)	816.71(g), (h); 816.72(g); 816.74(g), (g)(1).	(a)(8), (b)(6) and (b)(6)(i).
(e)(4)	816.71(g)	(b)(5).
(e)(5)		816.102(e).
(f)(1)	816.71(d)(1)	(a)(7), (b)(1).
(f)(2)	816.71(d); 816.72(d); 816.74(d).	(a)(6).
(f)(3)	816.71(1); 816.72(b)(2 & 4); 816.74(c).	(b)(1).
(g)	816.71(d)	(a)(6).
(h)	816.71(j)	(a)(4).
(h)(1)	816.71(j)	(a)(4).
(h)(2)	816.71(j)	(a)(4).
(h)(3)	816.71(j)	(a)(4).
(h)(4)	816.71(j)	(a)(4).
(i)	816.71(k)	(a)(9).
(i)(1)	816.71(k)(1)	(a)(9)(i).
(i)(2)	816.71(k)(2)	(a)(9)(ii).
(i)(3)	816.71(k)(3)	(a)(9)(iii).
(j)	816.71(n)	(a)(11).
(k) [817.71]		(a)(1).
§ 816.72		
Intro	816.72 intro, 816.73 intro	(b).
(a)(1)	816.72(d), (f); 816.74(e)	(b)(2).
(a)(2)	816.71(d); 816.72(d); 816.73(c); 816.74(d).	(a)(6).
(b)	816.73(a), (b)	
(b)(1)	816.73(b)(1)	
(b)(2)	816.73(b)(2)	
(b)(3)	816.73(b)(3)	
§ 816.73		
Intro	816.74 intro	(a)(10).
(a)	816.74 intro	(a)(10)(i).
(b)	816.74 intro, (a)(2)	(a)(10)(ii), (iv).
(c)	816.74 intro	(a)(10)(iii).
(d)	816.74(b)(2)	
(e)	816.74	(a)(10).
(f)	816.74(d)	(a)(6).
§ 816.74		
(a)	816.75(a)	(d)(1).
(b)	816.75(b)	(d)(2).
(c)	816.75(c)	(d)(3).
(d)	816.75(d)	(d)(4).
(d)(1)	816.75(d)(1)	(d)(4)(i).
(d)(2)	816.75(d)(2)	(d)(4)(ii).
(e)	816.71(o), (o)(1)	(c), (c)(1).
(e)(1)	816.71(o)(2)(i)	(c)(2)(i).
(e)(2)	816.71(o)(2)(iv)	(c)(2)(iv).
(e)(3)	816.71(o)(2)(v)	(c)(2)(v).
(e)(4)		

In the final rule the majority of changes from the proposed rule are organizational and editorial. These changes will not be discussed in the preamble as the derivation table more effectively illustrates the movement and redesignation of provisions. However, any substantive changes from the proposed rules will be discussed.

It should be noted that in a number of instances provisions from proposed paragraphs have been split out and separately redesignated in the final rule.

Section 816.71 General requirements.

The requirements in final § 816.71 (a) through (j) discussed below provide general safety and environmental performance standards applicable to all excess spoil fills which the engineer responsible for designing and constructing the disposal area must satisfy and for which the operator will be responsible.

Section 816.71(a)

Final § 816.71(a) requires that excess spoil be placed in designated disposal areas within the permit area in a controlled manner. This provision is slightly changed from the proposal but is revised only for clarity. Final § 816.71(a) is consistent with Section 515(b)(22) (A) and (B) of the Act.

Final § 816.71 (a)(1), (a)(2), and (a)(3) require that the excess spoil be placed in a controlled manner to minimize adverse effects on surface and ground water, ensure mass stability and prevent mass movement during and after construction, and ensure that the disposal areas can be properly reclaimed.

One commenter asserted that OSM weakened the rule by requiring that the effect of leachate and runoff from the fill on surface and ground water be "minimized" in lieu of the previous requirement that allowed no degradation to occur. OSM disagrees. As a practical matter, it is impossible to absolutely prevent runoff or leachate from a fill. In such cases, the word minimize more accurately reflects the realities of excess spoil disposal. Additionally, Section 515(b)(10) of the Act requires that disturbances to the hydrologic balance be "minimized." The proposed rule is consistent with the language in Section 515(b)(10) of the Act and therefore, as final § 816.71(a)(1), it is adopted as proposed with only a slight editorial change.

Final § 816.71 (a)(2) and (a)(3) are consistent with Section 515(b)(22) (A) and (G) of the Act. No comments were received on these provisions and they are adopted as proposed.

Section 816.71(b)(1)

Final § 816.71(b)(1) sets the certification standard for the design of fills and appurtenant structures, including foundations and gives the regulatory authorities the discretion to set additional design criteria. It follows Section 515(b)(22)H) of the Act. The first sentence of § 816.71(b)(1) is adopted as the provision was proposed with only the change of the phrase "recognized professional standards" to "current, prudent engineering practices" for clarity and to make the OSM rules consistent with Mine Safety and Health Administration (MSHA) rules. See the comment under § 816.71(f)(3) for further discussion.

One commenter objected to the discretionary authority given to the States to set additional design criteria while another commenter stated this was the only reasonable approach to adopt. In the proposed rules OSM eliminated many of the specific design criteria to allow greater flexibility and more innovative designs. It was intended that the regulatory authorities, along with the professional engineering community, would best be able to develop and set design criteria for their specific environments and locations. The regulatory authorities should have the leeway to set additional design criteria particularly if they are necessary to address regional or local problems. The argument of one commenter that the State would abuse its discretionary authority to the detriment of the industry is unsubstantiated. Sections 101, 503 and 505 of the Act clearly contemplate that the primary governmental responsibility for regulation of surface coal mining should rest with the States. Therefore, this provision has been adopted as proposed.

Documented Engineering Experience. A number of similar comments questioned the proposed provisions requiring the use of qualified registered professional engineers and the necessity for the engineers to furnish documentation in writing to the regulatory authority of their experience in the design and construction of earth and rock fills. One stated that the use of registered engineers would result in increased costs since all companies do not have registered engineers on their staffs. Further, it was asserted, many regulatory authorities also do not have registered engineers on their staffs. The commenter also felt that rountine fill design does not necessarily require any elaborate engineering to ensure stability.

Other commenters objected to furnishing documented proof of design and construction engineering experience with earth and rock fills and presented the following agruments: (1) It was not consistent with reducing burdensome requirements; (2) The design should be judged on its merits, not the designer's experience; (3) The regulatory authority has no authority to regulate or evaluate engineers; and (4) State laws already prohibit engineers from signing off on designs beyond their level of competency.

Final § 816.71(b)(1) continues to require the use of qualified registered professional engineers in the design of excess spoil fills as required by Section 515(b)(22)(H) of the Act. In Section 515(b)(22) of the Act, Congress expressed a clear concern that disposal of excess spoil be conducted in an environmentally sound and safe manner. It is fully consistent with the intent of the Act to require the involvement of a qualified registered professional engineer to help ensure the safety and environmental soundness of these structures. By the same token, the construction phase is as significant to the performance of an excess spoil facility as is the design. The level of accountability, therefore, should be similar to assure that the design has been properly implemented. The certification of the construction by a qualified registered professional engineer required in final § 816.71(h) is necessary to ensure the safety of the public and the protection of the environment.

It should be noted that under the excess spoil requirements of Section 515(b)(22)(H) of the Act, the term "qualified" is used with respect to registered professional engineers. This implies some further qualification beyond the normal professional engineering registration. OSM has found through its enforcement activities that some practicing registered professional engineers do not have sufficient experience to certify all phases of the design and construction of excess spoil disposal fills (Tipton, 1981). Therefore, with respect to excess spoil fills, the added requirement that the engineer only be a registered professional engineer but also be experienced in the design of excess spoil fills on similiar structures is justified.

OSM agrees, however, that these qualifications need not be supported by extensive documentation with each certification. State regulatory authorities generally are familiar with the qualifications of those engineers who work regularly on mine design. If the regulatory authority is uncertain about the qualifications of an engineer or engineers, it may request additional proof of the engineer's experience.

Thus, under the final rule the regulatory authority will decide how permit applicants are to demonstrate that engineers are "qualified" and adequately experienced to handle the job. This could be done by oral interview with the engineer, checking

references, a written document or by reputation.

As to whether the State regulatory authorities must have qualified engineers available on its staff, approval of a State program is conditioned upon the States having adequate staff to administer their programs. This is not to imply that OSM will require regulatory authorities to have registered professional engineers on their staffs. Although the Act requires the operator to use a qualified registered professional engineer, this requirement does not necessarily extend to the regulatory authority. Evaluations of the ability of the State program staffs to handle their responsibilities in permit review, inspections, and enforcements are made based upon individual State program submissions and can be made by OSM in its oversight role if deficiencies arise in a particular State. In addition, any submissions to OSM for approval of State program amendments removing design criteria will require the State to show how it will adequately review the design of the proposed mining operation.

Section 816.71(b)(2)

Final § 816.71(b)(2) sets a static safety factor of 1.5 as the necessary degree of stability and requires the foundation and abutments of the fill to be stable under all conditions of construction. One commenter felt it was too conservative to require a safety factor of 1.5 in all cases for excess spoil fills and suggested the use of a lower factor of safety unless failure presented a particular hazard. OSM recognizes the limitations inherent in the use of static safety factors as design requirements. However, a change in the rule is not necessary, and OSM has decided to continue to include the 1.5 limitation in the final rule. Since the operator will have a certain level of design flexibility under the final rule and can generally select a suitable location for disposal of excess spoil, the factor of safety limitation of 1.5 is achievable and should not impose an undue burden on the operator.

It must be realized that this is a general requirement. The increased assurance of stability represented by achieving a factor of safety of 1.5 is necessary because excess spoil fills will be constructed on slopes or other locations where the foundation will generally not be as stable as backfilling on the level bench of the mined-out area.

Another commenter noted the 1.5 static safety factor applies only to the final configuration of the fill and does not assure stability during the construction. The final rule has been revised to state clearly that the fill must provide mass stability and prevent mass movement at all times, but at the same time be designed to achieve a minimum long-term static safety factor of 1.5. OSM recognizes that under some construction techniques, such as gravity placement, a factor of safety of 1.5 for material as it is beng placed in the fill may not be achievable. However, the foundation and abutments must be stable at all times during construction.

The proposed rule also required that the foundataion and abutments be stable under all conditions of operation. This requirement has been modified in final § 816.71(b)(2) because the word "construction" better describes the use and action associated with an excess spoil fill. It is more accurate to say a fill is "constructed" than to say it is "operated." No substantive change is intended by this revision.

Section 816.71(c)

Final § 816.71(c) is a revised version of the proposed rule and requires disposal areas to be located on the most moderately sloping and naturally stable areas, as approved by the regulatory authority. The rule also requires the disposal area to be located, where possible, upon or above a natural terrace, bench, or berm, if such placement provides additional stability and prevents mass movement.

This provision was proposed to be applicable only for head-of-hollow and valley fills but has been moved to the section applicable to all excess spoil fills because Section 515(b)(22)(E) of the Act requires all excess spoil fills to be located using such slope considerations.

One commenter questioned the value of the proposed rule since it ignored the importance of environmental enhancement and compatibility with postmining land use in site selection of disposal areas.

The environmental enhancement and compatibility with the postmining land use are not ignored in the site selection of the disposal areas. Final § 816.71(a)(3) requires that the excess spoil be placed in a designated disposal area so as to ensure that the final fill is suitable for reclamation and revegetation compatible with natural surroundings and the approved postmining land use. Final § 816.71(e)(3) reinforces this by requiring the final configuration of the fill to be suitable for the approved postmining land use.

The intent of final § 816.71(c) is to emphasize the importance of the location of the disposal area in regard to foundation slopes and their effect on stability. Final Paragraph (c) follows the requirements of Section 515(b)(22)(E) of the Act.

Section 816.71(d)

Final § 816.71(d) requires sufficient foundation investigation and laboratory testing of foundation materials for stability of the fill and the use of special stability analyses where the toe area is on a downslope. Final § 816.71(d) is the same as the corresponding proposed provisions, except that a cross reference to the analysis requirements of § 780.35 of this chapter is included and the provisions are now applicable to all excess spoil fills.

Section 816.71(d)(1)

Specifically, final § 816.71(d)(1) requires that sufficient foundation investigations, as well as any necessary laboratory testing of foundation materials, be performed for the determination of proper design requirements for a stable fill foundation.

One commenter objected to the use of the term "sufficient" in this provision indicating that "sufficient" is open to individual interpretation and subject to the desires of the regulatory authority which in some situations may have no bearing on the level of investigation needed for the specific situation. The commenter also felt the testing was redundant, ridiculous and a waste of money in situations where, through years of experience, it has become common knowledge that in certain situations the resulting slopes will have a safety factor considerably above that required. Another commenter suggested that the regulatory authority should be allowed to exempt the operator from foundation studies that are not necessary. The commenter noted that in many coal mining regions of the West (nonsteep slope mining) little to no foundation investigation is necessary to assure stability.

As provided in the final § 816.71(b)(2), the foundation and abutments of any fill must be stable under all conditions of construction. This basic standard must be met under all conditions. Stability of a foundation or abutment can only be determined from an investigation or study on the types and extent of the materials upon which the excess spoil is to be placed. On certain sites, the foundation materials will control the degree of stability. There is guidance provided in many geotechnical references, including the OSM's Engineering and Design Manual for Disposal of Excess Spoil on the types of investigation necessary, along with the types and numbers of samples, and tests for different types of foundation

materials. The determination of whether the investigations are sufficient can only be made by the professional engineer and the regulatory authority on a site-specific basis as supported by information on the site conditions.

OSM disagrees with the comment that foundation investigations are unnecessary in some areas. Foundation investigations, including any necessary tests, are necessary for all excess spoil fills. However, the extent of the investigation that is necessary can vary. Investigations can range from geological information taken from maps and adjoining outcrops or excavations, to obtaining boring samples for testing, followed by design analysis of conditions. These are all engineering judgments that have to be made on a site-specific basis. Because of the congressional concern for stability, costs of foundation investigation are not considered wasteful. Based on site-specific conditions, the costs can vary over a wide range. One change has, however, been made for the final rule based on these comments. The words "any necessary" have been added before the phrase "laboratory testing" to recognize that laboratory testing may not be necessary in all cases.

Final § 816.71(d)(1) does not adopt the requirement of the proposed rule that the regulatory authority must approve the design prior to construction. This requirement is implicit in the permitting requirements of Subchapter G. No substantive change is intended by this revision.

Section 816.71(d)(2)

Section 816.71(d)(2) requires keyway cuts or rock toe buttresses when the slope in the disposal area is in excess of 2.8h:1v (36 percent) or at a lesser degree set by the regulatory authority. The rule also requires stability analyses in accordance with § 780.35(c) to determine the size of any necessary rock toe buttresses or keyway cuts whenever the toe of the spoil rests on a downslope. This provision is identical to previous § 816.71(i) and has been retained in this rule without change.

One commenter remarked that keyway cuts or rock toe buttresses cannot necessarily be used interchangeably without discretion as indicated in the proposed rule. The commenter further remarked that the wording seemed to preclude the use of a combination of these design concepts, and appeared to be a specification item not a performance item.

The final rule is not intended to preclude a combination of both types of structure. Whether both keyway cuts and rock toe buttresses are required can best be determined by qualified engineers on a site-by-site basis.

One commenter objected to allowing the regulatory authority discretion to require rock toe buttresses and/or keyways on lesser slopes, while another commenter felt a specific slope ratio was not necessary since this could be determined by design analysis. The stability of the toe area, as well as the the spoil pile, must meet the stability requirements of final § 816.71(b)(2) regardless of the slope at the toe area or elsewhere. The 2.8h:1v slope (36 percent) was retained from the previous rule as being consistent with the greater concern for stability on steep slopes. Specifying such slopes does not, however, preclude the potential need for use of such structures on lesser slopes. The final rule recognizes this and provides the regulatory authority the flexibility to extend the requirement to such lesser slopes.

Section 816.71(e)(1)

Final §816.71(e)(1) requires removal of vegetation and organic matter and implements requirements for handling of topsoil. The final rule is adopted as proposed, but with a correction to reference only § 816.22 which now consolidates all the topsoil rules.

Several commenters contended that removal of all topsoil, vegetative and organic material from the entire disposal area was not necessary for stability especially in steep slope areas where the material is scarce and the cost of removing it prohibitive.

Removal of topsoil and organic material is generally consistent with good engineering practices. The requirement of final § 816.71(e)(1) comes directly from Section 515(b)(5) and 515(b)(22)(B) of the Act. The necessity and extent of topsoil removal is set forth in final § 816.22. Further guidance on topsoil removal is provided in the preamble to that section.

Section 816.71(e)(2)

Final § 816.71(e)(2) establishes the basic fill construction standards. It requires that excess spoil be placed in 4-foot lifts, be compacted for stability, be graded for compatibility with surrounding terrain, and be covered with topsoil or equivalent substitute material. The paragraph also allows lifts other than 4 feet in thickness if approved by the regulatory authority.

One commenter asserted that the change of wording in the first sentence of the proposed provision from "hauled and conveyed" to "transported" to the designated disposal area will reinstitute the practice of "end dumping spoil material into fill areas," particularly in steep-sloped mining areas of Southern Appalachia. The commenter further asserted that Congress intended that this practice be discontinued.

OSM made the revision to be consistent with the wording in the Act. The Act uses the phrase "transported and placed in a controlled manner." The first sentence of final § 816.71(e)(2), closely parallels Section 515(b)(22)(A) of the Act. The requirements of final §816.71(e)(2), along with other requirements of the section, are adequate to prevent the uncontrolled end-dumping practices of the past. However, OSM has clarified the first sentence of § 816.71(e)(2), editing it to read "* * * shall be transported and placed in a controlled manner in horizontal lifts * * *" to eliminate any possible confusion. On the other hand, gravity placement of fill is not prohibited under the Act. See § 816.71 of the previous rules (46 FR 37231). The commenter is correct, however, in indicating that Congress did intend to eliminate the "uncontrolled" end dumping of material. The final rule does prohibit the uncontrolled end dumping of excess spoil.

One commenter asserted that in the previous rules the 4-foot maximum lift requirement only applied to valley fills and that this requirement in the proposed rule should have been included in the special provisions for head-of-hollow/valley fills.

The necessity of having a 4-foot-lift thickness is more related to manner of placement and the type of materials involved than the type or location of the fill. The 4-foot-lift requirement has been found to be a generally accepted depth for proper compaction by equipment normally available on surface mining operations. The 4-foot-lift requirement is also consistent with the goal to minimize disturbance of the hydrologic balance by allowing concurrent reclamation, and to limit settlement to reasonable ranges so as not to alter final drainage features. Therefore, the 4-foot maximum lift standard has been retained as a general requirement in the final rule. However, the 4-foot limit for all fills should not result in undue hardship. An alternate design may be approved by the regulatory authority if it is demonstrated by the operator and certified by a qualified registered professional engineer that the use of lifts in excess of 4 feet will ensure the stability of the fill and will meet all other applicable requirements.

One commenter was in favor of the provision giving the regulatory authority discretion to allow lifts greater than 4 feet. Several other commenters were

against this provision. One of the commenters asserted that the discretion to allow lifts greater than 4 feet would lead to serious abuse, circumventing Congress' intent that spoil be compacted, and thereby resulting in adverse impacts to the environment.

Discretion should be given to the regulatory authority because the State is in a much better position to decide whether the economy of allowing thicker lifts is properly balanced by environmental and public safety precautions. In addition, the phrase "horizontal lifts other than 4 feet in thickness" allows the regulatory authority to require lifts of less than 4 feet if site-specific conditions require. Obviously, to use thicker lifts the responsible engineer will have to make special adjustments for stability of the fill. These adjustments can take the form of increased compaction for improvement of strength; control of the type of material used in certain portions of the fill, such as specifying only certain types of rock; or other measures consistent with the properties of the excess spoil and the site-specific conditions of the disposal area. The depth of the lift must be consistent with the compaction effort required.

OSM recognizes that compaction may vary depending upon the particular design used, the properties of the excess spoil and the characteristics of the site and the approved postmining land use. These items can be properly evaluated by qualified engineers and appropriate regulatory authorities. Because operators are required to use qualified engineers for design and construction of excess spoil facilities, the operator must use the construction techniques that will be consistent with the engineer's design determinations and specified construction control measures.

Such measures must ensure controlled placement and concurrent compaction as necessary to ensure mass stability and prevent mass movement during and after construction. Such techniques must also minimize adverse effects on downstream water quality both during and after construction. Proposed departures from the 4-foot lift requirement must be evaluated by the regulatory authority and, where consistent with engineering and environmental performance standards, the regulatory authority could approve the use of lifts in excess of the 4-foot maximum. The final rule is consistent with congressional intent and there is no basis to believe that the flexibility provided will lead to abuse. For these reasons the final rule incoporates the provisions substantially as proposed.

Section 816.71(e)(3)

Final § 816.71(e)(3) outlines when terraces can be used and sets the grade of the outslope between terrace benches. One commenter felt that provisions should be made for site-specific exceptions to the maximum slope of 2h:1v allowed in final § 816.71(e)(3). The commenter pointed out that steeper slopes than 2:1 have been used for highway embankments and commercial areas.

OSM recognizes that fill outslopes steeper than 2h:1v have been constructed on highway embankments and residential areas. However, in most cases, these are because of some special constaint, such as right-of-way limitations or utility relocations. Additionally, some maintenance is usually assured for these facilities.

Geotechnical engineers and revegetation experts consistently limit slopes to the flattest slope feasible. The maximum 2:1 slope is usually the standard, not only because of revegetation and stability but also because of added costs and equipment limitations. Adjustments can be made on most operations to accommodate additional excess spoil without resorting to steeper outslopes. Also, the 2:1 maximum is more consistent with all environmental performance standards than a steeper slope. If an operator wishes to demonstrate the feasibility of using steeper slopes on excess spoil facilities, the provisions for experimental practices could possibly be used if the requirements of 30 CFR 785.13 are met.

The design requirements of the previous rule to grade the terrace bench to slope toward the fill and diversion ditches and to build a ditch at the intersection of the outslope and the bench to control runoff are deleted from final § 816.71(e)(3) because final § 816.71(a) contains performance standards to minimize the adverse effects of surface runoff and § 816.71(f) contains drainage provisions.

The conditions for allowing terraces have been expanded to include conservation of soil moisture and any construction necessary to facilitate the approved postmining land use rather than just to develop primary roads. OSM recognizes the diverse uses for terraces in reclamation of a coal mining site and has expanded § 816.71(e)(3) appropriately. Terraces are a standard soil conservation convention to control runoff flow of water and reduce the soil loss caused by erosion and therefore are of positive value when constructed to be consistent with the approved postmining land use.

Section 816.71(e)(4)

Final § 816.71(e)(4) prohibits impoundments on completed fills, but allows small depressions if needed to retain moisture, minimize erosion, create wildlife habitat or assist revegetation and if they are not incompatible with the stability of the fill. Final § 816.71(e)(4) differs from the proposed and previous rules in that it allows small depressions on completed fills where before they were prohibited.

One commenter suggested that this provision should allow use of depressions or impoundments where they are compatible with the postmining land use and are incorporated in the design of the fill.

Under the general requirements of § 816.71 the regulatory authority may allow small depressions for certain fills if they are necessary and will create beneficial results. However, the small depressions must not be incompatible with the stability of the fill, as discussed in the preamble to the previous rules (44 FR 15203–15204).

There are many types of fills, such as area or side-hill fills, on which a small depression may be a suitable feature, but it would be incumbent upon the regulatory authority to thoroughly review all proposed plans that include small depressions as a feature. This is especially important for head-of-hollow fills where the regulatory authority must ensure that the small depressions will not create a phreatic surface within the fill that may affect the long-term stability of the fill.

Small depressions are typically described as gouges or furrows in the earth and other similar small, infrequent and shallow depressions left by mining or agricultural machinery. These depressions will have to be revegetated, though such vegetation may be more lush than the surrounding area due to the increased moisture collection. Congress intended that depressions that collect and store water be barred unless approved as permanent impoundments. Sen. Rep. 95–128, 95th Cong., 1st Sess., at p. 99 (1977). Therefore, the small depressions must not collect and store water.

Impoundments are not allowed in excess spoil fills. They require more critical performance standards, design and construction methods. They cannot be included as a makeshift feature of an excess spoil fill. Impoundments are properly regulated under 30 CFR 816.49 and 817.49—Impoundments, and proposed §§ 816.84 and 817.84—Coal mine waste impoundments.

Section 816.71(e)(5)

Final § 816.71(e)(5) provides requirements for disposal of acid- or toxic-forming excess spoil materials. This section has been added to the final rules in response to a commenter who asked whether excess spoil that was acid- or toxic-forming would be allowed in an excess spoil fill. Final § 816.71(e)(5) sets the conditions for the disposal in an excess spoil fill of acid- or toxic-forming or combustible excess spoil material produced from coal mining. The acid- or toxic-forming overburden material must be adequately covered with nonacid, nontoxic and noncombustible excess spoil material, or treated, to control the impact on surface and ground water in accordance with § 816.41, to prevent combustion, and to minimize adverse effects on plants and land uses. This rule follows Section 515(b)(14) of the Act. Further explanation for this rule and the comment that initiated it is found in this preamble discussion concerning the disposal of coal mine waste under § 816.71(i).

Section 816.71(f)(1)

Final § 816.71(f)(1) requires that water, depending on its source, be diverted around excess spoil fills or handled in underdrain systems. The provision follows Section 515(b)(22)(C) and (D) of the Act. The final rule has been modified from the proposal to state what performance standards must be met if the fill area contains water rather than to specify a design to divert the water. The performance standards are to control erosion, prevent water from infiltrating the fill and ensure stability of the fill. The proposed requirement for approval of the drainage plan by the regulatory authority is redundant and unnecessary since the fill design must be approved as part of the reclamation plan submitted under Part 780 of this chapter.

One commenter suggested that the word "prevent" in final § 816.71(f)(1) be revised to read "minimize" since it would be very costly to build an underdrain that would absolutely prevent water infiltration into the fill.

The basic purpose of the underdrain system is to provide a conduit for transportation of ground water from existing springs or seeps beneath the excess spoil fill and from any water seepage into the fill due to rainfall to prevent excessive hydrostatic head from developing within the fill. Excessive hydrostatic head could lead to mass movement and failure of the fill. OSM agrees that it is impractical to absolutely prevent water infiltration into a fill. Rather the underdrains should be capable of carrying away water that does infiltrate into the fill and prevent the build up of a phreatic surface within the fill. Either the words "prevent" or "minimize" would accomplish this objective. The final rule continues to use the term "prevent" as more consistent with the express language of Sections 515(b)(22) (C) and (D) of the Act. In this context it is meant to prevent infiltration that would result in the build up of a phreatic surface within the fill.

Section 816.71(f)(2)

Final § 816.71(f)(2) requires that diversions comply with the performance standards for diversions in § 816.43. No comments were received on this provision and it is adopted with some editorial revisions.

Section 816.71(f)(3)

Final § 816.71(f)(3) contains the specific requirements for underdrain systems. This provision was moved to § 816.71 because these specific requirements apply to all underdrain systems whether or not the disposal area falls within the definition of a head-of-hollow or valley fill. The requirements are consistent with Section 515(b)(22)(D) of the Act.

One commenter felt the proposed provision could be erroneously read to require only the filter to meet specific standards, instead of the entire underdrain system. OSM recognizes the confusion and has amended final § 816.71(f)(3) to clear up this inconsistency.

One commenter stated an underdrain system does not have to be provided in the non-structural portion of the fill and recommended the requirements of final § 816.71(f)(3) not apply where the presence of an underdrain has no effect on the performance of the structure. The Act requires that underdrains be constructed in such a manner that infiltration of water from springs, natural water courses, or wet weather seeps into the excess spoil fill will be prevented. In addition, the performance standard of minimizing disturbances to the hydrologic balance with respect to the quality and quantity of ground water systems must be met. These are all design considerations that have to be determined on a site-by-site basis by a qualified engineer who has knowledge of the effects of water infiltration on the performance of the fill and ground water quality and quantity. In most cases all the springs and wet weather seeps of any significance will be tied into the main underdrain system, whether in the structural zone or not. By allowing the use of an underdrain pipe system, this is now feasible in all other methods of placement and can be achieved with little additional control and effort in disposal areas where the dumped, durable rock fill allowed in § 816.73 is used.

An editorial change was made in final § 816.71(f)(3) to clarify that the underdrain system is to be designed to carry the "anticipated seepage of water due to rainfall away from the excess spoil fill and from seeps and springs in the foundation of the disposal area" rather than to carry the "anticipated flow of infiltration into the fill."

One commenter asserted that the phrase "accepted engineering practices" is more appropriate than "standard geotechnical engineering method" as used in the proposed provision since there are no standard methods of practice established. OSM agrees that the suggested phrase is more consistent with actual practice. But in order to make the rules more consistent with MSHA rules, OSM has chosen to use MSHA phrasing—"current, prudent engineering practices." This phrase, taken from 30 CFR 77.215(i), is interpreted to mean practices well-established by engineering principles and widely recognized by experts for use in excess spoil disposal, as opposed to practices being novel or experimental. The engineer is also responsible for confirming that the practice has long-term reliability. Final § 816.71(f)(3) is revised accordingly.

One commenter noted that many shales have been found acceptable for use in highway underdrain systems and recommended that final § 816.71(f)(3) be revised to allow the use of shale in rock underdrains.

Nowhere does the final rule specifically prohibit the use of shale in a rock underdrain. However, very specific performance standards have been set in § 816.71(f)(3) and elsewhere in the rules for rocks that are to be used in uderdrains. If the type of shale the commenter is considering can be certified to meet the performance standards, then conceivably the shale could be used in the underdrain. But shale materials are difficult to evaluate with respect to long-term physical characteristics and are extremely variable in durability, tendency to slake in water and degrade to soil material. In order to compensate for the lack of any assigned maintenance responsibility for excess spoil fills, long-term functioning requirements for rock underdrains are warranted and the use of the highest quality of materials for underdrain systems is required. Shale, unfortunately, is not high on the list

when it comes to durability and long-term stability. The final rule does allow pipe to be used as an alternative underdrain conduit, which could be used where high quality rock materials are not readily available.

One commenter stated that the use of pipe as allowed in lieu of durable rock may pose long-term stability problems given the design "life" limitations of metal pipes. Additionally, the use of pipe will require an intense scrutiny of the rate of corrosion, inherent strength and other related hazards. OSM agrees that pipe cannot be used indiscriminately and that careful analysis must be given to the environmental as well as structural considerations. It is standard engineering knowledge that certain types of pipes have a very limited design life. Therefore, OSM has inserted performance standards for perforated pipe underdrains. Final § 816.71(f)(3) requires these underdrain pipes to be corrosion resistant and to have characteristics consistent with the long-term life of the fill. The qualified engineer must certify that the design will meet the long-term performance standards, and with this additional provision the engineer will have to specify the type of pipe to be used such that it will meet the long-term performance requirements.

Another commenter stated it was "technically satisfying" to be able to use site-specific designs for underdrains, but that it does impose the burden of specific hydraulic sizing design analysis upon each excess spoil fill component.

The hydraulic sizing should be analyzed for each part of the fill regardless of whether the engineer is using set design standards or performance standards. Engineers using a design standard set by OSM or the regulatory authority should analyze it with regard to whether it is appropriate for their conditions and adequate to ensure the public and environmental safety. While a design standard set by OSM or the regulatory authority is the minimum design required, a more protective design may be necessary on that particular site.

Section 816.71(g)

Final § 816.71(g) requires that slope protection be provided to minimize surface erosion and that all disturbed areas be revegetated. The provisions in final § 816.71(g) received no comments and they are adopted as proposed with editorial revisions. Final § 816.71(g) is consistent with Section 515(b) (4) and (19) of the Act.

Section 816.71(h)

Final § 816.71(h)(1–4) outlines the basic construction quality control standards. Final § 816.71(h) requires a qualified registered professional engineer or other qualified professional specialist to inspect the fill periodically during construction and the engineer to certify that the fill has been constructed as designed and that it is stable. The comments regarding the determination of whether an engineer is a qualified registered professional engineer in § 816.71(h) were discussed with other comments received on § 816.71(b)(1). As a result of those comments the proposed requirement to document experience in writing is removed from final § 816.71(h). The reader is referred to § 816.71(b)(1) for the discussion of those comments.

One commenter recommended that the phrase "under the supervision of the registered engineer" be added after the term "specialist" in final § 816.71(h). Otherwise, the commenter said, the requirement puts the engineer in the position of making a certification based on inspections done by a person on whom the engineer may not be able to rely. The commenter further asserted that the engineer must be able to dictate when to make an inspection and to instruct the specialist on what should be observed. This suggestion has been accepted. The specialist should supply sufficient documentation for the engineer to make a certification with respect to the constructed fill. The revised language will ensure that necessary inspections and observations are conducted if a specialist is used. The terms "qualified" and "professional" require that the specialist be reliable and have the necessary background and experience to conduct the necessary inspections. In any case, it is the engineer who must certify the fill and it is the engineer who has the choice of using the services of a "specialist" to aid in the inspection activities.

Section 816.71(h)(1)

Final § 816.71(h)(1) calls for inspections to be made at least quarterly throughout construction, during critical construction periods and regularly during placement and compaction of fill materials.

It should be noted that these inspections do not satisfy the requirements for enforcement inspections to be done by the regulatory authority and do not serve the same purpose. The basic objective of inspections by the certifying engineer is to ensure that the construction is being performed in accordance with design, requirements. The frequency of inspection will vary from site to site based upon types of material, the design rate of placement, operational personnel, and other factors. These items must be considered both by the regulatory authority and the inspecting engineer.

One commenter asserted that quarterly inspections may not be frequent enough. The quarterly inspection requirement is a minimum requirement and it is anticipated that most engineers would want to exceed this frequency in order to support their certification statements. The quarterly inspection frequency was maintained as a minimum standard in final § 816.71(h)(1).

One commenter requested clarification of the "critical construction periods" mentioned in final § 816.71(h)(1) since the commenter felt the rule implied that daily inspection for placement and compaction would be needed to certify each load as well as to certify each phase of revegetation. Another commenter felt some of the items were too routine to require reporting.

The five phases outlined in the proposed rule were listed in the previous rules in response to a similar comment [44 FR 15204, March 13, 1979]. These were listed to show the normally critical periods on most fills in addition to providing a guide for the frequency of inspection. The regulatory authority has the discretion to be more specific and set additional inspection critieria. Since the engineer must certify the construction, he must determine based on site-specific conditions how often his inspections are needed and how detailed the reports need to be to support his certification. For instance, during certain fill operations such as placement of underdrain systems daily inspections may be required. During other aspects of the operation, less frequent inspections may be necessary. The final rule has been revised to reflect this flexibility and to allow the regulatory authority and the inspecting engineer to establish additional critical construction periods requiring inspections. The final rule continues to require, however, that such critical construction periods include foundation preparation with the removal of organic material and topsoil; placement of underdrains and protective filter systems; installation of final surface drainage systems; and the final graded and revegetated fill. Routine placement of fill has been eliminated from the final rule as a mandatory critical construction period, since such operations are not

always critical. If, however, placement and compaction aspects of construction are critical to a particular design, it is expected that the qualified engineer or specialist will inspect the fill during such critical periods.

Section 816.71(h)(2)

Final § 816.71(h)(2) requires the qualified registered professional engineer to provide the regulatory authority with reports certifying that the fill has been constructed and maintained as designed and in accordance with the approved plan and 30 CFR Chapter VII. Such reports, which have to be filed promptly after each inspection, must describe any apparent instability, structural weakness, and other hazardous conditions.

One commenter remarked that the reporting requirements of final § 816.71(h)(2) placed undue constraint on a coal operation which has many small fills progressing simultaneously. The commenter suggested rather than a report on each fill, that an engineer could submit one consolidated report on all the small fills. The final rule is not intended to prevent the certifying engineer from inspecting more than one fill on the same inspection; conducting a series of inspections; or, depending on the requirements of the specific regulatory authority, covering several fills in one report. No change is deemed necessary in the final rule. The engineer and the regulatory authority have the discretion to accommodate the construction of several small fills at the same time.

Section 816.71(h)(3)

Final § 816.71(h)(3) requires that the certified report also include color photographs of the underdrain and sets the specific conditions for those photos. A paragraph is added to clarify the photographic documentation necessary for a natural segregation drainage system.

