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Federal Register

Wednesday
September 14, 1983

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Federal Aviation Administration

Aliens
Immigration and Naturalization Service

Animal Drugs
Food and Drug Administration

Aviation Safety
Federal Aviation Administration

Banks, Banking
Farm Credit Administration

Coastal Zone
National Oceanic and Atmospheric Administration

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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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Postal Service

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Foreign Assets Control Office

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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 and Nutrition Service

7 CFR Part 226

Disposition of Equipment Acquired Under the Food Service Equipment Assistance in the Child Care Food Program

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the Child Care Food Program (CCFP) regulations regarding property management requirements to make the CCFP regulations consistent with the Department's regulations, Uniform Federal Assistance Regulations, 7 CFR Part 3015, published on November 10, 1981, at 46 FR 55636. This rule is also intended to clarify the CCFP requirements for management of property and disposition of equipment purchased with Food Service Equipment Assistance (FSEA) funds.

The Uniform Federal Assistance Regulations provides specific requirements regarding real property, equipment, and supplies whose acquisition is financed by Federal grant funds. It should be noted that 7 CFR Part 3015 is final and no authority exists for these requirements to be modified in the CCFP regulations.

EFFECTIVE DATE: October 14, 1983.

FOR FURTHER INFORMATION CONTACT: Ms. Beverly Walstrom or Ms. Mary Lou Wheeler at the Child Care and Summer Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 416, Alexandria, Virginia 22302, during regular business hours (8:30 a.m. to 5:00 p.m.) Monday through Friday, or call (703) 756-3688.

SUPPLEMENTARY INFORMATION:

Classification. This action has been reviewed under Executive Order 12291 and has been classified *not major* because it will not have an annual effect on the economy of $100 million, will not cause a major increase in cost or prices for Program participants, individual industries, Federal agencies, State or local government agencies or geographic regions, and will not have a significant economic impact on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or foreign markets.

This final rule has also been reviewed with regard to the requirements of Pub. L. 96-354, the Regulatory Flexibility Act. Pursuant to that review, Robert E. Leard, Administrator of the Food and Nutrition Service, has certified that this rule does not have a significant economic impact on a substantial number of small entities.

The Uniform Federal Assistance Regulations (7 CFR Part 3015) were submitted for comment on July 20, 1981, and made final on November 10, 1981. 7 CFR 3015.1 indicates that the requirements of that part supersede any individual USDA regulation. Therefore, good cause exists for dispensing with public comment on this technical incorporation of those already effective rules.

Background

Effective October 1, 1981, Section 810(f) of Pub. L. 97-35, the Omnibus Budget Reconciliation Act of 1981, repealed the Food Service Equipment Assistance Program. As stated in the preamble to the interim CCFP regulation (November 27, 1981, 46 FR 57980), the provisions which prescribed the procedures for administering and distributing FSEA funds to CCFP institutions were deleted, but the definition of FSEA and property management requirements contained in § 226.24 were retained. Section 226.24 sets forth the requirements for management and disposition of property acquired in whole or part with FSEA funds.

Section 226.24—Property Management Requirements, is based on OMB Circular A-102, Attachment N, Property Management Standards. OMB Circular A-102 prescribes uniform standards governing the utilization and disposition of property furnished (1) by the Federal Government; (2) acquired in whole or in part with Federal funds; or (3) whose cost was charged to a project supported by a Federal grant. When the Department issued 7 CFR Part 3015, the requirements of Circular A-102 were included as part of the Department's regulations as Subpart R-Property. The requirements of 7 CFR 226.24 and Subpart R of 7 CFR Part 3015 are similar in most respects. However, the terms "recipient", "subrecipient", and "awarding agency" cited in 7 CFR Part 3015 are being clarified in this rule to identify the CCFP entity. In States that are administered by the Regional Office, "recipient" is the institution and the "awarding agency" is the Food and Nutrition Service (FNS). When the States administer the Program, the "recipient" is the State agency, the "subrecipient" is the institution, and the "awarding agency" is FNS. Disposition of property must be conducted in accordance with 7 CFR Part 3015. These Uniform Federal Assistance Regulations authorize some additional options which may be followed with regard to disposition of property whose acquisition cost was $1000 or more, and also provides a description of the conditions for the retention of these proceeds.

7 CFR Part 3015 allows the recipient (whether the State agency or the institution) to dispose of the original or replacement equipment acquired in part or whole with grant funds whose acquisition cost was less than $1000. The recipient may (1) sell, (2) retain, or (3) otherwise dispose of such equipment with no further obligation to the Federal government. However, if the acquisition cost of the equipment exceeded $1000, the Federal government shall have the right to an amount calculated by multiplying the current market value or the proceeds from the sale by the Federal share of the equipment. If the recipient is still receiving grants from the same Federal Program and the awarding agency approves, the net amount due may be used for allowable Program costs. Otherwise, the net amount must be returned to the awarding agency by check or money order.

7 CFR Part 3015 also provides that when the equipment has been disposed of, and the recipient has retained the

proceeds, the recipient (State agency only) or the awarding agency shall, as part of their closeout review procedures, review the recipients records to support the use of proceeds for Program purposes. When the records indicate that the proceeds have not been used to enhance the food service program, and the recipient is not receiving grant support from the same Federal program, the awarding agency shall have the authority to recover such funds or waive the recovery procedures. However, the institution may retain ten percent of the proceeds or $100, whichever is greater, for the expense involved in the disposition of the equipment. When the recipient (State agency only) recovers proceeds from equipment disposition, replacement or transfer, it must continue to account for the use of the net Federal share for CCFP purposes by reporting any funds obtained on the SF-269 report. The Uniform Federal Assistance Regulations, 7 CFR Part 3015, and existing CCFP regulations require that these records and all other Program records must be maintained for three years.

Since the Department is amending § 226.24 on property management requirements to conform with 7 CFR Part 3015, the definition on nonexpendable personal property in § 226.2 is obsolete and has been deleted.

The Department believes that these options provided by 7 CFR Part 3015 will provide the States with greater flexibility in Program management, and will involve less paperwork when such funds are recovered.

List of Subjects in 7 CFR Part 226

Day care, Food assistance programs, Grant programs—health, Infants and children, Reporting and recordkeeping requirements, Surplus agricultural commodities.

PART 226—CHILD CARE FOOD PROGRAM

Accordingly, Part 226 is to be amended as follows:

§ 226.2 [Amended]

1. Section 226.2 is amended to remove the definition of "nonexpendable personal property."

2. Section 226.24 is revised to read as follows:

§ 226.24 Property management requirements.

Institutions and administering agencies shall follow the policies and procedures governing title, use, and disposition of equipment obtained by purchase, whose cost was acquired in whole or part with food service equipment assistance funds in accordance with the Department's Uniform Federal Assistance Regulations (7 CFR Part 3015).

In accordance with the Paperwork Reduction Act of 1980, (44 U.S.C. 3507), the reporting and recordkeeping requirements that are included in this final rule have been approved by the Office of Management and Budget (OMB) under clearance 0584-0055.

(Section 2, Pub. L. 95-627, 92 Stat. 3603 (42 U.S.C. 1766); Section 10, Pub. L. 89-642, 80 Stat. 889 (42 U.S.C. 1779))

Dated: September 9, 1983.

Robert E. Leard,

Administrator.

[FR Doc. 83-24981 Filed 9-13-83; 8:45 am]

BILLING CODE 3410-30-M

Farmers Home Administration

7 CFR Part 1951

Analyzing Credit Needs and Graduation of Borrowers

Correction

In FR Doc. 83-24301, beginning on page 40202 in the issue of Tuesday, September 6, 1983, make the following correction to Subpart F:

On page 40209, in "Exhibit B", second column, eleventh line of item "15.", "will include * * *" should read "will not include * * *".

BILLING CODE 1505-01-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103 and 214

Powers and Duties of Service Officers; Availability of Records; Nonimmigrant Classes; Temporary Alien Employees

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule amends the application procedure for an extension of stay for a temporary worker. It also allows nonimmigrant temporary workers (H-1 and H-3) to be admitted to the United States for longer periods which are commensurate with the purposes of their admission. Certain employers are permitted to file a blanket petition to classify certain classes of their employees as eligible for intra-company transferee visas. These changes benefit the Service and the public by reducing the number of extensions of stay and petitions filed and enhance compliance.

EFFECTIVE DATE: October 14, 1983.

FOR FURTHER INFORMATION CONTACT:

For General Information: Loretta J. Shogren, Director, Policy Directives & Instructions, Immigration and Naturalization Service, 425 I Street, NW., Washington, D.C. 20536, Telephone: (202) 633-3048

For Specific Information: Thomas E. Cook, Immigration Examiner, Immigration and Naturalization Service, 425 I Street, NW., Washington, D.C. 20536, Telephone: (202) 633-5014

SUPPLEMENTARY INFORMATION: Proposed rulemaking was published on pages 14631-14638 of the **Federal Register** of April 5, 1983 and initiated comments for 30 days ending May 5, 1983.

Comments on Proposed Regulation

The Service received 18 comments. Seventeen expressed support for the rule change but suggested modifications. Only one comment expressed general concern with the proposal. Among the comments, seven basic problem areas were identified and are discussed below:

(1) Section 214.2(1)(3). Eight commenters suggested that the validity period of the L blanket petition should be indefinite or that the Service should extend the proposed three years. We will study the issue of extending the three-year validity at a later date based on experience with the program. The request for an indefinite validity is not feasible in the L classification. The L-1 visa is intended for a nonimmigrant who enters the United States "temporarily" on an intra-company transfer to render services to his or her employer or a related company. In the case of students and exchange visitors (examples referred to by the commenters), it is relatively easy to determine the length of the temporary stay. Time limits may not be inherent or expressed in the various positions which may be covered by a blanket petition, and the consular officer is not in a position to know whether the applicant has previously received visas from other consulates. The only practical way to control abuse and assure that the applicant for the L-1 visa will be entering the United States for a temporary stay is to limit the blanket petition to the period of need or three years, whichever is shorter. Where appropriate, extensions of stay may be granted. In the case of the L beneficiary, the temporary nature of the stay must be examined on a case-by-case basis, depending on the nature of the services he or she is coming to render. The three-year renewals by petitioner and

beneficiary will provide a mechanism for ensuring compliance with the Act.

(2) Section 214.2(h)(10). Two commenters opposed the filing of additional Forms I–129B (Petition to Classify Nonimmigrant as Temporary Worker or Trainee) and I–539 (Application for Extension of Stay) as an added complication. This requirement is the most effective way of ending the current confusion, described below in description of final rule, as to what can be appealed and what benefit is actually sought. Also, to monitor compliance with the regulations requires that individual applicants for extension of stay be examined in greater detail, which is afforded by the information on Form I–539.

(3) Section 214.2(l)(1)(A). Five commenters objected to the definition of "executive" as too restrictive. Four objected to the concept of including the definition, one felt that it would eliminate alien executives who worked under a different management system than that used in the United States. It was written as a general description of duties which would qualify a person as an executive. These guidelines, in the Service's opinion, are flexible enough to allow aliens functioning as executives to justify their claim to executive status.

(4) Section 214.2(l)(1)(iii)(C). Six commenters requested that the Service lower the number of past L approvals required to qualify for the blanket petition or apply a different system. The main purpose of the revision was to streamline processing in cases where the petitioner makes frequent intracompany transfers of a similar nature and has demonstrated familiarity with applicable requirements. The decision to use ten approvals as the qualifying number was based on information from the business community prior to publication. The issue has been reevaluated based on the comments and the qualifying number of approvals is lowered from ten to five.

(5) Section 214.2(l)(1)(iii). Eight commenters objected to the exclusion of specialized knowledge from the blanket petition. The final rule remains unchanged, based on the Service's past experience in adjudicating this classification. The exclusion of specialized knowledge is necessary to give INS the necessary control in monitoring compliance afforded by adjudication of individual petitions. The Department of State has concurred with these regulations including INS' decision to exclude specialized knowledge from the blanket petition.

(6) Four commenters opposed the codification of Service interim decisions into the regulations. In the twelve years since the L classification was created, there have been numerous precedent decisions relating to the eligibility of intra-company transferees. The principles of these decisions have been included in the new L regulation to provide better information to members of the public who do not have access to the numerous administrative decisions.

(7) Three commenters pointed out that there is no provision for an appeal if the person requesting a L visa under a blanket petition is refused by an American consular officer on the ground that he is not an executive or manager. A revision to Service Operations Instruction 214(l) will provide that if an American consular officer refuses to issue an L visa on the basis that the applicant is neither an executive nor a manager within the meaning of these regulations, the applicant shall be advised that an individual petition may be filed with INS in his behalf. Denial of such a petition can be appealed under 8 CFR 103.

(8) Section 214.2(h)(8) and (l)(5). One comment questioned the Service's authority to establish revocation procedures for nonimmigrant visa petitions. It is the view of the Service that the elimination of specific statutory authority to revoke nonimmigrant visa petitions was inadvertent. Also, section 214 (8 U.S.C. 1184) of the Act, does provide the Attorney General with the authority to prescribe regulations for admission to the United States of any alien for such time, and under such conditions as deemed necessary.

Description of Final Rule

This rule provides that when an alien applies for an extension of stay under section 101(a)(15) (H) or (L) of the Act, the period of validity of the previously approved visa petition must have been extended. This action formalizes a procedure which already takes place whenever an extension requested by an H or L applicant is granted. The Service desires to clarify that the decision to deny an extension of stay request is separate from the decision to deny a request for extension of the validity of a visa petition. The denial of a request by an H or L applicant for an extension of stay made on Form I–539 is nonappealable. Denial of a request to extend a previsouly approved visa made on Form I–129 is appealable. This rule, by providing separate Service actions on the two types of requests, will benefit the public by ending any confusion as to what benefit is being sought and what appeal rights are available. This rule therefore requires all H's and L's to file separate extension of stay requests on Form I–539. While this will increase the number of these filings, the Service believes that proper enforcement of the regualtions requires that individual applicants for extension be examined in the greater detail afforded by the information in Form I–539.

Section 214.2 (h)(8) and (l)(5) adds adds a procedure for revoking the previous approval of a nonimmigrant visa petition filed on Form I–129B. The new procedure allows for two types of revocation proceedings, automatic and on notice. Automatic revocation of an approved Form I–129B would occur when the petitioner dies, goes out of business, or files written withdrawal of the petition. The automatic revocation proceedings are not appealable.

The revocation on notice procedure is initiated by the district director, by serving a notice of intent to revoke the visa petition. Upon receipt of this notice, the petitioner may submit evidence in rebuttal to the reasons for the proposed revocation. The district director shall consider all evidence submitted in making the decision. His decision may be appealed to the regional commissioner under part 103 of this chapter. When the beneficiary of a revoked petition is in the United States, a copy of the revocation is furnished to the alien and an appropriate period in which to voluntarily depart the United States is set.

Section 214.2(h)(6) allows for an initial approval period not to exceed two years for H–1 petitions (aliens of distinguished merit and ability). Approvals of H–3 (trainee) petitions will be granted for the duration of the approved training program. Experience with the administration of the H–1 and H–3 categories of nonimmigrants has shown that extending the initial approval period will greatly benefit the public without causing an adverse impact on compliance. First extension requests filed by the vast majority of aliens of distinguished merit and ability (H–1) are routinely granted. Upon initial approval of a petition for a trainee (H–3), the Service determines that the stated length of the training program is appropriate; therefore, admitting an H–3 for the length of that approved training program relieves the Service from unnecessary review of extension requests.

Section 214.2(l)(1)(ii) adds definitions of three major terms contained in section 101(a)(15)(L) of the Act (8 U.S.C. 1101(15)(L)). Those terms are *managerial capacity, executive capacity*, and *specialized knowledge*. Administration of this section of law during the past twelve year has produced a body of administrative law and practive which

the proposed definitions reflect. See *Matter of Raulin*, 13 I. & N. Dec. 654 (RC 1970), *Matter of Michelin Tire*, 17 I. & N. Dec. 248 (BIA 1977), *Matter of Penner*, Interim Decision 2865 (INS 1982), *Matter of Colley*, Interim Decision 2881 (INS 1981) and *Matter of Isovic*, Interim Decision 2933 (INS 1982).

The rule provides for a blanket petition procedure under which a petitioner may transfer managers and executives, for a temporary period, to the United States under section 101(a)(15)(L) of the Act based upon the approval of a single blanket petition (Form I–129B). After approval of a petition, all executives or managers whom the petitioner desires to transfer to the United States, in the positions covered by the blanket petition, are permitted to apply directly to an American embassy or consulate for L–1 visa issuance for a period of three years with possible extensions. A separate visa petition for each such individual is not required. Authority to determine that the individual manager or executive qualifies under the Act and regulations is vested in the consular officer. Service Operation Instructions will be amended to provide that if the consular officer finds that an applicant is not a manager or executive, an individual petition may be filed with the appropriate district office in the beneficiary's behalf. The length of stay for a beneficiary will run concurrently with, but not exceed the validity of, the approved blanket petition. Section 214.2(1)(iii)(C) applies only to executives and managers under the intra-company transferee classification and does not apply to an alien classified as an intra-company transferee under "specialized knowledge". To qualify, the petitioner must produce evidence that he has had at least five approved visa petitions during the past year.

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

This rule is not a major rule within the meaning of Section 1(b) of E.O. 12291 because it is not likely to result in a major increase in costs or prices, nor result in adverse effects on competition, employment, investment, productivity, or innovation.

List of Subjects

8 CFR Part 103

Administrative practice and procedure.

8 CFR Part 214

Administrative practice and procedure, Aliens, Authority delegation, Employment, Organization and functions, Passports and visas.

Accordingly, Title 8 of the Code of Federal Regulations is amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. Section 103.1, is amended by adding paragraph (l)(2)(xxiv) to read as follows:

§ 103.1 Delegation of authority.

* * * * *

(l) * * *

(2) * * *

(xxiv) Decisions revoking approval of certain petitions, as provided in § 214.2.

* * * * *

PART 214 — NONIMMIGRANT CLASSES

2. Section 214.2 is amended by revising paragraphs (h)(1), (h)(6), (h)(7), (h)(8) and (h)(9); paragraphs (h)(3a) and (h)(11) are removed, revised, and designated as (h)(14) and (h)(10) respectively; paragraph (h)(10) is redesignated as (h)(11); a new paragraph (h)(12) is added and former paragraph (h)(12) is redesignated as (h)(13).

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

* * * * *

(h) *Temporary employees*—(1) *Petitions.* Any alien defined in section 101(a)(15)(H) of the Act must be the beneficiary of an approved or extended visa petition filed on Form I–129B. The petition must be accompanied by the evidence listed in parts (2), (3), or (4) of this paragraph. The petitioner need not be a United States resident.

(i) *Jurisdiction.* An employer shall file the petition and supporting documents with the district director having administrative jurisdiction over the place in the United States where the beneficiary will perform services or receive training. If the services will be performed or the training will be received in more than one location in the United States, the petition must be filed with a Service officer having jurisdiction over at least one of those areas.

(ii) *Multiple beneficiaries.* An employer may include more than one beneficiary in an H petition if the beneficiaries will be performing the same type of service or receiving the same type of training, applying for visas at the same consulate, and performing services or receiving training in the same Service district.

(iii) *Change in employment or training.* If an alien in the United States desires to perform temporary service or training for another petitioner, the new employer must file a new petition on Form I–129B and the petition must accompany an application of an extension of stay, Form I–539. If the new petition is approved, an extension of stay may be granted for the validity of the approved visa petition.

* * * * *

(6) *Approval of petition*—(i) *General.* In adjudicating the petition, the district director shall consider all the evidence submitted, and any other evidence as he may independently require or obtain to assist his adjudication. The district director shall notify the petitioner on Form I–171C of the approval of the petition. An approved petition for an alien classified under section 101(a)(15)(H)(i) of the Act is valid for the period of established need for the beneficiary's temporary service but not to exceed two years. An approved petition for an alien classified under section 101(a)(15)(H)(iii) of the Act is valid for the documented length of the approved training program. If a certification by the Secretary of Labor or his designated representative is attached to a petition to accord an alien a classification under section 101(a)(15)(H)(ii) of the Act, the approval of the petition will not be valid beyond the date to which the certification is valid. When the certification does not state a validity period, approval of the petition will not exceed 1 year from the date on which the certification was issued.

(ii) *Spouse and dependents.* The spouse and minor children of the beneficiary are entitled to nonimmigrant H classification if accompanying or following to join the beneficiary in the United States. Neither the spouse nor children may accept employment unless they are the beneficiaries of an approved petition filed in their behalf and have been granted a nonimmigrant classification authorizing their employment.

(7) *Denial of petition*—(i) *Notice of intent.* Only when an adverse decision is proposed on the basis of evidence not submitted by the petitioner, shall the district director notify the petitioner of the intent to deny the petition and the basis for the denial. The petitioner may inspect and rebut the evidence and will

be granted a period of 10 days from the date of the notice in which to do so. Any rebuttal material will be considered in making a final decision.

(ii) *Notice of denial.* The petitioner will be notified of the decision, the reasons for the denial, and the right to appeal under Part 103 of this chapter. A denial decision by the district director will set forth the pertinent facts adduced from the evidence considered and give the specific reasons for the decision in the light of the facts and relating provisions of section 101(a)(15)(H) of the Act.

(8) *Revocation of approval of petitions*—(i) *Automatic revocation.* The approval of any petition is automatically revoked if the petitioner dies, goes out of business, or files a written withdrawal of the petition. When it comes to the attention of the district director that the approval has been automatically revoked, the district director shall promptly notify the petitioner of the revocation by letter.

(ii) *Revocation on notice.* The approval of a petition may be revoked if the beneficiary is no longer employed by the petitioner in the same capacity as specified in the petition or if the beneficiary is no longer receiving training as specified in the petition. The approval may also be revoked if it is determined that the statement of facts contained in the petition was not true and correct. If the district director finds that any of the above conditions exist, a notice of intent to revoke will be sent to the petitioner. The petitioner may submit evidence in rebuttal within 10 days from the date of the notice. Any rebuttal material will be considered in making the final decision. The petitioner may appeal a revocation on notice to the regional commissioner under Part 103 of this chapter.

(9) *Admission.* A beneficiary may apply for admission to the United States only during the validity period of the petition. The authorized period of the beneficiary's admission will not exceed the date of validity of the petition.

(10) *Extension of stay.* An extension may be authorized in increments of not more than 12 months each under the same terms and conditions that apply to admission. If maintaining status, the beneficiary may apply for an extension for the validity period of the approved visa petition by submitting Form I-539. An application for an extension of stay on behalf of a group of beneficiaries covered by the same original petition must be filed on Form I-539 by each individual alien, but only one Form I-129B for extension of visa petition validity is required. In the case of an extension of stay for an alien ensemble performing as a group, only one Form I-539 is required with an attached list of beneficiaries. A change in the previously authorized employment or training requires the filing of a new petition by the prospective employer or trainer and the filing of an I-539 by the beneficiary. The forms I-539 and I-129B may be filed concurrently. For an alien defined in section 101(a)(15)(H)(ii) of the Act, the application for extension of stay must be accompanied by a labor certification or a notice that the certification cannot be made, and the alien shall not be granted an extension which would result in an unbroken stay in the United States for more than 3 years. An application for an alien athlete or entertainer, admitted under section 101(a)(15)(H)(ii) of the Act to perform services in the United States Virgin Islands, cannot be approved for extension of stay beyond a total of 45 days. There is no appeal from the denial of an alien's request for an extension of stay filed on Form I-539.

(11) *Effect of strike.* (i) A petition to classify an alien as a nonimmigrant as defined in section 101(a)(15)(H) of the Act shall be denied if the Secretary of Labor or his designee certifies to the Commissioner of Immigration and Naturalization or his designee that a strike or other labor dispute involving a work stoppage of workers is in progress in the occupation and at the place the beneficiary is to be employed or trained and that the employment or training of the beneficiary would adversely affect the wages and working conditions of U.S. citizen or lawful resident workers.

(ii) If a petition has been approved, but the beneficiary has not yet entered the United States to take up the approved employment or training, and the Secretary of Labor or his designee certifies to the Commissioner of Immigration and Naturalization or his designee that a strike or other labor dispute involving a work stoppage of workers is in progress in the occupation and at the place the beneficiary is to be employed or trained, and that the employment or training of the beneficiary would adversely affect the wages and working conditions of U.S. citizens or lawful permanent resident workers, the approval of the petition is automatically suspended and the application for admission on the basis of the petition shall be denied.

(iii) If a petition has been approved, and the beneficiary has entered the United States to take up the employment or training, if the beneficiary is not an "employee" as defined in the National Labor Relations Act (29 U.S.C.) 152(3)), and the Secretary of Labor or his designee certifies to the Commissioner of Immigration and Naturalization or his designee that a strike or other labor dispute involving a work stoppage of workers is in progress in the occupation and place of employment or training, and that the employment or training of the beneficiary would adversely affect the wages and working conditions of U.S. citizens or lawful permanent resident workers, the approval of the petition is automatically suspended.

(iv) If a petition has been approved, the beneficiary has entered the United States to take up employment, and if the beneficiary is an "employee" within the definition of the NLRA; the existence of a strike in the occupation at the place of employment shall result in suspension of the beneficiary's authorization to work, unless the employer establishes to the satisfaction of the Secretary of Labor or his designee, who in turn certifies to the Commissioner of Immigration and Naturalization or his designee, that less than 30 percent of the work force in the occupation at the place of employment are U.S. citizens or lawful permanent resident workers, provided that the Secretary of Labor or his designee also certifies that the strike has been authorized by a majority of such U.S. citizens or lawful permanent resident workers who voted, or a majority of such workers are participating in the strike.

(v) As used in this section, "place of employment" means wherever the employer or a joint employer does business.

(12) *Extension of visa petition validity.* A visa petition extension may be authorized in increments of not more than 12 months each, under the same terms and conditions that applied to the original approval. If there is no change in the previously approved visa petition, an extension may be requested by submitting Form I-129B. Supporting documents are not required unless requested by the Service.

(13) *Special classes.* The services of an entertainer beneficiary shall be restricted to the activity, area, and employer specified in the approved petition. Any engagement not specified in the original petition requires a new petition. A new petition is also required if the entertainer's services are engaged by a new employer of by a new agent or are to be performed in another area, except that a new petition is not required for the appearance of an alien performer on a bona fide charity show without compensation; provided, the alien is already in the United States under an approved visa petition. A show is not considered a "bona fide charity show" within the meaning of this paragraph if any of the musicians,

entertainers, or other performers receive compensation, including reimbursement for expenses, for their performance. A petition is not required for an appearance, interview, or demonstration, if without remuneration, by any nonimmigrant alien who is not an entertainer by occupation. A separate petition and fee are required for each group of variety entertainers comprising a separate and distinct act.

(14) *Use of Form I–171C.* The Service shall notify the petitioner on Form I–171C whenever a visa petition or an extension of a visa petition is approved under the H classification. The petitioner may furnish the Form I–171C to any one of the beneficiaries who desires to depart from and return to the United States within the period for which the visa petition is valid, but may not duplicate the original form received from the Service; however, additional original forms may be requested. A beneficiary who is required to present a visa for admission and whose visa will have expired before the date of his or her intended return may use Form I–171C, as stated on the form, to apply for a new or revalidated visa. If the beneficiary is exempt from the visa requirement, the beneficiary may present the original Form I–171C at the United States port of entry upon return to be considered for readmission until the expiration date of the validity of the visa petition as shown on Form I–171C.

* * * * *

3. In § 214.2, paragraph (l) is revised to read as follows:

(l) *Intra-company transferees*—(1) *Petition.* Any alien defined in section 101(a)(15)(l) of the Act must be the named beneficiary of an approved or extended visa petition filed on Form I–129B, or be assigned to a position identified in an approved blanket petition made on the same form. The petition must be accompanied by the evidence listed in part (iii) of this paragraph. The petitioner need not be a United States resident.

(i) *Jurisdiction.* The prospective employer must file a separate petition for each beneficiary with the district director having jurisdiction over the place in the United States where the beneficiary will perform the services. In case of a blanket petition, the petition must be filed with the district director having jurisdiction over the employer's main office in the United States. The authority to determine the individual eligibility of beneficiaries covered by blanket petitions under this section is delegated to United States consular officers.

(ii) *Definitions.* As used in this part:

(A) "Managerial capacity" means an assignment within an organization in which the employee directs the organization or a customarily recognized department or subdivision of the organization, controls the work of other employees, has the authority to hire and fire or recommend those actions as well as other personnel actions (promotion, leave authorization, etc.), and exercises discretionary authority over day-to-day operations. This does not include the first-line level of supervision unless the employees supervised are managerial or professional.

(B) "Executive capacity" means an assignment within an organization in which the employee directs the management of an organization and establishes organizational goals and policies, exercises a wide latitude of discretionary decision-making, and receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the business.

(C) "Specialized knowledge" means knowledge possessed by an individual which relates directly to the product or service of an organization or to the equipment, techniques, management, or other proprietary interests of the petitioner not readily available in the job market. The knowledge must be relevant to the organization itself and directly concerned with the expansion of commerce or it must allow the business to become competitive in the market place.

(D) "New office" means an office that has been in operation for less than one year.

(iii) *Evidence*—(A) *General.* A petitioner seeking to accord an alien classification under section 101(a)(15)(L) of the Act shall attach a statement to the petition describing the capacity in which the beneficiary will be employed in the United States. The documentary evidence must establish that the service currently performed by the beneficiary, and those to be performed in the United States, have been and will be either executive, managerial, or involve specialized knowledge. The statement must satisfy the requirement in part (1)(ii) of this section. If the petition indicates that the beneficiary is coming to open or to be employed in a new office in the United States, the petition must be accompanied by evidence that sufficient physical premises to house the United States operation have been secured by purchase, lease, or rental, and the petitioner has sufficient resources to remunerate the beneficiary. An individual petition is required in the case of all petitions involving new offices.

(B) *Individual petition.* A petition must be accompanied by evidence of the corporate interrelationship between the foreign company and the United States-based company in order to establish existence of the interrelationship described in section 101(a)(15)(L) of the Act. A statement explaining the temporary need for the beneficiary's services must also accompany the petition. If the beneficiary is an owner, operator, or major stockholder of the company, the petition must be accompanied by evidence that the beneficiary's services are to be used for a temporary period and also include evidence that the beneficiary will be transferred to an assignment outside the United States upon completion of the temporary services in the United States.

(C) *Blanket petitions.* A petitioner may file a blanket petition if it has transferred at least 5 "L" managerial or excecutive beneficiaries to the United States during the previous 12 months. The petition must be accompanied by evidence that this requirement has been met. The petition must also be accompanied by evidence of the corporate interrelationship of all foreign and domestic entities which the petitioner identified in the petition and a list of the positions to which its executives or managers may be assigned in the United States. If an organization will identify more than 10 positions, the petitioner may furnish a description of its personnel structure and identify the level above which it will or may seek to transfer managers or executives. Qualified employees who are being transferred into managerial and executive positions identified in the approved blanket petition shall apply directly to an American embassy or consulate for visa issuance without being named in an individual visa petition. A beneficiary of a blanket petition may be admitted as a manager or executive with any organization or division named in the approved visa petition. When the beneficiary of a revoked petition is in the United States, a copy of the revocation shall be furnished to the alien with a date on which to depart the United States.

(2) *Certification of documents by attorneys.* A copy of a document submitted in support of a visa petition filed pursuant to section 214(c) of the Act and § 214.2(l) of this part may be accepted, without the original, if the copy bears a certification by an attorney, typed or rubber-stamped in the language set forth in § 204.2(h) of this chapter. However, the original document shall be submitted if requested by the Service.

(3) *Approval of petition.*—(i) *General.* The district director shall notify the petitioner on Form I–171C upon approval of a visa petition filed on Form I–129B. An individual petition approved under this paragraph is valid for the period of established need for the beneficiary's temporary services, not to exceed three years. A blanket petition approved under this paragraph is valid for a period of three years from the date of approval of the petition. A blanket petition may be approved in whole or in part. Only those interrelationships found to qualify under section 101(a)(15)(L) of the Act shall be approved. A petitioner may utilize the services of a beneficiary in any qualifying executive or managerial position and for any company found qualified in the blanket petition.

(ii) *Spouse and dependents.* The spouse and unmarried minor children of the beneficiary are entitled to the same nonimmigrant classification and length of stay if accompanying or following to join the beneficiary in the United States. Neither the spouse nor children may accept employment unless they are the beneficiaries of an approved petition filed in their behalf and have been granted a nonimmigrant classification authorizing their employment.

(4) *Denial of petition*—(i) *General.* A petition denied in whole or in part may be appealed under Part 103 of this chapter.

(ii) *Individual petition.* If an individual petition is denied, the petitioner will be notified of the denial, the reasons for the denial, and of the right to appeal on Form I–292.

(iii) *Blanket petition.* If a blanket petition is denied in whole or in part, the petitioner shall be notified of the decision and the reasons for the denial in part resulting from a finding that some of the claimed inter-company relationships and/or positions do not qualify under section 101(a)(15)(L) of the Act. The district director shall forward the denial along with Form I–171C, Notice of Approval, when the petition is denied in part. Form I–171C shall list those inter-company relationships and positions which were found to qualify. If the decision of the district director is reversed on appeal, a new Form I–171C shall be furnished to the petitioner to reflect the changes made as a result of the appeal.

(5) *Revocation of approval of petitions*—(i) *Automatic revocation.* The approval of any petition is automatically revoked if the petitioner dies, goes out of business, or files a written withdrawal of the petition. When it comes to the attention of the district director that the approval has been automatically revoked, the district director shall promptly notify the petitioner of the revocation by letter.

(ii) *Revocation on notice.* The approval of a petition may be revoked if the ownership and control of the related businesses are altered, and the interrelationship or employment of the beneficiary no longer qualify under section 101(a)(15)(L) of the Act. The petitioner shall notify the Service of any changes in the relationships between authorized companies and any changes to the employment of the beneficiary. If the district director's review of the change finds that the inter-relationship or employment is no longer eligible within the meaning of section 101(a)(15)(L) of the Act, a notice of intent to revoke shall be sent to the petitioner. If an inter-relationship previously approved under a blanket petition is found to no longer qualify, a notice of intent to revoke only that portion of the petition affected by the determination shall be sent to the petitioner. Upon receipt of this notice, the petitioner may submit evidence in rebuttal of the reasons for the proposed revocation. The district director will consider all evidence in making the decision. If the petition is revoked in part, the remainder of the petition shall remain approved and a revised Form I–171C shall be sent to the petitioner with the revocation notice. The petitioner may appeal a revocation on notice to the regional commissioner under Part 103 of this chapter.

(6) *Admission.* A beneficiary may apply for admission to the United States only during the validity period of the petition. The authorized period of the beneficiary's admission shall not exceed the date of validity of the petition.

(7) *Extension of stay.* An alien classified under section 101(a)(15)(L) of the Act shall apply for an extension of stay on Form I–539. The Form I–539 must be accompanied by a statement of continued need signed by an authorized company representative. Extensions of stay may be authorized in increments not to exceed 12 months for a beneficiary of an individual petition and not exceed 36 months for an alien admitted under a blanket petition authorization. No extension will be granted to exceed the validity of the approved petition. The same terms and conditions authorizing the approval of the petition and admission of the beneficiary shall apply. However, an alien admitted under the authority of an approved blanket petition may be reassigned to any business in a managerial or executive position included in the approval of the blanket petition without referral to the Service. The application for extension of stay for a beneficiary of an approved blanket petition must be filed with the Service office that approved the original visa petition. The spouse and unmarried minor children of an L–1 beneficiary may be included in the extension application and given extensions of stay to the same date as the beneficiary. A new Form I–171C shall be sent to the applicant if the extension is approved. There is no appeal from the denial of an extension of stay. Form I–129B may be filed concurrently for extension of visa petition validity.

(8) *Extension of visa petition validity.* An individual petition may be extended in increments of not more than 12 months each by submitting Form I–129B if all existing conditions in the original approval remain the same. Supporting documents are not required unless requested by the Service. A blanket petition may be extended for an additional three year period by submitting a Form I–129B with the file number of the previously approved petition. Supporting documents are not required if all existing business relationships and authorized positions remain the same. When listed oganizations or positions are to be amended, a revised petition must be filed on Form I–129B. Form I–171C must list all qualifying inter-company relationships which have qualified under this part.

(9) *Labor disputes.* A petition will be denied if a strike or other labor dispute involving a work stoppage or layoff of employees is in progress in the occupation and at the place the beneficiary is to be employed. If the petition has already been approved, the approval of the beneficiary's employment is automatically suspended while the srike or other labor dispute is in progress.

(10) *Use of Form I–171C.* The Service shall notify the petitioner on Form I–171C upon approval of a visa petition filed on Form I–129B. The Form I–171C will include the name of the beneficiary or, in the case of a blanket petition, will identify the positions and organizations included in the petition. Each alien seeking a visa to occupy a position named in an approved blanket petition must submit a copy of Form I–171C with a letter from the petitioner which identifies: the position and organization from which the employee is transferring, the new organization and position to which the employee is destined, a description of the employee's actual duties and salary under both the new and former positions, and the dates and locations of previous L stays in the

United States. The employer of a beneficiary named in an individual visa petition may request the Service to issue an original form I-171C to the employee to facilitate entry into the United States for a beneficiary who does not require an nonimmigrant visa. The original Form I-171C may be retained by the beneficiary and presented for entry during the validity of the petition; provided, the beneficiary is entering or reentering the United States to resume the same employment with the same petitioner within the validity period of the petition. However, an L-1 beneficiary admitted under the authorization of a blanket petition may be readmitted even though reassigned to a different managerial or executive position or organization named on the Form I-171C. The original Form I-171C received from the Service may only be duplicated by employers who have approved blanket petitions; however, additional forms may be requested by individual petitioners.

* * * * *

(Secs. 103, 214, Immigration and Nationality Act, as amended (8 U.S.C. 1103, 1184))

Dated: August 23, 1983.

Alan C. Nelson,

Commissioner of Immigration and Naturalization.

[FR Doc. 83-24860 Filed 9-13-83; 8:45 am]

BILLING CODE 4410-10-M

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8 CFR Part 238

Contracts With Transportation Lines; Wardair Canada (1975) Ltd.

Correction

In FR Doc. 83-23777 appearing on page 39214 in the issue of Tuesday, August 30, 1983, make the following correction:

On page 39214, second column, under "Supplementary Information", eighth line, "Immigration and Nationally Act" should read "Immigration and Nationality Act".

BILLING CODE 1505-01-M

FARM CREDIT ADMINISTRATION

12 CFR Part 614

Loan Policies and Operations

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: Farm Credit Administration ("FCA"), by its Federal Farm Credit Board is amending its regulation dealing with banks for cooperatives' authorization to make both secured and unsecured loans. This amendment will permit the treatment of loans secured by payment in kind ("PIK") contracts as loans secured by warehouse receipts or other title documents. This final regulation is identical to an interim regulation which was published on June 29, 1983 (48 FR 29833) and which was effective on that date. No comments were received on the interim regulation.

EFFECTIVE DATE: June 29, 1983.

FOR FURTHER INFORMATION CONTACT: Gary L. Norton, Office of General Counsel, Farm Credit Administration, Washington, D.C. 20578, (202) 426-7631.

SUPPLEMENTARY INFORMATION: FCA regulation 12 CFR 614.4260 establishes the loan and security requirements for loans made by the banks for cooperatives ("BCs"). The regulation provides that loans which are secured by warehouse receipts or other title document are eligible for advances up to 75 percent of the unhedged net value of the commodity or 90 percent of the hedged value of the commodity.

On March 4, 1983, the Agricultural Stabilization and Conservation Service, USDA, published a final rule which provides for a payment-in-kind ("PIK") program for acreage diversion for the 1983 crops of wheat, corn, grain sorghum, rice, and upland cotton. Under the program, producers will be offered a quantity of a commodity as compensation for diverting acreage normally planted to that commodity in addition to that being taken out of production under the 1983 acreage reduction and cash land diversion programs for wheat, corn, grain sorghum, rice, and upland cotton previously announced. The USDA has determined that the diversion of this additional acreage from the production of such crops is necessary to adjust the total national acreage of such commodities to achieve desirable production goals and that producers should be compensated by receipt of like commodities. (48 FR 9232 codified at 7 CFR Part 770).

The Federal Farm Credit Board ("Federal Board") has determined that PIK contracts which have been assigned by producers to marketing cooperatives should be treated as title documents for purposes of 12 CFR 614.4260 because of the unique safeguards contained in the PIK program and in light of cross compliance requirements and provisions for liquidated damages. Accordingly, the final regulation amends 12 CFR 614.4260 to provide that BC loans secured by contract rights under the PIK program will be eligible for the same net value loan advance amounts as loans secured by title documents.

In permitting these higher percentage advances the Federal Board recognizes that since PIK commodities are not eligible for Commodity Credit Corporation ("CCC") loans the BCs will not be able to rely on the CCC loan rates as price floor for commodities covered by the contracts and therefore the BCs must exercise care in valuing these commodities.

Because of the immediate need to provide authority for higher percentage loan advances for BC loans secured by PIK contracts and the need of the BCs to avoid delay when making commitments to advance funds under these loans the Federal Board determined, pursuant to 5 U.S.C. 553, it was unnecessary and contrary to the public interest to provide notice and opportunity for public comment prior to the effective date of the interim regulation. Accordingly the interim regulation was effective June 29, 1983. The public was provided 30 days to comment on the interim regulation. No comments were received. The interim regulation is now being published as a final regulation without change.

List of Subjects in 12 CFR Part 614

Agriculture, Banks, banking, Credit, Rural areas.

PART 614—LOAN POLICIES AND OPERATIONS

For the reasons set out in the preamble, 12 CFR Part 614 is amended by revising §614.4260, paragraph (c) to read as follows:

* * * * *

§ 614.4260 Banks for cooperatives.

* * * * *

(c) Seasonal loans made to finance commodities that qualify for special interest rate (where applicable) and lending limit consideration shall be secured. Loans secured by a chattel mortgage, factor's lien, security agreement, or security other than warehouse receipts or other title documents shall not exceed 65 percent of the net value of unhedged or 85 percent of the net value of hedged commodities and the borrower must have sufficient working capital to keep the loan properly margined. Loans secured by warehouse receipts or other title documents shall not exceed 75 percent of the unhedged net value of the commodity or 90 percent of the hedged net value and the borrower must have sufficient working capital to keep the loan properly margined. Loans secured by contract rights under the Agricultural Stabilization and Conservation Service,

USDA, special program of payment in kind for acreage diversion for 1983 or subsequent crop years of wheat, corn, grain sorghum, upland cotton, and rice (7 CFR Part 770) shall be eligible for the same net value amounts as loans secured by title documents.

* * * * *

(Secs. 5.9, 5.12, 5.18, Pub. L. 92-181, 85 Stat. 619, 620, 621 (12 U.S.C. 2243, 2246, 2252))

Kenneth J. Auberger,

Acting Governor.

[FR Doc. 83-24951 Filed 9-13-83; 8:45 am]

BILLING CODE 6705-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 83-NM-74-AD; Amdt. 39-4722]

Lockheed-California Company Model L-1011-385 Series; Airworthiness Directives: Airplanes, Serial Numbers 1052 and Subsequent

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This document amends an existing airworthiness directive (AD) 81-26-51 applicable to Lockheed-California Company Model L-1011-385 Series airplanes, Serial Numbers 1052 through 1243, which requires inspections for cracks in the Fuselage Station (FS) 1363 bulkhead and repair and/or replacement of defective parts as necessary. This amendment (1) Adds a new requirement for inspection of the bulkhead cap; (2) Reduces the external inspection intervals from 1,000 to 600 landings; (3) Requires a new inspection method; and (4) Reduces the external inspection intervals from 500 landings to 250 landings in case cracks are found only in the reinforcing strap and have not been repaired. These changes are necessary because the present inspection requirements have been determined to be inadequate. If cracks are present and are not detected, they may propagate to a point where sudden decompression of the aircraft may occur.

DATES: Effective September 21, 1983.

Compliance schedule as prescribed in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service information may be obtained from: Lockheed-California Company, P.O. Box 551, Burbank, California 91520, Attention: Commercial Support Contracts, Dept. 63-11, U-33, B-1. This information also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Augusto Coo, Aerospace Engineer, Airframe Branch, ANM-121L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808, telephone (213) 548-2826.

SUPPLEMENTARY INFORMATION: On December 11, 1981, telegraphic AD T81-26-51 was issued to all known operators of Lockheed-California Company Model L-1011-385 Series airplanes, Serial Number 1052 and subsequent, as a result of reports of cracks in FS 1363 bulkhead which if left unattended could result in sudden decompression of the airplane. Subsequently, AD 81-26-51 was amended to include an alternative inspection and a repetitive inspection requirement, to add an inadvertently omitted initial inspection threshold and to add a terminating modification.

Since AD 81-26-51 was amended on February 9, 1983, several Lockheed Model L-1011 operators have experienced difficulties performing the required eddy current inspection procedures using an encircling probe as defined in Lockheed Service Bulletin 093-53-208, Revision 2, dated August 17, 1982. An X-ray inspection method has been developed to replace the low frequency eddy current inspection method and its procedures incorporated in Service Bulletin 093-53-228, dated April 22, 1983, which superseded Lockheed Service Bulletin 093-53-208. This inspection method does not have the sensitivity and reliability of the eddy current inspection method originally intended for use; thus, the inspection intervals as prescribed in the AD have to be reduced for this X-ray inspection method to be utilized. This amendment is needed to provide these substitutive requirements.

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

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by amending AD 81-26-51, Amendment 39-4328 (47 FR 8557; March 1, 1982) as amended by Amendment 39-4555 (48 FR 4266; January 31, 1983), by revising paragraphs A.1, A.3(a), A.3(b), C., and E., to read as follows, and adding paragraph A.3(d):

A.1. Compliance is required within 300 landings after the effective date of this AD for the inspection specified in paragraph C., below, on all aircraft having accumulated 10,000 or more landings, as of the effective date of this AD. Previously accomplished inspections per paragraph B. or F., below, or per Accomplishment Instructions, Section 2, of Lockheed L-1011 Service Bulletin 093-53-208, Revision 1, dated December 23, 1981, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region, satisfy this initial inspection requirement.

A.3. Repetitive inspections in accordance with paragraph C., below, are required on all affected aircraft until the permanent modification specified in Section 2, Accomplishment Instructions, of Lockheed L-1011 Service Bulletin 093-53-207, Revision 1, dated October 12, 1982, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region, is accomplished which terminates the repetitive inspections required by this AD.

(a) If the initial inspection was accomplished in accordance with paragraph B. below, within an additional 300 landings after the initial inspection, or within 100 landings after the effective date of this amendment, whichever is later, inspect internally at intervals not to exceed 2,000 landings and externally at intervals not to exceed 600 landings thereafter in accordance with paragraph C. below.

(b) If the initial inspection was accomplished in accordance with Accomplishment Instructions, Section 2, of Lockheed L-1011 Service Bulletin 093-53-208, Revision 1, dated December 23, 1981, within an additional 600 landings after the initial inspection, or within 300 landings after the effective date of this amendment, whichever is later, inspect internally at intervals not to exceed 2,000 landings and externally at intervals not to exceed 600 landings thereafter in accordance with paragraph C. below.

(d) Any area with bulkhead cap repairs must be inspected at an interval not to exceed 500 landings. If the bulkhead cap repair had been accomplished prior to the effective date of this AD, the next X-ray inspection to the bulkhead cap must be accomplished within 500 landings from the date of the repair or within 500 landings from the last X-ray inspection, whichever is earlier.

C. Accomplishment Instructions—Option 2

Inspect for cracks in FS 1363 bulkhead cap and surrounding areas in accordance with the inspection procedures specified in Section 2, Accomplishment Instructions, of Lockheed L-1011 Service Bulletin 093-53-228, dated April 22, 1983, or later revisions approved by the

Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

E. If cracks are found only in the Lockheed P/N 1518531-121 reinforcing strap and not repaired, reinspect externally in accordance with paragraph C., above, at intervals not to exceed 250 landings until a repair or permanent modification is incorporated in a manner approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Lockheed California Company, P.O. Box 551, Burbank, California 91520, Attention: Commercial Support Contracts, Dept. 63-11, U-33, B-1. These documents also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington or the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

This amendment becomes effective September 21, 1983.

(Sec.313(a), 314(a), 601, through 610, and 1102, Federal Aviation Act of 1958 [49 U.S.C. 1354(a), 1421 through 1430, and 1502]; 49 U.S.C. 106(g) Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89)

Note:—The FAA has determined that this regulation is an emergency regulation that is not major under Section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12281 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption **FOR FURTHER INFORMATION CONTACT.**

Issued in Seattle, Washington on September 1, 1983.

Charles R. Foster,

Director Northwest Mountain Region.

[FR Doc. 83-24946 Filed 9-13-83; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 83-NM-71-AD; Amdt. 39-4723]

Lockheed-California Company Model L-1011-385 Series; Airworthiness Directives: Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This document amends an existing airworthiness directive (AD) applicable to Lockheed-California Company Model L-1011-385 series airplanes, Serial Numbers 1001 through 1051, inclusive, which requires inspections for cracks in the Fuselage Station (FS) 1363 bulkhead and repair and/or replacement of defective parts, if necessary. This amendment introduces a requirement to inspect repaired bulkhead caps at intervals of 500 landings and expands the eddy current inspection procedures. Failure to detect cracks could lead to decompression of the airplane.

DATE: Effective September 21, 1983.

Compliance schedule as prescribed in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service information may be obtained from: Lockheed-California Company, P.O. Box 551, Burbank, California 91520, Attention: Commercial Support Contracts, Dept. 63-11, U-33, B-1. This information also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Augusto Coo, Aerospace Engineer, Airframe Branch, ANM-120L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808, telephone (213) 548-2826.

SUPPLEMENTARY INFORMATION: On August 21, 1981, telegraphic AD T81-18-51 was issued to all known operators of Lockheed-California Company Model L-1011-385 series airplanes, Serial Numbers 1001 through 1051 inclusive, as a result of reports of fuselage cracks in the main landing gear wheel well area at FS 1363. These cracks, if left unattended, could result in rapid decompression of the airplane. AD 81-18-51 was subsequently amended to establish a repetitive inspection program and to provide a terminating modification.

On April 22, 1983, Lockheed revised Service Bulletin 093-53-206 and added X-ray inspection procedures for use in the inspection of bulkhead cap structure repairs which require repetitive inspections at intervals of 500 landings and expanded the eddy current inspection procedures. The inspection procedures required by AD 81-18-51 are not adequate to detect cracks in repaired bulkhead caps. This amendment revises paragraphs related to this service bulletin. The terminating repair paragraph has been revised to allow modifications to later FAA approved revisions to Service Bulletin 093-53-207.

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

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by amending AD 81-18-51, Amendment 39-4242 (46 FR 52091; October 26, 1981) as amended by Amendments 39-4279 (46 FR 60808; December 14, 1981) and 39-4365 (47 FR 16617; April 19, 1982) by revising paragraphs A.2, A.3 and C.1 to read as follows:

"A.2. If operators elect to accomplish the inspections in accordance with paragraph C below, the repetitive inspection interval not to be exceeded is 1,000 landings on airplanes with no structural damage and on repaired airplanes that have no repairs or structural damage to the bulkhead cap. Any aircraft with repairs to the bulkhead cap must be inspected at intervals not to exceed 500 landings. If the bulkhead cap repair had been accomplished prior to the effective date of this amendment, the next X-ray inspection to the bulkhead cap must be accomplished within 1,000 landings from the date of the repair or 500 landings from the effective date of this amendment, whichever is earlier. Thereafter, inspect per X-ray inspection procedures at intervals not to exceed 500 landings."

"A.3. Permanent modifications to the FS 1363 bulkhead structure in accordance with Lockheed-California Company L-1011 Service Bulletin 093-53-207, dated January 28, 1982, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region, eliminates the requirements for the periodic inspections specified in this AD."

"C.1. Inspect for cracks in FS 1363 bulkhead cap and surrounding areas in accordance with Lockheed L-1011 Service Bulletin 093-53-206, Revision 2, dated April 22, 1983, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region."

Under **FOR FURTHER INFORMATION CONTACT,** replace Harvey A. Chimerine with Mr. Augusto Coo.

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Lockheed-California Company, P.O. Box 551, Burbank, California 91520, Attention: Commerical Support Contracts, Dept. 63-11, U-33, B-1. These documents also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington

or the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

This amendment becomes effective September 21, 1983.

(Sec. 313(a), 314(a), 601 through 610, and 1102, Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502) (49 U.S.C. 106(g)) (Revised, Pub. L. 97-449, January 12, 1983); adn 14 CFR 11.89

Note.—The FAA has determined that this regulation is an emergency regulation that is not major under Section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evalution or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption **FOR FURTHER INFORMATION CONTACT.**

Issued in Seattle, Washington on September 1, 1983.

Charles R. Foster,

Director Northwest Mountain Region.

[FR Doc. 83-24848 Filed 9-13-83; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket 8909]

Xerox Corp.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying Order.

SUMMARY: This order reopens the proceeding and modifies Paragraph XVI of the Commission's order issued on July 29, 1975 in the matter of Xerox Corporation, by deleting provisions that prohibited the company from promoting or taking orders for the sale or lease of any new office copier more than 3 months before its commercial availability.

DATES: Consent Order issued July 29, 1975. Modifying Order issued August 22, 1983.

FOR FURTHER INFORMATION CONTACT: FTC/CC, Selig S. Merber, Washington, D.C. 20580. (202) 634-4642.

SUPPLEMENTARY INFORMATION: In the Matter of Xerox Corporation, a corporation. Codification appearing at 40 FR 42203 remains unchanged.

List of Subjects in 16 CFR Part 13

Office copiers, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended (15 U.S.C. 45))

Order Modifying Cease and Desist Order Issued on July 25, 1975

In the matter of Xerox Corporation, a corporation (Docket No. 8909).

By a petition filed on April 22, 1983, respondent Xerox Corporation ("Xerox") requests that the Commission reopen the proceeding in Docket No. 8909 and modify Paragraph XVI of the order issued in this case to terminate approximately two years early its prohibition against Xerox promoting new copiers more than three months before their commercial availability. Paragraph XVI presently is scheduled to expire on July 29, 1985. Pursuant to Section 2.51 of the Commission's Rules of Practice, the petition was placed on the public record for comments. No comments were received.

Upon consideration of Xerox's request and supporting materials, and other relevant information, the Commission finds that the public interest warrants reopening and modification of the order.

In view of the changes that have taken place in the United States copier industry over the last decade, including the entry of numerous new competitors and Xerox's diminished market position, the order's prohibition against advance product announcement and promotion by Xerox is no longer needed to assure competition in the United States copier market. Advance new product announcements by Xerox, in light of these industry changes, no longer pose any danger of allowing Xerox to gain or perpetuate a monopoly or otherwise limit competition in the relevant market. Moreover, continuation of the order's prohibition against advance product announcement and promotion by Xerox appears to hamper Xerox's ability to compete and, consequently, reduces interbrand competition and deprives buyers of the opportunity to make informed decisions concerning their copier needs.

Accordingly,

It is ordered that this matter be, and it hereby is, reopened and that Paragraph XVI of the Commission's order be modified to read as follows:

XVI

It is further ordered that during the period ending 10 years after the date of issuance of this order at the time Xerox announces that it will take orders for the lease of an Office Copier in the United States, it shall also announce the selling price of such Office Copier.

By direction of the Commission.

Issued: August 22, 1983.

Emily H. Rock,

Secretary.

[FR Doc. 83-24982 Filed 9-13-83; 8:45 am]

BILLING CODE 6750-01-M

16 CFR Part 13

[Docket C-3114]

Trans Union Credit Information Co.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires a Chicago-based computerized consumer credit reporting agency and its credit bureaus, among other things, to review its credit reporting system to detect and remedy, where feasible, significant inaccuracies in information maintained or reported by the system. The company is prohibited from furnishing reports to investigative agencies, government law enforcement agencies and others who are not properly certified, or to those whom respondent has reason to believe would use the information for impermissible purposes. The company must advise users of the reports that anyone obtaining credit information under false pretenses is subject to a fine and/or imprisonment under federal law. In making file disclosures to properly identified consumers, respondent must disclose the nature and substance of all information retained on the consumer, however recorded. The company must also reinvestigate disputed credit information; advise the consumer of the results of its investigation; and record corrected information within a reasonable period of time. Reports must also contain clear and accurate dispute statements or summaries of such statements filed by consumers. Further, when responding to a telephonic request for information, respondent must read the dispute statement prior to disclosing the challenged information. Additionally, respondent is prohibited from purging any consumer file containing credit account information that is solely non-derogatory and whose most recent date of activity is less than five years old, unless it advises users of

the reports that such purges are performed periodically.

DATES: Complaint and Order issued Aug. 25, 1983.[1]

FOR FURTHER INFORMATION CONTACT: FTC/PD, David Federbush, Washington, D.C. 20580. (202) 523–1847.

SUPPLEMENTARY INFORMATION: On Tuesday, June 14, 1983, there was published in the **Federal Register**, 48 FR 27258, a proposed consent agreement with analysis In the Matter of Trans Union Credit Information Company, a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Collecting, Assembling, Furnishing or Utilizing Consumer Reports: § 13.382 Collecting, assembling, furnishing, or utilizing consumer reports; 13.382–1 Confidentiality, accuracy, relevancy and proper utilization; 13.382–1(a) Fair Credit Reporting Act; 13.382–5 Formal regulatory and/or statutory requirements; 13.382–5(a) Fair Credit Reporting Act. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; 13.533–37 Formal regulatory and/or statutory requirements; 13.533–45 Maintain records.

List of Subjects in 16 CFR Part 13

Consumer credit reports.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 84 Stat. 1128–36; 15 U.S.C. 1681–1681t)

Emily H. Rock,

Secretary.

[FR Doc. 83-24093 Filed 9-13-83; 8:45 am]

BILLING CODE 6750-01-M

[1] Copies of the Complaint and the Decision and Order filed with the original document.

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 180

Regulations Pertaining to Arbitration

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is amending Commission Rule 180.3 governing the content of pre-dispute arbitration agreements entered into by futures commission merchants ("FCMs"), floor brokers or associated persons and their customers. The amendments extend the requirements of that rule to introducing brokers ("IBs"), commodity pool operators ("CPOs") and commodity trading advisors ("CTAs") and make clear that the rule applies to the associated persons ("APs") of each such category of registrant.[1]

EFFECTIVE DATE: October 14, 1983.

FOR FURTHER INFORMATION CONTACT: Robert H. Rosenfeld, Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581 (202) 254–8955.

SUPPLEMENTARY INFORMATION:

I.

The Futures Trading Act of 1982 amended sections 4d, 4f and 4k of the Commodity Exchange Act to require, *inter alia*, the registration of introducing brokers and three new categories of associated persons: APs of introducing brokers, commodity pool operators and commodity trading advisors.[2] The Commission recently implemented those new registration requirements by, *inter alia*, requiring the registration of introducing brokers and by amending the definition of "associated person" in rule 1.3(aa) to include APs of introducing brokers, commodity pool operators and commodity trading advisors.[3] The adoption by the Commission of such rules could result in an anomalous interpretation of § 180.3 governing the content and effect of pre-dispute arbitration agreements entered into by FCMs, floor brokers and APs.[4] Associated persons of IBs, CPOs and CTAs would be required to comply with the requirements of § 180.3(b) in the event they enter into a pre-dispute arbitration agreement with their customers[5] while their principals would not be under any direct requirement to comply with that rule.[6]

In order to avoid such an inconsistent application of its rules, and to assure that all classes of registrants who deal with the trading public will be subject to the same requirements concerning the use of pre-dispute arbitration agreements, the Commission proposed in 48 FR 22167 (May 17, 1983), to amend § 180.3(b) to include pre-dispute arbitration agreements entered into by introducing brokers, commodity pool operators and commodity trading advisors and to make clear that the rule applies to APs of such registrants.

The Commission received comment on its proposal from the National Futures Association ("NFA"), the Commodities Corporation ("CC") and from one individual. NFA and the individual commenter essentially supported the proposed amendment to § 180.3 as a realistic and practical approach to preserving the rights of customers while encouraging the use of arbitration. In particular, NFA noted that amendment of § 180.3 would assure that customers of IBs, CPOs and CTAs have the opportunity to proceed in a Commission reparations proceeding even though such customers had signed a pre-dispute arbitration agreement. Similarly, the individual commenter noted the importance of requiring a disinterested arbitration panel in order to protect the intergrity of the arbitration process. The Commodities Corporation contended, however, that the proposed amendment would place an undue economic burden upon CPOs and CTAs. Specifically, CC objected to the fact that § 180.3 as amended would require, *inter alia*, that CPOs and CTAs executing pre-dispute arbitration agreements include language in those agreements informing customers of their right to select a forum and notifying the customer that the registrant would pay any incremental costs associated with the selection of a mixed panel. Finally, CC observed that

[1] The Commission previously requested comment on whether introducing brokers and their associated persons similarly should be subject to these requirements of Part 180 of the Commission's regulation. *See* 48 FR 14933, 14935 (April 6, 1983).

[2] 7 U.S.C. 6d, 6f, 6k, as amended by the Futures Trading Act of 1982, Pub. L. No. 97–444, sections 207, 208, and 212.

[3] *See* 48 FR 35248, 35279, 35295. (August 3, 1983).

[4] The Commission recently adopted final rules concerning arbitration procedures provided by contract markets and registered futures associations and, in connection therewith, amended § 180.3. *See* 48 FR 22136 (May 17, 1983).

[5] This result is consistent with the Congressional recognition that such persons essentially function in the same capacity with respect to IBs, CPOs, and CTAs as persons associated with FCMs. *See* H. Rep. No. 97–565, Pt. 1, 97th Cong., 2d Sess. 48–49 (1982).

[6] Members of the National Futures Association, however, are required to comply with § 180.3(b) pursuant to § 170.8, which requires that a registered futures association's rules concerning arbitration conform to and be consistent with Part 180 of the Commission's regulations. Thus, many of the above new registrants as well as their principals are already indirectly subject to § 180.3(b). NFA Bylaw 1101, which prohibits NFA members from doing business with any non-members of NFA, acts as an incentive for FCMs, CPOs, CTAs and IBs to become members. The membership incentive of Bylaw 1101 has been strengthened by the recent adoption by the Commission of § 170.15, which requires all FCMs that must be registered with the Commission to become members of a registered futures association. *See* 48 FR 26304 (June 7, 1983).

modification of existing arbitration agreements to reflect the requirements of § 180.3 would require CPOs and CTAs to incur additional printing and mailing expenses.

Initially, the Commission wishes to make clear that § 180.3 does not require any registrant to offer an opportunity for its customers to enter into pre-dispute arbitration agreements. In the event a CPO or CTA determines for whatever reason not to offer customers the opportunity to enter into a pre-dispute arbitration agreement with the firm, it is under no legal obligation to do so.[7] With respect to those firms which do desire to use a pre-dispute arbitration agreement, the Commission believes adoption of the amendment will not result in any unreasonable regulatory burdens since the regulation reflects a reasonable means of assuring the fairness of such agreements and, as previously noted, most members of the registrant class are already indirectly subject to the requirements of Part 180 of the Commission's regulations by virtue of their membership in NFA.[8]

Finally, the expenses associated with conforming outstanding arbitration agreements to the requirements of § 180.3 may be minimized by adopting procedures previously recommended by the Futures Industry Association ("FIA") to it members, and approved by the Commission, for that purpose. Those procedures included: (1) advising affected customers of matter that must be disclosed under § 180.3(b), as amended, and (2) notifying affected customers that such provisions will be incorporated into their arbitration agreements unless the customer notifies them otherwise within thirty days.[9]

II. Section 15 Analysis

Section 15 of the Act requires the Commission to:

Take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the objectives of this Act, as well as the policies and purposes of this Act, in issuing any order or adopting any Commission rule or regulation, or in requiring or approving any bylaw, rule, or regulation of a contract market or registered futures association established pursuant to section 17 of this Act.

In considering the amendment to § 180.3 set forth below, the Commission gave careful consideration to any anticompetitive effects which the rule might have. The Commission believes, however, that since the amendments do not require any of the registrants affected by § 180.3 to offer pre-dispute arbitration agreements to their customers, they do not raise any anticompetitive concerns. Furthermore, the Commission believes that considerable public policy objectives will be served by the amendments and that furtherance of these objectives will outweigh any anticompetitive effects which the amendments may have.[10]

III. Regulatory Flexibility

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, requires that agencies, in proposing rules, consider the impact of those rules on small businesses. In this regard, the Commission has already established that neither FCMs nor registered CPOs should be considered to be small entities for purposes of the RFA.[11] Accordingly, the requirements of the RFA do not apply to those entities. With respect to the remaining entities, the Commission believes, as noted above, that the proposed rule would not impose any additional burdens upon such parties since most members of the registrant class are already indirectly subject to the requirements of Part 180 of the Commission's regulations by virtue of their membership in NFA. Furthermore, as the Commission has already noted above, the proposal governs the terms of pre-dispute arbitration agreements but does not require any of the affected parties to offer such agreements. Accordingly, pursuant to section 3(a) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Acting Chairman certifies that § 180.3(b), as amended, would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 17 CFR Part 180

Arbitration, Futures commission merchants, Introducing brokers, Floor brokers, Commodity pool operators, Commodity trading advisors, Associated persons, Commodity futures.