Two commenters stated that the color photograph requirements for underdrain systems preclude the construction of an underdrain system by the natural segregation technique employed under the durable rock fills methods of disposal. OSM recognizes the natural segregation method of constructing the underdrain system under the durable rock spoil disposal method. However, photographic documentation is still appropriate. OSM has added a sentence to final § 816.71(h)(3) requiring color photographs be taken of the underdrain as it is being formed when, in building a durable rock fill, natural segregation of rock is used to create the underdrain.

Photographs taken during normal routine inspections by the engineer will be sufficient in most cases. In cases where extension of materials to the to area is not achieved in the dumping operation a separate operation to create a drainage system may still be necessary. In these instances, photographic documentation of any necessary extension of the system by a separate operation should also be made prior to the grading operation to achieve the final configuration.

One commenter did not believe the requirement for photographs was excessively burdensome given the importance of drain and filter systems to the integrity of the excess spoil structure. Another commenter said the photographs are helpful but will not ensure the drainage system will function properly. The commenter said the only assured method of determining adequacy of the drain and filter system was to conduct periodic gradation analyses of the materials used and other standard testing processes.

OSM agrees. The photographs of the underdrains are meant to be a record for proper certification by the engineer that the underdrain has been designed and constructed as planned. The photographs are not intended to be the sole basis for the engineer's certification of the proper construction of the underdrain.

There are many events that can occur during the construction of an excess spoil fill that can affect the quality or integrity of the underdrain system, such as a large rainfall event that washes sediments from the unreclaimed soil slopes into the drain voids or equipment operators inadvertently destroying the constructed filters. The frequent and certified inspections by the engineer during the entire construction of the fill should identify such unforeseen adverse impacts and the remedial action needed. For all non-durable rock fills, a separate construction operation and certification is necessary for the underdrain system. Even where natural segregation is employed for constructing the underdrain system, special design and construction consideration of the underdrain system must be given by the responsible engineer to support his certification. Therefore, the proposed rule is adopted as final with the addition of the clarification for durable rock fills discussed earlier.

Section 816.71(h)(4)

Final § 816.71(h)(4) requires a copy of each inspection report to be retained at or near the mine site.

One commenter recommended that the requirement that reports be kept "at the mine site" be changed to read "at or near the mine site." It was anticipated by the proposed rules that the reports would be retained at the same location where other mine records, such as, licenses, approved plans, current permits and authorzation to operate, were kept. OSM has previously ruled that mine records should be available at or near the mine site. Final § 816.71(h)(4) has been revised to read "at or near themine site."

Section 816.71(i)

Final § 816.71(i)(1–3) allows for the disposal of coal mine waste in excess spoil fills and sets the performance standards for such operations. These requirements are consistent with those in Section 515(b)(11) of the Act. In order to put coal mine waste in an excess spoil fill the final rule requires that it be placed according to the coal mine waste rules in proposed § 816.83, that the coal mine waste be nontoxic- and nonacid-forming and that it be of the proper characteristics to be consistent with design stability of the fill. For convenience, these rules reference the draft final coal mine waste rules as set forth in OSM's "Final Environmental Impact Statement OSM EIS–1: Supplement," (FEIS) Volume III, p. 193. If such rules are not adopted, a technical amendment will be issued to provide the proper reference. This also applies to references to other proposed rules which appear in this final rule (for instance, the references to proposed §§ 816.41 and 816.43 in final §§ 816.71(e)(5) and 816.72(a)(2), respectively).

Several commenters felt the proposed rule represented a change in policy in that it allowed the disposal of coal mine waste in head-of-hollow and valley fills and that this change increases the probability of failure in fills because it will be more difficult to achieve long-term stability. They also indicated the proposed elimination of the 90-percent dry density requirements from the coal mine waste rules (See previous § 816.85(c)(2)) which are referenced by final § 816.71(i)(1) increases the likelihood of coal mine waste fires developing in these fills. They cited other adverse impacts such as increased sedimentation, destruction of aquatic life, and increased hazard to human health and safety from failure of fills.

The physical, chemical and engineering properties of coal mine waste can be adequately defined by proper testing techniques. This makes it feasible to analyze, design and apply properly the necessary construction controls to place coal mine waste in excess spoil fills so as to meet all

performance standards of the Act and rules including the minimum long-term static safety factor of 1.5.

The adopted rules require the operator to use qualified registered professional engineers for analysis and design and that the construction be certified by a qualified registered professional engineer. In addition the rules require site-by-site approval by the regulatory authority, and further that the coal mine waste materials be placed in accordance with standard coal mine waste disposal methods as outlined in proposed § 816.83.

In steep slope areas, where head-of-hollow and valley fill excess spoil facilities are normally constructed, coal mine waste has in the past been disposed of in the same or similar fill configurations. By allowing the combination of such materials in fills under proper design and construction techniques, this rule should reduce unnecessary duplication of fills and reduce the number of valley fills while maintaining environmental and safety standards. Coal mine waste can be disposed of in such facilities without any increase in adverse impacts. The provision is adopted as proposed with minor editorial revisions.

One commenter thought that the requirement of final § 816.71(i)(2) prohibited the disposal of toxic- and acid-forming overburden materials in excess spoil fills.

The proposed provision corresponding to § 816.71(i)(2) referred only to coal mine waste, not acid- or toxic-forming overburden. Most overburden materials will be returned to the mined-out area and backfilled and graded according to § 816.102. In the rare case where there is an excess of acidic or toxic overburden material it shall be disposed of in a permitted excess spoil disposal area using similar compaction and cover requirements as those required in § 816.102(e). A provision similar to § 816.102(e) has been inserted in the final rule as § 816.71(e)(5) to cover such instances. Coal mine waste must be nontoxic- and nonacid-forming if it is to be placed in an excess spoil fill.

The backfilling and grading rules in final § 816.102(e) and the excess spoil rule § 816.71(e)(5) require that all acid- or toxic-forming overburden materials be adequately covered with nonacid- and nontoxic-forming material. This acidic or toxic material must also be treated if necessary to control any adverse impact to surface and ground water in accordance with proposed § 816.41, to prevent combustion, and to minimize adverse effects on plant growth and land uses.

Additionally, coal mine waste disposed of in an excess spoil fill must be handled according to proposed § 816.83, which requires that all coal mine waste be covered by 4 feet of nonacid and nontoxic overburden material. Therefore, when coal mine waste is used in an excess spoil fill only excess overburden material that is nonacid- and nontoxic-forming may cover the coal mine waste.

Section 816.71(j)

Final § 816.71(j) provides provisions for returning excess spoil to underground mine workings. All underground activities require approval and/or coordination with MSHA. No specific comments were received, and the provision is adopted as proposed. This provision follows Sections 516(a) and 515(b)(11) of the Act.

Section 816.72 Disposal of excess spoil: Valley fills/Head-of-hollow fills.

Final § 816.72 outlines the special requirements that must be met in addition to the general requirements of § 816.71 when the excess spoil disposal area falls within the definition of a head-of-hollow or valley fill.

Section 816.72(a)

Final § 816.72(a)(1–2) covers control of surface runoff and runoff from above the fill and sets the performance standards for diversion channels. Final § 816.72(a)(1) requires the top surface of the fill to be graded to slope toward properly designed drainage channels and prohibits directing uncontrolled surface drainage over the outslope. This is necessary to prevent erosion of the outslope of the fill. No comments were received on this provision and it is adopted as proposed.

Final § 816.72(a)(2) requires that runoff from areas above the fill and the surface of the fill be diverted into stabilized diversion channels designed according to proposed § 816.43 and which are also able to safely pass the runoff from a 100-year, 6-hour precipitation event. The final rule is slightly revised from the proposed rule.

The proposed rule would have required that the 100-year, 6-hour design storm event be used in the design of drainage systems for all head-of-hollow and valley fills and in all other fills if required by the regulatory authority to ensure stability.

One commenter said the use of the design storm criteria in all head-of-hollow and valley fills was unnecessary. The commenter wanted the regulatory authority to have the discretion to decide if the design storm criteria were needed to ensure stability.

The design storm criteria are included in the final rule because at this time they are considered criticial to the protection of the environment and the public safety. In the final rule, the 100-year, 6-hour design storm criteria are contained in § 816.72(a)(2) as special requirements for head-of-hollow and valley fills. Their use will not be required for other types of fills, where lower design storm criteria are used because of the less critical nature of the fill.

Several commenters stated that the change of the design precipitation event to the 100-year, 6-hour storm weakens the channel capacity requirements and may increase the potential for erosion, but gave no reasons or data to support their conclusions.

The storm design criteria were changed to be consistent with the storm design criteria of the Mine Safety and Health Administration (MSHA) published in "Design Guidelines for Coal Refuse Piles and Water, Sediment, or Slurry Impoundments and Impounding Structures" (IR1109). OSM recognizes that the 24-hour duration storm usually results in a runoff volume and peak somewhat higher than the 6-hour storm for the same area (See 44 FR 15207.) However, it also has been reported that in some watersheds, the 100-year, 6-hour event can result in a higher peak flow. For a given storm frequency, the time of concentration and watershed shape can be more influential in determining the peak flow than the storm duration. In most cases the differences in any increased volume of peak flows will be minor from a practical design and construction standpoint. Any computed increase in peak flow volume would most likely not result in any significant change in flow depth or flow velocities, and correspondingly, any alteration in channel design. For instance, in a rock riprap-lined channel, velocity increase from resulting increase in peaks would not likely alter the specified rock size used in the design. Therefore, the change in precipitation event for design of diversions on excess spoil fills will not result in any significant increase in the potential for erosion.

Section 816.72(b) Rock-core chimney drains.

In the proposed rulemaking of June 8, 1982 (47 FR 24961), OSM inadvertently proposed to remove the provisions for rock-core chimney drains in head-of-hollow and valley fills that were previously contained in § 816.73 (a) and (b). To correct that omission, final § 816.72(b) sets the conditions when rock-core chimney drains may be used and additional Paragraphs (b)(1), (b)(2),

and (b)(3) contain the performance and design requirements. No comments were received on this omission or in relation to rock-core chimney drains.

Final § 816.72(b) allows rock-core chimney drains to be used for head-of-hollow fills that are not located in areas having intermittent or perennial streams. A rock-core chimney drain may be used in a valley fill if the fill does not exceed 250,000 cubic yards of material and upstream drainage is diverted around the fill. Those fills in a head-of-hollow that do not reach the ridgeline are considered valley fills. The previous rules allowed-rock core chimney drains in such fills if they did not exceed 250,000 cubic yards.

OSM also recognizes the need to prevent a phreatic surface from developing within critical zones of the fill and the continued need for chimney drains to prevent this from occurring not only from underground flows, but also from infiltration of rain water.

Section 816.72(b)(1)

Final § 816.72(b)(1) is taken directly from previous § 816.73(b)(1) with an additional phrase added. It requires a vertical core of durable rock at least 16 feet thick extending from the toe to the head of the fill and from the base to the surface of the fill. A system of lateral rock underdrains connected to the rock core shall be designed to carry the anticipated seepage of water due to rainfall away from the excess spoil fill and from seeps and springs. It also requires the rocks used in the drain to meet the requirements of § 816.71(f), which defines the characteristics of durable rock.

Section 816.72(b)(2)

Final § 816.72(b)(2) requires a filter system, to ensure the proper functioning of the rock core, to be designed and constructed using current, prudent engineering practices. This provision is derived from previous § 816.73(b)(2) with a change from the phrase "standard geotechnical engineering methods" to "current, prudent engineering practices" because, as discussed previously, the new phrase is more consistent with actual practice and MSHA rules. (See discussion under § 816.71(f)(3)).

Section 816.72(b)(3)

Final § 816.72(b)(3) allows grading to drain surface water toward the rock core, but prohibits intermittent or perennial streams from being diverted into the rock core. It requires that the maximum slope of the top of the fill be 33h:1v (3 percent). Terraces on the fill shall be graded with 3 to 5 percent grade toward the fill and a 1 percent slope toward the rock core. The final rule also allows for a drainage pocket to intercept runoff over the rock drain if it does not impair the stability of the fill and does not have the potential capacity for impounding more than 10,000 cubic feet of water. Final § 816.72(b)(3) comes directly from previous § 816.73(b)(3).

Because the final rule on rock-core chimney drains was only slightly changed from the previous rule the justification for its inclusion remains the same as that which was contained in the previous rulemaking on March 13, 1979. (See 44 FR 14931 and 15206 and 15207).

Section 816.73 Durable rock fills.

Final § 816.73 will allow the regulatory authority to approve the alternative method of disposing of excess durable rock spoil by gravity placement in single or multiple lifts and sets the performance and material standards for rock fills.

Section 816.73(a)

Final § 816.73(a) requires that durable rock fills meet the requirements of § 816.71, except as provided in § 816.73. No comments were received on the proposal that such fills meet the "other environmental standards in § 816.71," which is how it was proposed in the June 8, 1982, rulemaking. This final paragraph reflects the new organization of the rule without changing the substance of the requirement.

Section 816.73(b)

Final § 816.73(b) retains from the previous and proposed rules the 80/20 ratio of durable to nondurable rock materials allowed in the fill and further describes the type of rock that may be used. A new phrase has been added to clarify an aspect of the proposed rule the commenters found confusing—the requirement for the use of "nondegradable" rock.

One commenter felt the term implied the need for more testing and classification than was intended in the original rock fill concept. Another commenter noted that OSM had not offered any specifications as to how rock is determined to be durable and nondegradable by OSM standards. One commenter pointed out that there are no rocks native to his State that could be considered nondegradable.

OSM agrees that the proposed term was confusing. The intent in using the terms "durable and nondegradable" in the proposal was that not only does the rock in the fill need to be resistant to slaking, but it must also be resistant to breakdown to soil materials caused by handling, weathering, or chemical reaction. The rock must remain rock. However, because of the confusion, OSM has removed the term "nondegradable" and revised the proposed phrase to the final phrase "durable rock, that will not slake in water or degrade to soil materials." Soil materials are, in relation to durable rock fills, any materials that have degraded or will degrade to such a size as to block or cause failure of the underdrain system. The phrase "nonacid- and nontoxic-forming" was added in § 816.73(b) to describe the type of rock that can be used in a durable rock fill. Just as in the rule for rock underdrains in final § 816.71(f), the rocks used in a durable rock fill must be nonacid- and nontoxic-forming. This is because, in most cases, the fill is in itself a rock underdrain formed through natural segregation of dumped rock materials. With one exception, all acid- and toxic-forming materials, whether soil or rock, must be returned to the pit area and backfilled and graded according to § 816.102(e). Only in rare instances would there be an excess of such material needed to be disposed of in an excess spoil fill and this may only be done according to final § 816.71(e)(5).

Section 816.73(c)

Final § 816.73(c) retains from the proposed rule the requirement that a qualified registered professional engineer must certify that the design will ensure the stability of the fill and meet all other applicable rules.

The proposed requirement that the operator "demonstrate" that the fill meets the design, stability or other performance standards has not been adopted. Since the 1.5 and 1.1 safety factors have been retained from the previous rule, the certification by the engineer that these factors are met and that the design will ensure stability of the fill better serves the purpose intended by the requirement for a "demonstration."

Section 816.73(d)

Final § 816.73(d) requires the fill to be designed to attain a minimum long-term static safety factor of 1.5 and an earthquake safety factor of 1.1. This provision, which was part of the proposed general requirements for all excess spoil fills, has been set out specifically here as was done in the previous durable rock fill rule. These provisions are unchanged from the previous rule.

Section 816.73(e)

A new provision in final § 816.73(e) allows for the underdrain system to be

constructed simultaneously with excess spoil placement by the natural segregation of dumped materials if the underdrain can carry the anticipated seepage of water due to rainfall away from the excess spoil fill and from seeps and springs in the foundation of the disposal area, and meet all other requirements for drainage control. This provision is included to further clarify OSM's acceptance of this type of underdrain, which previously had been treated as an assumed, standard part of a rock fill and not in need of further explanation. Because of the certification requirements in § 816.71(h) and commenters' confusion, the use of a natural segregation rock underdrain in a durable rock fill is specifically provided for in this paragraph.

As previously mentioned, the construction quality control rules for excess spoil fills are also revised to clear up the inconsistency between the use of the gravity placement method for durable rock fills and the requirement for color photographs of the underdrain prior to placement of the excess spoil. As several commenters pointed out, photographs cannot be taken of an underdrain prior to placement of the excess spoil if the underdrain is created by the natural segregation of dumped rock as normally happens in the use of durable rock fills.

Section 816.73(f)

Final § 816.73(f) requires that surface runoff be prevented from flowing onto the fill and be diverted into diversions channels designed to safely pass the runoff from a 100-year, 6-hour precipitation event in accordance with proposed § 816.43. These provisions, which were part of the general requirements for all excess spoil fills in the proposed rule, have been set out specificallly in this paragraph as was done in the previous durable rock fill rule for clarity. The change in § 816.73(f) of the precipitation event from the previous rule (100-year, 24-hour) follows the same reasoning as supplied for use of the 100-year, 6-hour storm event in § 816.72(a)(2).

The changes in final § 816.73 were prompted by the comments summarized earlier in this preamble under *General Comments* and should correct any misunderstanding concerning OSM's policy on durable rock fills. Further discussion of the use of durable rock fills and gravity placement can be found in the preamble of the March 13, 1979 rules (44 FR 15207).

Section 816.74 Disposal of excess spoil: Pre-existing benches.

Final § 816.74 provides for the disposal of excess spoil on preexisting benches. Paragraphs (a) through (d) of this section were adopted as a separate final rule in § 816.75 on April 29, 1982 (47 FR 18553). With a few revisions, it is being readopted today for the same reasons and with the same legal justification as was expressed in the **Federal Register** preamble to the April 29 rule. It was reproposed on June 8, 1982, as part of the reorganization of the excess spoil rules and to allow its environmental effects to be considered in the FEIS. This optional method of disposing of excess spoil will help to achieve the important goal of reclaiming abandoned mine lands.

One commenter felt that one of OSM's justifications for allowing such disposal—"that preexisting benches are inherently more stable than spoil placed on valley soils"—was not supported by an studies and was in fact untrue. The commenter said that preexisting benches often consist of unstable highwalls, have excessive seepage and unstable spoil at the perimeter of the bench. The commenter believed that before placement of excess spoil is permitted on existing benches, a complete foundation and drainage pattern analysis should be conducted.

The final rules ensure stability of the backfill. According to final § 816.71(d) the operator must perform a foundation investigation and laboratory testing of materials as the first step in determining design requirements of the fill. Final § 816.71(f) requires further precautions be taken in terms of drainage control. The design of a fill using preexisting benches must meet the general requirements for fills as is stated in final § 816.74(a).

Section 816.74(a)

Final § 816.74(a) establishes which general requirements of § 816.71 apply to disposal of excess spoil on preexisting benches. The general requirements referenced are necessary to ensure compliance with the performance standards of the Act. No comments were received on § 816.74(a) and the rule is adopted as proposed. Final § 816.74 is consistent with Section 515 (b) and (d) of the Act.

Section 816.74(b)

Final § 816.74(b) requires that excess spoil disposed of through placement on a preexisting bench be placed only on the solid portion of the bench. The requirement is considered necessary to assure compliance with the Act. No comments were received on this paragraph and it is adopted as proposed.

Section 816.74(c)

Final § 816.74(c) requires the fill to be designed, using current, prudent engineering practices, and to attain a 1.3 static safety factor to ensure stability of the fill. The requirement is considered necessary to assure compliance with the Act and is consistent with the requirements of § 816.102 for backfilling overburden in mined-out areas. No comments were received on this paragraph, however, an editorial change was made requiring the fill be designed using "current, prudent engineering practices" rather than "standard geotechnical analysis." The change was made to be consistent with MSHA rules as discussed previously with regard to § 816.71(f)(3).

Section 816.74(d)

Final § 816.74(d) outlines the backfilling and grading requirements for disposing of excess spoil on a preexisting bench. One commenter felt the requirements of § 816.74(d) (1) and (2) could be interpreted to be in direct conflict with each other. The commenter stated that the most moderate slope possible could result in a slope much flatter than the angle of repose thus using more material than might be necessary and reducing the spoil available to eliminate the highwall. The question could then be raised whether the highwall was eliminated to the maximum extent technically practical. The commenter further stated that the elimination of the highwall can be measured both vertically and longitudinally along the bench.

The elimination of the highwall to the maximum extent technically practical is difficult to define to cover all possible situations. The requirements of § 816.74(d) (1) and (2) are performance standards that require design determination on a site-by-site basis. OSM disagrees that these two standards conflict with each other. The most moderate slope possible in most cases will be consistent with the slope used in the design analysis for determination of the 1.3 safety factor as required by final § 816.74(c). The elimination of the highwall to the extent practicable was defined in the proposed rules of June 8, 1982 (47 FR 24959), as "that portion of the highwall that is both technically and economically feasible to eliminate using available excess spoil." Paragraph(d)(2) is changed to read "to the maximum extent technically practical," in order to clarify the concept to be consistent with

the interim final rule on steep slope remaining published November 12, 1982 (47 FR 51316). This change was made to emphasize that the Act does not require operators to employ extraordinary physical measures to eliminate the highwall where there is not enough excess spoil to do so. In the proposed rule preamble (47 FR 24959) it was also made clear that, in the case where an operator has chosen to eliminate a higher portion of the highwall over a shorter horizontal distance, rather than a longer section of highwall at a lower height, the regulatory authority would have to determine the practicability of the plan and approve or disapprove it.

Section 816.74(e)

Final § 816.74(e) outlines the provisions for the controlled gravity transport of excess spoil from an actively mined, upper bench to an existing lower bench. The proposed rules essentially repeated the previously published final rules (July 17, 1981, 46 FR 37332, and August 11, 1980, 45 FR 53138). Some editorial changes have been made to improve the clarity of the requirements. The provision requiring a demonstration that the excess spoil disposed of by gravity transport is not necessary for elimination of the highwall or AOC was deleted because this requirement is now implicit in the definition of excess spoil in § 701.5.

One commenter alleged that the gravity transport method proposed would reinstitute the practice of "end-dumping" excess spoil. The preamble discussions for the previous rulemaking indicate the rules were designed to allow controlled transport of excess spoil only, and to prohibit the past practice of "uncontrolled" end dumping.

Section 816.74(e)(1)

Final § 816.74(e)(1) requires the transport courses to be specifically located and approved by the regulatory authority. No comments were received on this provision and it is adopted as proposed with two exceptions. The term "courses" replaces "points" because it better describes the fact that the material will travel a path between the benches which should be approved rather than just the point of discharge. Also, the requirement to minimize damage has been extended to areas between the benches and outside the set course. This is consistent with final § 816.74(e)(4) which allows gravity transport in some instances where the transport course will pass over a natural slope.

Section 816.74(e)(2)

Final § 816.74(e)(2) requires the excess spoil to be placed in a controlled manner in horizontal lifts, compacted to ensure mass stability and graded to allow surface and subsurface drainage to be compatible with the natural surroundings, and to ensure a minimum long-term static safety factor of 1.3.

One commenter asserted that excess spoil should not be placed and compacted in horizontal lifts as required in final § 816.74(e)(2) but rather placed to attain a 1.3 static safety factor as required in § 816.74(c).

The requirement for horizontal lifts in § 816.74(e)(2) is consistent with the general placement requirements for excess spoil under final § 816.71(e)(2) as referenced by § 816.74(a). The horizontal dimension of the lift is dependent on the amount of solid bench, the design of the fill and the approval of the regulatory authority. Section 816.71(e)(2) also allows the regulatory authority to approve lifts greater than the 4-foot thickness. With this flexibility, the combination of the 1.3 static safety factor and the compacted horizontal lifts should provide no complication or burden to the engineer. Therefore, final § 816.74(e)(2) is adopted as proposed, with one change to clarify that preexisting spoil that is disturbed must also be reclaimed.

Section 816.74(e)(3)

Final § 816.74(e)(3) requires the construction of a safety berm on the solid portion of the lower bench when excess spoil is gravity transported. No comments were received on this provision and it is adopted as proposed.

Section 816.74(e)(4)

Final § 816.74(e)(4) is a new provision stating the reclamation requirements for the gravity transport course. The paragraph prohibits excess spoil on the downslope below the upper bench except at designated gravity transport courses. The final rule also prohibits excess spoil from remaining on the designated transport courses after completion of the fill and requires that each transport course be properly reclaimed. This provision was added to ensure that there will be a controlled placement of excess spoil and the entire area will be properly reclaimed. Proposed § 816.71(c)(2)(vi) would have required the lower bench to be considered an "affected area." Under the previous definition of the "permit area," which included all "affected areas," the lower bench would thus be subject to reclamation requirements. The new Paragraph (e)(4) more explicitly covers the need to have all disturbed areas properly reclaimed.

Two commenters were concerned with the proposed prohibition of natural slope between the highwall and the upper bench. One commenter requested that natural slopes between the highwall of the lower bench and the upper actively mined bench be allowed. The commenter felt the proposed prohibition precluded gravity transport since in most instances there would be some natural slope between the highwall of the preexisting unreclaimed mine and the bench of the new mine. The commenter said these slopes usually are only a short slope distance and would be disturbed anyway by the new operation during reclamation. Therefore, he said, there is no rationale for the constraining requirement. The commenter noted that since both areas would be part of the permit area it should be assumed that the regulatory authority will require reclamation of all natural slopes as well as the new mining area and the preexisting mining area.

Another commenter requested that this provision require that no natural slope be allowed "other than the natural slope of the undisturbed natural barriers required by § 816.99(a)." The commenter said this wording change was needed because the gravity transport method would never apply because there would always be some natural slope due to the undisturbed berm.

The final rule does not adopt the proposed provision that would have limited the use of the gravity transport method to only those areas where the highwall of the lower bench meets the upper actively mined bench with no natural slope between them. This was done to recognize the need for a natural barrier between benches in many instances. Previously the rules had allowed gravity transport only where benches intersected with no natural slope between them. Since Section 515(b)(25) of the Act requires a natural berm to be left to prevent sliding or erosion, the chance of the benches intersecting naturally with no "natural" slope between them will be very small. However, the natural slope maintained as part of the natural barrier should not necessarily prohibit gravity transport.

OSM will not allow excess spoil to be "placed"—meaning to be permanently stored or located—on the downslope of the natural slope between the benches. Section 515(d)(1) of the Act does not allow such placement on steep slopes and, in other instances, the requirements of Section 515(b)(22) of the Act will not be met. OSM will permit, however, a small specified portion of the downslope

to be prepared, under the topsoil rule in § 816.22, to act as a gravity transport course for transporting excess spoil to the lower bench. The important aspect of this new provision in § 816.(e)(4) is that the excess spoil is never allowed to be "placed" on the transport course—it may not remain there permanently and the angle of the course should be such that the effect of gravity should move it quickly to the lower bench. The excess spoil must be hauled to the gravity transport course point on the upper bench and released to fall down the course for rehandling into compacted horizontal lifts on the lower bench. This shall be permitted only with the approval of the regulatory authority, and only if no excess spoil remains on the course at the completion of the fill and the course is properly controlled and reclaimed.

The phrase "gravity transport point" was changed to "gravity transport course" to better describe the actual area disturbed since a natural slope is allowed between the two benches for this disposal method.

The final rule also does not adopt the proposed provision that would h ave limited the use of the gravity transport method to only those areas where excess spoil can be placed on a solid portion of a lower preexisting bench. This was not included because it is already necessary that the fill meet the 1.3 static safety factor in addition to the foundation investigations required in § 816.71.

OSM addressed the issue of the natural slope between benches in two previous rulemakings, July 17, 1981 (46 FR 57233) and August 11, 1980 (45 FR 53184). Readers are referred to those preambles for further discussion on the subject.

Section 817.71 Underground Mining Activities.

As previously mentioned the bases and purposes of §§ 816.71–816.74 and 817.71–817.74 are the same. All public comments discussed in the portion of the preamble relating to §§ 816.71–816.74 were considered and similarly disposed of with respect to §§ 817.71–817–74 because the differences between underground and surface mining generally do not justify differences in excess spoil disposal requirements between structures associated with surface mining and those associated with underground mining. In effect, disposal of excess spoil from underground activities pursuant to these sections will provide, and is necessary to ensure, the same level of protection for the environment and public health and safety as to be required for the disposal of excess spoil associated with surface mining.

The reader is referred to §§ 816.71–816.74 for a discussion of comments and issues relevant to §§ 817.71–817.74. The only difference in the sections occurs in § 817.71(k). This section provides an additional provision for placement of spoil from a face-up operation at drift entries. This material may be placed at a drift entry as part of a cut and fill structure, if this structure is to be less than 400 feet in horizontal length and is designed according to the rest of the standards of § 817.71. By using some of the spoil at the drift entry, a smaller excavation in the hillside is needed to prepare to build a working area for the mine. No comments were received on this provision and it is adopted as proposed.

Reference Materials

Reference materials used to develop these final rules are the same as those listed in the proposed rules (47 FR 24960) and the previous rules (44 FR 15213 and 44 FR 15205).

III. Procedural Matters

Executive Order 12291 and the Regulatory Flexibility Act

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*). The rule will impose only minor costs on the coal industry and coal consumers because it emphasizes the use of performance standards instead of design criteria, which will allow operators to utilize the most cost-effective means of achieving the performance standards. The rule should especially ease the regulatory burden of small coal operations in Appalachia.

Paperwork Reduction Act

The information collection requirements in existing 30 CFR Parts 816 and 817 were approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3507 and assigned clearance numbers 1029–0047 and 1029–0048. OSM has codified the OMB approvals under new §§ 816.10 and 817.10. The information required by 30 CFR Parts 816 and 817 will be used by the regulatory authority in monitoring and inspecting surface and underground mining activities to ensure that they are conducted in a manner which preserves and enhances environmental and other values of the Act. This information required by 30 CFR Parts 816 and 817 is mandatory.

National Environmental Policy Act

OSM has analyzed the impacts of these final rules in the "Final Environmental Impact Statement OSM EIS–1: Supplement," in accordance with Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The final EIS is available in OSM's Administrative Record in Room 5315, 1100 L Street, NW., Washington, D.C., or by mail request to Mark Boster, Chief, Branch of Environmental Analysis, Room 134, Interior South Building, U.S. Department of the Interior, Washington, D.C. 20240.

This preamble serves as the record of decision under NEPA. The following differences are noted between this final rule and the preferred alternative in the EIS: (1) A definition of excess spoil is added which incorporates concepts of the treatment of excess spoil which were analyzed in the EIS; (2) The provisions on disposal of excess spoil have been reorganized and split into different sections which has no effect on the analysis of environmental effects; (3) §§ 816.72(b) and 817.72(b), covering construction of rock-core chimney drains in head-of-hollow/valley fills, has been added with minor revisions from the previous rules, the environmental effects of which were analyzed under the No Action alternative; (4) The previous provision concerning construction of keyway cuts or rock toe buttresses was retained without change, the environmental effects of which were analyzed in the No Action alternative; and (5) The certification requirement in §§ 816.71(h)(2) and 817.71(h)(2) has been modified slightly to require that fills be constructed and maintained "as designed." Although the fills do not have to be certified as "stable," any apparent instability must be described. Because these modifications do not change the inspection frequency, the level of examination and analysis, or the requirement to file certified reports, they have no environmental effect.

List of Subjects

30 CFR Part 701

Coal mining, Law enforcement, Surface mining, and Underground mining.

30 CFR Part 816

Coal mining, Evironmental protection, Reporting and recordkeeping requirements, and Surface mining.

30 CFR Part 817

Coal mining, Evironmental protection, Reporting and recordkeeping requirements, and Underground mining.

Accordingly, 30 CFR Parts 701, 816 and 817 are amended as set forth herein.

Dated: July 14, 1983.

J. J. Simmons III,

Under Secretary.

PART 701—PERMANENT REGULATORY PROGRAM

1. In § 701.5 the definition of Excess spoil is added alphabetically and the definitions of *Head-of-hollow fill, Underground development waste,* and *Valley fill* are revised to read as follows:

§ 701.5 Definitions.

* * * * *

Excess spoil means spoil material disposed of in a location other than the mined-out area; provided that spoil material used to achieve the approximate original contour or to blend the mined-out area with the surrounding terrain in accordance with §§ 816.102(c) and 817.102(c) of this chapter in non-steep slope areas shall not be considered excess spoil.

* * * * *

Head-of-hollow fill means a fill structure consisting of any material, other than organic material, placed in the uppermost reaches of a hollow where side slopes of the existing hollow, measured at the steepest point, are greater than 20 degrees or the average slope of the profile of the hollow from the toe of the fill to the top of the fill is greater than 10 degrees. In head-of-hollow fills the top surface of the fill, when completed, is at approximately the same elevation as the adjacent ridge line, and no significant area of nautral drainage occurs above the fill draining into the fill area.

* * * * *

Underground development waste means waste-rock mixtures of coal, shale, claystone, siltstone, sandstone, limestone, or related materials that are excavated, moved, and disposed of from underground workings in connection with underground mining activities.

* * * * *

Valley fill means a fill structure consisting of any material, other than organic material, that is placed in a valley where side slopes of the existing valley, measured at the steepest point, are greater than 20 degrees, or where the average slope of the profile of the valley from the toe of the fill to the top of the fill is greater than 10 degrees.

* * * * *

PART 816—PERMANENT PROGRAM PERFORMANCE STANDARDS—SURFACE MINING ACTIVITIES

2. Section 816.71 is revised to read as follows:

§ 816.71 Disposal of excess spoil: General requirements.

(a) *General.* Excess spoil shall be placed in designated disposal areas within the permit area, in a controlled manner to—

(1) Minimize the adverse effects of leachate and surface water runoff from the fill on surface and ground waters;

(2) Ensure mass stability and prevent mass movement during and after construction; and

(3) Ensure that the final fill is suitable for reclamation and revegetation compatible with the natural surroundings and the approved postmining land use.

(b) *Design certification.* (1) The fill and appurtenant structures shall be designed using current, prudent engineering practices and shall meet any design criteria established by the regulatory authority. A qualified registered professional engineer experienced in the design of earth and rock fills shall certify the design of the fill and appurtenant structures.

(2) The fill shall be designed to attain a minimum long-term static safety factor of 1.5. The foundation and abutments of the fill must be stable under all conditions of construction.

(c) *Location.* The disposal area shall be located on the most moderately sloping and naturally stable areas available, as approved by the regulatory authority, and shall be placed, where possible, upon or above a natural terrace, bench, or berm, if such placement provides additional stability and prevents mass movement.

(d) *Foundation.* (1) Sufficient foundation investigations, as well as any necessary laboratory testing of foundation material, shall be performed in order to determine the design requirements for foundation stability. The analyses of foundation conditions shall take into consideration the effect of underground mine workings, if any, upon the stability of the fill and appurtenant structures.

(2) Where the slope in the disposal area is in excess of 2.8h:1v (36 percent), or such lesser slope as may be designated by the regulatory authority based on local conditions, keyway cuts (excavations to stable bedrock) or rock toe buttresses shall be constructed to ensure stability of the fill. Where the toe of the spoil rests on a downslope, stability analyses shall be performed in accordance with § 780.35(c) of this chapter to determine the size of rock toe buttresses and keyway cuts.

(e) *Placement of excess spoil.* (1) All vegetative and organic materials shall be removed from the disposal area prior to placement of the excess spoil. Topsoil shall be removed, segregated and stored or redistributed in accordance with § 816.22. If approved by the regulatory authority, organic material may be used as mulch or may be included in the topsoil to control erosion, promote growth of vegetation or increase the moisture retention of the soil.

(2) Excess spoil shall be transported and placed in a controlled manner in horizontal lifts not exceeding 4 feet in thickness; concurrently compacted as necessary to ensure mass stability and to prevent mass movement during and after construction; graded so that surface and subsurface drainage is compatible with the natural surroundings; and covered with topsoil or substitute material in accordance with § 816.22 of this chapter. The regulatory authority may approve a design which incorporates placement of excess spoil in horizontal lifts other than 4-feet in thickness when it is demonstrated by the operator and certified by a qualified registered professional engineer that the design will ensure the stability of the fill and will meet all other applicable requirements.

(3) The final configuration of the fill shall be suitable for the approved postmining land use. Terraces may be constructed on the outslope of the fill if required for stability, control of erosion, to conserve soil moisture, or to facilitate the approved postmining land use. The grade of the outslope between terrace benches shall not be steeper than 2h: 1v (50 percent).

(4) No permanent impoundments are allowed on the completed fill. Small depressions may be allowed by the regulatory authority if the yare needed to retain moisture, minimize erosion, create and enhance wildlife habitat, or assist revegetation; and if they are not incompatible with stability of the fill.