In consideration of the foregoing, and pursuant to the authority of the Commodity Exchange Act, and in particular, sections 4d, 4f, 4k, 5a(11) and 8a, thereof, 7 U.S.C. 6d, 6f, 6k, 7a(11) and 12a, as amended by the Futures Trading Act of 1982, Pub. L. No. 97–44, 96 Stat. 2294 (1983), the Commission hereby amends Chapter I of Title 17 of the CFR as follows:

PART 180—ARBITRATION OR OTHER DISPUTE SETTLEMENT PROCEDURES

1. The authority citation for Part 180 is revised to read as follows:

Authority: 7 U.S.C. 6c, 6d, 6f, 6k, 7a(11) and 12a.

2. Section 180.3 of Part 180 is amended by revising the introductory text of paragraph (b) and paragraphs (b)(1), (3), (4) and (5) as follows:

§ 180.3 Voluntary procedure and compulsory payments.

* * * * *

(b) No futures commission merchant, introducing broker, floor broker, commodity pool operator, commodity trading advisor, or associated person shall enter into any agreement or understanding with a customer in which the customer agrees, prior to the time the claim or grievance arises, to submit such claim or grievance to any settlement procedure except as follows:

(1) Signing the agreement must not be made a condition for the customer to utilize the services offered by the futures commission merchant, introducing broker, floor broker, commodity pool operator, commodity trading advisor or associated person.

* * * * *

(3) The agreement may not require the customer to waive the right to seek reparations under Section 14 of the Act and Part 12 of these regulations. Accordingly, the customer must be advised in writing that he or she may seek reparations under Section 14 of the Act by an election made within 45 days after the futures commission merchant, introducing broker, floor broker, commodity pool operator, commodity trading advisor or associated person notifies the customer that arbitration will be demanded under the agreement. This notice must be given at the time when such person notifies the customer of an intention to arbitrate. The

[7] Members of NFA and the contract markets are subject to compulsory arbitration of customer-initiated claims pursuant to the rules of those self-regulatory organizations once a dispute has arisen, however, whether or not a pre-dispute arbitration agreement has been executed.

[8] *See* n. 6 above.

[9] On July 22, 1983, the Commission determined to concur in the FIA procedures, provided that its members maintain, in accordance with Commission Rule 1.31, a written record of each customer to whom the new terms and conditions of the agreement were transmitted. Moreover, because the notice of new terms and conditions may be included with the transmission of other information to a customer, the Commission further premised its concurrence on the expectation that any such communication clearly direct a customer's attention to the proposed amendment of that customer's predispute arbitration agreement. In this regard, the Commission indicated that each registrant electing to use this method would be free to determine under appropriate contract law what would constitute adequate notice.

[10] The Commission believes that the amendments help assure the integrity of the arbitration process and thereby promote the increased use of arbitration to resolve disputes.

[11] See 47 FR 18618 (April 30, 1982).

customer must also be advised that if he or she seeks reparations under Section 14 of the Act and the Commission declines to institute reparation proceedings, the claim or grievance will be subject to the preexisting arbitration agreement and must also be advised that aspects of the claims or grievances that are not subject to the reparations procedure (i.e. do not constitute a violation of the Act or rules thereunder) may be required to be submitted to the arbitration or other dispute settlement procedure set forth in the preexisting arbitration agreement.

(4) The agreement must advise the customer that, at such time as he or she may notify the futures commission merchant, introducing broker, floor broker, commodity pool operator, commodity trading advisor or associated person that he or she intends to submit a claim to arbitration, or at such time as such person notifies the customer of its intent to submit a claim to arbitration, the customer will have the opportunity to elect a qualified forum for conducting the proceeding. Within ten business days after receipt of such notice from the customer, or at the time the futures commission merchant, introducing broker, floor broker, commodity pool operator, commodity trading advisor or associated person so notifies the customer, the futures commission merchant, introducing broker, floor broker, commodity pool operator, commodity trading advisor or associated person must provide the customer with a list of two or more organizations whose procedures qualify them to conduct arbitrations in accordance with the requirements of § 180.2 of this Part, together with a copy of the rules of each forum listed. The list must include: (i) The contract market, if available, upon which the transaction giving rise to the dispute was executed or could have been executed or a registered futures association designated by such contract market; and (ii) At least one other organization which will provide the customer with the opportunity to select the location of the arbitration proceeding from among several major cities in diverse geographic regions and which will provide the customer with the choice of a panel or other decision-maker composed of at least one or more persons, of which at least a majority are not members or associated with a member of a contract market or employee thereof, and which are not otherwise associated with a contract market (mixed panel). The customer shall, within forty-five days after receipt of such list, notify the opposing party of the organization selected. A customer's failure to provide such notice shall give the opposing party the right to select an organization from the list.

(5) The agreement must acknowledge that the futures commission merchant, introducing broker, floor broker, commodity pool operator, commodity trading advisor or associated person will pay any incremental fees which may be assessed by a qualified forum for provision of a mixed panel, unless the arbitrators in a particular proceeding determine that the customer has acted in bad faith in initiating or conducting that proceeding.

* * * *

Issued in Washington, D.C. on September 9, 1983.

Jane K. Stuckey,

Secretary of the Commission.

[FR Doc. 83-25016 Filed 9-13-83; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

Labor Certification Process for the Temporary Employment of Aliens in Agriculture; Adjustment of Piece Rates

AGENCY: Employment and Training Administration, Labor.

ACTION: Rule-related notice.

SUMMARY: On September 2, 1983, there was published in the **Federal Register** a final rulemaking document revising 20 CFR 655.207 (b) and (c) (48 FR 40168–40175). The final rule was effective on its date of publication (48 FR at 40168).

FOR FURTHER INFORMATION CONTACT: Mr. Harry L. Sheinfeld (202) 523–7836.

SUPPLEMENTARY INFORMATION: On September 8, 1983, Judge Charles Richey of the United States District Court for the District of Columbia issued an Order in the matter of *NAACP, Jefferson County Branch, et al.* v. *The Honorable Raymond J. Donovan, Secretary, United States Department Labor, in his Official Capacity, et al.*, Civil Action No. 82–2315. Judge Richey, in part, ordered the Department of Labor to arrange for publication of a notice of the terms of the Order in the **Federal Register** as soon as possible.

Therefore, pursuant to Judge Richey's Order, the terms of that Order are quoted as follows:

Order

This matter having come before the Court on plaintiff's motion for further relief to enforce the Court's Order of June 28, 1983, and the Court having considered the motion and the arguments of counsel, and having determined: (i) That defendants have certified, agreed to certify, and intend to certify the applications of growers who offer piece rates lower than those required by the sixth operative paragraph of the Court's order of June 28, 1983, (ii) that defendants as of the date of this Order have neither requested modification of the requirements of the sixth operative paragraph of the June 28th order nor made a showing justifying such a modification, (iii) that there is substantial doubt that defendants could supersede this Court's order simply by promulgating a new regulation without obtaining modification of that Order, and further substantial doubt that the regulation published on September 2, 1983, purportedly amending 20 CFR 655.207(c) was adopted in conformity with the Administrative Procedure Act, and (iv) that unless relief is granted as specified below, members of the plaintiff class will suffer injury for which they have no adequate remedy at law, it is, on this 8th day of September, 1983, *ordered and adjudged:*

1. The effective date of the proposed revision of 20 CFR 655.207(c) published in the **Federal Register** on September 2, 1983, is hereby suspended indefinitely pending further order of the Court.

2. All officials and employees of the Department of Labor ("DOL") are enjoined from granting any application for temporary labor certification of agricultural workers under the (H) (2) program (Hereafter "certification") unless the grower-employer agrees: (i) To pay each employee the amount which the employee is entitled under the Court's order of June 28, 1983, or (ii) to pay each employee at least the amount to which he would be entitled under the above-referenced rule published in the **Federal Register** on September 2, 1983, and in addition to place in escrow, as described in and subject to the conditions of paragraph 6 below, the difference between the amount to which the employee is entitled under the Court's order of June 28, 1983, and the amount actually paid.

3. DOL shall withdraw any certification previously granted to any employer-grower who has not offered and agreed to pay agricultural workers the amounts to which they are entitled under the Court's order of June 28, 1983, if the Immigration and Naturalization Service ("INS") has not yet approved all appropriate entry visas for foreign workers to be employed by such grower in connection with such applications, unless and until the grower-employer has agreed to the conditions set forth in paragraphs 2 and 6 of this order.

4. DOL shall forthwith notify each grower-employer who has been granted certification without offering and agreeing to pay agricultural workers the amounts to which they are entitled under the Court's order of June 28, 1983, and in connection with whose application INS has approved all appropriate entry visas, that such grower-employer will be denied certification in 1984 and subsequent years unless it agrees to the

conditions set forth in paragraphs 2 and 6 of this order.

5. DOL shall promptly provide notice of the terms of this order to each grower that has any application for certification pending or that has been granted certification on or after June 28, 1983. In addition, DOL shall arrange for publication of such notice in the **Federal Register** as soon as possible.

6. The escrow payments applicable to paragraphs 2 through 4 of this order shall be made and distributed as follows:

(a) The grower-employer shall establish an interest-bearing bank account in a federally insured financial institution in which the grower-employer will deposit on a weekly basis the appropriate differential amount for each employee. The account shall be established with the approval of and in the name of the local Regional Administrator of DOL's Employment and Training Administration as trustee for the employees of the grower-employer. The Regional Administrator shall be responsible for assuring compliance with the provisions of this paragraph 6, including but not limited to compiling a list of workers' names and addresses employed during the current harvest season.

(b) If upon disposition of plaintiffs Motion For Further Relief To Enforce The Court's Order of June 28, 1983, filed on September 6, 1983, it appears that the employees of a grower-employer have received all wages to which they are entitled, the Court will direct that the funds in the account will be returned with accrued interest to the grower-employer.

(c) If upon disposition of said motion it appears that the employees of a grower-employer have received less than the wages to which they are entitled, the Court will direct that the funds in the account be distributed to the employees in the amount equal to the wages due plus accrued interest. Any balance to which the employees are not entitled will be refunded to the grower-employer.

(d) The Regional Administrator shall require a grower-employer to use its best efforts to locate all employees entitled to receive funds from the account. If any employee entitled to a payment cannot be located, the Regional Administrator, through DOL, shall so report to the Court. Any such funds that cannot be distributed directly to the employees entitled to them shall not revert to the grower-employer, and the Court by further order will determine their appropriate disposition.

Signed at Washington, D.C., this 12th day of September 1983.

Albert Angrisani,

Assistant Secretary of Labor.

[FR Doc. 83-25207 Filed 9-13-83; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 155

[Docket No. 81P-0049]

Canned Vegetables; Mushrooms; Standards of Identity and Fill of Container; Confirmation of Effective Date

AGENCY: Food and Drug Adminstration.

ACTION: Final rule; confirmation of effective dates.

SUMMARY: The Food and Drug Adminstration (FDA) is confirming the effective date for compliance with all provisions of the final rule amending the U.S. standard of identity for canned mushrooms based on consideration of the Recommended International Standard for Canned Mushrooms (Codex standard) and the drained weight requirements in the U.S. standard of fill of container based on consideration of the Codex standard and of a petition by the National Food Processors Association (NFPA). The purpose of these actions is to promote honesty and fair dealing in the interest of consumers and to facilitate international trade.

DATES: Effective July 1, 1985, for all affected products initially introduced or initially delivered for introduction into interstate commerce on or after this date. Voluntary compliance may have begun May 16, 1983.

FOR FURTHER INFORMATION CONTACT: F. Leo Kauffman, Bureau of Foods (HFF-214), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-245-1164.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 15, 1983 (48 FR 10812), FDA issued a final rule to revise the standard of identity for canned mushrooms in § 155.201(a) (21 CFR 155.201 (a)) and to amend those provisions of the standard of identity for "Certain other canned vegetables" in § 155.200 (21 CFR 155.200) applicable to canned mushrooms based on consideration of the identity provisions of the Codex standard developed by the Codex Alimentarius Commission. FDA amended the standard of identity to define canned mushrooms as being of the species *Agaricus (Psalliota) bisporus* or *A. bitorquis*, provide for mushrooms to be so processed by heat to prevent spoilage either before or after being sealed in a container, define optional styles and provide for "quarters" and "random sliced" as additional styles, provide for optionally packing canned mushrooms in either water or other suitable liquid medium, and provide for the use of calcium disodium EDTA to promote color retention. The agency also amended the standard of fill of container for canned mushrooms in § 155.201(c) based on the Codex standard and a petition by NFPA (Docket No. 81P-0049) to amend the minimum drained weight requirements.

One letter containing two objections without requests for a hearing and two letters of comment filed after the objection period closed were submitted in response to the final regulation on behalf of a mushroom processor. The comments reiterated some of the objections contained in the original letter.

Pursuant to section 701(e) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 371(e)), FDA has considered the objections and its conclusions are as follows:

1. One objection asserted that the reduction in the weight of mushrooms in No. 10 cans is without merit and will mean that consumers will receive less product for their money.

The purpose of reducing the minimum drained weight for mushrooms in No. 10 cans is to ensure the safety of the product. NFPA recommends a maximum drained weight of 70 ounces for No.10 containers to assure proper heat treatment of the mushrooms. However, NFPA has stated that processors cannot meet both this 70 ounce maximum and the 68 ounce minimum required by the fill of container standard because 7 or 8 ounces above the minimum is the normal variability for filling mushrooms in No. 10 cans under good commercial practice. The resulting overfilling and subsequent underprocessing has resulted in a high incidence of bacterial spoilage in these containers. This bacterial spoilage has resulted in serious public health problems. It is for these reasons that the agency is lowering the minimum drained weight requirement in § 155.201(c)(1)(ii) for canned mushrooms in No. 10 cans to 61 ounces or 56 percent of the water capacity of the container.

With regard to the comment that consumers will, by virtue of the amendments, receive fewer products for their money, FDA notes that the premise of the comment is that processors will charge the same price for the reduced

amount of mushrooms in a No. 10 can. This premise is mere speculation.

2. One objection asserted that the definitions of the styles of product established by the final rule would impose upon the American packer requirements that could not be complied with because most American packers have automated operations that do not always guarantee precise cutting of the mushrooms. The objection also questioned how these requirements will benefit the consumer.

The agency believes that objective definitions of the various styles in which mushrooms are packed are necessary to permit meaningful labeling so that consumers can make informed choices in the marketplace and can have a reasonable expectation of consistently obtaining a comparable product when the food is labeled as being a particular style by various packers. The agency further believes that it has provided for reasonable product and process variability in the definitions. No data were submitted to support the objector's claim that American mushroom packers, because of their automated operations, cannot meet the requirements established by the definition of styles in the final rule. Therefore, FDA concludes that the definitions of styles are reasonable and is retaining them as published in the March 15, 1983 final rule.

List of Subjects in 21 CFR Part 155

Canned vegetables, Food standards, Vegetables.

PART 155—CANNED VEGETABLES

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 401, 701(e), 52 Stat. 1046 as amended, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), notice is given that the effective date for compliance with the standards of identity for certain other canned vegetables (21 CFR 155.200) and the standards of identity and fill of container for canned mushrooms (21 CFR 155.201 (a) and (c)) as amended in the **Federal Register** of March 15, 1983 (48 FR 10812), is July 1, 1985. Voluntary compliance may have begun May 16, 1983.

Dated: September 7, 1983.

Mervin H. Shumate,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 83-24957 Filed 9-13-83; 8:45 am]

BILLING CODE 4160-01-M

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Part 193

[FAP 9H5201/R603; PH-FRL 2431-7]

Tolerances for Pesticides in Food; Pirimiphos-Methyl

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule established a food additive regulation for the experimental use of the insecticide pirimiphos-methyl and certain metabolites in peanut oil. This regulation was requested by ICI Americas, Inc. This rule will permit the marketing of peanut oil while further data is collected on the pesticide.

EFFECTIVE DATE: Effective on September 14, 1983.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St. SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Jay Ellenberger, Product Manager (PM) 12, Registration Division (TS-767C), Environmental Protection Agency, 401 M St. SW., Washington, D.C. 20460. Office location and telephone number: Rm. 202, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703-557-2386).

SUPPLEMENTARY INFORMATION: EPA issued a notice in the **Federal Register** of December 28, 1978 (43 FR 60652) that announced that ICI Americas, Inc., Wilmington, DE 19897, had submitted a food additive petition (FAP 9H5201) to the Agency proposing to amend 21 CFR Part 193 by establishing a regulation permitting residues of the insecticide pirimiphos-methyl, *O*-[2-(diethylamino)-6-methyl-4-pyrimidinyl] *O,O*-dimethylphosphorothioate in peanut oil resulting from application of pirimiphos-methyl to stored peanuts in a proposed experimental program with a tolerance limitation of 50.0 parts per million (ppm).

There were no comments received in response to the notice of filing.

The data submitted in the petition and other relevant material have been evaluated, and it has been determined that the pesticide may be safely used in accordance with the provisions of the experimental use permit which is being issued concurrently under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973, 89 Stat. 751; 7 U.S.C. 136(a) *et seq.*). It has further been determined that since residues of the pesticide may result in peanut oil from the agricultural use provided for in the experimental use permit, the food additive regulation should be established and should include a tolerance limitation.

The petition was later amended to include the metabolite *O*-(2-ethylamino-6-methyl-pyrimidin-4-yl) *O,O*-dimethylphos-phorothioate and in free and conjugated form, the metabolites 2-diethylamino-6-methyl-pyrimidin-4-o1, 2-ethylamino-6-methyl-pyrimidin-4-o1, and 2-amino-6-methyl-pyrimidin-4-o1 in the tolerance regulation.

The data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the proposed tolerance include a 2-year rat chronic feeding/oncogenicity study which was negative for oncogenic effects at the levels tested (10, 50 and 300 ppm) and had a cholinesterase inhibition and systemic no-observed-effect level (NOEL) of 10.0 ppm and 300 ppm, respectively; a mouse oncogenicity study which was negative for oncogenic effects at the levels tested (5,250, and 500 ppm); a 2-year dog feeding study which had a cholinesterase-inhibition and systemic NOEL of 0.5 milligram (mg)/kilogram (kg)/day and 2.0 mg/kg/day, respectively; a rabbit teratology study which was negative at 16 mg/kg; a rat reproduction study which had a NOEL of 100 ppm; and a subchronic hen neurotoxicity study which was negative at up to 10 mg/kg/day. Studies on mutagenicity showed negative potential.

Based on the 2-year rat chronic feeding/oncogenicity study with a 10 ppm (0.5mg/kg/day) NOEL for cholinesterase inhibition, and using a safety factor of 10, the acceptable daily intake (ADI) for men is 0.05 mg/kg of body weight (bw)/day.

The metabolism of pirimiphos-methyl is adeqately understood for this use, and an adequate analytical method, gas chromato-graphy-mass spectrometry, is available for enforcement purposes. No actions are currently pending against registration of pirimiphos-methyl, nor are there any other relevant considerations involved in establishing the regulation.

The pesticide is considered useful for the purpose for which the regulation is sought. It is concluded that the pesticide may be safely used in the prescribed manner when such use is in accordance with the label and labeling registered pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act and is established as set forth below.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–534, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new food or feed additive levels, or conditions for safe use of additives, or raising such food or feed additive levels do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24945).

(Sec. 409 (c)(1), 72 Stat. 1786 (21 U.S.C. 346 (c)(1)))

List of Subjects in 21 CFR Part 193

Food additives, Pesticides and pests.

Dated: September 1, 1983.

James M. Conlon,

Acting Director, Office of Pesticide Programs.

PART 193—[AMENDED]

Therefore, 21 CFR Part 193 is amended by adding new § 193.468 to read as follows:

§ 193.468 Pirimiphos-methyl.

(a) [Reserved]

(b) A tolerance of 50.0 parts per million is established for the insecticide pirimiphos-methyl, *O*-[2-(diethylamino)-6-methyl-4-pyrimidinyl] *O,O*-dimethylphosphorothioate and the metabolite *O*-(2-ethylamino-6-methyl-pyrimidin-4-yl) *O,O*-dimethyl-phosphorothioate and in free and conjugated form the metabolites 2-diethylamino-6-methyl-pyrimidin-4-ol, 2-ethylamino-6-methyl-pyrimidin-4-ol, and 2-amino-6-methyl-pyrimidin-4-ol in peanut oil resulting from applications of the insecticide to stored peanuts. This tolerance is established in accordance with an experimental use permit that expires September 2, 1984.

[FR Doc. 83-24990 Filed 9-13-83; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR 524

Ophthalmic and Topical Dosage Form New Animal Drugs Not Subject To Certification; Gentamicin Sulfate Spray

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 Schering Corp., providing for ophthalmic use of gentamicin sulfate spray in cattle for the treatment of pink eyes.

EFFECTIVE DATE: September 14, 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: Schering Corp., Galloping Hill Rd., Kenilworth, NJ 07033, filed an NADA (130–952) providing for use of gentamicin sulfate spray. Each milliliter of the spray contains gentamicin sulfate equivalent to 1.07 milligrams of gentamicin. The spray is indicated for ophthalmic use in cattle for the treatment of pink eye (infectious bovine keratoconjunctivitis) caused by *Moraxella bovis*. The NADA is approved, and the regulations are amended accordingly. The basis for 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 carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement therefore will not be prepared. The Bureau's finding of no significant impact and the evidence supporting this finding, contained in a statement of exemption (pursuant to 21 CFR 25.1(f)(1)(ii)(*b*)), may be seen in the Dockets Management Branch (address above).

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

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Part 524 is amended by adding new § 524.1044e to read as follows:

§ 524.1044e Gentamicin sulfate spray.

(a) *Specification.* Each milliliter of sterile aqueous solution contains gentamicin sulfate equivalent to 1.07 milligrams of gentamicin.

(b) *Sponsor.* See No. 000085 in § 510.600(c) of this chapter.

(c) *Conditions of use.* (1) The drug is indicated for the treatment of pink eye in cattle (infectious bovine keratoconjunctivitis) caused by *Moraxella bovis*.

(2) One actuation of the sprayer delivers 0.7 milliliter containing 0.75 milligram gentamicin. The sprayer should be held upright 3 to 6 inches from the affected eye, with the opening directed towards the eye, and pumped once. It is advisable to treat once a day for up to 3 days.

(3) Conditions other than bacterial infections of the bovine eye and infectious keratoconjunctivitis caused by *Moraxella bovis* may produce similar signs. If conditions persists or increases, discontinue use and consult veterinarian.

Effective date. The regulations shall become effective September 14, 1983.

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

Dated: September 7, 1983.

Lester M. Crawford,

Director, Bureau of Veterinary Medicine.

[FR Doc. 83-24858 Filed 9-13-83; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 500

Foreign Assets Control Regulations; Report of Blocked Property

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Foreign Assets Control is amending the Foreign Assets Control Regulations to require that reports on blocked property (on Form TFR–611) be filed no later than December 1, 1983 by any person subject to the jurisdiction of the United States who, as of June 30, 1983, held property blocked under the Regulations. The purpose of this census is to provide the Office of Foreign Assets Control with information for use in administering the blocking controls, in monitoring compliance with the Regulations, and in preserving the value of the blocked assets.

EFFECTIVE DATE: September 9, 1983.

FOR FURTHER INFORMATION CONTACT: Loren L. Dohm, Census Section, Office of Foreign Assets Control, Department

of the Treasury, Washington, D.C. 20220, Tel. (202) 376-0968.

SUPPLEMENTARY INFORMATION: Copies of Form TFR-611, Report of Blocked Property, along with reporting instructions, are being sent by the Treasury to persons believed to be affected by the reporting requirements. Other persons required to report or otherwise interested in obtaining copies of the form and instructions may do so by contacting the Office of Foreign Assets Control or the nearest regional Federal Reserve Bank. Photocopies of the report form may be used. Listed below are the telephone numbers of the regional Federal Reserve Banks:

Boston—(617) 973-3000
New York—(212) 791-5000
Philadelphia—(215) 574-6000
Cleveland—(216) 579-2000
Richmond—(804) 643-1250
Atlanta—(404) 586-8500
Chicago—(312) 322-5322
St. Louis—(314) 444-8444
Minneapolis—(612) 340-2345
Kansas City—(816) 881-2000
Dallas—(214) 651-6111
San Francisco—(415) 974-2000

Reporting is mandatory for all persons subject to the jurisdiction of the United States who, as of June 30, 1983, held property blocked by the Foreign Assets Control Regulations.

Since the amendment involves a foreign affairs function, the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable. Similarly, because the amendment is issued with respect to a foreign affairs function of the United States, it is not subject to Executive Order 12291 of February 17, 1981, dealing with federal regulations. In accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3507, the information collection requirements of Form TFR-611, which are imposed by final rule, have been approved by the Office of Management and Budget (OMB).

List of Subjects in 31 CFR Part 500

North Korea, North Vietnam, South Vietnam, Cambodia (Kampuchea); Foreign assets control, Reporting and recordkeeping requirements.

PART 500—[AMENDED]

31 CFR Part 500 is amended as follows:

Section 500.611 is revised to read as follows:

§ 500.611 Reports on Form TFR-611.

(a) *Requirement for report.* Reports on Form TFR-611 are hereby required to be filed on or before December 1, 1983, in the manner prescribed herein, by persons subject to the jurisdiction of the United States, with respect to all property held on June 30, 1983, to which § 500.201 applies.

(b) *Who must report.* Reports on Form TFR-611 must be filed by each of the following:

(1) Any person subject to the jurisdiction of the United States or his successor who, as of June 30, 1983, had in his custody, control or possession, directly or indirectly, in trust or otherwise, property subject to § 500.201. This requirement includes State abandoned property and escheat agencies.

(2) All business or non-business entities in the United States in which, as of June 30, 1983, there existed any interest, financial or otherwise, of any designated country or national thereof, as described in § 500.201(d).

(c) *Filing Form TFR-611.* Reports on Form TFR-611 shall be prepared in triplicate. On or before December 1, 1983, two copies shall be sent in a set to the Office of Foreign Assets Control, Unit 611, Department of the Treasury, Washington, D.C. 20220. The third copy must be retained with the reporter's records.

(d) *Certification.* Every report on Form TFR-611 shall contain the certification required in Part F of the form. Failure to complete the certification shall render the report ineffective, and the submission of such a report shall not constitute compliance with this section.

(e) *Confidentiality of reports.* Reports filed on Form TFR-611 are regarded as privileged and confidential.

(Sec. 5, 40 Stat. 415, as amended (50 U.S.C. App. 5, E.O. 9193, 7 FR 5205, 3 CFR, 1938-1943 Comp., p. 1174; E.O. 9989, 13 FR 4891, 3 CFR, 1943-1948 Comp., p. 748))

Dated: September 9, 1983.

Dennis M. O'Connell,

Director, Office of Foreign Assets Control.

Approved:

John M. Walker, Jr.,

Assistant Secretary, Enforcement and Operations.

[FR Doc. 83-25208 Filed 9-12-83; 4:08 pm]

BILLING CODE 4810-25-M

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31 CFR Part 515

Cuban Assets Control Regulations; Report of Blocked Property

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Foreign Assets Control is amending the Cuban Assets Control Regulations to require that reports on blocked property (on Form TFR-611) be filed no later than December 1, 1983 by any person subject to the jurisdiction of the United States who, as of June 30, 1983, held property blocked under the Regulations. The purpose of this census is to provide the Office of Foreign Assets Control with information for use in administering the blocking controls, in monitoring compliance with the Regulations, and in preserving the value of the blocked assets.

EFFECTIVE DATE: September 9, 1983.

FOR FURTHER INFORMATION CONTACT: Loren L. Dohm, Census Section, Office of Foreign Assets Control, Department of the Treasury, Washington, D.C. 20220, Tel. (202) 376-0968.

SUPPLEMENTARY INFORMATION: Copies of Form TFR-611, Report of Blocked Property, along with reporting instructions, are being sent by the Treasury to persons believed to be affected by the reporting requirements. Other persons required to report or otherwise interested in obtaining copies of the form and instructions may do so by contacting the Office of Foreign Assets Control or the nearest regional Federal Reserve Bank. Photocopies of the report form may be used. Listed below are the telephone numbers of the regional Federal Reserve Banks:

Boston—(617) 973-3000
New York—(212) 791-5000
Philadelphia—(215) 574-6000
Cleveland—(216) 579-2000
Richmond—(804) 643-1250
Atlanta—(404) 586-8500
Chicago—(312) 322-5322
St. Louis—(314) 444-8444
Minneapolis—(612) 340-2345
Kansas City—(816) 881-2000
Dallas—(214) 651-6111
San Francisco—(415) 974-2000

Reporting is mandatory for all persons subject to the jurisdiction of the United States who, as of June 30, 1983, held property blocked by the Cuban Assets Control Regulations.

Since the amendment involves a foreign affairs function, the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable. Similarly, because the amendment is issued with respect to a foreign affairs function of the United States, it is not subject to Executive Order 12291 of February 17, 1981,

dealing with federal regulations. In accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3507, the information collection requirements of Form TFR-611, which are imposed by final rule, have been approved by the Office of Management and Budget (OMB).

List of Subjects in 31 CFR Part 515

Cuba, Foreign assets control, Reporting and recordkeeping requirements.

PART 515—[AMENDED]

31 CFR Part 515 is amended as follows:

Section 515.611 is revised to read as follows:

§ 515.611 Reports on Form TFR-611.

(a) *Requirement for report.* Reports on Form TFR-611 are hereby required to be filed on or before December 1, 1983, in the manner prescribed herein, by persons subject to the jurisdiction of the United States, with respect to all property held on June 30, 1983, to which § 515.201 applies.

(b) *Who must report.* Reports on Form TFR-611 must be filed by each of the following:

(1) Any person subject to the jurisdiction of the United States or his successor who, as of June 30, 1983, had in his custody, control or possession, directly or indirectly, in trust or otherwise, property subject to § 515.201. This requirement includes State abandoned property and escheat agencies.

(2) All business or non-business entities in the United States in which, as of June 30, 1983, there existed any interest, financial or otherwise, of any designated country or national thereof, as described in § 515.201(d).

(c) *Filing Form TFR-611.* Reports on Form TFR-611 shall be prepared in triplicate. On or before December 1, 1983, two copies shall be sent in a set to the Office of Foreign Assets Control, Unit 611, Department of the Treasury, Washington, D.C. 20220. The third copy must be retained with the reporter's records.

(d) *Certification.* Every report on Form TFR-611 shall contain the certification required in Part F of the form. Failure to complete the certification shall render the report ineffective, and the submission of such a report shall not constitute compliance with this section.

(e) *Confidentiality of reports.* Reports filed on Form TFR-611 are regarded as privileged and confidential.

(Sec. 5, 40 Stat. 415, as amended; 50 U.S.C. App. 5, sec. 620(a), 75 Stat. 445; 22 U.S.C. 2370(a); Proc. 3447, 27 FR 1085, 3 CFR, 1959-1963 Comp., E.O. 9193, 7 FR 5205, 3 CFR, 1938-1943 Comp., p. 1174, E.O. 9989, 13 FR 4891, 3 CFR, 1943-1948 Comp., p. 748)

Dated: September 9, 1983.

Dennis M. O'Connell,

Director, Office of Foreign Assets Control.

Approved:

John M. Walker, Jr.,

Assistant Secretary (Enforcement and Operations).

[FR Doc. 83-25200 Filed 9-12-83; 4:09 pm]

BILLING CODE 4810-25-M

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31 CFR Part 520

Foreign Funds Control Regulations; Report of Blocked Property

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Foreign Assets Control is amending the Foreign Funds Control Regulations to require that reports on blocked property (on Form TFR-611) be filed no later than December 1, 1983 by any person subject to the jurisdiction of the United States who, as of June 30, 1983, held property blocked under the Regulations. The purpose of this census is to provide the Office of Foreign Assets Control with information for use in administering the blocking controls, in monitoring compliance with the Regulations, and in preserving the value of the blocked assets.

EFFECTIVE DATE: September 9, 1983.

FOR FURTHER INFORMATION CONTACT: Loren L. Dohm, Census Section, Office of Foreign Assets Control, Department of the Treasury, Washington, D.C. 20220, Tel. (202) 376-0968.

SUPPLEMENTARY INFORMATION: Copies of Form TFR-611, Report of Blocked Property, along with reporting instructions, are being sent by the Treasury to persons believed to be affected by the reporting requirements. Other persons required to report or otherwise interested in obtaining copies of the form and instructions may do so by contacting the Office of Foreign Assets Control or the nearest regional Federal Reserve Bank. Photocopies of the report may be used. Listed below are the telephone numbers of the regional Federal Reserve Banks:

Boston—(617) 973-3000
New York—(212) 791-5000
Philadelphia—(215) 574-6000
Cleveland—(216) 579-2000
Richmond—(804) 643-1250
Atlanta—(404) 586-8500
Chicago—(312) 322-5322
St. Louis—(314) 444-8444
Minneapolis—(612) 340-2345
Kansas City—(816) 881-2000
Dallas—(214) 651-6111
San Francisco—(415) 974-2000

Reporting is mandatory for all persons subject to the jurisdiction of the United States who, as of June 30, 1983, held property blocked by the Foreign Funds Control Regulations.

Since the amendment involves a foreign affairs function, the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable. Similarly, because the amendment is issued with respect to a foreign affairs function of the United States, it is not subject to Executive Order 12291 of February 17, 1981 dealing with federal regulations. In accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3507, the information collection requirements of Form TFR-611, which are imposed by final rule, have been approved by the Office of Management and Budget (OMB).

List of Subjects in 31 CFR Part 520

Czechoslovakia, East Germany, Latvia, Lithuania, Estonia, Foreign assets control, Reporting and recordkeeping requirements.

PART 520—[AMENDED]

31 CFR Part 520 is amended as follows:

Section 520.611 is revised to read as follows:

§ 520.611 Reports on Form TFR-611.

(a) *Requirement for report.* Reports on Form TFR-611 are hereby required to be filed on or before December 1, 1983, in the manner prescribed herein, by persons subject to the jurisdiction of the United States, with respect to all property held on June 30, 1983, which remains blocked pursuant to Executive Order 8389 of April 10, 1940, as amended. Reports on Form TFR-611 are also required with respect to Czechoslovak property held on June 30, 1983 by persons subject to the jurisdiction of the United States, which was previously blocked pursuant to Executive Order 8389, as amended, and which was unblocked on March 19, 1982.

(b) *Who must report.* Reports on Form TFR-611 must be filed by each of the following:

(1) Any person subject to the jurisdiction of the United States or his successor who, as of June 30, 1983, had in his custody, control or possession, directly or indirectly, in trust or otherwise, property blocked pursuant to

Executive Order 8389, as amended. This requirement includes State abandoned property and escheat agencies.

(2) Any person subject to the jurisdiction of the United States or his successor who, as of June 30, 1983, had in his custody, control or possession, directly or indirectly, in trust or otherwise, Czechoslovak property which was previously blocked pursuant to Executive Order 8389, as amended, and which was unblocked on March 19, 1982.

(c) *Filing Form TFR–611.* Reports on Form TFR–611 shall be prepared in triplicate. On or before December 1, 1983, two copies shall be sent in a set to the Office of Foreign Assets Control, Unit 611, Department of the Treasury, Washington, D.C. 20220. The third copy must be retained with the reporter's records.

(d) *Certification.* Every report on Form TFR–611 shall contain the certification required in Part F of the form. Failure to complete the certification shall render the report ineffective, and the submission of such a report shall not constitute compliance with this section.

(e) *Confidentiality of reports.* Reports filed on Form TFR–611 are regarded as privileged and confidential. However, the United States will release to the Government of Czechoslovakia, in connection with the U.S.-Czechoslovak Agreement concerning the settlement of certain outstanding claims and financial issues, the following information:

(1) The names of holders of accounts of Czechoslovak government agencies and Czechoslovak banks, and the aggregate amount of all Czechoslovak assets held by all such holders.

(2) The names and amounts of blocked accounts of Czechoslovak government agencies and Czechoslovak banks. Information required to be submitted on this census regarding such accounts is mandatory and is not confidential.

(3) The name of, and aggregate amount held by, each holder of private Czechoslovak assets who consents in his report on this census to have the information furnished.

(4) A statement of the aggregate amounts of blocked Czechoslovak assets broken down into private and official categories.

(Sec. 5, 40 Stat. 415, as amended; 50 U.S.C. App. 5; E.O. 8389, Apr. 10, 1940, 5 FR 1400, as amended by E.O. 8785, June 14, 1941, 6 FR 2897, E.O. 8832, July 26, 1941, 6 FR 3715, E.O. 8963, Dec. 9, 1941, 6 FR 6348, E.O. 8998, Dec. 26, 1941, 6 FR 6785, E.O. 9193, July 6, 1942, 7 FR 5205; 3 CFR, 1943 Cum. Supp; E.O. 10348, Apr. 26, 1952, 17 FR 3709, 30 FR 1949–1953 Comp., p. 871; E.O. 11281, May 13, 1966, 31 FR 7215, 3 CFR 1966 Supp)

Dated: September 9, 1983.

Dennis M. O'Connell,

Director, Office of Foreign Assets Control.

Approved:

John M. Walker, Jr.,

Assistant Secretary (Enforcement and Operations).

[FR Doc. 83-25210 Filed 9-12-83; 4:08 pm]

BILLING CODE 4810-25-M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 204

Danger Zone; New River, N.C.

AGENCY: Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: The Corps of Engineers is amending the regulations which establish danger zones in the New River, North Carolina and vicinity, to expand the boundaries of the Browns Island target and bombing range area. The expansion of the area is necessary to meet the training needs of the U.S. Marine Corps.

EFFECTIVE DATE: September 14, 1983.

ADDRESS: HQDA, DAEN–CWO–N, Washington, D.C. 20314.

FOR FURTHER INFORMATION CONTACT: Mr. Ernest Jahnke at (919) 343–4467 or Mr. Ralph T. Eppard at (202) 272–0200.

SUPPLEMENTARY INFORMATION: On March 25, 1983, the Corps of Engineers published a Notice of Proposed Rulemaking in the **Federal Register** (48 FR 12563) soliciting comments on the proposal to amend 33 CFR 204.56.

On April 21, 1983, the Wilmington District Engineer published a public notice soliciting comments from all known interested parties. The public notice contained the same basic proposed changes contained in the NPRM and the comment period expired for both notices on May 9, 1983. We received no comments to the NPRM. The district engineer received several comments about the impact of the proposed firing range on endangered species and a question from the State of North Carolina on the effects of the danger zone on recreational and commercial fishing interests. We are satisfied that these issues have been adequately addressed by the Marine Corps and the Wilmington District Engineer.

The amended danger zone is urgently needed by the Marine Corps to meet its immediate training needs and since the danger zone has been in existence for many years and there are no unresolved objections to the NPRM or public notice, we find it to be in the best public interest to make these amendments effective upon publication in the **Federal Register.**

Note.—The Department of the Army has determined that this proposed rule is not a major rule and is exempt from the general requirements of Executive Order 12291 in accordance with the exceptions povided military functions. The Department of the Army has also determined that these regulations would not have a significant economic impact on a substantial number of small entities as required by Public Law 96–354.

List of Subjects in 33 CFR Part 204

Waterways, Transportation.

Dated: August 24, 1983.

Approved:

William R. Gianelli,

Assistant Secretary of the Army (Civil Works).

PART 204—[AMENDED]

Accordingly, the Department of the Army is amending 33 CFR 204.56 by revising paragraph (d)(1) as set forth below.

§ 204.56 New River, N.C., and vicinity; Marine Corps Firing Ranges.

* * * * *

(d) *Target and bombing area in Atlantic Ocean in vicinity of Bear Inlet*—(1) The water within an area described as follows: Beginning at latitude 34°37'32", longitude 77°12'03"; thence to latitude 34°36'58", longitude 77°11'25"; thence to latitude 34°37'44", longitude 77°10'35"; thence to 34°32'27", longitude 77°06'30"; thence to latitude 34°28'55", longitude 77°15'05"; thence to latitude 34°34'50", longitude 77°15'10"; thence to the point of beginning.

* * * * *

(33 U.S.C. 1 and 3)

[FR Doc. 83-24902 Filed 9-13-83; 8:45 am]

BILLING CODE 3710-92-M

VETERANS ADMINISTRATION

38 CFR Part 3

Veterans Benefits; Implementing Legislation

AGENCY: Veterans Administration.

ACTION: Final regulatory amendment.

SUMMARY: The Veterans Administration is amending its regulations to implement pertinent provisions of the Veterans' Compensation, Education and Employment Amendments of 1982. These regulatory changes affect the

definition of active duty for training, extend burial allowance eligibility, increase special monthly compensation for certain blinded veterans, and extend dependency and indemnity compensation eligibility to certain surviving spouses and children.

DATES: These changes are effective October 1, 1982, as provided by the above cited law.

FOR FURTHER INFORMATION CONTACT: Robert White, Legal Consultant, Compensation and Pension Service (211B), Department of Veterans Benefits, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 389-3005.

SUPPLEMENTARY INFORMATION: On pages 21595-98 of the **Federal Register** of May 13, 1983, the Veterans Administration published proposed amendments to 38 CFR 3.6, 3.22, 3.350, 3.1600, 3.1601, 3.1603 and 3.1605. Interested persons were given until June 13, 1983, to submit comments, suggestions, or objections to the proposed amendments.

We received no suggestions for change or objections to the proposed amendments. One comment was received from the Washington Legal Foundation which supported the proposed amendments. We have, therefore, adopted the amendments as proposed.

The administrator hereby certifies that these amended regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. The reason for this certification is that the proposed regulations would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amended regulations are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

In accordance with Exec. Order 12291, Federal Regulations, we have determined that these regulation changes are non-major for the following reasons:

(1) They will not have an effect on the economy of $100 million or more.

(2) They will not cause a major increase in costs or prices.

(3) They will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

(Catalog of Federal Domestic Assistance Program numbers are 64.101, 64.109, and 64.110)

Approved: August 29, 1983.

By direction of the Administrator

Everett Alvarez, Jr.,

Deputy Administrator.

PART 3—ADJUDICATION

The Veterans Administration is amending 38 CFR Part 3 as follows:

1. In § 3.6, paragraph (c)(4) is revised as follows

§ 3.6 Duty periods.

* * * * *

(c) *"Active duty for training".* * * *

(4) Duty performed by a member of a Senior Reserve Officers' Training Corps program when ordered to such duty for the purpose of field training or a practice cruise under chapter 103 of title 10, United States Code (38 U.S.C. 101(22); Pub. L. 97-306, 96 Stat. 1429); and

* * * * *

2. In § 3.22, paragraph (a)(2) (introductory portion preceding subdivision (i)) is revised as follows. The introductory portion of paragraph (a) is shown for reader convenience.

§ 3.22 Benefits at DIC rates in certain cases when death is not service-connected.

(a) *Entitlement criteria.* Benefits authorized by section 410(b) of title 38, United States Code shall be paid to a deceased veteran's surviving spouse (see § 3.54(c)(2)) or children in the same manner as if the veteran's death is service connected when the following conditions are met:

* * * * *

(2) The veteran was in receipt of or for any reason (including receipt of military retired or retirement pay or correction of a rating after the veteran's death based on clear and unmistakable error) was not in receipt of but would have been entitled to receive compensation at the time of death for a service-connected disablement that either:

* * * * *

3. In § 3.350, paragraphs (d) (introduction), (d)(4) and (f)(2) are revised as follows:

§ 3.350 Special monthly compensation ratings.

* * * * *

(d) *Ratings under 38 U.S.C. 314(n).* The special monthly compensation provided by 38 U.S.C. 314(n) is payable for any of the conditions which follow: Amputation is a prerequisite except for loss of use of both arms and blindness without light perception in both eyes. If a prosthesis cannot be worn at the present level of amputation but could be applied if there were a reamputation at a higher level, the requirements of this paragraph are not met; instead, consideration will be given to loss of natural elbow or knee action.

* * * * *

(4) Anatomical loss of both eyes or blindness without light perception in both eyes.

* * * * *

(f) *Intermediate or next higher rate.*

* * *

(2) *Eyes, bilateral, and blindness in connection with deafness.* (i) Blindness of one eye with 5/200 visual acuity or less and blindness of the other eye having only light perception will entitle to the rate between 38 U.S.C. 314(l) and (m).

(ii) Blindness of one eye with 5/200 visual acuity or less and anatomical loss of, or blindness having no light perception in the other eye, will entitle to a rate equal to 38 U.S.C. 314(m).

(iii) Blindness of one eye having only light perception and anatomical loss of, or blindness having no light perception in the other eye, will entitle to a rate between 38 U.S.C. 314 (m) and (n).

(iv) Blindness in both eyes rated under 38 U.S.C. 314(l), (m) or (n), or under the intermediate or next higher rate provisions outlined above, when accompanied by:

(*a*) Service-connected total deafness in one ear, will afford entitlement to the next higher intermediate rate or if the veteran is already entitled to an intermediate rate to the next higher statutory rate under 38 U.S.C. 314, but not higher than the (o) rate; or

(*b*) Bilateral deafness rated at no less than 40 percent, and the hearing impairment in one or both ears is service connected, will afford entitlement to the next higher statutory rate under 38 U.S.C. 314 or if the veteran is already entitled to an intermediate rate to the next higher intermediate rate, but in no event higher than the rate for (o); or

(*c*) Service-connected loss or loss of use of one hand, will afford entitlement to the next higher statutory rate under 38 U.S.C. 314 or, if the veteran is already entitled to an intermediate rate, to the next higher intermediate rate, but in no event higher than the rate for (o); or

(*d*) Service-connected loss or loss of use of one foot which by itself or in combination with another compensable

disability would be ratable at 50 percent or more, will afford entitlement to the next higher statutory rate under 38 U.S.C. 314 or, if the veteran is already entitled to an intermediate rate, to the next higher intermediate rate, but in no event higher than the rate for (o); or

(e) Service-connected loss or loss of use of one foot which is ratable at less than 50 percent and which is the only compensable disability other than bilateral blindness, will afford entitlement to the next higher intermediate rate or, if the veteran is already entitled to an intermediate rate, to the next higher statutory rate under 38 U.S.C. 314 , but in no event higher than the rate for (o). (38 U.S.C. 314(p); Pub. L. 97-306, 96 Stat. 1429)

* * * * *

4. Section 3.1600 is amended as follows:

(a) By removing the word "and" and inserting the word "or" at the end of paragraph (b)(2)(ii).

(b) By adding a new paragraph (b)(3) and redesignating the former paragraph (b)(3) as paragraph (b)(4) and by revising paragraph (c) so that the added and revised material reads as follows: The introductory portion of (b) is shown for reader convenience.

§ 3.1600 Payment of burial expenses of deceased veterans.

* * * * *

(b) *Nonservice-connected death burial allowance.* If a veteran's death is not service connected, an amount not to exceed $300 (or if entitlement is under § 3.8 (c) or (d), a rate in Philippine pesos equivalent to $150) may be paid toward the veteran's funeral and burial expenses including the cost of transporting the body to the place of burial. Entitlement is subject to the following conditions:

* * * * *

(3) The deceased was a veteran of any war or was discharged or released from active military, naval, or air service for a disability incurred or aggravated in line of duty, and the body of the deceased is being held by a State (or a political subdivision of a State), and the Administrator determines

(i) That there is no next of kin or other person claiming the body of the deceased veteran, and

(ii) That there are not available sufficient resources in the veteran's estate to cover burial and funeral expenses; and (38 U.S.C. 902(a); Pub. L. 97-306, 96 Stat. 1429)

(4) The applicable further provisions of this section and §§ 3.1601 through 3.1610. (38 U.S.C. 210(c), 902)

(c) *Death while properly hospitalized.* If a person dies from non-service-connected causes while properly hospitalized by the Veterans Administration, there is payable an allowance not to exceed $300 for the actual cost of the person's funeral and burial, and an additional amount for transportation of the body to the place of burial. For burial allowance purposes, the term "hospitalized by the Veterans Administration" means admission to a Veterans Administration facility (as defined in 38 U.S.C. 601(4)) for hospital, nursing home, or domiciliary care under the authority of 38 U.S.C. 610 or 611(a), or admission (transfer) to a nursing home under the authority of 38 U.S.C. 620 for nursing home care at the expense of the United States. (38 U.S.C. 903(a)) (If the hospitalized person's death is service connected, entitlement to burial benefits falls under paragraph (a) of this section instead of this paragraph.

5. Section 3.1601 is amended as follows:

(a) By adding a parentheses around the words "other than a § 3.1604(d) claimant" in the introductory portion of paragraph (b).

(b) By adding paragraph (b)(5) as follows:

§ 3.1601 Claims and evidence.

* * * * *

(b) *Supporting evidence.* * * *

(5) *Entitlement under § 3.1600(b)(3).* In addition to the other evidentiary requirements of this subparagraph, there must be written certification over the signature of a responsible official of the State (or political subdivision of the State) where the body was held that—

(i) There is no next of kin or other person claiming the body of the deceased veteran, and

(ii) There are not available sufficient resources in the veteran's estate to cover burial and funeral expenses. (38 U.S.C. 902(a); Pub. L. 97-306, 96 Stat. 1429)

6. Section 3.1603 is revised as follows:

§ 3.1603 Authority for burial of certain unclaimed bodies.

If the body of a deceased veteran is unclaimed, there being no relatives or friends to claim the body, and there is burial allowance entitlement which is not based on § 3.1600(b)(3), the amount provided for burial and plot or interment allowance will be available for the burial upon receipt of a claim accompanied by a statement showing what efforts were made to locate relatives or friends. The question of escheat of any part of such deceased veteran's estate is not a factor in such a claim. Burial allowance may be authorized for cost of disinterment and reburial of unclaimed remains originally accorded pauper burial but not for initial expenses of a burial in a potter's field. Burial in a prison cemetery is not considered a pauper burial.

7. Section 3.1605 (the introductory portion preceding paragraph (a)) is amended by adding the cross reference "(see § 3.1600(c))" after the words "authority of the Veterans Administration" at the end of the first sentence.

[FR Doc. 83-24886 Filed 9-13-83; 8:45 am]

BILLING CODE 8320-01-M

POSTAL SERVICE

39 CFR Part 111

Domestic Mail Manual; Miscellaneous Amendments

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service hereby describes the numerous miscellaneous revisions consolidated in the Transmittal Letter for Issue 12 of the Domestic Mail Manual (DMM), which is incorporated by reference in the Federal Register, 39 CFR 111.1.

Most of the revisions are minor, editorial or clarifying. Substantive changes, such as the new parcel size and weight limitations, have previously been published in the Federal Register.

EFFECTIVE DATE: June 2, 1983.

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

SUPPLEMENTARY INFORMATION: The Domestic Mail Manual, which is incorporated by reference in the Federal Register (see 39 CFR 111.1) has been amended by the publication of a transmittal letter for issue 12, dated June 2, 1983. The text of all published changes is filed with the Director of the Federal Register. Subscribers to the Domestic Mail Manual receive these amendments automatically from the Government Printing Office.

The following excerpt from the Summary of Changes section of the transmittal letter for issue 12 covers the minor changes not previously described in interim or final rules published in the Federal Register.

Note.— Issue 12 contains all DMM revisions published between January 27, 1983, and June 2, 1983 (PB 21388 through 21406).

Summary of Changes

Major Revisions

1. * * *

2. * * *

3. *Collect on Delivery Mail.* Section 914 has been revised to clarify existing policies on

collect on delivery (COD) mail and to provide additional guidance for acceptance and delivery employees (PB 21398, 4–7–83).

Other Revisions

1. * * *

2. Section 119.1 is revised to update the list of registered and pending trademarks and service marks (PB 21397, 3–31–83).

3. Sections 121.321 *c* and *d* are amended to provide maximum dimensions for fiberboard boxes and more specific weight requirements for parcels over 65 pounds. Sections 121.321 *e, f, g,* and *h* are renumbered 121.321 *d, e, f,* and *g* respectively. The reference to 123.33 in section 121.53 is corrected to 124.126. In the first sentence in 125.12, the reference to 121.321*d* is changed to 121.321*c* (PB 21400, 4–21–83.

4. Sections 124.24, 124.334, 124.335*b*(6), 124.341, 124.354, 124.363*c*, and 124.382*b* replace the words "shipper's certification" with "shipper's declaration for dangerous goods". Section 124.391 adds "and shipper's declaration for dangerous goods" after "magnetized material warning label" in the last sentence (PB 21388, 1–27–83).

5. Section 124 is revised to eliminate requirements for: a. Federal meat inspection certification marking for meat and meat products and b. disposal instructions for etiologic agents. Delete section 124.64 and renumber 124.65, 124.66, and 124.67 to 124.64, 124.65, and 124.66 respectively (PB 21396, 3–24–83).

6. Exibit 125.2 is updated (PB 21402, 5–5–83).

7. The table in Section 128.3 is revised to clarify that flat-sized mail is matter that exceeds *one or more* of the maximum dimensions for letter-sized mail (PB 21406, 6–2–83).

8. Section 142.21 is revised to reflect that the charge for returned checks has increased to $10 (PB 21395, 3–17–83).

9. Section 144.112 is revised to allow meter stamps to be used to prepay reply postage on First-Class letters, flats, and postcards which do not exceed 12 ounces. Delete the last sentence of 144.113. The first sentence of 144.21 is changed to require that manufacturer-supplied applications for postage meter licenses contain the same information and format as Form 3601–A, *Application for a Postage Meter License.* Sections 144.471 and 144.534 are revised to permit the use of .00 postage meter stamps to redate metered mail (PB 21394, 3–10–83).

10. Section 144.13 and 144.41*b* are revised to reflect the new name of Friden Alcatel (formerly F.M.E. Corporation) and new official mail meter stamps for Pitney Bowes, Friden Alcatel, and International Mailing Systems, respectively (PB 21400, 4–21–83).

11. Sections 144.224, 144.382*b*(7), 144.383, and 144.976*e* and *f* dealing with Computerized Remote Postage Meter Resetting Meters (CMRS) are amended to eliminate both the need for the postal employee to telephone the manufacturer's data center at the time of the six-month examination and the requirement to maintain the Form 3610, *Record of Postage Meter Setting* (PB 21397, 3–31–83).

12. Section 149.333*a* is expanded to emphasize that claim form sets for lost numbered insured articles being forwarded to FPO postal officers must include the unit or ship designation in the mailing address (PB 21401, 4–28–83).

13. Sections 149.513, 295.1, and 295.2 are changed to reflect the new time limit of 90 days to file Express Mail claims (PB 21403, 5–12–83).

14. Sections 159.551 and 159.552 are revised to correct the ZIP Code for the Boston Dead Letter Branch to 02205; section 159.561 is revised to correct the Boston Dead Letter Branch ZIP Code to 02205 and to show the reassignment of the Los Angeles dead parcel operation to the San Francisco Dead Parcel Branch (PB 21406, 6–2–83).

15. Section 293 is revised to authorize the use of Form 3877, *Firm Mailing Book,* as an Express Mail receipt (PB 21404, 5–19–83).

16. Section 411.332 is corrected to read that the per piece rate for packages of six or more addressed pieces for carrier route or finer sort destinations is 3.3 cents (PB 21394, 3–10–83).

17. The cross references in the following sections are corrected as follows: in section 443.1, change 410 to 411.33; in 462.1*i*, change 467.1 to 465.1; in 465.1, change 461.1*f* to 462.1*f;* in section 667.52*b*, change 667.12 to 667.13; in 667.52*d*, change 663.118 to 667.123; in 667.52*f* change 667.12*e* to 667.52*e;* in 667.71, change 667.41 to 667.51; in 721.1*c*, change 411.4 to 411.22; and in 945.374*a*, change 122.4 to 122.41.

18. New section 642.13 authorizes a one-year test of procedures to permit mailers currently authorized to mail at special third-class rates to obtain additional one-year authorizations to mail at other post offices (PB 21393, 3–3–83).

19. The exhibit lines in Exhibits 711.2, 711.3, and 711.4 have been moved to the top of the exhibits to eliminate any possible confusion.

20. Sections 767.21 and 767.31 are amended to emphasize the requirement that sacks or bundles of bulk rate bound printed matter be separated by parcel post zones in order to verify postage at the office of mailing (PB 21389, 2–3–83).

21. Section 912.56, change "post office box customers" to "box service customers".

22. Section 917.322 is revised to read that payment of business reply mail may be paid in cash or through a regular postage due account (PB 21389, 2–3–83).

23. In section 919.11, a reference to Postal Operations Manual (POM) 149 has been added.

24. Delete the final sentence in section 941.132 concerning validation plates (PB 21403, 5–12–83).

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—GENERAL INFORMATION ON POSTAL SERVICE

In consideration of the foregoing, 39 CFR 111.3 is amended by adding at the end thereof the following:

§ 111.3 Amendments to the Domestic Mail Manual.

* * * * *

Transmittal letter for issue	Dated	Federal Register publication
12	June 2, 1983	48 FR

* * * * *

[5 U.S.C. 552(a); 39 U.S.C. 401, 407, 408, 3001–3011, 3201–3218; 3403–3405, 3601, 3621; 42 U.S.C. 1973 cc–13, 1973 cc–14]

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

[FR Doc. 83–25007 Filed 9–13–83; 8:45 am]

BILLING CODE 7710–12–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 23

[OST Docket No. 64c and 64d]

Participation by Minority Business Enterprises in Department of Transportation Programs

Correction

In FR Doc. 83–19050, beginning on page 33432, in the issue of Thursday, July 21, 1983, on page 33444, in the first column, in § 23.68, in the second complete paragraph "(1)" should read "(e)(1)".

BILLING CODE 1505–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[Docket No. 30909–185]

Atlantic Tuna Fisheries

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Rule-related notice; closure.

SUMMARY: NOAA issues this notice to close the fishery for giant Atlantic bluefin tuna conducted by vessels permitted in the General category. Closure of this fishery is necessary because the portion of the annual catch quota available before September 15, 1983, will be attained by the effective date of this notice. Upon closure, vessels permitted in the General category will be prohibited from retaining giant Atlantic bluefin tuna captured in the regulatory area until further notice.

EFFECTIVE DATE: 0001 hours local time September 12, 1983.

FOR FURTHER INFORMATION CONTACT: William C. Jerome, Jr., National Marine Fisheries Service, Northeast Region, State Fish Pier, Gloucester, MA 01930, 617–281–3600, extension 325, or David S. Crestin, 617–281–3600, extension 253.

SUPPLEMENTARY INFORMATION: Regulations promulgated under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971–971h) regulating the take of Atlantic bluefin tuna by persons and vessels subject to U.S. jurisdiction were published in the **Federal Register** on June 17, 1983 (48 FR 27745).

Section 285.22(a) of the regulations provides for an annual quota of 650 short tons (st) of giant Atlantic bluefin tuna to be taken by vessels permitted in the General category in the Regulatory Area. The regulations further establish that only 550 st of the annual quota may be taken before September 15, 1983. The Assistant Administrator of Fisheries, NOAA (Assistant Administrator), is authorized under § 285.20(b)(1) to monitor the catch and landing statistics and, on the basis of these statistics, to project a date when the total catch of Atlantic bluefin tuna will equal any quota under § 285.22. The Assistant Administrator, further, is authorized under § 285.20(b)(1) to prohibit the fishing for, or retention of, Atlantic bluefin tuna by the type of vessels subject to the quotas. The Assistant Administrator has determined, based on the reported catch of giant Atlantic bluefin tuna of 450 st, and the recent catch rate of approximately 100 tons per week, the portion of the annual quota of giant Atlantic bluefin tuna available to vessels permitted in the General category prior to September 15, 1983, will be attained by September 12, 1983. Fishing for, and retention of, giant Atlantic bluefin tuna by these vessels must cease at hours Eastern Daylight Time on September 12, 1983, and may not resume until further notice.

The effects of this inseason adjustment of the daily catch rate limit on the participants in the fishery were considered in the design of the final regulations. This action is taken under the authority specified at 50 CFR 285.20(b)(1), and is taken in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 285

Administrative practice and procedure, Fish, Fisheries, Fishing, Imports, International organizations, Penalties, Reporting and recordkeeping requirements.

(16 U.S.C. 971 *et seq.*)

Dated: September 9, 1983.

Anthony J. Calio,

Deputy Administrator for National Oceanic and Atmospheric Administration.

[FR Doc. 83-25040 Filed 9-9-83; 4:34 pm]

BILLING CODE 3510-22-M

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50 CFR Part 663

[Docket No. 30907-183]

Pacific Coast Groundfish Fishery

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Rule-related notice; inseason adjustment and request for comments.

SUMMARY: NOAA issues this notice to further limit commercial landings of widow rockfish and the *Sebastes* complex of rockfish taken off the coasts of Washington, Oregon, and California, and seeks public comment on these actions. These actions are authorized under regulations implementing the Pacific Coast Groundfish Fishery Management Plan at 50 CFR Part 663. These actions supersede the landing restrictions on widow rockfish and the *Sebastes* complex published in the **Federal Register**.

DATES: This notice is effective from 0001 hours Pacific Daylight Time September 10, 1983, until modified, superseded, or rescinded. Comments will be accepted until September 29, 1983.

ADDRESSES: H. A. Larkins, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE, Bin C15700, Seattle, Washington 98115, or Floyd S. Anders, Jr., Acting Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

FOR FURTHER INFORMATION CONTACT: H. A. Larkins, 206–527–6150, or Floyd S. Anders, Jr., 213–548–2575.

SUPPLEMENTARY INFORMATION: The Pacific Coast Groundfish Fishery Management Plan (FMP) was approved on January 4, 1982, and final implementing regulations were published October 5, 1982 (47 FR 43964). The regulations allow the Secretary of Commerce (Secretary) to reduce fishing levels if it is determined that continued fishing at current levels would cause biological stress to any species. Commercial fisheries on widow rockfish and the *Sebastes* complex were restricted in 1983 to minimize biological stress and to extend the fishery as long as possible during the year. Both widow rockfish and the *Sebastes* complex are managed by quota in 1983; once the quota is reached, further commercial landings of these species will be prohibited.

Widow Rockfish. Signs of biological stress were documented for widow rockfish in 1982 and a 75,000-pound trip limit was imposed (47 FR 46287). Signs of biological stress persisted in 1983 and the trip limit was reduced to 30,000 pounds (48 FR 8283). Provisions were made for a midseason evaluation and adjustment of trip limits if landings were at a rate that would exceed the quota (the numerical optimum yield, OY) before the end of the year. Data available June 1 indicated that landings for the first half of 1983 were at acceptable levels and no further fishing restrictions would be necessary. However, data available August 30, 1983, revealed landings at higher levels than previously anticipated, and projections indicate that the 10,500-mt quota could be reached as early as mid-September if landings are not curtailed.

Sebastes Complex. The *Sebastes* complex consists of several species of rockfish which are harvested together off Washington, Oregon, and California. Yellowtail and canary rockfishes comprised 70 percent of the landings from the Vancouver-Columbia area in 1982, and their landings exceeded their summed ABCs by a factor of two. To minimize biological stress on those two species, a coastwide 40,000-pound trip limit on the *Sebastes* complex was imposed with the intent of holding landings in the Vancouver-Columbia area at a level half-way between 1982 landings and the 1983 allowable biological catch (ABC), about 14,000 mt (48 FR 8285). (The trip limit was imposed coastwide to preclude large effort shifts into the Eureka, Monterey, and Conception areas.) The midseason evaluation revealed not only that the 40,000-pound trip limit had not reduced fishing pressure, but that, in fact, effort had intensified. In response to public testimony that closing the fishery at 14,000 mt would be severely disruptive to the industry and would not provide a reasonable amount of time to adapt to alternate fisheries, the amount of the *Sebastes* complex that could be landed was raised to the 1982 level (18,500 mt) with the understanding that landings above that level would be prohibited. The 40,000-pound, coastwide, trip limit was retained, but only one delivery larger than 3,000 pounds (round weight) was allowed per vessel per week in the Columbia-Vancouver area (48 FR 30395). By taking this action, the Council hoped to slow landings while extending the *Sebastes* fishery in the Vancouver-Columbia area throughout 1983. In spite

of these attempts to slow the fishery, estimates of landings through July 1983 were about a third higher than the previous year and, in some areas, the number of vessels landing the *Sebastes* complex tripled. Projections made on August 30, 1983, indicate that landings of the *Seastes* complex in the Vancouver-Columbia area could reach the 18,500 mt quota on September 29, 1983, if fishing levels are not reduced further.

Council Recommendation

Recognizing the impact of closures on the domestic fishing industry, and at the request of the industry and the states of Washington, Oregon, and California, the Council held an emergency public hearing on September 1, 1983, to solicit public comment on the impending closures. Several strategies for extending the fishing season without exceeding the quotas were discussed.

In a telephone conference call following the public hearing, and after being advised of public comments received on this issue, the Council recommended in a written report to the Secretary that fishing levels should be reduced further to encourage only incidental landings of widow rockfish and the *Sebastes* complex. In so doing, the Council intended to extend the season, not only to maintain a more constant supply of fish to the market, but also to reduce waste of rockfish taken unavoidably in other fisheries which must be discarded once the quota is reached. After considerable discussion, the Council endorsed a trip limit of 1,000 pounds for widow rockfish coastwide and a trip limit of 3,000 pounds for the *Sebastes* complex for the Vancouver-Columbia area (north of 43°00′ N. latitude). The Council acknowledged that if effort increases, little quota may remain by the time these trip limits are implemented and the seasons may not be extended long by these actions. These circumstances are particularly likely for the widow rockfish fishery which would be closed in mid-September at current fishing rates.

The Secretary concurs with the Council's recommendations, and the states have agreed to support and implement similar restrictions.

Secretarial Action

In accordance with the regulations at 50 CFR 663.22 and the recommendations of the Council, the Secretary announces:

(1) No more than 1,000 pounds (round weight) of widow rockfish may be taken and retained, or landed per vessel per fishing trip. When the 10,500 quota is reached, all landings of widow rockfish will be prohibited.

(2) No more than 3,000 pounds (round weight) of the *Sebastes* complex may be taken and retained, or landed, in the Vancouver-Columbia area (north of 43° 00′ N. latitude) per vessel per fishing trip. There is no limit on the number of trips that may be made until the 18,500 quota for the Vancouver-Columbia area is reached. When the quota is reached, all landings of the *Sebastes* complex taken in the Vancouver-Columbia area will be prohibited.

(3) No more than 40,000 pounds (round weight) of the *Sebastes* complex may be taken and retained, or landed, in the Eureka, Monterey, or Conception areas (south of 43°00′ N. latitude) per vessel per fishing trip.

(4) These limits apply to all commercial fishing vessels operating seaward of Washington, Oregon, and California including U.S. vessels delivering to foreign processors and foreign processors receiving U.S. harvested fish. For U.S. vessels, delivering to foreign processors the trip limits are applied on a haul-by-haul basis.

U.S. vessels operating under an experimental fishing permit issued under 50 CFR 663.10 and those landing pink shrimp also must comply with these trip limits.

Classification

The determinations to prohibit further landings of widow rockfish and the *Sebastes* complex are based on the most recent data available. The aggregated data upon which these determinations are based are available for public inspection at the Office of the Director, Northwest Region, on weekdays from 8:00 a.m.to 4:30 p.m. until the end of the comment period (see **ADDRESSES** above).

These actions are taken under the authority of 50 CFR 663.22 and are taken in compliance with Executive Order 12291. The actions are covered by the regulatory flexibility analysis prepared for the authorizing regulations.

Section 663.23 of the groundfish regulations states that the Secretary will publish a notice of proposed regulatory action before taking such action unless he determines that such notice and public review are impracticable, unnecessary, or contrary to the public interest. For the reasons outlined at 48 FR 8286, **Federal Register**. The public had opportunity to comment on inseason actions affecting widow rockfish and the *Sebastes* complex at the Council's May 11–12, 1983, meeting in Seattle, Washington, it's June 8–9 meeting in Portland, Oregon, it's July 19–21, 1983, meeting in Culver City, California, and the public hearing held September 1 in Portland, Oregon. The public also participated in meetings of the Council's Groundfish Management Team (June 1–2, and August 30-September 1, 1983, in Portland, Oregon), the Groundfish Advisory Subpanel and Scientific and Statistical Committee (June 7, 1983, in Portland, Oregon), and the Groundfish Task Force (June 3, 1983, in Portland, Oregon) where landings data were analyzed and management recommendations were developed for Council consideration. Public comments were accepted for 15 days after publication of the inseason adjustments made in February and July 1983. Further public comments will be accepted for 15 days after publication of this notice in the **Federal Register**.

The Secretary finds good cause for the reasons noted above to waive the 30-day delayed effectiveness provision of 50 CFR 663.23(c).

List of Subjects in 50 CFR Part 663

Administrative practice and procedure, Fish, Fisheries, Fishing.

(16 U.S.C. 1801 *et seq.*)

Dated: September 9, 1983.

Anthony J. Calio,

Deputy Administrator for National Oceanic and Atmospheric Administration.

[FR Doc. 83-25041 Filed 9-9-83; 4:50 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 48, No. 179
Wednesday, September 14, 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 Conservation and Renewable Energy

10 CFR Part 430

[Docket Nos. CE-CP-SPRM, NY001, WI002, CA003, MN004, OR005]

Energy Conservation Program for Consumer Products; Cancellation of Public Hearing

AGENCY: Office of Conservation and Renewable Energy, Department of Energy.

ACTION: Cancellation of public hearing in Minnesota.

SUMMARY: The Department of Energy is cancelling the public hearing scheduled for September 15, 1983, at the Courthouse/Federal Building, 110 Fourth Street, Minneapolis, Minnesota. This hearing had been scheduled in connection with DOE's proposal to grant Minnesota's petition for exemption from Federal preemption of Minnesota's regulation pertaining to energy use or energy efficiency for clothes dryers and kitchen ranges and ovens (48 FR 34858, August 1, 1983). Although DOE did not receive sufficient interest to hold the Minnesota hearing, the respondent wishing to testify has been notified and has agreed to appear at the Wisconsin hearing on September 13, 1983, 1:00 p.m., at 212 East Washington Avenue, Room 215, Small Business Administration, in Madison, Wisconsin.

FOR FURTHER INFORMATION CONTACT:

Michael J. McCabe, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE-113, Room GH-068, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585; (202) 252-9127,

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-33, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585; (202) 252-9513, or

U.S. Department of Energy, Conservation and Renewable Energy, Office of Hearings and Dockets, Room 6B-025, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585; (202) 252-9319.

SUPPLEMENTARY INFORMATION: On August 1, 1983, (48 FR 34858) DOE issued a notice of proposed rulemaking and hearing on granting Minnesota's petition for exemption from Federal preemption on Minnesota's regulation pertaining to clothes dryers and kitchen ranges and ovens. In the August 1983 proposal, the Department also proposed granting the petitions from Federal preemption from New York, Wisconsin, California, and Oregon concerning State laws for clothes dryers and/or kitchen ranges and ovens. A public hearing was scheduled to be held in each State and in Washington, D.C. to provide interested persons an opportunity to comment on the proposed rules. In the Notice of Proposed Rulemakings DOE stated that it might consolidate any or all of the hearings if the Department did not receive sufficient interest concerning a particular hearing. DOE is cancelling the Minnesota hearing for this reason. DOE has contacted each speaker and has provided each person the opportunity to present testimony at the hearing to be held in Madison, Wisconsin.

Issued in Washington, D.C., September 12, 1983.

Pat Collins,

Acting Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 83-25187 Filed 9-13-83; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 83-NM-69-AD]

Airbus Industrie Model A300 Series Airplanes; Airworthiness Directives

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes an airworthiness directive (AD) that would require a one time inspection for cracks, and replacement if necessary, of the brake system hydraulic hose end fitting collars on certain Airbus Industrie Model A300 series airplanes. Cracks have been found in these components which, if left uncorrected, could lead to loss of braking.

DATES: Comments must be received no later than October 31, 1983.

ADDRESSES: The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France or may also be examined at the address shown below.

FOR FURTHER INFORMATION CONTACT:

Mr. Sulmo Mariano, Foreign Aircraft Certification Branch, ANM-150S, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington, telephone (206) 767-2530. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket and be submitted in duplicate to the address specified below. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of

the Regional Counsel, Attention: Airworthiness Rules Docket No. 83-NM-69-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The French Direction Generale de l'Aviation Civile has classified Airbus Industrie Service Bulletin A300-32-310 as mandatory. Prior to delivery of an Airbus Industrie Model A300 series airplane, cracks were found in the end fitting collars of the ⅜ inch diameter brake system hydraulic hoses manufacutured by Titelflex. An investigation was made by the manufacturer; the findings indicate the possibility of a limited number of defective hoses installed on the brake system. Since these hoses are subject to severe environmental conditions and their failure could result in loss of braking, the service bulletin recommends a one time inspection and replacement of defective hoses.

This airplane model is manufactured in France and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement. Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require the inspection and replacements previously described.

It is estimated that 19 U.S. registered airplanes would be affected by this AD, that it would take approximately 6 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Repair parts are estimated at $100 per airplane. Based on these figures, the total cost impact of this AD to the U.S. operator is estimated to be $6,460. For these reasons, the proposed rule is not considered to be a major rule under the criteria of Executive Order 12291. No small entities within the meaning of the Regulatory Flexibility Act would be affected.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new Airworthiness Directive:

Airbus Industrie: Applies to Model A300 B2-1A, B2-1C, B4-2C, B2k-3C, B4-103, B2-203 and B4-203 series airplanes, certificated in all categories with serial numbers specified in paragraph 1, Planning Information, of Airbus Industrie Service Bulletin A300-32-310, dated February 12, 1981. To prevent potential loss of braking, accomplish the following, unless previously accomplished:

A. Within the next 500 flight hours after the effective date of this AD, inspect the hydraulic hose end fitting collars on Titeflex Type ⅜" diameter hoses SC641060266 of the brake hydraulic system in accordance with paragraph 2, Accomplishment Instructions, of the service bulletin.

1. Prior to further flight, end fittings with batch reference number 06K672C, 06L039C, or 06M330C on the sleeve or other fittings which are cracked must be replaced with end fittings manufactured after January 1976 and having identification mark "U."

2. Uncracked end fittings with date of manufacture later than January 1976 and no identification mark or identification mark "X" must be replaced with the end fittings types specified in subparagraph A.1, above, within 250 flight hours from the date of inspection.

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

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

(Sec. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85).

Note.—For the reasons discussed earlier in the preamble, the FAA has determined that this document: (1) Involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A regulatory evaluation has been prepared and has been placed in the public docket.

Issued in Seattle, Washington on September 1, 1983

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 83-24947 Filed 9-13-83; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 83-NM-68-AD]

Airbus Industrie Model A300 Series Airplanes; Airworthiness Directives

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes an airworthiness directive (AD) that would require repetitive inspections, modifications, and replacements, if necessary, of certain main landing gear components of Airbus Industrie Model A300 series airplanes. Corrosion has been found in certain areas of the main landing gear hinge arm which, if left uncorrected, could lead to collapse of the main landing gear.

DATES: Comments must be received no later than October 31, 1983.

ADDRESSES: The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France or may also be examined at the address shown below.

FOR FURTHER INFORMATION CONTACT: Mr. Sulmo Mariano, Foreign Aircraft Certification Branch, ANM-150S, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington, telephone (206) 767-2530. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 96168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket and be submitted in duplicate to the address specified below. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 83-NM-68-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The French Direction Generale de l'Aviation Civile has classified certain Airbus Industrie and Messier-Hispano-Bugatti service bulletins as mandatory.

During routine maintenance inspections of several reinforced hinge arms on the main landing gear, corrosion was found at the hinge arm—trunnion blend radii on both the actuating cylinder and universal joint sides. The corrosion on the actuating cylinder side is on areas subjected to high stress levels which could lead to the formation of cracks, possible failure of the hinge arm and eventually, collapse of the main landing gear. The corrosion results from the protective coating on the hinge arm being worn away when it is contacted by the bronze bushings fitted in the stirrup and universal joints.

The manufacturer performed fatigue tests on a corroded hinge arm which had experienced 6894 landings; the arm failed after 1855 additional simulated landings. Airbus Industrie issued Service Bulletin A300-32-356, which prescribes inspection of the hinge arm in accordance with the instructions of Messier-Hispano-Bugatti Service Bulletin 470-32-422. If corrosion is found, Airbus Industrie Service Bulletin A300-32-362 prescribes replacement or overhaul of the hinge arms in accordance with Messier-Hispano-Bugatti Service Bulletin 470-32-431. Airbus Industrie also issued Service Bulletins A300-32-348 and A300-32-355 which prescribe installation of washers to prevent the stirrup and universal joint busings from translating. The details of incorporating these two modifications are presented in Messier-Hispano-Bugatti Service Bulletins 470-32-407 and 470-32-421.

This airplane model is manufactured in France and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require inspections of the main landing gear hinge arms, incorporation of modifications, and if needed, replacement of components, as previously described.

It is estimated that 22 U.S. registered airplanes would be affected by this AD, that it would take approximately 105 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Repairs parts are estimated at $2200 per airplane. Based on these figures, the total cost impact of this AD to the U.S. operator is estimated to be $140,800. For these reasons, the proposed rule is not considered to be a major rule under the criteria of Executive Order 12291. No small entities within the meaning of the Regulatory Flexibility Act would be affected.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new airworthiness directive:

Airbus Industrie: Applies to A300 series airplanes, certificated in all categories and whose serial numbers are listed in paragraph 1, Planning Information, of Airbus Industrie (AI) Service Bulletin A300-32-356, Revision 1, dated December 1, 1982. To prevent failure of main landing gear hinge arms, accomplish the following, unless previously accomplished:

A. Within 120 days from the effective date of this AD, measure the displacement of the bronze bushing fitted in the stirrup on the actuating cylinder side on all affected hinge arms in accordance with paragraph 2.B of Messier-Hispano-Bugatti (MHB) Service Bulletin 470-32-422, Revision 1, dated December 3, 1982. Within the number of landings specified in the service bulletin (as related to the results of the above measurements), visually inspect for corrosion the blending radii of attachment between the trunnions and the hinge arm body in accordance with the instructions of the service bulletin.

1. If no trace of corrosion is found, incorporate the modifications AI 4544/S5351, and AI 4544/S5548, described in AI Service Bulletins A300-32-348, Revision 2, and A300-32-355, Revision 2, both dated May 16, 1983, and in accordance with the instructions of MHB Service Bulletins 470-32-421, Revision 2, and 470-32-407, Revision 2, both dated March 31, 1983.

Note.—Damaged surface protection must be restored before incorporating the modifications.

2. If traces of corrosion are detected, before further flight, replace the concerned hinge arms either with new arms or with arms modified in accordance with the instructions of MHB Service Bulletin 470-32-431, dated December 24, 1982, related to AI Service Bulletin A300-32-362, dated June 15, 1983, and further, incorporate the modifications required by paragraph A.1., above.

B. Termination of the inspection requirements is accomplished by the incorporaton of modifications AI 4544/S5351 and AI 4544/S5548.

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

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85).

Note.—For the reasons discussed earlier in the preamble, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A regulatory evaluation has been prepared and has been placed in the public docket.

Issued in Seattle, Washington on September 1, 1983.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 83-24945 Filed 9-13-83; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 83-AGL-9]

Proposed Alteration of Transition Area; Columbus, Ohio

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Columbus, Ohio, transition area. A recent review of the currently published description revealed discrepancies in the areas involved. The correct description is presented in the text of this notice.

The intended effect of this action is to insure segregation of the aircraft using approach procedures in instrument weather conditions from other aircraft operating under visual weather conditions in controlled airspace.

DATES: Comments must be received on or before October 15, 1983.

ADDRESS: Send comments on the proposal in triplicate to FAA Office of Regional Counsel, AGL-7, attention: Rules Docket Clerk, Docket No. 83-AGL-9, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket will be available for examination by intersted persons in the Office of the Regional Counsel, Federal Aviation Administration, 2300

East Devon Avenue, Des Plaines, Illinois 60018.

An informal docket will also be available for examination during normal business hours in the Airspace, Procedures, and Automation Branch, Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Airspace, Procedures, and Automation Branch, Air Traffic Division, AGL-530, FAA, Great Lakes Region, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION: This action is to redescribe the Columbus, Ohio, transition area to accurately reference the area involved. The new description includes additional controlled airspace to accommodate instrument approach procedures at Delaware Municipal Airport, Fayette County Airport, Buckeye Executive Airport, and Union County Airport. This action also corrects the names of airports that have been changed which include Lockbourne AFB changed to Rickenbacker ANGB, Mt. Vernon Airport changed to Knox County Airport, and Licking County Airport changed to Newark-Heath Airport. The airspace associated with the Circleville, Ohio, 700-foot transition area was redescribed in Docket No. 82-AGL-28 and is, therefore, excluded from this description.

The minimum descent altitudes may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts will reflect the defined areas which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 83-AGL-9." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, S.W., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2, which describes the application procedures.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the transition area airspace near Columbus, Ohio.

Section 71.181 of Part 71 of the Federal Aviation Regulations was published in Advisory Circular AC 70-3A dated January 3, 1983.

List of Subjects in 14 CFR Part 71

Transition areas, Aviation safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

Columbus, OH

That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of the center (latitude 39°59'42" N., longitude 82°52'11" W.) of Port Columbus International Airport, Columbus, Ohio; within a 14-mile radius of the center (latitude 39°49'00" N., longitude 82°56'00" W.); of Rickenbacker ANGB, Columbus, Ohio; within a 6.5-mile radius of the center (latitude 40°19'42", N. longitude 82°31'22" W.) of Knox County Airport, Mt. Vernon, Ohio; within an 8.5-mile radius of the center (latitude 40°01'29" N., longitude 82°27'44" W.) of Newark-Heath Airport, Newark, Ohio; and within 1.5 miles either side of the 324° bearing from Newark-Heath Airport extending to 11 miles northwest of the airport; within an 8.5-mile radius of the center (latitude 40°04'08" N., longitude 83°04'24" W.) of the Ohio State University Airport, Columbus, Ohio; and within 3.5 miles either side of the 096° bearing from Don Scott RBN (latitude 40°04'49" N., longitude 83°04'43" W.) extending from the RBN to 11.5 statute miles east of the RBN; within an 8.5-mile radius of the center (latitude 39°54'07" N., longitude 83°08'12" W.) of Bolton Field, Columbia, Ohio; within an 8.5-mile radius of the center (latitude 39°45'21" N., longitude 82°39'27" W.) of Fairfield County Airport, Lancaster, Ohio; within a 5.5-mile radius of the center (latitude 40°16'46" N., longitude 83°06'22" W.) of Delaware Municipal Airport, Delaware, Ohio; and within 3 statute miles either side of the 290° bearing from Delaware RBN (latitude 40°16'41" N., longitude 83°06'33" W.) extending from the RBN to 9.5 miles northwest of the RBN; within a 5-mile radius of the center (latitude 39°34'15" N., longitude 83°25'13" W.) of Fayette County Airport, Washington Court House, Ohio; and within 2.5 miles either side of the 039° bearing from Court House RBN (latitude 39°35'58" N., longitude 83°23'32" W.) extending from the RBN to 11.5 miles northeast of the RBN; within a 6-mile radius of the center (latitude 39°57'42" N., longitude 82°32'28" W.) of Buckeye Executive Airport, Hebron, Ohio; and within 6 miles either side of the 351° bearing from the airport extending 12.5 miles north of the airport; within a 5-mile radius of the center (latitude 40°13'29" N., longitude 83°21'00" W.) of Union County Airport, Marysville, Ohio; and within 3.5 statute miles either side of the 091° bearing from the Marysville RBN (latitude 40°13'35" N., longitude 83°20'54" W.) extending from the RBN to 12 miles east of the RBN, excluding that portion which overlies the Circleville, Ohio, 700-foot transition area.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983))

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

Issued in Des Plaines, Illinois, on August 25, 1983.

Monte R. Belger,

Acting Director, Great Lakes Region.

[FR Doc. 83-24941 Filed 9-13-83; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 83-AGL-12]

Ohio State University Airport, Columbus, Ohio; Proposed Alteration of Control Zone

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the Ohio State University Airport, Columbus, Ohio, control zone to revise the airspace currently designated for the control zone.

The intended effect of this action is to insure segregation of the aircraft using approach procedures in instrument weather conditions from other aircraft operating under visual weather conditions in controlled airspace.

DATES: Comments must be received on or before October 15, 1983.

ADDRESS: Send comments on the proposal in triplicate to FAA Office of Regional Counsel, AGL-7, attention: Rules Docket Clerk, Docket No. 83-AGL-12, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket will be available for examination by interested persons in the Office of the Regional Counsel, Federal Aviation Adminstration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

An informal docket will also be available for examination during normal business hours in the Airspace, Procedures, and Automation Branch, Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Airspace, Procedures, and Automation Branch, Air Traffic Division, AGL-530, FAA, Great Lake Region, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION: This action revises the Ohio State University Airport control zone to accommodate existing airspace requirements. A review of designated airspace in the Columbus area prompted a rewrite to better and more accurately describe the airspace in the area. The revised description is presented in the text of this notice.

Aeronatical maps and charts will reflect the defined areas which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 83-AGL-12." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, S.W., Washington, D.C. 20591, or by calling (202) 426-8058.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of advisory Circular No. 11-2, which describes the application procedures.

The Proposal

The FAA is considering an amendment to § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the Ohio State University Airport, Columbus, Ohio, control zone.

Section 71.171 of Part 71 of the Federal Aviation Regulations was published in Advisory Circular AC 70-3A dated January 3, 1983.

List of Subjects in 14 CFR Part 71

Control zones, Aviation safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

Columbus, Ohio State University Airport, OH

Within a 5-mile radius of the center, latitude 40°04'48" N., longitude 83°04'24" W., of Ohio State University Airport; within 3 miles each side of the 096° bearing from the Don Scott RBN, latitude 40°04'49" N., longitude 83°04'43" W., extending from the 5-mile radius zone to 9 miles east of the RBN, excluding that portion within the Port Columbus International Airport, Columbus, Ohio, control zone. This control zone is effective during the specific dates and times established in advance by a notice to airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983))

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

Issued in Des Plaines, Illinois, on August 25, 1983.

Monte R. Belger,

Acting Director, Great Lakes Region.

[FR Doc. 83-24942 Filed 9-13-83; 8:45 am]

BILLING CODE 4910-13-M

CIVIL AERONAUTICS BOARD

[EDR-466; Docket 41686]

14 CFR Ch. II

Computer Reservations Systems; Alleged Competitive Abuses and Consumer Injury

Dated: September 9, 1983.

AGENCY: Civil Aeronautics Board.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The CAB is requesting comment on proposals for rules that would deal with alleged competitive abuses and consumer injury resulting from the practices of airlines that provide computer reservations systems to travel agents. The notice invites comments on the basis for Board intervention and suggestions for possible remedies. This advance notice addresses the following areas: presentation of information in a format that is biased to favor the airline providing the travel agent computer system or to omit or provide more difficult acess to information on competing airlines' services; discriminatory prices charged other airlines for participation in the computer reservation systems, and anticompetitive or coercive contractual conditions for access; and unfair use of information of travel agent sales by the airlines providing the computer reservation systems.

DATES: Comments by: October 17, 1983.

Reply comments by: November 1, 1983.

Comments and other relevant information received after this date will be considered by the Board only to the extent practicable.

Requests to be put on Service list by: September 27, 1983

The Docket Section prepares the Service List and sends it to each person listed on it, who than serves comments on others on the list.

ADDRESSES: Twenty copies of comments should be sent to Docket 41686, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Individuals may submit their views as consumers without filing multiple copies. Comments may be examined in Room 711, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. as soon as they are received.

FOR FURTHER INFORMATION CONTACT: Susan B. Jollie, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428 (202) 673-6011

SUPPLEMENTARY INFORMATION: The purpose of this advance notice of proposed rulemaking is to determine whether government intervention is necessary to insure that computer reservation systems ("CRS's") used by travel agents to get information about air carrier price and service offerings and to make reservations are not used in ways that injure competition or that otherwise harm consumer welfare. The Board is soliciting comments on the need for action and comments on various suggested remedial rules.

To some degree, this proceeding is an outgrowth of a Congressional request in the Conference Report accompanying Pub. L. 97-369 that the Board investigate the competitive and antitrust implications of CRS's. In response to this request, the Board opened a docket for comments and conducted informal interviews with numerous carriers. The Board submitted its *Report to Congress on Airline Computer Reservations Systems* (report) on June 1, 1983. The Subcommittee on Aviation of the Committee on Public Works and Transportation of the House of Representatives held hearings on June 21-23.

On March 16, 1983, while the Board was preparing its report, the Association of Retail Travel Agents (ARTA) filed a petition for rulemaking asking the Board to adopt rules designed to prohibit what it perceived to be abuses of the CRS systems. Since the Board issued its reports, two additional petitions have been filed, one by Continental Airline and one by a group of 11 carriers: Air Cal, Muse Air, Capitol International Airlines, Air Florida, Pacific Express, and Pan American World Airways, Midway Airlines, Ozark Airlines, Pacific Southwest Airlines, Jet America, and Northeastern International (the Joint Petitioners).

Report to Congress and Congressional Hearings

In its report, the Board outlined the functioning of computer reservation systems and their role in the sale of air transportation. The Board identified four areas of alleged abuses. The report concluded that there were grounds for concern about allegations of anticompetitive behavior.

A. Display Screen Bias

When a travel agent requests information on flights in a given city pair, the CRS ranks available flights before they are displayed. All systems establish the hierarchy of display using some service factors, such as displacement from the requested departure time, elapsed time of the flight, whether the flight is a direct or connecting flight, and whether the connection is on-line. In addition, the predominant systems employ carrier identity factors which give preference to CRS owners (hereinafter sometimes referred to as "hosts" or "proprietors") and other carriers that contract for enhanced display and other services (hereinafter sometimes referred to as "co-hosts" or "participants"). The methods for incorporating bias based on the identity of the carrier rather than the quality of service vary from system to system. For example, American's Sabre system not only assigns points for various service factors, but also assesses additional points on the basis of carrier identity. United's Apollo system displays United flights leaving two hours before the requested departure, as well as an unlimited period after, while only flights leaving after the specified time are displayed for other carriers. Both the inclusion of carrier identity factors in the parameters that determine display priority and the limitation of a program capability to certain carriers are forms of display bias.

Many carriers are also concerned about bias in the selection and display of connecting flights. Again, although the methods may vary, each system displays only a certain number of connecting flights. Some carriers prescreen all connections before loading them into the computer. Others preselect a number of connecting points and program their systems to generate connecting routings over only those hubs. The number varies from system to system. Nevertheless, all make selections in ways that favor the CRS carrier's connecting hubs, thus enhancing the display of their own services and eliminating competing connections over nonselected hubs. However, some systems permit agents to specify connecting points and construct their own routings.

No one denies that bias exists; the dispute is over its significance and the need for corrective action. Except for the airline CRS owners, most parties that were involved in the Board's informal investigations and the Aviation Subcommittee hearings urged some action to control CRS practices. They argued that intentional bias is an unfair competitive practice and injures consumers in a number of ways. First, because each host represents that its system permits agents to select the best flight from all available offerings, agents and consumers who rely on them claim they are being misled. Second, they contend bias reduces the efficacy of

price and service competition from non-host airlines, thus insulating CRS owners from the discipline of the market. Finally, because some relevant flights are omitted altogether, they argue consumers are deprived of the opportunity of choosing from the full range of price and service options.

CRS owners say that the fruits of bias are merely their reward for taking the risks and making substantial investments in CRS equipment and programming, and without that reward, there would be no incentive to offer the services. Owners also argue that bias is not insurmountable. They suggest that there are limits on the amount of bias that can be programmed before agents lose faith in the system, and knowledgeable agents can overcome the bias by making additional or non-standard information requests. Finally, owners argue that CRS's merely reflect a kind of competitive advantage that the market is supposed to foster and that properly compensates for advantages in cost structure enjoyed by other airlines.

In rebuttal, opposing parties respond that the rewards should come from profits earned on CRS's. Opposing parties further argue that even if the bias does not consist of absolute exclusion, it still creates an enormous competitive booking advantage for the owner-airlines. They point also that forcing agents to make the extra effort to locate the flights of competing carriers negates the efficiency that use of CRS's is intended to produce.

B. Carrier Access

The second area of potential abuse identified by the Board involved the terms the CRS airlines extract for other carriers' participation in their systems. Access to CRS's is offered to carriers on varying terms. Most owners offer a co-host status that gives co-hosts some preference in bias, some ability to communicate with agents directly, and limited access to marketing data. While all non-co-hosts are generally lumped together as "other carriers", there are differences within this group. CRS systems tend to include schedules of most if not all carriers, but they may not provide agents with information on seat availability or the ability to book a reservation on all of them. At the moment, most owners seem to be moving in the direction of charging other carriers booking fees to display availability and permit reservations.

It has been alleged that owners deny co-host status or seat availability displays to carriers that are competing with them in important markets. Frontier alleged, for example, that United personnel said that it had been denied co-host status for over two years because of competitive reasons. Other instances of threatened or actual removal from systems were cited in comments to the Board for its Report and in testimony before the Aviation Subcommittee.

The various charges for participation are also said to be unfair in a number of ways. Opponents charge that fees are discriminatory, citing the fact that some carriers pay 25-cent booking fees while others pay $3. Others pay no booking fees. They claim that the fees are excessive and that the charges are designed to raise the costs of competing carriers. Small carriers or new entrants contend that they have neither the name identity, nor the internal marketing resources to compete effectively without access to agents.

Finally, opponents charge that owners use access to CRS's to coerce carriers into net ticketing or interline arrangements. Under these agreements, the carrier that has written the most number of interline tickets exacts a commission or fee for each surplus ticket written by the carrier's personnel or by a travel agent using that carrier's CRS. Opponents argue that these fees are also excessive in relation to costs, that owners are using their dominance in the CRS market to extract an agreement that would not occur in air transportation markets where they lack market power.

Owners respond that access is open to all carriers willing to pay the cost. They also claim to have an open policy on co-hosts, subject only to their technical capabilities and the sophistication of an applicant's internal CRS.

They argue that opponents do not fully understand the costs of the system. Primarily they have not given sufficient weight to the high fixed costs involved in developing the system. Differences in charges reflect booking arrangements made with different carriers at different times for different length of times. Current low charges to some carriers merely reflect contracts signed in the early stages of CRS development when owners agreed to below cost fees as a promotional tool. Owners argue that the interline fees are necessary to recover the total costs of handling tickets including administration and credit card discounts.

C. Misinformation

Criticism had been raised about CRS carrier practices including claims that owners delay input of information or send wrong information about their competitors to gain competitive advantage. For example, Continental alleged at the Aviation Subcommittee hearings that American had delayed loading a new low fare until after its marketing department had considered a competitive response. American claimed that the delay was necessary to avoid confusion and that its policies have been revised.

Opponents also allege that owners intentionally provide erroneous information about seat availability, closing flights which are not fully booked and allowing agents to book seats on flights that are already filled. They fear that agent mistrust can cost bookings.

Owners argue that these incidents are attributable to simple error. For the most part the error comes in the transmission of information to the owner, and the remainder is the result of unavoidable human error on the part of owner's personnel.

In the Aviation Subcommittee hearings, there also were complaints that owners sent messages to agents through the CRS to undermine competing airlines and censored co-host's attempts to send messages to counteract these efforts.

D. Marketing Information

CRS's contain detailed information on the activity of agent subscribers. Precise information is available on all segments booked by each subscriber on each carrier in the system, including city-pairs, number of seats booked, and customer name. Monthly reports are prepared for each subscriber.

Opponents argue that owner access to this detailed information gives them an unfair competitive advantage. Because owners receive it in such a timely fashion, they are able to determine market trends much more quickly than competitors. These reports are also provided to CRS carrier sales representative who then call on agents to induce them to increase sales on the owners. There are suggestions that threats as well as incentive commissions are used to increase CRS owners' market share.

Owners counter that the information is necessary for proper billing of booking and interline fees. Moreover, they argue that the data are proprietary, and they are under no obligation to—and perhaps cannot—distribute it to other carriers. Finally, they dispute the value of the data.

Market Structure

The general positions that parties took in comments for the Board's report and in the Aviation Subcommittee hearings reflect different perceptions about

market structure, which are relevant to a determination of whether a particular practice is anticompetitive. Opponents generally argued that CRS's are at this time natural monopolies, with American and United having roughly equal shares of 80 percent of the automated agencies. This fact, combined with high capital costs and scale and network economies available to incumbents, makes new entry at competitive prices unattractive. Further exacerbating the problem is the fact that it is generally uneconomical for an individual agency to subscribe to more than one system. In addition to the deterrents to switching systems, a relatively small number of low volume agencies remain unautomated; thus the potential market appears small. They also claimed that owner's use of incremental revenues gained through CRS bias or omissions to offset prices to agents that are below cost further insulates owners from the threat of new entry.

Owners argue that there is more than sufficient competition. They point to the existence of a total of five carrier-owned systems plus one independent as evidence that competition is working. Two of the carrier owned systems, Eastern's and Delta's, are of recent vintage. Owners argue that competitive pressures have precipitated innovation and improvements and have prevented them from charging fees which fully recover costs.

A. Market Shares

The usual starting point in competitive analysis is an examination of the relevant market and the market shares of firms offering competing services. If any one producer has a large enough portion of any relevant market, there is a risk that it may abuse its market position. Of course, market share are not conclusive, since factors such as barriers to entry may determine the extent to which a firm with a large market share is disciplined by potential competition.

Relevant markets are established by identifying competing services or products that are sold in general geographic areas. In its report the Board defined the product market as CRS's and examined the possibility of two types of geographic markets: the national market and regional markets.

In the national market, the Board found that 78–80 percent of automated locations were split roughly equally between American and United. TWA's PARS had 14 percent, the independent MARS Plus, 5, and others 5. These figures did not account for the recent entry of Eastern and Delta.

In some regional markets, which the Board defined as areas around major hubs, the Board found that one carrier or another serviced a much larger proportion of automated agents than national market shares would suggest. The Board found an empiric correlation between these large CRS market shares and the air transport dominance of the CRS owner at hubs that lacked a strong presence by a second CRS carrier.

The Board offered two possible explanations for this correlation. The first might be described as historical happenstance. In developing the CRS's, carriers would naturally derive the most benefit from their use by agents in areas where the owners focused on areas that they served heavily, producting the high regional market shares. As other airline CRS owners expand into new air transportation markets, they may have an interest in contesting those CRS markets as well.

The second explanation is that agents may perceive a number of advantages in using the CRS of a major local carrier. First, it permits direct communication with the carrier that is likely to be a major source of sales. This permits better and more reliable information. Other features, such as the ability to issue boarding passes, also become more of an advantage as the number of flights a carrier provides into the agent's area increases. This explanation implies that in order to compete effectively against a rival CRS, a carrier first would have to establish a substantial presence in its air transportation services.

B. Entry Barriers

The Board also identified a number of factors that might be considered entry barriers, which it defined as a factor that makes entry or expansion difficult, costly, or time consuming.

Development of CRS hardware and software would be expensive and timeconsuming. The Board observed that American claimed to have incurred expenses of $160 million to develop Sabre. Specialized programmers are said to be scarce, and existing CRS carriers could refuse to cooperate with potential competitors, who would not then be in a position to offer comparable services.

With some 80 percent of agents already automated, a new entrant would have to rely on coverting agents with existing systems, which is not very attractive. First, agents have time and money invested in the systems that they have, and the resultant disinclination to switch alone may be hard to overcome. In addition, CRS opponents have alleged that owners engage in a number of unfair practices in their contracts with agents.

It was alleged that the travel agent contracts were below cost. Airline CRS owners generate greater air transportation sales because of display bias. Because they can garner potentially greater returns from these incremental revenues, they have substantial economic incentives to price biased systems below cost. A potential entrant would need incremental revenues or some other form of offset to price their systems to agents competitively. Opponents also charge that carriers are using long-term leases with substantial liquidated damages provisions to tie up agents. Other provisions, such as United's rule requiring that an agent with Apollo must issue 95 percent of its tickets from United sales on Apollo, discourage agents from having multiple CRS's. Finally, opponents charge that owners actively pursue agents with "sweetheart" deals, including up-front bonuses, payment of liquidated damages, and overrides.

The report also observed that scale economies and network efficiencies might require that a new CRS be placed in a large number of locations to be competitive. Finally, if an airline needs to establish a substantial or dominant air transportation presence for successful CRS penetration, this might itself be a barrier to entry.

For its part, American says it offers agents the option of buying or leasing for anywhere from 1–5 years. While it does not generally discourage multiple CRS's, it will do so if the potential second system has an exclusionary policy with respect to Sabre. As to bonuses, American admits offering commission incentive overrides, but it denies giving up-front money or absorbing the costs of breaking a contract.

United concedes that the effect of the 95% rule is to reduce the incentives for multiple CRS's, but it argues that this is beneficial. Even for agents which can afford them, United argues that a duplicate system is uneconomical. In addition, it protects agents from unfair competition from large firms that can afford duplication. As to the long term leases, United argues that they are beneficial because they add stability to the industry.

Petitions for Rulemaking

ARTA

On March 16, 1983, ARTA filed a petition in Docket 41369 requesting that the Board adopt a rule declaring bias in

CRS's to be an unfair competitive practice. ARTA identified four kinds of bias, which it urged the Board to specifically prohibit. The four kinds were: (1) omission or deferral of schedule or availability information of a competitor; (2) omission or deferral of information on a competitor's fares; (3) delay in loading information on new fares or schedules to avoid competition; and (4) encouraging travel agents to use one carrier's validation plate for all tickets.

ARTA argued that bias is contrary to public interest because it stifles fare competition, inconveniences the public, and generally makes it more difficult if not impossible to compete with CRS owners. In addition, since some courts have held a travel agent to be an agent of the traveller, bias may expose the agent to litigation risk for failing to find the lowest fare or best service.

Frontier Airlines and Donald L. Pevsner filed comments on ARTA's petition. Mr. Pevsner fully supported ARTA, but asked the Board to expand the scope of its inquiry. He argued that United and American dominate the CRS industry and that they use this power to exhort exorbitant fees from smaller carriers, whose survival depends on access to travel agents. Frontier stated that while it shares ARTA's concern, it believed that the timing of its petition (before the Board issued its report) was premature.

Joint Petitioners

Eleven carriers filed a petition in Docket 41621 on August 2, 1983, for rulemaking requesting more comprehensive relief. Southwest and Frontier have filed answers which support the petition and, in the case of Frontier, propose additional rules.

In support of their proposal, the Joint Petitioners argued that further information has been elicited in the Aviation Subcommittee hearings that provides the Board with a basis for going forward. Southwest suggested that the potential for harm sufficient to justify a rulemaking has been demonstrated already. The Joint Petitioners stated that the Board has acted in the past to formulate prospective rules defining unfair competitive practices without specific findings of violations of section 411, and that the Board has a statutory duty to proceed in this area, citing sections 102(a)(5) and (7). The Joint Petitioners contended that the CRS owners have the power to engage in unfair and deceptive practices; that they can deny or have denied access for competitive reasons, to discipline competitive response or to coerce participation in net ticketing agreements; and that fees are set in an unreasonable and discriminatory fashion, usually based on the degree of competition. The Joint Petitioners discount owner protests that the systems are losing money by pointing out that revenues are understated by the amount of incremental transportation revenues, and that costs are overstated, because the costs of processing owners tickets are not charged properly. They urge the Board to give little weight to arguments that all contracts will be equalized as they come due for renewal. Besides intentionally discriminating, this system means that carriers paying excess fees are subsidizing carriers that pay low or no fees.

The Joint Petitioners also object that CRS owners employ non-service factors to bias ranking of displays, thus shifting revenues to CRS owners on some basis other than price or service quality. While competent agents can overcome bias, they will lose efficiency, and the increased costs ultimately will be passed on to the comsumer. They also suggest that the public interest is injured because entry by new carriers is more difficult.

The Joint Petitioners further suggested that a rulemaking is justified because CRS owners use proprietary agent data to promote their own service. They argued that owner claims that the data are not all that useful are belied by their strenuous objections to a Board proposal in 1978 to release less timely, less detailed international traffic data. They also suggest that this issue is analogous to one the FCC resolved by ordering General Telephone and AT&T to release data to competitors that they were making available to their marketing departments.

The last abuse, or potential for abuse, for which they sought redress was manipulation of competitive information by delay, or erroneous loading. While conceding that proof of intentional manipulation would be difficult, they argued that the owners' absolute control of the data input process, and the high volume of carrier complaints suggest that the danger is real. They argue that the Board must take steps to assure that an owner can be held accountable for its mistakes.

In conclusion, the Joint Petitioners argued that their proposed rulemaking would not be inconsistent with deregulation, as it does not involve excessive governmental oversight or prescription of standards. Rather, they would require CRS owners to establish objective standards in a number of areas and apply them fairly to all carriers. Their specific proposed rules are contained in Appendix A.

Continental Air Lines

In its petition in Docket 41628, Continental urged action to correct CRS abuses because of the critical role that CRS's and their travel agent users play in the air transportation market today. Travel agents' historic reputation as impartial representatives of the entire industry enhances the perception of reliability in the eyes of the consumer. Agents rely more and more on CRS's as an efficient source of information, and CRS owners have taken advantage of this situation to conceal from agents, and hence consumers as well, information on the best price and service.

Continental asserted that ranking flight display on the basis of carrier identity factors constitutes an abuse. It further suggested that identity bias in connecting flight selection and display and the use of airport codes is also objectionable.

Continental also complained that CRS owners discriminate in offering access to other carriers. First, they do not charge the same price to all carriers for comparable access levels and display preference. Second, they may refuse display preference altogether. Continental suggested that refusal to grant access to marketing information and refusal to disclose weighting factors constitute unfair or deceptive practices. Finally, it identified as abuses that need to be corrected policies of discouraging agents from using multiple systems and policies of not making service enhancements available to other carriers.

Continental described in some detail its legal theory for justifying Board action at this time without further detailed inquiry. It argues that the Board has a history under section 411 of acting even without proof of actual consumer injury or intent to deceive, in order to provide consumers a margin of safety. In addition, it noted that the Board has in the past found that manipulation of key tools used by travel counselors violates section 411. *Great Lakes Airlines* v. *United States Overseas Airlines*, 34 CAB 59, 61 n.7 (1961).

Continental, arguing by analogy to section 5 of the Federal Trade Commission Act, claimed that CRS practices are both unfair and deceptive. Because in its view CRS practices result in substantial injury to consumers and both violate the public policy and amount to inherently unscrupulous business conduct, they would be condemned as unfair trade practices, citing *FTC* v. *Sperry Hutchinson*, 405 U.S. 233 (1972).

The carrier alleged moreover that CRS owners have made a variety of materially false and deceptive representations, both express and implied, to agents and consumers. Because consumers rely on travel agent impartiality and expect agents to have access to all necessary information to assist in making the best choices, Continental argued that CRS owners should be considered as deceiving consumers under theories of indirect misrepresentation which have been applied by the courts. *See e.g., Region Corp.* v. *FTC*, 322 F. 2d 765, 768 3d. Cir, (1963). Continental also cited what it regarded as misrepresentations made in the course of the Board's inquiry into CRS's. Continental suggested that while firms are entitled to profit from entrepenurial enterprise, they are not entitled to reap their rewards by means of unlawful conduct.

Continental supported an expedited rulemaking because the harm to competition is present and growing. To await the outcome of possible anti-trust litigation would permit substantial injury that the carrier believes is appropriate is preventative in nature, not remedial. Rulemaking is particularly appropriate in this case because it will give all affected persons the opportunity to be fairly heard. The specific rules proposed by Continental are contained in Appendix B.

Basis for Requesting Comments

The Board will grant the outstanding petitions for rulemaking and consolidate them into Docket 41686. While there is much debate about the precise degree to which the current CRS practices affect the air transport industry, the information now available justifies serious concerns about the potential of these practices to inhibit competition and injure consumers. Given the magnitude of the potential harm, we believe it imperative to consider adopting rules designed to limit possible abuses.

Computer reservations systems have taken on an integral role in the distribution of air transportation in the five years since the Airline Deregulation Act was passed. Prior to that time, the OAG, tariffs, and the telephone were the primary sources of schedule, fare, and availability information for passengers and travel agents. With deregulation, and the explosion of varying fare and service offerings that came with it, passengers have come to rely much more heavily on travel agents for their information. Travel agents, in turn, have looked to CRS's to keep abreast of fares and services. These factors have made CRS's the most important means through which airline passengers learn of competing fare and service offerings.

Roughly 60% of all domestic airlines sales are made through travel agencies. Until very recently, airline agreements prohibited sales through any other form of non-airline sales distribution network. Although the study cited in the report estimated that 80 percent of all agencies have CRS's automated agencies probably account for more than 90 percent of airline ticket sales by agents, since only the smallest volume outlets are not automated today. At the very least, it appears that more than half of all airline tickets are distributed through automated agencies. While these agencies and their clients have access to secondary information resources such as the OAG, general advertising and direct calls to carriers, it appears clear that the primary tool they use at the "point of sale" is the CRS. To the extent that an air carrier is unable to present information on its schedules, fares, and availability at this point of sale, agents and passengers may be unaware of the competitive offerings of that carrier, and its potential traffic pool will be reduced correspondingly. In an industry where relatively small marginal changes in traffic or load factor can mean the difference between profits and substantial losses, such a result could have significant competitive effects. For travelers, ignorance of the existence of various travel options may mean that consumers are being denied the benefits of competition.

Given the central role of CRS's in the distribution of air transportation, we must be concerned about any conditions that give a few air carriers the power to dictate the terms of access to this system. To the extent that such carriers are able to limit revenues or raise costs of their competitors artificially, consumers in particular and the air transport system in general will suffer. The decision to deregulate the air transport industry was based on the perception that the industry was structurally competitive—*i.e.*, that entry barriers were low and resources were mobile. Given these conditions, one could rely on competition to weed out inefficiency, artificially high prices, and constricted service levels.

Our initital inclination is to rely to the maximum extent on the competitive market. But we do not believe that deregulation requires an uncritical adherence to a laissez-faire policy when there are indications of market abuse. If the distribution system or a critical part of it is controlled by a few airlines and their competitors cannot easily circumvent that system or provide their own system, their ability to compete will be greatly diminished and the premises underlying deregulation will be undercut. Our primary responsibilities under deregulation are to insure that the air transport system remains competitive and to insure that consumer interests are not abused.

Two CRS's—Sabre and Apollo—account for about 80% of all automated agency locations. Using rough estimates, the American or United systems can at any point in time account for 40–50% of agency sales generating on the order of 20 percent of domestic travel. While the national CRS market appears concentrated, certain regions of the country are even more so. In the Denver area, for example, Apollo alone accounts for an estimated 80% of the automated agencies. Dallas/Fort Worth, St. Louis and other major markets are similarly dominated by a single CRS.

Adding to the concern over these concentration figures is our perception that entry into the CRS field is apparently neither quick nor easy. United and American have each spent more than $150 million to develop their systems. It is reasonable to conclude that competing systems would cost as much or more to develop. Moreover, most of the potential market has already been automated. While new or existing CRS providers may be able to induce some travel agents to switch systems over time, it is not reasonable to expect that large numbers of agents will ignore the cost and inconvenience of retooling and retraining. Thus we can only expect that the existing CRS market structure will remain for at least the next few years.

Given the importance of CRS access to airlines and consumers, and given that a handful of air carriers control those systems now and will continue to do so for a substantial period to come, we must carefulluy scrutinize the practices of the CRS carriers to make sure that they do not adversely affect air transport competition or consumer interests. Based on the information available to us, we find that several of these practices have the potential to injure the air transport system, and we thus believe that there is a need to consider certain ground rules to limit abuses.

The practice with the most obvious potential impact on consumers is the display bias by which the CRS owners program their systems to give preference to their own flights in the selection and display of services on the CRS screen. The evident purpose of this practice is to obtain "incremental revenues" by inducing travel agents to book

passengers on the flights of the system proprietor or its favored co-hosts. In cases where the bias succeeds in influencing passengers' decisions, it may be that consumers have made the selection not because of the superiority of the proprietor's fare or service offerings, but because the range of options available to the passenger is artificially limited or skewed. One of the attributes of a competitive market is that buyers have information about competing prices and services.

It may be argued that the purpose and effect of bias—influencing passenger choice—is no different than the intent of other acceptable marketing strategies like advertising and incentive commissions for travel agents. There are, however, several factors that differentiate bias and may make it "unfair." First, unlike advertising, bias is used to *suppress* information about competitors' offerings, rather than to *provide* information about the offerings of the carrier initiating the practice. Second, while CRS providers do not hide the fact that they bias the system, they do not appear to volunteer details on the nature and degree of bias, and they do make it relatively difficult to overcome. Third, the travel agency system for which CRS's are the basic information tool is held out as an impartial system representing all airlines equally. However, unless a customer is sophisticated enough to inquire, he may not be aware that the information he is getting from a travel agent may be slanted in favor of certain carriers. Most importantly, bias is a competitive strategy that is available only to certain carriers.

Estimates vary as to the degree to which bias affects carrier revenues and passenger choices. However, the effect is clearly substantial. The President of American Airlines has testified that American enjoys a "premium share" of 8%–15% in agencies automated with Sabre and that with Apollo agencies American's bookings are approximately 10% lower than they would be if the Apollo agencies were not automated. These are relatively large increments of traffic in an industry where a 5 percent difference in average passenger load factors can be the margin between financial success and failure. He further testified that in 1981 American received about $100 million more in revenues from Sabre agents and $86 million less from Apollo agents than it would have if those agents had not been automated. The existence of CRS's and the identity of their proprietors has a substantial, hidden impact on the choices made by millions of passengers. While bias is not the only factor influencing these CFS-related choices, it is nonetheless a significant factor. Bias may account for a shift of millions of dollars in passenger revenues to CRS carriers and cause a substantial number of passengers to choose options offered by travel agents that they may well not have opted for had they known more about the quality of the fare or service offerings available to them. This result would appear to undercut fair competition and be unfair to consumers.

A second CRS practice that causes serious concern is the charging of allegedly unfair or discriminatory fees for a carrier to be listed in the systems. Both United and American admit to charging fees that vary widely from carrier to carrier. Some carriers, for example, paid nothing for their listing of schedules, fares, and availability but other carriers were charged $3.60 per segment booked for the same service. United admits that the fees it charges are based in part on the identity of the carrier it is negotiating with and on that carrier's "value" to United. Besides the access fee issue, American, United, and TWA have required other carriers to enter into net ticketing agreements with them as a condition to obtaining access to their CRS's. The ability of these CRS proprietors to maintain widely varying prices for substantially similar services and to extract substantial net ticketing fees may be an indicator that they have substantial CRS market power. In effect, the proprietors have shown that they have a degree of control over the costs of, and the prices charged by, their air transport competitors.

The imposition of discriminatory prices for CRS services may be unfair and may present a threat to air transport competition. In today's environment, most carriers must have their services and availability listed in the major CRS's if they wish to sell seats to the majority of the traveling public that uses travel agents. While the CRS proprietors have every right to expect payment for such listings, there is no explanation for an imposition of differing fees on similarly situated carriers. Such variations are certainly not based on cost differences and cannot be justified on the basis of increased efficiency of utilization. Moreover, if this is true, the clear effect of this practice is to handicap certain carriers that may be in competition with the CRS providers by raising their costs and hence the prices they can charge to the public.

Price discrimination may be acceptable in a full competitive market where there are alternatives available to customers. However, in a market like the CRS market, which is concentrated and appears to have relatively high entry barriers, and in which the dominant suppliers also compete with their customers, such discrimination may present a threat to competition.

We are also concerned about the imposition of net ticketing agreements as a condition to CRS access. Because the smaller carriers need access to travel agents, and therefore to CRS, they have no choice but to agree to the net ticketing fees. This use of CRS market power to impose fees for the interline sale of air transportation is alleged to be a tie-in arrangement that contravenes the antitrust laws. *See, Fortner Enterprises, Inc. v. United States Steel Corp.*, 394 U.S. 495 (1969); *Standard Oil Co. of California v. United States*, 337 U.S. 293 (1949). The potential damage to air transport competition from this practice is similar to the potential damage from discriminatory pricing—*i.e.*, it can be used to control the costs and prices of the proprietor's air transport competitors.

The third general practice that gives us immediate concern relates to access to, and use of, travel agent sales information. The system proprietors prepare monthly reports summarizing the sales activities of each travel agent subscriber. The reports show the bookings made on each carrier overall and in each market. It also appears that the CRS owner airlines have access to information on individual travel agent customers. In addition to being provided to agents, this information is used by the owners' marketing personnel in developing individualized commission arrangements and in other travel agent sales tactics, and appears to be a very useful sales tool, at least for some system owners.

The use of this information exclusively by CRS owners gives them a potentially unfair advantage over their competitors. Information on travel agency sales is proprietary to the travel agents and transporting carrier. There is reason to question why the carriers' marketing personnel should be given that information. Its use by marketing personnel gives the CRS carriers a sales advantage that cannot be duplicated by their competitors.

We conclude that there is an immediate need for us to consider rules designed to address these three problem areas. Those practices could present a serious threat to air transport competition and to consumer interests which, if proven, should be forestalled as soon as possible. We seek detailed comments on how one might intervene to restore competitive balance with a

minimum of disruption and expense. We do not at this point rule out the possibility that we may take further action if it is required.

Specific Proposals

We have decided to seek comment on a range of possible rules. We invite detailed responses both to the proposals of the various petitioners contained in the Appendices and to those proposals which we discuss below. As discussed below in connection with procedures we believe that we can act more expeditiously if we refrain from endorsing a specific proposal at this time. Moreover, at this stage, we have some questions about the efficacy of all the proposals put forth in the various petitions. In addition, the various proposals are not wholly consistent with each other, this suggests that at this time there is some dispute over the best solution to the alleted problems. By going forward with an ANPRM at this time without supporting any specific proposals, we expect to develop a record on which to evaluate these proposals. We also expect that commentors will be able to focus more finely on specific proposals.

Display Preference or Bias

The first set of proposals on which we seek comments concerns the display of airline schedules, fares, and seat availability. As explained in more detail in our discussion of the CRS report, two qualitatively different types of information now determine the ranking of flights: factors relating to carrier identity, and factors relating to the service characteristics, of a flight. Service factors relate generally to objectively ascertainable scheduling attributes such as displacement from the time of requested departure, elapsed time of flight, direct or non-stop service, and interline and online connections. Different CRS's weigh these factors differently, so that even in the absence of carrier preferences, various CRS's might well display service offerings in a different order.

We have not as yet encountered substantial criticism of the CRS carriers' selection and weighing of factors that are based on objective service criteria. The differences appear to be based on disparate perceptions of the value that travelers place on service factors and on management decisions about how programming resources will be applied to manipulate data. We are generally reluctant to regulate carrier practices unless we are persuaded that the competitive market is not functioning properly or cannot adequately protect consumer interests. We are therefore not inclined at this time to entertain suggestions for regulations or agreements that would seek to prescribe to uniform industry standard. Such an approach might well result in a rigid system that is not sufficiently responsive to technological innovations. We prefer not to stifle rivalry among CRS providers on display format choices that do not appear to result in competitive injury or consumer detriment.

We are suggesting several remedial actions that we could take if we are persuaded that corrective action is required to curb practices that abuse competition or injure the consumer. We ask commenters to address the following alternatives: (1) allowing CRS hosts a maximum advantage, however obtained, of thirty minutes; (2) removal of all carrier identity factors except that a CRS host could display its offering first in the event of a "tie" in service factors; (3) removal of all carrier identity factors, requiring that service factor ties be resolved by random selection. For each of these, commenters should discuss the likely effect on the incentives and costs, both increased and avoided, for CRS hosts, participating airlines, traval agents, and the traveling public.

In addition, we also solicit comment on proposals that would govern bias or non-display of connecting flights. Connections now play a greater role than in the past because of the development of hub and spoke route networks. Subjective criteria for the selection of connecting schedules based on the identity of a favored or disfavored carrier could have important implications for both consumers and carriers. This practice may influence flight selection as much as express carrier identity factors, yet it is less readily apparent and probably more difficult to overcome.

As explained in more detail in our preceding discussion of the report, preference in the order in which connections are displayed will be influenced by carrier identity factors that dictate the order in which flights are displayed. In addition, all CRS carriers suppress or eliminate some connecting services. There are strong suggestions that such decisions are made on the basis of competitive considerations. For example, a carrier may show connections over only a handful of hubs, or build connections using only a few connect points, and favor its own hubs in the majority of cases, even if service over those points would cause a more circuitous, time consuming, or expensive journey for the traveler. This form of bias cannot be overcome by glancing down the screen; rather, an agent must speculate about possible alternative hubs and enter successive instruction to the computer to construct schedules dynamically over the various choices.

We anticipate that CRS carriers will contend that it would impair their systems' efficiency or be technologically impossible to display a large number of connections. However, the gravamen of the complaints to date has been that the connections which are selected for display are artifically constrained on the basis of competitive considerations. Our first set of questions therefore deals with criteria for selecting connections, apart from the question of whether the CRS owner should be required to display a certain number of connections that would rank the highest under certain objective criteria.

We ask comment on whether CRS hosts should continue to select hubs or connecting services, and be able to charge participating carriers to have their connections or hubs favored or included. In the alternative, should objective criteria be required for the construction of connections? What factors should be used to construct connections, and how frequently must the selection process take place? Some alternatives for the service criteria could include: (1) all connections within a certain elapsed time from point of origin to ultimate destination, or within a minimum waiting time at the connection point, or some other scheduling variant; (2) all connections over hubs within a certain circuity (distance) allowance factor, e.g., 20 percent; (3) all connections that could be constructed using hub airports of a particular category, *e.g.*, all large and/or medium size hubs; (4) predominant actual itinerary based on historic traffic flows in city-pair markets; (5) some combination of factors; or (6) the CRS carriers' choice of objective hub criteria, such as those just described.

Aside from how hubs may be selected, we have questions on how many connections should be constructed and displayed. Should they be constructed over all hubs that qualify for selection, or should we prescribe a minimum number? Of the connections constructed, should we require display of all, a fixed raw number, or a fixed percentage? Should the answers to these questions vary according to the size of the market requested?

Another aspect of CRS display on which we seek comment is fare information. At the present time, price is not generally included as one of the so-

called objective factors used in ranking flights for display purposes. In addition, fare information is not generally included with schedule and availability displays. Agents must call up additional screens to get information on fares available on specific flights and to rank fares in a given market. Some persons have suggested that CRS owners' policies on fare information constitutes a form of display bias since the policies protect owners from possibly higher display rankings of low cost competitors based on fare and make it more difficult for consumers to shop on the basis of price. Even if the policies are not considered as a form of bias it has been argued that they do a disservice to consumers because they make it more difficult to compare offerings on the basis of price.

We request participants to comment on whether any Board rule on display bias should include requirements for the display of fare information. Would rules amount to excessive governmental intervention, e.g., dictating substantive terms to the so-called objective standards? In addition CRS owners have argued that practices on display of fare information result from the fact that most CRS's were developed at a time when fares were tightly controlled by the Board. We also request comment on whether it would be technologically and economically feasible to enhance the importance of fares in CRS display rankings by adding them as a service element.

Access Issues

A. *Access Charges*

If the Board decides to act, the core of any regulation dealing with access would likely be a prohibition against discriminatory pricing. Given that general prohibition, to what extent and on what basis should CRS carriers be allowed to differentiate among classes of carriers in setting access charges? Some possible bases for differentiation might be a carrier's volume of reservations, the degree to which its own computer system is capable of interacting with that of the host, and its participation in certain system enhancements (e.g., advance boarding passes). If all forms of display bias are eliminated, is there still a justification for differentiating in price among different classes of participants such as cohosts and non-cohosts?

In what way will or should a ban on price discrimination affect existing contractual arrangements? Continental suggests that we declare enforcement of discriminatory contracts to be an unfair and deceptive practice. If such contracts are not rendered unenforceable, to what extent should the CRS owners be required to conform access charges for new participants with existing charges for favored participants? How much time will CRS proprietors need to develop and negotiate a more uniform pricing structure? In general, how can we minimize any disruption in the transition to a nondiscriminatory pricing structure? What methods are available, or could be developed, to reduce government regulation in this area?

A number of carriers have complained about the level of CRS charges in addition to their disparity. Should the Board specifically require that CRS access charges be reasonable? Should we go further and require CRS carriers to develop and publish fee schedules that are based on the past and projected costs of the systems? In that connection, is there a reason to require CRS carriers to develop accounting systems for their CRS operations that amoretize development cost, allocate costs between their airline marketing and CRS automation expenditures, and/or make other adjustments? In such a system should the CRS airline be required to access fees for its own operations on the same basis that it charges other airlines, or should it be required to take account of incremental revenues on the income side of the ledger?

B. *Terms and Conditions for Participation*

Should we prohibit CRS owners from requiring participants to sign net ticketing agreements or similar contracts as a precondition to the display of their schedules or availability? As a general matter, to what extent are interline relationships necessary to, or interconnected with, CRS relationships?

If we do not permit CRS carriers to impose net ticketing agreements on their airline participants, should they be allowed to formulate other means to recover the credit card and accounting expenses they incur in issuing tickets on other carriers? Is there any basis for recovering some of those "net ticketing" costs through increased CRS fees? To the extent that such expenses are included in the CRS cost base, should there also be an adjustment for the "credit float" that the CRS hosts enjoy by virtue of their issuance of tickets on other carriers?

With respect to the loading of fare, schedule and availability information, how can we best insure uniform nondiscriminatory practices? Should we require CRS owners to publish standards and procedures for the loading of data? Should the system proprietors be permitted to load or amend their own fare and schedule data on a more expeditious and reliable basis than they load participants' data? Would a general prohibition on unfair or discriminatory loading practices be effective in controlling the alleged abuses. Is there a reliable means of prohibiting CRS owners from censoring or delaying the input of their competitors' fare and schedule information? For example, should the CRS carriers be required to develop formats that would permit participants to input their fare and schedule changes directly into the CRS systems or, short of that, to submit such changes in a machine readable format?

Finally should service enhancements be made available to all participants at the same time? Would such a requirement dampen CRS innovation? Can enhancements be phased in gradually without undermining the standard of equal access to enhancements?

Proprietary Information

The third area on which the Board requests comments is the use of CRS data. To what extent are the data on bookings made by travel agents proprietary to those agents, to the CRS owners, or the carriers on whom the bookings are made? Is it unfair for CRS carriers to use such information in their marketing activities? Would a prohibition against such use be enforceable? Would a requirement that such information be shared equally among all carrier participants be fair to travel agents? Finally, would such a requirement promote or dampen air transport competition? What effect would a general prohibition on misuse of proprietary information have on the alleged problem?

General Considerations

The Board seeks detailed and documented information on the precise extent of claimed problems as well as the proposed solutions. To that end we have already ordered certain CRS owners to provide specific information in Order 83–8–105. Other interested persons may prepare similar information for submission with their comments.

To the maximum extent possible, comments should include supporting or rebuttal materials and should address both the consumer protection and competitive rationales underlying potential courses or action. We encourage submission of critical analysis of the degree of competition in the CRS market, its structure, and its peculiar characteristics. Commenters are asked to provide actual studies of

agency sales patterns or documentation of revenue changes that occurred when a participating carrier's status in a CRS changed, for example, to a cohost or a non-participant. We are also intersted in explicit discussion of how consumers or airlines are injured, and the degree to which the flights actually selected differ from what the knowledgeable passenger might reasonably have chosen with different information.

Commenters are also requested to substantiate objections or recommendations by submitting cost and time estimates for programming changes that might be required in future rules. If CRS carriers intend to object to the technological feasibility of proposals, they must provide a sufficiently detailed explanation of their position. Any estimate of reprogramming costs must also include an analysis of any potential cost savings, for example, savings in computer (CPU) time from program simplification, reduction in communication, costs or changes in manpower requirements. We also invite personnel of non-CRS carriers who are knowledgeable about these systems to submit their views on the cost/benefit issues.

We are interested in receiving comments on the scope of any proposed rules. In addition to the "proprietary" CFR's owned, operated, and marketed to agents by a handful of major airlines, there are at least two other types of reservation systems now offered to agents. First is the "multi-access" system, through which agency subscribers can enter the internal reservations computers of participating airlines, which contain the information and displays available to a carrier's own personnel. There is no independent data base, only those that are made available by each airline participant, and reservations are held within each airline's internal system. A variant of multi-access is direct access. While the agency subscriber can enter the internal system of each participating carrier, all reservations are stored in the host's system, and the first or "primary" screen displayed when no individual airline participant is specified presents information on a number of carriers. Our *Report to Congress*, at pages 24–36, contains a more detailed account of these CRS alternatives. We hope to receive input on whether and to what extent potential regulations might apply to the multi-access and direct access CRS's.

Comments are also requested on whether the duration of any regulations should be limited. Comments may consider the timing and conclusion of the Justice Department's investigation of the CRS industry and transfer of the Board's authority in this area to a successor agency.

Procedures

We propose to conduct an informal rulemaking, as defined by the Administrative Procedure Act, 5 U.S.C. 553. We intend through this proceeding to develop rules of general applicability to curb practices that may inhibit air carrier competition and injure consumer welfare. Informal rulemakings are well suited for situations, such as this one, when the action contemplated is prospective and legislative in nature and when the agency's purpose is to develop a factual record, responsive policies, and appropriate regulatory action rather than to take enforcement action against specific persons. However, we will permit comment on the procedures we propose to follow.