(5) Excess spoil that is acid- or toxic-forming or combustible shall be adequately covered with nonacid, nontoxic and noncombustible material, or treated, to control the impact on surface and ground water in accordance with § 816.41, to prevent sustained combustion, and to minimize adverse effects on plant growth and the approved postmining land use.

(f) *Drainage control.* (1) If the disposal area contains springs, natural or manmade water courses, or wet weather

seeps, the fill design shall include diversions and underdrains as necessary to control erosion, prevent water infiltration into the fill, and ensure stability.

(2) Diversions shall comply with the requirements of § 816.43.

(3) Underdrains shall consist of durable rock or pipe, be designed and constructed using current, prudent engineering practices and meet any design criteria established by the regulatory authority. The underdrain system shall be designed to carry the anticipated seepage of water due to rainfall away from the excess spoil fill and from seeps and springs in the foundation of the disposal area and shall be protected from piping and contamination by an adequate filter. Rock underdrains shall be constructed of durable, nonacid-,nontoxic-forming rock (*e.g.*, natural sand and gravel, sandstone, limestone, or other durable rock) that does not slake in water or degrade to soil material, and which is free of coal, clay or other nondurable material. Perforated pipe underdrains shall be corrosion resistant and shall have characteristics consistent with the long-term life of the fill.

(g) *Surface area stabilization.* Slope protection shall be provided to minimize surface erosion at the site. All disturbed areas, including diversion channels that are not riprapped or otherwise protected, shall be revegetated upon completion of construction.

(h) *Inspections.* A qualified registered professional engineer, or other qualified professional specialist under the direction of the professional engineer, shall periodically inspect the fill during construction. The professional engineer or specialist shall be experienced in the construction of earth and rock fills.

(1) Such inspections shall be made at least quarterly throughout construction and during critical construction periods. Critical construction periods shall include at a minimum: (i) Foundation preparation, including the removal of all organic material and topsoil; (ii) placement of underdrains and protective filter systems; (iii) installation of final surface drainage systems; and (iv) the final graded and revegetated fill. Regular inspections by the engineer or specialist shall also be conducted during placement and compaction of fill materials.

(2) The qualified registered professional engineer shall provide a certified report to the regulatory authority promptly after each inspection that the fill has been constructed and maintained as designed and in accordance with the approved plan and this chapter. The report shall include appearances of instability, structural weakness, and other hazardous conditions.

(3) (i) The certified report on the drainage system and protective filters shall include color photographs taken during and after construction, but before underdrains are covered with excess spoil. If the underdrain system is constructed in phases, each phase shall be certified separately.

(ii) Where excess durable rock spoil is placed in single or multiple lifts such that the underdrain system is constructed simultaneously with excess spoil placement by the natural segregation of dumped materials, in accordance with § 816.73, color photographs shall be taken of the underdrain as the underdrain system is being formed.

(iii) The photographs accompanying each certified report shall be taken in adequate size and number with enough terrain or other physical features of the site shown to provide a relative scale to the photographs and to specifically and clearly identify the site.

(4) A copy of each inspection report shall be retained at or near the mine site.

(i) *Coal mine waste.* Coal mine waste may be disposed of in excess spoil fills if approved by the regulatory authority and, if such waste is—

(1) Placed in accordance with § 816.83;

(2) Nontoxic and nonacid forming; and

(3) Of the proper characteristics to be consistent with the design stability of the fill.

(j) *Underground disposal.* Excess spoil may be disposed of in underground mine workings, but only in accordance with a plan approved by the regulatory authority and MSHA under § 784.25 of this chapter.

3. Section 816.72 is revised to read as follows:

§ 816.72 Disposal of excess spoil: Valley fills/head-of-hollow fills.

Valley fills and head-of-hollow fills shall meet the requirements of § 816.71 and the additional requirements of this section.

(a) *Drainage control.* (1) The top surface of the completed fill shall be graded such that the final slope after settlement will be toward properly designed drainage channels. Uncontrolled surface drainage may not be directed over the outslope of the fill.

(2) Runoff from areas above the fill and runoff from the surface of the fill shall be diverted into stabilized diversion channels designed to meet the requirements of § 816.43 and, in addition, to safely pass the runoff from a 100-year, 6-hour precipitation event.

(b) *Rock-core chimney drains.* A rock-core chimney drain may be used in a head-of-hollow fill, instead of the underdrain and surface diversion system normally required, as long as the fill is not located in an area containing intermittent or perennial streams. A rock-core chimney drain may be used in a valley fill if the fill does not exceed 250,000 cubic yards of material and upstream drainage is diverted around the fill. The alternative rock-core chimney drain system shall be incorporated into the design and construction of the fill as follows.

(1) The fill shall have, along the vertical projection of the main buried stream channel or rill, a vertical core of durable rock at least 16 feet thick which shall extend from the toe of the fill to the head of the fill, and from the base of the fill to the surface of the fill. A system of lateral rock underdrains shall connect this rock core to each area of potential drainage or seepage in the disposal ara. The underdrain system and rock core shall be designed to carry the anticipated seepage of water due to rainfall away from the excess spoil fill and from seeps and springs in the foundation of the dispposal area. Rocks used in the rock core and underdrains shall meet the requirements of § 816.71(f).

(2) A filter system to ensure the proper long-term functioning of the rock core shall be designed and constucted using current, prudent engineering practices.

(3) Grading may drain surface water away from the outslope of the fill and toward the rock core. In no case, however, may intermittent or perennial streams be diverted into the rock core. The maximum slope of the top of the fill shall be 33h:1v (3 percent). A drainage pocket may be maintained at the head of the fill during and after construction, to intercept surface runoff and discharge the runoff through or over the rock drain, if stability of the fill is not impaired. In no case shall this pocket or sump have a potential capacity for impoundingmore than 10,000 cubic feet of water. Terraces on the fill shall be graded with a 3 to 5 percent grade toward the fill and a 1 percent slope toward the rock core.

4. Section 816.73 is revised to read as follows:

§ 816.73 Disposal of excess spoil: Durable rock fill.

The regulatory authority may approve the alternative method of disposal of excess durable rock spoil by gravity placement in single or multiple lifts, provided the following conditions are met:

(a) Except as provided in this section, the requirements of § 816.71 are met.

(b) The excess spoil consists of at least 80 percent, by volume, durable, nonacid- and nontoxic-forming rock (*e.g.*, sandstone or limestone) that does not slake in water and will not degrade to soil material. Where used, noncemented clay shale, clay spoil, soil or other nondurable excess spoil materials shall be mixed with excess durable rock spoil in a controlled manner such that no more than 20 percent of the fill volume, as determined by tests performed by a registered engineer and approved by the regulatory authority, is not durable rock.

(c) A qualified registered professional engineer certifies that the design will ensure the stability of the fill and meet all other applicable requirements.

(d) The fill is designed to attain a minimum long-term static safety factor of 1.5, and an earthquake safety factor of 1.1.

(e) The underdrain system may be constructed simultaneously with excess spoil placement by the natural segregation of dumped materials, provided the resulting underdrain system is capable of carrying anticipated seepage of water due to rainfall away from the excess spoil fill and from seeps and springs in the foundation of the disposal area and the other requirements for drainage control are met.

(f) Surface water runoff from areas adjacent to and above the fill is not allowed to flow onto the fill and is diverted into stabilized diversion channels designed to meet the requirements of § 816.43 and to safely pass the runoff from a 100-year, 6-hour precipitation event.

5. Section 816.74 is revised to read as follows:

§ 816.74 Disposal of excess spoil: Preexisting benches.

(a) The regulatory authority may approve the disposal of excess spoil through placement on preexisting benches, provided that all the standards set forth in § 816.71(a), (b)(1), (d) through (i) and the requirements of this section are met.

(b) Excess spoil shall be placed only on the solid portion of the preexisting bench.

(c) The fill shall be designed, using current, prudent engineering practices, to attain a long-term static safety factor of 1.3 for all portions of the fill.

(d) The preexisting bench shall be backfilled and graded to—

(1) Achieve the most moderate slope possible which does not exceed the angle of repose, and

(2) Eliminate the highwall to the maximum extent technically practical.

(e) Disposal of excess spoil from an upper actively mined bench to a lower preexisting bench by means of gravity transport may be approved by the regulatory authority provided that—

(1) The gravity transport courses are determined on a site specific basis by the operator as part of the permit application and approved by the regulatory authority to minimize hazards to health and safety and to ensure that damage will be minimized between the benches, outside the set course, and downslope of the lower bench should excess spoil accidentally move;

(2) All gravity transported excess spoil, including that excess spoil immediately below the gravity transport courses and any preexisting spoil that is disturbed, is rehandled and placed in horizontal lifts in a controlled manner, concurrently compacted as necessary to ensure mass stability and to prevent mass movement, and graded to allow surface and subsurface drainage to be compatible with the natural surroundings and to ensure a minimum long-term static safety factor of 1.3. Excess spoil on the bench prior to the current mining operation that is not disturbed need not be rehandled except where necessary to ensure stability of the fill;

(3) A safety berm is constructed on the solid portion of the lower bench prior to gravity transport of the excess spoil. Where there is insufficient material on the lower bench to construct a safety berm, only that amount of excess spoil necessary for the construction of the berm may be gravity transported to the lower bench prior to construction of the berm.

(4) Excess spoil shall not be allowed on the downslope below the upper bench except on designated gravity transport courses properly prepared according to § 816.22. Upon completion of the fill, no excess spoil shall be allowed to remain on the designated gravity transport course between the two benches and each transport course shall be reclaimed in accordance with the requirements of this part.

§ 817.75 [Removed.]

6. Section 816.75 is removed.

PART 817—PERMANENT PROGRAM PERFORMANCE STANDARDS-UNDERGROUND MINING ACTIVITIES

7. Section 817.71 is revised to read as follows:

§ 817.71 Disposal of excess spoil: General requirements.

(a) *General.* Excess spoil shall be placed in designated disposal areas within the permit area, in a controlled manner to—

(1) Minimize the adverse effects of leachate and surface water runoff from the fill on surface and ground waters;

(2) Ensure mass stability and prevent mass movement during and after construction; and

(3) Ensure that the final fill is suitable for reclamation and revegetation compatible with the natural surroundings and the approved postmining land use.

(b) *Design certification.* (1) The fill and appurtenant structures shall be designed using current, prudent engineering practices and shall meet any design criterial established by the regulatory authority. A qualified registered professional engineer experienced in the design of earth and rock fills shall certify the design of the fill and appurtenant structures.

(2) The fill shall be designed to attain a minimum long-term static safety factor of 1.5. The foundation and abutments at the fill must be stable under all conditions of construction.

(c) *Location.* The disposal area shall be located on the most moderately sloping and naturally stable areas available, as approved by the regulatory authority, and shall be placed, where possible, upon or above a natural terrace, bench, or berm, if such placement provides additional stability and prevents mass movement.

(d) *Foundation.* (1) Sufficient foundation investigations, as well as any necessary laboratory testing of foundation material, shall be performed in order to determine the design requirements for foundation stability. The analyses of foundation conditions shall take into consideration the effect of underground mine workings, if any, upon the stability of the fill and appurtenant structures.

(2) When the slope in the disposal area is in excess of 2.8h:1v (36 percent), or such lesser slope as may be designated by the regulatory authority based on local conditions, keyway cuts (excavations to stable bedrock) or rock toe buttresses shall be constructed to ensure stability of the fill. Where the toe of the spoil rests on a downslope, stability analyses shall be performed in accordance with § 784.19 of this chapter to determine the size of rock toe buttresses and keyway cuts.

(e) *Placement of excess spoil.* (1) All vegetative and organic materials shall be removed from the disposal area prior

to placement of excess spoil. Topsoil shall be removed, segregated and stored or redistributed in accordance with § 817.22. If approved by the regulatory authority, organic material may be used as mulch or may be included in the topsoil to control erosion, promote growth of vegetation or increase the moisture retention of the soil.

(2) Excess spoil shall be transported and placed in a controlled manner in horizontal lifts not exceeding 4 feet in thickness; concurrently compacted as necessary to ensure mass stability and to prevent mass movement during and after construction; graded so that surface and subsurface drainage is compatible with the natural surroundings; and covered with topsoil or substitute material in accordance with § 816.22 of this chapter. The regulatory authority may approve a design which incorporates placement of excess spoil in horizontal lifts other than 4 feet in thickness when it is demonstrated by the operator and certified by a qualified registered professional engineer that the design will ensure the stability of the fill and will meet all other applicable requirements.

(3) The final configuration of the fill shall be suitable for the approved postmining land use. Terraces may be constructed on the outslope of the fill if required for stability, control of erosion, to conserve soil moisture, or to facilitate the approved postmining land use. The grade of the outslope between terrace benches shall not be steeper than 2h:1v (50 percent).

(4) No permanent impoundments are allowed on the completed fill. Small depressions may be allowed by the regulatory authority if they are needed to retain moisture, minimize erosion, create and enhance wildlife habitat, or assist revegetation; and if they are not incompatible with the stability of the fill.

(5) Excess spoil that is acid- or toxic-forming or combustible shall be adequately covered with nonacid, nontoxic and noncombustible material, or treated, to control the impact on surface and ground water in accordance with § 817.41, to prevent sustained combustion, and to minimize adverse effects on plant growth and the approved postmining land use.

(f) *Drainage control.* (1) If the disposal area contains springs, natural or manmade water courses, or wet weather seeps, the fill design shall include diversions and underdrains as necessary to control erosion, prevent water infiltration into the fill, and ensure stability.

(2) Diversions shall comply with the requirements of § 817.43.

(3) Underdrains shall consist of durable rock or pipe, be designed and constructed using current, prudent engineering practices and meet any design criteria established by the regulatory authority. The underdrain system shall be designed to carry the anticipated seepage of water due to rainfall away from the excess spoil fill and from seeps and springs in the foundation of the disposal area and shall be protected from piping and contamination by an adequate filter. Rock underdrains shall be constructed of durable, nonacid-, nontoxic-forming rock (*e.g.*, natural sand and gravel, sandstone, limestone, or other durable rock) that does not slake in water or degrade to soil materials, and which is free of coal, clay or other nondurable material. Perforated pipe underdrains shall be corrosion resistant and shall have characteristics consistent with the long-term life of the fill.

(g) *Surface area stabilization.* Slope protection shall be provided to minimize surface erosion at the site. All disturbed areas, including diversion channels that are not riprapped or otherwise protected, shall be revegetated upon completion of construction.

(h) *Inspections.* A qualified registered professional engineer or other qualified professional specialist under the direction of the professional engineer, shall periodically inspect the fill during construction. The professional engineer or specialist shall be experienced in the construction of earth and rock fills.

(1) Such inspection shall be made at least quarterly throughout construction and during critical construction periods. Critical construction periods shall include at a minimum: (i) Foundation preparation including the removal of all organic material and topsoil; (ii) placement of underdrains and protective filter systems; (iii) installation of final surface drainage systems; and (iv) the final graded and revegetated fill. Regular inspections by the engineer or specialist shall also be conducted during placement and compaction of fill materials.

(2) The qualified registered professional engineer shall provide, to the regulatory authority, a certified report promptly after each inspection that the fill has been constructed and maintained as designed and in accordance with the approved plan and this chapter. The report shall include appearances of instability, structural weakness, and other hazardous conditions.

(3)(i) The certified report on the drainage system and protective filters shall include color photographs taken during and after construction, but before underdrains are covered with excess spoil. If the underdrain system is constructed in phases, each phase shall be certified separately.

(ii) Where excess durable rock spoil is placed in single or multiple lifts such that the underdrain system is constructed simultaneously with excess spoil placement by the natural segregation of dumped materials, in accordance with § 817.73, color photographs shall be taken of the underdrain as the underdrain system is being formed.

(iii) The photographs accompanying each certified report shall be taken in adequate size and number with enough terrain or other physical features of the site shown to provide a relative scale to the photographs and to specifically and clearly identify the site.

(4) A copy of each inspection report shall be retained at or near the minesite.

(i) *Coal mine waste.* Coal mines waste may be disposed of in excess spoil fills if approved by the regulatory authority and, if such waste is—

(1) Placed in accordance with § 817.83;

(2) Nontoxic and nonacid forming; and

(3) Of the proper characteristics to be consistent with the design stability of the fill.

(j) *Underground disposal.* Excess spoil may be disposed of in underground mine workings, but only in accordance with a plan approved by the regulatory authority and MSHA under § 784.25 of this chapter.

(k) *Face-up operations.* Spoil resulting from face-up operations for underground coal mine development may be placed at drift entries as part of a cut and fill structure, if the structure is less than 400 feet in horizontal length, and designed in accordance with § 817.71.

8. Section 817.72 is revised to read as follows:

§ 817.72 Disposal of excess spoil: Valley fill/head-of-hollow fills.

Valley fills and head-of-hollow fills shall meet the requirements of § 817.71 and the additional requirements of this section.

(a) *Drainage control.* (1) The top surface of the completed fill shall be graded such that the final slope after settlement will be toward properly designed drainage channels. Uncontrolled surface drainage may not be directed over the outslope of the fill.

(2) Runoff from areas above the fill and runoff from the surface of the fill shall be diverted into stabilized diversion channels designed to meet the requirements of § 817.43 and to safely pass the runoff from a 100-year, 6-hour precipitation event.

(b) *Rock-core chimney drains.* A rock-core chimney drain may be used in a head-of-hollow fill, instead of the underdrain and surface diversion system normally required, as long as the fill is not located in an area containing intermittent or perennial streams. A rock-core chimney drain may be used in a valley fill if the fill does not exceed 250,000 cubic yards of material and upstream drainage is diverted around the fill. The alternative rock-core chimney drain system shall be incorporated into the design and construction of the fill as follows:

(1) The fill shall have, along the vertical projection of the main buried stream channel or rill, a vertical core of durable rock at least 16 feet thick which shall extend from the toe of the fill to the head of the fill, and from the base of the fill to the surface of the fill. A system of lateral rock underdrains shall connect this rock core to each area of potential drainage or seepage in the disposal area. The underdrain system and rock core shall be designed to carry the anticipated seepage of water due to rainfall away from the excess spoil fill and from seeps and springs in the foundation of the disposal area. Rocks used in the rock core and underdrains shall meet the requirements of § 817.71(f).

(2) A filter system to ensure the proper long-term functioning of the rock core shall be designed and constructed using current, prudent engineering practices.

(3) Grading may drain surface water away from the outslope of the fill and toward the rock core. In no case, however, may intermittent or perennial streams be diverted into the rock core. The maximum slope of the top of the fill shall be 33h:1v (3 percent). A drainage pocket may be maintained at the head of the fill during and after construction, to intercept surface runoff and discharge the runoff through or over the rock drain, if stability of the fill is not impaired. In no case shall this pocket or sump have a potential capacity for impounding more than 10,000 cubic feet of water. Terrances on the fill shall be graded with a 3 to 5 percent grade toward the fill and a 1 percent slope toward the rock core.

9. Section 817.73 is revised to read as follows:

§ 817.73 Disposal of excess spoil: Durible rock fills.

The regularoty authority may approve the alternative method of disposal of excess durable rock spoil by gravity placement in single or multiple lifts, provided the following conditions are met:

(a) Except as provided in this section, the requirements of § 817.71 are met.

(b) The excess spoil consists of at least 80 percent, by volume, durable, nonacid- and nontoxic-forming rock (*e.g.*, sandstone or limestone) that does not slake in water and will not degrade to soil material. Where used, noncemented clay shale, clay spoil, soil or other nondurable excess spoil material shall be mixed with excess durable rock spoil in a controlled manner such that no more than 20 percent of the fill volume, as determined by tests performed by a registered engineer and approved by the regulatory authority, is not durable rock.

(c) A qualified registered professional engineer certifies that the design will ensure the stability of the fill and meet all other applicable requirements.

(d) The fill is designed to attain a minimum long-term static safety factor of 1.5, and an earthquake safety factor of 1.1.

(e) The underdrain system may be constructed simultaneously with excess spoil placement by the natural segregation of dumped materials, provided the resulting underdrain system is capable of carrying anticipated seepage of water due to rainfall away from the excess spoil fill and from seeps and springs in the foundation of the disposal area and the other requirements for drainage control are met.

(f) Surface water runoff from areas adjacent to and above the fill is not allowed to flow onto the fill and is diverted into stabilized diversion channels designed to meet the requirements of § 817.43 and to safely pass the runoff from a 100-year, 6-hour precipitation event.

10. Section 817.74 is revised to read as follows:

§ 817.74 Disposal of excess spoil: Preexisting benches.

(a) The regulatory authority may approve the disposal of excess spoil through placement on preexisting benches, provided that all the standards set forth in § 817.71 (a), (b)(1), (d) through (i) and the requirements of this section are met.

(b) Excess spoil shall be placed only on the solid portion of the preexisting bench.

(c) The fill shall be designed, using current, prudent engineering practices, to attain a long-term static safety factor of 1.3 for all portions of the fill.

(d) The preexisting bench shall be backfilled and graded to—

(1) Achieve the most moderate slope possible which does not exceed the angle of repose, and

(2) Eliminate the highwall to the maximum extent technically practical.

(e) Disposal of excess spoil from an upper actively mined bench to a lower preexisting bench by means of gravity transport may be approved by the regulatory authority provided that—

(1) The gravity transport courses are determined on a site-specific basis by the operator as part of the permit application and approved by the regulatory authority to minimize hazards to health and safety and to ensure that damage will be minimized between the benches, outside the set course, and downslope of the lower bench should excess spoil accidentally move;

(2) All gravity transported excess spoil, including that excess spoil immediately below the gravity transport courses and any preexisting spoil that is disturbed, is rehandled and placed in horizontal lifts in a controlled manner, concurrently compacted as necessary to ensure mass stability and to prevent mass movement, and graded to allow surface and subsurface drainage to be compatible with the natural surroundings and to ensure a minimum long-term static safety factor of 1.3. Excess spoil on the bench prior to the current mining operation that is not disturbed need not be rehandled except where necessary to ensure stability of the fill;

(3) A safety berm is constructed on the solid portion of the lower bench prior to gravity transport of the excess spoil. Where there is insufficient material on the lower bench to construct a safety berm, only that amount of excess spoil necessary for the construction of the berm may be gravity transported to the lower bench prior to construction of the berm;

(4) Excess spoil shall not be allowed on the downslope below the upper bench except on designated gravity transport courses properly prepared according to § 816.22. Upon completion of the fill, no excess spoil shall be allowed to remain on the designated gravity transport course between the two benches and each transport course shall be reclaimed in accordance with the requirements of this part.

§ 817.75 [Removed]

11. Section 817.75 is removed.

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

[FR Doc. 83-19073 Filed 7-18-83; 8:45 am]
BILLING CODE 4310-05-M

federal register

Tuesday
July 19, 1983

Part III

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations; Final Rule

DEPARTMENT OF THE INTERIOR

30 CFR Parts 800, 801, 805, 806, 807, 808, and 809

Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations

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

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is revising its rules on bonding and insurance requirements for surface coal mining and reclamation operations. The new rules continue to require sufficient bonding to assure completion of the reclamation plan, but have been revised to afford flexibility to the regulatory authority and to the coal mine operator in choosing a bonding plan. These final rules are adopted for the permanent regulatory program.

EFFECTIVE DATE: August 18, 1983.

FOR FURTHER INFORMATION CONTACT: Adele Merchant, Division of Economic Analysis, Office of Surface Mining, U.S. Department of the Interior; 202/343-2156.

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion of Comments and Rules Adopted
III. Procedural Matters

I. Background

The Surface Mining Control and Reclamation Act of 1977 (the Act), Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*, requires a bond sufficient to cover the cost of reclamation if it had to be performed by a regulatory authority in the event of forfeiture (Section 509(a) of the Act). The Act requires that a bond be posted as a condition of issuance of a permit to an operator. *Id.* Section 519 of the Act sets criteria for release of a bond upon completion of several phases of reclamation. Regulations are required by Section 501 of the Act to implement a bonding program necessary for a State program or a Federal program.

On March 13, 1979, OSM promulgated the permanent program bonding rules, 30 CFR Chapter VII, Subchapter J, Parts 800-809 (44 FR 15385). A number of the rules were challenged in litigation filed on May 9, 1979, *In re: Permanent Surface Mining Regulation Litigation*, Civ. No. 79-1144 (D.D.C.). Before a decision was made on two of the bonding issues raised, the following provisions of the rules were suspended by the Director: Sections 806.12(e)(6)(iii) and (g)(7)(iii), which required the immediate cessation of operations upon insolvency of a surety or revocation of a surety's license; and § 808.12(c), which limited bond liability on the permit area to only the hydrologic balance (November 27, 1979, 44 FR 67942) and (December 31, 1979, 44 FR 77455).

The district court ruled on four other issues in its decision of February 26, 1980 (summary available in Environmental Resource Council publication, 14 Envir. Rep. Cas. 1083, 1099-1101). The district court upheld the rules in § 808.13(a)(2) on forfeiture and § 808.14(a) on adjustment of the bond amount. It remanded, however, the rules for public participation in bond release because § 807.11(e) lacked a provision for informal conferences, and the rules in § 808.14(b) because they lacked a provision for return of excess forfeited bond amounts.

As a result of an April 1979, petition for rulemaking, OSM concluded that several sections of Subchapter J needed revision (see 44 FR 28005, May 14, 1979, and 44 FR 52098, September 6, 1979). These revisions were proposed on January 24, 1980 (44 FR 6028) and became final on August 6, 1980 (45 FR 52306).

Because of considerable controversy, over lack of collateral support in the proposed revision offered for self-bonding rules, the original self-bonding provisions, which included requirements for 100 percent collateral, were retained in the final rules of August, 1980 (45 FR 52314). Rather than proceed with further rulemaking, OSM proposed to undertake a study of self-bonding (45 FR 71815). This study was subsequently cancelled because of budgetary problems and the proposed bonding revision of September 9, 1981 (46 FR 45096) called for the States to design their own self-bonding programs.

The August 6, 1980, rulemaking also precipitated litigation—*National Coal Association, American Mining Congress v. Andrus*, Civ. No. 80-2530 and *Penn. Coal Mining Ass'n v. Dept. of Interior*, Civ. No. 80-2544, U.S. District Court, D.C. This litigation has resulted in the suspension of most of the self-bonding rules and of the requirement to bond subsidence control measures (46 FR 59934, December 7, 1981). On August 19, 1981, as the result of another rulemaking petition, OSM suspended the availability of a bond amount for reclamation work anywhere within the permit area as authorized by § 808.12(c) (46 FR 42082, 42063).

OSM again prepared a draft rule of all bonding requirements and sent it out for comment on March 25, 1981. Based on comments and recommendations received, OSM developed the proposed rules published on September 9, 1981 (46 FR 45082) and which are being made final in this rulemaking.

The rules being published in this rulemaking replace all of the existing and suspended bonding requirements for surface and underground mining and related surface facilities, except § 806.14—*Self Bonding*. These rules consolidate into Part 800, the provisions of previous Parts 800, 801, 805, 806, 807, 808 and 809. As discussed below under § 800.23, self-bonding rules were reproposed in a separate rulemaking on August 20, 1982 (47 FR 36570). After consideration of comments received, the self-bonding rules will be made final in a separate rulemaking notice and will be added to § 800.23.

II. Discussion of Comments and Rules Adopted

The comments largely favored the proposed changes in the bonding rules. Most of the comments came from State regulatory agencies, the coal industry, the surety industry and environmental organizations. The public comment period for these bonding rules opened September 9, 1981, and closed October 9, 1981. A total of 31 commenters filed written statements resulting in over 180 comments. A public hearing was held September 24, 1981, in Washington, D.C., in which one witness, the Joint Committee of the National Coal Association/American Mining Congress, appeared and generally supported the proposed rules. Three public meetings were also held. Because of the general support for the amendments to the rules, they are being made final in the same form as proposed except as noted in the following discussion. The reasons for the changes discussed in the preamble to the proposed rules are incorporated into this document where applicable.

General Comments

A surety commenter generally favored the proposed rules, but said that as welcome as the changes are "they will do little to alleviate the bonding problems in the coal industry, particularly those of the small to medium size mine operation. Bonding, especially surety bonding, will not be generally available to the coal industry, as long as the reclamation requirements can be changed in mid-term of the permit, the bond amounts can be increased in mid-term of the permit, the liability period stays so long and the bond release procedures remain so burdensome." OSM notes that the various concerns the commenter mentioned are requirements set in Sections 509 and 519 of the Act which

cannot be modified by the agency's rulemaking.

A surety commenter urged OSM to investigate the possibility of "grandfathering" existing permits and bonds. The commenter said that as primacy is granted to the eastern States the "repermitting" requirement is going to cause much anguish to those operators working on existing permits who will not be able to qualify for the revised bonds under the new requirements. The commenter felt because of the increased enforcement by the States, the grandfathering of some of these permits and bonds should not greatly compromise the intent of the Act and would save all concerned much trouble.

There is no provision in the bonding rules that would prevent a regulatory authority from considering a reclamation bond already posted as valid for the permitting of the same area under a State program. However, the regulatory authority will still have to determine the amount of bond and should the outstanding bond amount be inadequate, it will have to be supplemented. Furthermore, since surety bonds are contracts between the operators and the surety, any change in the conditions under which a bond is posted would likely be subject to surety approval. OSM cannot by this rulemaking unilaterally modify the terms of those contracts without surety company approval.

One commenter disagreed with OSM's effort in these proposed rules to increase the States' flexibility in establishing bonding programs and suggested that OSM retain all its previous bonding rules so as to maintain specific, enforceable standards. The commenter said to do less would be to leave to the industry, the public and the States the necessity of having to make *"ad hoc,* standardless decisions on crucial regulatory matters."

OSM disagrees with this comment. The permanent program rules form the benchmark for State programs. As such they provide the minimum standards which State programs must meet. There is no requirement in the Surface Mining Act that the permanent program rules must provide for every possible situation that may arise and as a consequence remove all discretion from the regulatory authorities. Not only do these rules provide for the bonding requirements set in Sections 509 and 519 of the Act, they also provide for the required public involvement in the bonding program.

A commenter noted that the proposed rules for bonding are primarily applicable to private lands and do not adequately address performance bonding for permits on Federal lands, especially where a permit might straddle the border between two States. The commenter suggested that in such a border-straddling situation there would be inconsistent bonding policies because of the difference in the two State bonding programs.

The recently adopted rules revising OSM's permanent program on Federal lands (48 FR 6912, February 16, 1983) make a State program, including its bonding provisions, applicable to surface coal mining and reclamation operations on Federal lands in that State. 30 CFR 740.11. Admittedly if an operation borders two States bonding requirements may differ for different parts of a permit area in some instances, and these cases will have to be resolved on a site-specific basis. However, each State's program must have bonding provisions which are consistent with OSM's permanent program regulations adopted today. In no case may the amount of the bond be less than that required to cover the anticipated costs of reclamation.

Section 800.1 Scope and purpose.

The scope and purpose of Part 800 is to set the minimum requirements and responsibilities for filing and maintaining bonds and insurance for surface coal mining and reclamation operations. OSM chose to use only one section, § 800.1, to state the scope and purpose of this part. Proposed §§ 800.1 and 800.2 were basically the same, so the basic language of § 800.2 was chosen to represent the scope and purpose of Part 800 in the final rule, § 800.1. No comments were received on these sections.

Section 800.4 Regulatory authority responsibilities.

Section 800.4 lists all the responsibilities of the regulatory authority in the performance bonding of coal mine operations.

Section 800.4(a)

Proposed § 800.4(a), which makes it a responsibility of the regulatory authority to furnish performance bonding forms, is retained in the final rule unchanged. No comments were received on this provision, which follows Section 509(a) of the Act.

Section 800.4(b)

Proposed § 800.4(b) gives the regulatory authority the responsiblity for prescribing the terms and conditions for performance bonds and insurance, which meet the requirements of Part 800.

In the preamble for this proposed rule, OSM omitted the explanation for the removal of the phrase "by regulation" from this rule. A commenter called OSM's attention to the lack of explanation and suggested that it was "both illegal and unwise to encourage the States to prescribe terms and conditions for performance bonds in anything less than statutes and regulations." This comment has been accepted and the language of § 800.4(b) revised accordingly.

In the final rule, OSM has deleted the proposed phrase "which meet, at a minimum, the requirements of this Part," from § 800.4(b), as unnecessary since each State program must be consistent with the Federal regulations.

Section 800.4(c)

Proposed § 800.4(c) required the regulatory authority to set the initial bond amount in accordance with § 800.14. The final provision follows Section 509(a) of the Act and is unchanged from the proposal. Two commenters objected to the deletion of bond adjustments from the listing of regulatory authority responsibilities. Since this responsibility is enumerated by the Act in Section 509(e), it has been reinserted into this paragraph.

Section 800.4(d)

In the proposed rule this provision allowed the regulatory authority to accept self-bonds if the permittee met the requirements of § 800.23 and any additional rules of the State or Federal program. Even though the self-bonding rules in § 800.23 are not being made final in this rulemaking, this paragraph will refer to § 800.23 with the understanding that § 800.23 does not have the force of law until it becomes final. Those requirements of the self-bonding rules in exising § 806.14 that were left after the suspension notice of December 7, 1981 (46 FR 59934), will remain in effect until they are replaced by a new set of final self-bonding rules. Further discussion of OSM's decision to repropose the self-bonding rules is available under § 800.23 of this preamble. The authority of the regulatory authority to accept self-bonds is described in Section 509(c) of the Act.

Because a self-bond may be accepted together with other types of bonds in a form of combination bonding, the proposed phrase "in lieu of a surety or collateral bond" is an incorrect limitation and is deleted from final § 800.4(d).

Section 800.4(e)

Proposed § 800.4(e), which established the regulatory authority's responsibility

in releasing bond liability, received no comments and is unchanged in the final rule. This rule follows Section 519(b) of the Act.

Section 800.4(f)

Proposed § 800.4(f), which required the regulatory authority to take action to cause forfeiture according to § 800.50, has been revised to clarify that the regulatory authority must cause forfeiture only under conditions set forth in § 800.50.

This change resulted from comments pointing out that the paragraph seemed to require that every bond be forfeited to some extent. They suggested that the real intent was that a bond be forfeited under certain conditions as outlined by § 800.50. OSM recognizes the confusion the proposed wording would have caused and therefore has rephrased the reference to § 800.50 to clarify that the regulatory authority is to follow the condition and procedures for forfeiture in § 800.50 of this part.

Several commenters objected to the mandatory provision in proposed § 800.4(f) that the regulatory authority "shall" cause all or part of a bond to be forfeited, instead of a more discretionary phrasing.

It is the intent of the Act that the regulatory authority complete the reclamation in the event of forfeiture (see Section 509(a) of the Act) by doing the work itself or having it done through a contract with a third party. This being the case, the regulatory authority must cause the bond to be forfeited in the event of operator default in order to have the funds to complete the reclamation. Thus the mandatory language has been adopted.

One commenter suggested adding the phrase "notify the operator of the intention" to cause forfeiture to give the operator a reasonable time to correct the problems. This is already a part of § 800.50 where notification is the initial step in the forfeiture procedures. Section 800.50 also offers an opportunity for the operator to avoid forfeiture through compliance.

Section 800.4(g)

In proposed § 800.4(g) the regulatory authority had the responsibility to require adequate bond coverage at all times.

There were no comments on this rule and it is promulgated as proposed. This provision follows Section 509(a) of the Act.

Section 800.5 Definitions.

Section 800.5 establishes definitions in addition to those in 30 CFR 700.5 and 701.5. The definitions in this section are specific to the bonding program. Two important changes will be made as the result of comments. Personal property is removed from being accepted as collateral and an escrow account bond is eliminated as a separate definition since it is a type of collateral bond.

Surety Bond

A surety bond is defined in § 800.5 as an indemnity agreement made payable to the regulatory authority and supported by a performance guarantee of a surety licensed in the State where the operation is located. The definition is retained as proposed.

One commenter objected to the requirement that the surety bond be supported by performance guarantees of a corporation "licensed to do business as a surety in the State where the operation is located." The commenter requested acceptance of an insurance bond issued by an insurance exchange such as Lloyd's of London. Because this licensing provision in § 800.5 is taken directly from Section 509(b) of the Act it will remain unchanged.

However, acceptance of a bond issued by an insurance exchange may be treated as an alternate system under Section 509(c) of the Act. The commenter cited New Mexico's acceptance of such bonds as a form of self-bond. The regulatory authority may accept bonds issued by an insurance exchange under Section 509(c) of the Act if it is allowed under a provision included as part of an approved State program.