With certain exceptions, the APA requires that informal rulemakings include the following steps: publication in the **Federal Register** of a notice soliciting public comments and publication of the final rule in the **Federal Register** at least thirty days before it is to take effect. We may supplement these procedures, since they are the minimum the law requires.

The petitions of Continental and the Joint Petitioners urge issuance of a notice of proposed rulemaking immediately. We think it better to solicit general and wide-ranging comment by an advanced notice of proposed rulemaking. We agree with Continental's contention that threats to consumer welfare should be cured with the maximum expedition, but we also think that issuance of the advanced notice will further this end rather than frustrating it. Not only will this preliminary step not consume much time, but it will enable us to craft our notice of proposed rulemaking with more precision than we could do on the present record, should we determine that further proceedings are warranted. Although there seems to be general agreement among those who advocate a rulemaking on the general problems to be addressed, there is a wide variety of specific proposals for specific rules. The ANPRM format should facilitate the earliest possible adoption of a final rule.

We propose to conduct this rulemaking without holding an oral evidentiary hearing. A final rule stating Board policy or a set of policies normally does not rest on the resolution of particular issues of adjudicative fact, and we do not at this point perceive the need for a hearing in this case. Board policy properly rests on the sorts of arguments, opinions, and facts that we expect to collect in the form of written comments and responses to our information request orders. We have a high level of confidence about the information we have acquired already and do not intend to suggest that the information we have solicited is essential to resolve material disputes of fact. However, we think the production of background material will enhance the public record by including documents and facts which parties submitted or discussed during our informal investigations, which were conducted under a pledge of confidentiality.

Written comments and reply comments on at least two public notices, supplemented by an oral argument, should suffice to resolve the factual issues in this proceeding for purposes of making policy decisions. Of course we can always decide later to conduct further fact finding procedures should they prove advisable.

Finally, since this proceeding involves three distinct subjects—*i.e.*, display bias, costs and other CFR access terms, and the use of information that is confidential or competitively sensitive—we may eventually decide, in the interests of efficiency, to separate it into more than one rulemakings proceeding.

Authority

It is the Board's opinion that sections 102, 204 and 411 of the Federal Aviation Act provide ample authority for this proceeding. We invite interested persons to address this issue in their comments to this advanced notice.

Section 102 contains a nonexhaustive list of public interest policy directives, and the various CRS issues call several of them into play. Subparagraph (a)(3) directs us to consider "the availability of a variety of adequate, economic, efficient, and low-price services by air carriers * * * without unjust discriminations, undue preferences or advantages, or unfair or deceptive practices: and "the need to improve relations among, and coordinate transportation by, air carriers." Subparagraph (a)(6) directs us to prevent "unfair, deceptive, predatory, or anticompetitive practices in air transportation" and to avoid "unreasonable industry concentration, excessive market domination, * * * monopoly power [,] and * * * other conditions * * * that would tend to allow one or more air carriers * * * unreasonably to increase prices, reduce services, or exclude competition in air transportation." Subparagraph (a)(10) promotes "the encouragement of entry

into air transportation markets by new air carriers, the encouragement of entry into additional air transportation markets by existing air carriers, and the continued strengthening of small air carriers so as to assure a more effective, competitive airline industry." As explained in detail in this advanced notice's discussion section, there are several CRS practices that work to frustrate these policy directives and that thus warrant corrective action.

Section 204 confers broad general powers on the Board. Among other things, it empowers the Board to conduct such investigations and make and amend such rules and regulations, pursuant to and consistent with the Act, as it deems necessary to carry out the Act's provisions, exercise its own specific powers, and discharge its duties. Use of section 204 in conjunction with section 102 as the legal basis for the sort of rulemaking we contemplate here is fully consistent with the legal precedent governing ourselves and other agencies. *Mourning* v. *Family Publications Service*, 411 U.S. 856 (1973); *Diefenthal* v. *CAB*, 681 F.2d 1039 (5th Cir. 1982). In addition to section 204's grant of general powers, section 411 specifically empowers the Board to investigate whether air carriers or ticket agents are engaged in unfair or deceptive practices or unfair methods of competition and, if so, to order the offenders to cease and desist. While section 411 does provide for notice and a hearing before issuance of an order to cease and desist, we have consistently held that for rulemaking purposes, this hearing need not be an oral evidentiary hearing. For example, we did not hold an oral evidentiary hearing in our rulemaking on denied boarding compensation and baggage liability, which we issued in part under section 411. Notice, comment, and possibly an oral argument traditionally suffice for these proceedings, and we have no cause at this stage to believe that they will not suffice here.

Morales, Member, Dissenting in Part

I disagree with the last two paragraphs before the heading "Access Issues" on page 18. I see no reason to seek comment on the display of fare information. It is incumbent on consumers of every kind of service to shop around for the lowest fare available to them. The Board has no regulatory basis for requiring that fares be "enhanced" in CRS display rankings.

The areas of fare information on which comment is sought can lead only to the suggestion that the Board should mandate or would entertain mandating that fare information be displayed in a particular manner. I do not need to seek comments on this possibility to know that such rules *would* amount to "excessive governmental intervention, *e.g.*, dictating substantive terms of the so-called objective standards". Therefore, I strongly dissent from that section of the ANPRM.

Diane K. Morales.

Accordingly, the Civil Aeronautics Board grants the petitions in Docket 41369, 41219, and 41628, and asks for comments and proposals on the issues in those petitions and this notice. We will consolidate those dockets and Docket 41207 into this proceeding, to form a new Docket 41686.

By the Civil Aeronautics Board:

Phyllis T. Kaylor,

Secretary.

The Joint Petitioners request that the Board adopt a rule which would define the following as unfair and deceptive practices and unfair methods of competition:

1. Charging similarly situated carriers different prices for the same services if the price differences were not related to cost or other CRS related conditions;

2. Requiring air carrier users of CRS's to pay net interline ticketing charges as a condition for receiving CRS services;

3. Display Bias.

A. Constructing schedule displays which are not service related and uniformly displayed, except that in the case of a tie, the CRS owner can prefer itself;

B. Providing fare displays where the rank is not strictly fare related, with the lowest fare first, uniformly applied to the owner and all others, except that where the owner and another carrier have the same fare, the owner can list itself first;

C. Using fare or schedule display formulas which have not been published, or to change formulas without giving public notice;

4. Providing CRS derive marketing data to the CRS owner's marketing or sales department before it is made available to other carriers, but owners may charge other carriers for this data on a fair and equitable basis;

5. Offering service enhancements or technological advancements to other carriers except on a basis of uniform and equitable criteria broadly available to competitive and noncompetitive carriers alike; and

6. Providing different terms and conditions for the processing of other carriers schedules, fares and marketing information than for the CRS owner's own.

In its answer, Frontier urges the Board to supplement the Joint Petitioners proposal with certain specific prohibitions. In the area of bias, Frontier would add to the following non-exclusive requirements:

a. If a CRS searches back and displays schedules ahead of the time requested, the CRS must search back for the same period and on the same basis for other carriers as it does for the owner;

b. In fixing the order of flight display, no weight shall be given whatsoever to identity of the carriers; and

c. If a CRS is programmed to edit out (omit) flights, the criteria must be service related, and must be applied equally to all carriers, including the owner.

Frontier would also require that in the case of tie, order of display be randomly selected.

In the area of enhancements and technological advancements, Frontier requests that the Board specifically require that they be offered to airline users at the same time they are implemented by the service carrier.

Continental urges the Board to adopt a rule which would do the following:

1. Prohibit discrimination between carriers in the display of schedules, fares, connections and availability, changes in same, or in the terms and conditions of providing enhanced services;

2. Require owners to disclose display order criteria to subscribers, and prohibit discrimination between airports serving the same city unless the subscriber makes a specific airport request;

3. Establishes as a defense to the first prohibition that a carrier did not accept an offer on terms proportionately equal to those provided to any other carrier;

4. Prohibits the use of fares and schedules of user carriers for any purpose other than providing computer reservations services;

5. Prohibit subscriber contracts which: (a) prohibit the use of a competing CRS; (b) require the subscriber to sell the service of any carrier, including the CRS owner; or (c) require the use of a provider's CRS in connection with sales of any particular airline; and

6. Prohibit the enforcement of any contract between CRS owners and other carriers executed prior to the effective date of the rule, except with respect to services performed prior to the effective date of the rule.

[FR Doc. 83-25079 Filed 9-13-83; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 928

Petition by Friends of the Earth and Others to Further Implement Section 312(b) of the Coastal Zone Management Act, as Amended

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of petition for rulemaking.

SUMMARY: On August 16, 1983 the Office of Ocean and Coastal Resource Management of the National Oceanic and Atmospheric Administration received a petition from the Friends of the Earth on their behalf and that of the National Audubon Society, the Oceanic

Society, the American Littoral Society, the Environmental Policy Institute, the Sierra Club, and the Natural Resources Defense Council, Inc., requesting issuance of regulations to further implement Section 312(b) of the Coastal Zone Management Act which states that:

> For the purpose of making the evaluation of a coastal state's performance, the Secretary shall conduct public meetings and provide opportunity for oral and written comments by the public. Each such evaluation shall be prepared in report form and the Secretary shall make copies thereof available to the public.

The petitioners contend that our regulations at 15 CFR 928.4 implementing Section 312(b) are inadequate.

DATE: Comments must be received by October 14, 1983.

ADDRESS: Submit comments concerning the petition for rulemaking to: Vickie A. Allin, Deputy Chief, Policy Coordination Division, Office of Ocean and Coastal Resource Management, 3300 Whitehaven Street, N.W., Washington, D.C. 20235.

FOR FURTHER INFORMATION CONTACT: Mary O'Connell, Policy Coordination Division, Office of Ocean and Coastal Resource Management, 3300 Whitehaven Street, N.W., Washington, D.C. 20235 (202) 634–4249.

SUPPLEMENTARY INFORMATION: The petitioners contend that our regulations at 15 CFR 928.4 implementing Section 312(b) are inadequate. These regulations require that a public meeting or meetings be held on each evaluation to solicit public comments on the coastal state's performance with respect to coastal management. The regulations require that a Notice of Intent to Evaluate be published in the **Federal Register** at least 45 days in advance of the public meeting(s) and that the state issue a newspaper or other notice at least 15 days in advance of the public meeting(s). The regulations also require that a notice of the availability of final findings to the public upon request be published in the **Federal Register**. The petition proposes additional rulemaking as follows:

15 CFR 928.4 should be amended by revising subpart (b)(3) as follows:

> (3) The Assistant Administrator shall assess and consider all oral and written comments both individually and collectively, and shall respond to written comments by one or more of the means listed below stating its response in the final evaluation findings:
>
> (i) Reduce financial assistance for failure to make significant improvement.
>
> (ii) Withdrawal of program approval and financial assistance.
>
> (iii) Supplement, improve, or modify its findings.
>
> (iv) Explain why the comments do not warrant further agency response, citing the sources, authorities, or responses which support the Assistant Administrator's position and, if appropriate, indicate those circumstances which would trigger agency reappraisal or further response.

15 CFR 928.4 should be amended by adding new subpart (b)(4) as follows:

> (4) All substantive written comments received on the evaluation (or summaries thereof where the response has been exceptionally voluminous), should be attached to the final evaluation findings whether or not the comment is thought to merit individual discussion by the agency in the final evaluation findings.

15 CFR 928.4 should be amended by amending and renumbering existing subpart (b)(3) as (b)(5) as follows:

> (5) Notice of the availability of final findings to the public upon request will be published in the **Federal Register** and a copy will be sent to those submitting written comments during the evaluation.

I. Authority

This petition for rulemaking will be considered in accordance with the procedures in the NOAA Directives Manual at Chapter 21–24, Section 14; and Section 4(d) of the Administrative Procedures Act (5 U.S.C. 553(e)).

II. Decision Whether or Not to Undertake Rulemaking

The Office of Ocean and Coastal Resource Management will consider comments received in response to this notice of petition for rulemaking. The Office will make its decision to proceed or not to proceed with rulemaking and will notify the petitioner by December 14, 1983. The Office will also publish a notice of its decision in the **Federal Register.**

List of Subjects in 15 CFR Part 928

Coastal zone, Energy, Grant programs—natural resources.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Administration)

Dated: September 8, 1983

K. E. Taggart,

Acting Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 83-24906 Filed 9-13-83; 8:45 am]

BILLING CODE 3510-08-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 882

[Docket No. 83N-0241]

Neurological Devices; Proposed Rule; Premarket Approval of the Implanted Cerebellar Stimulator

Correction

In FR Doc. 83-24231 beginning on page 40273 in the issue of Tuesday, September 6, 1983, make the following correction:

On page 40277, third column, the section now designated "§ 822.5820" should have been designated "§ 882.5820".

BILLING CODE 1505-01-M

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Parts 0 and 16

[Order No. 1030-83]

Freedom of Information Act and the Privacy Act of 1974; Revision of Implementation

AGENCY: Office of the Attorney General, Justice.

ACTION: Extension of comment period for notice of proposed rulemaking.

SUMMARY: The notice of proposed rulemaking, Attorney General Order No. 1025–83, published at 48 FR 35892 (Aug. 8, 1983), set forth proposed revisions to the procedural regulations of the Department of Justice that implement the Freedom of Information Act ("FOIA") and the Privacy Act of 1974 and provide for access to FBI identification records. Public comments were invited by September 7, 1983. In response to several requests for an extension of the period for public comments on the notice of proposed rulemaking, the Department is extending the period for public comment until October 3, 1983.

DATE: Comments must be received on or before October 3, 1983.

ADDRESS: Comments should be directed to: Kevin R. Jones, Deputy Assistant Attorney General, Office of Legal Policy, United States Department of Justice, Room 4224, 10th Street and Constitution Avenue, NW., Washington, D.C. 20530.

FOR FURTHER INFORMATION CONTACT: Kevin R. Jones, Deputy Assistant

Attorney General, Office of Legal Policy, United States Department of Justice, Room 4224, 10th Street and Constitution Avenue, NW., Washington, D.C. 20530 ((202) 633–4606).

SUPPLEMENTARY INFORMATION: The notice of proposed rulemaking published on August 8, 1983, provided that public comments should be received by September 7, 1983, in accordance with the thirty day notice period to the public which Congress has required under the Administrative Procedure Act, 5 U.S.C. 553. Seven commenters, including two members of Congress, have requested an extension of the comment period.

These proposed regulations would make long overdue improvements in the structure and format of the Department's regulations implementing the FOIA and the Privacy Act, which should render the regulations more understandable to the general public, the beneficiary of these acts, and make the several components of the Department more responsive to the needs of requesters. The Department's regulations have remained essentially in their present form since 1975, notwithstanding continued evidence that a restructuring and improvement is necessary in the public interest.

Despite the public interest in prompt revision of the Department's regulations, the Department has concluded that there is a sufficient reason to warrant a limited extension of the statutory period for notice to the public. The publication of the notice of proposed rulemaking during the summer vacation period apparently has made it more difficult for some members of the public to file comments in a timely manner. Accordingly, the Department has determined that the time for public comment shall be extended to and including October 3, 1983.

Dated: September 8, 1983.

William French Smith,

Attorney General.

[FR Doc. 83-24982 Filed 9-13-83; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 902

Abandoned Mine Land Reclamation Program

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

ACTION: Proposed rule.

SUMMARY: On August 17, 1983, the State of Alaska submitted to OSM its proposed Abandoned Mine Land Reclamatioin Plan (Plan) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). OSM is seeking public comment on the adequacy of this State Plan.

DATE: Written comments on the Plan must be received on or before 5:00 p.m., October 14, 1983.

ADDRESSES: Copies of the full text of the proposed Plan are available for review during regular business hours at the following locations.

Office of Surface Mining Reclamation and Enforcement, Casper Field Office, Freden Building, 935 Pendell Boulevard, Mills, Wyoming 82644

State of Alaska, Department of Natural Resources, Division of Minerals and Energy Management, 55 Cordova Street, Anchorage, Alaska 99510

Office of Surface Mining Reclamation and Enforcement, Adminstrative Record, 1100 L. Street, N.W., Room 5315, Washington, D.C. 20204.

Written comments must be mailed or hand carried to: OSM, Casper Field Office, P.O. Box 1420, 935 Pendell Boulevard, Mills, Wyoming 82644. Comments received after 5:00 p.m., October 14, 1983, will not necessarily be considered or included in the administrative record for this rulemaking.

The Administrative Record will be available in two locations for public review at the OSM Offices above, on Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays.

FOR FURTHER INFORMATION CONTACT: William Thomas, Field Office Director, Office of Surface Mining, Casper Field Office, P.O. Box 1420, 935 Pendell Boulevard, Mills, Wyoming 82644. Telephone (307) 261–5776.

SUPPLEMENTARY INFORMATION: Title IV of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), Public Law 95–87, 30 U.S.C. 1201 *et seq.*, establishes an abandoned mine land reclamation program for the purposes of reclaiming and restoring lands and water resources adversely affected by past mining. This program is funded by a reclamation fee imposed upon the production of coal. Lands and water eligibile for reclamation are those that were mined, or affected by mining, and abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility under State or Federal law.

Title IV provides that if the Secretary determines that a State has developed and submitted a program for reclamation of abandoned mines and has the ability and necessary State legislation to implement the provisions of Title IV, the Secretary may approve the State program and grant to the State exclusive responsibility and authority to implement the approved program.

On August 17, 1983, OSM received a proposed Abandoned Mine Land Reclamation Plan from the State of Alaska. The purpose of this submission is to demonstrate both the State's intent and capability to assume responsibility for administering and conducting the provisions of SMCRA and OSM's Abandoned Mine Land Reclamation (AMLR) Program (30 CFR Chapter VII, Subchapter R) as published in the **Federal Register** (FR) on June 30, 1982 (47 FR 28574–28604).

This notice describes the proposed program and sets forth information concerning public participation in the Assistant Secretary's determination of whether or not the submitted Plan may be approved. The public participation requirements for the consideration of a State Plan are found in 30 CFR 884.13 and 884.14. Additional information may be found under corresponding sections of the preamble to OSM's AMLR Program Final Rules (47 FR 28587, June 30, 1982).

The receipt of the Alaska State Plan submission is the first step in the process which will result in the establishment of a comprehensive program for the reclamation of abandoned mine lands in the State of Alaska.

By submitting a proposed Plan, Alaska has indicated that it wishes to be primarily responsible for the reclamation of abandoned mine lands in that State. If the program is disapproved and the State does not choose to revise the Plan, a Federal AML Program will be implemented and OSM will be primarily responsible for these activities.

The Field Office Director has determined that the public was provided adequate notice and opportunity to be heard on the Plan and that the record does not reflect any major unresolved controveries. Therefore, a public hearing will not be held.

Representatives of the Field Director's Office will be available to meet, Monday through Friday (excluding holidays) between 8:00 a.m. and 4:00 p.m. in the Field Director's Office, at the request of members of the public to receive their advice and recommendations concerning the proposed Alaska Reclamation Plan and Program.

Persons wishing to meet with representatives of the Field Director's Office during this time period may place such requests with Robert Mikulas, telephone (307) 261–5828, at the Field Director's Office.

The Department intends to continue to discuss the State's Plan with representatives of the State throughout the review process. All contacts between Departmental personnel and representatives of the State will be conducted in accordance with OSM's guidelines on contacts with States published September 19, 1979, at 44 FR 54444.

The Office of Surface Mining has examined this proposed rulemaking under Section 1(b) of Executive Order No. 12291 (February 17, 1981) and has determined that, based on available quantitative data, it does not constitute a major rule. The reasons underlying this determination are as follows:

1. Approval will not have an effect on costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and

2. Approval will not have adverse effects on competition, employment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposed rulemaking has been examined pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, and the Office of Surface Mining has determined that the rule will not have significant economic effects on a substantial number of small entities. The reasons for this determination is that approval will not have demographic effects, direct costs, information collection and recordkeeping requirements, indirect costs, nonquantifiable cost, competitive effects, enforcement costs, or aggregate effects on small entities.

Further, the Office of Surface Mining has determined that the Plan will not have a significant effect on the quality of the human environment because the decision relates only to the policies, procedures, and organization of the State's Abandoned Mine Land Reclamation Program. Therefore, under the Department of the Interior Manual (DM 5162.3(A)(1)), the Assistant Secretary's decision on the Plan is categorically excluded from the National Environmental Policy Act requirements. As a result, no environmental assessment nor environmental impact statement (EIS) has been prepared on this action. It should be noted that a programmatic EIS was prepared by OSM in conjunction with the implementation of Title IV. Moreover, an environmental analysis, or an EIS, will be prepared for the approval of grants for the abandoned mine reclamation projects under 30 CFR Part 886.

The Alaska Abandoned Mine Land Reclamation Plan can be approved if:

1. The Assistant Secretary finds that the public has been given adequate notice and opportunity to comment, and the record does not reflect major unresolved controversies;

2. Views of other Federal agencies have been soliciated and considered;

3. The State has the legal authority, policies, and administrative structure to carry out the Plan;

4. The Plan meets all requirements of the OSM, AMLR Program, Provisions;

5. The State has an approved Regulatory Program; and

6. It is determined that the Plan is in compliance with all applicable State and Federal laws and regulations.

The following constitutes a summary of the contents of the Alaska Reclamation Plan submission: The State of Alaska, Department of Natural Resources, has been designated by the Governor of the State to implement and enforce the Abandoned Mine Reclamation Program in accordance with SMCRA. The Department has developed State regulations to carry out the State mandate. Contents of the State Plan submission include:

(a) A designation by the Governor of the State of the agency authorized to administer the State reclamation program and to receive and administer grants under Part 886 of this chapter.

(b) A legal opinion from the State Attorney General, or the chief legal officer of the State agency, that the designated agency has the authority under State law to conduct the program in accordance with the requirements of Title IV of the Act.

(c) A description of the policies and procedures to be followed by the designated agency in conducting the reclamation program, including:

(1) The purposes of the State reclamation program;

(2) The specific criteria, consistent with Section 403 of the Act, for ranking and identifying projects to be funded;

(3) The coordination of reclamation work among the State reclamation program, the Rural Abandoned Mine Program administered by the Soil Conservation Service, the reclamation programs of any Indian tribes located within the States, and OSM's reclamation programs;

(4) Policies and procedures, regarding land acquisition, management, and disposal, under 30 CFR Part 879;

(5) Policies and procedures, regarding reclamation on private land, under 30 CFR Part 882;

(6) Policies and procedures, regarding rights of entry, under 30 CFR Part 877; and

(7) Public participation and involvement in the preparation of the State reclamation plan and in the State reclamation program.

(d) A description of the administrative and management structure to be used in conducting the reclamation program, including:

(1) The organization of the designated agency and its relationship to other State organizations or officials that will participate in or augment the agency's reclamation capacity;

(2) The personnel staffing policies which will govern the assignment of personnel to the State reclamation program;

(3) The purchasing and procurement systems to be used by the agency. Such systems shall met the requirements of Office of Management and Budget Circular A–102, Attachment O; and

(4) The accounting system to be used by the agency, including specific procedures for the operation of the State Abandoned Mine Reclamation Fund.

(e) A general description, derived from available data, of the reclamation activities to be conducted under the State reclamation plan, including the known or suspected eligible lands and waters within the State which require reclamation, including:

(1) A map showing the general location or known or suspected eligible lands and waters;

(2) A description of the problems occurring on these lands and waters; and

(3) How the plan proposes to address each of the problems occuring on these lands and waters.

(f) A general description, derived from available data, of the conditions prevailing in the different geographic areas of the State where reclamation is planned, including:

(1) The economic base;

(2) Significant esthetic, historic or cultural, and recreational values; and

(3) Endangered and threatened plant, fish, and wildlife and their habitat.

List of Subjects in 30 CFR Part 902

Coal mining, Intergovernmental regulations, Surface mining, Underground mining.

(Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977, 30 USC 1201-1328, 91 Stat. 4-532)

Dated: September 1, 1983.

James R. Harris,

Director, Office of Surface Mining.

Dated: September 6, 1983.

Wilbert L. Dare,

Acting Deputy Assistant Secretary for Energy and Minerals

[FR Doc. 83-25063 Filed 9-13-83; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 3E2766/P304; PH-FRL 2431-4]

Chlorpyrifos; Proposed Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that a tolerance be established for the combined residues of the insecticide chlorpyrifos and its metabolite in or on the raw agricultural commodity kiwifruit. This proposed regulation to establish a maximum permissible level for residues of chlorpyrifos in or on the commodity was requested, pursuant to a petition, by Dow Chemical Company.

DATE: Comments must be received on or before October 14, 1983.

ADDRESS: Submit written comments by mail to:

Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington,D.C. 20460.

In person bring comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Jay Ellenberger, PM-12, (703-557-2386).

SUPPLEMENTARY INFORMATION: Dow Chemical Company, PO Box 1706, Midland, MI 48640, has submitted pesticide petition 3E2766 to EPA proposing to amend 40 CFR 180.342 by establishing a tolerance for the combined residues of the insecticide chlorpyrifos [*0,0*-diethyl *0*-(3,5,6-trichlor-2-pyridyl) phosphorothioate] and tis metabolite 3,5,6-trichloro-2-pyridinol in or on the raw agricultural commodity kiwifruit imported from New Zealand at 2.0 parts per million (ppm).

The scientific data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the tolerance include a 2-year rat feeding/oncogenicity study with a no-observed-effect level (NOEL) of 0.1 milligram (mg)/kilogram (kg) of body weight (bw) per day based on red blood cells (RBC) cholinesterase activity and was negative for oncogenic effects at the levels tested (0.03, 0.1, 1.0 and 3.0 mg/kg); a dog feeding study with a NOEL of 0.1 mg/kg of bw/day based on RBC cholinesterase activity; a mouse oncogenicity study which was negative at 100 mg/kg; and a 3-generation reproduction study which was negative for oncogenic effects at the levels tested (0.5, 5.0 and 15.0 ppm); a mouse teratology study which was negative at 25 mg/kg; an acute delayed neurotoxicity study which demonstrated a NOEL of 1.0 mg/kg/day. Based on the 2-year chronic rat feeding study with a NOEL of 0.1 mg/kg of bw/day and using a safety factor of 10, the acceptable daily intake (ADI) for humans is 0.01 mg/kg of bw/day. The theorectical maximal residue contribution (TMRC) from previously established tolerances for chlorpyrifos utilizes 105.10 percent of the ADI. The resulting increase in the TMRC from the use of kiwifruit is 0.0009 mg/day (1.5 kg), an increase in the ADI of 0.15%. While the establishment of the requested tolerance will add to the already exceeded ADI, this use is aceptable since the added increment to the TMRC and ADI is minimal.

The metabolism of chlorpyrifos is adequately understood for this use, and an adequate analytical method, gas chromatography, is available for enforcement purposes. No regulatory actions are pending against the continued registration of chlorpyrifos. Because there are no livestock or poultry feed items involved, there will be no secondary residues in meat, milk, poultry, and eggs as a result of this use.

Based on the above information considered by the Agency, the tolerance established by amending 40 CFR 180.342 would protect the public health. It is proposed, therefore, that the tolerance be established as set forth below.

Any person who has registered or submitted and application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(d) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 3E2766/P304]. All written comments filed in response to this petition will be available in the Product Manager's (PM-12) office, Registration Division, at the address given above from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(d)(2), 68 Stat. 512 (21 U.S.C. 346a(d)(2)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: August 31, 1983.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, it is proposed that 40 CFR 180.342 is amended by adding, and alphabetically inserting, the raw agricultural commodity kiwifruit to read as follows:

§ 180.342 Chlorpyrifos; tolerances for residues.

* * * * *

Commodities	Parts per million
* * * * *	
Kiwifruit	2.0
* * * * *	

[FR Doc. 83-24888 Filed 9-13-83; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 3E2851/P307; PH-FRL 2431-3]

Ethoprop; Proposed Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that a tolerance be established for residues of the pesticide ethoprop in or on the raw agricultural commodity okra. The proposed regulation to establish a maximum permissible level for residues of ethoprop in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

DATE: Comments must be received on or before October 14, 1983.

ADDRESS: By mail, submit comments to: Emergency Response and Minor Use Section, Registration Support and Emergency Response Branch, Registration Division (TS-767C), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.
In person, deliver comments to:
Emergency Response and Minor Use Section, Rm. 716B, CM No. 2, 1921 Jefferson Davis Highway, Arlington VA 22202.

FOR FURTHER INFORMATION CONTACT: Donald Stubbs (703-557-1192).

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition 3E2851 to EPA on behalf of the IR-4 Technical Committee and the Agricultural Experiment Station of North Carolina.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for residues of the pesticide ethoprop (*O*-ethyl, *S,S*-dipropyl phosphorodithioate) in or on the raw agricultural commodity okra at 0.02 part per million (ppm).

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicological data considered in support of the proposed tolerance include two 90-day feeding studies (rat and dog) with no-observed-effect levels (NOEL's) for cholinesterase inhibition of 0.3 ppm (0.015 milligram (mg/kilogram (kg)) and 1.0 ppm (0.025 mg/kg), respectively; an acute delayed neurotoxicity study in adult hens with no signs of delayed neurotoxicity when dosed at levels above the acute oral LD50 (9.9 mg/kg); a rat teratology study with a NOEL for teratogenic effects at 16 mg/kg (highest dose tested) and a NOEL for maternal effects at 1.6 mg/kg; and an Ames test with no mutagenic effects at the highest dose tested (5.0 microliters/plate).

Data considered desirable but lacking include oncogenicity studies in two species (mouse and rat), chronic feeding studies (rat and dog), a general methabolism study, and additional mutagenicity tests. A rabbit teratology study and a three-generation reproduction study have been submitted and are under review. Although there are significant data gaps for the chemical, the available toxicity data are adequate to support the proposed tolerance since the Agency has concluded that the amount of ethoprop added to diet from the proposed use will not significantly increase dietary exposure in humans. Therefore, the tolerance that will be established by this proposed rule is considered to pose a negligible increment in risk.

The provisional acceptable daily intake (PADI), based on the 90-day rat-feeding study (NOEL of 0.015 mg/kg/day) and using a 200-fold safety factor, is calculated to be 0.000075 mg/kg of body weight (bw)/day. The provisional maximum permitted intake (PMPI) for a 60-kg human is calculated to be 0.0045 mg/day. The theoretical maximum residue contribution (TMRC) from existing tolerances for a 1.5-kg daily diet is calculated to be 0.0052 mg/day; the current action will increase the TMRC by 0.00002 mg/day (0.38 percent) and will use an additional 0.44 percent of the ADI.

The nature of the residues is adequately understood, and an adequate analytical method, gas chromatography using a flame photometric detector, is available for enforcement purposes. Residue data to support the proposed tolerance are from the States of Alabama, Georgia, and Maryland. Since no livestock feed items are involved, there is no expectation of finite residues in meat, milk, poultry, or eggs. There are currently no actions pending against the continued registration of this chemical.

Based on the above information considered by the Agency, the tolerance established by amending 40 CFR 180.262 would protect the public health. It is proposed, therefore, that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended that contains any of the ingredients listed herein may request within 30 days after publication of this notice in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 3E2851/P307]. All written comments filed in response to this petition will be available in the Emergency Response and Minor Use Section, Registration Division, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408 (d)(2), 68 Stat. 514 (21 U.S.C. 346a(e)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: August 8, 1983.

Robert V. Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, it is proposed that 40 CFR 180.262 be amended by adding and alphabetically inserting the raw agricultural commodity okra to read as follows:

§ 180.262 Ethoprop; tolerances for residues.

* * * * *

Commodities	Parts per million
* * * * *	
Okra	0.02
* * * * *	

[FR Doc. 83-24884 Filed 9-13-83; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 180

[OPP-300075; PH-FRL 2431-2]

Certain Primary Alkyl Amines; Proposed Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that primary *n*-alkylamines, where the alkyl group (C_8-C_{18}) is derived from coconut, cottonseed, soya, or tallow acids, be exempted from the requirement of a tolerance when used as surfactants in pesticide formulations. This proposed regulation was requested by the Armak Company.

DATE: Written comments must be received on or before October 14, 1983.

ADDRESS: Written comments may be submitted by mail to:

Registration Support and Emergency Response Branch, Registration Division (TS-767C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, deliver comments to:

Registration Support and Emergency Response Branch, Registration Division (TS-767C), Rm. 716D, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: N. Bhushan Mandava, 703-557-7700.

SUPPLEMENTARY INFORMATION: At the request of Armak Company, the Administrator proposes to amend 40 CFR 180.1001(d) by establishing an exemption from the requirement of a tolerance for primary *n*-alkylamines, where the alkyl group (C_8-C_{18}) is derived from coconut, cottonseed, soya, or tallow acids.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 162.3(c), and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as water; baits such as sugar, starches, and meat scraps; dust carriers such as talc and clay; fillers; wetting and spreading agents; propellants in aerosol dispensers; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

Preambles to proposed rulemaking documents of this nature include the common or chemical name of the substance under consideration, the name and address of the firm making the request for the exemption, and toxicological and other scientific bases used in arriving at a conclusion of safety in support of the exemption.

Name of inert ingredient: Primary *n*-alkylamines, where the alkyl group (C_8-C_{18}) is derived from coconut, cottonseed, soya, or tallow acids.

Name and address of requestor: Armak Company, 8401 West 47th St., McCook, Illinois 60525.

Bases for approval—1. An adequate toxicity data base exists, which includes 90-day feeding studies in dogs and rats; NOEL's of 500 ppm each or 25 mg/kg/day for the related material, N,N-*bis* (2-hydroxyethyl) alkylamine where the alkyl group (C_8-C_{18}) is derived from coconut, cottonseed, soya, or tallow fatty acids.

2. Similar materials are exempt under 40 CFR 180.1001(d).

3. A representative moiety is regulated as an indirect food additive under 21 CFR 173.310, i.e., boiler water additives used to prepare food.

Based on the above information and review of its use, it has been found that when used in accordance with good agricultural practices this ingredient is useful and does not pose a hazard to humans or the environment. It is concluded, therefore, that the proposed amendment to 40 CFR Part 180 will protect the public health, and it is proposed that the regulation be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended that contains this inert ingredient may request within 30 days after publication of this notice in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating both the subject and the petition and document control number [OPP-300075]. All written comments filed in response to this notice of proposed rulemaking will be available for public inspection in the Emergency Response and Minor Use Section at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(d)(2), 68 Stat. 514 (21 U.S.C. 346a(e)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: August 30, 1983.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, it is proposed that 40 CFR 180.1001(d) be amended by adding and alphabetically inserting the inert ingredient primary *n*-alkylamines, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(d) * * *

Inert ingredients	Limits	Uses
* * * * *		
Primary alkyl group (C_8-C_{18}) is derived from coconut, cottonseed, soya, or tallow acids.	.....	Surfactant.
* * * * *		

* * * * *

[FR Doc. 83-24885 Filed 9-13-83; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 3E2860/P309; PH-FRL 2431-1]

Oxamyl; Proposed Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule.

SUMMARY: This document proposes that tolerances be established for residues of the insectivide/nematocide oxamyl in or on the raw agricultural commodities peppermint hay and spearmint hay. The proposed rugulation to establish maximum permissible levels for residues of the pesticide in or on the commodities was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

DATE: Comments must be received on or before October 14, 1983.

ADDRESS: Written comments by mail to:
Program Management and Support Division, Registration Division (TS-767C), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.
In person deliver comments to:
Emergency Response and Minor Use Section, Rm. 716C, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Donald Stubbs (703-557-1192) at the above address.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition 3E2860 to EPA on behalf of the IR-4 Technical Committee and the Agricultural Experiment Station of Oregon.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for residues of the pesticide oxamyl [methyl *N'*-,*N'*-dimethyl-*N*-[(methylcarbamoyl)-oxy]-1-thiooxamimidate) in or on the raw agricultural commodities peppermint hay and spearmint hay at 10 parts per million (ppm).

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerances are sought. The toxicological data considered in support of the proposed tolerances include a 2-year rat feeding study with a no-observed-effect-level (NOEL) of 2.5 milligrams(mg)/kilogram(kg) (50 ppm) and negative oncogenic potential; a 2-year dog feeding study with a NOEL of 2.5 mg/kg (100 ppm); a 3-generation rat reproduction study with a NOEL of 2.5 mg/kg (50 ppm); a 2-year mouse oncogenic study showing negative oncogenic potential at the highest dose tested (7.5 mg/kg); a rat teratology study, negative at 15 mg/kg (300 ppm); a rabbit teratology study, negative at 4 mg/kg/day; and mutagenicity studies (Ames assay, recessive assay, host-mediated assay), all negative.

The acceptable daily intake (ADI), based on the 2-year rat feeding study (NOEL of 2.5 mg/kg/day) and using a 100-fold safety factor, is calculated to be 0.025 mg/kg of body weight (bw)/day. The maximum permitted intake (MPI) for a 60-kg human is calculated to be 1.5 mg/day. The theoretical maximum residue contribution (TMRC) from existing tolerances for a 1.5-kg daily diet is calculated to be 0.4594 mg/day; the current action will increase the TMRC by 0.0045 mg/day (1.0 percent). Published tolerances utilize 30.6 percent of the ADI; the current action will utilize an additional 0.3 percent.

The nature of the residues is adequately understood and an adequate analytical method, gas-liquid chromatography utilizing a flame photometric detector with a sulfur filter, ia available for enforcement purposes. No secondary residues in meat, milk, poultry or eggs are expected. There are presently no actions pending against the continued registration of this chemical.

Based on the above information considered by the Agency, the tolerances established by amending 40 CFR 180.303 would protect the public health. It is proposed, therefore, that the tolerances be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number [PP 3E2860/P309]. All written comments filed in response to this petition will be available in the Emergency Response and Minor Use Section, Registration Division, at the address given above from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(d)(2), 68 Stat. 512 (21 U.S.C. 346a(d)(2)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: August 31, 1983.

Dogulas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR 180.303 be amended by adding, and alphabetically inserting, the raw agricultural commodities peppermint hay and spearmint hay to read as follows:

§ 180.303 Oxamyl; tolerances for residues.

* * * * *

Commodities	Parts per million
* * * * *	
Peppermint, hay	10.0
* * * * *	
Spearmint, hay	10.0

* * * * *

[FR Doc. 83-24886 Filed 9-13-83; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

45 CFR Part 400

Refugee Resettlement Program; Consolidated (Per Capita) Grants to States, Grants to States for Child Welfare Services for Refugees, and Federal Financial Participation for Assistance and Services for Refugees

AGENCY: Social Security Administration (SSA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed regulation sets forth requirements governing consolidated (per capita) grants to States and grants to States for child welfare services (including services to unaccompanied minors) under the Refugee Resettlement Program. The new consolidated, or per capital grant, is intended to replace the previously separate grants for refugee cash assistance (RCA) and refugee medical assistance (RMA), social services (including child welfare services except assistance and services to unaccompanied minors), education assistance for refugee children, and targeted assistance. The consolidated grant will provide States with optimal flexibility in the direction, control, and allocation of resources for the attainment of refugee economic self-

sufficiency in the shortest time possible. It will allow States to provide quick, more effective, and innovative responses to the needs of its eligible refugee population according to local requirements, situation, and problems. The proposed regulation also includes requirements concerning general administration of State programs, submittal and approval of State plans, and Federal funding for a State's expenditures. The proposed regulation implements Chapter 2 of title IV of the Immigration and Nationality Act, added by section 311(a)(2) of the Refugee Act of 1980, Pub. L. 96–212, and amended by the Refugee Assistance Amendments of 1982, Pub. L. 97–363.

DATES: To assure consideration, comments should be received by October 31, 1983.

ADDRESSES: Office of Refugee Resettlement, Department of Health and Human Services, Switzer Building, Room 1332, 330 C Street, S.W., Washington, D.C. 20201.

If you prefer, you may deliver your comments to Room 1332-A Switzer Building, 330 C Street, S.W., Washington, D.C. Agencies and organizations are requested to submit comments in duplicate. Comments will be available for public inspection, beginning approximately two weeks after publication, in Room 1310 Switzer Building, 330 C Street, S.W., Washington, D.C., on Monday through Friday of each week from 9:30 a.m. to 4:00 p.m. Because of the large number of comments we expect to receive, we cannot acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments and will respond to them in the preamble to that rule.

FOR FURTHER INFORMATION CONTACT: Christie Cohagen, (202)426–6510.

SUPPLEMENTARY INFORMATION:

Background

On March 17, 1980, the Immigration and Nationality Act (the Act) was amended by the Refugee Act of 1980 (Pub. L. No. 96–212) ro revise procedures for the admission of refugees and to establish a uniform base for the provision of assistance to refugees. Section 311 of Pub. L. 96–212 added Chapter 2 to title IV of the Act to establish the Office of Refugee Resettlement (ORR) in HHS. The function of ORR is to fund and administer domestic refugee resettlement programs of the Federal Government. Title IV of the Act also requires: (1) monitoring and evaluation of the resettlement program; (2) reports to the Congress on the operation of the program and the activities of ORR; (3) submission of State plans for refugee resettlement to the Director of ORR in order to receive Federal funds under the Act; and (4) annual State reports on the uses of Federal funds in the preceding fiscal year.

Prior to enactment of the Refugee Act of 1980, which authorized the provision of assistance and services to refugees in the United States without regard to their national origin, assistance was provided through three separate programs for refugees:

1. The Cuban Refugee Program, which began in 1961 and was administered primarily by States, and for which a phasedown in funding was initiated in 1978.

2. The Indochinese Refugee Assistance Program (IRAP), which began in 1975 and was also primarily State administered.

3. A program of matching grants to national voluntary refugee resettlement agencies, which began in 1979, for assistance and services to Soviet and other non-Cuban, non-Indochinese refugees.

On August 29, 1980, ORR Issued a program instruction (ORR–AT–80–6) to States on the effect of the Refugee Act on these programs. Policies which had applied to IRAP were extended to cover assistance and services to refugees in the United States regardless of national origin.

The matching grants to national voluntary refugee resettlement agencies for Soviet and other refugees are being continued as one way of providing assistance and services to refugees authorized under the 1980 Act. After a further phasedown, under section 313(c) of the 1980 Act, the Cuban Refugee Program was terminated at the end of fiscal year 1981.

The Secretary of Education issued final regulations on January 14, 1981 (46 FR 3378), to implement the Transition Program for Refugee Children authorized under the Refugee Act of 1980. The regulations govern the award of educational assisance grants under section 412(d)(1) of the Act to benefit eligible refugee children enrolled in elementary and secondary schools.

On September 9, 1980 (45 FR 59323), ORR issued final regulations which set forth plan and reporting requirements that States must meet as a condition for receiving Federal funds for assistance to refugees under title IV of the Act. On March 12, 1982 (47 FR 10841), ORR issued interim final regulations revising cash and medical assistance policies for both the Refugee Resettlement Program (RRP) and the Cuban/Haitian Entrant Program (CHEP).

The most significant change in this proposed rule is a consolidated or per capita, grant to States which replaces the previously separate grants for refugee cash assistance (RCA) and refugee medical assistance (RMA), social services, education assistance for refugee children, targeted assistance, and child welfare services (except services for unaccompanied minors). The proposed changes are identified in this preamble, and we particularly direct the attention of commenters to them.

Regulatory Procedures

Under Executive Order 12291, we must judge whether a regulation is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. This regulation does not meet the definition of a "major" regulation contained in the Executive Order. This regulation for the most part ratifies practices already in place under the program and therefore would not be creating costs.

Pursuant to the provisions of the Regulatory Flexibility Act (5 USC 505(b)), the Secretary certifies that the attached rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This rule will indirectly affect small entities, because some services funded under the RRP are provided by not-for-profit institutions under contract with the State. However, nothing in the rule imposes a significant burden on these small entities, and the rule, therefore, does not meet the threshold for regulatory flexibility analysis.

Sections 400.4, 400.5, 400.11(a)(9), 400.11 (c) and (d), 400.28 (a) and (b), 400.118, and 400.120 of this proposed rule contain collection-of-information requirements. As required by Section 3504(h) of the Paperwork Reduction Act of 1980 and 5 CFR 1320.13, we have submitted a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of these reporting and recordkeeping requirements. Other organizations and individuals desiring to submit comments on these collection-of-information requirements should direct them to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building (Room 3208), Washington, DC 20503, ATTN Desk Officer for HHS/SSA.

Statutory Authority

Section 412(a)(9) of the Act authorizes the Secretary of HHS to issue regulations needed to carry out the program.

Description of the Regulation

Under predecessor refugee assistance programs, policy was transmitted to States in the form of program instructions and action transmittals from the Social and Rehabilitation Service and the Social Security Administration, HHS. States were instructed in the August 29, 1980, program instruction (OOR-AT-80-6) to continue the policies in effect for the Indochinese Refugee Assistance Program and to apply them to all eligible refugees, regardless of nationality, until regulations for the entire program are in effect.

The proposed regulation restates some current policies, and modifies or augments others. In this preamble, we will discuss rules that incorporate current policy and explain policy changes contained in the proposed regulation which were necessary as a result of the Refugee Act of 1980, the 1982 Amendments, or as a result of re-evaluation of the program and its goals.

To the extent possible, we have tied the Refugee Resettlement Program to the administrative and delivery systems of existing public assistance programs in the States, both to reduce the administrative burden on States and in an attempt to achieve equality between the assistance available to refugees and other needy individuals in the United States. However, the initial needs of refugees are different from those of needy Americans, and existing programs are not in all cases appropriate to meet these initial needs.

Subpart A—Introduction (Section 400.1 and 400.2)

This subpart essentially repeats the rules that appear in subpart A of the current State plan regulation.

We have expanded the list of definitions in § 400.2 to include several abbreviations which we use in the proposed rules as well as a few terms specific to the Refugee Resettlement Program. Significant among these is the definition of "refugee" which incorporates the definition in section 101(a)(42) of the Act, so that all aliens whom the Immigration and Naturalization Service (INS) identifies as refugees are considered to be refugees for purposes of the Refugee Resettlement Program. We have deleted from this subpart the section specifying other HHS regulations that apply, which appears as § 400.3 in the current State plan regulation, and have substituted an assurance of compliance with Federal laws and regulations which appears in § 400.5.

We have also revised the definition of "State agency" by adding "or agencies" to make clear that, in the absence of a Federal statutory requirement for a single State agency, a Governor may designate more than one agency to plan and carry out different aspects of the RRP.

Subpart B—Grants to States for Refugee Resettlement

A. *The State Plan (Sections 400.4 through 400.9)*

This portion of the proposal retains much of the substance of the current State plan regulation but makes some changes to minimize burden and allow State flexibility.

We have revised § 400.4, which describes the purpose of the plan. We published the existing regulation before the States' October 1, 1980, deadline to submit their plans (see section 313(d) of Pub. L. No. 96-212). Now that participating States have filed plans, § 400.4 provides that, once approved, a plan will remain in effect until a State amends or revokes it or ORR notifies the State in accordance with § 400.8 that it no longer complies with the statute or applicable regulations. Thus States do not have to file a new State plan each fiscal year. However, because of the additional State plan requirements contained in this regulation, a State may have to amend its plan when this regulation becomes final.

We revised § 400.5, which describes the content of the plan, to delete the requirement that the plan specify the composition of the State advisory council required under § 400.9 of the current regulation. In the interest of minimizing the burden on States, especially those with small refugee populations, we will no longer require States to establish a State advisory council. However, a State may establish a council and we will reimburse the State for reasonable and necessary administrative expenses of such a council.

We also have clarified some aspects of the plan content by requiring States to include descriptions of various aspects of the program and methods of ensuring effective use of the consolidated grant to best achieve the goal of economic self-sufficiency. These are intended to avoid duplication of effort and ensure that the refugee moves toward self-sufficiency as quickly as possible.

Finally, we have added a requirement that a State will assure that meetings are held between local representatives of voluntary refugee resettlement agencies and representatives of State and local governments to plan and coordinate refugee placement. This provision reflects a requirement added by the Refugee Assistance Amendments of 1982 that the Director of ORR provide for a mechanism to accomplish such meetings.

We have changed § 400.7, Submittal of the State plan and plan amendments for Governor's review, by adding that the Governor, or his, or her designee, must sign a plan or plan amendment.

Evaluation, Review, and Coordination of Federal and Federally Assisted Programs and Projects

Section 400.8 is a new provision that describes the method by which ORR will approve State plans and plan amendments. The procedure follows that used in the AFDC program (see 45 CFR Part 201—Subpart A). The State must submit a plan or plan amendment to the Director of ORR, or his or her designee, who must approve or disapprove the plan within 45 days and promptly notify the State of such action. An approved State plan or plan amendment cannot be effective before the first day of the calendar quarter in which the State submits it, unless otherwise approved by the Director.

The new § 400.9 sets out the process for initial administrative review of ORR decisions on approval of State plans or plan amendments. A State dissatisfied with an ORR determination may petition the Director of ORR within 60 days after it receives notification of the decision. The State may, but is not required to, request that a hearing be held. If a hearing is requested, the Director, or his or her designee, will then notify the State of the time and location within 30 days after receiving the petition. The hearing will be scheduled not less than 30 days nor more than 60 days from the date the State receives the notice of hearing. The time of the hearing is taken from the AFDC program (see 45 CFR 213.12). The hearing follows the AFDC procedures in 45 CFR Part 213. The Director will affirm, modify, or reverse the original decision within 60 days of receipt of the State's petition, or if a hearing is held, within 60 days after the conclusion of the hearing.

B. *Award of Consolidated and Other Grants to States (Sections 400.11 and 400.12)*

Section 400.11 is a new provision explaining the method by which ORR makes grant awards to States with approved State plans.

Section 400.11(a) describes the new consolidated grant to States which replaces funds previously provided separately for refugee cash and medical

assistance, social services (including child welfare services, except assistance and services to unaccompanied minors), targeted assistance, and educational assistance for children. Subject to the necessity of meeting the statutory requirements for a State plan for the RRP, the consolidated grant may be used for any and all of these purposes, at the option of the State, and thus provides maximum flexibility to States in planning and carrying out those specific activities which a State determines to be most important in meeting the needs of refugees within the State. If the State has an approved State plan for the Cuban/Haitian Entrant Program (CHEP) under 45 CFR Part 401, the consolidated grant could also be used to meet the needs of Cuban and Haitian entrants (hereafter, "entrants") within the State.

Under this proposed rule, the allocation of consolidated grant funds would be based on each State's proportion of the Nation's population of refugees who have been in the United States less than 3 years. Ninety-seven percent of the funds available for consolidated grants would be awarded to States with approved State plans in the form of quarterly awards at the beginning of each quarter of the fiscal year or as soon as possible thereafter following the availability of funds, and 3 percent would be reserved for award during the third and fourth quarters in order to allow for any necessary substantial adjustments in population estimates. Consolidated grant funds would remain available to a State until the end of the fiscal year following the fiscal year for which the funds are awarded.

In order to avoid any abrupt change in the allocation of funds among the States, this formula would be adjusted to assure that in fiscal year 1984 no State would receive less than 90 percent of the share that it received in fiscal year 1983 for those purposes which would now be encompassed by the consolidated grant. Prior to fiscal year 1985, the experience of States under this "hold-harmless" adjustment would be examined to determine whether some adjustment should also be applied to the consolidated grant allocation formula for that year.

In determining the 90% "hold-harmless" adjustment for FY 1984, the FY 1983 costs which would be taken into consideration would be the sum of the following for each State: Refugee and entrant cash assistance (RCA) and refugee medical assistance (RMA) costs, including administrative costs associated with the provision of RCA and RMA; the formula allocations for refugee and entrant social services; the allocation of refugee and entrant targeted assistance funds; and the allocation of education assistance for refugee and entrant schoolchildren.

A State will be required to submit a report on its intended uses of consolidated grant funds and to make the report public within the State, but the State's plan for the uses of these funds will not be subject to Federal approval except where required by statute (e.g., in section 412 of the Act, paragraphs (e)(3) and (e)(5)). No particular form is required for this report. However, the information provided must be sufficient to enable the Director to make the determinations required by the Act.

Paragraph (a)(8) of § 400.11 would limit administrative costs under the consolidated grant to 10% of a State's grant. This proposed limitation is based on ORR's experience during the last few years, which has shown administrative costs generally to range between 8% and 12% and to average about 10%.

Subject to the consideration of public comments, we would intend that the consolidated grant, if finally approved, would go into effect at the beginning of the quarter which follows by at least 30 days the publication of a final regulation. Prior to such date, we would plan to issue grant awards to a State under existing policy. The amount of a consolidated award for the residual portion of the fiscal year would be calculated by deducting from the State's annual consolidated award the amounts awarded for one or more previous quarters for activities to be encompassed by the consolidated grant.

Under section 400.11(b), ORR will provide quarterly grants to States, separate from the consolidated grant, for assistance and services for unaccompanied minors and for the State cost of assistance provided to refugees, during their first 36 months in the U.S., under the programs of AFDC, SSI, adult assistance (i.e., aid to be aged, blind, and disabled, aid to the blind, aid to the permanently and totally disabled, and old-age assistance) in the territories, Medicaid, and cash or medical assistance provided under a State or local general assistance (GA) program of general applicability.

Currently, ORR does not provide reimbursement for GA costs during a refugee's first 18 months in the United States since assistance to refugees who are not eligible for AFDC, SSI, Medicaid, or the adult assistance programs is covered by the special programs of refugee cash assistance (RCA) and refugee medical assistance (RMA) during that period (see the present regulation at 45 CFR 400.62). Under the consolidated grant concept, RCA and RMA are no longer required to be provided and, in lieu thereof, ORR will reimburse States for GA costs incurred at any time during a refugee's first 36 months rather than only during the latter 18 months of that period. If a State should elect to provide special cash or medical assistance to refugees beyond its existing programs of general applicability, then the cost of such special assistance would be met from the State's consolidated grant award.

Section 400.11(c)(1) and (2) represents current ORR policy on State submittals of requests for reimbursement. States must submit estimates of reimbursable costs for the fiscal year 45 days prior to the beginning of that fiscal year, and adjustments to the quarterly estimates 30 days prior to the beginning of that quarter. Under § 400.11(c)(3), within 30 days of the close of the quarter, States must submit a financial status report describing their actual expenditures. These reports are described in departmental grants administration rules at 45 CFR 74.73(a).

After ORR reviews a State's submittals, it will compute the grant award and transmit the notification of award to the State.

Section 400.12 provides States an opportunity to informally appeal adverse determinations in post-award disputes. Departmental grant appeals policies allow agencies to establish by regulation informal appeal procedures that must be exhausted before a grantee can appeal to the Grant Appeals Board (see 45 CFR 16.5(b)(2)). The procedures established in § 400.12 for the Refugee Resettlement Program are modeled on, but not identical to, those used by the Public Health Service (see 42 CFR Part 50, Subpart D, Public Health Service Grant Appeals Procedure, § 50.401 et seq.) If the informal appeal results in an adverse determination, the State may appeal to the Departmental Grant Appeal Board under Part 16 of Title 45.

Subpart C—General Administration

This subpart contains several administrative rules, most of which appear in the current State plan regulation at 45 CFR Part 400. Section 400.27 regulates the safeguarding of information, currently set forth in § 400.11 of the State plan regulation.

The subpart also contains some new provisions and additions to the existing regulation.

Section 400.22 requires the State agency to maintain oversight responsibility for the program.

Section 400.23(a) requires States to provide hearings utilizing the same procedures and standards as those used for the AFDC program and set forth in 45 CFR 205.10(a).

At the same time, we have made clear in § 400.23(b) that if the date of entry of a refugee is at issue, that is a matter for prompt factual determination based on documentation, and not a subject for a hearing. Again, we have based this on policies applicable to the AFDC program (cf. discussion of 45 CFR 205.10 at 47 FR 5672–5673 with respect to not holding a hearing when the issue is a factual one of age or school attendance or a question of law or policy).

Section 400.25 prohibits States from imposing durational residency requirements on applicants for assistance or services. This prohibition is based on those in the AFDC and Medicaid programs.

Section 4001.28 repeats the maintenance of records requirements that appear at § 400.10 of the current State plan regulation, and adds certain data reporting requirements. We are asking States to supply this information so that ORR can satisfy its statutory duties under section 413 of the Act to report to Congress. We encourage States to describe to us any alternative methods of data transfer they may know of that will communicate the required information.

We have developed data reporting forms to include the statistical and program information under § 400.28(b) determined necessary to fulfill our responsibilities under the Act. These forms have been approved by OMB.

We have eliminated the requirement for submittal of annual financial and performance reports (§ 400.11(c) and (d) of the existing regulation) because of the quarterly financial and performance reports required under §§ 400.11(d) and 400.28(b) of this proposed regulation.

Subpart D—Immigration Status and Identification of Refugees

In order to assure that all refugees are eligible to apply for benefits, the new § 400.43 includes forms of documentation that INS has given individuals both before and after enactment of the 1980 Act.

Section 400.43(b) provides that the Director will issue instructions specifying the documentation that applicants for assistance or services must submit. This formulation allows the Director maximum flexibility to respond quickly to any changes INS might make in the forms of documentation it provides refugees.

Subparts E–G—(Reserved)

Subpart H—Child Welfare Services

This subpart sets forth the requirements concerning grants to States for child welfare services to refugee unaccompanied minors under section 412(d)(2)(B) and the Act.

A. *Definition of Unaccompanied Minor (Sections 400.111 and 400.113)*

The proposed definition is a change from current policy. It is intended to clarify which refugee children, under what circumstances, may be considered to be unaccompanied minors. The definition reflects the intent of the legislative history of the 1980 Act which makes clear that "Unaccompanied" means refugee children who "enter the United States unaccompanied by their parents or other adult guardians" (H. Report No. 96–608, p. 27). The definition also provides that an unaccompanied minor is one who is not "destined to" a parent, close adult relative, or other adult having legal custody since such a child might actually enter the U.S. unaccompanied but his entry would be for the purpose of family reunification.

The definition also requires that the child must have been identified as "unaccompanied" by the Immigration and Naturalization Service but would permit the Director or ORR to determine on the basis of information provided by a State that a particular child should have been, but was not, classified as unaccompanied. This provision will enable States to identify specifically those children whom they may consider unaccompanied.

Finally, the definition permits a State to continue to consider as unaccompanied any minors who were properly so classified under Action Transmittal SSA–AT–79–04 prior to the effective date of this regulation.

Section 400.113 is intended to clarify specifically the circumstances under which a child's status as "unaccompanied" is terminated—by age, by reunification with parent(s), or by being united with a non-parental adult who is granted legal custody or guardianship under State law.

B. *Legal Responsibility for Unaccompanied Minors (Sections 400.115)*

This section would require a State to initiate procedures for establishing legal responsibility for an unaccompanied minor within 30 days after the minor arrives at the resettlement location. Current policy does not mandate a specific deadline.

Paragraph (c) of this section clarifies that, in certain rare cases, adoption of unaccompanied minors may be permitted under State law. In general, such minors are not eligible for adoption since they are only temporarily separated from their parents or close adult relatives and since family reunification is the objective of the program.

C. *Services to Unaccompanied Minors (Sections 400.116 through 400.120)*

A State must provide an unaccompanied minor with the same range of child welfare benefits and services available in foster care cases to other children in the State and may provide additional services if the Director approves, in writing, the provision of such services. A State may provide services directly or through arrangements with licensed public or private nonprofit child welfare agencies in the State.

(a) *Case planning (Section 400.118)*

The State, or the agency with which it has made an arrangement to provide services, must develop, implement, and review an appropriate plan for the care and supervision of, and services provided to, each unaccompanied minor. Special attention must be given in the plan to family reunification, orientation of the minor to American culture, preservation of ethnic and religious heritage, appropriate placement, health screening and treatment, and preparation for independent living.

(b) *Interstate movement (Section 400.119)*

A State must use the same procedures that govern the movement of nonrefugee foster care cases to other States when an unaccompanied minor, after initial placement in the State, is resettled in another State.

(c) *Reporting requirements (Section 400.120)*

The proposed regulation contains requirements for State reports required by sections 412(d)(2)(B)(iv) and 413(a)(2)(G) of the Act. A State must submit the reports required by the regulation.

Two reporting forms for State use to meet these requirements have been approved by OMB.

Subpart I—(Reserved)

Subpart J—Federal Funding (FF)

The existing structure of Federal refugee funding to States would be changed by the establishment of consolidated grants. Under this concept, two types of grants would be provided to each participating State: (1) A

consolidated grant, to be awarded quarterly (as described in the discussion, above, of § 400.11(a)) and (2) a grant, also to be awarded quarterly, which would provide funding for those aspects of the RRP not covered by the consolidated grant.

The consolidated grant would provide funding previously identified separately for: Refugee cash assistance (RCA) and refugee medical assistance (RMA) and related administrative costs; support services (formerly termed "social services"), including child welfare services (except assistance and services for unaccompanied minors); targeted assistance; and educational assistance for refugee schoolchildren.

Quarterly grants, separate from the consolidated grant, would provide reimbursement for: The State share of AFDC costs, Medicaid costs, and adult assistance costs in the territories, including administrative costs, during a refugee's first 36 months; State supplementary payments to refugee SSI recipients during that period; the cost of cash or medical assistance provided under a State or local GA program during that period; and the cost of assistance and services to refugee unaccompanied minors.

Funding is available for services provided to unaccompanied minors under §§ 400.115 through 400.120, including the cost of establishing legal responsibility for a minor, until the refugee's status as an unaccompanied minor terminates.

Subpart K—Waivers

Current regulations do not contain a provision for waivers. Subpart K would permit a waiver by the Director if a State demonstrates to the Director's satisfaction that it cannot reasonably comply with a requirement of the regulations. We believe that such a provision is necessary in recognition of the wide variations from State to State in legislative and administrative requirements and programmatic circumstances. This would allow a degree of flexibility for specific exceptions when the Director determines that a particular exception in a given State would advance the purposes of the refugee program and the intent of the Act. No waiver could be considered when a requirement of the regulations reflects a specific statutory requirement.

List of Subjects in 45 CFR Part 400

Grant programs—Social programs, Health care, Public assistance programs, Refugees, Reporting and recordkeeping requirements.

45 CFR Part 400 is proposed to be amended as follows:

1. The Table of Contents is revised to read as follows:

PART 400—REFUGEE RESETTLEMENT PROGRAM

Subpart A—Introduction

Sec.
400.1 Basis and purpose of the program.
400.2 Definitions.
400.3 [Reserved]

Subpart B—Grants to States for Refugee Resettlement

The State Plan

400.4 Purpose of the plan.
400.5 Content of the plan.
400.6 [Reserved]
400.7 Submittal of the State plan and plan amendments for Governor's review.
400.8 Approval of State plans and plan amendments.
400.9 Administrative review of decisions on approval of State plans and plan amendments.
400.10 [Reserved]

Award of Consolidated and Other Grants to States

400.11 Award of grants to States.
400.12 Adverse determinations concerning State grants.

Subpart C—General Administration

400.20—400.21 [Reserved]
400.22 Responsibility of the State agency.
400.23 Fair hearings.
400.24 [Reserved]
400.25 Residency requirements.
400.26 [Reserved]
400.27 Safeguarding of information.
400.28 Maintenance of records and reports.

Subpart D—Immigration Status and Identification of Refugees

400.40 Scope.
400.41 Definitions.

Documentation of Refugee Status

400.43 Requirements for documentation of refugee status.
400.44 Restriction.

Subparts E-G—[Reserved]

Subpart H—Child Welfare Services

400.110 Basis and scope.
400.111 Definitions.
400.112 [Reserved]
400.113 Duration of eligibility.
400.114 [Reserved]
400.115 Establishing legal responsibility.
400.116 Services for unaccompanied minors.
400.117 Provision of care and services.
400.118 Case planning.
400.119 Interstate movement.
400.120 Reporting requirements.

Subpart I—[Reserved]

Subpart J—Federal Funding (FF)

400.200 Scope.

FF In Expenditures for Determining Eligibility and Providing Assistance and Services

Sec.
400.202 Extent of FF.
400.203 FF for each assistance.
400.204 FF for medical assistance.
400.205 FF for assistance and services for unaccompanied minors.
400.206 FF under consolidated grant.
400.207 FF for administrative costs.
400.208 Claims involving filing units which include both refugees and non-refugees.
400.209 Claims involving filing units which include refugees who have been in the United States more than 36 months.
400.210 Time limit for filing of State claims.

Subpart K—Waivers

400.300 Waivers.

Authority: Sec. 412(a)(9), Immigration and Nationality Act (8 U.S.C. 1522(a)(9).

2. Sections 400.1 and 400.2 of Subpart A are revised to read as follows:

Subpart A—Introduction

§ 400.1 Basis and purpose of the program.

(a) This part prescribes requirements concerning grants to States under title IV of the Immigration and Nationality Act.

(b) It is the purpose of this program to provide for the effective resettlement of refugees and to assist them to achieve economic self-sufficiency as quickly as possible.

(c) Under the authority in section 412(a)(6)(B) of the Immigration and Nationality Act, the Director has established the provision of employment services and English language training as a priority in accomplishing the purpose of this program.

§ 400.2 Definitions.

The following definitions are applicable for purposes of this part:

"AABD" means aid to the aged, blind, and disabled under title XVI of the Social Security Act.

"AB" means aid to the blind under title X of the Social Security Act.

"Act" means the Immigration and Nationality Act.

"AFDC" means aid to families with dependent children under title IV-A of the Social Security Act.

"APTD" means aid to the permanently and totally disabled under title XIV of the Social Security Act.

"Cash assistance" means financial assistance to refugees, including AFDC, SSI, and general assistance, as defined herein, under title IV of the Act.

"Consolidated grant" means a grant which provides funding for any or all of the following purposes, at the discretion of the State: Refugee cash assistance; refugee medical assistance; child welfare services; support services; targeted assistance; and educational

assistance for refugee schoolchildren. Consolidated grants may be used for any activities allowable under paragraphs (c) through (e) of section 412 of the Act, subject to the Director's approval where required by the Act.

"Director" means the Director, Office of Refugee Resettlement.

Federal Funding" or "FF" means Federal funding for a State's expenditures under the refugee resettlement program.

"General assistance program" means a financial and/or medical assistance program existing in a State or local jurisdiction and which: (a) Is funded entirely by State and/or local funds; (b) is generally available to needy persons residing in the State or locality who meet specified income and resource requirements; and (c) consists of one-time, emergency, or ongoing assistance intended to meet basic needs of recipients, such as for food, clothing, shelter, medical care, or other essentials of living.

"HHS" means the Department of Health and Human Services.

"Medicaid" means the program of medical assistance provided under a State plan approved under title XIX of the Social Security Act.

"Medical assistance" means medical services to refugees, including Medicaid and general assistance, as defined herein, under title IV of the Act.

"OAA" means old age assistance under title I of the Social Security Act.

"ORR" means the Office of Refugee Resettlement.

"Plan" means a written description of the State's refugee resettlement program and a commitment by the State to administer or supervise the administration of the program in accordance with Federal requirements in this part.

"Refugee" means an individual who meets the definition of a refugee under section 101(a)(42) of the Act.

"Refugee cash assistance" means cash assistance provided under section 412(e) of the Act to refugees who are ineligible for AFDC, OAA, AB, APTD, AABD, or SSI and who have resided in the United States for less than an 18-month period from their initial entry into the country.

"Refugee medical assistance" means: (a) Medical assistance provided under section 412(e) of the Act to refugees who are ineligible for the Medicaid program and who have resided in the United States for less than an 18-month period from their initial entry into the country; (b) services provided under § 400.106 of this part either to refugees who are eligible under (a), above, or to refugees who are eligible for the Medicaid program and who have resided in the United States for less than a 36-month period from their initial entry into the country; or (c) services provided under § 400.107 of this part.

"Secretary" means the Secretary of HHS.

"Sponsor" means an individual, church, civic organization, State or local government, or other group or organization which has agreed to help in the reception and initial placement of refugees in the United States.

"SSI" means supplemental security income under title XVI of the Social Security Act.

"State" means the 50 States, the District of Columbia, Guam, Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, and the Trust Territories of the Pacific.

"State agency" means the agency (or agencies) designated by the Governor or the appropriate legislative authority of the State to develop and administer, or supervise the administration, of the plan and, except where the context otherwise requires, includes any local agencies administering the plan under supervision of the State agency.

"State Coordinator" means the individual designated by the Governor or the appropriate legislative authority of the State to be responsible for, and authorized to, ensure coordination of public and private resources in refugee resettlement.

"Support services" means services provided by, or purchased by, a State, which are designed to meet resettlement needs of refugees, for which funding is available under title IV of the Act.

"Title IV of the Act" means title IV, Chapter 2, of the Immigration and Nationality Act.

"Voluntary resettlement agency" or "voluntary agency" or "resettlement agency" means one of the national resettlement agencies (or its local affiliate or subcontractor) or a State or local government that has entered into a grant, contract, or cooperative agreement with the United States Department of State of other appropriate Federal agency to provide for the reception and initial placement of refugees in the United States.

§ 400.3 [Removed and Reserved]

3. Section 400.3 is removed and reserved.

4. The title of Subpart B is revised, an undesignated center heading is added, and § 400.4 is revised to read as follows:

Subpart B—Grants to States for Refugee Resettlement

The State Plan

§ 400.4 Purpose of the plan.

(a) In order for a State to receive refugee resettlement assistance from funds appropriated under sec. 414 of the Act, it must submit to ORR a plan that meets the requirements of title IV of the Act and of this part and that is approved under § 400.8 of this part.

(b) An approved plan continues in effect until the State expressly amends or revokes the plan or ORR notifies the State in accordance with § 400.8 of this part that the plan no longer meets the requirements of title IV of the Act and of this part.

5. Section 400.5 is revised to read as follows:

§ 400.5 Content of the plan.

The plan must:

(a) Provide for the designation of, and describe the organization and functions of, a State agency (or agencies) responsible for developing the plan, and administering, or supervising the administration of, the plan;

(b) Describe how the State will coordinate cash and medical assistance with support services to ensure their successful use to encourage effective refugee resettlement and to promote employment and economic self-sufficiency as quickly as possible.

(c) Describe how the State will ensure that language training and employment services are made available to refugees receiving cash assistance, and to other refugees, including State efforts to actively encourage refugee registration for employment services;

(d) Identify an individual designated by the Governor or the appropriate legislative authority of the State, with the title of State Coordinator, who is employed by the State, and will have the responsibility and authority to ensure coordination of public and private resources in refugee resettlement in the State;

(e) Provide for, and describe the procedures established for, the care and supervision of, and legal responsibility (including legal custody and/or guardianship under State law, as appropriate) for, unaccompanied refugee children in the State;

(f) Provide for and describe (1) the procedures established to identify refugees who, at the time of resettlement in the State, are determined to have medical conditions requiring, or medical histories indicating a need for, treatment or observation, and (2) the procedures

estblished to monitor any necessary treatment or observation;

(g) Provide that assistance and services funded under the plan will be provided to refugees without regard to race, religion, nationality, sex or political opinion; and

(h) Provide that the State will, unless exempted from this requirement by the Director, assure that meetings are convened, not less often than quarterly, whereby representatives of local affiliates of voluntary agencies meet with representatives of State and local governments to plan and coordinate in advance of their arrival the appropriate placement of refugees.

(i) Provide that the State will: (1) Comply with the provisions of title IV of the Act and official issuances of the Director; (2) meet the requirements in this part; (3) comply with all other applicable Federal statutes and regulations in effect during the time that it is receiving grant funding; and (4) amend the plan as needed to comply with standards, goals, and priorities established by the Director.

§ 400.6 [Removed and Reserved]

6. Section 400.6 is removed and reserved.

7. Section 400.7 is revised to read as follows:

§ 400.7 Submittal of the State plan and plan amendments for Governor's review.

A plan or plan amendment under title IV of the Act must be submitted to the State Governor or his or her designee, for review, comment, and signature before the plan is submitted to ORR.

8. Section 400.8 is redesignated as § 400.200 and revised and the text of the section is set out under Subpart J below. A new § 400.8 is added to read as follows:

§ 400.8 Approval of State plans and plan amendments.

(a) The State agency must submit the State plan and plan amendments which have been signed by the Governor, or his or her designee, together with one copy of such plan or amendment, to the Director of ORR, or his or her designee, for approval. States are encouraged to consult with the Director, or his or her designee, when a plan or amendment is in preparation.

(b) The Director, or designee, will initiate any necessary discussions with the State agency to clarify aspects of the plan.

(c) No later than 45 days after the State plan or plan amendment is submitted, the Director, or designee, will—

(1) Determine whether a State plan or plan amendment meets or continues to meet requirements for approval based on relevant Federal statutes and regulations, and

(2) Approve or disapprove the plan or plan amendment.

(d) The Director, or designee, will notify the State agency promptly of all actions taken on State plans and amendments.

(e) The effective day of an approved State plan or plan amendment may not be earlier than the first day of the calendar quarter in which the State agency submits the approvable plan or plan amendment, except as otherwise approved by the Director.

9. Section 400.9 is removed and a new § 400.9 is added to read as follows:

§ 400.9 Administrative review of decisions on approval of State plans and plan amendments.

(a) Any State dissatisfied with a determination by the Director, or designee, under § 400.8 with respect to any plan or plan amendment may, within 60 days after the date of notification of such determination, file a petition with the Director, or designee, for reconsideration of the determination.

(b) A State may, but is not required to, request that a hearing be held.

(c) If a State requests a hearing, the Director, or designee, will notify the State within 30 days after receipt of such a petition, of the time and location of the hearing to reconsider the issue.

(d) The hearing must be held not less than 30 days nor more than 60 days after the date that notice of the hearing is furnished to the State, unless the Director or designee, and the State agree in writing on another time.

(e) The hearing procedures in Part 213 of this title will be used except that:

(1) "The Director" is substituted where there is reference to "the Administrator," and

(2) "ORR Hearing Clerk" is substituted where there is reference to the "SRS Hearing Clerk."

(f) The Director will affirm, modify, or reverse the original decision within 60 days of the receipt of the State's petition or, if a hearing is held, within 60 days after the hearing.

(g) The initial determination by the Director, or designee, that a plan or amendment is not approvable shall remain in effect pending the reconsideration.

(h) If the Director reverses the original decision, ORR will reimburse any funds incorrectly withheld or otherwise denied.

§ 400.10 [Redesignated as § 400.28]

10. Section 400.10 is redesignated as §400.28 and revised and the text is set out under Subpart C below.

11. Section 400.11 is redesignated as § 400.27 and revised and the text of the section is set out under Subpart C below. An undesignated center heading and new §§ 400.11 and 400.12 are added to read as follows:

Award of Consolidated and Other Grants to States

§ 400.11 Award of grants to States.

(a) *Quarterly consolidated grants.* (1) Subject to the availability of funds, ORR will make consolidated grants each quarter to States with approved State plans (hereafter, "eligible States") for the purposes of section 412(c) through (e) of the Act, except that ORR will make separate grants to States for the purposes set forth in paragraph (b) of this section.

(2) Of the funds available for consolidated grants, the Director—

(i) Will reserve 3 percent in order to make any necessary corrections in the allotments to States, which 3 percent shall be awarded during the third and fourth quarters of the fiscal year.

(ii) Will award, on a quarterly basis, 97 percent to eligible States as soon as is reasonably possible following the availability of funds to the Director.

(3) Each eligible State shall be allotted a share of the consolidated grant funds awarded under paragraph (a)(2)(ii) of this section which bears the same ratio to the amount appropriated as the number of refugees in such State who have been in the United States for less than 3 years bears to the total number of such refugees in all eligible States, *except that*, for fiscal year 1984, or any portion thereof for which consolidated grant awards are made, such awards shall be made in such manner as to provide each eligible State with not less than 90 percent of the percentage that such State was awarded for fiscal year 1983 of the total funds awarded nationally under this part and Part 401 for the following purposes: Refugee cash assistance (RCA) and refugee medical assistance (RMA) costs, including administrative costs associated with the provision of RCA and RMA; the formula allocations for social services; the allocation of targeted assistance funds; and the allocation of education assistance for schoolchildren.

(4) For purposes of paragraph (a)(3) of this section, the number of refugees in a State (who have been in the United States less than 3 years), and the number of such refugees in all the

States, shall be established on the basis of the Director's estimate of such numbers, based on the best data available to the Director, as of September 30 of the fiscal year preceding the year for which the allotment is made.

(5) The allotment for each State, as determined under paragraphs (a) (3) and (4) of this section, shall be adjusted for each fiscal year, by the close of the second quarter of fiscal year, if the Director determines that the estimate of the number of refugees present in such State does not accurately reflect their actual location at the beginning of such fiscal year, and that the allotment of a State has thereby been substantially affected. Any such adjustment shall be made, to the extent of available funds, from the 3 percent reserved by the Director under paragraph (a)(2)(i) of this section. Any funds remaining from the 3 percent after such adjustments shall be allocated among the eligible States in accordance with each State's pro rata share.

(6) As a condition for receiving a consolidated grant, each State shall submit to the Director such information as the Director determines necessary to establish States' allotments, in such form and at such time or times as the Director may reasonably specify, pertaining to the numbers of refugees in the State and the changes in such numbers from prior periods.

(7) The amount of each State's consolidated grant allotment for a fiscal year shall remain available until the close of the following fiscal year and shall not be taken into account in determining its allotment for such following year.

(8) The consolidated grant may be used at the option of the State for any one or more of the activities authorized by section 412(c) through (e) of the Act, and subject to the conditions of the Act with respect to those activities, except that not more than 10 percent of a consolidated grant may be used for administrative costs in connection with the provision of services and assistance.

(9) Prior to, and as a condition for, the award to a State of consolidated grant funds for any fiscal year or portion thereof, the State shall report to the Director on the intended uses of such funds, including information on the types of activities to be supported and the estimated numbers and categories or characteristics of individuals to be served. The report shall be transmitted to the Director and shall be made public within the State in such manner as to facilitate comment by interested persons, voluntary agencies, and local governments on the intended uses of the funds. The State shall revise the report throughout the year as may be necessary to reflect subtantial changes in the intended uses of the funds, and any revised report shall be subject to the requirements of this paragraph. The report, and any revisions thereto, will not be subject to Federal approval except for activities with respect to which a determination must be made by the Director under the Act. No particular form is required for this report, but the information provided must be sufficient to enable the Director to make the determinations required by the Act.

(b) *Other Quarterly grants.* Subject to the availability of funds, ORR will make quarterly grants to eligible States, separate from the consolidated grants described in paragraph (a) of this section, for the following purposes (and in accordance with the limitations of Subpart J of this part): Cash assistance provided by a State or local public agency under the program of aid to families with dependent children (AFDC) under Part A of title IV of the Social Security Act or under the adult assistance programs (AABD, AB, APTD, or OAA) in the territories; foster care maintenance provided under Part E of that title; State supplementary payments under section 1616(a) of the Social Security Act or section 212 of Pub. L. 93-66; medical assistance under title XIX of the Social Security Act; assistance and services to unaccompanied minors under section 412(d)(2)(B) of the Immigration and Nationality Act; and cash or medical assistance provided under a public assistance program established under authority other than Federal law and under which such assistance is generally available to needy individuals or families in similar circumstances within the State. ORR will compute the amount of the quarterly award based on documents submitted by the State agency in accordance with this section and such other pertinent facts as the Director may find necessary.

(c) *Form and manner of State application for grant award.* (1) *Estimates of reimbursable costs.* For quarterly grants under paragraph (b), a State must submit to the Director, or designee, estimates for reimbursable costs for the fiscal year, identified by quarter and type of expense, and a justification statement in support of the estimates, no later than 45 days prior to the beginning of the fiscal year on a form prescribed by the Director.

(2) *Quarterly adjustments.* If a State revises its quarterly estimates required in paragraph (c)(1) of this section, it must submit to the Director, or designee, the revisions, accompanied by a justification statement, no later than 30 days prior to the quarter in which the revision or adjustment applies.

(d) *Financial status report.* A State must submit to the Director, or designee, a financial status report described in § 74.73(a) of this title, no later than 30 days after the end of each quarter.

(e) *Review.* ORR will determine whether the State's description of services, estimates, other relevant information, and any adjustments to be made for prior periods meet the requirements under this part, and will compute the quarterly award.

(f) *Grant award.* (a) ORR will transmit to the State the grant award form showing, by type of assistance, the amount of the award.

(2) The State may draw funds, under the Departmental Federal Assistance Financing System (SFAFS), as needed, to meet the Federal share of disbursements.

§ 400.12 Adverse determinations concerning State grants.

(a) *Policy.* The Secretary has established a Departmental Grant Appeals Board for the purpose of reviewing and providing hearings on post-award disputes which may arise in the administration of certain grant programs by constituent agencies of HHS. Section 16.5(b)(2) of this title authorizes HHS agencies to establish informal appeal procedures which must be exhausted before a formal appeal to the Board will be allowed. Paragraph (d) of this section provides an informal preliminary procedure for resolution of such disputes within ORR prior to appeal to the Board.

(b) *Scope.* Adverse determinations to which this procedure is applicable are as follows:

(1) Termination, in whole or in part, of a grant for failure of the grantee to carry out its approved project or program in accordance with applicable law and the terms and conditions of such assistance or for failure of the grantee otherwise to comply with any law, regulation, assurance, term, or condition applicable to the grant.

(2) A determination that an expenditure not allowable under the grant has been charged to the grant or that the grantee has otherwise failed to discharge its obligation to account for grant funds.

(3) The disapproval of a grantee's written request for permission to incur an expenditure during the term of a grant.

(4) A determination that a grant is void because the award was obtained fraudulently, or was otherwise illegal or invalid from inception.

(c) *Notice of adverse determination.* If the Director, or his or her designee, makes an adverse determination with respect to a grant, he or she shall promptly issue a notice of adverse determination to the State containing the reasons for the determination in sufficient detail to enable the State agency to respond and informing the State agency of the opportunity for review under paragraph (d) of this section.

(d) *Request for review of adverse determination.* (1) If the State agency wants a review of the determination, it must submit a request for such review to the Director no later than 30 days after the postmark on the notice, unless an extension of time is granted for good cause shown.

(2) The request for review must contain a full statement of the State's position with respect to the determination being appealed and the pertinent facts and reasons in support of such position. The State agency must attach to the submission a copy of the notice.

(3) The Director may, at his or her discretion, invite the State to discuss pertinent issues and to submit such additional information as he or she deems appropriate.

(4) Based on his or her review, the Director will send a written response to the State. If the response is adverse to the State's position, the correspondence shall state the State's right to appeal to the Departmental Grant Appeals Board, pursuant to Part 16 of this title.

(e) *Request for appeal of an adverse determination.* (1) To appeal an adverse determination, a State agency must file an appeal with the Executive Secretary, Departmental Grant Appeals Board, in accordance with requirements contained in Subparts A and B of Part 16 of this title.

(2) The State's application for review must be postmarked no later than 30 days after the postmark on the Director's response to the State's request for review in paragraph (d)(4) of this section.

§ 400.62 [Removed]

12. Section 400.62 is removed.

13. New subparts C–J are added to read as follows:

Subpart C—General Administration

§§ 400.20–400.21 [Reserved]

§ 400.22 Responsibility of the State agency.

(a) The State agency may not delegate, to other than its own officials, responsibility for administering or supervising the administration of the plan.

(b) The State agency must have—

(1) Methods for informing staff of State policies, standards, procedures, and instructions; and

(2) Systematic planned examination and evaluation of operations in local offices.

§ 400.23 Fair hearings.

(a) A State must provide applicants for and recipients of assistance and services under the Act with an opportunity for a hearing to contest adverse determinations using hearing procedures for public assistance programs set forth in § 205.10(a) of this title.

(b) If the issue is the date of entry into the United States of an applicant for or recipient of assistance or services, the State must provide for prompt resolution of the issue by inspection of the individual's documentation issued by the Immigration and Naturalization Service (INS) or by information obtained from INS, than by hearing.

§ 400.24 [Reserved]

§ 400.25 Residency requirements.

A State may not impose requirements as to duration of residence as a condition of participation in the State's program for the provision of assistance or services.

§ 400.26 [Reserved]

§ 400.27 Safeguarding of information.

(a) Except for purposes directly connected with, and necessary to, the administration of the program, a State must ensure that no information about, or obtained from, an individual and in possession of any agency providing assistance or services to such individual under the plan, will be disclosed in a form identifiable with the individual without the individual's consent, or if the individual is a minor, the consent of his or her parent or guardian.

(b) The provision by a State to a voluntary resettlement agency, as defined in § 400.2, of information as to whether an individual has applied for or is receiving cash assistance is to be considered undertaken for a purpose directly connected with, necessary to, the administration of the program during the first 36 months after such individual's entry into the United States.

§ 400.28 Maintenance of records and reports.

(a) A State must provide for the maintenance of such operational records as are necessary for Federal monitoring of the State's refugee resettlement program in accordance with Part 74, Subpart D, of this title. This recordkeeping must include:

(1) Documentation of services and assistance provided, including identification of individuals receiving those services;

(2) Records on the location, progress, and status of unaccompanied minor refugee children, including the last known address of parents; and

(3) Documentation that necessary medical followup services and monitoring have been provided.

(b)(1) A State must submit statistical or programmatic information on refugees receiving assistance and services which are provided, or the State costs of which are reimbursed, under the Act that the Director determines to be required to fulfill his or her responsibility under the Act.

(2) Such information must include:

(i) Aggregated data, showing the numbers, by nationality, of persons and cases receiving cash assistance, by AFDC, SSI, and GA, and other recipients;

(ii) Aggregated data, showing the numbers, by nationality, of persons receiving medical assistance, by Medicaid, GA, and other recipients; and

(iii) Aggregated data showing the numbers of persons identifiable as secondary migrants from other States.

(iv) Aggregated data showing the numbers of persons who have been provided with employment services, job placements, and other support services.

(v) Aggregated data showing the numbers of unaccompanied minors who have received income maintenance, medical, and support services.

(vi) Aggregated data showing the numbers of persons who have received health monitoring services, including health screenings, followup, and treatment.

Subpart D—Immigration Status and Identification of Refugees

§ 400.40 Scope.

This subpart sets forth requirements concerning the immigration status and identification of eligible applicants for assistance under title IV of the Act.

§ 400.41 Definitions.

For purposes of this subpart—

"Applicant for asylum" means an individual who has applied for, but has not been granted asylum under section 208 of the Act.

"Asylee" means an individual who has been granted asylum under section 208 of the Act.

Documentation of Refugee Status

§ 400.43 Requirements for documentation of refugee status.

(a) An applicant for assistance under title IV of the Act must provide proof, in the form of documentation issued by the Immigration and Naturalization Service (INS), of one of the following statutes under the Act as a condition of eligibility:

(1) Paroled as a refugee or asylee under section 212(d)(5) of the Act;

(2) Admitted as a conditional entrant under section 203(a)(7) of the Act;

(3) Admitted as a refugee under section 207 of the Act;

(4) Granted asylum under section 208 of the Act;

(5) Admitted with an immigration status that entitled the individual to refugee assistance prior to enactment of the Refugee Act of 1980, as specified by the Director; or

(6) Admitted for permanent residence, provided the individual previously held one of the statuses identified above.

(b) The Director will issue instructions specifying the documentation that applicants for assistance must submit.

§ 400.44 Restriction.

An applicant for asylum is not eligible for assistance under title IV of the Act.

Subparts E–G—[Reserved]

Subpart H—Child Welfare Services

§ 400.110 Basis and scope.

This subpart prescribes requirements concerning grants to States under section 412(d)(2)(B) of the Act for child welfare services to refugee unaccompanied minors.

§ 400.111 Definitions.

For purposes of this subpart—

"Child welfare agency" means an agency licensed or approved under State law to provide child welfare services to children in the State.

"Unaccompanied minor" means a person who has not yet attained 18 years of age (or a higher age established by the State of resettlement in its child welfare plan under title IV–B of the Social Security Act for the availability of child welfare services to any other child in that State); who entered the United States unaccompanied by and not destined to (a) a parent or (b) a close non-parental adult relative who is willing and able to care for the child or (c) any adult with a clear and court-verifiable claim to custody of the minor; and who has no parent(s) in the United States. *Limitation:* No child may be considered by a State to be "unaccompanied" for the purposes of this part unless such child was identified by INS at the time of entry as "unaccompanied," except that a child who was correctly classified as "unaccompanied" by a State in accordance with Action Transmittal SA–AT–79–04 (and official interpretations thereof by the Director) prior to the effective date of this definition may continue to be so classified until such status is terminated in accordance with § 400.113(b) of this subpart; and the Director may approve the classification of a child as "unaccompanied" on the basis of information provided by a State showing that such child should have been classified as "unaccompanied" at the time of entry.

"Title IV–B plan" means a State's plan for providing child welfare services to children in the State under part B of title IV of the Social Security Act.

§ 400.112 [Reserved]

§ 400.113 Duration of eligibility.

An unaccompanied minor continues to meet the definition of "unaccompanied minor" and is eligible for services under §§ 400.115 through 400.120 of this part until the minor—

(a) Is reunited with a parent; or

(b) Is united with a non-parental adult (relative or non-relative) willing and able to care for the child to whom legal custody and/or guardianship is granted under State law; or

(c) Attains 18 years of age or such higher age as the State's title IV–B plan prescribes for the availability of child welfare services to any other child in the State.

§ 400.114 [Reserved]

§ 400.115 Establishing legal responsibility.

(a) A State must ensure that legal responsibility is established, including legal custody and/or guardianship, as appropriate, in accordance with applicable State law, for each unaccompanied minor who resettles in the State. The State must initiate procedures for establishing legal responsibility for the minor, with an appropriate court (if action by a court is required by State law), within 30 days after the minor arrives at the location of resettlement.

(b) In establishing legal responsibility, including legal custody and/or guardianship under State law, as appropriate, the minor's natural parents should not be contacted in the native country since contact could be dangerous to the parents.

(c) Unaccompanied minor are not generally eligible for adoption since family reunification is the objective of the program. In certain rare cases, adoption may be permitted pursuant to normal adoption laws in the State of resettlement, provided a court finds that: (1) Adoption would be in the best interest of the child; and (2) there is clear expression (as determined by the court) of the termination of parental rights, including situations where the parents are dead or are missing and presumed dead. When adoption occurs, the child's status as an unaccompanied minor terminates.

§400.116 Services for unaccompanied minors.

(a) A State must provide unaccompanied minors with the same range of child welfare benefits and services available in foster care cases to other children in the State. Allowable benefits and services may include foster care maintenance (room, board, and clothing) payments; medical assistance, support services; services identified in the State's plans under titles IV–B and IV–E of the Social Security Act; services permissible under title XX of that Act; and expenditures incurred in establishing legal responsibility.

(b) A State may provide additional services if the Director, or his or her designee, determines such services to be reasonable and necessary for a particular child or children and provides written notification of such determination to the State.

§ 400.17 Provision of care and services.

(a) A State may provide the care and services to an unaccompanied minor directly or through arrangements with a public or private nonprofit child welfare agency approved or licensed under State law.

(b) If a State arranges for the care and services through a public or private nonprofit child welfare agency, it must retain oversight responsibility for the appropriateness of the unaccompanied minor's care.

§ 400.118 case planning.

(a) A State, or its designee under § 400.117, must develop and implement an appropriate plan for the care and supervision of, and services provided to, each unaccompanied minor, to ensure that the child is placed in a foster home or other setting approved by the legally responsible agency and in accordance with the child's need for care and for social, health, and educational services.

(b) Case planning for unaccompanied minors must, at a minimum, address the following elements:

(1) Family reunification;

(2) Appropriate placement of the unaccompanied child in a foster home, group foster care, residential facility, supervised independent living, or other setting, as deemed appropriate in meeting the best interest and special needs of the child.

(3) Health screening and treatment, including provision for medical and dental examinations and for all necessary medical and dental treatment.

(4) Orientation, testing, and counseling to facilitate the adjustment of the child to American culture.

(5) Preparation for participation in American society with special emphasis upon English language instruction and occupational as well as cultural training as necessary to facilitate the child's social integration and to prepare the child for independent living and economic self-sufficiency.

(c) A State, or its designee under § 400.117 of this part, must review the continuing appropriateness of each unaccompanied minor's living arrangement and services no less frequently than every 6 months.

§ 400.119 Interstate movement.

After the initial placement of an unaccompanied minor, the same procedures that govern the movement of nonrefugee foster care cases to other States apply to the movement of unaccompanied minors to other States.

§ 400.120 Reporting requirements.

A State must submit to ORR, on forms prescribed by the Director, the following reports on each unaccompanied minor:

(a) An initial report within 30 days of the date of the minor's placement in the State;

(b) A progress report every 12 months beginning with 12 months from the date of the initial report in paragraph (a);

(c) A change of status report within 30 days of the date—

(1) The minor's placement is changed;

(2) Legal responsibility of any kind for the minor is established or transferred; or

(d) A final report within 30 days of the date the minor—

(1) Is reunited with a parent; or

(2) Is united with an adult, other than a parent, in accordance with § 400.113(b)(2) or § 400.115(c) of this part.

(3) Is emancipated.

Subpart I—[Reserved]

Subpart J—Federal Funding (FF)

§ 400.200 Scope.

This subpart specifies when, and the extent to which, FF is available under this regulation in expenditures for determining eligibility and for providing assistance and services to refugees determined eligible under this part, and prescribes limitations and conditions on FF for those expenditures.

FF in Expenditures for Determining Eligibility and Providing Assistance and Services

§ 400.202 Extent of FF.

Subject to the availability of funds and under the terms and conditions approved by the Director, FF will be provided for 100 percent of authorized allowable costs of determining eligibility and providing assistance and services in accordance with this part.

§ 400.203 FF for cash assistance.

(a) FF is available for cash assistance to eligible refugees during the 36-month period beginning with the first month the refugee entered the United States, as follows—

(1) If a refugee is eligible for AFDC, adult assistance programs, or foster care maintenance payments under title IV–E of the Social Security Act, FF is available only for the non-Federal share of such assistance.

(2) If a refugee is eligible for SSI, FF is available for any supplementary payment a State may provide under that program.

(3) If a refugee is eligible for general assistance (GA), FF is available.

§ 400.204 FF for medical assistance.

(a) FF is available for the non-Federal share of medical assistance to refugees who are eligible for Medicaid or adult assistance programs during the 36-month period beginning with the first month the refugee entered the United States.

(b) FF is available for a State's expenditures for medical assistance under a general assistance (GA) program during the 36-month period beginning with the first month the refugee entered the United States.

§ 400.205 FF for assistance and services for unaccompanied minors.

FF is available for a State's expenditures for services to unaccompanied minors under §§ 400.115 through 400.120 of this part until the minor's status as an unaccompanied minor is terminated as specified by § 400.113(b).

§ 400.206 FF under consolidated grant.

FF is provided under the consolidated grant for any activities allowable under paragraphs (c) through (e) of section 412 of the Act, in accordance with the requirements of said paragraphs and of this part.

§ 400.207 FF for administrative costs.

FF is available for reasonable and necessary identifiable administrative costs of providing assistance and services under this part, and such costs may be included in a State's claims against its quarterly grants for the purposes set forth in §§ 400.203 through 400.205 of this part or may be charged against its consolidated grant for activities allowable under § 400.206 of this part, subject to the limitation of § 400.11(a)(8).

§ 400.208 Claims involving filing units which include both refugees and non-refugees.

(a) FF is available for a State's expenditures for assistance and services to a filing unit which includes a refugee parent or two refugee parents and one or more of their children who are non-refugees, including children who are United States citizens.

(b) FF is not available for a State's expenditures for assistance and services provided to a non-refugee adult member of a filing unit or to a non-refugee child or children in a filing unit if one parent in the filing unit is a non-refugee.

§ 400.209 Claims involving filing units which include refugees who have been in the United States for more than 36 months.

FF is not available for State expenditures for cash and medical assistance and child welfare services (except services for unaccompanied minors) provided to any refugee within a filing unit who has been in the United States more than 36 months. A State agency must exclude expenditures made on behalf of such refugees from its claim.

§ 400.210 Time limit on filing State claims.

FF is available for a State's expenditures for assistance and services to eligible refugees for which a claim is filed no later than one year after the end of the Federal fiscal year in which the expenditure was made.

Subpart K—Waivers

§ 400.300 Waivers.

If a State agency administering a plan approved under this part demonstrates, to the satisfaction of the Director, that it cannot reasonably comply with a requirement of this part, the Director may waive such requirement with respect to such State, unless required by statute, if the Director determines that such waiver will advance the purposes of this part.

(Sec. 412(a)(9), Immigration and Nationality Act (8 U.S.C. 1522(a)(9)))

Approved: July 12, 1983.

Margaret M. Heckler,

Secretary of the Department of Health and Human Services.

[FR Doc. 83-24801 Filed 9-13-83; 8:45 am]

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FEDERAL MARITIME COMMISSION

46 CFR Ch. IV

[Docket No. 83-38]

Inquiry and Intent To Review Regulation of Ports and Marine Terminal Operators

AGENCY: Federal Maritime Commission.

ACTION: Notice of inquiry.

SUMMARY: The Commission solicits public comment on the regulation of ports and marine terminal operators under the Shipping Act, 1916 (46 USC § 801 et seq.) including the filing of tariffs (46 CFR 533), and the filing and approval of certain agreements under section 15 (46 U.S.C. 814). The Commission also solicits public comment on the need for continued antitrust immunity under section 15 of the Shipping Act, 1916, and certain other issues.

DATES: Comments on or before December 12, 1983.

ADDRESS: Comments to: Secretary, Federal Maritime Commission, Washington, D.C. 20573.

FOR FURTHER INFORMATION CONTACT: Francis C. Hurney, Secretary, Federal Maritime Commission, 1100 L Street, N.W., Room 11101, Washington, D.C. 20573, (202) 523-5725.

SUPPLEMENTARY INFORMATION:

Authority

The Federal Maritime Commission is charged with the responsibility of administering the Shipping Act, 1916 (46 U.S.C. 801 et seq.) and other related statutes. Among the responsibilities vested in the Commission by the Shipping Act is the authority to regulate the activities of persons "furnishing wharfage, dock, warehouse or other terminal facilities in connection with a common carrier by water".[1]

The Commission was accorded jurisdiction over such persons because of Congressional concern that terminal operators and owners "be required to make their terminal facilities available to water carriers on equal terms * * *" [2] and that, if the Federal Maritime Commission was to be effective in its regulation of waterborne commerce, then "it must also have supervision of all those incidental facilities connected with the main carriers." [3] Consequently, activities of marine terminal operators fall within the Commission's jurisidiction.

With regard to marine terminals, the Commission regulates terminal leases and other arrangements involving carriers and terminal operators under section 15.[4] These arrangements must be filed and approved by the Commission prior to their implementation. An agreement found to contravene section 15 standards must be disapproved. An agreement which is *per se* violative of the U.S. antitrust laws, or is otherwise shown to be anticompetitive, is contrary to the public interest and must be disapproved unless justified under the *"Svenska"* standard.[5] Agreements that are approved by the Commission under section 15 are exempt from the reach of U.S. antitrust laws.

The Commission also requires, under sections 17, 21 and 43 of the Act, that marine terminal operators file tariffs of their rates, rules and regulations with the Commission.[6]

Under sections 16 and 17 of the Act, the Commission regulates terminal practices to ensure that such practices are not unjustly discriminatory or unreasonable.[7]

Finally, section 35 of the Act permits the Commission to exempt certain activities from regulation. The legislative intent of section 35 was to permit exemption only in those instances where regulation is serving no significant substantive purpose and exempting will not impair effective regulation.[8]

In order to fulfill its responsibilities under the Regulatory Flexibility Act (5 U.S.C. 610), which requires the Commission to periodically review its regulations, and as a result of the changing technological, economic and legal environment in which the regulated marine terminal industry operates, the Commission is seeking the comments of the marine terminal industry, the shipping public and all other interested parties on a number of issues relating to the proper course of the Commission's regulation of this industry.

Since the range of these issues is broad, the Commission has organized the Notice of Inquiry into three parts. Part One addresses and solicits comments on whether existing regulatory requirements for terminal tariff filing and terminal agreement filing and approval may be unnecessarily burdensome. Only the regulations included for comment in Part One will be subject to formal Commission review. Part Two solicits comments on the need and justification for the exemption from the U.S. antitrust laws of terminal

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[1] 46 U.S.C. 801.

[2] Report of the House Committee on Merchant Marine and Fisheries (63rd Cong.), Investigation of Shipping Combinations, vol. 4, p. 32.

[3] 53 Cong. Rec. 8376 (1916) (remarks of Rep. Alexander).

[4] Section 15 requires the filing of all agreements "fixing or regulating transportation rates or fares; giving or receiving special rates, accommodations, or other special privileges or advantages; controlling, regulating, preventing, or destroying competition; pooling or apportioning earnings, losses, or traffic; allotting ports or restricting or otherwise regulating the number and character of sailings between ports; limiting or regulating in any way the volume or character of freight or passenger traffic to be carried; or in any manner providing for an exclusive, preferential, or cooperative working arrangement." (46 U.S.C. 814).

[5] The *Svenska* doctrine is the proposition affirmed in *Federal Maritime Commission* v. *Aktiebolaget Svenska Amerika Linien*, 390 U.S. 238 (1968), whereby section 15 agreements which interfere with the policies of the antitrust laws will be disapproved as "contrary to the public interest" unless justified by evidence establishing that the agreement, if approved, will meet a serious transportation need, secure an important public benefit or further a valid regulatory purpose of the Shipping Act, 1916. The burden is on proponents of such agreements to come forward with the necessary evidence.

[6] Section 17 reads in pertinent part: Every such carrier and every other person subject to this Act shall establish, observe and enforce just and reasonable regulations and practices relating to or connected with the receiving, handling, storing, or delivering of property. Whenever the Commission finds that any such regulation or practice is unjust or unreasonable it may determine, prescribe, and order enforced a just and reasonable regulation or practice. (46 U.S.C. 816).

Section 21 authorizes the Commission to "require any * * * person subject to this Act * * * to file with it * * * any account, record, rate of charge * * * appertaining to the business of such * * * person." (46 U.S.C. 820).

Section 43 authorizes the Commission to "make such rules and regulations as may be necessary to carry out the provisions of this Act." (46 U.S.C. 841a).

[7] Section 16 reads in pertinent part: "That it shall be unlawful for any * * * person subject to this Act: First. To make or give any undue or unreasonable preference or advantage to any particular person, locality or description of traffic in any respect whatsoever, or to subject any particular person, locality, or description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever * * *" (46 U.S.C. 815).

[8] Section 35 reads in pertinent part: The Federal Maritime Commission, upon application or on its own motion, may by order or rule exempt for the future any class of agreements between persons subject to this Act or any specified activity of such persons from any requirement of the Shipping Act, 1916, * * * where it finds that such exemption will not substantially impair effective regulation by the Federal Maritime Commission, be unjustly discriminatory, or be detrimental to commerce. (46 U.S.C. 833a).

operator conference agreements and other terminal agreements now approved under section 15 standards. Part Three more generally solicits comments on a number of issues that either now or at some point in the future may require the Commission to review its role in the regulation of the marine terminal industry.

Part One: Review of Current Marine Terminal Regulations

Marine Terminal Tariffs

The Commission requires that marine terminal operators file tariffs of their rates and charges with the Commission. These rules set forth in 46 CFR Part 533 (General Order 15). Part 533 requires that marine terminal operators (1) file their rates, rules, and regulations and any changes thereto with the Commission on or before their effective date; (2) post their tariff of rates, rules, and regulations at their place or places of business; and (3) include in their tariffs either the definitions of services set forth in section 533.6 of the rules or other definitions with appropriate explanation of how they differ from the definitions contained in the rules.

These rules apply to persons engaged in furnishing wharfage, dock, warehouse, or other terminal facilities within the United States or a commonwealth, territory, or possession thereof, in connection with a common carrier by water in the foreign commerce of the United States or in interstate commerce on the high seas or the Great Lakes. The purpose of these rules, as expressed by the Commission at the time of their original publication, was to establish uniform tariff filing requirements necessary for the Commission to carry out the provisions of section 17 (see note 6).

The Commission stated in the preamble to the rule that it was not in a position to determine whether regulations and practices of terminals are just and reasonable unless the regulations and practices are specified in tariffs, which are then published in such a way that the public and the Commission can consider their fairness.

At the present time, it is estimated that 300 terminal operators have approximately 400 terminal tariffs on file with the Commission. Approximately 7,000 terminal tariff pages are filed with the Commission each year. Tariffs are periodically reviewed by shippers, by carriers, by terminal operators interested in the rates or rules of a competitor, by consultants when making studies, and by the Commission's staff when a problem over a tariff has been raised.

In order to evaluate the utility and effectiveness of current marine terminal tariff regulations, the Commission requests comments on the following questions:

1. Is it important that tariffs be published, centrally located and easily accessible to all interested parties? Why?

2. In lieu of filing tariffs with the Commission, what procedures could be implemented that would ensure that tariffs are easily accessible to all interested parties?

3. Should Part 533 be amended to require that tariffs be filed or submitted to an organization other than the FMC? If so, what type of organization should be considered?

4. Should Part 533 be amended to delete the filing requirement, but require that all terminal operators publish rates and charges in local shipping or commercial publications, and make such rates and charges available to interested parties at the terminal operator's place of business?

5. Should Part 533 be amended to require that a schedule of charges be made available at the terminal operator's place of business? Should the terminal operator be required to make its tariff available to any interested party at a reasonable fee?

6. Should Part 533 be amended in any way, and if so, how?

Marine Terminal Agreements

At the present time, roughly 650 terminal agreements stand approved and are in effect. The experience of the Commission indicates that while some agreements have the potential for significant anticompetitive consequences, the vast majority of current filings appear to be matters of no competitive significance, are rarely protested, and are routinely approved, or are determined not to be subject to section 15 of the Act. For example, in fiscal year 1982, the Commission's Bureau of Agreements processed 169 terminal agreements, of which 73 were approved under delegated authority and 72 were determined not be to subject to section 15. The remainder were approved by the Commission. Some agreements were approved with conditions, but only in one instance did the parties choose not to meet the conditions, requesting a hearing.[9]

In spite of the fact that marine terminal agreements infrequently present the Commission with questions of regulatory significance, the filing and approval process for such section 15 agreements has historically been the source of lengthy delays. While substantial improvements have been recently made in the Commission's procedures for processing all types of section 15 agreements, the continued potential for delay may result in unnecessary expense and inconvenience to the shipping public and to the regulated industry with little or no offsetting regulatory benefits.

A significant proportion of terminal agreements now filed with the Commission do not appear to enhance the Commission's effectiveness in regulating the ocean terminal industry. The exemption of certain categories of terminal agreements from the filing and/or approval requirements of section 15 could result in considerable savings to the port industry and to the Commission.

Areas of exemption might include:

Class 1. Exempting specific categories of terminal agreements from filing and approval requirements.

Class 2. Exempting other categories of terminal agreements from the approval requirement, but not from filing.

Class 3. Exempting specific terminal agreements upon request of parties.

Class 4. Exempting terminal agreements on a port-by-port basis through the approval of specific local procedures for public comment and remedy to potentially aggrieved parties. Grant of a port-wide exemption from the FMC agreement filing and approval process on a port-by-port basis could take many forms.

The assist the Commission in its efforts to identify and eliminate unnecessary regulations, the Commission seeks the views of the marine terminal industry and the shipping public as to possible areas and consequences of deregulatory measures pertaining to the marine terminal industry. In particular, the Commission would like answers to the following questions:

7. What types of agreements should the Commission consider for inclusion in Class 1, Class 2 and Class 3 agreements? Why? Please comment by class of agreement.

8. What would be the impact on shippers, carriers and on commerce generally, on the marine terminal

[9] FMC Docket No. 82-34, *Agreement No. T-3856, Order of Investigation and Hearing*; served July 7, 1982. Agreement No. T-3856 is between Mid-Gulf Seaports Marine Terminal Conference, Terminal Operators Conference of Hampton Roads, and the South Atlantic Marine Terminal Conference. On April 16, 1981 the Commission conditionally approved Agreement No. T-3856, on the condition that the Agreement be amended to delete its ratemaking authority. On August 26, 1981 the parties to Agreement No. T-3856 requested a hearing, which was granted.

industry, and on terminal operations, if any of the above mentioned classes of terminal agreements were exempted in whole or in part from section 15? Please comment by class of agreement.

9. What would be the impact on shippers, carriers and on commerce generally, on the marine terminal industry, and on terminal operations if the Commission authorized exemptions under section 15 for terminal agreements on a port-wide basis? Should local procedures for public comment and remedy to potentially aggrieved parties be required? How and to what extent would such an exemption affect terminal operations? Would it be appropriate for the Commission to make this type of exemption available to ports specifically requesting it, with alternative types of exemptions (such as those described above in classes 1, 2, and 3) being available to other ports?

10. Should marine terminal operators be allowed the option of filing agreements for approval under section 15 in order to receive antitrust immunity even where exemptions for these agreement categories have been granted? Why?[10]

Part Two: Antitrust Immunity for Marine Terminal Operators

Marine Terminal Conference Agreements

Through its section 15 approval process, and in addition to its grant of antitrust immunity to agreements between terminal operators and/or common carriers by water, the Commission grants antitrust immunity to conferences of marine terminal operators. This includes interconference agreements. Marine terminal conference agreements are, perhaps, the area within the Commission's regulation of marine terminal operators that is most vulnerable to antitrust prosecution without the immunity that attaches to section 15 approval by the Commission.

Marine terminal conference agreements usually authorize the parties to discuss and agree upon marine terminal rates, rules, regulations and practices, and to exchange other information. They generally provide for formation of committees, scheduling of meetings, voting requirements, other procedures for the conduct of business, and the filing of minutes. Over the years, marine terminal conferences have been justified on the basis that they provide for stability of rates and uniformity of practices within a port or among ports within a coatal region, affording individual ports or terminal operators protection from user pressures that attempt to play one off against the other. Further justifications have included: uniform definitions for terminal services, establishment of long-term objectives of benefit to ports and users, exchange of views on practices and problems, discussion of liability and legal matters, and discussion of labor matters.

The number of currently active terminal agreements on file and approved by the Commission is as follows:

Intraport Agreement—11 (all with rate authority).

Interport Agreement—12 (six with rate authority).

Interconference Agreement—2 (neither with rate authority) [11].

Antitrust Immunity

Of particular relevance to the Commission, considering the possible passsage of the proposed Shipping Act of 1983 now pending before Congress, is the area of antitrust immunity for terminal operators and associations of terminal operators. In its report on the bill H.R. 1878, the Shipping Act of 1983, the House Judiciary Committee "found the arguments against such immunity (for terminal operators and owners) to be strong, if not compelling." [12] In particular, the Judiciary Committee cited the testimony of several witnesses that appeared before the Committee, including Chairman Miller of the FTC, who "questions the need for broad antitrust immunity for all . . . categories of (terminal operator and owner) agreements."[13]

The Judiciary Committee Report also referrerd to a letter to Committee Chairman Rodino from the Department of Justice that stated, ". . . [T]here are no valid reasons for marine terminal operators to have antitrust immunity to collectively establish rates and terms of service."[14]

The Judiciary Committee report concluded by stating, "Agreements among terminal operators or owners to fix rates or conditions of service, if the participants possess substantial market power, would appear to contravene the standard in section 5(f) ("the competition strandard") unless there are countervailing public benefits that outweight the harm to competition. The Committee record is inadequate to provide analysis of the economic arguments for continuing the antitrust immunity under such circumstances. The Federal Maritime Commission should be in a position to address this issue in the interpretive guidelines."[15]

It should be noted that the Commission is sensitive to the antitrust immunity issue. In response to a series of questions from House Judiciary Committee Chairman Rodino, FMC Chairman Alan Green, Jr. replied:

> Whatever the rationale for extending antitrust immunity to agreements between and among carriers and conferences (that they are necessary given the international character and economic conditions of the industry), a different rationale would have to be offered as a basis for extending such immunity to agreements solely among terminal operators.[16]

The Judiciary Committee did not, however, remove from the bill language continuing the antitrust immunity now extended to the marine terminal industry for terminal agreements approved under section 15. The Judiciary Committee did amend section 18(c) of H.R. 1878, adding language that instructs the Study Commission on the Deregulation of International Ocean Shipping "to report on the need for antitrust immunity for ports and marine terminal operators in their commercial relations with one another, and with ocean common carriers." [17]

Consequently, the issue of whether, and to what extent, antitrust immunity should continue to be extended to the industry has become an important question. To a great degree, Congress appears to be looking to the Commission to provide the answer to that question. Part Two of this Notice of Inquiry is intended to provide a forum to the industry and shipping public for comments on the immunity issue in order for the Commission to develop a

[10] In answering questions 7–10 please include comments on the extent to which exemptions for any class of agreements discussed above might substantially impair effective regulation by the Commission, might be unjustly discriminatory, or might be detrimental to commerce.

[11] Agreement No. T-2206, between the Northwest and Marine Terminal Association and the California Association of Port Authorities, was conditionally approved on September 24, 1982 with the condition being that the agreement would be amended to delete its rate discussion authority. The parties to T-2206 resubmitted documents complying with the condition and the agreement. T-2206, went into effect on November 15, 1982.

[12] Report of the House Committee on the Judiciary (98th Cong.), "Shipping Act of 1983," Report 98-53, Part 2, p. 22, July 1, 1983.

[13] Id., at 21.

[14] Id.

[15] Id., at 22. Interpretive guidelines "may aid in interpreting the competition standard," according to the Judiciary Committee. They should be ". . . informal, nonbinding guidelines, modelled after the merger guidelines issued by the Antitrust Division . . ." (Committee Report, p. 13).

[16] Letter from Chairman Green to Chairman Rodino on April 18, 1983.

[17] H.R. 1878, 98th Cong., 1st Sess., as reported by the Committee on the Judiciary, July 1, 1983.

public record upon which to base its recommendations to Congress and to the Study Commission.

In order for the Commission to evaluate the need for antitrust immunity for marine terminal conferences and other terminal agreements, the Commission seeks comments on the following questions:

11. What would be the impact on shippers, carriers and on commerce generally, on the marine terminal industry, and on terminal operations if marine terminal conference agreements were no longer granted exemption pursuant to section 15 from the application of the antitrust laws?

12. What types of marine terminal operator activities most critically require antitrust immunity and why?

13. If antitrust immunity continues to be extended to certain Commission approved marine terminal and marine terminal conference agreements under section 15 of the Shipping Act, what would be the effect if antitrust immunity were only extended to those agreements among one or more marine terminal operators and one or more ocean common carriers to "discuss, fix or regulate rates or other conditions of service; and engage in exclusive, preferential, or cooperative working arrangements?" [18] Is there a need for ports or individual terminal operators to enter into agreements, that "pool or apportion traffic, revenues, net losses, or net profits?" [19]

14. What would be the impact on shippers, carriers, and on commerce generally, on the marine terminal industry, and on terminal operations if *no* antitrust immunity were extended to agreements among common carriers to establish, operate or maintain marine terminals? Should the parties to such agreements be permitted to apply for antitrust immunity for such agreements under section 15 of the Shipping Act if antitrust immunity were not extended to such agreements? [20]

[18] Subsection 3(b)(1) and 3(b)(2), H.R. 1878, 98th Cong., 1st Sess., as reported by House Committee on the Judiciary, July 1, 1983.

[19] Subsection 4(b), S. 47, 98th Cong., 1st Sess., as reported by Senate Committee on Commerce, Science and Transportation, February 17, 1983. This language was removed on the floor of the Senate on March 1, 1983 by a Senate Judiciary Committee amendment to S. 47. H.R. 1878 did not include this language in the bill as introduced in the 98th Congress.

[20] The House Judiciary Committee amended section 7(b) of H.R. 1878, the Shipping Act of 1983, adding to the exceptions to which the proposed Shipping Act would *not* extend antitrust immunity, the following: "(This Act does not extend antitrust immunity) . . . to any agreement among common carriers subject to this Act, a consortium or other entity whose members are common carriers subject to this Act, to establish, operate, or maintain marine terminals within the United States." (Subsection 7(b)(3)).

Part Three: The Future of the Commission in Marine Terminal Regulation

The Commission recognizes that the technological, economic, and legal environment in which the marine terminal industry functions will continue to change. The Commission wishes to be in a position to anticipate those changes, and to be aware of the evolving regulatory requirements of the marine terminal industry. Through effective planning based on continued contact with the marine terminal industry and the shipping public, the Commission should be able to ensure that its regulations are appropriate, effective, and present no unnecessary burden on the industry.

Consequently, in Part Three of the Notice of Inquiry, the Commission seeks comment from the marine terminal industry, the shipping public and all interested parties on a wide range of issues that either now, or at some point in the future, may (or should) affect the nature and extent of the Commission's regulatory responsibilities over the activities of ports and marine terminal operators. These issues include but are not limited to: the trend toward regional load centers and associated feeder ports through, for example, the growing use of equalization, absorption substituted service and alternative port service; the increasing use of single rated intermodal cargo movements through minibridge, microbridge, and interior point intermodalism; cargo diversion through Canada and Mexico; the implementation of bilateral and multilateral trading arrangements (including the UNCTAD Code); and, finally, the future administration of the proposed Shipping Act of 1983.

The Commission solicits comments concerning the impact on shippers, carriers and on commerce generally, on the marine terminal industry, and on terminal operations of any or all of the issues raised above, or of any other area affecting the present or future regulation of the port industry. In addition, the Commission solicits comments on the following questions:

15. Will there be a greater need for ratemaking or rate discussion agreements in the future among individual marine terminal operators in a port, or among several different ports? If so, please explain the need, benefit, and purpose of such agreements.

16. In the event Congress adopts legislation to require ports to impose user fees to cover the cost of dredging and navigational aids, do you anticipate the need for agreements among ports to establish uniform charges and procedures? Do you feel that such agreements would be or should be subject to the Commission's jurisdiction?

17. What areas of terminal practices should the Commission consider for future regulatory action as a result of changes in transportation technology, regulation, or other external factors? Why?

(Secs. 15, 17, 21, 35, 43 Shipping Act, 1916 (46 U.S.C. 814, 816, 820, 833a, 841a) Administrative Procedures Act (5 U.S.C. 553) Regulatory Flexibility Act (5 U.S.C. 601, et seq.))

[FR Doc. 83-25025 Filed 9-13-83; 8:45 am]

BILLING CODE 6730-01-M

National Oceanic and Atmospheric Administration

50 CFR Part 661, 662, and 663

Pacific Fishery Management Council; Meetings and Public Hearings on Northern Anchovy Fishery; Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California; and Pacific Coast Groundfish Fishery

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of Public Meetings with partially-closed session and Public Hearings on Anchovy and Groundfish.

SUMMARY: This notice sets forth the schedule and proposed agendas of the forthcoming public meeting with a partially closed session of the Pacific Fishery Management Council.

DATES: September 28–29, 1983.

ADDRESS: The meetings and hearings will be held at the Bahia Hotel, 998 West Mission Bay Drive, San Diego, California.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph C. Greenley, Executive Director, Pacific Fishery Management Council, 526 S.W. Mill Street, Portland, Oregon 97201, (503–221–6352).

SUPPLEMENTARY INFORMATION: The Council was established by section 302 of the Magnuson Act, 16 U.S.C. 1801 *et seq.* The agenda items covered in the closed session are exempt from public attendance and participation under section 302(i)(3) of the Magnuson Act. All other portions of the meeting will be open to the public.

Agendas

Council (Closed Session)—September 28, 1983 (1 p.m. to 1:45 p.m.) in the Del Mar Room of the Bahia Hotel. Discussion of the status of litigation and personnel matters. Only those Council members and selected staff having security clearances will be allowed to attend this session.

Council (Open Session)—September 28–29, 1983 (1:45 p.m. to 5 p.m. on September 28; 8 a.m. to 5 p.m. on September 29) in the Del Mar Room. Elect a Chairman and Vice Chairman for FY 84. Appoint advisors to fill the vacancies on the Salmon and Groundfish Advisory Subpanels. Adopt a draft Salmon Framework Plan Amendment for public review. Approve Anchovy Plan Amendment 5 for submission to the Secretary of Commerce and hear the Groundfish Plan Maintenance Team's preliminary estimates of allowable biological catches, optimum yields, (OYs), and harvest guidelines for 1984; consider other matters which may come before the Council by that date; and conduct a public comment period beginning at 4 p.m. on September 28.

Public Hearings

Anchovy—September 28, 1983, (7 p.m.) in the Del Mar Room. Members of the public are invited to comment on Anchovy Plan Amendment 5. This is a rewrite of the Anchovy Management Plan and incorporates the egg production method of estimating spawning biomass.

Groundfish—September 29, 1983 (10 a.m. to 11 a.m.) in the Del Mar Room. Members of the public are invited to comment on a proposal to increase the OY for widow rockfish and the harvest guideline for the *Sebastes* complex in 1983.

(16 U.S.C. 1801 *et seq.*)

Dated: September 8, 1983.

William G. Gordon,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 83-24977 Filed 9-13-83; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 48, No. 179
Wednesday, September 14, 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

Forms Under Review by Office of Management and Budget

September 9, 1983.

The Department of Agriculture has submitted to OMB 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. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Marshall L. Dantzler, Acting Department Clearance Officer, USDA, OIRM, Room 108-W Admin. Bldg., Washington, D.C. 20250, (202) 447-6201.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, ATTN: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

- Food and Nutrition Service

Food Stamp Program Regulations, Part 275
Quality Control (Reporting and Recordkeeping)
On Occasion
State or Local Governments: 53 responses; 266 hours; not applicable under 3504(h)
Dennis Vachon (703) 756-3431

- Rural Electrification Administration

Operating Report
REA 12 a-h
Annually
Small Businesses: 1,237 responses; 7,244 hours; not applicable under 3504(h)
Charles Weaver (202) 382-1900

- Rural Electrification Administration

Annual Financial and Statistical Report
REA 7
Annually
Small Businesses: 976 responses; 15,616 hours; not applicable under 3504(h)
Charles Weaver (202) 382-1900

- Forest Service

National Forests Surface Use Under U.S. Mining Laws (36 CFR 228, Subpart A)
On Occasion
Individuals or Households: 6,000 responses; 12,000 hours; not applicable under 3504(h)
Howard Banta (703) 235-8105

Revised

- Food and Nutrition Service

Negative Quality Control Review Schedule (Reporting and Recordkeeping)
FNS-245, FNS-247, FNS-248
On Occasion, Monthly
Individuals or Households, State or Local Governments: 31,774 responses; 94,376 hours; not applicable under 3504(h)
Dennis Vachon (703) 756-3431

- Food and Nutrition Service

Integrated Quality Control Review Schedule (Reporting and Recordkeeping)
FNS-380-1
On Occasion
Individuals or Households, State or Local Governments: 50,800 Responses; 51,999 hours; not applicable under 3504(h)
Dennis Vachon (703) 756-3431

- Food and Nutrition Service

Integrated Quality Control Review Worksheet (Reporting and Recordkeeping)
FNS-380
On Occasion
Individuals or Households: State or Local Governments responses; 458,399 hours; not applicable under 3504(h)
Dennis Vachon (703) 756-3431

- Statistical Reporting Services

Stocks Reports
Quarterly, Semi Annually
Farms and Businesses: 186,619 responses; 38,118 hours; not applicable under 3504(h)
Lee Sandberg (202) 447-6820

New

- Food and Nutrition Service

Emergency Assistance for Victims of Disasters
FNS-447
On Occasion
Individuals or Households: 5,400 responses; 989 hours; not applicable under 3504(h)
Daphne Brown (703) 756-3429

Dewayne E. Hamilton,
Acting Department Clearance Officer.

[FR Doc. 83-25048 Filed 9-13-83; 8:45 am]
BILLING CODE 3410-01-M

Rural Electrification Administration

Colorado-UTE Electric Association, Inc.; Finding of No Significant Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969, the Council on Environmental Quality Regulations (40 CFR Part 1500) and REA's Bulletin 20-21:320-21, Environmental Policies and Procedures, has made a Finding of No Significant Impact (FONSI) with respect to proposed financing assistance to Colorado-Ute Electric Association, Inc., (Colorado-Ute) of Montrose, Colorado. The proposed financing assistance is necessary for the construction of 115 kV transmission facilities in Eagle County, Colorado.

FOR FURTHER INFORMATION CONTACT: REA's Finding of No Significant Impact and Environmental Assessment (EA) and Colorado-Ute's Borrower's Environmental Report (BER) may be reviewed at or obtained from Mr. William E. Davis, Director, Western

Area—Electric, Rural Electrification Administration, Room 3304, South Agriculture Building, Washington, D.C. 20250, telephone: (202) 382–8848, or Colorado-Ute Electric Association, Inc., 1845 South Townsend Avenue, Montrose, Colorado 81401, telephone: (303) 249–4501, during regular business hours.

SUPPLEMENTARY INFORMATION: REA and the Forest Service have reviewed the BER submitted by Colorado-Ute and have determined that it represents an accurate assessment of the environmental impact of the proposed project. The proposed project would consist of approximately 17.6 km (11 miles) of 115 kv transmisssion line which would extend from the Wolcott Substation to the Beaver Creek Substation in Eagle County, Colorado.

The BER and EA adequately consider potential impacts of the proposed project to resources including threatened and endangered species, important farmlands, cultural resources, floodplains and wetlands.

Alternatives examined included no action, energy conservation, interconnection with Public Service Company of Colorado at Gilman and alternative routes. The proposed route would parallel Colorado-Ute's existing 115 kV Wolcott-Vail line for approximately 14.1 km (8.8 miles), then extend south 1.8 km (1.1 miles) and then east 1.8 km (1.1 miles) to the Beaver Creek Substation. Other alternative corridors generally parallel or replace Colorado-Ute's existing Wolcott-Beaver Creek 69 kV line. After reviewing these alternatives, REA determined that the proposed project is an acceptable alternative because it meets Colorado-Ute's needs with a minimum of adverse impact.

Based upon the BER and other related data, REA prepared an EA and Finding of No Significant Impact concerning the proposed construction. REA has independently evaluated the proposed project and has concluded that approval of financing assistance for the project would not constitute a major Federal action significantly affecting the quality of the human environment.

In accordance with REA's Bulletin 20–21:320–21, dated January 21, 1980, Colorado-Ute advertised the availability of the BER in the local newspapers. No comments were received.

This program is listed in the Catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees.

Dated: September 9, 1983.

Jack Van Mark,

Acting Administrator.

[FR Doc. 83-24979 Filed 9-13-83; 8:45 am]

BILLING CODE 3410-15-M

Northeast Texas Electric Cooperative, Inc.; Finding of No Significant Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969, the Council on Environmental Quality Regulations (40 CFR Part 1500) and REA Bulletin 20–21:320–21, Environmental Policies and Procedures, has made a Finding of No Significant Impact (FONSI) with respect to a request for financing assistance from Northeast Texas Electric Cooperative, Inc., (NTEC) of Longview, Texas, for a 11.72 percent ownership interest in the Southwestern Electric Power Company's (SWEPCO) H. W. Pirkey Power Plant Unit 1 and associated lignite mine leases. The plant site is located in Harrison County, Texas.

FOR FURTHER INFORMATION CONTACT: REA's FONSI and Environmental Assessment (EA) and NTEC's Borrower's Environmental Report (BER) may be reviewed in the office of the Chief, Distribution and Transmission Engineering Branch, Southwest Area-Electric, Room 0009, South Agriculture Building, Rural Electrification Administration, Washington, D.C. 20250, telephone (202) 382–1915, or at the office of Northeast Texas Electric Cooperative, Inc., (J. L. Johns, President), 200 N. Fredonia Street, Suite 507, Longview, Texas 75601, telephone (214) 757–3282, during regular business hours.

SUPPLEMENTARY INFORMATION: REA, in connection with a request for financing assistance from NTEC, has reviewed the BER submitted by NTEC as well as the Draft and Final Environmental Impact Statements (EIS) issued by the Environmental Protection Agency (Region 6) in March and September 1982 respectively for the Pirkey Power Plant and South Hallsville Mine Project. As a result of this review, REA has determined that these documents represents an accurate assessment of the environmental impact of the entire project. The Project consists of one 640 MW (net) lignite fired power plant, 587 ha (1,388 a) cooling reservoir, 18.8 km (11.7 mi) of 138 kV transmission lines, a 32 km (20 mi) water pipeline and the 8,406 ha (20,771 a) South Hallsville Surface Lignite Mine which is adjacent to the plant site. NTEC will not have any ownership interest in the transmission lines nor the mining equipment.

REA finds that the project will have no affect on threatened and endangered species and no significant adverse impact on cultural resources and floodplains. Mining activities at the South Hallsville Mine will result in significant impacts to 2,651 ha (6,551 a) of prime farmland and 33 ha (823 a) of wetlands. Over the life of the mine, an additional 1,197 ha (2,957 a) of wetlands could be impacted. A combination of mined land reclamation and wetlands mitigation measures will compensate for the expected environmental impacts.

REA has determined that there is a demonstrated and significant need for the project and that there are no practicable alternative actions that would reduce the large acreages of important farmlands and wetlands to be converted or encroached upon directly and indirectly.

Alternatives examined include maintaining existing power purchase contracts with SWEPCO (no action), participation in the Pirkey Project, energy conservation, participation in generation projects of other utilities and construction of generation facilities by NTEC. After reviewing these alternatives, REA determined that the proposed action is an acceptable alternative because it best meets NTEC's needs with a minimum of adverse impacts.

Based upon the BER and the Draft and Final EIS issued by EPA, REA prepared an Environmental Assessment concerning the proposed action and its impacts. REA concluded that any approval of financing assistance for participation in the Project would not be a major Federal action significantly affecting the quality of the human environment.

In accordance with REA Bulletin 20–21:320–21, dated January 21, 1980, NTEC advertised and requested comments on the environmental aspects of the proposed action in local newspapers in Gregg, Harrison and Upshur Counties, Texas. No comments were received.