Collateral Bond

A collateral bond was defined in the proposed provision as an indemnity agreement supported by deposit with the regulatory authority of one or more of the following: Cash; negotiable bonds of the United States, a State or a municipality; negotiable certificates of deposit; a letter of credit; a perfected first-lien security interest in real or personal property; or investment-grade rated securities having a rating of AAA, AA or A or an equivalent rating. Three changes are made to this definition. First, the use of personal property as collateral is deleted from paragraph (e). Also, the phrase "federally insured or equivalently protected accounts" is added to paragraph (a) to provide protection to the regulatory authority on cash deposits accepted as collateral, and certain editorial changes have been made so that escrow accounts will be included as collateral under cash accounts.

The reasons for these changes are discussed with the comments that initiated them.

A commenter felt that the proposed definition of collateral implied that the regulatory authority may, in the case of forfeiture, obtain collateral upon demand without a hearing. The commenter pointed out that most of the proposed forms of collateral were made payable or endorsed to the regulatory authority upon deposit. The commenter felt this was inconsistent with the proposed provision for hearings in § 800.50, in that the regulatory authority could collect collateral upon demand prior to the hearing.

The provisions in § 800.50 protect the operator from the possibility of the regulatory authority obtaining collateral upon forfeiture without allowing opportunity to avoid forfeiture. They do not prevent the regulatory authority from collecting collateral as soon as possible so that reclamation may proceed. It is the responsibility of the operator to be aware of any right of appeal provided under applicable laws.

In § 800.5(a) the phrase "or the deposit of cash directly with the regulatory authority" is added to the definition of collateral bond since the provision was in the definition of escrow account, now included in the collateral definition.

Cash can be deposited either in an account in a bank, savings and loan, or credit union of directly with regulatory authority.

The same commenter also suggested that a mechanism of collateral assignment be used in place of making collateral directly payable to the regulatory authority. According to the commenter, using this mechanism would place the regulatory authority in the customary position of a secured party, thus allowing better interface between the rules and existing State laws governing foreclosure of collateral. It would also allow the regulatory authority the flexibility to avoid acting as custodian of the collateral.

Under the final rules, the regulatory authority has the necessary flexibility to avoid acting as custodian, since collateral need not remain in direct possession of the regulatory authority, but can be placed in a bank. Also, in regard to certificates of deposit the regulatory authority can use the assignment mechanism.

Two commenters felt that the addition of language giving the regulatory authority the option to accept negotiable certificates of deposit "payable or assigned" weakens the guarantee that the amount and form of bond will cover the costs of reclamation. The commenters felt that placing the regulatory authority in the role of assignee adds problems attendant to the

assignee position and that such certificates should be payable directly to the regulatory authority.

OSM agrees that the assignee position can be somewhat riskier and has added language at § 800.21(a)(3) to protect the regulatory authority against rights of setoff or liens.

Two commenters objected to the proposed inclusion in § 800.5(f) of securities, other than negotiable government bonds, as collateral bonds. The commenters stated that this was in violation of Section 509(b) of the Act in that the aforementioned securities are not within the scope of permissible types of collateral bonds listed by the Act. The commenters also suggested that using securities not noted in the Act would be more appropriately covered as an alternative bonding system under Section 509(c) of the Act.

The rule as adopted will include the types of securities enumerated in Section 509(b) of the Act, along with alternative types of securities. The additional types of securities noted in paragraph (f) will provide an equivalent assurance against risk of forfeiture as those listed in the Act. Including the alternatives of paragraph (f) will achieve the objectives and purposes of the bonding program and is consistent with Section 509(c) of the Act, which allows alternative systems. To the extent OSM may approve alternative bonding programs as part of individual State programs, OSM also may incorporate acceptable alternatives as part of its nationwide permanent bonding program. Also, the Secretary, in Section 201(c)(2) of the Act, is directed to promulgate rules that are necessary to carry out the purposes of the Act. This provides additional authority for adding other types of collateral that may be accepted as a bond where the protection afforded is equivalent to those specified types listed in the Act.

Several commenters noted that OSM in the preamble of the proposed rule (46 FR 45085) suggested that States could add their own requirement that cash be deposited only in the "federally-insured" accounts. OSM also suggested in the preamble that a federally-insured account requirement would be "more stringent" than the proposed Federal rule, which did not include the requirement for a federally-insured account as in the previous rule. The commenters pointed out that placing cash bonds in federally-insured accounts is really no additional burden and should not be considered "more stringent." Also, the commenters noted, by deleting the provision and calling it "more stringent," OSM is preventing those States which are bound by State law not to have State programs more stringent than Federal minimum criteria from using the safer federally-insured accounts. One commenter pointed out that the only flexibility that the proposed rule offered was the flexibility to use riskier accounts.

In this final rule, OSM is requiring that each deposit used as collateral be deposited in "federally-insured or equivalently protected" accounts. This is in response to commenters who felt that the proposed deletion of this requirement added an element of risk for the regulatory authority without providing appreciable flexibility to the regulatory authority or to the operator. OSM agrees that addition of this requirement does not impose a hardship on operators and it reduces the risk to the regulatory authority. OSM has added the option of "equivalently protected" accounts in order to allow for deposit of cash in accounts that are protected by State-operated insurance programs which provide the same level of protection as federally-insured accounts.

Two commenters suggested that a perfected first-lien security interest in real or personal property proposed in Paragraph (a) cannot be included as a collateral bond under Section 509(b) of the Act. The rule as adopted will include the types of securities listed in Section 509(b) of the Act as well as real property and other identified rated securities. Including real property as a form of collateral achieves the objectives and purposes of the bonding program. The authority for allowing other forms of security and real property as collateral is found in Section 509(c), allowing alternative bonding methods. OSM views the authorization of Section 509(c) as allowing for separate systems of bonding and for separate forms of bonds, such as collateral bonds supported by a perfected first-lien security interest in real property.

OSM has determined, however, that accepting a perfected first-lien security interest in personal property as collateral may present problems. These problems could include situations such as loss of the property, obtaining appraisals of such items, fluctuations in value, and the attachment of liens. Therefore, OSM has deleted personal property as a general form of collateral from the definition of collateral bond in final rule § 800.5(e)

Self Bond

A self-bond was defined in proposed §800.5 as an indemnity agreement executed by the permittee and made payable to the regulatory authority without separate surety. A commenter noted that the phrase "without separate surety" limited the ability of the State to develop a self-bonding program which includes forms of collateral. The commenter also noted that OSM had approved the State program of New Mexico, which allows a surety bond to be included in a self-bond. The commenter asked that the definition of "self-bond" be modified to include the phrase "with or without separate surety."

OSM agrees that the States should have the flexibility to choose whether to use other forms of surety within their self-bonding programs. Therefore, OSM has changed the self-bond definition to include the phrase, "with or without separate surety."

Another commenter to the proposed self-bonding rules suggested that the definition of self-bond be revised to reflect that under the proposed new self-bonding rules, self-bonds could be executed by a permittee's parent guarantor. This comment has been accepted in the expectation that the final revision to the self-bonding rules will allow such actions.

Escrow Account Bond

An escrow account bond was defined in proposed § 800.5 as cash deposited in accounts made payable only to the regulatory authority or deposited with the regulatory authority.

A State regulatory authority objected to the separate definition of "escrow account bond" as distinguished from "collateral bond." OSM agrees with the reasoning that an escrow account is a form of collateral bond and should not be separately defined. OSM has deleted the definition of "escrow account bond." Escrow accounts will be included as "cash accounts" in § 800.5(a) and § 800.21(d) under the general provisions for collateral bonds.

Section 800.10 Information collection.

This new section has been added in order to comply with the Paperwork Reduction Act, Pub. L. 96-511 (44 U.S.C. 3507). No substantive provisions are added by this section. It only describes the Office of Management and Budget clearance of the bonding program information collection requirements mandated by Sections 509 and 519 of the Act.

Section 800.11 Requirements to file a bond.

Section 800.11 sets the basic bonding requirements for the operator, establishing the time at which a bond must be posted and alternative methods the operator may choose. The section

requires the operator to post a bond before receiving a permit to mine. It allows that a bond may be posted for all of the permit area or that the permit area may be divided into increments and bonded separately or cumulatatively.

In the preamble discussion for final §800.11 which follows OSM explains the authorization and practical reasons for having incremental and phase bonding. OSM will also clarify that the State has the option of accepting or not accepting a bonding scheme offered by an applicant and has the responsibility to review and approve the specific terms and size of increments to be bonded. A provision is added to allow State and Federal programs to have alternative bonding systems if approved by the Secretary.

A number of other changes have been made for clarity, including some redesignations in §800.11(c). Section 800.11 is further discussed with the following comments.

Section 800.11(a)

Section 800.11(a) sets the requirement that before a permit is issued the applicant shall file with the regulatory authority, on a form prescribed and furnished by the regulatory authority, a bond or bonds made payable to the regulatory authority and conditioned on performance of all requirements of the Act, the regulatory program and the permit. Section 800.11(a) follows the provisions in Section 509(a) of the Act. No comments were received on § 800.11(a), and it has been retained as proposed with minor clarifications.

The phrase "After a surface coal mining and reclamation permit application * * *" is being replaced by the phrase "After a permit application under Subchapter G of this chapter * * *." This is to clarify the type of permit application to which this rule refers.

The term "reclamation plan" has been added at the end of § 800.11(a) as one of the performance requirements on which the bond must be conditioned. It is the requirements of the reclamation plan that the operator must fulfill in order to complete the requirements set by the Act, the regulatory program, and the permit.

Bonding Schemes

In final § 800.11(d), OSM provides three forms of bonds under the bonding rules: One bond which covers the whole permit area; cumulative bonding; and incremental bonding.

The meaning of a single bond for the entire area is self-evident. If an operator chooses to post such a bond and the regulatory authority elects to accept such a bond, it is posted at the time of permit issuance and covers all of the permit area, even though discrete areas within the permit area may not be disturbed until some time later.

Cumulative bonding is described in detail in the preamble to the proposed revision of the bonding rules of January 24, 1980, 45 FR 6028–6030. Under cumulative bonding, a bond is posted covering the initial area to be disturbed. As successive incremental areas are to be disturbed the operator posts additional bond in accordance with a schedule submitted at the time the initial bond is posted. Additions are made to the initial bond so that there is, at any one time, only one bond, which covers the entire area disturbed.

Incremental bonding recognizes a permit area divided into discrete portions, each separate from and independent of another insofar as reclamation work is concerned. Thus, bonding of an increment under this alternative necessarily implies that if there is a default in reclamation responsibility on one increment within the permit area, the regulatory authority cannot forfeit the bond or bonds posted for any other increment and apply those proceeds to the increment on which default has occurred.

Besides these bonding systems, OSM proposed in September 1981 and provides in these new bonding rules, a new concept of separate bonds for separate phases of reclamation. That is, under § 800.13(a)(2) operators will be allowed, with the approval of the regulatory authority, to post a bond to cover Phase I backfilling, regrading and drainage control work, and another bond to cover Phases II and III requirements.

The total of the phase bonds must be sufficient to cover costs to the regulatory authority to complete the reclamation plan, and bond covering all three phases must be posted before disturbance of the area or increment bonded.

Under § 800.11(d) the operator has the option of selecting which bond scheme he or she wishes to file. The regulatory authority has the discretion to accept or not accept that which the operator files.

Discussion of Incremental Bonding

Incremental bonding finds its authority in Section 509 of the Act, and has been incorporated in the permanent program regulations. Conflicting views have resulted, however, from wording in the March 13, 1979 regulations concerning the area required to be covered by the bond on any increment. One commenter on the initial bonding proposal, 43 FR 41872 (September 18, 1978), argued that allowing a bond, posted for an increment, to be forfeited for any part of the entire permit area flew in the face of contract law principles on which insurance and bonding are based. In short, the commenter argued that if a bond is posted for a discrete area, it should only be forfeited for work to be done on that area. The March 13, 1979 final rule acknowledged the comment and provided in § 808.12(c) that bond coverage under an increment would apply to the entire permit area only with respect to the protection of the hydrologic balance. (44 FR 15393, March 13, 1979). However, in apparent conflict with the provision included in § 808.12(c), § 800.11(b) and the accompanying preamble indicated that a bond posted for an increment must be available for reclamation work throughout the permit area. The reason given was that water pollution or other unanticipated problems could occur on increments for which bond had been partially released such that the remaining amount would be inadequate.

The bond liability provisions of § 808.12(c) were challenged in *re: Permanent Surface Mining Regulation Litigation, supra.* Subsequently, a rulemaking petition was filed by the Mining and Reclamation Council of America (MARC) and two insurance carriers to amend the bonding regulations, 44 FR 28005 (May 14, 1979).

Because it appeared that the bonding regulation should be subjected to further rulemaking, the Director of OSM submitted an affidavit to the district court informing it that the contested phrase of § 808.12(c) would be suspended. See affidavit of Walter N. Heine, October 29, 1979, submitted in Appendix I to Government Round I brief in No. 79–1144, October 29, 1979. On November 27, 1979, the phrase "with respect to protection of the hydrologic balance" was suspended from § 808.12(c). A proposed revision appeared on January 24, 1980 (45 FR 6028), to delete the language limiting bond protection to the hydrologic balance and making it discretionary whether an incremental bond must apply to the entire permit area.

On August 6, 1980 (45 FR 52306), a final rule was adopted which deleted the phrase pertaining to protection of the hydrologic balance but retaining the concept that the bond on an increment must apply to the entire permit area.

After the August, 1980 final rule, another rulemaking petition was submitted by MARC, joined by the Surety Association of America,

requesting that the requirement extending liability to the entire permit area be modified (46 FR 16277, March 12, 1981). Their argument was that the provision extending liability under a bond to the entire permit area prevents sureties from writing bonds for increments. They urged that the section be revised to provide that under forfeiture a bond may be used only for those reclamation operations for which it was posted. By a notice appearing in the **Federal Register** on August 19, 1981 (46 FR 42082), the petition was granted and § 808.12(c) was suspended in its entirety pending revised rulemaking.

That administrative action was followed by the proposed revision of all bonding rules on September 9, 1981 (46 FR 45082). The proposed rule would have made clear that when a bond, posted for an increment, is forfeited, it would be available only for reclamation work for which it was posted.

The history presented above shows that OSM has gone through various changes with respect to precise requirements and methods of acceptable incremental bonding. Congress intended to provide assurance that mined lands would be reclaimed even in the case of an operator default; it did not intend to impose on operators and sureties excessive bonding requirements that could not be implemented. These final bonding rules set forth standards for incremental bonding and release of incrementally bonded areas which fulfill the intent and purpose of the Act. Allowing for incremental bonding is not required by these rules, but is an option that may be adopted by the regulatory authority.

A number of comments were received with respect to incremental bonding. Three commenters urged that the proposed rule be changed and provisions reinstated requiring that the incremental bond cover the entire permit area, rather than bonds being applied to individual increments of the permit area. One commenter was concerned about the possibility that due to unforeseen problems the actual cost of reclamation may be higher than the estimated cost and subsequent bond. The commenter felt that allowing the regulatory authority to forfeit bonds from other increments for reclamation work on any part of the permit area would allow the bond posted for other increments to make up for the error.

Two commenters further suggested that in the event problems occur on an increment already released from bond liability, but still within the permit area, a fund sufficient to assure completion of all reclamation work must be available. The commenters were also concerned that releasing bonds in increments may not leave enough funds to meet emergency reclamation contingencies affecting the permit area.

These commenters' concerns are addressed by the bond adjustment mechanism provided in these rules. The Act and OSM regulations require that the bonding amount posted be sufficient to cover the cost of reclamation. The bond may not be released until all of the reclamation requirements of the Act and the permit have been met. There is no evidence that Congress intended the operator to carry the burden of bonding not only the cost of anticipated reclamation but also an additional unspecified amount to cover unforeseen problems. Each regulatory authority should be able to estimate the cost of all potential reclamation with reasonable accuracy. If at any time the cost of future reclamation under the bond changes, the regulatory authority is required to adjust the bond accordingly (§ 800.15(a)). Thus, the amount of the bond for any increment must at all times be sufficient to assure the completion of the reclamation plan if the work had to be performed by the regulatory authority. Additionally, prior to release of the bond, the regulatory authority must consider, among other factors, the degree of difficulty to complete any remaining reclamation and the probability of any future reclamation work being required.

A surety, who in good faith enters into a surety contract for a performance bond, is entitled to a reasonable degree of certainty with respect to that bond and a reasonable ability to verify performance under the bond. By allowing a bond to be written for a specific defined increment, the final rule provides this reasonable level of certainty while ensuring that a sufficient bond is required for each increment to cover the costs of reclamation in the event of forfeiture.

A commenter argued that the incremental bonding program in West Virginia, where the bond is set at a flat rate of $1,000/acre, would probably result in insufficient funds to complete reclamation. The commenter felt that bonding of the entire permit area on the other hand would probably cover the cost of all reclamation work.

The commenter apparently misunderstands the West Virginia program. The West Virginia bonding program is an alternative bonding program under Section 509(c) of the Act which establishes a central fund to cover the cost of reclamation work that is not covered by forfeited bond amounts. OSM conditionally approved the West Virginia program, but required the State to submit proof that the per-acre bond amounts, as supplemented by the amount in the fund, will be adequate for all potential forfeitures. See 46 FR 5915, January 20, 1981.

Two commenters suggested that proposed § 800.11(b) was inconsistent with Section 509 of the Act, which states "the applicant shall file * * * a bond for performance * * * conditional upon faithful performance of all the requirements of this Act and the permit." The commenters said this requires that liability, under even an incremental bonding plan, cover the entire permit area. The commenters also cited a Senate Report in support of inserting a provision that the bond cover the entire permit area. The Senate report states: "The bond must cover the entire area to be mined during the initial term of the permit." S. Rep. No. 95-128, 95th Cong., 1st Sess., 78 (1977).

Another commenter argued that Section 519(c) of the Act, which provides that a bond may not be released until all reclamation requirements of the Act are fully met, prohibited release of incremental bonds until all requirements within the entire permit area are met.

The Act has two primary sections dealing with bonding: Sections 509 and 519. Section 509 of the Act deals with the posting of a bond or bonds to ensure completion of reclamation—work which the permittee under Section 515 of the Act (for surface mines) and Section 516 of the Act (for underground mines) is obligated to perform. The pertinent provisions of Section 509(a) specify that:

> [T]he bond shall cover that area of land within the permit area upon which the operator will initiate and conduct surface coal mining and reclamation operations *within* the initial term of the permit. As succeeding increments of surface coal mining and reclamation operations are to be initiated and conducted within the permit area, the permittee shall file with the regulatory authority an additional bond *or bonds* to cover such increments in accordance with this section. The amount of the bond required for *each bonded area* shall depend upon the reclamation requirements of the approved permit; * * *." (Emphasis added.)

Although the legislative history on the precise requirements for incremental bonding is vague, based on the quoted language it is OSM's view that separate bonds covering separate increments of the permit area are authorized.

The Act in Section 509(a) clearly intends that additional bonds for increments of the permit area can be filed as succeeding increments are mined. But, the Act does not explicitly address whether increments can be bonded and released separately and

independently from other increments within the permit area.

The statement in Section 509(a) that the first bond posted is to be for operations "within" the "initial" permit term, leads OSM to conclude that Congress did not intend to exclude consideration of a bond which covers an area less than the whole of the area to be mined during the entire permit term so long as at any point in time each portion of disturbed land is subject to a bond covering the cost of reclamation for that area. This is consistent with the statement in the Senate Report cited by the commenter which was a generic statement addressing the scope of bond coverage and not dealing specifically with the question of incremental bonding. A House Report on H.R. 13950, a predecessor to the Act (H. Rep. No. 94–1445, 94th Cong. 2d Sess. (1976) at 114), states that the bond is to cover all or part of the area under permit but must cover the land on which operations are conducted. The use of the phrase "or bonds" in the second quoted sentence from the Act indicates that Congress authorized the posting of more than one bond for a permit area. And the last underscored phrase, "each bonded area," further strengthens the argument for the bonding of separate increments.

The Act provides that a balance should be struck between assuring a coal supply essential to the nation's energy needs and protecting the environment. The intent of the bonding provision is to insure performance of the reclamation plan. In some cases, the area to be mined during a 5-year permit term can require substantial bond amounts to cover costs of reclamation. Requiring a performance bond at the beginning of a permit term for areas which are not to be disturbed until the later years of the permit term could be excessive. Incremental bonding of areas within the permit area helps to avoid excessive bonding requirements while continuing to ensure a bond sufficient to cover the costs of reclamation.

One commenter complained that in its proposal OSM was reversing the position taken in 1979 in the litigation on the permanent program regulations promulgated March 13, 1979. (*In re: Permanent Surface Mining Regulation Litigation, supra.*) In accordance with the petition for rulemaking received from MARC and the Surety Association of America, and in accordance with Executive Order 12291, OSM agreed to reconsider this issue. Thus, a new proposed rule was published on September 9, 1981. In addition, in accordance with the February 1, 1983 remand Order of the U.S. Court of Appeals in *In re: Permanent Surface Mining Regulation Litigation*, No. 80–1810 (D.C. Cir.), OSM has been directed to consider the issues raised in the briefs of the parties to that action. OSM has concluded that its prior position was not warranted and that the Act does not require a bonding system that imposes excessive and unnecessary burdens on the operator and sureties. For this reason, the March 13, 1979 regulations as amended on August 6, 1980 and suspended in part on August 19, 1981, are being revised in this rulemaking.

A commenter suggested that proposed § 800.11(b) seems to require the regulatory authority to approve any proposal for incremental bonding rather than allowing the regulatory authority discretion in accepting only appropriate incremental bonding schemes. OSM agrees with the concern. The Act allows the regulatory authority discretion in accepting or rejecting various bonding schemes. The rule at § 800.11(d) has been revised to require regulatory authority approval of an applicant's bond under one of the prescribed schemes and § 800.11(b) is revised to include all proposed types of bonds.

Some commenters referred to the National Coal Policy Project recommendations on the first bonding rulemaking petition as support for their contention that bonds should be available for work throughout the permit area. (See comment of National Coal Policy Project of Georgetown University, dated June 15, 1979.) Those recommendations do not specifically deal with the issue raised in suspended § 808.12(c). Rather they are directed at the issue in previous § 807.12(c) of complete release of a bond on an increment of a permit area versus release of that increment from the permit area. Their recommendation, which was subsequently adopted in the August 6, 1980 rulemaking, was that all of the bond on an increment should be released but that increments should not be released from the permit area until the final increment was released from its bond. The purpose of keeping an increment in the permit area is to retain operator responsibility for any failure that may occur.

OSM in these final bonding rules is retaining similar requirements. All of the bond on an increment may be released following the extended liability period if the regulatory authority concludes that reclamation on the increment has been completed and the requirements of § 800.40 are satisfied for that increment. The regulatory authority may then retain the increment as part of the permit area if operator liability on the increment is still necessary, or, upon application, the regulatory authority may approve a permit revision to release the increment from the permit area.

Discussion of Phase Bonding

A related issue raised by one commenter with respect to proposed § 800.13 is that in his view separate phases of reclamation cannot be bonded separately. The basis of his opposition is that such phase bonding is not permitted by the Act.

The Act is silent on whether bonding of separate phases is permitted. The phase bonding concept was proposed as a possible solution to objections from the surety industry to the excessive length of time a performance bond must be held. Under the phase bonding system of § 800.13(a)(2), an operator who may not be able to obtain surety bonding for his entire operation, may have a better chance to obtain surety bonding on one or more phases of the bonding. The operator could post another bond, such as a collateral bond, for the phases of bonding that the surety finds objectionable, *e.g.*, Phases II and III. As with incremental bonding, the use of phase bonding does not negate the requirement that the total amount of the bond on the area at one time must be sufficient to cover all of the reclamation requirements for that area.

If the regulatory authority does not wish to allow phase bonding, it is under no obligation to do so. In setting phase bond amounts, the Phase I amount must be sufficient to complete Phase I reclamation activities, but, in order to be totally released after the completion of Phase I reclamation, cannot exceed 60 percent of the combined bond amount. A second bond would be posted for Phase II and III requirements which must be in an amount sufficient to complete the remaining reclamation. The bond amount retained for Phase III must at least be enough to reestablish vegetation. Release of phase bonds will be handled in much the same way as phased release of regular bonds, in accordance with § 800.40. For example, after Phase I reclamation is complete on an area or increment and bond release procedures have been followed, the regulatory authority, if satisfied that Phase I reclamation is complete, could release the entire Phase I bond for the area or increment for which it was posted if it did not exceed 60 percent of total bond amount. After Phase II reclamation, an additional amount could be released if sufficient bond is retained, for the period of extended liability, to reestablish revegetation.

Redesignation of Proposed § 800.11 (b) and (c)

Proposed § 800.11 (b) and (c) have been reordered and redesignated as § 800.11 (b), (c) and (d).

Proposed § 800.11(b) has been separated into § 800.11(b) (1) and (2). Specifically, § 800.11(b)(1) requires a bond to cover the entire permit area or that land upon which the operator will conduct surface coal mining and reclamation operations within an identified increment of the permit area. The modification from the proposal specifies that the entire permit area may be covered instead of increments. If the entire permit area is not covered by one bond, § 800.11(b)(2) calls for additional bonds to be posted as succeeding increments of mining operations are conducted within the permit area.

The introductory language in proposed § 800.11(c) required that the operator not disturb any land until a performance bond has been accepted by the regulatory authority. Proposed paragraphs (c)(1) (i), (ii) and (iii) explained the types of bonds and schedules an operator may file: (i) Entire permit area performance bond, (ii) cumulative bond and (iii) incremental bond. Proposed paragraph (c)(2) required an applicant to submit a map identifying the incremental areas for bonding and specify the bonds to be filed. Proposed § 800.11(c)(2) also specified when bonds must be filed.

OSM received a number of comments on proposed paragraph (c) and is making some changes and redesignations to reflect those comments. Two commenters objected to the inclusion of two provisions, § 800.11 (c)(1) and (c)(2), as part of proposed paragraph (c) suggesting instead that each provision stand on its own as a separate paragraph.

OSM agrees that a better order of the provisions is needed and has redesignated proposed paragraphs (b) and (c) as follows:

Proposed paragraph	New paragraph
(b)	(b)(1), (b)(2).
(c) (introduction)	(c).
(c)(1)(i)	(d)(1).
(c)(1)(ii)	(d)(2).
(c)(1)(iii)	(d)(3).
(c)(2)	(b)(3).

The introductory language in proposed § 800.11(c) is the entire final § 800.11(c).

Proposed § 800.11(c)(1) (i), (ii) and (iii) are included in final § 800.11(d). Paragraph (d) requires the applicant to file with the approval of the regulatory authority, a bond under one of three schemes, listed as (d)(1), (d)(2) and (d)(3). Paragraph (d)(1) refers to performance bonds for the entire permit area. Paragraph (d)(2) refers to cumulative bonds and Paragraph (d)(3) refers to incremental bonds. These three schemes were described earlier in this preamble.

Proposed § 800.11(c)(2) has been adopted in part in final § 800.11(b)(3). It requires identification of bonding areas or increments on maps submitted with the permit application and the bond amount for each area or increment. The proposal for filing each bond amount 30 days in advance of beginning operations in an increment has not been adopted. This provision is unnecessary in light of § 800.11(c) which prohibits the disturbance of any area prior to acceptance by the regulatory authority of the required bond.

A commenter was concerned about possible administrative problems in keeping track of a large number of increments, especially if there are cutbacks in personnel and funding at the State level. The commenter also recommended that increments be limited to a manageable size, perhaps to set the minimum limit of an increment's size as the area of land to be disturbed in 1 year.

An optimum increment size must be developed on a site-specific basis. However, a provision has been added, new § 800.11(b)(4), to require that increments shall be of sufficient size and configuration for efficient reclamation.

A State regulatory authority noted that since there is no requirement that the regulatory authority accept all types of bonds, the first line in proposed § 800.11(c)(1) (new § 800.11(d)) should read "After the amount of the bond has been determined * * * the [regulatory authority] may accept in fulfillment of the bond requirement either * * *."

OSM agrees that the regulatory authority is not required to accept all types of bonds. Language in new § 800.11(d) has been changed to reflect this and to require regulatory authority approval of the bond or bonds filed.

The same commenter noted that proposed § 800.11(c)(1)(i) (new § 800.11(d)(1)) would require a bond only for the term of the permit. The commenter noted an inconsistency of this rule with proposed § 800.13 which required that bond liability be for the duration of the mining and reclamation operations. The commenter asked that the first line of Paragraph (c)(1)(i) be changed to read "A performance bond or bonds for the entire permit area; or * * *." The commenter also felt the operator should have the option to post a bond for the entire area which the proposed rule did not specify. OSM agrees with these comments and has adopted the suggestion in new § 800.11(d)(1) and also in § 800.11(b)(1).

The State regulatory authority also noted that it was inappropriate to require a schedule for release of acreage (proposed § 800.11(c)(1)(ii)) in the section concerning "Requirement to file a bond." OSM agrees and has deleted the requirement for a schedule of release of acreage.

The State further commented that, using the proposed definition in 46 FR 45086 and 45090, a cumulative bond would cover the total disturbed area in the permit and that there would be no release of acreage until the entire permit area is reclaimed. Thus, it was concluded that only an incremental bond scheme would have liability released on parts of the permit area. On this point, OSM must disagree. Partial release of bond on a cumulatively bonded permit area is not prohibited by these rules, although liability of a cumulative bond extends over the entire permit area. OSM has added the requirement under the cumulative bond option in § 800.11(d)(2) that the applicant file not only a cumulative bond schedule, but also a performance bond or bonds in the amount necessary to cover reclamation of the initial area to be affected.

The same regulatory authority felt that in proposed § 800.11(c)(2) (new § 800.11(d)(3)) the phrase "proportion of total amount" implied a percentage of bond amount for the entire permit area and was not relevant to the objective of incremental bonding. The amount of bond on an increment is determined and posted only for the reclamation work needed on that particular increment.

OSM agrees and has changed language in new § 800.11(b)(3) of the final rule to read that the operator shall "specify the bond amount to be filed for each increment." Incremental bonding is based on calculating bond amounts for specific increments and is not based on assigning proportions of a total amount to the individual increments.

The regulatory authority also did not agree with the inclusion in proposed § 800.11(c)(2) of the phrase "required for the term of the permit" in referring to the amount of bond needed.

OSM agrees that this phrase should not be included. The phrase is unnecessary and confusing, and is not adopted in the final rule.

The Kentucky Coal Association joined the National Coal Association (NCA) in recommending the addition of a new paragraph to § 800.11 to allow for entire permit areas, increments, or portions of increments to be transferred from the

permittee to an agency involved in research to encourage advances in mining and reclamation. The NCA noted that there is neither a specific statutory requirement for bonding of research parcels in Section 711 of the Act nor one excluding them from being bonded. The commenters noted that the present bonding rules do not mention research parcels even though Sections 511(a)(2) and 509(c) of the Act allow for revision of a permit and alternative bonding systems. The NCA suggested that provisions should be made for an alternative bonding system that will achieve the objectives and purposes of the bonding program while encouraging the use of research parcels.

OSM believes that, while it may be advisable to waive bonding requirements for research parcels, neither Section 711 or Section 509(c) allows a waiver of the financial guarantees required under Section 509 of the Act. Thus, no separate provisions have been included in the final rules for research parcels. The amount of bond for the research will depend on the stage (phase) and the complexity of reclamation, the problems to be encountered, and the amount of work to be done if required to be completed by a third party.

The ability of the party seeking transfer to carry out the terms of the permit is a well-stated requirement in the transfer of permit areas under 30 CFR Part 788. The transferee must post a bond and comply with the permit conditions. Transfer of permits to research organizations is already provided for under permit revision and transfer procedures and is not necessary as a separate provision of bonding.

Section 800.11(e)

The final rule retains language found in previous 30 CFR 806.11(b) and moved it to new § 800.11(e) with minor revisions. A modified version of this paragraph appeared as proposed § 800.12(b), but is not adopted. Section 800.11(e) allows State and Federal programs to have alternative bonding systems if they are approved by OSM and meet certain objectives. These objectives include assuring that sufficient money will be available to the regulatory authority to complete the reclamation if a default should occur. The alternative bond must also provide a substantial economic incentive for the permittee to comply with all reclamation provisions. This paragraph derives its authority from Section 509(c) of the Act. The modifications from the proposal include the explicit reference to OSM approval of alternative programs rather than Secretarial approval, and use of the phrase "reclamation plan," rather than "reclamation, restoration and abatement." The latter change recognizes that bonding obligations are tied specifically to reclamation.

A State regulatory authority objected to the original placement of this provision on alternative bonding in § 800.12—"Forms of bonds." The commenter suggested that moving the provision to § 800.11 would allow both different bond procedures or schemes as well as bond forms. Another commenter objected to omission in proposed § 800.12(b) of the specific alternative bonding systems that were in previous § 806.11(b) (1) and (2). Sections 806.11(b) (1) and (2) listed the objectives that alternative bonding systems must meet if OSM is to approve their inclusion in a State program. OSM accepts these suggestions and has added the provision to § 800.11 as discussed above in order to allow for an alternate system of bonding as well as an alternate bond form.

The alternative bonding provision is in more detail than in the proposed rule because it retains language and objectives from previous § 806.11(b) in order to clarify what is required from the States in establishing alternative bonding programs.

Section 800.12 Form of the performance bond.

Section 800.12 is promulgated as proposed except that paragraph (b) concerning acceptability of alternative bonding systems is moved to § 800.11(e) and proposed § 800.12(a) has been redesignated. Section 800.12 lists the three types of bonds that may be posted: Surety, collateral or self-bond. These three types are authorized under Section 509 of the Act. Section 800.12 also allows the regulatory authority to accept any combination of these three types of bonds.

Two commenters objected to allowing combinations of bonds to include self-bonds on the grounds that it is not consistent with proper business practices and Section 509(b) of the Act which allows only for the deposit of collateral in the place of a surety bond. The commenters suggested that accepting a self-bond in a bond combination would permit the operator to dilute the "full showing" required in Section 509(c) of the Act and to "bootstrap" a self-bond onto a posting of collateral or surety.

The final rule is consistent with Section 509 of the Act, including Section 509(c). Allowing a combination of self-bond with other bond forms allows the regulatory authority to limit self-bonding to specific levels depending on financial qualifications of a self-bond applicant. This could allow limited self- bonding for an operator who qualifies for a certain dollar amount of self-bond but whose required bond exceeds this amount. Self-bonding should be allowed for applicants who qualify, but self-bond levels must reflect a sound assurance of ability to perform the reclamation.

A commenter requested the addition of the following provision to § 800.12: "Where the mining operation is owned by two or more persons or entities, the regulatory authority shall allow each person to provide separate financial assurance provided that the total of such assurance is sufficient to accomplish reclamation."

There is no language in the rules that prevents a regulatory authority from accepting separate bonds or financial guarantees from persons or entities who are jointly involved in an operation. The suggested provision would require the regulatory authority to accept separate bonds. OSM would rather keep the flexibility in the rule giving the regulatory authority discretion to accept or not accept separate bonds. Therefore, the provision offered has not been included in the final rule.

The same commenter offered another provision for inclusion in § 800.12 which would allow for a "'blanket" bond concept. It reads as follows:

> A blanket bond covering Statewide or countrywide operations may be furnished if the terms and conditions thereof are sufficient to comply with the regulations in this part and if approved by the regulatory authority.

Insufficient detail as to the amount, liability, and extent of control over forfeiture was furnished to adequately evaluate the proposal and to include it in the final rules. OSM does not see any advantage to allowing "blanket" bonds. If such bonds were allowed, the bond coverage required could be no less than the total amount to cover costs to a third party to complete the reclamation plans of all bonded areas. Therefore, the blanket bond would not offer an appreciable advantage over individual bonds.

Section 800.13 Period of liability.

Proposed § 800.13 required that the liability of the bond be for the duration of the surface coal mining and reclamation operation and for a period coincident with the operator's revegetation responsibility. The proposed section set the liability periods for revegetation completion and agricultural postmining land use and allowed small areas requiring extended liability to be bonded separately with

the regulatory authority's approval. Proposed § 800.13 stated that bond liability is to cover only those actions obligated under the permit and reclamation plan and within the control of the permittee.

A few language changes have been made to clarify requirements of this section. Also, the provisions allowing that the liability period for certain bonds "may be limited," and establishing the periods of extended responsibility for revegetation have not been adopted. Language has been added to clarify that "actions of third parties" for which the operator is not responsible refers to implementation of alternative postmining land use plans.