This program is listed in the Catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees.

Dated: September 9, 1983.

Jack Van Mark,

Acting Administrator.

[FR Doc. 83-24978 Filed 9-13-83; 8:45 am]

BILLING CODE 3410-15-M

Soil Conservation Service

Foard County Critical Area Treatment RC&D Measure, Texas

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service, Guidelines, (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture gives notice that an environmental impact statement is not being prepared for the Foard County Area treatment RC&D Measure, Foard County, Texas.

FOR FURTHER INFORMATION CONTACT: Billy C. Griffin, State Conservationist, Soil Conservation Service, W. R. Poage Federal Building, 101 South Main, Temple Texas 76503, telephone 817–774–1214..

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Billy C. Griffin, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for critical area treatment on 72 eroded areas in Foard County. Planned works of improvements include installing grade stabilization structures, constructing diversion terraces above eroded areas, shaping eroded areas, vegetating treated areas, and fencing areas where needed to protect vegetation. This will involve 28 acres of rangeland, 325 acres of cropland, and 231 acres of gullied land. Diversion terraces will be installed on 156 acres of the 325 acres cropland and will not require a change of land use.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Billy C. Griffin.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.901, Resources Conservation and Development 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)

O. Dale Fischgrabe,

Deputy State Conservationist.

[FR Doc. 83-25013 Filed 9-13-83; 8:45 am]

BILLING CODE 3410-16-M

CIVIL AERONAUTICS BOARD

[Docket 41445]

Olympic Airways, S.A. and Travhellas Corp. Enforcement Proceeding; Assignment of Procedure

This proceeding has been assigned to Administrative Law Judge Ronnie A. Yoder. Future communications should be addressed to him.

Dated at Washington, D.C., September 7, 1983.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 83-25063 Filed 9-13-83; 8:45 am]

BILLING CODE 6320-01-M

COMMISSION ON CIVIL RIGHTS

Massachusetts Advisory Committee; Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Massachusetts Advisory Committee to the Commission will convene at 4:00 p.m., and will end at 6:00 p.m., on October 12, 1983, at the USCCR New England Regional Office, 55 Summer Street, 8th Floor, Boston, Massachusetts.

The purpose of the meeting is to discuss the status of current projects and the nature of future programs.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Mr. Andrew T. Stewart, Moose Mountain, Enfield, New Hampshire 03748, (603) 523–4882; or the New England Regional Office, 55 Summer Street, 8th Floor, Boston, Massachusetts 02110, (617) 223–4671.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C. September 9, 1983

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 83-24987 Filed 9-13-83; 8:45 am.

BILLING CODE 6335-01-M

Ohio Advisory Committee; Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regualtions of the U.S. Commission on Civil Rights, that a meeting of the Ohio Advisory Committee to the Commission will convene at 10:00 p.m., and will end at 3:00 p.m., on October 1, 1983, at the Terrace Hilton,Valley Room. 15 W. 6th, Cincinnati, Ohio 45201.

The purpose of the meeting is to discuss the status of current projects and the nature of future programs.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Mrs. Marian A. Spencer, 940 Lexington Avenue, Cincinnati, Ohio 45229, (513) 221–5656; or the Midwestern Regional Office, 230 South Dearborn, 32nd Floor, Chicago, Illinois 60604, (312) 352–7479.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., September 9, 1983

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 83-24986 Filed 9-13-83; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Office of the Secretary

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOE has submitted to OMB for clearance the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.

Title: 1984 New York City Housing and Vacancy Survey.

Form Numbers: Agency—H-100, H-100(L), H-108, H-100(A); OMB—N/A.

Type of Request: New.

Burden: 18,000 respondents; 4,500 reporting hours.

Needs and Uses: This household survey is to be conducted for the New York City Department of Housing Preservation and Development to determine the vacancy rate of rental housing units and to measure the quality of housing in the city. The results will

be used in the development of programs directed at improving housing conditions in New York City.

Affected Public: Individuals or households.
Frequency: On occasion.
Respondent's Obligation: Voluntary.
OMB Desk Officer: Tim Sprehe, 395–4814.

Agency: Bureau of the Census.
Title: Retail Inventory Valuation Supplement.
Form Numbers: Agency—B–250; OMB—0607–0184.
Type of Request: Reinstatement of a previously approved collection of which approval has expired.
Burden: 2,500 respondents; 208 reporting hours.
Needs and Uses: Since retail firms use different methods of inventory valuation to calculate inventories, the purpose of this program is to determine how much of the total inventory was derived using each method. The Bureau of Economic Analysis (BEA) uses the information from this survey to compute the change in the business inventory component of the gross national product (GNP). Non-governmental users analyze the inventory statistics to forecast future developments in business activity.
Affected Public: Businesses or other for-profit, small businesses or organizations.
Frequency: Annually.
Respondent's Obligation: Voluntary.
OMB Desk Officer: Tim Sprehe, 395–4814.

Agency: Bureau of the Census.
Title: Control Card—Quarterly Household Survey.
Form Numbers: Agency—QHHS–700; OMB—0607–0127.
Type of Request: Extension of a currently approved collection.
Burden: 4,500 respondents; 643 reporting hours.
Needs and Uses: Serves as basic household record for sample units included in the Survey of Alterations and Repairs (SORAR). This form is used as a screener to select owner-occupied housing units from which data or expenditures for home upkeep and repairs are obtained. Data from the SORAR are used in computation of the GNP. SORAR information is also collected as part of the Consumer Expenditure Survey.
Affected Public: Individuals or households.
Frequency: Quarterly.
Respondent's Obligation: Voluntary.
OMB Desk Officer: Tim Sprehe, 395–4814.

Agency: Bureau of the Census.
Title: Interviewer Record/Follow-up Record/Monthly Noncertainty Letter.
Form Numbers: Agency—B–645, B–646, and B–647; OMB—0607–0067.
Type of Request: Extension of a currently approved collection.
Burden: 29,580 respondents; 3,739 reporting hours.
Needs and Uses: Data developed through this component in conjunction with the list sample component are used to develop the retail trade estimates as published in the monthly retail trade reports and the estimated receipts of selected services as published in the Services Annual Survey report. The survey is a probability sample of land segments and is conducted through personal enumeration, as part of the current business surveys.
Affected Public: Businesses or other for-profit, small businesses or organizations.
Frequency: Annually.
Respondent's Obligation: Voluntary.
OMB Desk Officer: Tim Sprehe, 395–4814.

Agency: International Trade Administration.
Title: Trade Adjustment Technical Assistance Application and Post-Approval Forms.
Form Numbers: Agency—SF 269, 270, 272 and 424; OMB—0625–0110.
Type of Request: Exension of a currently approved collection.
Burden: 25 respondents; 1,240 reporting hours.
Needs and Uses: Forms are completed by organizations wishing to receive trade adjustment technical assistance to help firms and industries recover from the adverse effects of foreign competition. Information is used to determine the need and justification for project approval, payments and the use of project funds.
Affected Public: Business or other for-profit, non-profit institutions, state or local governments.
Frequency: On occasion, monthly, quarterly.
Respondent's Obligation: Required to obtain or retain benefit.
OMB Desk Officer: Ken Allen, 395–3785.

Agency: International Trade Administration.
Title: International Trade Fair Certification.
Form Numbers: Agency—ITA–4100P; OMB—N/A.
Type of Request: Existing collection in use without an OMB control number.
Burden: 200 respondents; 1,000 reporting hours.
Needs and Uses: This program allows organizations to apply for Commerce Certification of trade fairs they want to operate as a private sector initiative, but with Government support. The information will permit the Commerce Department to review and select proposals from private sector organizations that wish to have the official endorsement and certification status for their trade fair.
Affected Public: Business or other for-profit, non-profit institutions, small businesses or organizations.
Frequency: On occasion.
Respondent's Obligation: Required to obtain or retain benefit.
OMB Desk Officer: Ken Allen, 395–3785.

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collections should be sent to the respective OMB Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Ed Michals,

Departmental Clearance Officer.

[FR Doc. 83–24954 Filed 9–13–83; 8:45 am]

BILLING CODE 3510–CW–M

International Trade Administration

Importers and Retailers' Textile Advisory Committee; Open Meeting

A meeting of the Importers and Retailers' Textile Advisory Committee will be held October 12, 1983, 10:30 a.m., Room 4830, Herbert C. Hoover Building, 14th St. and Constitution Avenue, NW., Washington, D.C. 20230. (The Committee was established by the Secretary of Commerce on August 13, 1963 to advise Department officials of the effects on import markets of cotton, wool, and man-made fiber textile and apparel agreements.)

Agenda: Review of import trends, implementation of textile agreements, a report on conditions in the domestic market, and other business.

The meeting will be open to the public with a limited number of seats available. For further information or copies of the minutes contact Helen L. LeGrande (202) 377–3737.

Dated: September 8, 1983.

Walter C. Lenahan,

Deputy Assistant Secretary for Textiles and Apparel.

[FR Doc. 83–25044 Filed 9–13–83; 8:45 am]

BILLING CODE 3510–25–M

Semiconductor Technical Advisory Committee; Partially Closed Meeting

SUMMARY: The Semicouductor Technical Advisory Committee was initially established on January 3, 1973, and rechartered on September 18, 1981 in accordance with the Export Administration Act of 1979 and the Federal Advisory Committee Act.

Time and place: September 29, 1983 at 9:30 a.m. Herbert C. Hoover Building, Room 7808, 14th Street and Constitution Ave., NW., Washington, D.C.

Agenda

General Sesssion

(1) Opening remarks by the Chairman.
(2) Presentation of papers or comments by the public.
(3) Update of the COCOM schedule for the list review.
(4) Subcommittee reports:
(a) Discrete Semiconductor Device,

(b) Microcircuits and
(c) Semiconductor Manufacturing Materials and Equipment.
(5) New Business.
(6) Action items underway.
(7) Action items due at next meeting.

Executive Session

(8) Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criterial related thereto.

Public Participation: The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

SUPPLEMENTAL INFORMATION: A Notice of Determination to close meetings of the Committee to the public on the basis of 5 U.S.C. 552(c)(1) was approved on September 29, 1981, in accordance with the Federal Advisory Committee Act. A copy of the Notice is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Telephone: 202–377–4217.

FOR FURTHER INFORMATION CONTACT: Mrs. Margaret A. Cornejo, Telephone: (202) 377–2583.

Dated: September 9, 1983.

Milton M. Baltas,

Director of Technical Programs, Office of Export Administration.

[FR Doc. 83-25043 Filed 9-13-83; 8:45 am]

BILLING CODE 3510-25-M

National Oceanic and Atmospheric Administration

Civil Operational Remote Sensing Satellite Advisory Committee (Formerly the Land Remote Sensing Satellite Advisory Committee); Notice of Re-establishment

In accordance with the provisions of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. I, and after consultation with the General Services Administration, the Secretary of Commerce has determined that the re-establishment of the Land Remote Sensing Satellite Advisory Committee (renamed the Civil Operational Remote Sensing Satellite Advisory Committee) is in the public interest in connection with the performance of duties imposed on the Department by law.

The Committee was first established in August 1981 and terminated on August 12, 1983. Its original purpose was to advise the Secretary of Commerce on the civil operational land remote sensing satellite program. In addition to its duties related to land satellites, the Committee also evaluated for the Secretary the views of U.S. industry on the transfer of the land and weather satellite systems currently managed by the Department of Commerce. Including weather (and future ocean) satellite systems as potential candidates for transfer is a new initiative being considered by this Administration for its potential in providing long-term cost savings to the Government in continuing the leadership of the Nation in civil remote sensing satellite activities.

In re-establishing the Committee, the Secretary has established a revised objective for the two years the new charter will cover. Building on the work of the past year, its knowledge of the transfer process, and the expertise of individual members, the Committee is to advise the Secretary on terms and conditions under which transfer to the private sector might be achieved for the civil remote sensing satellite programs and assets, and the post-transfer division of responsibility between the Federal Government and the private sector. Research indicates that the Committee's function cannot be accomplished by any organizational element or other committee of the Department.

The Committee membership will be expanded from 18 to 22 members to add expertise on the oceans and the atmosphere. The Committee membership will continue a balanced representation of domestic, non-Federal communities interested in civil operational remote sensing satellites, including state and local government, the value-added services industry, end-user industry, the academic community, the aerospace industry, and the investment community. The committee will operate in compliance with the provisions of the Federal Advisory Committee Act.

Copies of the Committee's revised Charter will be filed with appropriate committees of the Congress and with the Library of Congress.

Inquiries or comments may be addressed to the Committee's Executive Director, Dr. Richard J. Keating, Director of the External Relations Staff Office, NOAA/NESDIS (E/ER), Washington, D.C. 20233 (301/763–5904) or to the Department's Committee Management Analyst, Mrs. Yvonne D. Barnes (202/377–4217).

Dated: September 6, 1983.

Charles V. St. Lawrence,

Acting Director, Management and Information Systems.

[FR Doc. 83-24953 Filed 9-13-83; 8:45 am]

BILLING CODE 3510-CW-M

[Docket No. 30905–180]

Application for Approval to Transfer Ownership of a U.S. Fishing Vessel to a U.S.Corporation Under Foreign Control

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of proposed fishing vessel transfer and request for comment.

SUMMARY: Application has been received by the Maritime Administration (MarAd), Department of Transportation, for approval to transfer to the Tam Van Nguyen Corporation, ownership of the vessel TWO FOOLS. The contemplated transfer would subject the vessel to foreign control since Tam Van Nguyen, a Vietnamese citizen, owns 100 percent of the stock of the Tam Van Nguyen Corporation. Comments are requested.

DATE: All comments must be postmarked no later than October 14, 1983.

ADDRESSES: Interested persons are invited to send written comments to Michael L. Grable, Chief, Financial Services Division, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Washington, D.C. 20235.

FOR FURTHER INFORMATION CONTACT: John A. Kelly, Jr., (Financial Assistance Specialist), (202) 634–7496.

SUPPLEMENTARY INFORMATION: Application for approval of the transfer of ownership of the vessel TWO FOOLS (O.N. 592455, build 1978, reg. length 44.2') owned by Troy and Delores Holden, 315 West D'AMOR, Chalmette, Louisiana 70443, was received by MarAd July 21, 1983. The vessel would remain documented in the fisheries of the United States and be operated primarily in the Gulf of Mexico Shrimp fishery. Approval of the transfer is required by Section 9 of the Shipping Act, 1916 as amended (46 U.S.C. 808) because although the Tam Van Nguyen Corporation, 14432 Dwyer Boulevard, New Orleans, Louisiana 70129, meets the citizenship requirements for documentation of a vessel, it is not a citizen of the United State within the meaning of Section 2 of the Act. The Maritime Administration is the Federal

agency responsible for the approval or disapproval of applications submitted under the Shipping Act. Where a foreign transfer involves a fishing vessel, MarAd customarily requests the National Marine Fisheries Service (NMFS) to review the application.

Accordingly, we are soliciting the views of interested persons in this regard and will convey them to MarAd with our recommendation. Generally, a recommendation will be favorable unless it is concluded that the transfer will adversely affect the particular segment(s) of the U.S. commercial fishery industry involved. No public hearing is contemplated at this time.

Dated: September 8, 1983.

William G. Gordon,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 83-24076 Filed 9-13-83; 8:45 am]

BILLING CODE 3510-22-M

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange Industrial Average Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contract.

SUMMARY: The Chicago Mercantile Exchange ("CME") has applied for designation as a contract market based on the CME Industrial Average. This proposed index is identical in composition and construction to the Dow Jones Industrial Average. The Commission has determined that the terms and conditions of the proposed futures contract are of major economic significance and that, accordingly, making available the proposed contract for public inspection and comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before November 14, 1983.

ADDRESS: Interested persons should submit their views and comments to Jane K. Stuckey, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Reference should be made to the CME Industrial Average futures contract.

FOR FURTHER INFORMATION CONTACT: Ronald Hobson, Division of Economics and Education, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C., (202) 254-7303.

A copy of the terms and conditions of the CME's proposed Industrial Average futures contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Other materials submitted by the CME in support of its application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. § 552) and the Commission's regulations thereunder (17 CFR Part 145 (1982)). Requests for copies of such materials should be made to the FOIA, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed futures contract, or with respect to other materials submitted by the CME in support of its application, should send such comments to Jane K. Stuckey, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581, by November 14, 1983. Such 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.

Issued in Washington, D.C. on September 9, 1983.

Jane K. Stuckey,

Secretary of the Commission.

[FR Doc. 83-25024 Filed 9-13-83; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on International Industry-to-Industry Armaments Cooperation; Notice of Advisory Committee Meeting

The Defense Science Board Task Force on International Industry-to-Industry Armaments Cooperation will meet in closed session on September 29, 1983 in the Pentagon, Washington, D.C.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense.

At the meeting on September 29, 1983 the Defense Science Board Task Force on International Industry-to-Industry Armaments Cooperation will continue its review of the Defense Department's policies, plans and procedures which impede or might impede international arms cooperation and thereby have the potential for adversely impacting the collective security of the United States, its friends and Allies. In this context, the Task Force will also analyze the effect current international cooperation policies have on the utility of the U.S., its friends and Allies to achieve in good order and sustain mobilization capacities.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. I, (1976)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1)(1976), and that accordingly these meetings will be closed to the public.

September 9, 1983.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Service, Department of Defense

[FR Doc. 83-24985 Filed 9-13-83; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Indian Education Act, Part C; Educational Services for Indian Adults

AGENCY: Department of Education.

ACTION: Application Notice for New Projects for Fiscal Year 1983.

SUPPLEMENTARY INFORMATION: Applications are invited for new projects under the Educational Services for Indian Adults program.

Authority for this program is contained in Section 316(b) of Title IV, Part C of the Indian Education Act.

(20 U.S.C. 1211a(b))

This program issues awards to Indian tribes, Indian organizations, and Indian institutions for educational service projects.

The purpose of these projects is to improve educational opportunities for Indian adults.

Closing Date for Transmittal of Applications: An application for a new award must be mailed or hand delivered by October 17, 1983.

Applications Delivered by Mail: An application sent by mail must be addressed to the U.S. Department of Education, Application Control Cente-

Attention: 84.062, Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commerical carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education. If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark; or (2) A mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformerly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encourgaed to use registered or first class mail. Each late applicant will be notified that its application will not be considered.

Applications Delivered by Hand: An application that is hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets, S.W., Washington, D.C.

The Application Control Center will accept a hand-delivered application between 8:00 a.m. and 4:30 p.m. (Washington D.C. time) daily, except Saturday, Sunday, and Federal Holidays.

An application that is hand delivered will not be accpeted after 4:30 p.m. on the closing date.

Available Funds: There will be $1,938,000 available under the 1983 Supplemental Appropriations Act for new FY 1983 grants. The Secretary estimates that these funds will support 18 projects with most awards between $75,000 and $115,000. These estimates, however, do not bind the U.S. Department of Education to a specific number of grants nor to the amount of any grant unless otherwise specified by statute and regulations.

New service project awards will be for a period of ten months only. An applicant desiring assistance after the ten-month period will have to apply as a new applicant in Fiscal Year 1984.

Application Forms: Application forms and program information packages may be obtained by writing to Director, Indian Education Programs, U.S. Department of Education, Room 2177, 400 Maryland Avenue, S.W., Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with regulations, instructions, and forms included in the program information package. However, the program information is only intended to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirement beyond those imposed under the statute and regulations.

The Secretary strongly urges that the narrative portion of the application not exceed 25 pages and that the applicant not submit information that is not requested.

Applicable Regulations: The regulations that apply to this program include the following:

(a) Regulations governing the Indian Education Act programs (34 CFR Parts 250 and 258);

(b) The Education Department General Administrative Regulations (EDGAR), (34 CFR Parts 74, 75, 77, and 78).

FOR FURTHER INFORMATION CONTACT: Dr. Bryan Gray, Indian Education Programs, Office of Elementary and Secondary Education, Room, 2177, Department of Education, 400 Maryland Avenue, S.W., Washington, D.C. 20202. Telephone (202) 245-8840.

(20 U.S.C. 1211a(b))

Dated: September 8, 1983.

(Catalog of Federal Domestic Assistance No. 84.062; Indian Education Special Programs and Projects—Part C—Educational Services for Indian Adults)

Lawrence F. Davenport,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 83-24852 Filed 9-13-83; 8:45 am]

BILLING CODE 4000-01-M

Office of Postsecondary Education

Accrediting and State Approval Agencies; Special Approval List; Correction

AGENCY: Department of Education.

ACTION: Notice; List of accrediting and State approval agencies reviewed under a special procedure; Correction.

SUMMARY: This document makes a technical correction in the Notice listing accrediting and State approval agencies to be reveiwed under a special procedure.

FOR FURTHER INFORMATION CONTACT: Richard J. Rowe, Director, Eligibility and Agency Evaluation Staff, Office of Postsecondary Education, 400 Maryland Avenue, SW. (Room 3030, ROB-3), U.S. Department of Education, Washington, D.C. 20202, Telephone: (202) 245-9873.

SUPPLEMENTARY INFORMATION: On August 25, 1983 the Assistant Secretary for Postsecondary Education published a list of agencies to be reviewed under a special procedure in the **Federal Register**, Vol. 48, No. 166, pages 38665-38666. This document corrects an error that was made in that notice.

On page 38666, in the third column, line 7, the document is revised to read as follows:

Joint Review Committee for Educational Programs for the Physician's Assistant.

(For accreditation of programs for the assistant to the primary care physician and the surgeon's assistant.)

Proposed Recommendation: Continue recognition for a period of four years.

Joint Review Committee for Respiratory Therapy Education.

(For accreditation of programs for the respiratory therapist and repiratory therapy technician.)

Proposed Recommendation: Continue recognition for a period of four years.

Dated: September 8, 1983.

Edward M. Elmendorf,

Assistant Secretary for Postsecondary Education.

[FR Doc. 83-25047 Filed 9-13-83; 8:45 am]

BILLING CODE 4000-01-M

Educational Opportunity Centers Program; Application for Noncompeting Continuation Awards for Fiscal Year 1984

Applications are invited for noncompeting continuation awards under the Educational Opportunity Centers Program.

Authority for this program is contained in sections 417A and 417E of the Higher Education Act of 1965, as amended.

(20 U.S.C. 1070d, 1070d-1c)

The Secretary is authorized to make grants under this program to institutions of higher education, public and private agencies and organizations, and, in exceptional cases, to secondary schools.

The purpose of the grant awards is to assist disadvantaged persons desiring to pursue a program of postsecondary education by providing them with information on available financial and academic assistance and by helping them apply for admission to postsecondary institutions and for financial aid to attend such institutions.

Closing date for transmittal of applications: To be assured of consideration for funding, an application for a noncompeting continuation award should be mailed or hand delivered by October 14, 1983.

If an application for a noncompeting continuation award is late, the Department may lack sufficient time to review it with other noncompeting continuation applications and may decline to accept it.

Applications delivered by mail: An application sent by mail should be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.066 (Educational Opportunity Centers), Washington, D.C. 20202.

An applicant should show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service Postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark or (2) a mail receipt that is not dated by the U.S. Postal Service. An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail.

Applications delivered by hand: An application that is hand delivered must be taken to the U.S Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets, SW., Washington, D.C.

The Application Control Center will accept a hand-delivered application between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time), daily except Saturdays, Sundays, and Federal holidays.

Available funds: The Administration's fiscal year 1984 budget request does not include the Educational Opportunity Centers Program. However, if Congress appropriates funds for this program in fiscal year 1984, the Secretary plans to make these funds available for noncompeting continuation awards.

Accordingly, noncompeting continuation applications are being requested even though no funds are currently proposed for the Educational Opportunity Centers Program. Current grantees will be notified if and when such funds become available.

Application Forms: Application forms for noncompeting continuation awards are expected to be ready for mailing no later than September 14, 1983. They are mailed routinely to currently funded projects. If a grantee does not receive the forms by September 28, 1983, the grantee should telephone the Information Systems and Program Support Branch of the Division of student services at (202) 245-7070.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information is only intended to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those imposed under the statute and regulations. The Secretary strongly urges that applicants not submit information that is not requested.

Applicable Regulations: Regulations applicable to noncompeting continuation awards are:

(a) Education Department General Administrative Regulations (EDGAR), 34 CFR Parts, 74, 75, 77, and 78; and

(b) Regulations governing the Educational Opportunity Centers Program in 34 CFR Part 644.

Further information: For further information contact the Program Development Branch, Division of Student Services, U.S. Department of Education (Room 3514, Regional Office Building 3), 400 Maryland Avenue, SW., Washington, D.C. 20202. Telephone: (202) 245-2511.

(20 U.S.C. 1070d, 1070d-1c)

Dated: September 8, 1983.

Edward M. Elmendorf,

Assistant Secretary for Postsecondary Education.

(Catalog of Federal Domestic Assistance Number: 84.066—Educational Opportunity Centers Program)

[FR Doc. 83-25050 Filed 9-13-83; 8:45 am]

BILLING CODE 4000-01-M

Talent Search Program; Application Notice for Noncompeting Continuation Awards for Fiscal Year 1984

Applications are invited for noncompeting continuation awards under the Talent Search Program.

Authority for this program is contained in sections 417A and 417B of the Higher Education Act of 1965, as amended.

(20 U.S.C. 1070d, 1070d-1)

The Secretary is authorized to make grants under this program to institutions of higher education, public and private agencies and organizations, and, in exceptional cases, to secondary schools.

The purpose of the grant awards is to permit applicants to carry out projects designed to enable disadvantaged youths to continue in and graduate from secondary school and to enroll in postsecondary educational programs.

Closing date for transmittal of applications: To be assured of consideration for funding, an application or a noncompeting continuation awards should be mailed or hand delivered by October 14, 1983.

If an application for a noncompeting continuation award is late, the Department may lack sufficient time to review it with other noncompeting continuation applications and may decline to accept it.

Applications delivered by mail: An application sent by mail should be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.044 (Talent Search), Washington, D.C. 20202.

An applicant should show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept a private metered postmark or a private mail receipt as proof of mailing. An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail.

Applications delivered by hand: An application that is hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets, SW., Washington, D.C.

The Application Control Center will accept a hand-delivered application between 8:00 a.m. and 4:30 p.m.

(Washington, D.C. time) daily except Saturdays, Sundays, and Federal holidays.

Available funds: The Administration's fiscal year 1984 budget request does not include the Talent Search Program. However, if Congress appropriates funds for this program in fiscal year 1984, the Department plans to make these funds available for noncompeting continuation awards.

Accordingly, noncompeting cohtinuation applications are being requested even though no funds are currently proposed for the Talent Search Program. Current grantees will be notified if and when such funds become available.

Application forms: Application forms for noncompeting continuation awards are expected to be ready for mailing no later than September 14, 1983. They are mailed rountinely to currently funded projects. If a grantee does not receive the forms by September 28, 1983, the grantee should telephone the Information Systems and Programs Support Branch of the Division of Student Services at (202) 245–7070.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information is only intended to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those imposed under the statute and regulations. The Secretary strongly urges that applicants not submit information that is not requested.

Applicable regulations: Regulations applicable to noncompeting continuation awards are:

(a) Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, and 78; and

(b) Regulations governing the Talent Search Program in 34 CFR Part 643.

Further information: For further information contact the Program Development Branch, Division of Student Services, U.S. Department of Education (Room 3514, Regional Office Building 3), 400 Maryland Avenue, SW., Washington, D.C. 20202. Telephone: (202) 245–2511.

(20 U.S.C. 1070d, 1070d–1)

(Catalog of Federal Domestic Assistance Number: 84.044—Talent Search Program)

Dated: September 2, 1983.

Edward M. Elmendorf,

Assistant Secretary of Postsecondary Education.

[FR Doc. 83-25048 Filed 9-13-83; 8:45 am]

BILLING CODE 4000-01-M

Upward Bound Program; Application Notice for Noncompeting Continuation Awards for Fiscal Year 1984

Applications are invited for noncompeting continuation awards under the Upward Bound Program.

Authority for this program is contained in sections 417A and 417C of the Higher Education Act of 1965, as amended.

(20 U.S.C. 1070d, 1070d–1a)

The Secretary is authorized to make grants under this program to institutions of higher education, public and private agencies and organizations, and, in exceptional cases, to secondary schools.

The purpose of the grant awards is to permit applicants to carry out projects designed to generate in participants the skills and motivation necessary for success in education beyond high school.

Closing date for transmittal of applications: To be assured of consideration for funding, an application for a noncompeting continuation award should be mailed or hand delivered by October 17, 1983.

If an application for a noncompeting continuation award is late, the Department may lack sufficient time to review it with other noncompeting continuation applications and may decline to accept it.

Applications delivered by mail: An application sent by mail should be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.047 (Upward Bound), Washington, D.C. 20202.

An applicant should show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept a private metered postmark or a private mail receipt as proof of mailing. An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail.

Applications delivered by hand: An application that is hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets, SW., Washington, D.C.

The Application Control Center will accept a hand-delivered application between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily except Saturdays, Sundays, and Federal holidays.

Available funds: The Administration's fiscal year 1984 budget request does not include the Upward Bound Program. However, if Congress appropriates funds for this program in fiscal year 1984, the Department plans to make these funds available for noncompeting continuation awards.

Accordingly, noncompeting continuation applications are being requested even though no funds are currently proposed for the Upward Bound Program. Current grantees will be notified if and when such funds become available.

Application forms: Application forms for noncompeting continuation awards are expected to be ready for mailing no later than September 16, 1983. They are mailed routinely to currently funded projects. If a grantee does not receive the forms by September 28, 1983, the grantee should telephone the Information Systems and Program Support Branch of the Division of Student Services at (202) 245–7070.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information is only intended to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those imposed under the statute and regulations. The Secretary strongly urges that applicants not submit information that is not requested.

Applicable regulations: Regulations applicable to noncompeting continuation awards are:

(a) Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, and 78; and

(b) Regulations governing the Upward Bound Program in 34 CFR Part 645.

Further information: For further information contact the Program Development Branch, Division of Student Services, U.S. Department of Education (Room 3514, Regional Office Building 3), 400 Maryland Avenue, SW., Washington, D.C. 20202. Telephone: (202) 245–2511.

(20 U.S.C. 1070d, 1070d–1a)

Dated: September 2, 1983.

(Catalog of Federal Domestic Assistance Number: 84.047—Upward Bound Program)

Edward M. Elmendorf,

Assistant Secretary for Postsecondary Education.

[FR Doc. 83-25049 Filed 9-13-83; 8:45 am]

BILLING CODE 4000-01-M

Special Needs Program; Correction

AGENCY: Department of Education.

ACTION: Notice—Extension of Closing Date under Special Needs Program—correction.

SUMMARY: This document makes a technical correction in the Notice which extended the closing date for receipt of applications under the Special Needs Program and further extends that closing date.

FOR FURTHER INFORMATION CONTACT: William A. Butts, Director, Division of Institutional Development, Office of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue, S.W., (Room 3066, ROB–3) Washington, D.C. 20202. Telephone: (202) 245–2715.

SUPPLEMENTARY INFORMATION: On August 24, 1983 the Assistant Secretary for Postsecondary Education published in the **Federal Register**, Vol. 48, No. 165, pages 38532–38533, a notice extending the closing date for receipt of applications under the Special Needs Program. This document corrects an error that was made in that notice.

On page 38532 in the third column, the sentence beginning on line 54 is revised to read as follows:

However, the maximum grant an institution may receive may not exceed $800,000 per twelve (12) month period.

Also, on page 38532, in the third column, lines 59–63, of the document is revised to read as follows:

An application for a development grant or an amended application for a development grant must be mailed or hand-delivered by September 21, 1983.

Dated: September 8, 1983.

Edward M. Elmendorf,

Assistant Secretary for Postsecondary Education.

[FR Doc. 83-25310 Filed 9-13-83; 11:33 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

[Case No. F–008]

Energy Conservation Program for Consumer Products; Decision and Order Granting Waiver From Furnace Test Procedures to Duo-Matic/Olsen, Inc.

AGENCY: Office of Conservation and Renewable Energy, Department of Energy.

ACTION: Decision and Order.

SUMMARY: Notice is given of the Decision and Order (Case No. F–008) granting Duo-Matic/Olsen, Inc. a waiver for its models of condensing furnaces from the existing DOE furnace test procedures.

FOR FURTHER INFORMATION CONTACT:

Michael J. McCabe, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE–113.1, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–9127.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–33, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–9513.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 430.27(g), notice is hereby given of the issuance of the Decision and Order set out below. In the Decision and Order, Duo-Matic/Olsen, Inc. has been granted a waiver for its models of condensing warm air furnaces, permitting the company to use an alternate test method.

Issued in Washington, D.C., August 31, 1983.

Howard S. Coleman,

Principal Deputy Assistant Secretary, Conservation and Renewable Energy.

In the Matter of: Duo-Matic/Olsen, Inc., Case No. F–008.

Background

The Energy Conservation Program for Consumer Products was established pursuant to the Energy Policy and Conservation Act, Pub. L. 94–163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act, Pub. L. 95–619, 92 Stat. 3266, which requires the Department of Energy (DOE) to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnances. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchase decisions. These test procedures appear at 10 CFR Part 430, Subpart B.

The Department of Energy amended the prescribed test procedure regulations, by adding § 430.27, to allow the Assistant Secretary for Conservation and Renewable Energy to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing of the basic model according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 45 FR 64108 (Sept. 26, 1980).

Pursuant to § 430.27(g), the Assistant Secretary shall publish in the **Federal Register** notice of each waiver granted, and any limiting conditions of each waiver.

Duo-Matic/Olsen, Inc. (Duo-Matic/Olsen), filed a "Petition for Waiver" in accordance with § 430.27 of 10 CFR Part 430. DOE published in the **Federal Register** the Duo-Matic/Olsen petition and solicited comments, data, and information respecting the petition. 47 FR 17129 (April 21, 1983). Comments were received from Lennox Industries, a manufacturer of condensing furnaces. The comments were sent to the petitioner on July 18, 1983, and rebuttal comments were received on August 11, 1983. DOE consulted with the Federal Trade Commission on August 4, 1983, concerning the Duo-Matic/Olsen petition.

Assertions and Determinations

Duo-Matic/Olsen requests the option to use the condensate measuring test method as set forth in Appendix C of the National Bureau of Standards (NBS) Interagency Report 80–2110, "Recommended Testing and Calculation Procedures for Estimating the Seasonal Performance of Residential Condensing Furnaces and Boilers" (hereafter referred to as the alternate test method), dated April 1981, to determine the Annual Fuel Utilization Efficiency (AFUE) of its models of condensing furnaces. This request infers to DOE the

contention that the existing DOE test procedures for condensing furnaces using average flue temperatures will yield materially inaccurate comparative data because the Duo-Matic/Olsen condensing furnace model condenses more of the water vapor than is calculated by the existing DOE test method.

Incidentally, this alternate test method is now proposed as an amendment to the current furnace test procedures. 48 FR 28014, June 17, 1983.

Duo-Matic/Olsen further requests that the alternate method be allowed not only for determining the AFUE but also for determining the steady-state efficiency of its models of condensing furnaces. Steady-state efficiency is used to determine a furnace's heating capacity. The product of the steady-state efficiency and the measured energy input (Btu/hr.) is the heating capacity of the furnace.

Comments from Lennox support Duo-Matic/Olsen's requests. NBS has found through testing experience that the existing flue loss testing procedure does, in fact, underestimate the amount of credit due to the condensing mode. Therefore, DOE has determined that Duo-Matic/Olsen should be granted a waiver to use the alternate test method when testing its models of condensing furnaces to determine AFUE.

Regarding the allowance to use the alternate test method for determining steady-state efficiency, Lennox felt this additional request would give an inequitable advantage to Duo-Matic/Olsen in that they would be allowed an increased steady-state efficiency of 1 to 3 percentage points with consequential increases in heating capacity and AFUE. However, DOE has determined that the use of the alternate method for determining steady-state efficiency will not result in an increase in reported AFUEs. This it true because steady-state efficiency is not used in determining the AFUE values. The only possible increase is with regard to the heating capacity. DOE believes the possible advantage is higher capacity values is minimal. Also, just as with AFUE determinations, DOE has found that steady-state efficiency determination could be underestimated by the existing flue loss test procedures. Therefore, DOE is today granting Duo-Matic/Olsen's request to use the alternate test method for determining steady-state efficiency. Accordingly, today's waiver includes additional instructions and calculations which will allow for the direct condensate measurement method to be used to determine steady-state efficiency

Today's grant includes provisions which require a 6 cycle test rather than the 3 cycle test outlined in the NBSIR 80–2110. This change has been recommended by the National Bureau of Standards as a result of its recent testing experience regarding condensing furnaces and is consistent with the proposed amendments. This testing experience indicated that for some models of condensing furnaces the variability of the amount of condensate collected during each cycle warrants more test cycles. This six cycles test is consistent with the proposed amendment.

It is therefore ordered that:

(1) The "Petition for Waiver" filed by Duo-Matic/Olsen, is hereby granted as set forth in paragraph (2) below, subject to the provisions of paragraphs (3) and (4).

(2) Notwithstanding any contrary provisions of Appendix N of 10 CFR, Part 430, Subpart B, Duo-Matic/Olsen, Inc. shall be permitted to test its models of condensing warm air furnaces on the basis of the test procedures specified in 10 CFR, Part 430, with the modifications set forth below:

(i) *Test Conditions*

(A) The test unit shall be installed according to the requirements given in section 2.

(B) Control devices shall be installed to allow cyclical operation of the unit and return water as described in section 3.3.

(C) The test unit shall be leveled prior to test.

(D) Operation times and the beginning and end of condensate collection shall be determined by a clock or timer with a minimum resolution of one second.

(E) Control of on or off operation actions shall be within ± 6 seconds of the scheduled time.

(F) Condensate drain lines shall be attached to the unit as specified in the manufacturer's installation instructions.

(G) The flue pipe installation must now allow condensate formed in the flue pipe to flow back into the unit. An initial downward slope from the unit's exit, an offset with a drip leg, annular collection rings, or drain holes must be included in the flue pipe installation without distrubing normal flue gas flow (as given in section 2.2), and temperature measurement instrumentation (as given in section 2.6). Flue gases shall not flow out of the drain with the condensate.

(H) Collection-containers must be glass or polished stainless steel, so removal of interior deposits can be easily made.

(I) The collection-container shall have a vent opening to the atmosphere.

(J) The scale for measuring the containers and condensate sample mass shall be calibrated with an error no larger than ± 0.5 percent over the range of interest.

(ii) *Test Method*

(A) The condensing furnace is to have steady-state, cooldown, and heat-up tests conducted in accordance with the procedures for noncondensing units given in section 3, using the flue gas, air or water flow, and room ambient conditions given in section 2 of the condensing furnace test procedure. In addition a steady-state and a cyclic condensate collection procedure shall be conducted.

(B) The condensate collection-container shall be dried prior to a sample collection.

(C) Tare weight of the collection-container must be measured and recorded prior to each sample collection.

(D) Return air temperature for cyclic and steady-state tests shall be equal to those required for steady-state tests periods, and shalll remain within the limits given in the existing test procedure.

(E) Operating times for on and off periods in the cyclic condensate collection procedure shall be 3 minutes 52 seconds on an 13 minutes 20 seconds for warm air furnaces.

(F) The unit should be operated in a cyclical manner until flue gas temperatures at the end of each on period are within 5°F (2.8°C) of each other for two consecutive cycles.

(G) Begin the cyclic condensate collection at one minute before start up of the first test on-period.

(H) Six cycles later, the container shall be removed at the end of the cool down cycle one minute prior to the beginning of what would be the seventh cycle period.

(I) Begin the steady-state condensate collection after steady-state conditions have been achieved as specified in section 3 of Appendix N. The steady-state condensate collection period shall be one (1) hour.

(J) Condensate mass shall be measured immediately at the end of the collection period to prevent evaporation loss from the sample.

(K) Fuel input shall be recorded during the entire cycle test period starting at the beginning of the on-time of the first cycle to the beginning of the on-time of the second cycle, etc., for each of the six test cycles and for the one hour sready-state test period, fuel Higher Heating Value (HHV), temperature and

pressures necessary for determining fuel energy inputs, Q_c and Q_{ss} will be observed and recorded. The fuel quantity and HHV shall be measured with errors no greater than one percent.

[iii) *Calculating the condensing Annual Fuel Utilization Efficiency (AFUE)*

(A) Determine the mass of condensate for the cyclic test, m_c, by subtracting the tare container weight from the total container and condensate weight measured at the end of the six cycles of operations. Determine the mass of condensate for the steady-state test, m_{ss}, by subtracting the tare container weight from the total container and condensate weight measured at the end of the one hour test period.

(B) Calculate the fuel energy input during the cyclic and steady-state condenstate collection tests, Q_c and Q_{ss}.

(C) Calculate the cyclic and steady-state heat gain due to condensation, L_G and $L_{G,SS}$, in percent by the following equation:

$$L_G = \frac{(m_c)\ (1053.3)\ (100)}{Q_c}$$

$$L_{G,SS} = \frac{(m_{ss})\ (1053.3)\ (100)}{Q_{ss}}$$

(D) Calculate the cyclic and steady-state loss, L_c, and $L_{c,ss}$ due to hot condensate going down the drain, correcting for the fact that this condensate did not go up the flue as heated vapor, in percent by the following equations:

$$L_c = L_G \frac{[1.0(F_{t,ss} - 70) - .45(T_{r,ss} - 42)]}{1053.3}$$

$$L_{c,ss} = L_{G,SS} \frac{[1.0(T_{t,ss} - 70) - .45(T_{r,ss} - 42)]}{1053.3}$$

(E) Calculate the condensing AFUE by adding the percent heat gain due to condensing, L_G, to the previously calculated noncondensing AFUE and by subtracting L_c.

$$AFUE_c = AFUE_{NC} + L_G - L_C$$

(F) Calculate the condensing steady-state efficiency, $N_{ss,c}$, by adding the percent heat gain due to condensing, $L_{G,ss}$, to the previously calculated noncondensing steady-state efficiency $N_{ss,nc}$, and by subtracting $L_{c,ss}$.

$$N_{ss,c} = N_{ss,nc} + L_{G,ss} - L_{c,ss}$$

(iv) With the exception of the modifications set forth in subparagraphs (i), (ii), and (iii) above, Duo-Matic/Olsen, Inc. shall comply in all respects with the test procedures specified in Appendix N of 10 CFR Part 430, Subpart B.

(3) The waiver shall remain in effect from the date of issuance of this order until the Department of Energy prescribes final test procedures appropriate to the type of condensing warm air furnace manufactured by Duo-Matic/Olsen, Inc.

(4) This waiver is based upon the presumed validity of statements, allegations, and documentary materials submitted by the applicant and commenters. This waiver may be revoked or modified at any time upon a determination that the factual basis underlying the application is incorrect.

Issued in Washington, D.C., August 31, 1983.

Howard S. Coleman,

Principal Deputy Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 83-24838 Filed 9-13-83; 8:45 am]

BILLING CODE 6450-01-M

[Case No. F-010]

Energy Conservation Program for Consumer Products; Decision and Order Granting Waiver From Furnace Test Procedures to Heil-Quaker Corporation

AGENCY: Office of Conservation and Renewable Energy, Department of Energy.

ACTION: Decision and Order.

SUMMARY: Notice is given of the Decision and Order [Case No. F-010] granting Heil-Quaker Corporation a waiver for its NUGK, NULK, NDGK, and NDLK models of condensing furnaces from the existing DOE furnace test procedures.

FOR FURTHER INFORMATION CONTACT:

Michael J. McCabe, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE-113.1, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-9127

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-33, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-9513

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 430.27(g), notice is hereby given of the issuance of the Decision and Order set out below. In the Decision and Order, Heil-Quaker Corporation has been granted a waiver for its NUGK, NULK, NDGK and NDLK models of consensing warm air furnaces, permitting the company to use an alternate test method.

Issued in Washington, D.C., August 31, 1983.

Howard S. Coleman,

Principal Deputy Assistant Secretary, Conservation and Renewable Energy.

In the Matter of: Heil-Quaker Corporation, Case No. F-010.

Background

The Energy Conservation Program for Consumer Products was established pursuant to the Energy Policy and Conservation Act, Pub. L. 94-163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act, Pub. L. 95-619, 92 Stat. 3266, which requires the Department of Energy (DOE) to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure to energy consumption that will assist consumers in making purchase decisions. These test procedures appear at 10 CFR Part 430, Subpart B.

The Department of Energy amended the prescribed test procedure regulations, by adding § 430.27, to allow the Assistant Secretary for Conservation and Renewable Energy to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing of the basic model according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 45 FR 64108 (Sept. 26, 1980).

Pursuant to § 430.27(g), the Assistant Secretary shall publish in the **Federal Register** notice of each waiver granted, and any limiting conditions of each waiver.

Heil-Quaker Corporation (Heil-Quaker), filed a "Petition for Waiver" in accordance with § 430.27 of 10 CFR Part 430. DOE published in the **Federal Register** the Heil-Quaker petition and solicited comments, data, and

information respecting the petition. 48 FR 30740 (July 5, 1983). No comments were received. DOE consulted with the Federal Trade Commission on August 4, 1983, concerning the Heil-Quaker petition.

Assertions and Determinations

The Heil-Quaker petition contends that even though the DOE test procedures for furnaces were amended to allow testing of condensing furnaces, 45 FR 53714 (Aug. 12 1980), the company's NUGK, NULK, NDGK and NDLK condensing furnace models, when tested according to those procedures, will yield materially inaccurate comparative data.

The Heil-Quaker petition seeks a waiver from the present DOE test method which bases condensation calculations on the average flue gas temperature. Heil-Quaker contends that is NUGK, NULK, NDGK and NDLK furnace models condenses more of the water vapor than is calculated by the DOE test method. In lieu of the current test method, Heil-Quaker requests the use of the condensate measuring test method as set forth in Appendix C of the National Bureau of Standards (NBS) Interagency Report 80–2110, "Recommended Testing and Calculation Procedures for Estimating the Seasonal Performance of Residential Condensing Furnaces and Boilers" (hereafter referred to as the alternate test method), dated April 1981, to determine the Annual Fuel Utilization Efficiency (AFUE) of its NUGK, NULK, NDGK and NDLK models of condensing furnaces. Incidentally, this alternate test method is now proposed as an amendment to the furnace test procedures. 48 FR 28014, June 17, 1983.

Heil-Quaker further seeks permission to conduct testing using the alternate test method at its in-house test facility. Such allowance for in-house testing was rejected initially in the Hydrotherm, Inc. Decision and Order. 46 FR 34621 (July 2, 1981). Since that time, however, the allowance to use the alternate test method at in-house test facilities has been granted to three manufacturers, Lennox, Arkla Industries, Inc. and Amana Refrigerator, Inc. 47 FR 32471 (July 27, 1982), 47 FR 57987 (December 29, 1982), and 48 FR 28531 (June 22, 1983) respectively.

NBS has found through testing experience that the existing flue loss testing procedure does, in fact, underestimate the amount of credit due to the condensing mode. Therefore, DOE has determined that Heil-Quaker should be granted a waiver to use the alternate test method when testing its NUGK, NULK, NDGK and NDLK models of condensing furnaces to determine AFUE.

Finally, in consideration of the evidence presented in previous waivers which stated that the alternate test method is of sufficient reliability to permit "in-house" testing and in order to save the manufacturer time and money, DOE has determined to grant Heil-Quaker's request for in-house testing. However, to further assure reliability, today's grant includes provisions which require a 6 cycle test rather than the 3 cycle test outlined in the NBSIR 80–2110. This change has been recommended by the National Bureau of Standards as a result of its recent testing experience regarding condensing furnaces and is consistent with the June 17 proposed amendments.

Heil-Quaker also requests in its petition to be waived from the 1.5 minute blower delay time provisions since operation under such provisions could damage the Heil-Quaker furnaces. DOE has determined that this request was unnecessary since the test procedures already includes alternate provisions to the 1.5 minute blower delay time that will satisfy Heil-Quaker's concerns at section 3.33 of Appendix N of 10 CFR Part 430, Subpart B. Heil-Quaker has been informed of these alternate provisions.

It is therefore ordered that:

(1) The "Petition for Waiver" filed by Heil-Quaker, is hereby granted as set forth in paragraph (2) below, subject to the provisions of paragraphs (3) and (4).

(2) Notwithstanding any contrary provisions of Appendix N of 10 CFR Part 430, Subpart B, Heil-Quaker shall be permitted to use in-house test facilities to test its NUGK, NULK, NDGK and NDLK models of condensing warm air furnaces on the basis of the test procedures specified in 10 CFR Part 430, with the modifications set forth below:

(i) Test Conditions

(A) The test unit shall be installed according to the requirements given in section 2.

(B) Control devices shall be installed to allow cyclical operation of the unit and return water as described in section 3.3.

(C) The test unit shall be leveled prior to test.

(D) Operation times and the beginning and end of condensate collection shall be determined by a clock or timer with a minimum resolution to one second.

(E) Control of on or off operation actions shall be within ±6 seconds of the scheduled time.

(F) Condensate drain lines shall be attached to the unit as specified in the manufacturer's installation instructions.

(G) The flue pipe installation must now allow condensate formed in the flue pipe to flow back into the unit. An initial downward slope from the unit's exit, an offset with a drip leg, annular collection rings, or drain holes must be included in the flue pipe installation without disturbing normal flue gas flow (as given in section 2.2), and temperature measurement instrumentation (as given in section 2.6). Flue gases shall not flow out of the drain with the condensate.

(H) Collection-containers must be glass or polished stainless steel, so removal of interior deposits can be easily made.

(I) The collection-container shall have a vent opening to the atmosphere.

(J) The scale for measuring the containers and condensate sample mass shall be calibrated with an error no larger than ±0.5 percent over the range of interest.

(ii) Test Method

(A) The condensing furnace is to have steady-state, cool-down, and heat-up tests conducted in accordance with the procedures for noncondensing units given in section 3, using the flue gas, air or water flow, and room ambient conditions given in section 2 of the condensing furnance test procedure. In addition a cyclic condensate collection procedure shall be conducted.

(B) The condensate collection-container shall be dried prior to a sample collection.

(C) Tare weight of the collection-container must be measured and recorded prior to each sample collection.

(D) Return air temperature for cyclic tests shall be equal to those required for steady-state test periods, and shall remain within the limits given in the existing test procedure.

(E) Operating times for on an off periods in the cyclic condensate collection procedure shall be 3 minutes 52 seconds on and 13 minutes 20 second for warm air furnaces.

(F) The unit should be operated in a cyclical manner until flue gas temperatrues at the end of each on period are within 5° F (2.8° C) of each other for two consecutive cycles.

(G) Begin the cyclic condensate collection at one minute before start up of the first test on-period.

(H) Six cycles later, the container, shall be removed at the end of the cool down cycle one minute prior to the beginning of what would be the seventh cycle period.

(I) Condensate mass shall be measured immediately at the end of the

collection period to prevent evaporation loss from the sample.

(J) Fuel input shall be recorded during the entire cycle test period starting at the beginning of the on-time of the first cycle to the beginning of the on-time of the second cycle, etc., for each of the six test cycles. Fuel Higher Heating Value (HHV), temperature and pressures necessary for determining fuel energy inputs and Q_c will be observed and recorded. The fuel quantity and HHV shall be measured with errors no greater than one percent.

(iii) Calculating the Condensing Annual Fuel Utilization Efficiency (AFUE)

(A) Determine the mass of condensate for the cyclic test, m_c, by subtracting the tare container weight from the total container and condensate weight measured at the end of the six cycles of operations.

(B) Calculate the fuel energy input during the cyclic condensate collection test, Q_c.

(C) Calculate the cyclic heat gain due to condensation, L_G, in percent by the following equation:

$$L_G = \frac{(m_c)(1053.3)(100)}{Q_c}$$

(D) Calculate the cyclic loss, L_C, due to hot condensate going down the drain, correcting for the fact that this condensate did not go up the flue as heated vapor, in percent by the following equations:

$$L_c = L_G \frac{[1.0(T_{t,ss} - 70) - .45(T_{t,ss} - 42)]}{1053.3}$$

(E) Calculate the condensing AFUE by adding the percent heat gain due to condensing, L_G, to the previously calculated noncondensing AFUE and by subtracting L_c.

$$AFUE_c = AFUE_{NC} + L_G - L_c$$

(iv) With the exception of the modifications set forth in subparagraphs (i), (ii), and (iii) above, Heil-Quaker Corporation shall comply in all respects with the test procedures specified in Appendix N of 10 CFR, Part 430, Subpart B.

(3) The waiver shall remain in effect from the date of issuance of this order until the Department of Energy prescribes final test procedures appropriate to the type of condensing warm air furnace manufactured by Heil-Quaker Corporation.

(4) This waiver is based upon the presumed validity of statements, allegations, and documentary materials submitted by the applicant and commenters. This waiver may be revoked or modified at any time upon determination that the factual basis underlying the application is incorrect.

Issued in Washington, D.C., August 31, 1983.

Howard S. Coleman,

Principal Deputy Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 83-24940 Filed 9-13-83; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket Nos. 83-CERT-280, etc.]

Dunlop Tire and Rubber Corp. et al.; Notice of Certifications of Eligible Use of Natural Gas To Displace Fuel Oil

The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) has received the following applications for certification of an eligible use of natural gas to displace fuel oil pursuant to 10 CFR 595 (44 FR 47920, August 16, 1979). Notice of these applications, along with pertinent information contained in the applications, was published in the **Federal Register** and an opportunity for public comment was provided for a period of ten calendar days from the date of publication. No comments were received. More detailed information is contained in each application on file and available for inspection at the ERA Fuels Conversion Division Docket Room, RG-42, Room GA-093, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585, from 8:00 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

Applicant and facility	Date filed	Docket No.	FEDERAL REGISTER notice of application
Dunlop Tire and Rubber Corp., Tonawanda, N.Y.	July 27, 1983	83-CERT-280	48 FR 38069, Aug. 22, 1983.
Maryland Cup Corp., Baltimore, Md.	Aug. 4, 1983	83-CERT-293	48 FR 38069, Aug. 22, 1983.
Lancaster Colony Corp., Konata Rubber Co., Wapakoneta, Ohio, Candle-lite Div., Leesburg, Ohio.	Aug. 5, 1983	83-CERT-294	48 FR 38069, Aug. 22, 1983.
PPG Industries, Inc., Meadville, Pa.	Aug. 8, 1983	83-CERT-295	48 FR 38069, Aug. 22, 1983.
Collins & Aikman Corp., Hickory, N.C.	Aug. 9, 1983	83-CERT-298	48 FR 38069, Aug. 22, 1983.

The ERA has carefully reviewed the above applications for certification in accordance with 10 CFR Part 595 and the policy considerations expressed in the Final Rulemaking Regarding Procedures for Certification of the Use of Natural Gas to Displace Fuel Oil (44 FR 47920, August 16, 1979). The ERA has determined that the applications satisfy the criteria enumerated in 10 CFR Part 595 and, therefore, has granted the certifications and transmitted those certifications to the Federal Energy Regulatory Commission.

Issued in Washington, D.C., on September 6, 1983.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 83-25019 Filed 9-13-83; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-FC-83-20; FC Case No. 63023-9237-01-23]

Acceptance of Petition for Exemption and Availability of Certifcation by the Gulf Refining and Marketing Co.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice.

SUMMARY: On August 3, 1983, the Gulf Refining and Marketing Company (Gulf) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) for an order exempting a new major fuel burning installation (MFBI) from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*) ("FUA" or "The Act"). Title II of FUA prohibits the use of petroleum and natural gas as a primary energy source in new powerplants and certain new MFBI's.

The criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503, published at 46 FR 59872 (December 7, 1981).

Gulf is seeking a permanent exemption from the prohibtions of Title II of FUA under 10 CFR 503.38(d) based upon the projected use in a new waste heat boiler (Boiler CO–8A) of a fuels mixture containing regenerator off gas, an alternate fuel, and between 4.9 and 19.7 percent natural gas, refinery fuel gas, or liquid fuel oil as the primary energy source.

The unit will produce 450,000 Lb./Hr. of 730 PSIG steam at 675° F. ERA's decision in this proceeding will determine whether Gulf will be granted the requested permanent exemption. The eligibility and evidentiary requirements governing the fuels mixtures exemption are set forth in 10 CFR 503.38.

ERA has determined that the petition appears to include sufficent evidence to support an ERA determination, and it is therefore accepted pursuant to 10 CFR 501.3. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in sections 701 (c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification as well as other documents and supporting materials on this proceeding are available upon request at: Department of Energy, Freedom of Information Room, 1000 Independence Avenue, S.W., Room 1E–190, Washington, D.C. 20585, Monday through Friday, 8:00 a.m. to 4:00 p.m., except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of reasons therefor, would be published in the **Federal Register.**

DATES: Written comments are due on or before October 31, 1983. A request for a public hearing must be made within this same 45-day period.

ADDRESS: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Programs, Room GA–093, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585. "Docket No. ERA–FC–83–20" should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Roland DeVries, Office of Fuels Programs, Economic Regulatory Administration, Forrestal Bldg., Room GA–093, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Phone (202) 252–6002

Marya Rowan, Office of General Counsel, Department of Energy, Forrestal Bldg., Room 6B–222, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Phone (202) 252–2967

SUPPLEMENTARY INFORMATION: The Port Arthur, Texas refinery of Gulf Refining and Marketing Company (Gulf) uses two fluid catalytic cracking units to produce gasoline blending components. In continuously regenerating the catalyst by burning carbon and other impurities at high temperatures using combustion air, exhaust gases of up to 1,200° F and containing significant quantities of carbon monoxide, are produced. These gases are recovered and used for steam production in waste heat boilers. On December 9, 1981, Gulf's Boiler CO–8 at Fluid Catalytic Cracking Unit 1242 was virtually destroyed by internal explosion. The new boiler, CO–8A, for which the exemption is requested, is being constructed to replace the original unit.

Boiler CO–8A will use, as its primary energy source, fluid catalytic cracking regeneration gas in a mixture with either natural gas, refinery fuel gas, or a liquid fuel oil. These fuels, which will represent between 4.9 and 19.7 and 3.7 and 14.8 percent of the primary energy source and the total fuel used, respectively, will be burned in the mixture in order to maintain the temperature of the carbon monoxide in the recovered off gas at a point high enough to sustain combustion. Boiler CO–8A will produce 450,000 Lb./Hr. of 730 PSIG steam at 675° F for use in the refinery.

Section 212(d) of FUA and 10 CFR § 503.38 provide for a permanent exemption from the prohibitions of Title II of the Act for units in which certain fuel mixtures containing natural gas or petroleum will be used as the primary energy source. Section 503.38(b) further provides that, for an MFBI, if the requested exemption is granted, the percentage of natural gas or petroleum to be used in the exempted mixture shall not be less than 25 percent of the total annual Btu heat input of the primary energy sources used by the installation. Section 503.38(d) accordingly provides a certification alternative for petitioning for an exemption to permit such use in a new MFBI of a mixture that will contain less than 25 percent of a non-alternate fuel.

In accordance with the requirements of 10 CFR 503.38(d), Gulf has certified to ERA that:

(1) The amount of petroleum or natural gas fuels [1] in the mixture proposed to be used as Boiler CO–8A's primary energy source will not exceed twenty-five (25) percent of the total annual Btu heat input of the installation, and

(2) All applicable environmental permits and approvals required prior to the commencement of operation of Boiler CO–8A have been secured.[2]

The latter certification is required under 10 CFR § 503.13(b)(1). In further compliance with that section, Gulf submitted and certified as accurate the information required by the environmental checklist in Section 503.13(b)(2).

In processing this exemption request, ERA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA), the Council on Environmental Quality's implementing regualtions, 40 CFR Part 1500 *et seq.*; and DOE's guidelines implementing those regulations, published at 45 FR 20694, March 28, 1980. NEPA compliance may involve the preparation of (1) an Environmental Impact Statement (EIS); (2) an Environmental Assessment; or (3) a memorandum to the file finding that the grant of the requested exemption would not be considered a major Federal action significantly affecting the quality of the environment. If an EIS is determined to be required, ERA will published a Notice of Intent to prepare an EIS in the **Federal Register** as soon as practicable. No final action will be taken on the exemption petition until ERA's NEPA compliance has been completed.

[1] As defined in 10 CFR Part 500.

[2] The Texas Clean Air Act, section 3.26(a), requires that the permit to operate the unit be applied for within sixty (60) days *after the facility has begun operation.* (Letter dated May 6, 1982, from the Texas Air Control Board to GULF OIL COMPANY—U.S.)

Pursuant to 10 CFR 501.3, ERA hereby accepts Gulf's petition for a permanent fuels mixture exemption for Boiler CO–8A. ERA retains the right, however, to request additional relevant information at any time during the pendency of these proceedings. As provided in 10 CFR 501.3(b)(4), acceptance of this petition by ERA does not constitute a determination that the petitioner is entitled to the exemption requested. That determination will be based on the entire record of these proceedings, including any comments received during the public comment period provided for in this notice.

Issued in Washington, D.C. on August 30, 1983.

Robert L. Davies,

Director, Fuels Conversion Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 83-25023 Filed 9-13-83; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. ER83-698-000]

The Cleveland Electric Illuminating Co.; Filing

September 8, 1983.

The filing Company submits the following:

Take notice that on August 25, 1983, The Cleveland Electric Illuminating Company (CEI) tendered for filing an executed Service Agreement and Exhibits A and B thereto, providing for transmission by CEI of approximately 20 MW of power from the 345 kv interconnection point on CEI's Juniper—Canton Line with the Ohio Power Company to the City of Cleveland, Ohio (City) in accordance with the terms and conditions of CEI's FERC Transmission Service Tariff.

CEI has requested waiver of the FERC's 60-day notice requirement in order to permit commencement of transmission service on July 1, 1983.

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 September 26, 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. 83-24959 Filed 9-13-83; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 7287-000]

Hamilton Associates; Errata Notice

September 8, 1983.

The notice of application for preliminary permit issued August 17, 1983, is revised as follows:

At 48 FR 38076 (published August 22, 1983) ¶12(j), entitled "Description of Project":

(a) Item (2) should be revised to read "a 9,000-foot-long pipeline and penstock", and

(b) Item (4) should be revised to read "a powerhouse containing a 5,000-kW generating unit".

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-24960 Filed 9-13-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ES83-64-000]

Iowa Electric Light and Power Co.; Application

September 8, 1983.

Take notice that on August 29, 1983, the Iowa Electric Light and Power Company (Applicant) filed an application with the Federal Energy Regulatory Commission seeking an order pursuant to Section 204 of the Federal Power Act authorizing the issuance of short-term notes in the aggregate principal amount of $85,000,000 to be issued on or before December 31, 1985, with maturities not later than December 31, 1986.

Any person desiring to be heard or to make protest with reference to this Application should on or before September 27, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions or protests in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). The Application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-24961 Filed 9-13-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-7004-017]

Pennzoil Co.; Sixth Amendment to Application for Immediate Clarification or Abandonment Authorization

September 7, 1983.

Take notice that on August 29, 1983, Pennzoil Company (Pennzoil), P.O. Box 2967, Houston, Texas 77001, filed in Docket No. G–7004–017 an application for immediate clarification of Order dated November 24, 1980 in the above-referenced docket, or abandonment authorization for as much gas as is required to allow sales of gas to twelve new applicants for residential service in West Virginia in addition to those applicants specified in Pennzoil's original application filed on October 25, 1982. In filing this Sixth Amendment to its original application, Pennzoil incorporates herein and renews each of the requests for clarification or abandonment authorization set forth in that application. Service to these applicants and existing customers would be provided from gas supplies that would otherwise be sold to Consolidated Gas Supply Corporation (Consolidated), an interstate pipeline.

Pennzoil states that immediate action is necessary to protect the health, welfare and property of the applicants and customers in West Virginia who depend upon Pennzoil for their gas supply needs. Pennzoil also states that immediate action also is required because, by order dated October 21, 1982, the Public Service Commission of West Virginia directed Pennzoil to show cause, if any it can, why it should not be found to be in violation of its duty * * * to provide adequate gas service to all applicants * * * and why it should not be required to provide service to domestic customers in West Virginia when requests are received for same.

Consolidated has indicated that it has no objection to the requested authorization.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than normal for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said amendment to the original application should on or before, September 16, 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, .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 the proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. Any person previously granted intervention in connection with Pennzoil's original application in Docket No. G–7004–006 need not seek intervention herein. Each such person will be treated as having also intervened in Docket No. G–7004–017.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 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 amendment to the original 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 a grant of 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 Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-24362 Filed 9-13-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-706-000]

Puget Sound Power & Light Co.; Notice of Filing

September 8, 1983.

The filing Company submits the following:

Take notice that on August 22, 1983, Puget Sound Power & Light Company (Puget) tendered for filing Appendix I to Residential Purchase and Sale Agreement between Puget Sound Power & Light Company and Bonneville Power Administration.

Puget Sound states that Appendix I, reflects the revised Tariff C (Point Roberts), effective April 1, 1983. This Tariff C changed retail rates but did not change Puget's ASC.