Section 800.13(a)

The first sentence of proposed § 800.13(a) has been adopted as § 800.13(a)(1), with one change. Both the proposed and final rules require performance bond liability to extend through the surface coal mining and reclamation operation and the period of extended responsibility for successful revegetation provided in 30 CFR 816.116 or 817.119. The change recognizes that liability under the Act must also continue until achievement of the reclamation requirements of the Act, regulatory program and permit. These obligations, recognized in Section 519(c)(3) of the Act, are independent of the revegetation responsibility.

The remainder of proposed § 800.13(a) is included in § 800.13(a)(2) and implements the concept of phase bonding. Specifically, it provides that, with the approval of the regulatory authority, a bond may be posted and approved to guarantee specific phases of reclamation within the permit area provided the sum of phase bonds posted equals or exceeds the total amount required under § 800.14 and 800.15.

Two commenters objected to allowing liability for bonds on specific phases or increments in proposed § 800.13(a). The commenters cited Section 509(b) of the Act, which states the "liability under the bond shall be for the duration of the surface coal mining and reclamation operation and for a period coincident with the operator's responsibility for revegetation requirement in Section 515." Therefore, the commenters stated, liability may not be limited to only specific phases or increments. OSM disagrees with the comment. "Liability" is not relieved merely because some of the bond amount for an increment is released. The implementation of phase bonding does not affect the requirement that at all times, the remaining bond must be sufficient to cover the cost of future reclamation.

A State regulatory authority requested clarification as to why in the second sentence of proposed § 800.13(a) OSM allowed limited liability for specific "increments" when Section 509(b) of the Act clearly states the period of liability and this statement is reiterated in the first sentence of § 800.13(a). Another commenter stated that the "provision for bonding individual phases of operation is not permitted by the Act. The Act permits only that bonds may be incremented to cover 'areas of land within a permit area' or 'succeeding increments'."

One commenter stated it would greatly help a surety to understand what he is bonding if liability in incremental bonding can be limited to each bonded increment.

Another commenter requested that the second sentence in § 800.13(a) be changed so that it reads "the liability period for certain bonds 'shall' be limited if * * *." The commenter's reasoning was, if the bond is posted to guarantee only a specific increment, the liability period should be correspondingly limited.

OSM realizes that proposed § 800.13(a) was confusing as to limiting the period of liability on "certain" bonds. The liability period required in Section 515(b)(20) of the Act must be met before the total performance bond can be totally released for an area or increment. However, as discussed earlier in the preamble, if phase bonding is implemented, it is possible to release the entire amount of a phase bond while maintaining liability and bond coverage on the area or increment to which that phase bond applies. OSM has made changes to new § 800.13(a)(2) to clarify its intent that bond may be approved to guarantee a specific phase of reclamation. The proposed language concerning limiting the liability period has not been adopted.

Other comments were more specifically addressed in the discussion on incremental and phase bonding under § 800.11.

A State regulatory authority, in evaluating the provisions for limited bonds, recommended clarifying § 800.13(a) to ensure that the regulatory authority has all the bonds needed to complete all phases of reclamation within each increment should forfeiture occur. The commenter said bonds posted to cover phases within an increment should all be posted at the same time, so that all phases are covered by bonds prior to the beginning of operations. OSM agrees that this should be clearly stated and has added language at § 800.13(a) to provide that the sum of phase bonds posted must equal the total bond required.

Another State regulatory authority, in anticipation of problems in accepting bonds covering phases, requested clarification in § 800.13(a) that a State is not required to accept this bonding method. The regulatory authority was also concerned that allowing different sureties to bond the separate phases of an increment would create a problem should the reclamation in Phase I fail after release of the bond. The sureties posting bonds for Phases II and III would not want to assume the problems of Phase I, leaving the State without funds to repair the damage. The regulatory authority also said that under its program, bond liability is not released after Phase I even though the bond amount may be released and that the bonds specifically held for Phases II and III reclamation may be applied to Phase I reclamation.

OSM provides in new § 800.11(d) that the regulatory authority has the discretion to approve or disapprove the bond of an operator. New § 800.13(a)(2) provides that a bond may be posted "with the approval of the regulatory authority," to further clarify that the regulatory authority decides whether to accept phase or incremental bonding. Phase bonding should not create new problems of extending liability of a bond to other areas or to reclamation requirements for which the bond has already been released. Whether a bond covered all phases and increments or specific phases and increments, its funds are no longer available to the regulatory authority after the bond amount is released. Therefore, the regulatory authority must be satisfied with Phase I reclamation before allowing release of the bond amount associated with the reclamation. After the release of either a separate Phase I bond or the Phase I portion of a bond covering all phases, the remaining monies are only supposed to be sufficient to cover Phases II and III. Thus, while the problem of failed reclamation is real, it is not exacerbated by the use of phase bonding. In any event, new § 800.50(d) requires that the operator be liable for all costs of reclamation in the event that forfeited bond amounts are insufficient.

Proposed § 800.13(b)

Proposed § 800.13(b) would have set the liability period of 5 or 10 years for completion of vegetation requirements after the last year of augmented seeding, fertilizing, irrigating or other work. This liability period begins again whenever augmented seeding, etc., is required.

Proposed § 800.13(b), which was taken from Section 515(b)(20) of the Act, is not adopted because it is duplicative of the revegetation provisions of the regulations at 30 CFR 816.116 and 817.116.

Proposed § 800.13(c)

Proposed § 800.13(c) would have allowed the regulatory authority to approve selected supplemental reclamation practices after the 5 or 10 year liability period has begun without extending the liability period if they conform to the revegetation standards of §§ 816.116 and 817.116. This provision is not being adopted because it would have duplicated the provisions of draft final §§ 816.116 and 817.116 as these provisions appear in OSM's "Final Environmental Impact Statement OSM–EIS–1: Supplement," (FEIS) Volume III, pp. 152 and 204. If these rules are not finalized, OSM will adopt amendments that, at the least, would incorporate the provisions of previous § 805.13(b)(3).

A commenter, comparing the proposed § 800.13(c) with the draft version of §§ 816.116 and 817.116, objected to the situations set out as acceptable reclamation practices which would not be considered augmentation and would not cause the liability period to be extended. The commenter said the draft revegetation rules and preamble of June 26, 1981 define the following situations when the bond liability period does not have to start over:

—Reseeding or refertilizing small spots where vegetation fails;
—Filling gullies;
—Interseeding and supplemental fertilizing in the West;
—Additional planting of trees and shrubs if this may continue as part of the postmining land use.

The commenter felt these revegetation provisions were vague, easily abused and should be deleted. As an alternative the commenter suggested that OSM rely on § 800.13(d) which allows problems areas to be separately rebounded.

The commenter also felt the combination of proposed § 800.13(b) and the revegetation rules was not consistent with the Act's intent to prevent release of part of the bond until vegetation shows itself to be successful. According to the commenter, the Act requires that when a vegetation problem develops which necessitates additional seeding or fertilizer, the 5 or 10 year liability period must start over.

OSM, in proposing revisions to its bond liability rules, has referenced existing revegetation requirements. At this time, the proposed changes to the revegetation rules (47 FR 12596, March 23, 1982) have not yet been finalized. References in these final bonding rules to revegetation incorporate the existing revegetation rules that are currently in effect. The comments summarized above refer to draft proposed revegetation rules, some of which may not have been proposed. To the extent applicable, these comments will be addressed in final revisions to the revegetation rules.

Final § 800.13(b)

Proposed § 800.13(d) allowed small areas of the permit, limited in extent and requiring extended liability, to be bonded separately with the approval of the regulatory authority. Access to these small areas could be included as a part of the area requiring extended liability. Final § 800.13(d) has been revised and adopted in final § 800.13(b) as discussed below.

Two commenters found the proposal "too open-ended" and said the proposal makes no attempt to discern if the intent of the operator to rebond small areas comes after a legitimate reclamation effort or after failure of a half-hearted attempt. The commenters also noted the proposal limits these types of areas only to ones which are "limited in extent."

Final § 800.13(b) will allow for the extension of bond liability on limited portions of the bonded area requiring extended liability so as not to delay bond release of the rest of the area. This provision represents a revision of § 805.13(c) promulgated August 6, 1980, 45 FR 52319. The regulatory authority will be in the best position to determine whether the operator should be allowed to separate areas from the permit area to be bonded separately when extended liability is required. Because the areas must be "limited in extent," it is not necessary to characterize them also as "small." Thus, the proposed descriptor "small" has not been adopted.

Another commenter requested clarification of the phrase "small, isolated, clearly defined portions" in proposed § 800.13(d). Because this phrase is not defined, the commenter said, it raises problems of inconsistent management policies by States responsible for Federal lands within their borders.

Mining on Federal land in States which have entered into cooperative agreements requires implementation of the provision by one agency within each such State, the State regulatory authority. Under the revisions to OSM's Federal lands program, referenced earlier, all non-Indian lands within a State will be subject to the same standards. Thus, the rules will not cause inconsistent management.

A commenter objected to the use of the term "checkerboard pattern of failure" in proposed § 800.13(d) to describe those areas of vegetation failure which may not be considered small and isolated and be separately rebonded. The commenter suggested that the term implies a regularity of failure that may never occur. The commenter noted the failure could be scattered and irregular and this should not be allowed to be separated and approved for rebonding either.

OSM agrees with the commenter and has changed the section to read "such areas shall be limited in extent and not constitute a scattered, intermittent, or checkerboard pattern * * *."

A commenter found that the last sentence of proposed § 800.13(d) was not clear as to whether the access had to be included in the areas of extended liability or could be in the area which may be released from liability. Two other commenters also felt the last sentence of § 800.13(d) should be amended so that additional acreage need not be assigned extended liability to cover access disturbances if access to an area of failure is possible from a public road, by foot, by using a hydroseeder or other means that would not disturb vegetation.

OSM agrees with the commenters and has changed the sentence to state clearly that access to the separated areas may be included in the area of extended liability if the regulatory authority determines this is necessary.

Final § 800.13(c)

Final § 800.13(c), proposed as § 800.13(e), provides that if the regulatory authority approves a long-term agriculture postmining land use in accordance with 30 CFR 816.133 or 817.133, the 5 or 10 year period of liability will begin at the date of initial planting for such long-term agricultural use. There were no comments on this provision and it remains unchanged from the proposed rule except for the addition of the last phrase "for such long-term agricultural use." This provision parallels Section 515(b)(20) of the Act.

Section 800.13(d)

Proposed § 800.13(f) would have stated that the bond liability shall include only obligations under the permit, including completion of the reclamation plan, in such a manner that the land is capable of supporting a postmining land use approved under 30 CFR 816.133(c) or 817.133(c). It also would have provided that actions beyond the control and influence of the permittee which are not responsibilities

under the permit need not be covered by the bond.

OSM has revised the corresponding final rule, § 800.13(d), to clarify that the permittee is excused from bonding for third party actions only insofar as they relate to implementation of approved alternative land use plans by the third party. Final § 800.13(d) recognizes that only alternative postmining land uses may be approved under draft final §§ 816.133(c) and 817.133(c) as set forth in Volume III of the FEIS. If the postmining land use is not changed, such approval would be made under §§ 816.133(a) or 817.133(a). Thus, the first sentence references § 816.133, rather than § 816.133(c).

A commenter objected to the use of the term "capable" in proposed § 800.13(f), citing this as insufficient to guarantee successful revegetation. The term is taken from Section 515(b)(2) of the Act, and its use here does not establish a performance standard separate from those standards in Parts 816 and 817 for reclamation and revegetation success. A sentence has been added to § 800.13(d) to clarify that bond liability for prime farmland has a different standard established in § 519(c)(2) of the Act and § 800.40(c)(2).

Another commenter requested deletion of the words "and influence" with respect to the permittee's control of third party actions on the grounds that influence is beyond the common law definition of control.

OSM has accepted this request because control provides a sufficient standard upon which the regulatory authority may decide whether the permittee is responsible. Influence is an amorphous standard too difficult to apply.

One commenter was concerned that the coal operator have some protection against disturbance of his reclamation efforts on land that he has leased. The commenter said: "After an operator has completed his mining activities and has properly backfilled, regraded and seeded an area, what recourse does this coal operator have over the fee owner or leasers [sic] to the surface who decide to use this newly reclaimed area for their own purposes. Surely the regulatory authority recognizes this potential problem and we trust that they will provide some means to insure that fairness will prevail. Where a landowner disturbs that surface before the full 5-year period of successful revegetation expires, some means of protection should be afforded the coal operator."

For the regulatory authority to relieve the operator of liability in this case would be a violation of Sections 515(b)(19) and (20) of the Act. However, in answer to the commenter's concern, the terms of the lease and surface owner consent to the postmining land use should delineate the operator and landowner's responsibilities. The reclamation plan should address acceptable practices which may be conducted during the liability period. Reclamation success is subject to performance criteria in §§ 816.116 and 816.133 of the rules. Surface owner consent should require the surface owner to cooperate with the operator in fulfilling reclamation responsibilities.

A State regulatory authority objected to the provision of proposed § 800.13(f) which allowed that actions not under the control of the permittee or for which he or she is not responsible under the permit need not be covered by the bond. The regulatory authority stated that in its experience many permittees charged with failure to reclaim offer the defense of the "phantom wildcatter" and that the language proposed in § 800.13(f) encourages this defense. The regulatory authority proposed the provision be changed to read: "Actions of third parties which are demonstrated by the permittee to be beyond the control and influence of the permittee * * *"

Another commenter suggested there must be a limit as to how far the operator's control and influence is assumed to extend. The commenter said the "No Trespassing" signs around reclaimed areas may or may not in a regulatory authority's view be adequate influence and control over the reclamation site. Under some circumstances, additional controls, such as fencing, may not be reasonable or feasible for the operator to install.

OSM did not intend by this provision to relieve the permittee from responsibility for third party actions except for those related to implementation of approved alternative postmining land use plans. OSM regrets any confusion which has been caused and has attempted to clarify its intent in new § 800.13(d).

Section 800.14 Determination of bond amount.

Section 800.14 describes those situations and analyses which must be taken into account when the regulatory authority determines the amount of a bond. This section also implements the requirements of the Act that the bond amount be adequate to ensure completion of the reclamation if the work had to be performed by the regulatory authority and that in no event can the bond for an entire permit area be less than $10,000. Section 800.14 has been slightly restructured, but remains substantively unchanged from the proposed rule. This section follows Section 509(a) of the Act.

A State regulatory authority urged that § 800.14(a) specify that the cost estimate submitted by the operator to help determine the bond amount should reflect, not today's cost of reclamation, but rather the cost 5 plus years in the future when the bond is near release.

Two other commenters also noted this confusion on estimated costs and suggested § 800.14(a) was a misinterpretation of Section 509 of the Act by not making it clear the "estimated cost" should be calculated in the context of potentially years and many disturbed acres later. The two commenters felt the cost estimate should only be one factor in determining the bond and that the regulatory authority should also consider historical cost changes, projections based on trends, and administrative overhead in contracting for the reclamation work.

The bond amount, in order to be sufficient to assure completion of the reclamation plan by the regulatory authority, must include administrative costs to the regulatory authority. However, OSM does not agree that the operator should necessarily have to post a bond in an amount that incorporates inflation factors for 5 years. The section as written provides the regulatory authority with the discretion to consider the potential impact of inflation, but does not require it. Rather, § 800.15 may be used to provide for adjustment of the bond amount as necessary to cover such problems as inflation.

A commenter objected to omission from § 800.14 of a provision in previous § 805.11(a) which required that the amount of the bond reflect an additional amount to restore land to its original premining use if a permittee does not implement the approved alternative postmining land use within the first 2 years.

Final § 800.14(b) requires instead that the bond amount be sufficient to complete the reclamation plan. The reclamation plan, as defined in 30 CFR 780.23 and 784.15, must include any alternative postmining land uses. Therefore, because the term "reclamation plan" includes the approved alternative postmining land use plans, §800.14(b) need only require that the bond amount be sufficient to complete the reclamation plan. If the reclamation plan were to change, bond adjustments could be required. It is unnecessary to include a specific additional provision in the bonding regulations similar to previous § 805.11(a).

A commenter asked how the requirement in § 800.14(b) that no bond be less than $10,000 for an entire permit area fits in with a phase bonding scheme. The commenter wanted to know if the $10,000 was an initial filing amount or had to be retained in the Phase III bond.

The Act requires in Section 509(a) that "in no case shall the bond for the entire area under one permit be less than $10,000." This language refers to the total bond initially posted for a permit area. Section 519(c) of the Act further provides for release of bond as reclamation activities are completed, with the requirement that, after the initial 60 percent release of bond, and the successful establishment of revegetation, sufficient bond amount be retained to reestablish revegetation. Section 519(c) does not mention retention of a $10,000 minimum amount. Therefore, OSM is of the view that the $10,000 minimum applies to the total bond amount initially posted and need not apply to the bond amount retained following completion of a phase or phases of reclamation and partial bond release. The final rule reflects this view. However, a regulatory authority may choose to require that a $10,000 bond amount be retained.

Section 800.15 Adjustment of amount.

Section 800.15 implements Section 509(e) of the Act which authorizes the regulatory authority to adjust the bond amount. It sets the notification actions required when a bond is proposed for adjustment and terms under which a permittee may request a reduction of a bond. This section also requires the regulatory authority to review the bond for possible adjustments from time to time and when an approved operation and reclamation plan is modified. Section 800.15 is revised to clarify the difference between bond ajustments and bond release. A provision is also added to allow the regulatory authority to set times for periodic review of the bond.

Section 800.15(a)

Proposed § 800.15(a) requires the regulatory authority to adjust the amount of the bond from time to time as affected land acreage is increased or decreased or cost of future reclamation changes.

A regulatory authority recommended a change to § 800.15(a) specifying that bond adjustments be made at the time of permit review rather than from "time to time" as proposed. The regulatory authority suggested that "time to time" adjustment of the bond amount creates an irregular and unknown administrative burden. Since bonding is essentially a permit condition, the regulatory authority suggested bond adjustments could easily be included as part of the normal permit review, precluding arbitrary and unfounded requests for bond adjustments.

Two other commenters agreed, adding further that the bond should be reviewed for adjustment only when documentation supports the request. One of the commenters suggested the following change in § 800.15(a):

> The amount of bond * * * shall be adjusted by the regulatory authority when, during review of the permit by the regulatory authority, it is determined that significant changes have been made in the number of acres of affected land or where the cost of future reclamation changes significantly.

As noted § 800.15(a) follows the requirements of Section 509(e) of the Act. The Act specifies that adjustments be made from "time to time" as necessary. However, to clarify that the regulatory authority may establish a schedule of adjustments, language is added to the final rule to this effect. Such a schedule could be tied to permit review as the regulatory authority urged if such a schedule related to the likely need for adjustments.

Section 800.15(b)

Section 800.15(b) requires that when a bond adjustment is proposed the regulatory authority shall notify the permittee, the surety, and any other persons with a property interest in the collateral and provide the permittee with an opportunity for an informal conference.

Section 800.15(b) received no comments. However, a clause is added consistent with new § 800.21(f), so that persons with an interest in collateral who wish to be notified of proposed bond adjustments, must request such notification. This provision follows Sections 509(e), 519, and 513 of the Act.

Section 800.15(c)

Final § 800.15(c) allows the permittee to request a bond reduction if the permittee submits evidence that a reduction may be warranted. The reduction of bond is considered a bond adjustment if the reduction is based on a change in method of operation or other circumstances which reduces the estimated cost for the regulatory authority to reclaim. Final § 800.15(c) has been revised to clarify the difference between bond "adjustments" and bond "release" as discussed with the comments below.

A commenter objected to proposed § 800.15(c) and suggested that the request for adjustment of the bond on acres already disturbed should not be considered a bond release subject to the complicated requirements of § 800.40. Rather, the commenter recommended replacing the general reference to § 800.40 for bond adjustments of disturbed acres in § 800.15 with a rule limiting the applicability of § 800.40 only to requests for bond adjustments on disturbed acres in Phases II and III of reclamation. The commenter suggests that defining bond release and bond adjustments in the same manner ignores the procedural and economic considerations inherent in the distinction.

OSM disagrees that bond release procedures should or could be applied under § 800.15 only bond adjustments are requested for land in Phase II or III of reclamation. Section 519 of the Act provides for formal release after completion of Phase I reclamation. Completion of Phase I reclamation cannot result in an adjustment of the bond amount.

Two commenters objected to proposed § 800.15(c) because it exempted bond adjustment proceedings from public participation when those proceedings involved bond reductions based on a change in method of operation or a decrease in the number of acres to be disturbed.

The commenters stated that the shift from underground to contour surface mining or from stripping to augering does not warrant a reduction of amount without the same degree of scrutiny accorded the original bond determination—full disclosure and maximum participation by the public.

The commenters also felt that to bypass bond release procedures of § 800.40, merely because the bond reduction is based on an area not to be mined, had no rational basis. The commenters said a reduction of acreage, where the acreage is a buffer, or a potential drainage area, could have a serious impact that might be overlooked without the public scrutiny and participation.

The commenters stated that the Act was specific in that in any bond release context, citizen participation may not be abridged. They stated that proposed §800.15(c) was not merely illegal, but open-ended and unfounded.

Additionally, the commenters asserted that Section 509(e) of the Act allows only for an upward adjustment of inadequate bonds as explained by a Senate Report: "Subsection (e) provides that the bond or deposit may be adjusted at any time if as a result of experience or changed circumstances, it is determined to be inadequate." S. Rep.

No. 95–128, 95th Cong., 1st Sess. 78 (1977).

Another commenter asked for a clarification of § 800.15(c) as to how a reduction can be due to a decrease in the number of acres already disturbed. The commenter also did not agree with OSM's differentiation between bond adjustment and partial bond release. The commenter suggested instead a previous OSM interpretation that adjustments in bond amounts at the request of the permittee, as opposed to those adjustments made on the motion of the regulatory authority, should be considered bond release request. The commenter said OSM's proposed split in § 800.15(c) is "not justifiable and flies in the face of Congressional concern for citizen participation."

Section 509(e) of the Act allows for either upward or downward adjustment of the bond amount. Section 509(e) allows for adjustments "as affected land acreage are increased or decreased" and also allows for adjustments "where the cost of future reclamation changes." The Act does not qualify "changes" to mean only upward or only downward changes in cost.

OSM has not included in the final rule any provision characterizing as an adjustment any reduction in bond amount for reclamation work performed on disturbed areas since bond for disturbed areas can only be released or reduced through formal release procedures of § 800.40. The disussion did not belong in the section pertaining to adjustment of bond amount. This language was confusing and redundant. A sentence has been added to clarify that bond adjustments which involve only undisturbed land or revision of the cost estimate of reclamation are not considered bond release subject to procedures of § 800.40.

The commenter's concern about operator financial responsibility for buffer zones is addressed as follows: If there is no disturbance to a buffer zone and there will be no surface coal mining and reclamation operations in the buffer zone, it will neither be permitted nor bonded. However, the operator's liability insurance policy under § 800.60 must cover damage to the buffer zone resulting from the operations. The policy covers all personal injury and property damage for which the operator is responsible under State law.

Section 800.15(d)

Section 800.15(d) requires that when an approved permit is revised, the regulatory authority will review the bond for adequacy and, if necessary, call for an adjustment to the bond.

Two commenters felt that in § 800.15(d) the regulatory authority should also have the responsibility to regularly review and adjust the bond at the time of permit review. The commenters stated that according to Section 511(c) of the Act the permit bond must be reviewed for adequacy in form and amount as part of the permit review. Section 511(c) says "The regulatory authority shall * * * review outstanding permits and may require reasonable revision or modification of the permit provisions during the term of such permit."

Requirements at §§800.4 and 800.15 establish regulatory authority responsibility to adjust the bond as necessary. Paragraphs (a) and (d) of § 800.15 require that the regulatory authority adjust the bond amount as acreage is increased or decreased and, if necessary, as the permit is revised.

Section 800.16 General terms and conditions of the bond.

Section 800.16 describes five general terms and conditions for acceptance of a bond. OSM has revised a few phrases in § 800.16 for clarity and has deleted the provision in proposed Paragraph (e)(2) requiring issuance of a notice of violation (NOV) for loss of bond coverage.

Section 800.16 (a) and (b)

Paragraphs (a) and (b) of § 800.16, which require the bond to be an amount determined by the regulatory authority, received no comments and are unchanged from the proposed rule. These two paragraphs follow Section 509(a) of the Act.

Section 800.16(c)

Section 800.16(c), which requires the bond to be conditioned upon faithful performance of all the requirements of the Act, 30 CFR Chapter VII, the regulatory program and the conditions of the permit, has been amended for clarity.

Completion of the "reclamation plan" is added to § 800.16(c) as a requirement to make clear that the bond is conditioned on performance of the reclamation plan, as well as the other performance requirements. This parallels the addition of similar language at § 800.11(a).

Section 800.16(d)

Section 800.16(d), which requires the bond to be held for a time period provided in § 800.13, received no comments and is unchanged from the proposed rule. This paragraph follows Section 509(b) of the Act.

Section 800.16(e)

Proposed § 800.16(e)(1) required that the bond provide a mechanism for a bank or surety to give prompt notice to the regulatory authority and permittee of insolvency, bankruptcy or suspensions of license. Proposed § 800.16(e)(1) has been adopted without change. Proposed § 800.16(e)(2) would have required that (1) a regulatory authority issue an NOV if the permittee is found to be without bond coverage; (2) if the violation is abated during the allowed time period the violation need not be reported in permit applications as a past violation; and (3) if it is not abated a cessation order will be issued.

In final § 800.16(e)(2) the term "person" has been deleted, since the term could only have applied to a person who had posted collateral, and, in the case of a bankruptcy of such person, the regulatory authority is protected against claims on the collateral through possession or a perfected security interest.

Industry commenters strongly objected to the proposed provision in § 800.16(e) for issuing an NOV for loss of bond coverage due to failure of the surety, a bank, a third party providing collateral or a guarantee, or the permittee's self-bond.

The commenters noted that OSM has no power under Section 509 of the Act to issue notices of violation upon the incapacity of the operator's bonding agent. They said the proposed rule was unfair because the operator would have to suffer the civil penalties of Section 518 of the Act that the NOV automatically triggers. The operator must then defend against a penalty proceeding brought against him which may be based on an event that has nothing to do with his own compliance with mining and reclamation standards. The commenters said the proposed automatic NOV would have served no purpose, since the danger that the reclamation will not be achieved is presented only when the operator is unable to pay for the work. As long as mining and reclamation operations are being conducted in compliance with the rules, there is no need for issuing the NOV.

The commenters suggested instead that the regulatory authority "notify any operator who is without bond coverage and specify a reasonable period to replace bond coverage, not to exceed 90 days."

A State regulatory authority felt it should have the power to issue a notice of violation, including specific conditions for continued operation, and

should also have the ability to terminate operations when necessary to protect the environment and comply with the Act.

In the final rule for § 800.16(e)(2), OSM has not adopted the provision for mandatory issuance of an NOV, and instead has specified that a notice must be given by the regulatory authority which specifies a reasonable period of up to 90 days within which the bond must be replaced. If the bond is not replaced by the end of that period, the operator must cease coal extraction under provisions of §§ 816.132 and 817.132 and immediately begin to reclaim the permit area in accordance with the reclamation plan. Mining operations can resume only upon the posting of a bond acceptable to the regulatory authority.

These changes answer industry's concern for unfair treatment of an operator following loss of bond due to incapacity of the operator's bonding agent. Under the new language the operator will not be penalized for circumstances beyond his or her control, and will be given a reasonable period of time to obtain replacement bond before mining operations must cease and reclamation activities must begin. The regulatory authority will have the power to issue a notice of violation after the period granted for replacement bond has expired if the operator does not obtain a replacement bond and does not cease mining operations and begin reclamation as required. The regulatory authority would have the power to terminate an operation during the replacement period if the environment or public safety is endangered; but such an action would not necessarily stem from loss of bond coverage.

Another commenter was concerned that the proposed references §§ 778.14 and 782.14 should be changed to reflect the renumbering that will occur when the draft proposed permit application rules are finalized. The new § 800.16(e)(2) does not contain references to the permitting sections since a notice of violation is no longer required for loss of bond coverage pursuant to § 800.16(e). Therefore, the comment is no longer applicable.

Section 800.17 Bonding requirements for underground coal mines and other long-term coal-related facilities and structures.

Final § 800.17 gives the regulatory authority the responsibility to require bond coverage for long-term surface facilities and disturbed surface areas of underground mines. The proposed section set the terms and conditions for these bonds, their liability period, forfeiture conditions and would have included provisions for bonding of subsidence control measures. Language has been added to clarify which facilities and structures are included in this section. Other editorial changes are made. Bonding requirements for subsidence control measures have not been adopted.

A surety company objected to proposed § 800.17 because it required processing plants and support facilities to be permitted and bonded. The commenter said that this provision exceeds the provisions of the Act and that tipples and processing plants should be considered factories, not surface mining operations. The commenter said he did not believe it was "Congress' intent to require demolition of industrial complexes [for reclamation] just because they may not be used from time to time."

Since the bonding provisions apply only to those areas permitted, these long-term bonding provisions may apply to coal preparation plants which fall within the definition of a surface coal mining operation in Section 701(28) of the Act. A more extensive discussion of which facilities are included in that definition appears in the preamble to the rule revising that definition. The permitting rules in 30 CFR Subchapter G cover facilities and operations to be permitted. The provisions of § 800.17 apply to those long-term facilities which are permitted under Subchapter G. Language to indicate this has been added to § 800.17(a).

Section 800.17(a)

Final § 800.17(a) gives the regulatory authority the responsibility to require a bond for all long-term coal-related surface facilities and structures, and for areas disturbed by surface impacts incident to underground mines, for which a permit is required. It also requires the regulatory authority to determine the bond according to § 800.14, taking into consideration special reclamation techniques that may be used. In § 800.17(b)(2) OSM has further clarified what is meant by long-term coal-related surface facilities and structures. Generally, the facilities, structures and activities provided for in this section are not expected to be reclaimed within the first few permit terms.

Several commenters suggested further explanation of the proposed phrase "disturbed surface areas of underground" in § 800.17(a) to make certain it only addresses activities conducted on the surface of lands in connection with underground activities. One of the commenters suggested the following language: "surface areas disturbed by activities conducted on the surface in connection with underground mining such as surface features of shaft and slope facilities, power lines, bore holes, ventilation shafts, preparation plants, machine shops, etc." OSM agrees that further clarification of the terms proposed in § 800.17(a) is necessary and has revised § 800.17(a) accordingly and added language to final § 800.17(b)(2) providing examples of long-term surface disturbances.

One of the commenters pointed out that areas of potential subsidence should not be included in "distrubed surface areas of underground mines" because those requirements are set out separately in § 800.17(c). OSM does not include areas of potential subsidence in this phrase. Further discussion follows under § 800.17(c).

Section 800.17(b)

Proposed § 800.17(b)(1) provided that the liability period for bonds on long-term surface facilities would begin when the permit is issued and extend until all reclamation under the permit has been completed or the bond is replaced or extended. Final § 800.17(b)(1) adopts the proposal, with two modifications. The word "disturbances" is substituted for the proposed word "facilities." The other modification is described below. Proposed § 800.17(b)(2) would have provided for long-term continuous coverage by providing that the bond would commence with the issuance of the permit, cover the initial term of the bond permit, and be conditioned to extend, replace or pay the full amount of the bond 120 days before the bond term expires. The corresponding provision of the final rule is § 800.17(b)(3). The proposed replacement of the bond 120 days before the term expires has been revised to 30 days to parallel the requirement of § 800.21(b)(2). In addition final § 800.17(b)(3) does not reference the issuance of the permit for the reason discussed below.

A commenter suggested the wording be changed in proposed § 800.17(b) (1) and (2) to require the liability period on long-term facilities to begin with the start of construction or disturbances of the surface. This comment has been accepted in part. Section 509(a) of the Act requires a bond to be filed before a permit is issued. Thus, the period of bond liability commences with the issuance of a permit. However, if an incremental or cumulative bonding scheme is used, the bond liability for succeeding increments or areas begins when the bond is posted for the succeeding increments or areas before

the initial surface disturbance on those increments or areas. Final § 800.17(b)(1) has been revised to account for the instances where long-term surface disturbances will occur on succeeding increments. Rather than incorporating a parallel change in new § 800.17(b)(3), the proposed provision requiring the bond to be posted prior to permit issuance has not been adopted. This change recognizes the incremental bonding provisions of § 800.11. Since the initial increment may not include the long-term surface disturbance, it is not necessary in such instances that the bond be posted prior to issuance of the permit. The bond must, however, be posted prior to disturbance of the increment including the long-term surface disturbance.

A regulatory authority suggested clarifying that the continuous bond coverage must extend through the 5 or 10 year vegetation liability period. OSM has added Paragraph (b)(4) to § 800.17 to make it clear the bond coverage must extend through the vegetation liability period and until the bond release provisions of § 800.40 are satisfied. Bond coverage is required since Section 515(b)(20) of the Act establishes operator responsibility for the extended liability period.

A commenter stated that there are substantial problems with using only a bond renewal mechanism for long-term bonding and suggested instead OSM follow the recommendations of the Mining Task Force of the National Coal Policy Project which urged renewable bonds be tied to a growing escrow account.

The Mining Task Force pointed out in its comments on a May 1979 petition by MARC on the bonding rules, 44 FR 28005, that the shortcomings of both the fixed period bond and the escrow fund could be corrected if they were used in tandem.

OSM agrees with the commenter that the idea of a fixed term bond to be replaced by an escrow bond could be a good way to establish continuous long-term bonding. This method is allowed under these final bonding rules. However, the bond renewal or replacement mechanism is also a viable mechanism for establishing continuous bond coverage and will continue to be allowed under the new rule.

A commenter noted that proposed § 800.17 (b)(2) and (d) allowed bonds to be posted for a period of time rather than the duration of the operation, and that this type of bonding could be accomplished through the normal permitting process.

The bonds posted for long-term operations must cover a specific period and are conditioned to be extended, replaced or paid in full at least 30 days before expiration, in order to assure continuous coverage. The special provision in § 800.17(b)(3) provides an opportunity to bond a long-term operation for a specific time period. A fixed term surety bond with termination must have a mechanism for continuous coverage. Thus, forfeiture of the bond is required under final § 800.17(c) [proposed § 800.17(d)] if a renewal bond is not posted 30 days before expiration of the bond term.

Subsidence Control Measures

Section 800.17(c)

Proposed § 800.17(c) required that an operator not extend any underground shaft, tunnel or operation until measures to prevent subsidence have been completed or a bond guaranteeing completion of such work is accepted by the regulatory authority.

This paragraph has been deleted from the final rule.

A commenter asked that § 800.17(c) be revised to reflect that mining measures may call for planned subsidence and that the operator may purchase a structure as a method of preventing subsidence from causing material damage on public or private land. The commenter noted that Section 516(b)(1) of the Act allows for planned subsidence in underground mining.

Additionally, the commenter felt that it would be wasteful to construct preventive measures as required in § 800.17(c) if the operator had purchased the structure in jeopardy of being damaged by the planned subsidence.

Two commenters recommended deletion of § 800.17(c). They stated that bonding of subsidence control measures was inappropriate because protection from subsidence is provided under other provisions relating to the operator's permit, subsidence plan and insurance requirements.

In a public meeting a commenter argued against inclusion of subsidence control bonding, § 800.17(c). He stated that the purpose of Section 509 of the Act on bonding is to assure the completion of reclamation and since subsidence control measures are taken before mining even begins they have nothing to do with postmining reclamation. Therefore, the commenter concluded, subsidence should not be included as a bonding responsibility. The commenter reasoned that the omission of the word "subsidence" in reference to bonding in the Act was obviously intentional on the part of Congress since it dealt with "subsidence" specifically in Section 516 of the Act.

A further argument was that damage to persons or property caused by subsidence is already covered by the liability insurance required under Section 507(f) of the Act and § 800.60 of the bonding rules.

Lastly, the commenter noted that the proposed rule did not explain what would trigger forfeiture of subsidence bonds, how the money would be used, and that determining the cost of subsidence control measures to set the proper bond amount is impossible.

A regulatory authority felt that the proposed § 800.17(c) was not clear and the existing provision in 30 CFR 801.16, as amended on August 6, 1981, more adequately describes bonding of subsidence control measures. The commenter said if § 801.16 is not retained, certain changes should be made in proposed § 800.17(c).

The regulatory authority felt "measures to prevent subsidence" should be clarified to mean "surface measures to prevent subsidence," based on OSM's preamble at 46 FR 45088. Secondly, the regulatory authority felt reference to § 784.20 which details the measures to prevent subsidence, was too broad and made the rule more burdensome than any previously proposed rule. The regulatory authority recommended the reference be limited to provisions in § 784.20(b)(3). Lastly, the regulatory authority felt the completed surface measures for control of subsidence should be approved by the regulatory authority before the operator is allowed to extend underground shafts and tunnels, etc.

A commenter suggested that the bond should cover the performance of all requirements contained in the performance standards related to underground mines, including bonds to ensure the performance of required efforts to control or prevent subsidence and mine drainage. The commenter said that eliminating performance bonding for subsidence control measures and mine drainage is illegal.

OSM, on December 7, 1981, suspended § 801.16(a) which required bonding for subsidence control measures in conjunction with underground mining (46 FR 59934). In explaining the suspension, OSM recognized the need to require completion of surface measures to be taken to prevent subsidence, but determined that bonding of these measures was not necessary. The preamble of the suspension notice explained that bonding is unnecessary because these surface measures are not part of the reclamation plan on which

the bond amount is based. Surface measures taken to prevent subsidence are completed before the mining operation begins, and the work would not be required if operations ceased due to forfeiture proceedings on the bonded area (46 FR 59934).

Bonding for subsidence control measures is neither necessary nor required by the Act. OSM has not adopted proposed § 800.17(c) which would have required bonding for subsidence control measures. Performance bonding is posted to guarantee performance of a reclamation plan following the mining of an area, while subsidence control measures are completed before mining begins in an area.

Performance bonding continues to be required at § 800.17(a) for surface disturbances incident to underground mining to ensure that the reclamation plan is completed for those areas. Completion of the reclamation plan as it relates to mine drainage and protection of the hydrologic balance would continue to be covered by the bond with respect to requirements included in § 784.14.

OSM has added a new paragraph (c) in § 800.14 both to establish and to clarify an operator's financial responsibility for ensuring that material damage resulting from subsidence will be repaired. It is apparent from the comments that the suspension of § 801.16 left unclear an operator's responsibility to bond to cover subsidence causing material damage. The new provision states that an operator's financial responsibility under § 817.121(c) for repairing material damage resulting from subsidence may be satisfied by the liability insurance policy required by § 800.60.

Protection from subsidence damage is better covered by liability insurance, since bonding is only intended to guarantee performance of the reclamation plan, while insurance protects against damage to surface owners and property.

Moreover, techniques for estimating the extent of necessary land restoration that may result from subsidence have not been developed and the amount of a performance bond based on estimated costs would be pure conjecture. Furthermore, if it is intended in a particular area that there will be no disturbances resulting from surface coal mining operations, that area need not be included in the permit area.

Section 516(d) of the Act requires that the Secretary consider differences between surface and underground coal mining and promulgate any modifications to bonding provisions as necessary to accommodate these differences. The modifications made in this rulemaking recognize these differences.

In response to the commenter who asserted that subsidence control measures are not necessary in situations where subsidence is planned and any structures in jeopardy of damage had been purchased, the final revisions to §§ 785.20 and 817.121 are expected to alleviate such concern.

Section 800.17(d)

Proposed § 800.17(d) required the regulatory authority to cause forfeiture of a bond pursuant to § 800.17, if 120 days prior to expiration of the bond, the operator has not filed a bond to cover the revegetation period, has not filed a bond for a new permit term, or the regulatory authority determines the operator is subject to the forfeiture conditions of § 800.50.

Because proposed § 800.17(c) is not adopted, proposed § 800.17(d) is redesignated § 800.17(c). No comments were received on proposed § 800.17(d)(1), and it has been promulgated as proposed with minor editorial changes for clarity and the substitution of "30 days" rather than "120 days" prior to bond expiration. Proposed § 800.17(d)(2) which referenced forfeiture under § 800.50 is not adopted because it was redundant.

New § 800.17(c) does not affect the regulatory authority's responsibility for forfeiture actions pursuant to § 800.50, but gives the regulatory authority the added ability to begin forfeiture actions prior to actual expiration of a bond. Thus, under the final rule, if no replacement bond is supplied before 30 days before bond expiration, the regulatory authority would take forfeiture action during the period before the bond expires. The period of 30 days is considered adequate to ensure that a replacement bond is posted in a timely manner.

Section 800.20 Surety bonds.

This section includes conditions specifically set for surety bonds. Minor editorial changes have been made to final § 800.20 for clarity.

Section 800.20(a) requires a corporate surety to be licensed to do business in the State where the bonded operation is located. No comments were received on § 800.20(a) and it is unchanged from the proposed. This rule follows Section 509(b) of the Act.

Proposed § 800.20(b) provided that surety bonds are noncancellable during their terms, except, with approval of the regulatory authority, they may be cancelled for lands not disturbed.

One commenter asked that a provision be included in § 800.20(b) to preclude a surety bond from expiring during any administrative or judicial proceeding regarding forfeiture.

The addition of such a provision is not necessary. Bonds are posted for performance of reclamation activities including the extended liability period and are conditioned on performance of the activities or on replacement by other suitable bond. Bonds posted under § 800.17 for specific time periods are conditioned upon bond extension, replacement or payment.

The surety industry raised a concern over provision in proposed § 800.20(b) for bond cancellation on undisturbed lands. The proposed rule required regulatory authority consent prior to cancellation. The surety industry recommended instead that only a 90-day notice be required for cancellation of a bond on undisturbed lands. The surety industry noted OSM had approved such a cancellation provision in the North Dakota State program. (Section 38–14. 1–16, Part 6 of North Dakota House Bill 1252).

The surety industry's suggestion has not been accepted as a national standard. The provision in § 800.20(b) for regulatory authority approval for cancellation of bond has been retained. However, a sentence is added requiring the regulatory authority to advise the surety within 30 days of receipt of notice to cancel if cancellation of the bond is to be authorized. This requirement will require timely notification to the surety of the proposed action.

A commenter objected to the omission in proposed § 800.20(b) of the specific cancellation procedures in previous § 806.12(e)(1), stating that it increases the possibility of under-coverage for disturbed acreage of gaps in coverage of an area that may not appear at first glance. The commenter suggested that the regulatory authority may not allow a bond to be cancelled if to do so would make the remaining bond insufficient within the meaning of Section 509(a) of the Act.

Cancellation of a bond posted on land which will not be disturbed may be allowed if the regulatory authority is satisfied that such cancellation is not a violation of the permit and that sufficient bond amount is retained on the permit area to ensure completion of the reclamation plan. If an operator decides not to disturb certain bonded areas that the regulatory authority is satisfied will not be disturbed by other mining operations, there is no need to keep the bond for this area, since reclamation on the area will not be

necessary. This is analogous to the bond adjustment provision for undisturbed land.

The exact procedure for cancellation and the precise steps that must be taken are matters that need not be covered in detail in these rules. States may add as much detail as they believe is necessary.

A commenter asked that the phrase "during their terms" in § 800.20(b) be clarified in light of Section 509(b) of the Act.

The phrase "during their terms" in § 800.20(b) refers to the term for which the bond is posted, which will be stated in the conditions of the bond as agreed to by the parties involved. Section 509(b) of the Act requires bond liability for the duration of the operation and the extended liability period specified in Section 515. The Act allows for the replacement of the bond or bonds during the period of operation and extended liability. Therefore, although liability under the bond is continuous during the surface coal mining and reclamation operations and the extended liability period, the phrase "during their terms" in § 800.20(b) refers to the terms for which the individual bonds have been written.

Section 800.21 Collateral bonds.

Proposed § 800.21 set the specific conditions for acceptance of collateral bonds, letters of credit and escrow accounts.

OSM has made some editorial changes to § 800.21 for clarity and added a provision giving the regulatory authority the option to have certificates of deposit made payable or assigned. The provision limiting individual deposits to levels of the Federal Deposit Insurance Corporation (FDIC) or of the Federal Savings and Loan Insurance Corporation (FSLIC) is retained from previous § 806.12(f)(4) and is included in §§ 800.21 (a)(4) and (d)(4). "Escrow" accounts are changed to "cash" accounts. A provision is added at § 800.21(f) concerning notification to persons with an interest in collateral of actions pursuant to the bond. Further discussion of these changes follows below with a discussion of the comments.

Section 800.21(a)

Proposed § 800.21(a) set three conditions that must be followed when collateral is used for the reclamation bond. This paragraph stated that collateral except letters of credit and escrow accounts, will be deposited with the regulatory authority by the applicant until authorized for release or replacement, that the value of the collateral will be its current market value and that certificates of deposit will be assigned to the regulatory authority both in writing and upon the books of the bank. These provisions have been adopted as discussed below.

A commenter recognized a problem in requiring the regulatory authority to maintain possession of real and personal property offered as collateral as provided in proposed § 800.21(a), which excepted only letters of credit and case accounts from having to be directly deposited with the regulatory authority. To remedy this, OSM has added real property to collateral excepted from the requirements of § 800.21(a). The term "escrow" accounts is changed to "cash" accounts.

As explained in the discussion of § 800.5, only real property will be included as a form of acceptable collateral in the final rule. Thus, the term "personal property" has been deleted in § 800.21. Personal property, other than that specifically listed in the definitions of collateral bond in § 800.5 (a)–(d) and (f), may not be posted as bond. Possession cannot be required of the regulatory authority with respect to real property.

Two commenters disagreed with the provision of proposed § 800.21(a)(3) which allowed assignment of certificates of deposit (CD's) used as collateral because it did not specify that the issuing bank must waive rights of setoff or liens. The commenters felt that a negotiable certificate which is encumbered, such as with a lien, or whose validity is challenged does not provide assurances equal to a surety bond, as required by Section 509 of the Act. Additionally, the commenters noted the certificates must be of sufficient amount and liquidity as to allow for total reclamation as a forfeiture situation demands even if they are negotiated prior to stated maturity date.

Section 800.21(a)(2) requires that the collateral be valued at market value. Any problems with respect to maturity or liquidity must be considered in setting the value of the collateral. Final § 800.21(a)(3) has been amended to allow the certificate of deposit to be made payable or assigned, consistent with the definition of collateral bond in § 800.5. In response to the comment, a sentence is added to protect the regulatory authority from rights of setoff or liens.

A commenter objected to proposed § 800.21(a) because, with the proposed omission of the previous provision in § 806.12(f)(4), it would have allowed the regulatory authority to accept collateral bonds which exceed the levels of Federal insurance, *i.e.*, $100,000 per person per bank under current FDIC protection. Previous § 806.12(f)(4) required that the regulatory authority not accept an individual certificate for a denomination in excess of $40,000 or maximum insurable amount as determined by FDIC or FSLIC. OSM agrees with the commenter. Allowing acceptance of certificates of deposits in excess of the maximum protected amount unnecessarily exposes the regulatory authority to liability should the bank fail. Therefore OSM is inserting in the final § 800.21 the provisions from previous rule § 806.12(f)(4) as new paragraph (a)(4) for certificates of deposit and at § 800.21(d)(4) for cash accounts.

Section 800.21(b)

Final § 800.21(b) sets three conditions for letters of credit. The paragraph requires that the letter be issued only by a bank authorized to do business in the United States, that the letter be irrevocable during its term and must be payable upon demand to the regulatory authority upon receipt from the regulatory authority of a notice of forfeiture under § 800.50. Language is added at § 800.21(b)(2) to assure continuous bond coverage when using a letter of credit. Other changes are made for clarity. A commenter was concerned about the notification of maturity dates for letters of credit in § 800.21(b) and asked that the procedures for "draw down" by the regulatory authority be delineated.

Section 800.21(b) requires suitable replacement of a letter of credit at least 30 days before the expiration date and that the letter of credit must be payable to the regulatory authority upon receipt of notice of forfeiture. Procedures for "draw down" in event of forfeiture are best left to the regulatory authority's determination.

Another commenter suggested § 800.21(b)(3) would be better understood if it read: "The letter must be payable to the regulatory authority upon demand, in part or in full, upon receipt from the regulatory authority * * *"

OSM agrees that this language clarifies the meaning of the paragraph and has adopted similar language in final § 800.21(b)(3).

Section 800.21(c)

Final § 800.21(c), which generally is adopted as proposed, sets three conditions for use of real property as a collateral bond. The applicant must grant the regulatory authority a first mortgage, first deed of trust or perfected first-lien security interest in real property with the right to sell or otherwise dispose of the property in the

event of forfeiture under § 800.50. The applicant must supply a schedule of the real property involved, including a description of the property, the fair market value as determined by an independent, certified appraiser and proof of possession and title to the real property. The proposed paragraph also stated that land pledged as security could not be mined under any permit.

A commenter pointed out that proposed § 800.21(c)(2)(iii) only required proof of ownership for real property, and not personal property offered as collateral. This appears to have been an oversight by OSM in the proposed rule. However, except for specifically listed types, OSM has eliminated personal property as collateral in the final rule. The proof of ownership is handled in rules dealing specifically with those types of acceptable personal property, that is, certificates of deposits, securities and cash. The commenter also felt OSM had made a mistake by eliminating some of the specific protections found in the previous rules (§ 806.12) for collateral bonds. The commenter agreed the State should have flexibility in establishing its programs, but felt the proposed rules did not set appropriate minimums to ensure that the State rules adequately protect the public and the environment.

The commenter does not specify which of the protections found in OSM's previous rules should not have been eliminated. New § 800.21 establishes adequate guidelines for the regulatory authority to use in accepting collateral bonds. These guidelines give adequate assurance that the intent and purpose of the Act are fulfilled.

A State regulatory authority commented that the provisions of § 800.21(c)(2), which require assessing collateral at fair market value, was burdensome and contrary to State law.

This provision is not burdensome. To the extent that this regulation may be inconsistent with a particular State law, the provisions of Section 505 of the Act apply. This can be examined in the context of the approval of an individual State program amendment. The provisions at § 800.21(c)(2) established the minimum standards of protection necessary to ensure the regulatory authority that collateral posted is adequate.

Another commenter suggested adding language to proposed § 800.21(c)(3) to clarify that land within the permit area which is offered as collateral could be mined once all liability for the operation for which it was serving as security has been released. The commenter believed the wording of the proposed rule prevented land offered as security from ever being mined. Specifically, the commenter offered the following language change for § 800.21(c)(3): "* * * land pledged as security shall not be mined under any permit while it is serving as security."

OSM agrees and has added similar language to this paragraph to clarify this, but has used the word "disturbed" rather than "mined."

Section 800.21(d)

Proposed § 800.21(d) set three conditions for use of escrow accounts as collateral bonds. This proposed paragraph allowed the operator to supplement a bond with an escrow account deposited in an account made payable only to the regulatory authority or deposited directly with the regulatory authority. It required interest paid on an escrow account to be retained in the escrow account and applied to the bond value of the account unless, with regulatory authority approval, the interest is paid to the operator. Under the proposal, certificates of deposit could be substituted for an escrow account with approval of the regulatory authority. The proposal has been adopted with the following changes.

In new § 800.21(d), all references to "escrow" have been changed to read "cash," to reflect the change in the definition of collateral at § 800.5.

The provision requiring a cash account to be deposited in a federally-owned or equivalently protected account is added to final § 800.21(d)(1). New § 800.21(d)(4) is added to protect the regulatory authority from uninsured cash accounts.

A regulatory authority commented that the provision of § 800.21(d)(2), which requires paying out interest on escrow accounts, was an administrative burden and contrary to some State laws.

Section 800.21(d)(2) does not require interest to be paid on cash accounts, but requires that interest amounts that are paid will be retained in the account unless otherwise approved by the regulatory authority. This provision offers sufficient regulatory authority discretion.

Section 800.21(e)

Proposed § 800.21(e) required the estimated bond value of all collateral posted be subject to a margin—bond value to market value ratio—determined by the regulatory authority. The margin would reflect legal and liquidation fees, value depreciation, marketability and fluctuations affecting the net cash available to the regulatory authority for completing reclamation. The proposal also provided that the bond value of the collateral be evaluated as part of the permit renewal and the performance bond increased or decreased, if necessary.

No comments were received on proposed § 800.21(e). Editorial changes have been made for clarification. This paragraph also retains language similar to previous § 806.12(i) requiring evaluation of the bond value at the time of permit renewal.

Section 800.21(f)

A new § 800.21(f) is added to provide that persons with an interest in collateral posted as bond who desire notification of actions pursuant to the bond must request such notification at the time collateral is offered.

Section 800.23 Self-bonding:

In the September 9, 1981 notice, proposed § 800.23 would have given the State regulatory authority the discretion to establish self-bonding programs and to set their own criteria. Those criteria would have had to provide guarantees equivalent to other bonding methods.

Because the majority of commenters requested more detailed Federal guidance for development of self-bonding in State programs and due to the concern of surety companies that loosely administered self-bonding programs may preclude surety industry involvement in surface coal mining reclamation bonds, the self-bonding section, § 800.23, was reproposed in a separate rulemaking on August 20, 1982. (47 FR 36570).

Two commenters noted that surety representatives testifying on the 1979 MARC bonding petition stated that, if self-bonding becomes too prevalent among large firms, the surety agencies may simply pull out of the mining business, stranding small companies altogether. A surety commenter reiterated these previous remarks of the surety industry and also pointed out that the establishment of self-bonding criteria is a complex process and without guidance at the Federal level it will make it very difficult for the States to meet the purpose of the Act.

A State regulatory authority suggested that by withholding further guidance in self-bonding, OSM leaves the States extremely vulnerable. Another commenter added what without minimum self-bonding standards OSM would be creating a patchwork of conflicting State programs, subject to external pressures.

Another State regulatory authority liked the flexibility but asked for more detailed provisions to ensure that businesses are not allowed to bond themselves with a mere promise to pay.

Two commenters noted that without more detailed self-bonding rules any State provision interpreting or controlling the alternative of self-bonding will be more stringent than the OSM rule thus making it unavailable to States forbidden to exceed the Federal minimum criteria.

The same commenters pointed out that the phrase "regulatory authority" as used in Section 509 of the Act does not mean exclusively a State or Federal program since the provisions of Section 509 are applicable during the interim program. The commenter said, therefore, it is entirely rational to assume that OSM should promulgate minimum criteria for self-bonding, which has a great potential for abuse. Two commenters said the proposed rules grant the operator the right to bypass Section 509 of the Act and obviate OSM's responsibility to promulgate national self-bonding minimum criteria.

As a result of these comments and other more specific suggestions, OSM has reproposed the self-bonding rules in an effort to maintain flexibility for development of State programs, while giving the States more detailed standards on which to build their programs.

Therefore, because of the reproposal, those portions of the self-bonding rules in § 806.14 which were not suspended will remain in effect under § 806.14 until the reproposed self-bonding rules (47 FR 36570) are adopted as final and designated as § 800.23. Section 806.14 would be deleted at that time.

Section 800.30 Replacement of bonds.

Section 800.30 provides that the regulatory authority may allow the permittee to replace existing bonds with bonds of equivalent coverage. The section also requires the regulatory authority to release the existing bonds only after the regulatory authority has approved and accepted the replacement bond. The section provides that replacement of a bond does not constitute release of a bond covered by § 800.40. This section contains minor editorial changes from the proposed rule. The purpose of this section is to allow for the substitution of equivalent bonds without altering the amount of coverage, so that an operator can substitute, for example, a cash account bond for a surety bond. The provision has been adopted as proposed.

The surety industry asked that the change they requested for proposed § 800.20 be made to proposed § 800.30 to allow a surety bond to be released before a replacement bond has been approved if the existing bond covers only undisturbed land and a 90-day notice is given to the regulatory authority.

OSM is retaining the provision for regulatory authority approval of cancellation of a surety bond on undisturbed lands in § 800.20. Inclusion of such a provision is not properly part of § 800.30.

Section 800.40 Requirements to release performance bonds.

Proposed § 800.40 set the information requirements and procedures for applying for bond release and set procedures for the regulatory authority to process the bond release requests. The section provides the procedures the regulatory authority follows in making a decision to release or not release a bond—inspections, public hearings, and notifications. It also sets the qualifications for release of a bond by phases. It implements the requirements of Sections 513 and 519 of the Act.

OSM has made a number of changes to proposed § 800.40, most of which were initiated by comments. Provisions are added regarding more precise information in advertisements announcing permits under review for bond release, citizen involvement in that review, notification of bond release proceedings, recordkeeping requirements at informal conferences, location of public hearings and a provision precluding fractionalization of an increment for bond release. Inclusion of topsoil replacement activities in phased release of bonds is clarified, as well as the use of soil surveys and the phrase "equivalent management practices." The order of proposed Paragraphs (g) and (h) is reversed. Additional discussion of these changes is included with the discussion of comments below. The phrase "or deposit" has been eliminated in a number of places because performance bonds include deposits.

Section 800.40(a)

Proposed § 800.40(a)(1) provided that the permittee could file an application with the regulatory authority for release of all or part of a performance bond and that the application may be filed only at specific times of the year identified in the reclamation plan. The review periods set had to allow for proper evaluation of the reclamation and be approved by the regulatory authority.

Proposed § 800.40(a)(2) required that the permittee place an advertisement which includes the description of the land, opportunity for comments and other particulars for release of bond. The bond release applicant was also required to write letters to those persons, agencies, etc., affected by the coal mining operations as to the applicant's intention to seek release from the bond.

One commenter found the newspaper advertisement requirements in proposed § 800.40(a)(2) overly detailed and restrictive.

These requirements are taken from Section 519(a) of the Act and are retained in the final rule.

A commenter objected to the provision in proposed § 800.40(a)(1) which limited the times when bond release applications may be filed to only times or seasons that allows for proper evaluations of reclamation operations.

Because the regulatory authority is required to conduct an inspection and evaluation of reclamation work within a specified period after the bond release request, requests should be submitted at appropriate times in the growing season.

Identification of the times and seasons when evaluation is most effective assists both the operator and the public. It gives the operator a chance to plan for reclamation operations to be completed during the most effective evaluation period, and gives the regulatory authority the authority to set the most appropriate time to properly evaluate revegetation success and thereby assure the proper reclamation of the land. The provision gives discretion to the regulatory authority to accept requests for bond releases at different times and seasons. Therefore, § 800.40(a)(1) is retained from the proposed rule. The final rule has been revised, however, to allow the times for an operator to request bond release to be established either in the regulatory program or in the mining and reclamation plan. This change will give the regulatory authority the flexibility to establish such time periods on a programmatic rather than a case-by-case basis.

A coal company objected to the involvement of the public in the final inspection findings and hearings required in proposed § 800.40(a)(2). The commenter felt the better time for public participation is during the approval of the reclamation plan.

Another commenter took the opposite view feeling instead that the early stages of the bonding process can be adequately handled by the regulatory authority and that citizen involvement is necessary and more useful at bond release.

Opportunity for public participation at the time of bond release is specifically required in Section 519 of the Act. Therefore, this provision is retained in § 800.40(a)(2).

A commenter pointed out that in proposed § 800.40(a)(2) an operator seeking bond release must provide copies of letters to adjoining property owners, local governmental bodies, etc., to prove his or her compliance with public participation requirements. The commenter contends that this provision does not require the operator to actually send the letters, but merely to send copies of letters which may have been sent. The commenter suggested the following change to proposed § 800.40(a)(2): "the applicant shall provide notice in writing to adjoining property owners and shall provide copies of such notices to the regulatory authority * * *."

OSM disagrees with the commenter. The provision states that the applicant "shall submit copies of letters *which he or she has sent* * * *." (emphasis added). This language clearly requires that the letters be sent to the appropriate parties. OSM is adding "or she" following "which he" for clarity.

The substance of the portion of § 800.40(a)(2) regarding notice to adjoining owners, governments, etc., is provided for in Section 519(a) of the Act.

Two commenters objected to the contents of the advertisement for bond release listed in proposed § 800.40(a)(2), stating the permittee's name should also be included, as well as the permit number and date of issuance or renewal. It was the commenters' contention that such information is essential in aiding the public in recognizing the precise permit in question and is consistent with Sections 513 and 519 of the Act in maximizing citizen participation.

OSM agrees that more precise identification of the permit in question would be helpful and has added requirements to include the permit number and approval date.

Section 800.40(b)

Proposed § 800.40(b) provided that the regulatory authority upon receipt of the bond release request will within 30 days, or as soon as weather conditions permit, conduct an inspection and evaluation of the reclamation work involved. The surface owner, agent or lessee could accompany the regulatory authority on the inspection. The paragraph also required the regulatory authority to consider the difficulty of reclaiming any remaining areas, the presence of any surface or subsurface water pollution, the probability of the future occurrence of water pollution and estimated cost of its abatement. Proposed § 800.40(b)(2) required that after requirements for public hearings have been met, the regulatory authority is to notify the permittee, the surety or other person with an interest in collateral in writing of its decision to release or not release the bond. Proposed § 800.40(b) has been adopted with certain revisions discussed below.

A regulatory authority commented that the requirement in proposed § 800.40(b)(1) to notify the surface owner, agent or lessee of the inspection was beyond the requirements of Section 519 of the Act and appears to require solicitation of citizen inspections. The regulatory authority agreed this notification may be a desirable practice but should be left to the discretion of the regulatory authority.

OSM agrees that this is not an express requirement of the Act. These persons specified in § 800.40(b)(1) will be apprised of the intent to request bond release through the newspaper advertisement and the notice other parties receive. However, there is no specific notification of when an inspection will be made. Such persons are ones having a direct interest in the lands and are not the general public. Therefore, the language is retained. A sentence has been added to § 800.40(b)(1) to allow any person, with an interest in the bond release, access to the areas subject to bond release at the discretion of the regulatory authority. The permittee cannot prevent surface owner access to the area in question. This new provision parallels that under Section 513 of the Act pursuant to the informal conference on permit applications. As written, no right of citizen access is presumed; but the procedure is set forth to assist citizens in supporting their possible contention of reclamation inadequacy.

A regulatory authority objected to the requirement in proposed § 800.40(b)(2) to advise "a person with collateral interest" of the decision on the release of the bond because the regulatory authority might not know all parties with an interest and the list might be extensive.

OSM agrees with this comment and has included a provision requiring notification to only those persons specifically requesting such notice when posting the collateral. A person posting collateral may want such a stipulation, especially when relying on release of the collateral at a predetermined time. In addition to the change in § 800.40, OSM has added a new § 800.21(f) requiring that persons who contribute collateral to an applicant's bond and wish to be notified of bond release proceedings and decisions, must request, in writing at the time they are posting the collateral, to be so notified.

OSM has also included a provision requiring a regulatory authority to notify persons who either filed objections in writing or who were a party to the hearing proceedings, if any, of its decision to release or not to release all or part of the performance bond.

Section 800.40(c)

Final § 800.40(c) allows the regulatory authority to release the bond in whole or in part if it is satisfied the reclamation or phase of reclamation had been accomplished as required by the Act. The paragraph also sets conditions for bond release after successful completion of each of three phases of reclamation. This paragraph implements Section 519(c) of the Act.

A State regulatory authority suggested the addition of a statement to § 800.40(c) which would require bond releases be considered only for entire increment areas, precluding any fractional release of an increment. To allow bond releases on fractions of increments, the regulatory authority said, would necessitate surveys to determine the extent of the disturbed acreage.

OSM agrees that, at a minimum, release should only be considered for a phase or phases of reclamation on an entire incremental area. OSM has added language at § 800.40(c) to reflect this.

A commenter suggested proposed § 800.40(c) be clarified to show that the regulatory authority has the authority to release bonds on both the entire permit area and on increments. The commenter suggested that the phrase "the bond or deposit for the entire permit area or incremental area" replace the proposed phrase "said bond or deposit" in proposed § 800.40(c).

The commenter also felt the above change should be carried through to proposed § 800.40(c)(1). Proposed § 800.40(c)(1) allowed release of 60 percent of the bond on the applicable *permit area* after completion of Phase I reclamation, that is, after the operator completes the backfilling, regrading and drainage control for the bonded area. The commenter suggested the word "permit" be deleted from the phrase "applicable permit area" in § 800.40(c)(1). OSM agrees with this commenter and has incorporated the suggested changes into the final rule.

A State regulatory authority indicated that in the proposed rule preamble, 46 FR 45089, OSM incorrectly referred to the Act as specifically "excluding topsoil replacement" from Phase I bond release and incorrectly carried this interpretation to its proposed § 800.40(c)(1). Prior to this proposal, OSM had included topsoil in Phase I reclamation work, but reconsidered its inclusion because commenters noted

that topsoil replacement is seasonal and may require different equipment than that used in the overburden replacement process.

However, the regulatory authority felt Phase I reclamation under the Act is meant to "define that portion of total reclamation that entails the bulk of the expense involved in reclaiming a minesite." The regulatory authority said that when this major portion of reclamation is completed, the Act then allows the regulatory authority to release 60 percent of the bond.

Another commenter agreed with the regulatory authority's belief that topsoil replacement could be an integral part of the backfilling and grading operation and, most importantly, because topsoil replacement is a major expense it should be considered as Phase I reclamation.

It was the regulatory authority's opinion that OSM should not define Phase I reclamation except to state that it must include backfilling and regrading (including replacement of topsoil if the regulatory so chooses), drainage control and any other items specified by the regulatory authority.

OSM agrees and wishes to clarify its interpretation of Section 519(c) of the Act regrading topsoil replacement noted in the proposed rule preamble. OSM did not intend to state that the Act excludes topsoil replacement from Phase I, but meant to say that the Act did not necessarily include topsoil replacement in Phase I operations. OSM has attempted to revise the rules on phase release of bonds to more closely reflect the wording of the Act. OSM has inserted in § 800.40(c)(1) the phrase "regarding (which may include replacement of topsoil)" to further clarify that the regulatory authority has discretion to include or not include topsoil replacement in Phase I reclamation.

Proposed § 800.40(c)(2) provided that after successful completion of Phase II reclamation the regulatory authority may release part of the bond, but must retain sufficient funds in case a third party is to reestablish revegetation and to cover the 5- to 10-year revegetation liability period. The proposed paragraph required that no part of the bond be released if the applicable lands are contributing suspended solids to streamflow or runoff in excess of requirements of § 816.49, and if soil productivity for prime farmlands has not been returned to equivalent levels of yield as nonmined lands. Proposed § 800.40(c)(2) also required that where a silt dam is to be permanent, part of the bond may be released only if provisions for sound future maintenance have been made with the regulatory authority.

A commenter believed that additional guidance is necessary in proposed § 800.40(c)(2) to estimate the percent of total bond which would be required to cover only Phases I and II. Not knowing the specific percentage that the bond may be reduced after Phase II could create problems at the time the Phase I and II bonds are first being considered.

Another commenter supported the provision in § 800.40(c)(2) giving States flexibility in establishing bond release percentages after Phase II reclamation because it allows the States to set strong economic incentives for the operator to complete reclamation properly and on schedule.

A commenter opposed the elimination in proposed § 800.40(c)(2) of the 25 percent limit on Phase II bond release. The proposed rule required that enough of the bond be retained to cover the cost of a third party reestablishing the vegetation and for the 5 or 10 year liability period. The commenter felt that 15 percent is the minimum bond that should be retained after Phase II and noted that the Mining Task Force of the National Coal Policy Project also supported this opinion. (Pages 5–6 of June 15, 1979 report.)

Land reclamation costs vary greatly not only from different regions of the country but even within the same mining operation. The establishment of the 25 percent Phase II maximum bond release amount was arbitrary. Its elimination ties the setting of the remaining bond amount to the actual projected remaining reclamation costs involved. Thus, in some instances, the amount retained after Phase II release could exceed 15 percent. For the final rule, the amount that may be released after Phase II focuses on the cost to the regulatory authority of reestablishing vegetation. That is the precise requirement of Section 519(c)(2) of the Act. Under this final rule the regulatory authority will have the discretion to determine the actual cost of the reclamation work that may need to be done should a failure occur.

A commenter indicated that the reference in proposed § 800.40(c)(2) to suspended solids should refer to § 816.42 on water quality standards and effluent limitations, rather than § 816.49, which deals with permanent and temporary impoundments.

In new § 800.40(c)(2) OSM has changed the references to specific sections to reference the Act and 30 CFR Chapter VII, Subchapter K, in order to avoid confusion that may be caused by rule changes to that Subchapter.

A commenter was concerned because proposed § 800.40(c)(2) did not specifically state that the standards for successful revegetation must be met prior to bond release. The commenter stated the provision contained standards for only sediment loads and prime farmland and that additional success standards must be added to cover the massive amount of mined land in the West which is rangeland or federally-owned.

Section 800.40(c)(2) is taken directly from the Act, Section 519(c)(2). The paragraph does require that the regulatory authority retain an amount sufficient to reestablish revegetation when "determining the amount to be released after *successful* revegetation has been established." (Emphasis added.) Standards for success are established in the permit.

A commenter felt that because the phrase "under equivalent management practices" was not included in the provision for bond release on prime farmlands in proposed § 800.40(c)(2) the rule is in conflict with the Act. The phrase "under equivalent management practices" has been added in the final § 800.40(c)(2).

A State regulatory authority was also concerned that it was OSM's intention to limit proof of productivity to information contained in soil surveys and that such a position by OSM would have serious consequences in its State. The regulatory authority felt that § 800.40(c)(2) is too ambiguous and allows the reader to believe that soil productivity can only be determined through a soil survey. The authority suggested the following language change "* * * until soil productivity from prime farmland has returned to equivalent levels of yield as non-mined land of the same soil type in the surrounding area under equivalent management practices. Soil types are to be determined from soil surveys pursuant to section 507(b)(16) of the Act."

The language in question is taken directly from the Act, Section 519(c)(2). Therefore, OSM has retained the language as proposed. However, the final rule has also been revised to refer to the standards in 30 CFR Part 823 which includes requirements for determining productivity levels on prime farmlands.

A regulatory authority objected to the provision in proposed § 800.40(c)(2) for "sound future maintenance" of silt dams to be made permanent contending that it appears to conflict with section 519(c) of the Act, which authorizes bond release once reclamation has been accomplished. The regulatory authority

felt that if the pond [silt dam] or any other facility is part of the approved postmining land use and meets the standards of the Act, there is no authority or any need for a requirement regarding future maintenance.

Section 800.40(c)(2) repeats verbatim the provision of section 519(c)(2) of the Act except that a citation to Subchapter K is made instead of section 515(b)(8) of the Act. While a rule need not always repeat requirements of the Act, deletion of the provision as the regulatory authority urges would not change the Act's requirements for "sound future maintenance" of permanent silt dams. Therefore, the rule is not revised as suggested.

A commenter requested an additional requirement in § 800.40(c)(2) to provide that the amount retained be sufficient to also cover the reclamation of the land if the proposed postmining land use does not occur.

If the proposed postmining land use does not occur, the operator is required to establish proper vegetation and otherwise reclaim the mined land to its original or higher use. In reviewing an operator permit application and in assessing the bond amounts required to complete the reclamation plan contained therein, the regulatory authority must consider that in the event a postmining land use described in the reclamation plan is not achieved, an alternate plan for reclamation is necessary. Bond amounts required should reflect this possibility.

Section 800.40(c)(3)

Final § 800.40(c)(3) allows for bond release at completion of Phase II after successfully completing all surface coal mining and reclamation activities, but not before the expiration of the 5 or 10 year liability period specified in § 816.116 and § 817.116. The paragraph also requires that no bond be fully released until all reclamation requirements of the Act and the permit are met.

A commenter indicated that proposed § 800.40(c)(3) may conflict with provisions of proposed § 800.13(a) by preventing complete release of the final portion of a bond until the entire reclamation plan has been completed.

Another commenter also spotted the confusion between the two provisions and suggested the following change be made to proposed § 800.40(c)(3): "* * * that no bond shall be fully released until all reclamation requirements of the Act and the permit are fully met for the area for which the bond was posted."

The wording for § 800.40(c)(3) comes from section 519(c)(3) of the Act. As stated above with respect to a bonding of separate increments, OSM interprets this provision to allow release of the final portion of a bond posted on an increment if the regulatory authority determines that all requirements of the Act and the permit have been fully met for the increment. As described earlier, the period of liability described in § 800.13(a) has been modified to reflect the requirements of Section 519(c) of the Act.

Section 800.40(d)

Proposed § 800.40(d) required that if the regulatory authority disapproves the bond or portion of the bond for release the regulatory authority shall notify the permittee in writing, stating the reasons for the disapproval and corrective action that can be taken.

A commenter believed that the provision in proposed § 800.40(d) for persons to be notified of bond release was not consistent with the notification provision in § 800.40(b)(2), which requires the permittee, the surety or other persons with an interest in the collateral be notified.