Puget Sound also states that adjustments made by BPA in its report dated July 29, 1983, pertaining to the above Tariff C filing, reflects a continuing disagreement between them and BPA regarding interpretation of the interim Average System Cost Methodology, particularly as regards the Washington, Public Utility Tax; there is no dispute regarding the Tariff C changes.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before September 23, 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. 83-24963 Filed 9-13-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-707-000]

American Electric Power Service Corp.; Notice of Filing

September 9, 1983.

The filing Company submits the following:

Take notice that the American Electric Power Service Corporation (AEP) on August 29, 1983, tendered for filing, on behalf of its affiliate Ohio Power Company (Ohio Power), Supplemental Schedule I, dated as of September 1, 1983, to Service Schedule A—Transmission Service under Agreement, dated as of April 1, 1974 (1974 Agreement), between American Municipal Power Ohio, Inc. (AMP–Ohio) and Ohio Power, Ohio Power Rate Schedule FERC No. 74.

AEP states that Supplemental Schedule I defines an Interconnection Point and a Delivery Point that is required by Service Schedule A so that AMP–Ohio can avail itself of the Transmission Service provided for in Service Schedule A.

AEP requests an effective date of September 1, 1983, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing were served upon the Public Utilities Commission of Ohio and AMP–Ohio.

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 September 19, 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. 83-25027 Filed 9-13-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER78-490-002 and ER80-673-001]

American Electric Power Service Corp.; Notice of Compliance Filing

September 9, 1983.

Take notice that on August 16, 1983, American Electric Power Service Corporation ("AEP") submitted for filing, on behalf of its subsidiary, Ohio Power Company, Supplement No. 12 (dated August 9, 1983) to the January 1, 1952 Interconnection Agreement between Ohio Edison Company and Ohio Power.

In compliance with the Commission's Order, Opinion No. 170 in Docket Nos. ER78–490–002 and ER80–673–001, issued June 3, 1983, Section 1 of Supplement No. 12 revises subsection 2.11 of Section 2 of Service Schedule D—Emergency Service. The revision provides for a separate cost category to account for foregone revenues. Also, no adder will be applied to the foregone revenue cost category.

Additionally, in compliance with the Commission's Order No. 84, Docket No. ER80–592, *et al.*, and the Commission's Opinion No. 170 in Docket Nos. ER78–490–000 and ER80–673–000, Section 2 revises subsection 2.2 of Section 2 and subsection 3.2 of Section 3 of Service Schedule A—Interchange Power. The revision provides for the replacement of the 10% adder on third party non-displacement energy with an adder of 1 mill per kilowatt-hour.

AEP requests an effective date of October 16, 1983 pursuant to 18 CFR 35.11.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before September 23, 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. 83-25028 Filed 9-13-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-138-004]

Cleveland Electric Illuminating Co.; Notice of Compliance Filing

September 9, 1983.

Take notice that on August 30, 1983, Cleveland Electric Illuminating Company ("CEI"), submitted for filing the service schedules applicable to service under the April 17, 1975 Agreement between the CEI and the City of Cleveland, Ohio.

The service schedules, which were issued pursuant to Commission Opinion No. 172, Opinion and Order Approving Terms and Conditions of Emergency, Short-Term and Limited-Term Services, (issued on June 16, 1983), are as follows:

Service Schedule A—Emergency Service
Service Schedule B—Firm Power Service
Service Schedule C—Short Term Power
Service Schedule D—Limited Term Power

CEI states that these service schedules incorporate the same terms and conditions of service as those adopted in Opinion No. 172, and will become effective upon approval by the Commission.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, D.C. 20426, on or before September 19, 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. 83-25029 Filed 9-13-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-708-000]

Connecticut Light and Power Co.; Notice of Filing

September 9, 1983.

The filing Company submits the followings:

Take notice that on August 29, 1983, the Connecticut Light and Power Company (CL&P) tendered for filing a proposed rate schedule pertaining to a Purchase Agreement, with Respect to Middletown Unit No. 4 between the Hartford Electric Light Company (HELCO) and the City of Burlington Electric Light Department (Burlington), dated as of September 15, 1977.

CL&P states that it has succeeded HELCO by merger and that the Purchase Agreement provides for a sale to Burlington of specified percentages of capacity and associated energy from what is now CL&P's generating unit, Middletown Unit No. 4, (the Unit) during the period of November 1, 1983 through October 31, 1985.

CL&P further states that the capacity charge rate for the proposed service was a rate determined on a cost-of-service basis at the time that the Purchase Agreement was executed. The monthly transmission charge rate is equal to one-twelfth of the annual average cost of transmission service on the transmission system of CL&P and its affiliated Northeast companies at the time that the Purchase Agreement was executed, and is determined in accordance with Section 13.9 of the New England Power Pool (NEPOOL) Agreement and the Uniform Rules adopted by the NEPOOL Executive Committee. The monthly Transmission Charge is determined by the product of (i) the appropriate monthly transmission charge rate ($/KW-month), and (ii) the number of kilowatts of winter capability which Burlington is entitled to receive during such month. The Energy Charge is based on Burlington's portion of the applicable fuel expenses related to the Unit and no special cost-of-service studies were made to derive that charge.

CL&P indicates that the services to be provided under the Purchase Agreement are similar to services provided by HELCO in the agreements between HELCO and the Vermont Public Service Corporation (FERC Rate Schedule No. HELCO 206), and the Public Service Company of New Hampshire (FERC Rate Schedule No. 203).

CL&P requests an effective date of November 1, 1983.

According to CL&P, copies of the filing were mailed to Burlington.

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 on or before September 19, 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. 83-25030 Filed 9-13-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-709-000]

Connecticut Light and Power Co.; Notice of Filing

September 9, 1983.

The filing Company submits the following:

Take notice that on August 29, 1983, Connecticut Light and Power Company (CL&P) tendered for filing a proposed rate schedule pertaining to a Purchase Agreement, with Respect to Middletown Unit No. 4, between the Hartford Electric Light Company (HELCO) and the Village of Lyndonville Electric Department (Lyndonville), dated as of September 15, 1977.

CL&P states that it has succeeded HELCO by merger and that the Purchase Agreement provides for a sale to Lyndonville of specified percentages of capacity and energy from what is now CL&P's Middletown Unit No. 4 generating unit (the Unit during the period of November 1, 1983 through October 31, 1985.

CL&P further states that the capacity charge rate for the proposed service is a rate determined on a cost-of-service basis at the time that the Purchase Agreement was executed. The monthly transmission charge rate is equal to one-twelfth of the annual average cost of transmission service on the transmission systems of CL&P and its affiliated Northeast Utilities companies at the time that the Purchase Agreement was executed, and is determined in accordance with Section 13.9 of the New England Power Pool (NEPOOL) Agreement and the Uniform Rules adopted by the NEPOOL Executive Committee. The monthly Transmission Charge is determined by the product of (i) the appropriate monthly transmission charge rate ($/KW-month) and (ii) the number of kilowatts of winter capability which Lyndonville is entitled to receive during such month. The Energy Charge is based on Lyndonville's portion of the applicable fuel expenses related to the Unit and no special cost-of-service studies were made to derive this charge.

CL&P indicates that the services to be provided under the Purchase Agreement are similar to services provided by HELCO in its agreements between HELCO and the Vermont Public Service

Corporation (FERC Rate Schedule No. HELCO 206), and the Public Service Company of New Hampshire (FERC Rate Schedule No. HELCO 23).

CL&P requests an effective date of November 1, 1983.

Copies of the filing have been mailed to Lyndonville.

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 on or before September 19, 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. 83-25031 Filed 9-13-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-711-000]

Florida Power & Light Co.; Notice of Filing

September 9, 1983.

The filing Company submits the following:

Take notice that Florida Power & Light Company (FPL), on August 29, 1983 tendered for filing a document entitled "Amendment Number Fifteen to Agreement to Provide Specified Transmission Service Between Florida Power & Light Company and Utilities Commission, City of New Smyrna Beach (Rate Schedule FERC No. 49)."

FPL states that under Amendment Number Fifteen, FPL will transmit power and energy for Utilities Commission, City of New Smyrna as is required in the implementation of its interchange agreement with the City of Kissimmee.

FPL requests that waiver of the Commission's Regulations be granted and that the proposed Amendment be made effective immediately.

Copies of the filing were served on Utilities Commission, City of New Smyrna Beach.

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 Practices and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 15, 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. 83-25032 Filed 9-13-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-798-000]

Florida Public Utilities Co.; Notice of Refund Report

September 9, 1983.

Take notice that on August 30, 1983, Florida Public Utilities Company ("FPUC") submitted for filing a Refund Report in compliance with the August 17, 1983 Commission Letter Order which accepted a revised rate for FPUC's service to the City of Blountstown, Florida. The revised rates reflect FPUC's reduced purchased power costs resulting from the settlement rates approved by a Commission order dated July 8, 1983 in *Gulf Power Company*, Docket No. ER82-689-000.

FPUC states that it refunded a total of $10,304.48 to Blountstown. This amount included $148.18 in interest.

FPUC further states that copies of the Refund Report were mailed to the City Manager of the City of Blountstown, Florida and the Florida Public Service Commission.

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 September 22, 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. 83-25033 Filed 9-12-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-712-000]

Idaho Power Co.; Notice of Filing

September 9, 1983

The filing Company submits the following:

Take notice that on August 29, 1983, Idaho Power Company (Idaho) tendered for filing a revised Appendix 1, as required by Exhibit C for retail sales in the State of Oregon. Idaho also submitted its agreement with and/or objections to BPA's Average System Cost Adjustments.

Additionally, Idaho submitted the Bonneville Power Administration's Average System Cost Report in which Bonneville determined the Average System Cost for the Oregon residential jurisdiction in accordance with the provisions of the Residential Purchase and Sale Agreement (Agreement) between Idaho and the Bonneville Power Administration (BPA). As a result of BPA's review, Idaho's Average Cost System is as follows:

Jurisdiction	Filed rate (mills/kWh)	Adjusted rate (mills/kWh)
Oregon	22.00	21.78

Idaho states that the Agreement was entered into pursuant to the Pacific Northwest Electric Power Planning and Conservation Act, Pub. L. 96-501. The Agreement provides for the exchange of electric power from Idaho and BPA for the benefit of Idaho's residential and farm customers.

A copy of the filing was served upon BPA and all parties that made comment on Idaho's Appendix 1 Filings.

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 September 19, 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. 83-25034 Filed 9-13-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ST82-34, ST83-133 and ST83-567]

Llano, Inc.; Notice of Technical Conference

September 9, 1983.

Take notice that on Wednesday, October 5, 1983, at 10 a.m., a Technical Conference in the above-captioned dockets will be held in the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street NE, Washington, D.C., regarding rates and charges to be collected pursuant to Section 311 of the Natural Gas Policy Act.

Kenneth F. Plumb,
Secretary.

[FR Doc. 83-25035 Filed 9-13-83; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP83-475-000]

Michigan Wisconsin Pipe Line Co. and Locust Ridge Gas Co.; Notice of Application

September 9, 1983.

Take notice that on August 22, 1983, Michigan Wisconsin Pipe Line Company (Mich Wis), One Woodward Avenue, Detroit, Michigan 48226, and Locust Ridge Gas Company (Locust Ridge), 2002 Gilmer, Longview, Texas 75604, filed in Docket No. CP83-475-000 a joint application pursuant to Section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the acquisition by Locust Ridge and for permission and approval for the abandonment by Mich Wis of 23.2 miles of pipeline and appurtenant facilities in the Holly Ridge area of Louisiana and Mississippi, 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 Mich Wis constructed approximately 23.2 miles of pipeline and appurtenant facilities in the Holly Ridge area of Louisiana and Mississippi to purchase gas reserves in Tensas, Franklin, Catahoula and Concordia Parishes, Louisiana, and Jefferson, Clarborne and Adams Counties, Mississippi, from Locust Ridge. It is further stated that pursuant to the gas purchase agreement Locust Ridge is responsible for causing the gathering of the gas in the area and providing transportation to Mich Wis to a central delivery point near Mich Wis's Holly Ridge compressor station in Tensas Parish, Louisiana. Further it is asserted that Locust Ridge is responsible for all daily routine operations and maintenance of the facilities.

Applicants explain that the pipeline facilities herein would be better utilized as a part of the Locust Ridge system. Therefore, it is asserted that Mich Wis proposes to sell and Locust Ridge proposes to purchase the subject facilities. The cost of such acquisition is asserted to be $1,000.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 30, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) 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 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 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 and permission and approval for the proposed abandonment are 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 Applicants to appear or be represented at the hearing.

Kenneth F. Plumb,
Secretary.

[FR Doc. 83-25036 Filed 9-13-83; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP83-490-000]

National Fuel Gas Supply Corp.; Notice of Application

September 9, 1983.

Take notice that on September 1, 1983, National Fuel Gas Supply Corporation (Applicant), 308 Seneca Street, Oil City, Pennsylvania 16301, filed in Docket No. CP83-490-000 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 to UGI Corporation (UGI), a non-affiliated storage customer of Applicant's affiliate, Penn-York Energy Corporation (Penn-York), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant seeks limited-term authorization to sell up to 1,000,000 Mcf of natural gas to UGI during the period beginning with the granting of the requested authorization and ending on October 31, 1983. Applicant states that no maximum daily delivery quantity would be applicable because delivery would be made by transfer in place in Applicant's facilities, an undivided portion of which are leased to Penn-York and used to render storage service to UGI. Applicant further states it would make such sales on an interruptible basis under a service agreement entered into pursuant to its Rate Schedule I-1. Applicant states that the Rate Schedule I-1 rate is its 100 percent load factor rate and would be $4.0030 per Mcf of gas.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 23, 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 proceedng 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. 83-25037 Filed 9-13-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-799-000]

Niagara Mohawk Power Corp.; Notice of Refund Report

September 9, 1983.

Take notice that on August 31, 1983, Niagara Mohawk Power Corporation ("Niagara"), submitted for filing a Refund Report in compliance with a Commission Order which was issued on August 1, 1983, in Docket No. ER82-799-000. The refund represented the refund and interest for the transmission charges to the Town of Massena.

Niagara states that the refund amount of $29,677.00 is based on the difference between the amount paid to date, $42,807.40 and the $15,000.00 agreed to be paid. Interest is also included in the calculations.

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, DC 20426, on or before September 22, 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. 83-25036 Filed 9-13-83; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Issuance of Decisions and Orders; Week of August 8 Through August 12, 1983

During the week of August 8 through August 12, 1983, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1111, New Post Office Building, 12th and Pennsylvania Ave., NW., Washington, D.C. 20461, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holdiays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

September 8, 1983.

Richard W. Dugan,

Acting Director Office of Hearings and Appeals.

Appeal

Clifford C. Stults, III August 10, 1983, HFA-0165

Clifford C. Stults, III (Stults) filed an Appeal from a denial by the Albuquerque Operations Office of the DOE of a Request for Information which he had submitted under the Privacy Act. In his request Stults sought to obtain information contained in his security clearance file. During the pendency of this Appeal, the Albuquerque Operations Office indicated that it no longer objected to providing Stults with the material which he sought. Accordingly, this Appeal was dismissed.

Motions for Discovery

Consolidated materials, Inc., August 12, 1983, HRD-0121, HRD-0149, HRH-0121

Consolidated Materials, Inc. (Consolidated) filed two Motions for Discovery and a Motion for Evidentiary Hearing in connection with its objections to a Proposed Remedial Order (PRO) issued to it by the ERA Philadelphia Field Office on December 7, 1982. The PRO charges that during the audit period November 15, 1973, through June 19, 1975, Consolidated's predecessors and affiliates violated the regulations pertaining to the resale of petroleum products at 6 CFR Part 150, Subpart L, and 10 CFR Part 212, Subparts F and H. Specifically, the PRO alleges that Consolidated improperly applied the "new item rule" at 6 CFR 150.361 and 10 CFR § 212.111 by determining May 15, 1973 prices for new items by reference to prices published in *Platt's Oilgram*, an industry newsletter.

In its Motion for Discovery directed toward ERA, Consolidated first sought discovery of the agency's contemporaneous constructions of the term "nearest comparable outlet" as used in 10 CFR 212.111(b)(3). The DOE denied this request on the basis that, because general market information given in a publication such as *Platt's Oilgram* is not equivalent to the price charged by an "outlet," this term was not ambiguous as applied to Consolidated. The DOE also denied Consolidated's request that it be permitted to depose all material witnesses on whom ERA intended to rely in support of its determination that Williams Energy Company and Signal Oil and Gas Company were the "nearest comparable outlets" to Consolidated's predecessor firms because no such witnesses existed.

In its Motion for Discovery directed toward Signal Oil and Gas Company, Consolidated requested that Signal produce all documents relating to its purchases and sales of motor gasoline for the months of March, April, and May 1974. The DOE observed that Consolidated's request was so broad that Signal would need to expend an enormous amount of time and effort to respond to it. The DOE concluded that because Signal was not a party to the PRO proceeding and because Consolidated had made no effort to discover similar information from ERA, Signal should not be required to incur such burdens in responding to Consolidated's discovery request. Accordingly, the Motion for Discovery directed toward Signal was denied. The DOE also found, however, that additional information concerning ERA's selection of Signal as a "nearest comparable outlet" was arguably relevant to the proceeding. Therefore ERA was ordered to produce all audit papers reflecting its selection of Signal as a "nearest comparable outlet."

In considering Consolidated's Motion for Evidentiary Hearing, the DOE determined that all but one of the issues about which Consolidated requested to present testimony at an evidentiary hearing were either legal issues or issues irrelevant to the proceeding. Accordingly, Consolidated's requests to present testimony on these matters was denied. The DOE dismissed without prejudice to refiling after the completion of discovery Consolidated's request that it be permitted to present testimony concerning the comparability of Williams and Signal to its predecessor firms.

Plateau, Inc., August 11, 1983, HED-0128

Plateau, Inc. filed a Motion for Discovery in connection with an Application for Exception filed by the Department of the Interior (DOI) on March 23, 1983, Case No. HEE-0063. The firm's discovery request sought materials concerning DOI's sales of royalty crude oil. In considering the Motion, the DOE noted that the DOE procedural regulations do not provide for discovery prior to the objections stage of an exception proceeding and found that no special circumstances existed that would warrant early discovery in this case. Accordingly, the Motion was dismissed without prejudice to a refiling during the objections stage of the proceeding.

Varibus Corporation, August 12, 1983, HRD-0107, HRH-0107

Varibus Corporation filed a Motion for Discovery and a Motion for Evidentiary Hearing in connection with its Statement of Objections to a Proposed Remedial Order that the Economic Regulatory Administration (ERA) issued to the firm on September 19, 1982, Case No. HRO-0093. In its Motion for

Discovery. Varibus requested audit workpapers not previously provided to the firm and DOE documents concerning whether non-product costs available for cost pass-through could be restricted to interest payments to non-affiliated third parties. In considering the Motion for Discovery, the DOE found that (i) Varibus had already received workpapers setting forth the calculations underlying the PRO's finding that overcharges occurred and, therefore, any other audit workpapers, such as those supporting the NOPV, were irrelevant to the PRO proceeding and (ii) the PRO's calculation of the firm's maximum lawful selling price (MLSP) included the maximum amount of non-product costs permitted by the regulations and, therefore, the issue whether interest payments to affiliated third parties would be passed through as non-product costs was irrelevant to the calculation of the firm's MLSP. Accordingly, the Motion for Discovery was denied.

In its Motion for Evidentiary Hearing, Varibus sought the opportunity to present oral testimony and depose an ERA enforcement official with respect to the calculations of: (i) The firm's product in inventory, (ii) the firm's MLSPs, and (iii) the overcharges. In considering the Motion for Evidentiary Hearing, the DOE found that an evidentiary hearing would substantially assist the DOE in resolving any disputes with respect to the correct calculation of the firm's product in inventory. The DOE further found that an evidentiary hearing was not necessary with respect to the actual calculations of the MLSP and overcharge since the only factual dispute with respect to those calculations concerned the correct calculation of the firm's product in inventory. Accordingly, the Motion for Evidentiary Hearing was granted in part.

Supplemental Order

Texas City Refining, Inc., August 12, 1983, HEX-0088

On January 15, 1982, the Office of Hearings and Appeals issued an Order which required Texas City Refining, Inc. (TCR) to purchase entitlements in the amount of $3,952,554 on the next Entitlements Notice issued by the DOE. *Texas City Refining, Inc.*, 9 DOE ¶ 81,016 (1982). The TCR purchase obligation results from the DOE's determination that TCR received excessive entitlement exception relief pursuant to a Decision and Order issued to the firm on June 22, 1978. *Texas City Refining, Inc.*, 2 DOE ¶ 82,006 (1978). The present Supplemental Order, issued *sua sponte*, modifies the January 15, 1982 Order and requires the firm to remit to the DOE escrow account established for this purpose the amount of the excessive exception relief.

Refund Applications

Panhandle Eastern Pipeline Company/ Missouri Self Service Gas Company, August 10, 1983, RF15-2

The DOE issued a Decision and Order concerning an Application for Refund filed by Missouri Self Service Gas Company, a motor gasoline reseller-retailer, which sought a portion of the Panhandle Eastern Pipeline Company consent order fund for itself and a subsidiary, Mutz Oil Company. *See Office of Enforcement*, 9 DOE ¶ 82,569 (1982). Missouri Self Service sought a refund based upon purchases of Panhandle motor gasoline which exceeded the small claim threshold figure of 50,000 gallons per month and therefore submitted detailed information concerning its business operations. After analyzing this information, the DOE concluded that Missouri Self Service and Mutz were injured by the alleged overcharges and should receive a refund based upon the volume of the Panhandle motor gasoline purchases for which it made a showing of injury. Accordingly, the Application for Refund was granted in part and a refund totalling $42,387 plus a proportionate share of accumulated interest was approved.

Standard Oil Company (Indiana)/City Auto Sales Company et al., August 11, 1983, RF21-823 et al.

The DOE issued a Decision and Order concerning 47 Applications for Refund filed by consumers of Amoco middle distillates. All of these firms elected to apply for a refund based upon the presumption of injury and the formulae outlined in *Office of Special Counsel*, 10 DOE ¶ 85,048 (1982). In considering these applications, the DOE concluded that each of the 47 applicants should receive a refund based upon the total volume of their Amoco middle distillate purchases less any volumes purchased during periods not covered by the Amoco consent order or volumes for which an Applicant has already received a direct refund from Amoco. The refunds granted in this proceeding total $14,397.

Standard Oil Company (Indiana)/Elgin, Joliet and Eastern Railway et al., August 12, 1983, RF21-6679 et al.

The DOE issued a Decision and Order concerning Applications for Refund filed by nine end-users that purchased one or more of the following refined petroleum products directly from Amoco: lubricating oils, natural gas liquids, naphtha, industrial greases, residual fuel oil and aviation jet fuel. In considering those applications, the DOE concluded that each of the applicants should receive a refund based upon the total eligible volume of its Amoco refined products purchases multiplied by 100 percent of the volumetric refund amount. The refunds granted in this proceeding total $8,410.

Standard Oil Company (Indiana)/Hamann Oil Co., Inc. et al., August 12, 1983, RF21-2576 et al.

The DOE issued a Decision and Order concerning four Applications for Refund filed by two firms that operate as both wholesalers of Amoco motor gasoline and resellers of Amoco middle distillates. Both of these firms elected to apply for a refund based upon the presumption of injury and the formulae outlined in *Office of Special Counsel*, 10 DOE ¶ 85,048 (1982). In considering these applications, the DOE concluded that the two applicants should receive a refund based upon the total volume of its Amoco motor gasoline and middle distillate purchases. The refunds granted in this proceeding total $1,998.

Standard Oil Company (Indiana)/Michael G. Keevish, August 12, 1983, RF21-7026, RF21-7027, RF21-12005

The DOE issued a Decision and Order concerning three Applications for Refund filed by Michael G. Keevish who operates as a retailer of Amoco motor gasoline as well as a reseller and consumer of Amoco middle distillates. Keevish elected to apply for a refund based upon the presumption of injury and the formulae outlined in *Office of Special Counsel*, 10 DOE ¶ 85,048 (1982). In considering these applications, the DOE concluded that Keevish should receive a refund based upon the total volume of its Amoco motor gasoline and middle distillate purchases. The refunds granted in this proceeding total $314.

Standard Oil Company (Indiana)/Patapsco and Back Rivers Railroad Company, August 12, 1983, RF21-12011

The DOE issued a Supplemental Order concerning an Application for Refund filed by the Patapsco and Back Rivers Railroad Company, a consumer of Amoco middle distillates. The Supplemental Order rescinds a refund erroneously calculated and granted to the firm in *Standard Oil Company (Indiana)/Michigan Avenue Management, Inc.*, 11 DOE ¶ 85,057 (1983). The Decision recalculates the firms's refund based upon the total volume of Patapsco's eligible middle distillate purchases from Amoco. The corrected refund granted in this proceeding is $625.

Standard Oil Company (Indiana)/R. W. Mitchell, Inc., et al, August 9, 1983, RF21-1660 et al.

The DOE issued a Decision and Order concerning 97 Applications for Refund filed by consumers of Amoco motor gasoline. All of these firms elected to apply for a refund based upon the presumption of injury and the formulae outlined in *Office of Spcecial Counsel*, 10 DOE ¶ 85,048 (1982). In considering these applications, the DOE concluded that each of the 97 applicants should receive a refund based upon the total volume of their Amoco motor gasoline purchases. The refunds granted in this proceeding total $94,432.

Standard Oil Company (indiana)/State of Maryland, August 10, 1983, RF21-8739 et al.

The DOE issued a Decision and Order concerning an Application for Refund filed by the State of Maryland on behalf of state and local governmental entities that were end-users of Amoco motor gasoline, middle distillates, natural gas liquids, and residual fuel oil. In considering the application, the DOE concluded that each of the governmental entities should receive a refund based upon the total volume of its eligible Amoco petroleum product purchases. The refunds granted in this proceeding total $7,933.

Worldwide Energy Corp./State of Oklahoma, August 12, 1983, RQ31-9

The DOE issued a Decision and Order concerning a Second Stage Refund Application filed by the State of Oklahoma (Oklahoma) pursuant to *Office of*

Enforcement, 11 DOE ¶ 85,023 (1983). In the *Office of Enforcement* decision, the OHA determined that Oklahoma would receive 17.87 percent of an escrow fund obtained as a result of a consent order entered into with Worldwide Energy Corporation upon approval by the Office of Hearings and Appeals (OHA) of a plan for use of the funds to benefit Oklahoma consumers of natural gas liquid products. In considering the application, the OHA concluded that Oklahoma's plan, which proposed a program to inform the public of the energy and monetary savings which can be realized by consumers practicing basic car maintenance, contained all the elements necessary for approval. The DOE therefore directed that 17.87 percent of the Worldwide funds, plus a proportionate share of the interest accrued, be disbursed to the State of Oklahoma.

Dismissals

The following submissions were dismissed:

Name	Case No.
Davies Oil Co., Inc.	RF21-7926.
Stoel, Rives, Boley, Fraser and Wyse	HFA-0174.
Layman Taylor	RF21-10440.
Tomahawk Oil Co.	RF21-10652.

[FR Doc. 83-25021 Filed 9-13-83; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed; Office of Hearings and Appeals; Week of August 12 Through August 19, 1983

During the week of August 12 through August 19, 1983, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461.

Richard W. Dugan,

Acting Director, Office of Hearings and Appeals.

September 6, 1983.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of August 12 through August 19, 1983]

Date	Name and location of applicant	Case No.	Type of submission
July 29, 1983	Shockley's Exxon Service, Delano, California	HEE-0076	Price Exception. If granted: Shockley's would receive retroactive exception relief from the provisions of 10 CFR Part 212, for the period August 1, 1979 through October 16, 1979, which would excuse the firm from having to repay overcharges alleged in a November 8, 1979 Proposed Remedial Order.
Aug. 15, 1983	Hideca Petroleum Corporation, Washington, D.C.	HRD-0157	Motion for Discovery. If granted: Discovery would be granted to Hideca Petroleum Corporation in connection with a Statement of Objections submitted in response to the Proposed Remedial Order (Case No. HRO-0150) issued to Hideca Petroleum Corporation.
Do	Y. Shanmugadhasan, Boron, California	HFA-0177	Appeal of an Information Request Denial. If granted: The July 28, 1983, Freedom of Information Request Denial issued by the San Francisco Operations Office would be rescinded, and Y. Shanmugadhasan would receive complete access to documents entitled "Weapon Development During June 1956" (UCRL-4725) and "Weapon Development During June 1958", (UCRL-5280).
Aug. 16, 1983	J. W. Akin, Wichita Falls, Texas	HRD-0156 & HRH-0156.	Motion for Discovery and Request for Evidentiary Hearing. If granted: Discovery would be granted and an evidentiary hearing would be convened in connection with the Statement of Objections submitted by J. W. Akin in response to the Proposed Remedial Order (Case No. HRO-0068) issued to Engineered Operating Company.
Aug. 18, 1983	Clean Machine, Inc., San Francisco, California	HRD-0158	Motion for Discovery. If granted: Discovery would be granted to Clean Machine, Inc. in connection with the Statements of Objections submitted in response to the Remedial Orders (Case No. HRO-0048 & HRO-0049) issued to Clean Machine, Inc.
Aug. 19, 1983	Kern Oil & Refining Company, Bakersfield, California	HUE-0078	Exception to the Entitlements Program. If granted: Kern Oil & Refining Company would receive a portion of the Dow Chemical, USA escrow account (HEX-0086), equal in value to the firm's entitlement exception relief.
Do	U.S. Department of Interior, Washington, D.C.	HEE-0077	Exception From the Certification Rules. If granted: The Department of Interior would receive an exception from certain certification requirements applicable to first sellers of crude oil as set forth in 10 CFR Part 212, with respect to its sales of offshore crude oil.

REFUND APPLICATIONS RECEIVED

[Week of August 12, 1983 to August 19, 1983]

Date	Name of refund proceeding/name of refund applicant	Case No.
8/15/83	Palo Pinto/Ohio	RQ5-12.
8/15/83	Palo Pinto/Georgia	RQ5-13.
8/15/83	Palo Pinto/New Mexico	RQ5-14.
8/15/83	Palo Pinto/US Virgin Islands	RQ5-15.
8/15/83 thru 8/19/83	Amoco Refund Applications	RF21-12162 thru RF21-12168.

[FR Doc. 83-25002 Filed 9-13-83; 8:45 am]

BILLING CODE 6450-01-M

Southwestern Power Administration

[Rate Order SWPA-11]

Order Confirming and Approving on an Interim Basis Extension of Existing Transmission Rate Schedule

AGENCY: Department of Energy.

ACTION: Notice of rate order.

SUMMARY: The Assistant Secretary for Conservation and Renewable Energy, under Delegation Order No. 0204-33, as amended, has confirmed and approved, on an interim basis, the extension of the existing transmission rate for the Southwestern Power Administration. The extension becomes effective October 1, 1983, and continues in effect until March 31, 1984, or until a substitute rate is approved.

DATES: Extension of rates on an interim basis effective October 1, 1983.

FOR FURTHER INFORMATION CONTACT:

Walter M. Bowers, Chief, Division of Power Marketing, Southwestern Power Administration, Department of Energy, P.O. Box 1619, Tulsa, Oklahoma 74101; (918) 581-7529; or

Fred A. Sheap, Office of Power Marketing Coordination, Department of Energy—CE-91, James Forrestal Building, 1000 Independence Avenue, SW., Rm. 6B-104, Washington, DC 20585; (202) 252-1040.

SUPPLEMENTARY INFORMATION: The Federal Energy Regulatory Commission (FERC) by Order issued July 31, 1981, confirmed and approved Transmission Rate Schedule TDC-2 for a period ending September 30, 1983.

A new transmission rate is being developed for submission shortly to the FERC for approval on a final basis.

The extension of rates hereby approved is subject to approval on a final basis by the FERC.

Issued in Washington, DC, August 31, 1983.

Joseph J. Tribble,

Assistant Secretary, Conservation and Renewable Energy.

Assistant Secretary for Conservation and Renewable Energy

[Rate Order No. SWPA-11]

In the matter of Southwestern Power Administration—System Transmission Rate.

Order Extending Confirmation and Approval of System Transmission Rate on an Interim Basis

August 31, 1983.

Pursuant to Sections 302(a) and 301(b) of the Department of Energy Organization Act, Pub. L. 95-91, the functions of the Secretary of the Interior and the Federal Power Commission under Section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, relating to the Southwestern Power Administration (SEPA) were transferred to and vested in the Secretary of Energy. By Delegation Order No. 0204-33, effective January 1, 1979, 43 FR 60636 (December 28, 1978), the Secretary of Energy delegated to the Assistant Secretary for Resource Applications the authority to develop power and transmission rates, acting by and through the Administrator, and to confirm, approve, and place in effect such rates on an interim basis and delegated to the Federal Energy Regulatory Commission (FERC) the authority to confirm and approve on a final basis or to disapprove rates developed by the Assistant Secretary under the delegation. Due to a Department of Energy organizational realignment, Delegation Order No. 0204-33 was amended, effective March 19, 1981, to transfer the authority of the Assistant Secretary for Resource Applications to the Assistant Secretary for Conservation and Renewable Energy. This rate order is issued pursuant to the delegation to the Assistant Secretary for Conservation and Renewable Energy.

Background and Discussion

Transmission service for the Southwestern Power Administration is presently provided under Transmission Rate Schedule TDC-2. This rate was confirmed and approved by the FERC by Order issued July 31, 1981, for a period ending September 30, 1983. SWPA is in the process of preparing a new Transmission Rate Schedule for submission to the FERC for confirmation and approval and has requested that the current rates be approved on an interim basis for an additional 6 months to allow time for SWPA to complete development of the rates and to allow the FERC to examine and approve the rates.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm and approve on an interim basis, effective October 1, 1983, an extension of existing Transmission Rate Schedule TDC-2 for the Southwestern Power Administration. The Rate Schedule, copies attached, as confirmed and approved hereby, shall remain in effect through March 31, 1984, or until a substitute rate is approved.

Issued at Washington, DC, this 31st day of August 1983.

Joseph J. Tribble,

Assistant Secretary Conservation and Renewable Energy.

Southwestern Power Administration

[Rate Schedule TDC-2]

Wholesale Rates for Transmission and/or Displacement of Non-Federal Power and Energy Over the System of Southwestern

Effective: As of January 1, 1981, and thereafter in accordance with Rate Order No. SWPA-7 of the Assistant Secretary for Resource Applications issued December 11, 1980.

Applicable: In the marketing area of the Southwestern Power Administration (Southwestern) described generally as the States of Arkansas, Kansas, Louisiana, Missouri, Oklahoma, and Texas to wholesale power customers of Southwestern and other electric utilities whose transmission facilities interconnect with the transmission facilities of Southwestern. Non-federal power and energy will be, by contract, transmitted and/or displaced over those portions of the transmission and related facilities owned and operated by Southwestern (System of Southwestern) in which the Administrator, Southwestern, in his sole judgment, determines that transmission and transformation capacities are and will be available in excess of that required to market power and energy pursuant to Section 5 of the Flood Control act of 1944 (58 Stat. 890).

Character and Conditions of Service: Non-federal power and energy will be received into the System of Southwestern as scheduled by Southwestern, transmitted and/or displaced between two points in the system of Southwestern and delivered at the voltage level of the point or points of delivery as 3-phase alternating current, at approximately 60 hertz as specified by contract. Energy losses will be the responsibility of the customer and will be provided to Southwestern as specified by contract.

Transmission Demand: The Transmission Demand for each point of delivery for any month shall be the number of kilowatts equal to either—

(i) The maximum rate in kilowatts at which non-federal power and energy was delivered from the System of Southwestern at such point of delivery during any sixty-minute period during such month; or

(ii) The maximum Transmission Demand established at such point of

delivery at any time during the preceding eleven months,

whichever quantity is greater.

Interruptible Transmission:

A. *Availability:* Interruptible Transmission is transmission and transformation capability that could be utilized for economy energy interchange and in emergencies on a short-term basis of less than one month at such times and in such amounts as requested and as Southwestern determines to be available.

B. *Interruptible Transmission Demand:* The Interruptible Transmission Demand at each point of delivery for any day shall be the maximum rate of delivery in kilowatts during any sixty-minute period of such day.

Rates: Compensation due Southwestern for the transmission and/or displacement over the System of Southwestern of non-federal power and energy shall be computed at the following rates:

(i) $0.25 per kilowatt per month of Transmission Demand for the transmisison and/or displacement of non-federal power and associated energy to point or points of delivery from the Systerm of Southewestern at 138 kV or 161 kV.

(ii) $0.40 per kilowatt per month of Transmission Demand for the transmission and/or displacement of non-federal power and associated energy to point or points of delivery from the System of Southewestern at 69 kV.

(iii) $0.55 per kilowatt per month of Transmission Demand for the transmission and/or displacement of non-federal power and associated energy to point or points of delivery from the System of Southwestern at voltages of less than 69 kV.

(iv) 5% of (i), (ii), or (iii) amounts above per kilowatt per day for the Interruptible Transmission Demand at a given delivery voltage as applicable.

(v) $0.0008 per kilowatt-hour for the transmission and/or jdisplacement of non-federal energy without associated non-federal power to point or points of delivery from the System of Southwestern.

When power and/or enery is delivered at two or more voltages, the delivery voltage(s) shall be as specified by contract.

Minimum Monthly Bill: The minimum bill for any month shall be equal to the rate times the sum of the Transmission Demands for each point or points of delivery for such month. There shall be no minimum monthly bill for interruptible transmission service.

Adjustment for Power Factor: An hourly power factor shall be maintained at each point of delivery of not less than 95% lagging. If during any hour in any particular month it is determined that at any point or points of delivery the hourly power factor at such point of delivery was less than 95% lagging, the Transmission Demand for such particular month for each such point or points of delivery shall be adjusted in accordance with the formula—

$$ATD = \frac{TD \times 0.95}{PF}$$

with the factors defined as follows:

ATD = The adjusted Transmission demand for a particular point of delivery for any month during which the power factor was determined to be less than 95% lagging.

TD = The Transmission Demand for such month.

PF = The power factor determined for such month.

[FR Doc. 83-25020 Filed 9-13-83; 8:45 am]
BILLING CODE 6450-01-M

[PP 1G2463/T417; PH-FRL 2431-5]

Thiophanate-Methyl; Establishment of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established temporary tolerances for the combined residues of the fungicide thiophanate-methyl, its oxygen analog, and its metabolites in or on certain raw agricultural commodities. These temporary tolerances were requested by Pennwalt Corporation.

DATE: These temporary tolerances expire January 31, 1985.

FOR FURTHER INFORMATION CONTACT: Henry Jacoby, Product Manager (PM) 21, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 229, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703-557-1900).

SUPPLEMENTARY INFORMATION: Pennwalt Corporation, Agchem Division, Three Parkway, Philadelphia, PA 19102, has requested, in pesticide petition PP 1G2463 the establishment of temporary tolerances for the combined residues of the fungicide thiophanate-methyl (dimethyl [(1,2-phenylene)bis(iminocarbonothioyl)]bis [carbamate]), its oxygen analog [dimethyl-4,4'-O-phenylene)(allophanate)] and its benzimidazole-containing metabolites (calculated as thiophanate methyl) in or on the raw agricultural commodities onions (green and dry) at 3.0 parts per million (ppm) and wheat, wheat straw, and wheat forage at 0.2 ppm.

These temporary tolerances will permit the marketing of the above raw agricultural commodities when treated in accordance with the provisions of the experimental use permit 4581-EUP-35 which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of the temporary tolerances will protect the public health. Therefore, the temporary tolerances have been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Pennwalt Corp. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire January 31, 1985. Residues not in excess of these amounts remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience or scientific data with this pesticide indicate that such revocation is necessary to protect the public health.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 610-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in

the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(j), 68 Stat. 516, (21 U.S.C. 346a(j)))

Dated: July 17, 1983.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 83-24667 Filed 9-13-83; 8:45 am]

BILLING CODE 6560-50-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-59133A; (TSH-FHL 2431-6)]

Esterified Copolymer of Alpha Olefins and Maleic Anhydride Approval of Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's aproval of TM-83-76, an application for test marketing exemption (TME) under section 5(h)(6) of the Toxic Substances Control Act (TSCA). The test marketing conditions are described below.

EFFECTIVE DATE: August 31, 1983.

FOR FURTHER INFORMATION CONTACT: Margaret J. Stasikowski, Deputy Director, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-345, 401 M St. SW., Washington, DC. 20460, (202-382-3938).

SUPPLEMENTARY INFORMATION: Section 5 (h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and to permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities.

EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the application, and for the time period specified below, will not present any unreasonable risk of injury to health or the environment. Production volume, number of workers exposed to the new chemical, and the levels and duration of exposure must not exceed that specified in the application. All other conditions described in the appplication must be met. The following additional restrictions apply:

1. If the substance is shipped, the applicant must maintain records of the date(s) of shipment(s) to each customer and the quantities supplied in each shipment, and must make these records available to EPA upon request.

2. A bill of lading accompanying each shipment must state that use of the substance is restricted to that approved in the TME.

TME 83-76

Date of Receipt: July 29, 1983.

Notice of Receipt: August 12, 1983 (48 FR 36647).

Applicant: Confidential.

Chemical: Esterified copolymer of alpha olefins and maleic anhydride (Generic).

Use: Modifying agency (Generic).

Production Volume: 40,000 lbs.

Number of Customers: 1.

Worker Exposure: Manufacturer: dermal, 12 workers, 8 hours/day for 20 days. Processing: dermal, 1-2 workers, 8 hours/day for up to 10 days.

Test Marketing Period: 3 months.

Commencing on: August 31, 1983.

Risk Assessment: The Agency indentified no significant potential health or environmental effects of concern. Human exposure and environmental release during manufacture, processing, and use, under the conditions specified in the application are expected to be low. Therefore, the Agency finds that the TME substance will not present an unreasonable risk to health or the environment during test marketing under the conditions specified in the application.

Public Comments: None.

The Agency reserves the right to rescind approval of an exemption should any new information come to its attention which cause significant doubt on its finding that the test marketing activities will not present an unreasonable risk to health or the environment.

Dated: August 31, 1983.

Marcia E. Williams,

Acting Director, Office of Toxic Substances.

[FR Doc. 83-24989 Filed 9-13-83; 8:45 am]

BILLING CODE 6560-50-M

[Region 6; FRL-2432-1]

Approval of PSD Permits; Smackover Shell, Ltd. et al.

Notice is hereby given that the Environmental Protection Agency (EPA), Region 6, has issued Prevention of Significant Deterioration (PSD) permits to the following:

1. PSD-TX-55M-2; Smackover Shell, Ltd.; natural gas processing and sulfur recovery plant located approximately 4 miles southwest of Eustace, Henderson County, Texas; modifies the permit to increase permitted SO_2 emissions from 138.1 lbs/hr to 250 lbs/hr; issued on October 15, 1982.

2. PSD-TX-59M-1; American Petrofina Company of Texas; petroleum refinery located in Port Arthur, Jefferson County, Texas; modifies the permit to include NO_x emissions of the HDS-Catalytic Reformer and Aromatics Complex at the refinery; issued on February 7, 1983.

3. PSD-TX-63M-1 and PSD-TX-63M-2; Texas Industries, Incorporated; Portland cement plant located approximately 2 miles southwest of Hunter, Comal County, Texas; TX-63M-1 modifies the permit to exempt Texas Industries from the initial particulate matter performance test for the finish mills, if a "No Visible Emission" opacity limitation is met, and added 10% opacity limitations for the two kilns and two clinker coolers; issued on July 17, 1981: TX-63M-2 modifies the permit to change the allowable emissions of nitrogen oxides from 262.8 tons/year to 766.5 tons/year, the sulfur dioxide emissions from 2102.4 tons/year to 65.7 tons/year, and the particulate emissions from 177.4 tons/year to 183.1 tons/year; issued on April 7, 1983.

4. PSD-TX-75M-1; Gulf Oil Company; petroleum refinery located on Highway 23, approximately 12 miles south of Belle Chasse, Plaquemines Parish, Louisiana; modifies the permit to reflect the actual emissions from the CO boiler based on stack tests; issued on June 2, 1983.

5. PSD-LA-77M-1; Boise Southern Company; pulp and paper manufacturing facility located approximately five miles west of DeRidder, Beauregard Parish, Louisiana; modifies the permit by changing the monitoring plan for reporting wet scrubber operational data; issued on April 6, 1983.

6. PSD-LA-91; Louisiana Power and Light; authorizes the construction of a coal-fired steam electric generating facility, consisting of two 800 MW boilers and two auxiliary boilers, to be located on the Mississippi River, approximately one-fourth of a mile west of Romeville, St. James Parish, Louisiana; issued on April 19, 1982.

7. PSD-AR-101M-2 Great Lakes Carbon Corporation; graphite electrode manufacturing facility located approximately 2.5 miles southwest of Altus, Franklin County, Arkansas; modifies the permit to include a 3% opacity limitation for the monitor load/unload building and a "No Visible Emissions" limitation for the remaining emission points. In addition, the

company will be exempt from the particulate matter initial performance testing by Method 5 if compliance with the opacity limitations is determined by Method 9 opacity testing; issued on March 12, 1982.

8. PSD–LA–117; Southwestern Electric Power Company; authorizes the construction of a 1440 MW coal-fired steam electric generating facility to be located on Highway 84, approximately ½ mile southeast of Naborton, De Soto Parish, Louisiana; issued on September 1, 1981.

9. PSD–TX–119M–1; Amoco Oil Company; Fluid Catalytic Cracking Unit (FCCU), an ultra forming unit, and a coking unit facility located at 2401 Fifth Avenue South in Texas City, Galveston, County, Texas; modifies the permit to: (1) Eliminate the requirement for sampling SO_2 from Ultraformer No. 3 and the Coker Resid Preheat System if a continuous H_2S monitor is used, a continuous fuel flow meter is installed, and the readings from both instruments are correlated on an hourly basis to insure that the SO_2 emission limit is not exceeded (2) Eliminate the requirement for stack testing of particulates for these two sources provided there are no visible emissions from these units, and (3) Remove the initial performance testing requirements for NO_x and CO from the Coker Resid Preheat System provided there are no visible emissions from the unit; issued on December 18, 1981.

10. PSD–LA–125M–1; Southern Natural Gas Company; natural gas compressor station lacated on State Highway 16, approximately 2 miles southwest of Franklinton, Washington Parish, Louisiana; modifies the permit to correct an error in computation of the emission rate for NO_x; issued on June 2, 1983.

11. PSD–TX–137M–1; Southwestern Refining Company; petroleum refinery located off Interstate Highway 37 on Nueces Bay Boulevard in Corpus Christi, Nueces County, Texas; modifies the permit to reflect in increased feed rate of 37,000 BPD from 28,000 BPD; issued on May 20, 1983.

12. PSD–TX–138M–1; Chaparral Steel Company; steel manufacturing plant located in Midlothian, Ellis County, Texas; modifies the permit to: (1) Remove the sampling requirements for the existing facilities built in 1974 and 1975, (2) Change emission rates to reflect those permitted by the Texas Air Control Board (TACB), and (3) Have the permit reflect the same sampling provisions as required by the TACG construction permits; issued on February 2, 1982.

13. PSD–TX–139M–2; Liquid Energy Corporation; crude/condensate fractionating facility located on U.S. Highway 380, approximately 2 miles west of Bridgeport, Wise County, Texas; modifies permit to change the number of allowable fugitive emission sources from five to twenty-six; issued on July 24, 1981.

14. PSD–LA–152M–2; Sid Richardson Carbon and Gasoline Company; carbon black production facility located in Addis, West Baton Rouge Parish, Louisiana; modifies the permit to amend the SO_2 emission rates of 3 baghouses and 4 reactors (Although the SO_2 emission rates for 2 reactors are higher than specified in PSD–LA–152M–1, total SO_2 emissions will be reduced.); issued on December 3, 1982.

15. PSD–AR–153M–1; Arkansas Eastman Company; intermediate organic chemicals plant located in Batesville, Independence County, Arkansas; modifies the permit to: (1) Revise the opacity limitation of emission points (b) through (k) from 10 percent to "No Visible Emissions" and use compliance with the opacity limitation as evidence of compliance with the particulates mass emission limit (2) Delete the SO_2 emission limitation from emission points (c), (e), and (g), and (3) Waive the initial performance test on emission points (d), (f), and (h) if the company demonstrates compliance with the SO_2 mass emission rate for emission point (b); issued on February 10, 1982.

16. PSD–NM–156M–1; Warren Petroleum Company; Vada natural gas processing plant located approximately 18 miles northwest of Tatum, Lea County, New Mexico; modifies the permit to increase the SO_2 emission limt from the acid gas flare from 190 lb/hr to 703 lb/hr, and increase the height from 100 feet to 175 feet; issued on December 23, 1981.

17. PSD–TX–185M–1; Texas Eastman Company; synthesis gas plant located approximately 4 miles southeast of Longview, Harrison County, Texas; modifies the permit to: (1) Replace the requirement to use Method 7 NO_x testing with the requirement to use Method 20 in Specific Condition 2, and (2) Delete Specific Condition 4, which required the use of continuous oxygen monitors on each compressor and the reformer furnace (These changes resulted in no emission increase of any pollutant.); issued on April 20, 1982.

18. PSD–LA–199; Tenneco Oil Company; petroleum refinery located on the east bank of the Mississippi River in Chalmette, St. Bernard Parish, Louisiana; authorizes the modification of the existing refinery by the addition of several new unitis and the shut down or modification of some existing units to provide the operational flexibility and capacity to process heavy crude oils and increase the production of gasoline, fuel oils, and saleable coke; issued on December 23, 1981.

19. PSD–TX–206M–1; Champlin Petroleum Company; natural gas processing plant located approximately 3½ miles east of Carthage, Panola County, Texas; modifies the permit to: (1) Eliminate Special Condition 5 which contained an implied CO emission limitation (CO emissions were not sufficient to require PSD analysis), and (2) Revise Special Condition 1 to change the NO_x emission rate for units 79–17 and 79–18 from 24 lb/1000 hp-hr to 22.5 lb/1000 hp-hr; issued on June 11, 1982.

20. PSD–TX–211M–1; United Gas Pipeline; natural gas compressor station located on Highway 59 in Carthage, Panola County, Texas; Modifies the permit to: (1) Remove emission points (a) and (b) from the permit (PSD does not apply to these engines), (2) Change the 1000 hp designation from a maximum to a nominal rating, and (3) Replace Condition 4, which requires permitter to adjust and operate engines so that the lb/1000 hp-hr limit in Condition 1 is not exceeded, with a condition that requires a monthly check of oxygen content of the flue gas and ignition timing; issued on August 12, 1982.

21. PSD–TX–212aM–1; Dorchester Refining Company; tank truck loading facility located at the refinery on West First Street in Mount Pleasant, Titus County, Texas; modifies the permit to change Condition 3 to allow operation 7 days a week instead of 6; issued on December 18, 1981.

22. PSD–TX–214M–1; Gulf Oil Company, U.S.; crude distillation unit at the petroleum refinery located in Port Arthur, Jefferson County, Texas; modifies the permit to: (1) Include the requirement that heater AVU 148 be taken out of service upon startup of CDU 1944, and (2) Limit the fuel firing rate of AVU 144 to 538,559 ft^3/hr until the startup of CDU 1944; issued on October 13, 1981.

23. PSD–TX–226M–1; PSD–TX–226M–2 and PSD–TX–226M–3; Formosa Plastics Corporation, U.S.A.; an ethylene dichloride (EDC), vinyl chloride monomer (VCM), and polyvinyl chloride (PVC) production plant located at 101 Formosa Drive, Point Comfort, Texas; TX–226M–1 modifies the permit to add two gas holding tanks; issued on April 10, 1981; TX–226M–2 modifies the permit to: (1) Change the NO_x emission limitation for emission points (a) through (e) from 0.12 lb/MMBtu to 0.11 lb/MMBtu, (2) Change the heat input from 30 MMBtu/hr to 21 MMBtu, the NO_x

emission limitation from 0.12 lb/MMBtu to 0.18 lb/MMBtu and raise the hydrocarbon emission limitation from 0.0029 lb/MMBtu to 0.004 lb/MMBtu for emission points (f) and (g). (3) Delete the NO_x emission limitation from emission point (i), since the PVC dryer will use steam and hot water and will not require natural gas firing. (4) Change emission point (j), now emission points (j) and (k), to show two EDC crackers with heat inputs of 57 MMBtu/hr each instead of one VCM cracker with a heat input of 100.7 MMBtu/hr. The rest of the emission points were redesignated, from (k) through (s) to (l) through (t), and (5) Lower boiler stack height from 150 feet to 50 feet; issued on May 4, 1981: TX-226M-3 modifies the permit to amend the hydrocarbon emission limitation to allow a 400 ppm VCM residue in the PVC slurry in conformance with the NESHAP-VCM standards while maintaining an 85 ppm annual average. This modification also includes a formula for determining the annual VCM emission rate, and a requirement for daily monitoring and recording of the VCM content; issued on November 18, 1981.

24. PSD-TX-233M-1 and PSD-TX-233M-2; Cameron Iron Works, Inc.; steel production facility located at 22301 Highway 290 in Houston, Harris County, Texas; TX-233M-1 modifies the existing permit, which authorized the addition of a vacuum arc degassing/vacuum oxygen decarburization (VAD/VOD) furnace, by revising Specific Condition 5 to allow operation of the permitted facility 7 days a week instead of 6; issued on October 13, 1981: TX-233M-2 modifies the permit to allow the VAD cycle only to operate up to 11 heats/day, 256 heats/month and 3072 heats/year; issued on December 10, 1982.

25. PSD-TX-234M-1; Houston Lighting and Power Company; 550 NW subbituminous coal-fired steam electric generating unit located off Robbs Prairie Road, approximately 3 miles southwest of Thompsons, For Bend County, Texas; modifies the permit to: (1) Allow enforcing of NO_x emissions on a 30-day rolling average and SO_2 emissions on a 3 hour rolling average, (2) Replace the requirement for a flue gas oxygen meter with carbon dioxide and carbon monoxide monitors, and (3) Delete emissions points (b) through (g) in Specific Condition 1 of the permit since the ownership and operation of all coal handling facilities has been transferred to Utility Fuels, Inc.; issued on November 12, 1981.

26. PSD-AR-240M-1; Endevco, Incorporated; natural gas sweetening plant located on State Highway 134, approximately eight miles northeast of Fouke, Miller County, Arkansas; modifies the permit to: (1) Change emission point (c) from a flare to an incinerator, (2) Change test Method 15, for determining compliance with the sulfur dioxide emission limitation for the flare, to Method 6, which is more appropriate for testing from the incinerator stack, and (3) Delete all opacity limitations, and opacity testing and monitoring requirements, as these limitations are not appropriate for facilities permitted for sulfur dioxide only; issued on December 3, 1981.

27. PSD-TX-241M-1; Marathon Petroleum Company; petroleum refinery located on Loop 197 South, approximately one mile south of the intersection of 6th Street and Texas Street, Texas City, Galveston County, Texas; modifies the permit to delete: (1) The nitrogen oxide emission limitations for both natural gas and oil firing in Specific Condition 1, (2) The Method 7 testing requirements of Specific Condition 2, and (3) The flue gas oxygen monitoring requirements (Specific Condition 3 in entirety); issued on October 4, 1982.

28. PSD-TX-246; Anheuser-Busch, Incorporated; brewery located at 775 Gellhorn Drive, Houston, Harris County, Texas; authorizes the expansion of the existing facility from 3 million to approximately 10 million barrels per year; issued on September 11, 1981.

29. PSD-LA-250M-1; Uniroyal Chemical; chemical production facility located at the Geismar Industrial Complex, Geismar, Ascension Parish, Louisiana; modifies the permit to delete all requirements set forth in PSD-LA-250 dealing with particulate matter and sulfur dioxide; issued on April 23, 1982.

30. PSD-LA-252M-1; Arizona Chemical Company; refining of liquid waste by-products from paper mills facility located at the Springhill Complex near Cullen, Webster Parish, Louisiana; modifies the permit to: (1) Raise the CO emission limitation from 3.6 lb/hr to 32 lb/hr as this represents BACT operation for this boiler, and (2) Include a provision in the permit to allow exceedances of the mass emission limitations for periods of soot blowing not to exceed six times per day and twenty minutes per episode; issued on January 28, 1982.

31. PSD-TX-256; United States Gypsum Company; lime manufacturing plant located on Wald Road near Solms Road, approximately 5 miles south of New Braunfels, Comal County, Texas; authorizes modification to the existing plant by construction of a coal-fired rotary kiln, a hydrator and auxiliary equipment; issued on February 17, 1982.

32. PSD-AR-271aM-1; Great Lakes Carbon Corporation; graphite electrode plant located approximately 2½ miles southwest of Altus, Franklin County, Arkansas; modifies the permit to reduce the 20% opacity to "No Visible Emissions" for the permitted emission points. Demonstration of compliance with the opacity limitations shall be presumed as evidence of compliance with the particulate matter mass emission limitations; issued on March 16, 1982.

33. PSD-TX-276M-1; Diamond Shamrock Corporation; chlorine caustic facility at the Battleground Plant located at the intersection of State Highway 134 and State Park Road 1836 in LaPorte, Harris County, Texas; TX-276 authorized the modification of the existing plant by construction of a 313 megawatt combined cycle power generating facility; TX-276M-1 completely revises the permit so that the Specific Conditions agree with the Special Provisions of the Texas Air Control Board permit C-7647; issued on September 22, 1982.

34. PSD-TX-284M-1 and PSD-TX-284M-2; Badische Corporation; organic chemical manufacturing plant located at 602 Copper Road in Freeport, Brazoria County, Texas: TX-284M-1 modifies the permit to include maximum allowable mass SO_2 emission limitations based upon the maximum capacity of the incinerator instead of the average capacity; issued August 5, 1981: TX-284M-2 modifies the permit to: (1) Revise Specific Condition 1 to allow soot blowing of the incinerator boiler four times per day instead of the permitted six times per 30 days, and (2) Remove the requirement in Specific Condition 1 to notify the permitting authority prior to the commencement of soot blowing; issued January 22, 1982.

35. PSD-LA-286aM-1; Hill Petroleum Company; petroleum refinery located on the west bank of the Atchafalaya River, on State Highway 105, south of Krotz Springs, St. Landry Parish, Louisiana; modifies the permit to: (1) Reflect an increase in hydrocarbon emission rates for some of the storage tanks, and (2) Remove the requirement for a thermal incineration system on the gasoline loading docks due to company's contention that a safety hazard exists for this emission point as permitted; issued on April 5, 1982.

36. PSD-TX-290; PPG Industries, Incorporated; authorizes the construction of a fiber glass manufacturing facility to be located on Interstate Highway 20, approximately 6

miles west of Midland, Midland County, Texas; issued on May 27, 1981.

37. PSD–TX–299; Gulf Oil Chemicals; authorizes the construction of a low density/high density polyethylene plant on Highway 185, approximately 13 miles south of Victoria, Victoria County, Texas; issued on August 17, 1981.

38. PSD–TX–302; Exxon Chemical Americas; Baytown Olefins Plant located at 3525 Decker Drive in Baytown, Harris County, Texas; authorizes the expansion of the existing facility by the addition of three 275 MMBtu/hr natural gas-fired cracking heaters; issued on July 30, 1981.

39. PSD–LA–305; Gulf States Utilities; Roy Nelson Generating Station located on Highway 90, approximately 8 miles northwest of Lake Charles in Westlake, Calcasieu Parish, Louisiana; authorizes modification of the existing station by installation of one combustion turbine and two coal gasifiers; issued on July 24, 1981.

40. PSD–TX–307a; Monsanto Company; Chocolate Bayou petrochemical plant located approximately 12 miles southeast of Alvin, Brazoria County, Texas; authorizes modification of the plant by the construction of a methionine hydroxy analogue facility; issued on August 26, 1981.

41. PSD–TX–313; Houston Pipeline Company; Bammel natural gas compressor station located on Kuykendahl Road, approximately 0.8 of a mile southeast of Bammel, Harris County, Texas; authorizes modification of the station by the addition of four natural gas-fired internal combustion engines and 2 additional dehydrators; issued on April 30, 1981.

42. PSD–AR–317; Georgia-Pacific Corporation; Kraft pulp mill located on First Avenue in Crossett, Ashley County, Arkansas; modifies permit to allow firing of natural gas or #2 fuel oil in the two wood-fired boilers during startup and emergency conditions not to exceed a maximum of 438 hours per year; issued on October 1, 1981.

43. PSD–LA–318; Good Hope Refineries, Inc.; petroleum refinery located on Highway 267 in Good Hope, St. Charles Parish, Louisiana; authorizes the expansion of the refinery so that processing capability will exist for up to 350,000 barrels per standard day of crude oil; issued on May 8, 1981.

44. PSD–TX–324 and PSD–TX–324M–1; Saber Refining Company; petroleum refinery located at 6560 Up River Road in Corpus Christi, Nueces County, Texas; TX–324 authorizes the expansion of the refinery to process heavy Arabian crude oil; issued on May 8, 1981: TX–324M–1 modifies the permit to reflect an increase in the carbon monoxide and particulate emission limits which resulted from the use of revised design data for the citrate scrubber; issued on March 18, 1983.

45. PSD–TX–325 and PSD–TX–325M–1; West Texas Utilities Company; T–325 authorizes the construction of a 640 MW coal-fired steam generating station located off State Highway 433, approximately 3.8 miles southwest of Oklaunion, Wilbarger County, Texas; issued on October 14, 1981: TX–325M–1 modifies the permit to revise: (1) Specific Condition 1 to reflect changes in the plant design, (2) Specific Condition 2, 7(a) and 7(d), to include the new point identification used in Condition 1, and (3) Specific Condition 7(c) to delete the requirement for wet suppression at emission points (g), (h) and (i) and substitute the requirement for bag filter collections at these points; issued on May 3, 1982.

46. PSD–TX–328 and PSD–TX–328M–1; Amerada Hess Corporation; TX–328 authorizes the construction of an injection gas processing plant in the Seminole-San Andres oil field located on State Highway 214, approximately 4 miles northwest of Seminole, Gaines County, Texas; issued on May 14, 1981: TX–328M–1 modifies the permit to reflect the replacement of the Selexol process of tertiary oil recovery with the Ryan/Holmes process which requires substantial process heat; and, therefore, the company proposes to use turbine engines rather than reciprocating engines; issued on May 10, 1983.

47. PSD–OK–329; Panhandle Eastern Pipeline Company; natural gas compressor station located approximately ½ mile south of Highway 74–E, and approximately 4 miles west of Cashion, Kingfisher County, Oklahoma; authorizes the modification of the compressor station by the addition of 2 natural gas-fired turbocharged internal combustion engines rated at 4500 hp each; issued on May 8, 1981.

48. PSD–OK–330 and PSD–OK–330M–1; Panhandle Eastern Pipeline Company; natural gas compressor station located approximately 1.5 miles west of U.S. Highway 281 and approximately 5 miles southwest of Alva, Woods County, Oklahoma; OK–330 authorizes the modification of the station by the addition of three 4500 hp and one 631 hp reciprocating internal combustion engines; issued on May 29, 1981: OK–330M–1 modifies the permit by deleting Specific Condition 4, which specifies one year of post construction ambient monitoring of nitrogen dioxide, and renumbering Specific Conditions 5 and 6; issued on June 21, 1982.

49. PSD–TX–331M–1; Sigmor Refining Company; petroleum refinery located at 301 Leroy Street, Three Rivers, Live Oak County, Texas; modifies the permit by deleting: (1) The requirement for continuous oxygen monitors in Specific Condition 2, and (2) The requirement for a continuous H_2S monitor and total sulfur monitor on the fuel source since fuel oil is not being used. Instead, the company will perform daily sampling of fuel gas for H_2S content using the Draeger Tube Method; issued on June 21, 1982.

50. PSD–TX–332; Texas Eastman Company; chemical process plant located on Kodak Boulevard, approximately 1½ miles from State Highway 149 and approximately 5 miles southeast of Longview, Harrison County, Texas; authorizes the modification of the existing plant by the construction of a new low density polyethylene manufacturing unit; issued on May 27, 1981.

51. PSD–TX–334M–1; Oasis Pipeline Company; Winchester Compressor Station located on FM Road 448, approximately 11 miles southwest of Giddings, Fayette County, Texas; modifies the permit to delete the requirement for flue gas oxygen monitors; issued on December 28, 1982.

52. PSD–TX–337 and PSD–TX–337M–1; Champlin Petroleum Company; TX–337 authorizes the construction of a refinery/chemical plant at the existing petroleum storage and transfer facility (West Plant) located on the Corpus Christi Ship Channel, northeast of the intersection of Interstate Highway 37 and Southern Minerals Road in Corpus Christi, Nueces County, Texas; issued on April 3, 1981: TX–337M–1 modifies the permit to reflect: (1) The substitution of refinery fuel gas for natural gas in the firing of all units associated with this permit, (2) Limitation of liquid fuel firing to 29% when operating in the gas-oil firing mode, and (3) Deletion of one of three power boilers and increasing the heat input of the remaining two to a total of 197.8 MMBtu/hr; issued on May 25, 1983.