OSM has corrected this inconsistency by adding to § 800.40(d) the requirement to notify the surety or other person interested in the collateral if they have requested notification. OSM has also required that persons with an interest in collateral who want notification of bond release must request such a notice in writing with the posting of collateral. (See § 800.21(f).) Section 800.40(d) is derived from Section 519(d) of the Act.

Section 800.40(e)

Section 800.40(e) requires that the regulatory authority notify the appropriate municipalities when a bond or part of a bond is to be released for surface coal mining operations within those municipalities. This notification is to be by certified mail at least 30 days prior to release of the bond.

No comments were received on proposed § 800.40(e) and the provisions will become final as proposed. This provision is taken directly from Section 519(e) of the Act.

Section 800.40(f)

Proposed § 800.40(f) allowed written objections to the release of a bond and requests for a public hearing to be filed with the regulatory authority by any person with a valid legal interest which may be adversely affected by the release, or any responsible officer of a Federal, State or local government agency which has jurisdiction by law, special expertise with respect to the environmental, social or economic impacts of the operation, or is authorized to develop or enforce environmental standards. The objections must be filed within 30 days after the final publication of the bond release notice. Should a public hearing be requested, the regulatory authority shall within 30 days after the request inform all interested parties as to the time and place of the hearing. The public hearing is to be held in the locality of the surface coal mining operation involved or at the State capital, at the option of the objector. The regulatory authority shall also advertise the time and place of the hearing in a newspaper of general circulation. Changes were made from the proposed paragraph to delete redundant language and to clarify requirements. Also, the option for the objector to have the hearing held at the location of the regulatory authority, is added.

A commenter objected to the provisions of proposed § 800.40(f) because the regulatory authority was not required to forward comments from persons objecting to bond release to the permittee for review and response. Inclusion of such provision is unnecessary. Such comments would be open to the operator to review and respond to if he desires. It may not be necessary to forward copies of comments to the permittee in each instance. If after reviewing the comments, the regulatory authority decides not to release the bond, the permittee will be notified of the actions required to correct any problems and will be afforded an opportunity for a hearing as provided for under Section 519(d) of the Act and § 800.40(d) of these rules.

A State regulatory authority took issue with the provision in proposed § 800.40(f) that allows for the bond release public hearing to be located at the State capital at the option of the objector. The authority suggested an amendment to allow for the hearing to be held at the regulatory authority's office at the option of the regulatory authority.

An industry commenter also objected to the hearing being held at the State capital because it would impose a burden on the permittee and would "effectively exclude" local citizen participation due to distance and travel costs. The commenter suggested that the burden of travel be placed on the hearing requestor.

Another regulatory authority wanted all public hearings to be held at the State capital with the objector's consent.

OSM based proposed § 800.40(f) on Section 519(f) of the Act, which requires a hearing in the locality of the land to be released from bond and offers the option

of the State capital to objectors. It is not clear whether the drafters of the Act envisioned that all regulatory authorities would be located in their State capitals. Many, in fact, are located there. However, for those cases where the State capital is not near either the locality or the offices of the regulatory authority, OSM has inserted an additional option with the phrase "at the office of the regulatory authority." But, since the Act specifically offers the discretion of choosing the State capital to the objector, no other change relating to this provision has been made to § 800.40(f).

A State regulatory authority asked for clarification of the phrase "Any person with a vaild legal interest which might be affected by release of the bond * * *" in the first part of § 800.40(f). The regulatory authority wanted to know who has the authority to make the judgment whether a person has a valid legal interest affected by the release of the bond.

The term "person" is defined in Section 701(19) of the Act as "an individual, partnership, association, society, joint stock company, firm, company, corporation, or other business organization." The term "person with a valid legal interest" is defined in 30 CFR 700.5. The regulatory authority has the responsibility to make the determination on whether a person has such an interest.

Section § 800.40(f) quotes the provisions of Section 519(f) of the Act in regard to this provision.

A commenter suggested that the language of proposed § 800.40(f) be revised to specify what was required within the 30-day period following the receipt of a request for public hearing.

As proposed, it appeared that the public notice of hearing as well as the hearing itself was required within the same 30-day period.

Neither the previous rule nor the proposed revision specified the time period in which notice must be given of a planned hearing. The commenter is correct in assuming that public notice of hearings as well as the hearing are required within the same 30-day period. Section 519(f) of the Act requires that the hearing be held within that period. OSM will not add provision for a time period within which the hearing date must be announced, but believes this is better left to the discretion of the regulatory authority.

Proposed § 800.40(g) [Final § 800.40(h)]

Proposed § 800.40(g) provided that the regulatory authority may hold an informal conference as provided in Section 513 of the Act to resolve written objections to a bond release. Proposed paragraph (g) has been redesignated as paragraph (h) in the final rule and proposed paragraph (h) has been redesignated as final paragraph (g). This is done to keep related provisions together.

A commenter objected to proposed § 800.40(g) because it did not have a provision whereby persons who participated in an informal conference may be advised as to its outcome. The commenter noted that Section 514(a) of the Act specifically requires that after an informal conference the regulatory authority shall furnish to all parties of the proceedings a written finding of the regulatory authority and the reasons for said finding.

A provision has been added to the rule to require a finding of the regulatory authority based on the informal conference and the reason for such finding to be furnished to parties who participate in the conference. Section 513(b) of the Act also requires a record be made of the informal conference, unless waived by all parties, and made available to those parties. OSM has added a sentence in final § 800.40(h) to emphasize this requirement.

Proposed § 800.40(h) (Final § 800.40(g))

Final § 800.40(g), proposed as § 800.40(h), allows that for the purposes of a hearing on bond release the regulatory authority shall have the authority to administer oaths, subpoena witnesses or printed materials and take evidence including but not limited to inspections of the land affected. A verbatim record of each public hearing shall be made and a transcript made available.

A commenter suggested that proposed § 800.40(h) should be tied more directly to § 800.40(f) since the provisions apply to hearings and not to informal conferences of the preceding paragraph, § 800.40(g). OSM agrees with this comment and has switched the position of the two paragraphs as described above. A reference to § 800.40(f) on public hearings has been included in final § 800.40(g) implements Section 519(h) of the Act.

Section 800.50 Forfeiture of bonds.

Proposed § 800.50 required that the regulatory authority cause forfeiture when conditions of the reclamation plan, the permit or the bond are not met. This section allowed the regulatory authority to withhold forfeiture proceedings if a third party or surety company agrees to complete reclamation. It also set the procedures for forfeiture and the restrictions in using the funds obtained in forfeiture. The provisions of § 800.50 have been rearranged for clarity.

Section 800.50(a)

Proposed § 800.50(a) required the regulatory authority to take action to forfeit all or part of a bond for any permit area or increment if reclamation operations are not conducted according to the reclamation plan or the permit, or the operator defaults on conditions of the bond. Final § 800.50(a) also includes operator refusal or inability to reclaim an unabated violation as cause for forfeiture. The reclamation plan is not mentioned in final § 800.50(a) because it is incorporated in the permit.

Final § 800.50(a)(1), which was proposed as § 800.50(b), sets the procedures the regulatory authority must follow in the event it must cause forfeiture of a bond. Section 800.50(a)(1) requires the regulatory authority to notify the permittee and the surety by certified mail of the determination to cause forfeiture of all or part of the bond including the reasons for such determination and amount to be forfeited. Final § 800.50(a)(2), which was proposed as § 800.50(b)(2), requires that the permittee and surety be advised under what conditions the forfeiture may be avoided.

A commenter objected to proposed § 800.50(a), which made bond forfeitures mandatory rather than discretionary. The commenter said Section 509 of the Act does not provide for a bond to be automatically subject to forfeiture. The commenter suggested the following language change to provide the operator a chance to correct any conditions alleged by the regulatory authority to constitute a default without triggering a bond forfeiture proceeding: "The regulatory authority shall take action to notify the operator of its intention to forfeit all or part of a bond for any permit area or an increment of a permit area for unabated violations or conditions of the reclamation plan, or terms of the permit * * *."

Mandatory language in this rule has been retained so that when forfeiture action is necessary it is enforceable. The grounds for mandatory forfeiture are similar to those in previous § 808.13(a).

The surety industry asked that OSM clarify how phase bonds are handled in forfeiture under § 800.50(a).

Forfeiture under phase bonds will not differ greatly from other forfeiture proceedings. Forfeiture of bond for an area or increment that has not had any bond release will require forfeiture on Phase I bond as well as the bond for Phases II and III, in order to provide sufficient funds for complete

reclamation. Forfeiture of phase bonds after partial release will involve forfeiture of the total of the phase bonds remaining for the area or increment for which forfeiture is necessary. Any excess funds remaining after reclamation will be distributed to the parties from whom they were collected, as determined by the regulatory authority, or as previously agreed to by the parties.

Two commenters objected to the proposed elimination of specific mandatory and discretionary forfeiture provisions of previous §§ 808.13 (a) and (b). The commenters felt that an operator who is complying with the rules in correcting violations and conducting reclamation as specified in the permit should not be threatened by forfeiture. Only the operator who cannot continue to comply, refuses to reclaim, or defaults on the conditions of the bond should be subject to forfeiture action.

The commenters also noted that previous § 800.13(b) set out situations where informal adjustment of the economic situation short of bond forfeiture is possible. The commenters felt that failure to set our criteria for forfeiture as was done in the previous rules hampers regulatory flexibility and aids neither industry nor the public.

Another commenter, also concerned with the elimination of the criteria of § 808.13, asked for clarification as to whether OSM meant to deny the regulatory authority the right to forfeit bonds if the permittee has been adjudicated bankrupt, become insolvent, subject to attachments and liens on equipment and collateral or the permittee cannot demonstrate the ability to continue to operate.

In considering actions in which forfeiture is required, OSM has included refusal or inability to conduct reclamation of unabated violations, failure to fulfill the terms of the permit and default on the conditions of the bond. Other factors may apply to the need for forfeiture, but these three are the major grounds for forfeiture action. Whether a specific set of facts will lead to forfeiture depends upon whether the permit terms are met and bond conditions are satisfied. The factors mentioned by the commenter may be considered within that context. General terms and conditions of bonds are set forth in § 800.16 and another specific forfeiture condition is contained in § 800.17(c). Other specific instances when forfeiture may be initiated may be added by States in their programs.

Compliance, even after the initial notice of forfeiture, is preferable to forfeiture. The final rules have been amended to add conditions under which forfeiture may be avoided. Section 800.50(a)(2)(i) provides for withholding forfeiture if the permittee or a third party agrees to perform reclamation operations under a compliance schedule which meets the permit conditions. Final § 800.50(a)(2)(ii) allows the surety to complete the reclamation plan or the relevant portion of the reclamation plan, if the surety demonstrates an ability to complete such reclamation. These two means of avoiding forfeiture were taken from previous § 808.11(b) and provide discretion to the regulatory authority about which the commenters were concerned. These had been proposed as § 800.50(a) (1) and (2).

A State regulatory authority questioned whether in accepting a permittee's obligation for reclamation after forfeiture, the State or the surety assumes the obligation for phase releases, water quality control, National Pollution Discharge Elimination System (NPDES) monitoring, and revegetation.

All plans and specifications found in the permit must be met in contracting for completion of reclamation. However, neither the regulatory authority nor the contractor assumes the liability of the permittee.

A regulatory authority requested the phrase "except for partial releases authorized under 30 CFR 800.40 * * *" be amended in proposed § 800.50(a)(2) to make partial release discretionary because it had no intention of making partial releases once bond forfeiture was initiated. The regulatory authority suggested the following language: "* * * except that the regulatory authority may approve partial releases under 30 CFR 800.40 * * *." OSM recognizes that there could have been a potential problem in § 800.50(a)(2)(ii) and has inserted a provision clearly giving the regulatory authority discretion in authorizing partial releases of bond.

A regulatory authority objected to the notification requirements in proposed § 800.50(b)(1) (final § 800.50(a)(1)) on the grounds that the permittee would have already received notice of the forfeiture by way of a notice of violation. The regulatory authority also objected to the requirement in proposed § 800.50(b)(2) that it also advise the permittee and the surety of a right of appeal, reasoning that it was not the position of the regulatory authority to advise these parties of their legal rights to appeal.

Ordinarily the permittee will be on notice with respect to his or her failure to reclaim prior to forfeiture. However, bond forfeiture is a separate action by the regulatory authority for which separate notice is required. Whereas the permittee would have likely received previous notices, a surety will probably not receive notice until forfeiture is to be taken. A surety in such an instance must be apprised of the pending forfeiture and due process requirements which dictate that the permittee receive notice of the action as well.

OSM agrees with the commenter on proposed § 800.50(b)(2) that the requirement of notification of rights of appeal should not be included as a regulatory authority responsibility. The regulatory authority should notify the permittee and surety, if any, that there is an opportunity for an administrative appeal to be taken, but recognizes that affected parties should be presumed to be aware of their rights.

Section 800.50(b)

Final § 800.50(b)(1), proposed as § 800.50(b)(3), requires a regulatory authority to proceed to collect the forfeited amount if actions to avoid forfeiture have not been taken, or if appeal rights are not exercised within a time established by the regulatory authority or are unsuccessful. Final § 800.50(b)(2), proposed § 80.50(d), requires the use of collected funds for reclamation.

The surety industry objected to the lack of guidelines in proposed § 800.50(b)(1) for the regulatory authority in determining how much of the bond needs to be forfeited. The commenter asked that the amount of the forfeited bond be based on the estimated cost to complete reclamation. The surety industry cited a decision in an Ohio State Court (*In re: Travellers Indemnity Company vs. Charles Call*, No. 80–CV–07–4107, Franklin County Court of Common Pleas, Nov. 25, 1980) in which it was held that the surety was entitled to an estimate of the cost to complete the reclamation upon which the amount of bond to be forfeited would be based.

The manner in which the regulatory authority arrives at the amount to be forfeited is best left to its discretion. The amount proposed has to be reasonable and cannot be arbitrary or capricious. To require that the regulatory authority provide an estimate of the amount would be premature because the costs may not be known in advance. Furthermore, the entire bond has to be available for the necessary reclamation. Conditioning its availability upon the accuracy of a cost estimate runs counter to congressional intent that the bond will assure that reclamation will be accomplished. In addition, final § 800.50(d)(2) requires the return of funds unused in the reclamation effort Therefore, the comment is not accepted.

Two commenters felt that in proposed § 800.50(b)(1) the regulatory authority should determine the amount of bond that is to be forfeited based on "total" contracting costs—administrative as well as operational.

The regulatory authority may determine the amount to be forfeited based on the total costs it will incur in either using State employees to do the reclamation work or contracting with an outside party. In either case, the State could include its administrative and other costs routinely allowed under cost accounting principles. However, should the amount forfeited be greater than the actual costs, the excess must be remitted to the surety or permittee.

§800.50 (c) and (d)

Proposed § 800.50(c) provided that upon default the regulatory authority may forfeit any and all bonds to complete the reclamation operations for which the bonds were posted. This has been adopted with one addition.

Proposed § 800.50(d) required the regulatory authority to use the forfeited funds to contract for completion of the reclamation plan on the permit area or increment to which the bond coverage applies. This has been adopted in § 800.50(b)(2), as noted above.

Final § 800.50(d)(1) recognizes the operator's continuing liability for reclamation costs if the bond amount is insufficient and it authorizes reclamation to be conducted prior to collection of additonal funds from the operator.

Several commenters found § 800.50 (c) and (d) too restrictive in allowing forfeited funds to be used only for reclamation operations for which the bond applies. This prohibits the use of forfeited funds to cover reclamation costs of another increment or for other situations not included in the reclamation plan. The commenters said the proposal derogates from the meaning of the Act which states that the bond is conditional upon faithful performance of all requirements of the Act and the permit. They said the proposal was "entirely inconsistent with the goal of successful reclamation of the entire permit area."

The commenters were concerned that under proposed § 800.50 (c) and (d) that situations will arise where the bond has been released on a given increment and no funds are available to perform reclamation occasioned by an emergency or cumulative impact appearing after that phase or increment is finished and bond released.

One commenter further noted that the only time there would be problems in extending incremental bond coverage to the entire permit area is when different sureties bond different increments and when different bonding methods are used on different increments. The commenter felt these two problems could be specifically dealt with allowing for coverage of the entire permit area.

These comments are addressed in the earlier discussion on incremental and phase bonds. As noted there, although the bonds for separate increments may be limited to the discrete increments, in order to comply with Section 519(c)(3) of the Act, the bond on an increment may not be fully released until the reclamation plan, including extended liability, is fully completed for the increment for which the bond is posted.

One commenter felt the existence of phase bonds in forfeiture proceedings should be recognized in proposed § 800.50(d). The commenter recommended the following word change " * * * contract for completion of the reclamation plan * * * on the permit area, incremental acreage or bonded phase on which * * * ."

The commenter's recommendation is accepted and a phrase added to recognize separate bonding of phases in final § 800.50(b)(2).

Several commenters disagreed with OSM's response in the proposed rule, 46 FR 45091, to the decision of the district court. (*In re: Permanent Surface Mining Regulation Litigation*, 14 Envir. Rep. Cas. 1100–1101, February 26, 1980). The district court remanded OSM's rule for not having a provision for returning unused portions of a forfeited bond.

OSM proposed in § 800.50 to allow the regulatory authority to determine amounts to be forfeited, and omitted a provision requiring unused portions to be returned. In response to the comment and the district court decision, OSM is adding the following provision to final § 800.50(d)(2): "In the event the amount of performance bond forfeited is more than the amount necessary to complete reclamation operations, the unused funds shall be returned by the regulatory authority to the party from whom they were collected."

One of the commenters was further confused by OSM's statement at 46 FR 45091, in explaining that funds not used to contract for reclamation would be refunded. OSM stated, "However, this rationale may not apply if bond forfeiture renders a penal sum rather than a performance guarantee." The commenter wanted to know if this statement meant that unused funds will not be refunded if bond forfeiture is a penalty action. The commenter felt penalty assessment and collection processes are separate and distinct from bond forfeiture actions and questioned the power of the regulatory authority to keep unused bond money and call it a penalty.

A surety commenter also noted OSM's preamble statement and wanted to ensure that no misconception arose regarding the term "penal sum" when used in performance bond forms. The commenter explained as follows:

> [In] the explanatory comments with regard to this section which appeared on 46 FR 45091 there seems to be some confusion with respect to the terms "penal sum" and "performance guarantee." In the surety industry, the term "penal sum" when used in conjunction with the amount of bond is not meant to convey that the entire bond can be construed to be a penalty. Most bonds use the term "penal sum" and they are only "penalty" bonds when the provisions of the bonds specifically provide this. Surface mining bonds in most instances are considered to be bonds that guarantee performance of the reclamation work required by the permit. They are damage bonds and respond by guaranteeing to pay the cost of the necessary reclamation work up to the bond penalty even if they use the term "penal sum."

In order to clarify the matter, OSM views a reclamation bond as one guaranteeing the performance of reclamation work. Therefore, it is not a penal bond. Upon forfeiture only the amount necessary to complete the reclamation work can be used by the regulatory authority. Use of the term "penal sum" has no bearing on the amount of the bond which the regulatory authority may retain. OSM concurs in the view expressed by the surety commenter.

A State regulatory authority requested an amendment of proposed § 800.50(d) regarding the provision requiring forfeited funds be used only within the permit area to which they apply. The State said it intends to include the administrative costs of securing a reclamation contract as part of the initial bond amount. Therefore, they argued the regulatory authority should have the option of allocating forfeited funds not needed for reclamation to a general fund for administrative costs associated with contracting for reclamation. Only the administrative portion of the bond would be allocated to the fund. The State felt this general fund for handling contract costs would best suit their practice of seeking a bid for several permit areas in the same general region at the same time.

A State may establish a certain percentage of any contract for its administrative costs, but such a practice has to have a sound accounting basis, including distribution of costs, to avoid retaining more of the forfeited funds

than the costs involved. Should the costs of reclamation, including properly allowable and allocable costs, be less than the amount of the forfeited bond, the excess must be returned to the surety or operator.

A State regulatory authority requested an addition of a new paragraph (e) to § 800.50 to clearly establish that the operator's liability is not limited to the amount of the performance bond and is not necessarily satisfied by that bond's forfeiture. The regulatory authority felt the performance bond requirement was not meant to supplant the operator's underlying obligation to reclaim all the land disturbed under his permit. The following language was suggested:

> In the event the forfeited bond is insufficient to pay for the full cost of reclamation, the operator shall be liable for remaining costs. The regulatory authority may complete, or authorize to be completed, reclamation of the bonded parcel and may recover from the operator all costs of reclamation in excess of the forfeited bond.

The operator does have the underlying obligation to fully reclaim disturbed lands. A regulatory authority, in having reclamation performed on which the operator has defaulted in his obligation, may incur costs in excess of the forfeited amount. To make clear that the regulatory authority may recover that excess amount from the operator, the suggested addition is made to § 800.50 in paragraph (d)(1).

Section 800.60 Terms and conditions for liability insurance.

Proposed § 800.60 implements the requirements of Section 507(f) of the Act that each permittee have liability insurance providing coverage for personal injury and property damage. This section sets the minimum coverage required, the duration of the policy, notification procedures and provides for an exception when the operator meets the requirements of State self-insurance provisions.

Section 800.60(a)

Final § 800.60(a) provides that the regulatory authority must require the applicant to submit with the permit application a certificate issued by an insurance company authorized to do business in the United States certifying that the applicant has a public liability insurance policy in force for the surface coal mining and reclamation operations for which the permit is sought. The certificate shall provide for personal injury and property damage protection in an amount adequate to compensate any persons injured or property damaged as a result of the surface coal mining and reclamation operations and who are entitled to compensation under State law. Minimum coverage for bodily injury and property damage shall be $300,000 for each occurrence and $500,000 aggregate.

A commenter objected to the minimum dollar amounts specified in proposed § 800.60(a) and states that OSM has given no justification for setting them. The commenter noted it is a common and preferred practice by coal companies to insure all their operation locations under one policy rather than allocating specific minimum amounts to each location as required in § 800.60(a). The commenter said the operator may carry liability insurance that is "adequate to compensate any persons damaged * * * and entitled to compensation" as required by Section 507(f) of the Act, but would not comply with the individual minimum requirements of § 800.60(a). The commenter felt that, in light of Section 101(f) of the Act, the State regulatory authority should be given the discretion to decide what type of coverage is "adequate."

Section 800.60(a) does not prohibit the type of policy which the commenter states is commonly purchased by companies having more than one operation. One policy could cover multiple operations. However, Section 507(f) requires that the policy be written "in an amount adequate to compensate any person damaged * * *." Thus, it is appropriate to provide for minimum amounts of liability coverage. See also the discussion in connection with the original rule, § 806.14, at 44 FR 15119.

A commenter requested that the sentence in proposed § 800.60(a) that begins "The certificate shall provide * * *" be rewritten and clarified. The commenter notes that a certificate cannot "compensate property damaged" as the phrase "shall provide for" implies. The commenter also felt the phrase "to all persons" is not needed.

OSM agrees with this comment and has revised § 800.60(a) for clarity but no substantive changes have been made. The proposed term "all persons" has been changed to "any persons" to parallel the statutory language.

Section 800.60(b)

Final § 800.60(b) requires that the policy be maintained in full force during the life of the permit or any renewal, including completion of all reclamation operations. This paragraph is adopted as proposed, with one revision discussed below.

A State regulatory authority was concerned that § 800.60(b) requires that the policy need only remain in effect during the term of the permit or any renewal. The regulatory authority noted that reclamation may continue after the permit term has expired, but feels the insurance policy should remain in effect during the reclamation period.

OSM agrees with this comment and has made a change to § 800.60(b) to specify that the liability insurance policy must continue in force until the end of the liability period for completion of reclamation. Section 800.60(b) follows Section 507(f) of the Act, which provides that it is to remain in effect during the length of all reclamation operations. This includes the period of extended liability under Section 515(b)(20) of the Act.

Sections 800.60 (c) and (d)

Section 800.60(c) provides that the policy have a rider requiring the insurer to notify the regulatory authority when major changes are made to the policy. Section 800.60(d) allows the regulatory authority to accept, in lieu of proof of a public liability insurance policy, evidence from the applicant that it satisfies State self-insurance requirements approved by the regulatory program. No comments were received on these two provisions, which follow Section 507(f) of the Act, and they are unchanged from the proposed. They also retain the provisions of previous § 806.16 (c) and (d).

Section 800.70 Bonding for anthracite operations in Pennsylvania.

Section 800.70(a) provides that all the provisions of Subchapter J shall apply to bonding and insuring anthracite surface operations in Pennsylvania except that the specified bond limits and the period of liability shall be determined and established according to Pennsylvania State law and rules. Section 800.70(b) also provides that should the Pennsylvania State regulatory program be amended, persons engaged in anthracite surface mining shall comply with the additional rules the Secretary may issue in order to meet the purposes of the Act. Lastly, the proposed § 800.70(c) requires that nothing in this part shall exempt anthracite operations from requirements of Subchapter J except as set forth in § 800.70.

No comments were received on this section but editorial changes have been made for clarity. Proposed § 800.70(c) is not adopted because it was redundant. Section 800.70 is necessary to implement the provision of Section 519 of the Act which allows State standards to be applicable to anthracite surface coal mines and makes some of the bonding provisions in Sections 509 and 519 of the Act applicable.

Reference Materials

Reference materials used to develop these final rules are as follows:

The American Law Institute. 1978. Uniform Commercial Code. National Conference of Commissioners on Uniform State Laws. 994 pp.

Baughn, William H. and Charles E. Walker. 1978. The Bankers' Handbook. Homewood, Illinois: Dow Jones—Irwin. 1205 pp.

III. Procedural Matters

Federal Paperwork Reduction Act

The information collection requirements contained in Part 800, as enumerated in § 800.10 of this rule, have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1029–0043. The information required will be collected and used by the regulatory authority in implementing bonding responsibilities for surface and underground mining activities to ensure that companies have suitable bonding and that the reclamation is completed. The information being collected is to meet requirements of Sections 509 and 519 of the Act and the obligation to respond is mandatory.

Executive Order 12291 and Regulatory Flexibility Act

The DOI has determined that this document is not a major rule and does not require a regulatory impact analysis under Executive Order 12291. The DOI certifies that this document will not have a significant economic effect on a substantial number of small entities and therefore does not require a regulatory flexibility analysis under Public Law 96–354. The flexibility of these rules should provide availability of surety bonding to small operators.

National Environmental Policy Act

An environmental assessment (EA) was prepared analyzing the individual impacts on the human environment which the revision of bonding rules in Part 800 will have. On the basis of this EA, it was determined that adopting these rules will not constitute a major Federal action significantly affecting the quality of the human environment. In addition, an EA was prepared which analyzed the cumulative impacts of adopting these rules in relation to certain other proposed revised rules. In a Finding of No Significant Impact (FONSI) based on this latter EA, the revision of the bonding rules was considered to be in category I, a category of revisions for which the analysis of impacts was sufficiently certain to support a finding of no significant impact. Both EAs and FONSIs are on file in the Administrative Record located at 1100 L Street NW., Room 5315, Washington, D.C.

List of Subjects in 30 CFR Part 800

Administrative practice and procedure, Coal mining, Insurance, Reporting and recordkeeping requirements, Surety bonds, Surface mining, Underground mining.

For the reasons set forth in the preamble, 30 CFR Parts 800, 801, 805, 806, 807, 808 and 809 are amended as set forth herein.

Dated: July 14, 1983.

J. J. Simmons III,

Under Secretary.

1. Subchapter J is revised to read as follows:

SUBCHAPTER J—BONDING AND INSURANCE REQUIREMENTS FOR SURFACE COAL MINING AND RECLAMATION OPERATIONS

PART 800—BOND AND INSURANCE REQUIREMENTS FOR SURFACE COAL MINING AND RECLAMATION OPERATIONS UNDER REGULATORY PROGRAMS

Sec.

800.1 Scope and purpose.
800.4 Regulatory authority responsibilities.
800.5 Definitions.
800.10 Information collection.
800.11 Requirement to file a bond.
800.12 Form of the performance bond.
800.13 Period of liability.
800.14 Determination of bond amount.
800.15 Adjustment of amount.
800.16 General terms and conditions of bond.
800.17 Bonding requirements for underground coal mines and long-term coal-related surface facilities and structures.
800.20 Surety bonds.
800.21 Collateral bonds.
800.30 Replacement of bonds.
800.40 Requirement to release performance bonds.
800.50 Forfeiture of bonds.
800.60 Terms and conditions for liability insurance.
800.70 Bonding for anthracite operations in Pennsylvania.

Authority: 30 U.S.C. 1201 *et seq.*, Pub. L. 95–87.

§ 800.1 Scope and purpose.

This part sets forth the minimum requirements for filing and maintaining bonds and insurance for surface coal mining and reclamation operations under regulatory programs in accordance with the Act.

§ 800.4 Regulatory authority responsibilities.

(a) The regulatory authority shall prescribe and furnish forms for filing performance bonds.

(b) The regulatory authority shall prescribe by regulation terms and conditions for performance bonds and insurance.

(c) The regulatory authority shall determine the amount of the bond for each area to be bonded, in accordance with § 800.14. The regulatory authority shall also adjust the amount as acreage in the permit area is revised, or when other relevant conditions change according to the requirements of § 800.15.

(d) The regulatory authority may accept a self-bond if the permittee meets the requirements of § 800.23 and any additional requirements in the State or Federal program.

(e) The regulatory authority shall release liability under a bond or bonds in accordance with § 800.40.

(f) If the conditions specified in § 800.50 occur, the regulatory authority shall take appropriate action to cause all or part of a bond to be forfeited in accordance with procedures of that section.

(g) The regulatory authority shall require in the permit that adequate bond coverage be in effect at all times. Except as provided in § 800.16(e)(2), operating without a bond is a violation of a condition upon which the permit is issued.

§ 800.5 Definitions.

(a) *Surety bond* means an indemnity agreement in a sum certain payable to the regulatory authority, executed by the permittee as principal and which is supported by the performance guarantee of a corporation licensed to do business as a surety in the State where the operation is located.

(b) *Collateral bond* means an indemnity agreement in a sum certain executed by the permittee as principal which is supported by the deposit with the regulatory authority of one or more of the following:

(1) A cash account, which shall be the deposit of cash in one or more federally-insured or equivalently protected accounts, payable only to the regulatory authority upon demand, or the deposit of cash directly with the regulatory authority;

(2) Negotiable bonds of the United States, a State, or a municipality, endorsed to the order of, and placed in the possession of, the regulatory authority;

(3) Negotiable certificates of deposit, made payable or assigned to the regulatory authority and placed in its possession or held by a federally-insured bank;

(4) An irrevocable letter of credit of any bank organized or authorized to transact business in the United States, payable only to the regulatory authority upon presentation;

(5) A perfected, first-lien security interest in real property in favor of the regulatory authority; or

(6) Other investment-grade rated securities having a rating of AAA, AA, or A or an equivalent rating issued by a nationally recognized securities rating service, endorsed to the order of, and placed in the possession of, the regulatory authority.

(c) *Self-bond* means an indemnity agreement in a sum certain executed by the permittee or the parent company guarantor and made payable to the regulatory authority, with or without separate surety.

§ 800.10 Information collection.

The information collection requirements contained in §§ 800.11, 800.15(c), 800.21, 800.40, 800.50(a), and 800.60 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1029–0043. The information is being collected to meet the requirements of Sections 509 and 519 of the Act, which require all applicants to file a bond with the regulatory authority prior to a permit being issued, and require written requests for bond release. This information will be used by the regulatory authority to ensure that sufficient funds are available for reclamation. The obligation to respond is mandatory.

§ 800.11 Requirement to file a bond.

(a) After a permit application under Subchapter G of this chapter has been approved, but before a permit is issued, the applicant shall file with the regulatory authority, on a form prescribed and furnished by the regulatory authority, a bond or bonds for performance made payable to the regulatory authority and conditioned upon the faithful performance of all the requirements of the Act, the regulatory program, the permit, and the reclamation plan.

(b)(1) The bond or bonds shall cover the entire permit area, or an identified increment of land within the permit area upon which the operator will initiate and conduct surface coal mining and reclamation operations during the initial term of the permit.

(2) As surface coal mining and reclamation operations on succeeding increments are initiated and conducted within the permit area, the permittee shall file with the regulatory authority an additional bond or bonds to cover such increments in accordance with this section.

(3) The operator shall identify the initial and successive areas or increments for bonding on the permit application map submitted for approval as provided in the application (under Parts 780 and 784 of this chapter), and shall specify the bond amount to be provided for each area or increment.

(4) Independent increments shall be of sufficient size and configuration to provide for efficient reclamation operations should reclamation by the regulatory authority become necessary pursuant to § 800.50.

(c) An operator shall not disturb any surface areas, succeeding increments, or extend any underground shafts, tunnels or operations prior to acceptance by the regulatory authority of the required performance bond.

(d) The applicant shall file, with the approval of the regulatory authority, a bond or bonds under one of the following schemes to cover the bond amounts for the permit area as determined in accordance with § 800.14:

(1) A performance bond or bonds for the entire permit area;

(2) A cumulative bond schedule and the performance bond required for full reclamation of the initial area to be disturbed; or

(3) An incremental bond schedule and the performance bond required for the first increment in the schedule.

(e) OSM may approve, as part of a State or Federal program, an alternative bonding system, if it will achieve the following objectives and purposes of the bonding program:

(1) The alternative must assure that the regulatory authority will have available sufficient money to complete the reclamation plan for any areas which may be in default at any time; and

(2) The alternative must provide a substantial economic incentive for the permittee to comply with all reclamation provisions.

§ 800.12 Form of the performance bond.

The regulatory authority shall prescribe the form of the performance bond. The regulatory authority may allow for:

(a) A surety bond;

(b) A collateral bond;

(c) A self-bond; or

(d) A combination of any of these bonding methods.

§ 800.13 Period of liability.

(a)(1) Performance bond liability shall be for the duration of the surface coal mining and reclamation operation and for a period which is coincident with the operator's period of extended responsibility for successful revegetation provided in § 816.116 or § 817.116 of this chapter or until achievement of the reclamation requirements of the Act, regulatory programs, and permit, whichever is later.

(2) With the approval of regulatory authority, a bond may be posted and approved to guarantee specific phases of reclamation within the permit area provided the sum of phase bonds posted equals or exceeds the total amount required under §§ 800.14 and 800.15. The scope of work to be guaranteed and the liability assumed under each phase bond shall be specified in detail.

(b) Isolated and clearly defined portions of the permit area requiring extended liability may be separated from the original area and bonded separately with the approval of the regulatory authority. Such areas shall be limited in extent and not constitute a scattered, intermittent, or checkerboard pattern of failure. Access to the separated areas for remedial work may be included in the area under extended liability if deemed necessary by the regulatory authority.

(c) If the regulatory authority approves a long-term, intensive agricultural postmining land use, in accordance with § 816.133 or § 817.133 of this chapter, the applicable 5 or 10 year period of liability shall commence at the date of initial planting for such long-term agricultural use.

(d)(1) The bond liability of the permittee shall include only those actions which he or she is obligated to take under the permit, including completion of the reclamation plan, so that the land will be capable of supporting the postmining land use approved under § 816.133 or § 817.133 of this chapter.

(2) Implementation of an alternative postmining land use approved under §§ 816.133(c) and 817.133(c) which is beyond the control of the permittee, need not be covered by the bond. Bond liability for prime farmland shall be as specified in § 800.40(c)(2).

§ 800.14 Determination of bond amount.

(a) The amount of the bond required for each bonded area shall:

(1) Be determined by the regulatory authority;

(2) Depend upon the requirements of the approved permit and reclamation plan;

(3) Reflect the probable difficulty of reclamation, giving consideration to such factors as topography, geology, hydrology, and revegetation potential; and

(4) Be based on, but not limited to, the estimated cost submitted by the permit applicant.

(b) The amount of the bond shall be sufficient to assure the completion of the reclamation plan if the work has to be performed by the regulatory authority in the event of forfeiture, and in no case shall the total bond initially posted for the entire area under one permit be less than $10,000.

(c) An operator's financial responsibility under § 817.121(c) of this chapter for repairing material damage resulting from subsidence may be satisfied by the liability insurance policy required under § 800.60.

§ 800.15 Adjustment of amount.

(a) The amount of the bond or deposit required and the terms of the acceptance of the applicant's bond shall be adjusted by the regulatory authority from time to time as the area requiring bond coverage is increased or decreased or where the cost of future reclamation changes. The regulatory authority may specify periodic times or set a schedule for reevaluating and adjusting the bond amount to fulfill this requirement.

(b) The regulatory authority shall—

(1) Notify the permittee, the surety, and any person with a property interest in collateral who has requested notification under § 800.21(f) of any proposed adjustment to the bond amount; and

(2) Provide the permittee an opportunity for an informal conference on the adjustment.

(c) A permittee may request reduction of the amount of the performance bond upon submission of evidence to the regulatory authority proving that the permittee's method of operation or other circumstances reduces the estimated cost for the regulatory authority to reclaim the bonded area. Bond adjustments which involve undisturbed land or revision of the cost estimate of reclamation are not considered bond release subject to procedures of § 800.40.

(d) In the event that an approved permit is revised in accordance with Subchapter G of this chapter, the regulatory authority shall review the bond for adequacy and, if necessary, shall require adjustment of the bond to conform to the permit as revised.

§ 800.16 General terms and conditions of bond.

(a) The performance bond shall be in an amount determined by the regulatory authority as provided in § 800.14.

(b) The performance bond shall be payable to the regulatory authority.

(c) The performance bond shall be conditioned upon faithful performance of all the requirements of the Act, this chapter, the regulatory program, and the approved permit, including completion of the reclamation plan.

(d) The duration of the bond shall be for the time period provided in § 800.13.

(e)(1) The bond shall provide a mechanism for a bank or surety company to give prompt notice to the regulatory authority and the permittee of any action filed alleging the insolvency or bankruptcy of the surety company, the bank, or the permittee, or alleging any violations which would result in suspension or revocation of the surety or bank charter or license to do business.

(2) Upon the incapacity of a bank or surety company by reason of bankruptcy, insolvency, or suspension or revocation of a charter or license, the permittee shall be deemed to be without bond coverage and shall promptly notify the regulatory authority. The regulatory authority, upon notification received through procedures of paragraph (e)(1) of this section or from the permittee, shall, in writing, notify the operator who is without bond coverage and specify a reasonable period, not to exceed 90 days, to replace bond coverage. If an adequate bond is not posted by the end of the period allowed, the operator shall cease coal extraction and shall comply with the provisions of § 816.132 or § 817.132 of this chapter and shall immediately begin to conduct reclamation operations in accordance with the reclamation plan. Mining operations shall not resume until the regulatory authority has determined that an acceptable bond has been posted.

§ 800.17 Bonding requirements for underground coal mines and long-term coal-related surface facilities and structures.

(a) *Responsibilities.* The regulatory authority shall require bond coverage, in an amount determined under § 800.14, for long-term surface facilities and structures, and for areas disturbed by surface impacts incident to underground mines, for which a permit is required. Specific reclamation techniques required for underground mines and long-term facilities shall be considered in determining the amount of bond to complete the reclamation.

(b) *Long-term period of liability.* (1) The period of liability for every bond covering long-term surface disturbances shall commence with the issuance of a permit, except that to the extent that such disturbances will occur on a succeeding increment to be bonded, such liability will commence upon the posting of the bond for that increment before the initial surface disturbance of that increment. The liability period shall extend until all reclamation, restoration, and abatement work under the permit has been completed and the bond is released under the provisions of § 800.40, or until the bond has been replaced or extended in accordance with § 800.17(b)(3).

(2) Long-term surface disturbances shall include long-term coal-related surface facilities and structures, and surface impacts incident to underground coal mining, which disturb an area for a period that exceeds 5 years. Long-term surface disturbances include, but are not limited to: surface features of shafts and slope facilities, coal refuse areas, powerlines, bore-holes, ventilation shafts, preparation plants, machine shops, roads, and loading and treatment facilities.

(3) To achieve continuous bond coverage for long-term surface disturbances, the bond shall be conditioned upon extension, replacement, or payment in full, 30 days prior to the expiration of the bond term.

(4) Continuous bond coverage shall apply throughout the period of extended responsibility for successful revegetation and until the provisions of § 800.40 have been met.

(c) *Bond forfeiture.* The regulatory authority shall take action to forfeit a bond pursuant to this section, if 30 days prior to bond expiration, the operator has not filed: (1) A performance bond for a new term as required for continuous coverage, or (2) a performance bond providing coverage for the period of liability, including the period of extended responsibility for successful revegetation.

§ 800.20 Surety bonds.

(a) A surety bond shall be executed by the operator and a corporate surety licensed to do business in the State where the operation is located.

(b) Surety bonds shalll be noncancellable during their terms, except that surety bond coverage for lands not disturbed may be cancelled with the prior consent of the regulatory authority. The regulatory authority shall advise the surety, within 30 days after receipt of a notice to cancel bond, whether the bond may be cancelled on an undisturbed area.

§ 800.21 Collateral bonds.

(a) Collateral bonds, except for letters of credit, cash accounts, and real property, shall be subject to the following conditions:

(1) The regulatory authority shall keep custody of collateral deposited by the applicant until authorized for release or replacement as provided in this subchapter.

(2) The regulatory authority shall value collateral at its current market value, not at face value.

(3) The regulatory authority shall require that certificates of deposit be made payable to or assigned to the regulatory authority, both in writing and upon the records of the bank issuing the certificates. If assigned, the regulatory authority shall require the banks issuing these certificates to waive all rights of setoff or liens against those certificates.

(4) The regulatory authority shall not accept an individual certificate of deposit in an amount in excess of $100,000 or the maximum insurable amount as determined by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

(b) Letters of credit shall be subject to the following conditions:

(1) The letter may be issued only by a bank organized or authorized to do business in the United States;

(2) Letters of credit shall be irrevocable during their terms. A letter of credit used as security in areas requiring continuous bond coverage shall be forfeited and shall be collected by the regulatory authority if not replaced by other suitable bond or letter of credit at least 30 days before its expiration date.

(3) The letter of credit shall be payable to the regulatory authority upon demand, in part or in full, upon receipt from the regulatory authority of a notice of forfeiture issued in accordance with § 800.50.

(c) Real property posted as a collateral bond shall meet the following conditions:

(1) The applicant shall grant the regulatory authority a first mortgage, first deed of trust, or perfected first-lien security interest in real property with a right to sell or otherwise dispose of the property in the event of forfeiture under § 800.50.

(2) In order for the regulatory authority to evaluate the adequacy of the real property offered to satisfy collateral requirements, the applicant shall submit a schedule of the real property which shall be mortgaged or pledged to secure the obligations under the indemnity agreement. The list shall include—

(i) A description of the property;

(ii) The fair market value as determined by an independent appraisal conducted by a certified appraiser; and

(iii) Proof of possession and title to the real property.

(3) The property may include land which is part of the permit area; however, land pledged as collateral for a bond under this section shall not be disturbed under any permit while it is serving as security under this section.

(d) Cash accounts shall be subject to the following conditions:

(1) The regulatory authority may authorize the operator to supplement the bond through the establishment of a cash account in one or more federally-insured or equivalently protected accounts made payable upon demand to, or deposited directly with, the regulatory authority. The total bond including the cash account shall not be less than the amount required under terms of performance bonds including any adjustments, less amounts released in accordance with § 800.40.

(2) Any interest paid on a cash account shall be retained in the account and applied to the bond value of the account unless the regulatory authority has approved the payment of interest to the operator.

(3) Certificates of deposit may be substituted for a cash account with the approval of the regulatory authority.

(4) The regulatory authority shall not accept an individual cash account in an amount in excess of $100,000 or the maximum insurable amount as determined by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

(e)(1) The estimated bond value of all collateral posted as assurance under this section shall be subject to a margin which is the ratio of bond value to market value, as determined by the regulatory authority. The margin shall reflect legal and liquidation fees, as well as value depreciation, marketability, and fluctuations which might affect the net cash available to the regulatory authority to complete reclamation.

(2) The bond value of collateral may be evaluated at any time but it shall be evaluated as part of permit renewal and, if necessary, the performance bond amount increased or decreased. In no case shall the bond value of collateral exceed the market value.

(f) Persons with an interest in collateral posted as a bond, and who desire notification of actions pursuant to the bond, shall request the notification in writing to the regulatory authority at the time collateral is offered.

§ 800.30 Replacement of bonds.

(a) The regulatory authority may allow a permittee to replace existing bonds with other bonds that provide equivalent coverage.

(b) The regulatory authority shall not release existing performance bonds until the permittee has submitted, and the regulatory authority has approved, acceptable replacement performance bonds. Replacement of a performance bond pursuant to this section shall not constitute a release of bond under § 800.40.

§ 800.40 Requirement to release performance bonds.

(a) *Bond release application.* (1) The permittee may file an application with the regulatory authority for the release of all or part of a performance bond. Applications may be filed only at times or during seasons authorized by the regulatory authority in order to properly evaluate the completed reclamation operations. The times or seasons appropriate for the evaluation of certain types of reclamation shall be established in the regulatory program or identified in the mining and reclamation plan required in Subchapter G of this chapter and approved by the regulatory authority.

(2) Within 30 days after an application for bond release has been filed with the regulatory authority, the operator shall submit a copy of an advertisement placed at least once a week for four successive weeks in a newspaper of general circulation in the locality of the surface coal mining operation. The advertisement shall be considered part of any bond release application and shall contain the permit number and approval date, notification of the precise location of the land affected, the number of acres, the type and amount of the bond filed and the portion sought to be released, the type and appropriate dates of reclamation work performed, a description of the results achieved as they relate to the operator's approved reclamation plan, and the name and address of the regulatory authority to which written comments, objections, or requests for public hearings and informal conferences on the specific bond release may be submitted pursuant to § 800.40 (f) and (h). In addition, as part of any bond release application, the applicant shall submit copies of letters which he or she has sent to adjoining property owners, local governmental bodies, planning agencies, sewage and water treatment authorities, and water companies in the locality in which the surface coal mining and reclamation operation took place, notifying them of

the intention to seek release from the bond.

(b) *Inspection by regulatory authority.* (1) Upon receipt of the bond release application, the regulatory authority shall, within 30 days, or as soon thereafter as weather conditions permit, conduct an inspection and evaluation of the reclamation work involved. The evaluation shall consider, among other factors, the degree of difficulty to complete any remaining reclamation, whether pollution of surface and subsurface water is occurring, the probability of future occurrence of such pollution, and the estimated cost of abating such pollution. The surface owner, agent, or lessee shall be given notice of such inspection and may participate with the regulatory authority in making the bond release inspection. The regulatory authority may arrange with the permittee to allow access to the permit area, upon request by any person with an interest in bond release, for the purpose of gathering information relevant to the proceeding.

(2) Within 60 days from the filing of the bond release application, if no public hearing is held pursuant to paragraph (f) of this section, or, within 30 days after a public hearing has been held pursuant to paragraph (f) of this section, the regulatory authority shall notify in writing the permittee, the surety or other persons with an interest in bond collateral who have requested notification under § 800.21(f), and the persons who either filed objections in writing or objectors who were a party to the hearing proceedings, if any, of its decision to release or not to release all or part of the performance bond.

(c) The regulatory authority may release all or part of the bond for the entire permit area or incremental area if the regulatory authority is satisfied that all the reclamation or a phase of the reclamation covered by the bond or portion thereof has been accomplished in accordance with the following schedules for reclamation of Phases I, II, and III:

(1) At the completion of Phase I, after the operator completes the backfilling, regrading (which may include the replacement of topsoil) and drainage control of a bonded area in accordance with the approved reclamation plan, 60 percent of the bond or collateral for the applicable area.

(2) At the completion of Phase II, after revegetation has been established on the regraded mined lands in accordance with the approved reclamation plan, an additional amount of bond. When determining the amount of bond to be released after successful revegetation has been established, the regulatory authority shall retain that amount of bond for the revegetated area which would be sufficient to cover the cost of reestablishing revegetation if completed by a third party and for the period specified for operator responsibility in Section 515 of the Act for reestablishing revegetation. No part of the bond or deposit shall be released under this paragraph so long as the lands to which the release would be applicable are contributing suspended solids to streamflow or runoff outside the permit area in excess of the requirements set by Section 515(b)(10) of the Act and by Subchapter K of this chapter or until soil productivity for prime farmlands has returned to the equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent management practices as determined from the soil survey performed pursuant to Section 507(b)(16) of the Act and Part 823 of this chapter. Where a silt dam is to be retained as a permanent impoundment pursuant to Subchapter K of this chapter, the Phase II portion of the bond may be released under this paragraph so long as provisions for sound future maintenance by the operator or the landowner have been made with the regulatory authority.

(3) At the completion of Phase III, after the operator has completed successfully all surface coal mining and reclamation activities, the release of the remaining portion of the bond, but not before the expiration of the period specified for operator responsibility in § 816.116 or § 817.116 of this chapter. However, no bond shall be fully released under provisions of this section until reclamation requirements of the Act and the permit are fully met.

(d) If the regulatory authority disapproves the application for release of the bond or portion thereof, the regulatory authority shall notify the permittee, the surety, and any person with an interest in collateral as provided for in § 800.21(a)(4), in writing, stating the reasons for disapproval and recommending corrective actions necessary to secure the release and allowing an opportunity for a public hearing.

(e) When any application for total or partial bond release is filed with the regulatory authority, the regulatory authority shall notify the municipality in which the surface coal mining operation is located by certified mail at least 30 days prior to the release of all or a portion of the bond.

(f) Any person with a valid legal interest which might be adversely affected by release of the bond, or the responsible officer or head of any Federal, State, or local governmental agency which has jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the operation or which is authorized to develop and enforce environmental standards with respect to such operations, shall have the right to file written objections to the proposed release from bond with the regulatory authority within 30 days after the last publication of the notice required by § 800.40(a)(2). If written objections are filed and a hearing is requested, the regulatory authority shall inform all the interested parties of the time and place of the hearing, and shall hold a public hearing within 30 days after receipt of the request for the hearing. The date time, and location of the public hearing shall be advertised by the regulatory authority in a newspaper of general circulation in the locality for two consecutive weeks. The public hearing shall be held in the locality of the surface coal mining operation from which bond release is sought, at the location of the regulatory authority office, or at the State capital, at the option of the objector.

(g) For the purpose of the hearing under paragraph (f) of this section, the regulatory authority shall have the authority to administer oaths, subpoena witnesses or written or printed material, compel the attendance of witnesses or the production of materials, and take evidence including, but not limited to, inspection of the land affected and other surface coal mining operations carried on by the applicant in the general vicinity. A verbatim record of each public hearing shall be made, and a transcript shall be made available on the motion of any party or by order of the regulatory authority.

(h) Without prejudice to the right of an objector or the applicant, the regulatory authority may hold an informal conference as provided in Section 513(b) of the Act to resolve such written objections. The regulatory authority shall make a record of the informal conference unless waived by all parties, which shall be accessible to all parties. The regulatory authority shall also furnish all parties of the informal conference with a written finding of the regulatory authority based on the informal conference, and the reasons for said finding.

§ 800.50 Forfeiture of bonds.

(a) If an operator refuses or is unable to conduct reclamation of an unabated violation, if the terms of the permit are not met, or if the operator defaults on the conditions under which the bond was accepted, the regulatory authority

shall take the following action to forfeit all or part of a bond or bonds for any permit area or an increment of a permit area:

(1) Send written notification by certified mail, return receipt requested, to the permittee and the surety on the bond, if any, informing them of the determination to forfeit all or part of the bond, including the reasons for the forfeiture and the amount to be forfeited. The amount shall be based on the estimated total cost of achieving the reclamation plan requirements.

(2) Advise the permittee and surety, if applicable, of the conditions under which forfeiture may be avoided. Such conditions may include, but are not limited to—

(i) Agreement by the permittee or another party to perform reclamation operations in accordance with a compliance schedule which meets the conditions of the permit, the reclamation plan, and the regulatory program and a demonstration that such party has the ability to satisfy the conditions; or

(ii) The regulatory authority may allow a surety to complete the reclamation plan, or the portion of the reclamation plan applicable to the bonded phase or increment, if the surety can demonstrate an ability to complete the reclamation in accordance with the approved reclamation plan. Except where the regulatory authority may approve partial release authorized under § 800.40, no surety liability shall be released until successful completion of all reclamation under the terms of the permit, including applicable liability periods of § 800.13.

(b) In the event forfeiture of the bond is required by this section, the regulatory authority shall—

(1) Proceed to collect the forfeited amount as provided by applicable laws for the collection of defaulted bonds or other debts if actions to avoid forfeiture have not been taken, or if rights of appeal, if any, have not been exercised within a time established by the regulatory authority, or if such appeal, if taken, is unsuccessful.

(2) Use funds collected from bond forfeiture to complete the reclamation plan, or portion thereof, on the permit area or increment, to which bond coverage applies.

(c) Upon default, the regulatory authority may cause the forfeiture of any and all bonds deposited to complete reclamation for which the bonds were posted. Unless specifically limited, as provided in § 800.11(d)(3), bond liability shall extend to the entire permit area under conditions of forfeiture.

(d)(1) In the event the estimated amount forfeited is insufficient to pay for the full cost of reclamation, the operator shall be liable for remaining costs. The regulatory authority may complete, or authorize completion of, reclamation of the bonded area and may recover from the operator all costs of reclamation in excess of the amount forfeited.

(2) In the event the amount of performance bond forfeited was more than the amount necessary to complete reclamation, the unused funds shall be returned by the regulatory authority to the party from whom they were collected.

§ 800.60 Terms and conditions for liability insurance.

(a) The regulatory authority shall require the applicant to submit as part of its permit application a certificate issued by an insurance company authorized to do business in the United States certifying that the applicant has a public liability insurance policy in force for the surface coal mining and reclamation operations for which the permit is sought. Such policy shall provide for personal injury and property damage protection in an amount adequate to compensate any persons injured or property damaged as a result of the surface coal mining and reclamation operations, including the use of explosives, and who are entitled to compensation under the applicable provisions of State law. Minimum insurance coverage for bodily injury and property damage shall be $300,000 for each occurrence and $500,000 aggregate.

(b) The policy shall be maintained in full force during the life of the permit or any renewal thereof, including the liability period necessary to complete all reclamation operations under this chapter.

(c) The policy shall include a rider requiring that the insurer notify the regulatory authority whenever substantive changes are made in the policy including any termination or failure to renew.

(d) The regulatory authority may accept from the applicant, in lieu of a certificate for a public liability insurance policy, satisfactory evidence from the applicant that it satisfies applicable State self-insurance requirements approved as part of the regulatory program and the requirements of this section.

§ 800.70 Bonding for anthracite operations in Pennsylvania.

(a) All of the provisions of this Subchapter shall apply to bonding and insuring anthracite surface coal mining and reclamation operations in Pennsylvania except that—

(1) Specified bond limits shall be determined by the regulatory authority in accordance with applicable provisions of Pennsylvania statutes, rules and regulations promulgated thereunder, and implementing policies of the Pennsylvania Department of Environmental Resources.

(2) The period of liability for responsibility under each bond shall be tablished for those operations in accordance with applicable laws of the State of Pennsylvania, rules and regulations promulgated thereunder, and implementing policies of the Pennsylvania Department of Environmental Resources.

(b) Upon amendment of the Pennsylvania permanent regulatory program with respect to specified bond limits and period of revegetation responsibility for anthracite surface coal mining and reclamation operations, any person engaging in or seeking to engage in those operations shall comply with additional regulations the Secretary may issue as are necessary to meet the purposes of the Act.

PARTS 801, 805, 807, 808, and 809—[REMOVED]

2. 30 CFR Parts 801, 805, 807, 808, and 809 are removed.

PART 806—FORM, CONDITIONS, AND TERMS OF PERFORMANCE BONDS AND LIABILITY INSURANCE—[AMENDED]

§§ 806.1, 806.11, 806.12, 806.13, 806.15, 806.16, and 806.17 [Removed]

3. Sections 806.1, 806.11, 806.12, 806.13, 806.15, 806.16, and 806.13 are removed.

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

[FR Doc. 83-19480 Filed 7-18-83; 8:45 am]

BILLING CODE 4310-05-M

federal register

Tuesday
July 19, 1983

Part IV

Department of Energy

L—Reactor Operation, Savannah River Plant, Aiken, S.C.; Intent To Prepare Environmental Impact Statement

DEPARTMENT OF ENERGY

L-Reactor Operation, Savannah River Plant, Aiken, South Carolina; Intent To Prepare an Environmental Impact Statement

AGENCY: Department of Energy.

ACTION: Notice of intent to prepare an environmental impact statement pertaining to the proposed resumption of L-Reactor operation at the Savannah River plant.

SUMMARY: The Department of Energy (DOE) announces its intent to prepare an Environmental Impact Stateament (EIS), pursuant to the Energy and Water Development Appropriations Act, 1984, and the National Environmental Policy Act (NEPA) of 1969, as amended, to address the proposed resumption of L-Reactor operation at the Savannah River Plant (SRP), Aiken, South Carolina. The proposal for resumption of L-Reactor is based on (1) requirements, approved by President Carter in 1980 and reaffirmed by President Reagan in 1982, for additional production capacity of defense nuclear material; and (2) studies by DOE showing L-Reactor to be one of the key elements in the initiatives required to meet the increased nuclear materials production requirements. The preparation and completion of the EIS will be on an expedited basis, in accordance with the Energy and Water Development Appropriations Act, 1984.

Scoping: DOE invites interested agencies, organizations, and the general public to submit comments or suggestions for consideration in connection with the preparation of the EIS. Written comments or suggestions to assist DOE in identifying significant environmental issues and the appropriate scope of the EIS are requested by August 10, 1983. Written comments should be submittd to Mr. M. J. Sires at the address listed below. Written comments post-marked after August 10, 1983, will be considered to the degree practicable. The DOE will also hold four public scoping meetings at the locations and times indicated below:

(1) Augusta, Georgia on August 1, 1983, at 9:00 am and 6:00 pm at the Augusta Hilton Convention Center, 730 Ellis Street, Augusta, Georgia 30904.

(2) Aiken, South Carolina on August 2, 1983, at 9:00 am and 6:00 pm at the Odell Weeks Activity Center, 1700 Whiskey Road, Aiken, South Carolina 29801.

(3) Beaufort, South Carolina on August 4, 1983 at 9:00 am and 6:00 pm at the Holiday Inn-Beaufort, Highway 21 at Lovejoy, Beaufort, South Carolina 29902.

(4) Savannah, Georgia on August 5, 1983, at 9:00 am and 6:00 pm at the Hyatt Regency, 2 West Bay Street, Savannah, Georgia, 31401.

Individuals desiring to make oral presentations at one of these meetings should notify Mr. Sires at the address listed below as soon as possible after the appearance of this notice in the **Federal Register** so that the Department may arrange a schedule for the presentations. Persons who have not submitted a request to speak in advance may register to speak at the meetings before each meeting commences. They will be called on to present their comments as time permits. In order to assure that everyone who wishes to present oral comments has the opportunity to do so, five minutes will be alloted to individuals, and ten minutes will be alloted to individuals representing groups. Comments received at these scoping meetings will also be considered in the preparation of the draft EIS.

Upon completion of the draft EIS, its availability will be announced in the **Federal Register** and local news media, and comments will be solicited. Comments on the draft EIS will be considered in preparing the final EIS. Transcripts of the scoping meeting will be prepared by the DOE. Members of the public may inspect the transcripts of the scoping meetings and other NEPA documents and major references used in the preparation of the EIS during normal business hours at the DOE Public Reading Room, 211 York St., NE, Aiken, SC.

Those interested parties who do not wish to submit comments or suggestions at this time but would like to receive a copy of the draft EIS for review and comment should notify Mr. M. J. Sires at the address given below.

ADDRESS: Written comments or suggustions on the scope of the EIS may be submitted to: Mr. M. J. Sires, III, Assistant Manager for Health, Safety, and Environment, U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, S.C. 29801, (803) 725–2597.

Envelopes should be maked "EIS for L-Reactor."

For general information on the DOE EIS process, please contact: Office of Environmental Compliance, EP–362, Office of the Assistant Secretary for Environmental Protection, Safety, and Emergency Preparedness, U.S. Department of Energy, Attn: Ms. Carol M. Borgstrom, Room 4G–085, Forrestal Building, 1000 Indenpendence Avenue SW., Washington, D.C. 20585, (202) 252–4600.

Blackground Information: The SRP is a controlled-access, major DOE installation stablished in the early 1950's for the production of nuclear materials for national defense. Plant facilities, which may be characterized as heavy industry, consist of five production reactors (three operational and two in standby status), electrical and steam generating plants, two chemical separations facilities, fuel and target fabrication facilities, a heavy-water production facility (in standby status), research laboratories, repair shops, warehouses, and administrative facilities. Reactor operation began at SRP in 1953 and five reactors operated between 1956 and 1964 (designated C, K, P, L, and R). R-Reactor was placed in standby status in 1964 due to decreasing demand for nuclear materials. In 1968, L-Reactor was also placed in standby status due to a continuing decrease in demand for nuclear materials for national defense.

Recent requirements for additional nuclear materials were approved by President Carter in 1980, and reaffirmed by President Reagan in 1982. This increased need for nuclear materials stems largely from efforts to modernize the weapons in the stockpile. The proposed restart of L-Reactor has been detrmined to be one of the key elements of the continuation of initiatives required to meet the increased nuclear materials production requirements. Funds for additional production capacity, and to restore and upgrade L-Reactor for potential restart were provided in a supplemental appropriation in FY 1981. The restart of L-Reactor as soon as possible, but no later than October 1983, was directed by President Reagan on November 18, 1982.

During the 15 years since L-Reactor was placed in standby status, modifications to the three operating reactors have been made to enhance their safety and operational reliability. Currently, L-Reactor, which has the same operations configuration, is being upgraded and restored to the same safety and reliability attained by the other operating reactors at SRP. Upgrading and restoration is scheduled to be completed by October 1983. Approximately 60 percent of the upgrading costs are for safety and environmental protection.

The Energy and Water Development Appropriations Act, 1984, directs Doe to prepare this EIS on an expedited basis. Specifically, DOE is to issue the Record of Decision, after the issuance of the final EIS, between December 1, 1983, and January 1, 1984. Given the extremely short time period available

for preparation and completion of this EIS, DOE is considering, consistent with the provisions of the Energy and Water Development Appropriations Act, 1984, to reduce the comment period for the draft EIS to 30 days from the normally required minimum of 45 days. The draft EIS should be available for public review in late September 1983.

DOE prepared an environmental assessment (DOE/EA-0195) on the proposed restart of L-Reactor, which was published in August 1982, and a Finding of No Significant Impact was issued on August 23, 1982 (47 FR 36691). A floodplain/wetlands statement of finding for the proposed operation of L-Reactor was also issued by DOE on that date (47 FR 36691).

The Committe on Armed Services, United States Senate, conducted a hearing in North Augusta, South Carolina, on February 9, 1983 (Senate Hearing 98-18), concerning the environmental consequences of the proposed restart of the L-Reactor. At the request of Senators Thurmond and Mattingly, DOE agreed to conduct a 90-day public review and to hold four additional hearings on the February 9, 1983, Senate hearing record (48 FR 16535). DOE conducted hearings in Augusta and Savannah, Georgia, and in Aiken and Beaaufort, South Carolina, between May 23 and 27, 1983. The 90-day public review period ended on July 17, 1983. In mid-August DOE will submit a report to the Armed Services and Appropriations Committees of the Senate and House of Representatives summarizing the public comments.

Alternatives: The alternatives proposed to be considered in this EIS are outlined below:

1. Production Alternatives.

• L-Reactor operation for the production of plutonium (Preferred Alternative).

• Maintain L-Reactor in an upgraded standby status (No Action).

• DOE has also considered the following production alternatives:

—Restart of R-Reactor at SRP
—Restart Hanford Reactor
—Increase throughput-SRP reactors and N-Rector

DOE will discuss in the EIS the reasonableness of these production alternatives. Due to national security considerations, some discussions may have to be presented in a classfied supplement.

2. Given the operation of L-Reactor as DOE's preferred alternative, this EIS will present analyses on environmental issues identified below in considering potential mitigation alternatives.

• Safety system alternatives.
—Confinement system
—Improved confinement system
—Containment dome
—Tall stack

• Cooling water alternatives.
—Direct discharge to Steel Creek
—Once-through systems
—Recirculation systems
—Modification of reactor operation

• Liquid waste disposal alternatives.
—Discharge to seepage basins
—In-plant waste treatment—solid waste disposal
—Additional effluent treatment and discharge to seepage basins
—Detritiation

Identification of environmental issues: The following issues will be analyzed for the proposed action during the preparation of the EIS. This list, based in part on the comments expressed at the public hearings on the environemental consequences of the proposed restart of the L-Reactor, is neither intented to be all inclusive, nor is it a predetermination of potential impacts. Additions or deletions to this list may occur as the result of the scoping process.

(1) *Socioeconomic:* Changes in property values, patterns of investment, and the economic viability of communities in areas surrounding the SRP as a result of the resumption of L-Reactor operation.

(2) *Endangered Species:* The biological evaluation and the development of needed mitigation plans as well as the DOE status in the consultation process required by Section 7 of the Endangered Species Act for the American alligator, red-cockaded woodpecker, shortnose sturgeon, and the wood stork (recently proposed for listing as an endangered species).

(3) *Fisheries:* Impingement and entrainment of fish, and fish eggs and larvae, respectively, due to the withdrawal of cooling water for L-Reactor; and a zone of passage for riverine fishes in the Savannah River adjacent to Steel Creek, potential for blockage of passage to the swamp, and associated loss of spawning habitat in the swamp during the discharge of cooling water by L-Reactor.

(4) *Ground-water Usage:* Continued drawdown of the Tuscaloosa Aquifer used as a regional source of drinking and industrial water resulting from the sustained ground-water withdrawal by L-Reactor and other existing and planned SRP facilities.

(5) *Radiocesium Remobilization:* The remobilization of radiocesium (previously deposited in Steel Creek) to the Savannah River, a source of drinking water, and a source of commercial and sport fish (also see Radiological Effects).

(6) *Radiological Effects:* Does commitments resulting from (a) normal L-Reactor operation, (b) accidental releases of radioactivity from L-Reactor, and (c) radiocesium remobilized from Steel Creek released to the Savannah River (also see Radiocesium Remobilization and Safety.)

(7) *Safety:* The consequences and risks of postulated accidents related to reactor operation and transport of radioactive materials to and from SRP. (See Mitigation Alternatives in the preceding section.)

(8) *Health Effects:* The potential for increased incidents of cancer death and genetic effects due to radioactive releases.

(9) *Ground-water Contamination:* Potential contamination of ground-water by the discharge of radioactive and nonradioactive chemical wastes to seepage basins in the L-Reactor area and the F- and H-Chemical Separations areas, and the potential for increased contamination of aquifers with chlorinated hydrocarbons by the incremental discharge of liquid waste (caused by L-Reactor operation) to the seepage basin in the Target Fuel Fabrication facilities.

(10) *Cumulative Thermal Effects:* Cumulative effects of cooling-water discharges to the Savannah River from C-, K-, and L-Reactor, the Vogtle Nuclear Power Plant, and the Urguhart Steam Generating Station.

(11) *Cumulative Radiological Effects:* Incremental dose commitment from radioactive releases (atmospheric and liquid) from SRP support facilities as the result of L-Reactor operation, and the cumulative dose commitment from (existing and planned) SRP and neighboring nuclear facilities.

Radioactive waste management practices at SRP have been addressed by related published NEPA documents, including:

• ERDA-1537, "Final Environmental Impact Statement—Waste Management Operations, Savannah River Plant, Aiken, South Carolina," September, 1977.

• DOE/EIS-0023, "Final Environmental Impact Statement—Long-Term Management of Defense High-Level Radioactive Wastes, Savannah River Plant, Aiken, South Carolina," November, 1979.

• DOE/EIS-0062, "Final Environmental Impact Statement—Waste Management Operations, Savannah River Plant, Aiken, South Carolina," Double Shell Tanks for Defense High-Level Radioactive Waste

Storage" (Supplement to ERDA–1537), April, 1980.

• DOE/EIS–0082, "Final Environmental Impact Statement—Defense Waste Processing Facility, Savannah River Plant, Aiken, South Carolina," February, 1982.

• DOE/EA–0179, "Environmental Assessment—Waste Form Selection for SRP High-Level Waste," July, 1982.

Dated in Washington, DC, this 18th day of July 1983, for the United States Department of Energy.

William A. Vaughan,

Assistant Secretary, Environmental Protection, Safety and Emergency Preparedness.

[FR Doc. 83–19687 Filed 7–18–83; 12:01 pm]

BILLING CODE 6450–01–M

federal register

Tuesday
July 19, 1983

Part V

Department of Agriculture

Animal and Plant Health Inspection Service

Harry S Truman, Animal Import Center; Final Rule

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 83-083]

Harry S Truman Animal Import Center

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends 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 imporation of additional cattle through the HSTAIC after the time of the initial lottery proceeding. This action is needed to ensure that the HSTAIC is more fully utilized and to help reduce costs for the importation of animals through the HSTAIC.

EFFECTIVE DATE: July 19, 1983.

FOR FURTHER INFORMATION CONTACT: Dr. M. R. Crane, VS, APHIS, USDA, Room 848, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8170.

SUPPLEMENTARY INFORMATION:

Background

This document amends the regulations in 9 CFR Part 92 (referred to below as the regulations) concerning animals imported through the Harry S Truman Animal Import Center (HSTAIC). This amendment is based on a proposal published in the **Federal Register** on June 30, 1983 (48 FR 30142-30144).

The regulations contain provisions for authorizing the importation of cattle through the HSTAIC based on a lottery proceeding conducted in accordance with specified procedures. Previously, the procedures allowed authorizations for the importation of cattle through the HSTAIC to be granted to applicants only at the time of the initial lottery proceeding regardless of whether available space still existed after the completion of such proceeding. However, it appeared that it was necessary to take action to ensure that the HSTAIC is more fully utilized and to help reduce costs for the importation of animals through the HSTAIC. Therefore, it was proposed to amend the regulations to provide a mechanism for allowing authorizations for the importation of additional cattle through the HSTAIC to be granted after the time of the initial lottery proceeding to those applicants who already have received authorizations at the time of the initial lottery proceeding.

The document of June 30, 1983, invited the submission of written comments on or before July 15, 1983. No comments were received. The factual situation and the analysis of the alternatives which were set forth in the proposal of June 30, 1983, still provide a basis for the amendment. Therefore, the proposal to amend the regulations is adopted.

Executive Order 12291 and Regulatory Flexibility Act

This final rule is issued 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 will not have an effect on the economy of $100 million or more; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will 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 the HSTAIC is insignificant compared with 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 will 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 adopted 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.

Effective Date

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 improters 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 this final rule is to be made effective in time to allow its provisions to be used for the importation of additional cattle at the scheduled importation in November, 1983, if must be made effective immediately. This is necessary to allow time for an additional drawing; for the execution of cooperative agreements and the 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 must take place in Europe in September, 1983, and preembarkation quarantining of the animals which must take place in Europe in October, 1983. Therefore, in accordance with the administrative procedure provisions in 5 U.S.C. 553, good cause is found for making this action effective less than 30 days after publication in the **Federal Register**.

List of Subjects in 9 CFR Part 92

Animal Diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Meat and 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

Accordingly, 9 CFR Part 92 is amended by adding a new § 92.41(a)(5) which reads 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 of 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.

(Sec. 2, 32 Stat. 792, as amended; sec. 1, 84 Stat. 202; (21 U.S.C. 111 and 135); 7 CFR 2.17, 2.51, and 371.2(d))

Done at Washington, D.C., this 18th day of July, 1983.

K. R. Hook,

Acting Deputy Administrator, Venterinary Services.

[FR Doc. 83-19693 Filed 7-18-83; 12:13 pm]

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The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR NOTICE 41 FR 32914, August 6, 1976.) Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.

Monday	Tuesday	Wednesday	Thursday	Friday
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DOT/NHTSA	HHS/FDA		DOT/NHTSA	HHS/FDA
DOT/RSPA			DOT/RSPA	
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	

Note: The Office of the Federal Register proposes to terminate the formal program of agency publication on assigned days of the week. See 48 FR 19283, April 28, 1983.

List of Public Laws

Last Listing July 15, 1983

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (phone 202–275–3030).

H.R. 3132 / Pub. L. 98–50 Energy and Water Development Appropriation Act, 1984. (July 14, 1983; 97 Stat. 247) Price: $2.25

H.R. 3135 / Pub. L. 98–51 Making appropriations for the Legislative Branch for the fiscal year ending September 30, 1984, and for other purposes. (July 14, 1983; 97 Stat. 263) Price: $2.50

New Publication

List of CFR Sections Affected

(1964 through 1972)

A Research Guide

These two volumes contain a compilation of the "List of CFR Sections Affected (LSA)" for the years 1964 through 1972. Reference to these tables will enable the user to find the precise text of CFR provisions which were in force and effect on any given date during the period covered.

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