53. PSD–TX–338; Ashland Chemical Company; carbon black plant located on State Highway 35, approximately 2 miles northeast of Arkansas Pass, Nueces County, Texas; authorizes the modification of the plant by installing a waste gas recovery system; issued on June 2, 1981.

54. PSD–LA–339; Ashland Chemical Company; carbon black plant located between State Highway 83 and the Intercoastal Waterway, approximately ½ mile southeast of Ivanhoe, St. Mary Parish, Louisiana; authorizes the

modification of the existing carbon black process to use waste gas as fuel for the existing reactors and carbon monoxide boiler; issued on June 23, 1981.

55. PSD–OK–344 and PSD–OK–344M–1; Allied Materials Corporation; refinery and asphalt shingle production facility located on U.S. Highway 66 in Stroud, Lincoln County, Oklahoma; OK–344 authorizes the installation of a waste incinerator/heat recovery unit; issued on September 30, 1981: OK–344M–1 modifies the permit to revise Specific Condition 3 to provide that continuous sulfur dioxide emission monitoring equipment will be required only in the event acid sludge is burned in the waste incinerator/heat recovery unit; issued on June 7, 1983.

56. PSD–TX–345 and PSD–TX–345M–1; Continental Carbon Company; carbon black plant located on State Highway 119, approximately 5 miles southwest of Sunray, Moore County, Texas; TX–345 authorizes the installation of 2 new waste gas furnaces to provide heat to the existing dryers; issued on June 11, 1981: TX–345M–1 modifies the permit to remove the requirement for a continuous SO_2 monitor and replace it with a requirement to test the sulfur content of the feedstock oil each time new supplies are added to storage. Also, a sulfur limit of 1.5% sulfur by weight was added; issued on September 3, 1981.

57. PSD–TX–346 and PSD–TX–346M–1; Diamond Shamrock Corporation; petroleum refinery located near the intersection of Highways 119 and 721, approximately 7 miles southwest of Sunray, Moore County Texas; TX–346 authorizes expanding the capacity of the fluid catalytic cracking unit (FCCU) from 32,500 barrels per stream day to 45,000 barrels per stream day by increasing the feed rate to the FCCU and installing a 600 psig, 240 MMBtu/hr boiler; issued on September 4, 1981: TX–346M–1 modifies the permit to: (1) Raise the FCCU NO_x emission limit from 24.4 lb/hr to 133 lb/hr, (2) Raise the boiler NO_x emission limit from .12 lb/MMBtu to .2 lb/MMBtu, while firing refinery gas, and (3) Increase the opacity limitation from 15% to 20% for the FCCU during soot blowing; issued on October 8, 1982.

58. PSD–NM–350; Southern Union Refining Company; petroleum refinery located on Highway 18, approximately 5 miles south of Lovington, Lea County, New Mexico; authorizes the expansion of: (1) The atmospheric crude unit, (2) LPG recovery unit, and (3) the sulfur recovery unit; and the addition of: (1) a No. 2 vacuum distillation unit, (2) a catalytic reforming unit, (3) a visbreaking unit, (4) an asphalt unit, (5) additional tankage, and (6) a gasoline truck loading rack; issued on October 5, 1981.

59. PSD–TX–352M–1; Southwestern Portland Cement Company; Portland cement production plant located on U.S. Highway 80, approximately 12.5 miles southwest of Odessa, Ector County, Texas; modifies the permit to: (1) Reflect detailed engineering changes which result in an increase in particulate matter of 40.1 tons per year, and (2) change the stack heights of kilns No. 2 and No. 3 from a 225 feet combined stack to an 80 feet stack each; issued on November 5, 1981.

60. PSD–TX–364; Longview Refining Company; petroleum refinery located in the 600 block of Premier Road in Longview, Gregg County, Texas; authorizes the modification of the existing refinery to increase the daily throughput from 15,000 barrels per day to 30,000 barrels per day; issued on May 8, 1981.

61. PSD–TX–365; Central Power and Light Company; coal-fired power plant located near U.S. Highway 59, approximately 2.5 miles northeast of Fannin, Goliad County, Texas; authorizes the addition of a 6780 MMBtu/hr coal-fired boiler; issued on October 19, 1981.

62. PSD–TX–368M–1; El Paso Products Company; (formerly Odessa Natural Corporation) natural gas compressor station located on a gravel road approximately 4 miles north of FM Road 2526, 7 miles southwest of Cisco, Eastland County, Texas; modifies the permit to reflect: (1) the permanent installation of a temporary refrigeration skid, (2) deletion of the 30 MMscfd cryogenic separation plant, and (3) deletion of the engine and turbine testing requirements; issued on March 18, 1983.

63. PSD–TX–370M–1; Guardian Industries; glass manufacturing facility located on U.S. Highway 287, approximately 1.5 miles southeast of Corsicana, Navarro County, Texas; modifies the permit to remove the continuous NO_x, SO_2 and opacity monitors and the 10% opacity limitation; issued on September 9, 1981.

64. PSD–TX–371; Houston Lighting and Power; authorizes the construction of a new 1500 megawatt coal-fired steam electric generating station to be located on FM Road 39, approximately 3.1 miles southeast of Farrar, Limestone County, Texas; issued on September 10, 1981.

65. PSD–TX–372M–1; Sun Gas Company; natural gas processing plant located on a private road approximately 1 mile south of Silver, Coke County, Texas; modifies the permit to: (1) Reflect the replacement of a 600 hp internal combustion (IC) engine with a 1200 hp IC engine, and (2) delete the requirement for the use of oxygen flue gas monitors; issued on October 22, 1981.

66. PSD–LA–373; Hill Petroleum Company; petroleum refinery located on State Highway 105 in Krotz Springs, St. Landry Parish, Louisiana; authorizes the modification to the existing refinery by the addition of: (1) A 50,000 bpsd crude topping unit, (2) a 18,550 bpsd vacuum distillation unit, (3) petroleum liquid storage tanks, and (4) barge loading docks; issued on April 5, 1982.

67. PSD–OK–375; Fort Howard Paper Company; paper mill located on Harold Abitz Drive in Muskogee, Muskogee County, Oklahoma; authorizes the modification of the existing mill by installing a natural gas-fired turbine; issued on June 4, 1981.

68. PSD–LA–378 and PSD–LA–378M–1; Texaco, Incorporated; petroleum refinery located on the Ascension-St. James Parish boundary line, along the east bank of the Mississippi River in Convent, St. James Parish, Louisiana; LA–378 authorizes the modification of the existing refinery by installing a sulfur recovery complex; issued on April 23, 1981: LA–378M–1 modifies the permit by deleting emission point (a) which is the HTU-CRU flue gas cooler; issued on February 1, 1982.

69. PSD–TX–379 and PSD–TX–379M–1; Lufkin Industries; iron foundry located at Trout and Winston Streets in Lufkin, Angelina County, Texas; TX–379 authorizes the replacement of an existing gray iron cupola, with the capacity to melt 25 tons of iron per hour, with a new cupola with a melting capacity of 50 tons of iron per hour; issued on May 26, 1981: TX–379M–1 modifies the permit to: (1) Require the maintenance of a temperature of at least 1200°F in the stack gas instead of the permitted 1600°F, (2) add the requirement that the gases to be incinerated have a retention time of at least 0.57 seconds, (3) delete the requirement for continuous monitoring of opacity, (4) delete the 10% opacity limit, and (5) delete the requirement for the use of Method 9 for determining compliance with the opacity; issued on August 5, 1981.

70. PSD–AR–380; Potlatch Corporation; Kraft pulp and paper mill located on the Mississippi River, approximately 10 miles northeast of McGehee, Desha County, Arkansas; authorizes the construction of a new coal-fired boiler and associated coal handling and storage facilities at the existing mill; issued on February 10, 1982.

71. PSD–LA–381; Texaco, Incorporated; Rabbit Island "A" Platform natural gas compressor station located in East Cote Blanche Bay approximately 11 miles southeast, offshore of South Point of Marsh Island, Iberia Parish, Louisiana; authorizes the installation of two 1650 hp compressor engines and two 360 hp generator drivers; issued on July 27, 1981.

72. PSD–LA–382; Texaco, Incorporated; Rabbit Island "D" Platform natural gas compressor station located in East Cote Blanche Bay, approximately 12 miles southeast, offshore of South Point of Marsh Island, Iberia Parish, Louisiana; authorizes the installation of one 1560 hp compressor engine and one 40 hp generator driver; issued on July 30, 1981.

73. PSD–TX–387; Friendswood Refining Corporation; (now Brio Refining, Inc.) petroleum refinery located on Choate Road near the intersection with Beamer Road in Houston, Harris County, Texas; authorizes the expansion of the existing refinery from 12,000 barrels per day to 30,000 barrels per day; issued on June 30, 1981.

74. PSD–TX–388; Independent Refining Corporation; petroleum refinery located on Highway 124, approximately 2½ miles southwest of Hamshire, Jefferson County, Texas; authorizes the expansion of the existing refinery from 45,000 barrels per day to 50,000 barrels per day; issued on September 11, 1981.

75. PSD–NM–389 and PSD–NM–389M–1; Phillips Petroleum Company; Lusk natural gas processing plant located on Highway 126, approximately 15 miles south of Maljamar, Lea County, New Mexico; NM–389 authorizes the installation of two 585 BHP turbocharged compressor engines; issued on October 8, 1981: NM–389M–1 modifies the permit to amend Specific Condition 3 to allow checking and adjustment of the air/fuel ratio and ignition timing once every four months instead of monthly; issued on February 4, 1983.

76. PSD–LA–390; Conoco, Incorporated; petroleum refinery located on Highway 90/IH–10, due west of Westlake, Calcasieu Parish, Louisiana; authorizes the modification of the existing refinery by the construction of a sour crude/resid conversion facility; issued on August 10, 1981.

77. PSD–TX–391; Panhandle Eastern Pipe Line Company; Blair-Heydrick natural gas compressor station located off Highway 207, approximately 6 miles south of Borger, Carson County, Texas; authorizes the installation of a 771 hp compressor engine at the existing station; issued on December 10, 1981.

78. PSD–LA 393; Dow Chemical, U.S.A.; chemical production complex located on Highway 1, on the west bank of the Mississippi River, immediately north of Plaquemine, Iberville Parish, Louisiana; authorizes the installation of two natural gas-fired combined cycle turbine generators at the Power II generating facility; issued on August 11, 1981.

79. PSD–TX–394; Independent Refining Corporation; petroleum refinery located on Highway 124, approximately 2½ miles southwest of Hamshire, Jefferson County, Texas; authorizes the installation of: (1) Fluid catalytic cracking unit, (2) HF alkylation unit, (3) amine contractors and regeneration units, (4) Merox sweetening units, (5) three-stage Claus sulfur plant with SCOT tailgas cleanup, (6) 10,000–GPM cooling tower, (7) 4 floating roof storage tanks, (8) 2 fixed roof storage tanks, (9) pressure sphere, (10) emergency flare, and (11) 3 combustion sources that will fire refining fuel gas as fuel; issued on December 3, 1981.

80. PSD–LA–395; International Paper Company; Kraft pulp and paper mill located at the intersection of State Highway 139 and East Carter Avenue in Bastrop, Morehouse Parish, Louisiana; authorizes the replacement of 4 (690 MMBtu/hr, combined) oil-fired boilers with one 760 MMBtu/hr coal/wood bark-fired boiler; issued on November 18, 1981.

81. PSD–OK–398; United Gas Pipe Line Company; authorizes the construction of a natural gas compressor station, including six 4050 hp compressor engines, to be located off State Highway 1, approximately 2 miles northeast of Roff, Pontotoc County, Oklahoma; issued on April 5, 1982.

82. PSD–OK–399; United Gas Pipe Line Company; authorizes the construction of a natural gas compressor station, including seven 4050 hp compressor engines, to be located off State Highway 47, approximately 6 miles northwest of Custer City, Custer County, Oklahoma; issued on June 21, 1982.

83. PSD–TX–402 and PSD–TX–402M–1; Amoco Oil Company; petroleum refinery located at 2401 Fifth Avenue South in Texas City, Galveston County, Texas; TX–402 authorizes the modification of the existing refinery by the installation of: (1) A cat feed hydrotreater unit, (2) a resid hydrotreater unit, and (3) a sulfur recovery unit; issued on October 13, 1981: TX–402M–1 modifies the permit to exempt emission points (j) (common stack for RHU 482 a & b) and (m) (common stack for RHU 483 a & b) from the initial nitrogen oxide performance testing requirements if the company demonstrates that the oxygen content of the flue gas for emission points (j) and (m) is the range determined for emission point (g) (common stack for RHU 481 a & b); issued on December 8, 1981.

84. PSD–OK–404; Fort Howard Paper Company; paper mill located on Harold Abitz Drive in Muskogee, Muskogee County, Oklahoma; authorizes the modification of the existing paper mill by installing a paper machine and coal-fired boiler; issued on October 21, 1981.

85. PSD–TX–405; Dow Chemical Company; petroleum refinery located near the intersection of FM Road 523 and FM Road 332 in Freeport, Brazoria County, Texas; authorizes the addition of a vaccum distillation unit to the existing refinery; issued on December 3, 1981.

86. PSD–LA–406; Southern Natural Gas Company; natural gas compressor station located on State Highway 507, approximately 1.5 miles northeast of Bienville, Bienville Parish, Louisiana; authorizes the installation of two 448 BHP turbocharge compressor engines at the existing facility; issued on September 11, 1981.

87. PSD–TX–408 and PSD–TX–408M–1; Champlin Petroleum Company; West Plant petroleum refinery located near the intersection of Up River Road and Southern Minerals Road in Corpus Christi, Nueces County, Texas; TX–408 authorizes the addition of a coker complex to the existing refinery; issued on November 13, 1981: TX–408M–1 modifies the permit to: (1) eliminate the kerosene hydrotreater, two 47 MMBtu/hr boilers, and the cokeship and tanker loading facilities, (2) relocate the coker unit, (3) add one 99 MMBtu/hr boiler, (4) reduce tankage from 20 to 16, (5) utilize refinery fuel gas rated at 850 BTU/hr instead of 916 Btu/hr, and (6) modify the coke handling/removal procedure; issued on May 17, 1983.

88. PSD–TX–410; Airco Carbon; authorizes the construction of a coke plant which is the initial phase of a graphite electrode manufacturing facility to be located near the intersection of State Highways 35 and 185, approximately 8 miles northwest of Seadrift, Calhoun County, Texas; issued on October 30, 1981.

89. PSD–TX–413; Gulf States Oil and Refinery Company (name changed to Koch Refining Company on February 17, 1983); petroleum refinery located at 9254 Up River Road in Corpus Christi, Nueces County, Texas; authorizes the expansion of the petroleum separation facilities at the existing refinery; issued on January 6, 1982.

90. PSD–TX–416; J. M. Huber Corporation; carbon black plant located on Highway 136 on the west side of

Borger, Hutchinson County, Texas; authorizes an increase of the sulfur level in the carbon black oil from 1.5 percent to 3 percent; issued on June 11, 1982.

91. PSD–TX–417; Elgin-Butler Brick Company; brick plant located on FM Road 696, approximately 5 miles east of Elgin, Bastrop County, Texas; authorizes the modification of the existing facility by the addition of a moving bed, lignite-fired, coal gasifier; issued on May 17, 1982.

92. PSD–NM–418; Plains Electric Generation and Transmission Cooperative, Inc; Algodones Power Plant located on Highway 85, approximately 7.5 miles northeast of Bernalillo, Sandoval County, New Mexico; authorizes the modification of the existing facility by installing a 729.4 MMBtu/hr gas turbine electric generating unit; issued on December 29, 1981.

93. PSD–LA–419; Conoco, Incorporated; petroleum refinery located on Interstate Highway 10, due west of Westlake, Calcasieu Parish, Louisiana; authorizes the addition of a catalytic reforming unit and a naphtha desulfurization unit; issued on October 8, 1981.

94. PSD–LA–420; Texaco, Incorporated; petroleum refinery located on the east bank of the Mississippi River at the Ascension-St. James Parish boundary line in Convent, St. James Parish, Louisiana; authorizes the modification of the existing refinery by installing an increased sour crude running and residuum upgrading facility; issued on November 16, 1981.

95. PSD–NM–422; Plateau, Incorporated; petroleum refinery located on the north side of Sullivan Road, approximately 1 mile southeast of Bloomfield, San Juan County, New Mexico; authorizes the expansion of the existing refinery from 15,000 to 18,000 barrels per day; issued on June 11, 1982.

96. PSD–OK–424; Union Texas Petroleum Corporation; natural gas compressor station located in a remote area, approximately 1.5 miles southeast of Aline, Alfalfa County, Oklahoma; authorizes the addition of two 1000 hp natural gas compressor engines to the existing station; issued on January 19, 1982.

97. PSD–OK–425; Union Texas Petroleum Corporation; natural gas plant located in a remote area, approximately 3 miles north of Ringwood, Major County, Oklahoma; authorizes: (1) The installation of four 1000 hp gas turbines and two 1000 hp compressor engines, and (2) the replacement of a 660 hp compressor engine with a 1000 hp compressor engine; issued on January 19, 1982.

98. PSD–NM–427; Phillips Petroleum Company; natural gas processing plant located approximately 13 miles southeast of Artesia, Eddy County, New Mexico; authorizes the installation of two 650 BHP compressor engines at the existing plant; issued on January 29, 1982.

99. PSD–TX–432; Champlin Petroleum Company; cryogenic natural gas expander plant located on U.S. Highway 79, approximately 4 miles northeast of Carthage, Panola County, Texas; authorizes the addition of: (1) Sixteen 1000 hp natural gas-fired compressor engines, (2) two heaters, and (3) a cryogenic expander unit; issued on January 29, 1982.

100. PSD–TX–434; Columbia Chemical; carbon black plant located on FM Road 1485, approximately 4 miles east of Conroe, Montgomery County, Texas; authorizes: (1) The replacement of all natural gas with tail gases to fire 8 dryers, and (2) combustion of the remaining portion of available tail gases in 2 new CO boilers; issued on January 13, 1982.

101. PSD–TX–436; Marathon Oil Company; Yates natural gas sweetening plant located on FM Road 1257, approximately 3 miles southwest of Iraan, Pecos County, Texas; authorizes the expansion of the existing plant from 25 MMCFD to 40 MMCFD; issued on July 8, 1982.

102. PSD–TX–437; St. Regis Paper Company; Kraft paper mill located on Highway 103 on the east edge of Lufkin, Angelina County, Texas; authorizes the installation of: (1) A 550 MMBtu/hr low-odor boiler, (2) associated smelt dissolving tank capacity, (3) a multiple-effect evaporator/concentrator system, (4) a new green liquor clarifier, and (5) black liquor storge tanks (to replace equipment presently being used for these functions); issued on December 23, 1981.

103. PSD–TX–441; Chemical Lime, Incorporated; lime plant located on FM Road 2602, approximately 6 miles south of Clifton, Bosque County, Texas; authorizes the addition of a third coal-fired lime kiln at the existing plant; issued on January 6, 1982.

104. PSD–TX–442; Liquid Energy Corporation; authorizes the construction of a new cryogenic natural gas plant to be located approximately 5 miles southeast of Morgan Mill, Erath County, Texas; issued on June 11, 1982.

105. PSD–TX–443; Mitchell Energy Production Company; authorizes the construction of a carbon dioxide recovery plant to be located on State Highway 114, approximately 3.5 miles west of Bridgeport, Wise County, Texas; issued on November 24, 1981.

106. PSD–TX–445 and PSD–TX–445M–1; Production Operators, Incorporated; TX–445 authorizes the construction of a new carbon dioxide recovery plant to be located approximately 3 miles north of Fort Stockton, Pecos County, Texas; issued on November 12, 1981: PSD–TX–445M–1 modifies the permit to: (1) Revise Specific Provision 4 to require sampling on at least one-half of each size engine at this site and allow the performance of the catalytic converters on the remaining engines to be established with performance curves calibrated by this sampling, (2) revise Specific Provisions 5 and 6 to specify monthly calibration of the air/fuel ratio controllers and to require monitoring of the nitrogen oxides and carbon monoxide emissions, and (3) add two 250 hp blowers, two 1000 hp compressors, and four gas-fired internal combustion engines; issued on December 23, 1982.

107. PSD–TX–447; Anheuser-Busch, Incorporated; brewery located at 775 Gellhorn Drive, Houston, Harris County, Texas; authorizes the modification of the existing brewery by the addition of three new gas/oil-fired boilers; issued on June 22, 1982.

108. PSD–TX–450; POGO Producing Company; authorizes the construction of a gas sweetening plant to be located 1 mile north of State Highway 33, approximately 14.5 miles southeast of Canadian, Hemphill County, Texas; issued on January 18, 1982.

109. PSD–TX–453; American Petrofina Company of Texas; petroleum refinery located at the intersection of Highway 366 and 32nd Street in Port Arthur, Jefferson County, Texas; authorizes the modification of the existing refinery by: (1) The addition of a gas oil hydrodesulfurization unit, crude unit, hydrocracker, hydrogen plant, coker, 2 Claus sulfur recovery plants, SCOT unit, and an emergency flare; and (2) modification of the residuum solvent extraction unit heater to allow for liquid fuel firing capability, in addition to the present natural gas firing capability; issued on January 28, 1983.

110. PSD–TX–454; Dal-Tex Cement Company; authorizes the construction of a Portland cement plant, with a coal-fired preheater and precalciner kiln, to be located on Highway 67, approximately 2 miles northeast of Midlothian, Ellis County, Texas; issued on September 24, 1982.

111. PSD–TX–455; Superior Oil Company; natural gas processing plant located on Highway 77A, approximately one mile west of Hallettsville, Lavaca County, Texas; authorizes modification of the existing North Work plant to: (1)

Increase the capacity from 32.2 MMCFD to 45 MMCFD, and (2) provide for processing gas with a larger hydrogen sulfide content; issued on April 20, 1982.

112. PSD–TX–456; American Petrofina Company of Texas; petroleum refinery located at the intersection of Highway 366 and 32nd Street in Port Arthur, Jefferson County, Texas; authorizes the addition of a residuum solvent extraction unit to the existing refinery; issued on April 15, 1982.

113. PSD–TX–457; Cabot Corporation; carbon black plant located on U.S. Highway 60, approximately 4 miles southwest of Pampa, Gray County, Texas; authorizes the construction of a flare stack at the existing plant; issued on January 29, 1982.

114. PSD–TX–459; Amoco Chemicals Corporation; chemical plant located at 2800 FM Road 519 East in Texas City, Galveston County, Texas; authorizes the modification of the No. 2 styrene unit to increase production of styrene from 620 MM lbs/yr to 796 MM lbs/yr and to increase the efficiency of the unit; issued on April 15, 1982.

115. PSD–TX–460; Red River Pipeline Corporation; authorizes the construction of a natural gas compressor station to be located approximately 2.8 miles southeast of Wheeler, Wheeler County, Texas; issued on May 19, 1982.

116. PSD–TX–461; Chemical Lime, Incorporated; authorizes the construction of a lime plant to be located near Highway 281, approximately 5.5 miles south of Burnett, Burnett County, Texas; issued on June 23, 1982.

117. PSD–TX–463; Continental Carbon Company; carbon black plant located off FM Road 119, approximately 5 miles southwest of Sunray, Moore County, Texas; authorizes the modification of the existing plant to use waste gas instead of natural gas in Unit 3 dryer, issued on November 17, 1982.

118. PSD–TX–464; Warren Petroleum Company; Sand Hills natural gas processing plant located off FM Road 1053, approximately 27 miles northwest of Crane, Crane County, Texas; authorizes the modification of the existing plant by installing additional refrigeration and residual gas compressors to achieve the desired plant capacity of 125 MM SCFD; issued on August 5, 1982.

119. PSD–TX–465; Badische Corporation; chemical manufacturing facility located at 602 Copper Road, Freeport, Brazoria County, Texas; authorizes the modification of the existing plant by the addition of a 200 MMBtu/hr natural gas-fired boiler to the Hydroxylamine 1 unit; issued on August 10, 1982.

120. PSD–TX–468; Inexco Oil Company; natural gas well located near Lake Wright Patman, approximately 2.5 miles northeast of Douglassville, Cass County, Texas; authorizes the construction of a temporary well testing facility to determine the type of permanent treating facility to install at the well; issued on October 21, 1982.

121. PSD–TX–469; Pioneer Gas Products Company; natural gas processing plant located on Highway 136, approximately 7 miles south of Fritch, Potter, County, Texas; authorizes the addition of four 1210 hp compressor engines; issued on January 28, 1983.

122. PSD–TX–470; Getty Oil Company; authorizes the construction of a natural gas treating and sulfur recovery plant to be located off FM Road 416, approximately 6.3 miles northeast of Streetman, Freestone County, Texas; issued on February 7, 1983.

123. PSD–TX–471; Kirby Forest Industries, Incorporated; authorizes the construction of a Kraft pulp and paper mill to be located off FM Road 363, approximately 1.5 miles west of Bon Wier, Newton County, Texas; issued on June 24, 1983.

124. PSD–TX–472; W. R. Edwards, Jr., Oil and Gas Association; natural gas processing plant located off FM Road 1923, approximately 14 miles northwest of Stinnett, Hutchinson County, Texas; authorizes the addition of an amine unit to the existing plant; issued on May 25, 1983.

125. PSD–TX–475; Red River Army Depot; the depot, located on U.S. Highway 82, approximately ¾ of a mile south of Hooks, Bowie County, Texas, receives, stores, maintains, and issues general supplies and ammunition; authorizes the replacement of 2 existing gas/oil-fired boilers with 3 coal/wood chips-fired boilers; issued on March 4, 1983.

126. PSD–TX–476; Texas Eastman Company; organic chemicals and plastics manufacturing facility located on Interstate Highway 20, approximately 5 miles southeast of Longview, Harrison County, Texas; authorizes the installation of an industrial waste incinerator; issued on April 29, 1983.

127. PSD–TX–482; Liquid Energy Corporation; authorizes the construction of a 40 MMSCF/day natural gas processing plant to be located approximately 5.5 miles southwest of Stinnett, Hutchinson County, Texas; issued on April 29, 1983.

128. PSD–TX–500; Shell Oil Company; Wasson Casinghead natural gas processsing plant located east of State Highway 214, north of FM Road 1939, approximately 1.5 miles north of Denver City, Yoakum County, Texas; authorizes the modification of the existing facility by the incorporation of CO_2 recovery plant; issued on June 23, 1983.

129. PSD–LA–503; Lake Charles Refining Company; petroleum refinery located on State Highway 3059, approximately 3 miles northeast of Lake Charles, Calcasieu Parish, Louisiana; authorizes the modification of the existing refinery to allow: (1) The use of gas and lower sulfur fuel oil as fuel, and (2) the addition of a standby crude heater, coker visbreaker, diesel desulfurization unit, and sulfur recovery plant; issued on January 18, 1982.

130. PSD–LA–505; Continental Forest Industries; Kraft paper mill located on State Highway 167 in Hodge, Jackson Parish, Louisiana; authorizes: (1) The construction of a pulverized coal-fired boiler, and (2) conversion of an existing combination natural gas/bark-fired boiler to a combination pulverized coal/bark-fired boiler; issued on June 2, 1983.

131. PSD–OK–551; Michigan Wisconsin Pipe Line Company; natural gas compressor station located approximately 3 miles southwest of Thomas, Custer County, Oklahoma; authorizes: (1) The installation of two 2000 hp compressor engines, and (2) uprating of three existing compressor engines from 850 to 1000 hp each; issued on April 9, 1982.

132. PSD–OK–552; Grand River Dam Authority; coal-fired generating station located ½ mile north of State Highway 33, approximately 3 miles east of Chouteau, Mayes County, Oklahoma; authorizes the construction of a 520 megawatt coal-fired electric generating unit (No. 2) at the existing facility; issued on April 9, 1982.

133. PSD–OK–556; Stream Supply Corporation; authorizes the construction of: (1) Three 230 tons/day steam electric generating, municipal solid waste incinerators, and (2) associated waste handling facilities, to be located at 21st and Yukon Street, Tulsa, Tulsa County, Oklahoma; issued on December 23, 1982

134. PSD–OK–560; Mesa Petroleum Corporation; authorizes the construction of a natural gas sweetening facility, with tailgas incinerator, to be located approximately 2 miles south and 3 miles east of Sweetwater, Beckham County, Oklahoma; issued on May 5, 1983.

135. PSD–NM–576; MAPCO Production Company; White Ranch natural gas processing plant located approximately 34 miles northeast of Roswell, Chaves County, New Mexico; authorizes the modification of the existing plant to: (1) Reflect a change in the inlet gas, and the equipment to dispose of the SO_2 in the waste gas, and (2) replace the existing 102 feet

incinerator stack with a 200 feet flare stack; issued on January 14, 1983.

136. PSD-TX-601; Shell Oil Company; natural gas processing plant located east of State Highway 214, north of FM Road 1939, approximately 1.5 miles north of Denver City, Yoakum County, Texas; authorizes the construction of a sulfur recovery plant at the existing facility; issued on June 23, 1983.

These permits have been issued under EPA's Prevention of Significant Air Quality Deterioration Regulations at 40 CFR 52.21, as amended August 7, 1980. The time period established by the Consolidated Permit Regulations at 40 CFR 124.19 for petitioning the Administrator to review any condition of the permit decisions has expired. Such a petition to the Administrator is, under 5 U.S.C. 704, a prerequisite to the seeking of judicial review of the final agency action. No petitions for review of these permits have been filed with the Administrator.

Documents pertaining to these permits are available for public inspection upon request at the following location: Environmental Protection Agency, Region 6, Air and Waste Management Division, 1201 Elm Street, InterFirst Two Building, Dallas, Texas 75270.

This notice will have no effect on the National Ambient Air Quality Standards.

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

Dated: August 30, 1983.

Dick Whittington,

Regional Administrator, Region 6.

[FR Doc. 83-24086 Filed 9-13-83; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-53052; TSH-FRL 2422-1]

Premanufacture Notices; Monthly Status Report for July 1983

Correction

In FR Doc. 83-23303, beginning on page 38891, in the issue of Friday, August 26, 1983, make the following corrections:

1. On page 38891, in table "I.", in entry 83-883, "calcum" should read "calcium".

2. On page 38892, in the fifth line of the table, in entry 83-911, "Generic name:" should be removed.

3. On page 38894, in table "III.", in entry 83-619, in the first line, "[4-[[4-" should read "[4-[[4-[[4-".

4. On page 38895, in table "IV.", in entry 82-305, "hyroxyethyl" should read "hydroxyethyl".

5. On page 38896, in table "V.", in entry 83-115, in the second line "momochlorotriazinyl" should read "monochlorotriazinyl".

6. Also on page 38896, in table "V.", in entry 83-622, in the third line, "hexasoldium" should read "hexasodium".

BILLING CODE 1505-01-M

FEDERAL COMMUNICATIONS COMMISSION

[MM Docket Nos. 83-951 and 952, File Nos. BP-810226AE and BP-810526AE]

Auburn Broadcasters, Inc. and Spanish American Radio Corp.; Hearing Designation Order

In the matter of Applications of Auburn Broadcasters, Inc., KASY, Auburn, Washington, Has: 1220 kHz, 2.5 kW, DA-D Req: 1210 kHz, 1 kW, 10 kW-LS, U (MM Docket No. 83-951, File No. BP-810226AE) and Spanish American Radio Corp., Seattle, Washington, Req: 1200 kHz, 250 W, 1 kW-LS, DA-N, U (MM Docket No. 83-952, File No. BP-810526AE) for Construction Permit.

Adopted: August 25, 1983.
Released: September 13, 1983.
By the Chief, Mass Media Bureau.

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has under consideration the above-captioned mutually exclusive applications for a modified and a new AM broadcast station. In addition, we have before us an informal objection to the application of Spanish American Radio Corporation filed by Clear Channel Communications, Inc., licensee of station WOAI, San Antonio, Texas.

2. *Auburn Broadcasters, Inc.* We are unable to determine whether the nighttime normally-protected (10 mV/m) contour of this proposal would provide service to all residential areas of Auburn, as required by § 73.24(j) of the Commission's Rules, and if not, whether circumstances exist which warrant waiver of the rule. An issue will be specified.

3. *Spanish American Radio Corporation.* One of this applicant's three principals, a Peruvian citizen, is its vice-president and a corporate director. As Section 310(b)(3) of the Communications Act of 1934, as amended, bars aliens from holding such positions, Spanish American must remove him from these offices and show it has done so by appropriate amendment.[1]

4. Spanish American's application, filed on the 1977 Form 301, indicates that $78,788 will be required to construct the station and to operate for three months. Subsequently, Spanish American amended its application to propose two 156 foot towers rather than four 60 foot towers, a change not reflected in the cost estimate. The application proposes to finance the station with loans from its three principals totalling $100,000. Their personal balance sheet show only about $6,000 net liquid assets available to meet these commitments, however, and no corporate balance sheet has been submitted. A limited financial issue will be specified to consider these deficiencies.[2]

5. Operating as proposed, Spanish American would provide nighttime normally protected (10 mV/m) service to only 50 percent of Seattle's area and 53 percent of its population. This falls considerably short of the principal-city service required by § 73.24(j) of the Commission's Rules, and the applicant has requested a waiver. In support, Spanish American states that Seattle is an irregularly shaped city, that complete coverage would not be possible from any transmitter location, and that it is a minority-controlled applicant proposing minority-oriented programming. The contention that no better site could be found or better coverage achieved is conclusory however, and Spanish American has therefore not met its burden of establishing that waiver is warranted. An appropriate issue will be specified.

6. Clear Channel Communications, Inc., seeks an inquiry into the effect of Spanish American's proposed operation on the nighttime operation of station WOAI, arguing that the new service could cause interference to WOAI's listeners. We have already acknowledged the possibility of such interference, however, but have found it a necessary cost of satisfying the need for additional services on the Class I-A clear channels, *Clear Channel Broadcasting in the AM Broadcast Band*, 78 FCC 2d 1367; *recon. granted in part and denied in part*, 83 FCC 2d 216 (1981); *aff'd sub nom. Loyala University v FCC*, 670 F. 2d 1222 (D.C. Cir. 1982). No basis for further inquiry thus exists.

7. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed.[3] However, since the

[1] Section 310(b)(3) provides, "No broadcast . . . radio station license shall be granted to or held by . . . any corporation of which any officer or director is an alien or of which more than one-fifth of the capital stock is owned of record or voted by aliens . . ." The Peruvian principal's stock holdings, 18 percent, are not inconsistent with this restriction.

[2] The certification process is not available to Spanish American under these circumstances. *South Florida Broadcasting Company, Inc.*, FCC 83-265, released June 2, 1983.

[3] Operation with the facilities specified herein is subject to modification, suspension or termination

Continued

proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding. Although the applications are for different communities, they would serve substantial aeas in common. Therefore, in addition to an issue to determine pursuant to Section 307(b) of the Communications Acts of 1934, as amended, which of the proposals would best provide a fair, efficient and equitable distribution of radio service, a contingent comparative issue will be specified.

8. Accordingly, it is ordered, that pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether the normally-protected nighttime (12 mV/m) contour of the proposal of Auburn Broadcasters, Inc., would provide service to all residential areas of Auburn, Washington, as required by § 73.24(j) of the Commission's Rules, and if not, whether circumstances exist which warrant waiver of the rule.

2. To determine with respect to Spanish American Radio Corporation (1) whether the applicant's original cost estimates should be revised to reflect subsequent amendment to its technical proposal, (2) whether the applicant's principals have available sufficient net liquid assets to meet their commitments, and (3) in light thereof, whether the applicant is financially qualified to construct the station and operate as proposed.

3. To determine whether the nighttime normally-protected (10 mV/m) contour of the proposal of Spanish American Radio Corporation would provide service to all residential areas of Seattle, Washington, as required by § 73.24(j) of the Commission's Rules, and if not, whether circumstances exist which warrant waiver of the rule.

4. To determine the areas and populations which would receive primary service from each proposal and the availability of other primary aural service to such areas and populations.

5. To determine, in light of Section 307(b) of the Communications Act of 1934, as amended, which of the proposals would best provide a fair, efficient, and equitable distribution of radio service.

6. To determine, in the event it be concluded that a choice among the proposals should not be based solely on considerations relating to Section 307(b), which of the proposals would, on a comparative basis, best serve the public interest.

7. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications, if any, should be granted.

9. It is further ordered, That Spanish American Radio Corporation shall file with the presiding Administrative Law Judge, within 30 days of the release of this Order, the information specified in paragraph 3 above.

10. It is further ordered, That the informal objection to the application of Spanish American broadcasting Corporation filed by Clear Channel Communications, Inc., is denied.

11. It is further ordered, That to avail themselves of the opportunity to be heard and pursuant to § 1.221(c) of the Commission's Rules, the applicants shall within 20 days of the mailing of this Order, in person or by attorney, file with the Commission, in triplicate, written appearances stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this order.

12. It is further ordered, That pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, the applicants shall give notice of the hearing as prescribed in the rule, and shall advise the Commission of the publication of the notices as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 83-24997 Filed 9-13-83; 8:45 am]

BILLING CODE 6712-01-M

without right to hearing, if found by the Commission to be necessary in order to conform to the Final Acts of ITU Administrative Conference on Medium Frequency Broadcasting in Region 2, Rio de Janeiro 1981, and to bilateral and other multilateral agreements between the United States and other countries.

[CC Docket Nos. 83-873 and 874, File Nos. 10300-CM-P-80 and 11609-CM-P-80]

Broadcast Data Corp. and Kravetz Media Corp.; Memorandum Opinion and Order

In re Applications of Broadcast Data Corp. (CC Docket No. 83-873, File No. 10300-CM-P-80) and Kravetz Media Corp. (CC Docket No. 83-874, File No. 11609-CM-P-80) for construction permits in the Multipoint Distribution Service for a new station at Bowling Green, Kentucky.

Adopted: August 9, 1983.

Released: August 26, 1983.

By the Common Carrier Bureau.

1. For consideration are the above-referenced applications.[1] These applications are for construction permits in the Multipoint Distribution Service and they propose operations on Channel 1 at Bowling Green, Kentucky. The applications are therefore mutually exclusive and, under present procedures, require comparative consideration. There are no petitions to deny or other objections under consideration.[2]

2. Upon review of the captioned applications, we find that these applicants are legally, technically, financially, and otherwise qualified to provide the services which they propose, and that a hearing will be required to determine, on a comparative basis, which of these applications should be granted.[3]

3. Accordingly, it is hereby ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 309(e) and § 0.291 of the Commission's rules, 47 CFR 0.291, the above-captioned applications are designated for hearing, in a consolidated proceeding, at a time and place to be specified in a subsequent Order, to determine, on a comparative basis, which of the above-captioned applications should be granted in order to best serve the public interest, convenience and necessity. In making such a determination, the following factors shall be considered: [4]

(a) The relative merits of each proposal with respect to efficient frequency use, particularly with regard to compatibility with co-channel use in nearby cities and adjacent channel use in the same city;

(c) The anticipated quality and reliability of the service proposed, including installation and maintenance programs; and

(b) The comparative cost of each proposal considered in context with the benefits of efficient spectrum utilization and the quality and reliability of service as set forth in issues (a) and (b).

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[1] On September 10, 1981, Richard L. Vega and Christopher Laning executed an Assets Sale and Purchase Agreement with Broadcast Data Corp. to assign the radio authorizations and applications of Northstar Communications to Broadcast Data Corp. Broadcast Data Corp. is a wholly-owned subsidiary of Graphic Scanning Corporation. See International Television Corporation, File No. 50078-CM-AP/AL-(5)-82 (release June 25, 1982).

[2] On March 25, 1983, Northstar Communications was granted an exemption from the Commission's "cut-off" rules pursuant to § 21.31 of the Rules 47 CFR 21.31, to preserve the status of its pending mutually exclusive applications.

[3] This finding is subject to paragraph 8, *infra*.

[4] Consideration of these factors shall be in light of the Commission's discussion in *Frank K. Spain*, 77 FCC 2d 20 (1980).

4. It is further ordered, that Broadcast Data Corp., Kravetz Media Corporation and the Chief, Common Carrier Bureau, are made parties to this proceeding.

5. It is further ordered, that parties desiring to partcipate herein shall file their notices of appearance in accordance with the provision of Section 1.221 of the Commission's Rules, 47 CFR 1.221.

6. It is further ordered, that any authorization granted to Broadcast Data Corp., a wholly-owned subsidiary of Graphic Scanning Corporation, as a result of the comparative hearing shall be conditioned on, and without prejudice to, reexamation and reconsideration of that company's qualifications to hold an MDS license following s decision in the hearing designated in *A.S.D. Answering Service, Inc., et al.*, FCC 82.391, released August 24, 1982, and shall be specifically conditioned upon the outcome of that proceeding.

7. This Order is effective on its release date, petitions for reconsideration under § 1.106 or application for review under § 1.115 of the Rules may be filed within the time limits specified in those sections. *See also* Rule 1.4(b)(2).

8. The Secretary shall cause a copy of this Order to be published in the Federal Register.

Kevin J. Kelley,

Deputy Chief, Domestic Facilities Division, Common Carrier Bureau.

[FR Doc. 83-24309 Filed 9-13-83; 8:45 am]

BILLING CODE 6712-01-M

[CC Docket Nos. 83-869 and 870, File Nos. 10741-CM-P-80 and 50095-CM-P-81]

Robert A. Gordon and Microband Corporation of America; Memmorandum Opinion and Order

In re Application of Robert A. Gordon d.b.a. The BA Company (CC Docket No. 83-869, File No. 10741-CM-P-80) and Microband Corporation of America (CC Docket No. 83-870, File No. 50095-CM-P-81) for construction permits in the Multipoint Distribution Service for a new station at Englewood, Florida.

Adopted: August 5, 1983.

Release: August 26, 1983.

By the Common Carrier Bureau.

1. For consideration are the above-referenced applications.[1] These applications are for construction permits in the Multipoint Distribution Service and they propose operations on Channel 1 at Englewood, Florida. The applications are therefore mutually exclusive and, under present procedures, require comparative consideration. There are no petitions to deny or other objections under consideration.[2]

3. Accordingly, it is hereby ordered, that pursuant to Section 309(e) of the Communications Act of 1934, as amended 47 U.S.C. 309(e) and § 0.291 of the Commission's rules 47 CFR 0.291, the above captioned applications are designated for hearing, in a consolidated proceeding, at a time and place to be specified in a subsequent Order, to determine, on a comparative basis, which of the above-captioned applications should be granted in order to best serve the public interest, convenience and necessity. In making such a determination, the following factors shall be considered:[3]

(a) The relative merits of each proposal with respect to efficient frequency use, particularly with regard to compatibility with co-channel use in nearby cities and adjacent channel use in the same city;

(b) The anticipated quality and reliability of the service proposed, including installation and maintenance programs; and

(c) The comparative cost of each proposal considered in context with the benefits of efficient spectrum utilization and the quality and reliability of service as set forth in issues (a) and (b).

4. It is further ordered, that Robert A. Gordon d.b.a. The BA Company, Mircroband Corporation of America and the Chief, Common Carrier Bureau, are made parties to this proceeding.

5. It is further ordered, that parties desiring to participate herein shall file their notices of appearance in accordance with the provisions of § 1.221 of the Commission's Rules, 47 CFR 1.221.

6. The Secretary shall cause a copy of this Order to be published in the Federal Register.

Kevin J. Kelley,

Deputy Chief, Domestic Facilities Division, Common Carrier Bureau.

[FR Doc. 83-24998 Filed 9-13-83; 8:45 am]

BILLING CODE 6712-01-M

[1] On August 18, 1980, Tymshare, Inc. (Tymshare) and Arthur Lipper Corporation (ALC) executed a contract whereby ALC agreed to transfer control of Microband Corporation of America to Tymshare. *Transfer of Control/MDS, 85 FCC 2d 1023 (1981).*

[2] By Memorandum Opinion and Order adopted June 20, 1981 and released July 2, 1981, Mimeo No. 001883, Microband was granted an exemption from the Commission's "cut-off" rules pursuant to § 21.31 of the Rules, 47 CFR 21.31, the preserve the status of its pending mutually exclusive application.

[3] Consideration of these factors shall be in light of the Commission's discussion in *Frank K. Spain, 77 FCC 2d 20 (1980).*

National Industry Advisory Committee, Emergency Broadcast Subcommittee; Meeting

Pursuant to the provisions of Pub. L. 92-463, announcement is made of a public meeting of the Emergency Broadcast Subcommittee of the National Industry Advisory Committee (NIAC) to be held Tuesday, September 27, 1983. The Subcommittee will meet at 10:00 A.M. at the Board Room of the National Association of Broadcasters, 1771 N Street, NW., Washington, D.C.

Purpose: To consider emergency communications matters.

Agenda: (1) Opening remarks by Chairman; (2) Review status of current Subcommittee activities; (3) Plan and schedule future Subcommittee activities; (4) Other business; and (5) Adjournment.

Any member of the public may attend or file a written statement with the Subcommittee either before or after the meeting. Any member of the public wishing to make an oral statement must consult with the Subcommittee prior to the meeting. Those desiring more specific information about the meeting may telephone the NIAC Executive Secretary in the FCC Emergency Communications Division at (202) 634-1549.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 83-25002 Filed 9-13-83; 8:45 am]

BILLING CODE 6712-01-M

National Industry Advisory Committee, Radio Communications Subcommittee; Meeting

Pursuant to the provisions of Pub. L. 92-463, announcement is made of a public meeting of the Radio Communications Subcommittee of the National Industry Advisory Committee (NIAC) to be held Thursday, October 6, 1983. The Subcommittee will meet at 1:00 P.M. at the American Petroleum Institute, Room 605, 2101 L Street, NW., Washington, D.C.

Purpose: To consider emergency communications matters.

Agenda: (1) Opening remarks by Chairman; (2) Review status of current Subcommittee activities; (3) Plan and schedule future Subcommittee activities; (4) Other business; and (5) Adjournment.

Any member of the public may attend or file a written statement with the Subcommittee either before or after the meeting. Any member of the public wishing to make an oral statement must consult with the Subcommittee prior to the meeting. Those desiring more

specific information about the meeting may telephone the NIAC Executive Secretary in the FCC Emergency Communications Division at (202) 634–1549.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 83-25003 Filed 9-13-83; 8:45 am]

BILLING CODE 6712-01-M

National Industry Advisory Committee and Long Range Planning Committee; Meeting

Pursuant to the provisions of Pub. L. 92–463, announcement is made of a public meeting of the Long Range Planning Committee of the National Industry Advisory Committee (NIAC) to be held Friday, October 7, 1983. The Committee will meet at 9:30 A.M. at the Continental Room of the Embassy Row Hotel, 2015 Massachusetts Avenue, NW., Washington, D.C.

Purpose: To consider emergency communications matters.

Agenda: (1) Opening remarks by Chairman; (2) Reports from NIAC Subcommittees—Common Carrier Communications, Emergency Broadcast, Radio Communications; (3) Review status of current developments and major issues; (4) Other business; and (5) Adjournment.

Any member of the public may attend or file a written statement with the Committee either before or after the meeting. Any member of the public wishing to make an oral statement must consult with the Committee prior to the meeting. Those desiring more specific information about the meeting may telephone the NIAC Executive Secretary in the FCC Emergency Communications Division at (202) 634–1549.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 83-25006 Filed 9-13-83; 8:45 am]

BILLING CODE 6712-01-M

First Meeting of Industry Advisory Committee on Technical Standards for DBS Service

September 6, 1983.

On June 30, 1983 the General Services Administration (GSA) approved the establishment of the FCC Advisory Committee on Technical Standards for the Direct Broadcast Satellite (DBS) Systems. The official designation of the Committee is, "Advisory Committee on Technical Standards for the DBS Service".

The Committee deliberations will benefit the FCC on DBS matters in the area of standards, and in turn permit more judicious decisions which will be in the public interest.

The Committee's basic objectives are twofold:

1. To advise the FCC on the facts, circumstances and considerations favoring and disfavoring its imposition, at this stage, of standardized requirements for DBS signal transmissions or reception (other than those mandated by the Final Acts of RARC–83).

2. To develop and submit to the Commission recommendations as to what specific standards it would appropriate for the Commission to impose, if it were found desirable to adopt such technical requirements.

An agenda for the first Committee meeting is as follows: (1) Approval of agenda; (2) History leading up to establishment of Committee; (3) Discussion of types of standards to be considered by the Committee, such as:

—transmission standards
—quality of performance
—receiver standards
—encryption standards
—interference requirements,

and distribution of documents submitted by participants (if any); (4) Establishments of appropriate working groups; (5) Nomination and selection of working group chairperson; (6) Other business; and (7) Selection of next meeting date.

The first meeting of this group is set for October 12, 1983 (Wed.) and will be held at the FCC in the Commission Meeting Room. Time of meeting is 9:30 AM. Those seeking further information should contact Bruno Pattan, FCC/OST at (202) 653–9098.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 83-25001 Filed 9-13-83; 8:45 am]

BILLING CODE 6712-01-M

Telecommunications Industry Advisory Group, Income and Other Accounts Subcommittee; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of a meeting of the Telecommunications Industry Advisory Group's (TIAG) Income and Other Accounts Subcommittee scheduled for Wednesday and Thursday, September 28, and 29, 1983. The meeting will begin on September 28 at 9:30 a.m. in the offices of the Federal Communications Commission, room #5119, 2025 M Street, NW., Washington, D.C., and will be open to the public.

The agenda is as follows:

I. General Administrative Matters.
II. Discussion of Assignments.
III. Other Business.
IV. Presentation or Oral Statements.
V. Adjournment.

With prior approval of Subcommittee Chairman Glenn L. Griffin, oral statements, while not favored or encouraged, may be allowed at the meeting if time permits and if the Chairman determines that an oral presentation is conducive to the effective attainment of Subcommittee objectives. Anyone not a member of the Subcommittee and wishing to make an oral presentation should contact Mr. Griffin (214/659–3483) at least five days prior to the meeting date.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 83-25005 Filed 9-13-83; 8:45 am]

BILLING CODE 6712-01-M

Advisory Committee for the 1985 ITU World Administrative Radio Conference on the Use of the Geostationary Satellite Orbit and the Planning of the Space Services Utilizing It (Space WARC Advisory Committee); Meeting

September 6, 1983.

Task Group B–1 of Working Group B: Legal Implications

Chairman: Martin Rothblatt (202) 422–4692

Date: Tuesday, September 13, 1983

Time: 1:30–5:00 P.M.

Location: Federal Communications Commission, 2025 M Street, NW., Room 7317, Washington, D.C. 20554.

Agenda:

(1) Approval of revisions to draft final report
(2) Approval of recommendations

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 83-25000 Filed 9-13-83; 8:45 am]

BILLING CODE 6712-01-M

Advisory Committee for the 1985 ITU World Administrative Radio Conference on the Use the Geostationary Satellite Orbit and the Planning of the Space Services Utilizing It (Space WARC Advisory Committee); Meeting

September 7, 1983.

Working Group A: Services, Facilities & U.S. Interests

Chairman: W. R. Schnicke, (202) 863-6691
Date: Wednesday, October 5, 1983
Time: 9:30 A.M.–4:00 P.M.
Location: Communications Satellite Corporation, 950 L'Enfant Plaza SW., Room 6030, Washington, D.C. 20024

Included in the agenda will be review and consideration of elements of the draft final report derived from Task Groups A–1, A–2 and A–3.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 83-25004 Filed 9-13-83; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

[Docket No. 83-39; Agreement No. 10464]

Armada/GLTL East Africa Service; Order of Investigation

Agreement No. 10464 (Agreement) between Armada Great Lakes/East Africa Service, Ltd. (Armada) and Great Lakes Transcaribbean Line, GMBH (GLTL) establishes a joint venture in the trade between Canada/U.S. Great Lakes, Atlantic and Gulf Coasts ports and South/East Africa. The joint venture will operate under the name of "Armada/GLTL East Africa Service." The Agreement has been protested by the United States/South and East Africa Conference and Ceres Navigation, Ltd.

Before reaching the merits of the Agreement under the standards of section 15 of the Shipping Act, 1916 (46 U.S.C. 814) (the Act), the Commission must first determine whether the Agreement is in fact subject to that section. Section 15 applies to those agreements between two or more common carriers by water in the foreign commerce of the United States which have one or more of the effects enumerated in the section.[1] The issue that must be resolved is whether Agreement No. 10464 involves two or more common carriers by water over which the Commission has *in personam* jurisdiction.[2]

GLTL is subject to the Shipping Act, 1916 (46 U.S.C. 801, *et seq.*) by virtue of its status as a common carrier in the trade between ports in the United States and various ports in the Caribbean and South America. Whether Armada should be considered a common carrier subject to the Act cannot be fully answered from the information now before the Commission. Armada does not appear to be presently operating as a common carrier subject to the Act. It is, however, part of the Armada Group which consists of a number of affiliated companies providing shipping services. These include Armada Lines and Atlantic Cross Shipping, two common carriers subject to the Act. Agreement No. 10464 contains a covenant not to compete which binds not only the signatories to the Agreement but their affiliates as well. Thus the Agreement restricts competition between the two common carriers subject to the Act—Armada/GLTL East Africa Service and Armada Lines—and, therefore, it may be appropriate to impute the common carrier status of Armada Lines to Armada. Parties will be given the opportunity to develop evidence on the issue of whether circumstances warrant imputing the common carrier status of Armada Lines to Armada.

It is also necessary to consider the structure of Armada/GLTL East Africa Service in determining whether there is section 15 jurisdiction over Agreement No. 10464. If the ships in the Armada/GLTL East Africa Service are crewed and operated by the respective owners of Armada/GLTL East Africa Service or if Armada and GLTL issue separate bills of lading, these facts would suggest that Armada and GLTL exist as separate entities in the trade. If Armada and GLTL exist as separate entities in the trade and are not subsumed in "Armada/GLTL East Africa Service," both may be common carriers subject to the Act.

Finally, even if Armada cannot be considered a common carrier subject to the Act, there may be section 15 jurisdiction over Agreement No. 10464 if it establishes a continuing relationship between Armada/GLTL East Africa Service and GLTL, both of which are common carriers subject to the Act. For example, the Commission found jurisdiction over a joint venture in *Agreement No. 9955–1*, 18 F.M.C. 426 (1975) on the basis of a continuing relationship between the joint venture and one of its parties, both of which were common carriers subject to the Act. Unlike the joint venture in *Agreement No. 9955–1*, Armada/GLTL East Africa Service is not a signatory to the Agreement. Nevertheless, it may be appropriate to consider Armada/GLTL East Africa Service a party to the Agreement if it places obligations on the joint venture vis-a-vis its owners.

Accordingly, we will order an expedited proceeding to address the question of jurisdiction. If, upon completion of the proceeding, the Commission finds that it has jurisdiction over Agreement No. 10464, the merits of the Agreement will be considered as a separate matter.

Therefore, it is ordered, That pursuant to sections 15 and 22 of the Shipping Act, 1916 (46 U.S.C. 814 and 821), an investigation and hearing is isntituted to determine whether Agreement No. 10464 is subject to section 15.

It is further ordered, That the parties listed in Appendix A attached hereto are hereby made Proponents in this proceeding; and

It is further ordered, That the parties listed in Appendix B attached hereto are hereby made Protestants in this proceeding; and

It is further ordered, That in accordance with the Commission's Rules (46 CFR 502.42), the Bureau of Hearing Counsel is hereby made a party to this proceeding; and

It is further ordered, That this matter is assigned for hearing and decision to the Commission's Office of Administrative Law Judges. This hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon a showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents. The decision of the Presiding Administrative Law Judge shall be served no more than 75 days after service of this Order; and

It is further ordered, That persons other than those named having an appropriate interest and desire to participate in this proceeding may petition for leave to intervene pursuant to Rule 72 of the Commission's Rules (46 CFR 502.72); and

It is further ordered, That this Order be published in the **Federal Register** and a copy served upon all parties of record; and

It is further ordered, That all future notices, orders, or decisions issued in this proceeding, including notice of the time and place of hearing or prehearing conference, be mailed directly to all parties of record; and

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[1] The filing and approval requirements of section 15 apply to agreements:

". . . fixing or regulating transportation rates or fares; giving or receiving special rates, accommodations, or other special privileges or advantages; controlling, regulating, preventing, or destroying competition; pooling or apportioning earnings, losses, or traffic; allotting ports or restricting or otherwise regulating the number and character of sailings between ports; limiting or regulating in any way the volume or character of freight or passenger traffic to be carried; or in any manner providing for an exclusive, preferential, or cooperative working arrangement.

[2] The term "common carrier by water in foreign commerce" is defined in section 1 of the Act (46 U.S.C. 801) to mean:

". . . a common carrier . . . engaged in the transportation by water of passengers or property between the United States or any of its Districts, Territories, or possessions and a foreign country, whether in the import or export trade . . .

It is further ordered, That all documents submitted by any party of record in this proceeding shall be filed in accordance with Rule 118 of the Commission's Rules (46 CFR 502.118), as well as being mailed directly to all parties of record.

By the Commission.

Francis C. Hurney,

Secretary.

Appendix A

Proponents:

Great Lakes Transcaribbean Line Gmbh, and Armada Great Lakes/East Africa Service, Ltd., Thomas D. Wilcox, P.C., Suite 705, 1899 L Street, NW., Washington, D.C. 20036

Appendix B

Protestants:

United States/South & East Africa Conference, John W. Angus III, Preston, Thorgrimson, Ellis & Holman, Suite 500, 1735 New York Avenue, NW., Washington, D.C. 20006

Ceres Navigation, Ltd., Steven B. Chameides, Becker & Chameides, 1819 H Street, NW., Washington, D.C. 20006

[FR Doc. 83-25026 Filed 9-13-83; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Federal Reserve Bank of Atlanta; Application for Acquisition of Bank Shares by a Bank Holding Company

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 § 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 each 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 facts that are in dispute and summarizing the evidence that would be presented at a hearing.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President), 104 Marietta Street, N.W., Atlanta, Georgia: 30303:

1. **First National Bancorp**, Gainesville, Georgia; to acquire 100 percent of the voting shares or assets of White County Bank, Cleveland, Georgia. Comments on this application must be received not later than October 7, 1983.

Board of Governors of the Federal Reserve System, September 8, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-24907 Filed 9-13-83; 8:45 am]

BILLING CODE 6210-01-M

Federal Reserve Bank of Boston et al.; Application for Formation of Bank Holding Companies

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 Boston** (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Fenwick Financial Corporation*, Old Saybrook, Connecticut; to become a bank holding company by acquiring 100 percent of the voting shares of Old Saybrook Bank and Trust Company, Old Saybrook, Connecticut. Comments on this application must be received not later than October 5, 1983.

B **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Progressive Bancshares Inc.*, Owingsville, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of Farmers Bank, Owingsville, Kentucky. Comments on this application must be received not later than October 7, 1983.

C. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *The Merchant Bancorporation of Florida*, Tampa, Florida; to become a bank holding company by acquiring 100 percent of the voting shares to the Merchant Bank of Florida, Tampa, Florida, a proposed new bank. Comments on this application must be received not later than October 7, 1983.

D. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Dows Bancorporation*, Dows, Iowa; to become a bank holding company by acquiring 80.8 percent of the voting shares of Farmers State Bank, Dows, Iowa. Comments on this application must be received not later than October 5, 1983.

E. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Independent Bankers Financial Corporation*, Dallas, Texas; to become a bank holding company by acquiring at least 80 percent of the voting shares of Texas Independent Bank, Dallas, Texas. Comments on this application must be received not later than October 5, 1983.

Board of Governors of the Federal Reserve System, September 8, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-24906 Filed 9-13-83; 8:45 am]

BILLING CODE 6210-01-M

Federal Reserve Bank of Chicago: Proposed de Novo Nonbank Activities by Bank Holding Company

The organization identified in this notice 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)(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 the application, 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 on the application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, indentifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating

how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated. Comments and requests for hearings should indentify 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 Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Walter E. Heller International Corporation*, Chicago, Illinois (mortgage banking; Pennsylvania): To engage through its subsidiary, Abacus Real Estate Finance Co., in making or acquiring, for its account or for the account of others, loans and other extensions of credit and servicing loans and other extensions of credit for any person. This activity will be managed through an office located in Philadelphia, Pennsylvania, serving the State of Pennsylvania. Comments on this application must be received not later than September 29, 1983.

Board of Governors of the Federal Reserve System, September 8, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-24968 Filed 9-13-83; 8:45 am]

BILLING CODE 6210-01-M

Agency Information Collection Activities Under OMB Review

September 8, 1983.

Background

When executive departments and independent agencies propose public use forms, reporting, or recordkeeping requirements, the Office of Management and Budget (OMB) reviews and acts on those requirements under the Paperwork Reduction Act (44 U.S.C. Chapter 35). Departments and agencies use a number of techniques to consult with the public on significant reporting requirements before seeking OMB approval. OMB in carrying out its responsibilities under the act also considers comments on the forms and recordkeeping requirements that will affect the public. Reporting or recordkeeping requirements that appear to raise no significant issues are approved promptly. OMB's usual practice is not to take action on proposed reporting requirements until at least ten working days after notice in the **Federal Register**, but occasionally the public interest requires more rapid action.

List of Forms Under Review

Immediately following the submission of a request by the Federal Reserve for OMB approval of a reporting or recordkeeping requirement, a description of the report is published in the **Federal Register.** This information contains the name and telephone number of the Federal Reserve Board clearance officer (from whom a copy of the form and supporting documents is available). The entries are grouped by type of submission—i.e., new forms, revisions, extensions (burden change), extensions (no change), and reinstatements.

Copies of the proposed forms and supporting documents may be obtained from the Federal Reserve Board clearance officer whose name, address, and telephone number appear below. The agency clearance officer will send you a copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, transmittal letters, and other documents that are submitted to OMB for review.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Cynthia Glassman—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, (202-452-3829)

OMB Reviewer—Judy Mc Intosh—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503, (202-395-6880)

Request for implementation of a New Report

1. Report title: Monthly Consolidated Foreign Currency Report of Banks in the United States

Agency form number: FFIEC 035

Frequency: Monthly

Reporters: U.S. banks and branches and agencies of foreign banks

Small businesses are affected.

General description of report: Respondent's obligation to reply is mandatory [12 U.S.C. 248(a) and 1844(c)]; a pledge of confidentiality is not promised

Needed to monitor the foreign exchange positions of major banking institutions, and to detect changes in policy in individual banks. Also, used as an aid in analysis of foreign exchange markets. Alll respondents are major U.S. banks, or U.S. branches or agencies of foreign banks.

Board of Governors of the Federal Reserve System, September 8, 1983.

James McAfee.

Associate Secretary of the Board.

[FR Doc. 83-24966 Filed 9-13-83; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Draft Environmental Impact Statement on the Bristol Bay Cooperative Management Plan, Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Extension of review period.

SUMMARY: The Bristol Bay Cooperative Management Plan and Environmental Impact Statement (EIS) for southwestern Alaska, as defined by the Alaska National Interest Lands Conservation Act (ANIL CA) evaluates a proposed action and four alternatives for the conservation and protection of significant fish, wildlife and cultural resources while still allowing for moderate economic growth and development of mineral and other land and water resources. The public review period for acceptance of comments on the plan/EIS is extended 30 days to allow additional time for public comment.

This notice informs the public that the EIS has been widely circulated, is available from the Regional Director of the Fish and Wildlife Service (FWS), Anchorage, Alaska or the Study Managers, Alaska Land Use Council, Anchorage, Alaska and can be examined at the Regional Office of FWS or at the office of the Study Manager as noted below.

DATES: The period of comment will close October 20, 1983.

ADDRESS: Comments should be addressed to Dave Simpson, Alaska Land Use Council Study Manager, 1689 C Street, P.O. Box 100120, Anchorage, Alaska, 99510-0120. Copies may be secured or viewed at the above address or at the Office of the Regional Director, Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska, 99503 (907-786-3355).

FOR FURTHER INFORMATION CONTACT: John Kurtz, U.S. Fish and Wildlife

Service, 1011 E. Tudor Road, Anchorage, Alaska, 99503 (907–786–3355).

Bruce Blanchard,

Director, Office of Environmental Project Review.

September 9, 1983.

[FR Doc. 83-25045 Filed 9-13-83; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

[A-17000-C]

Arizona; Notice of Opening of Public Lands

1. In Federal Register Volume 46, Number 138, Pages 36950–36951 dated July 16, 1981 and Federal Register Volume 46, Number 166, Pages 43313–43314 dated August 27, 1981, approximately 19,988 acres were proposed as suitable for classification for transfer to the State of Arizona under the State Indemnity Selection Program. All of the lands have been transferred to the State of Arizona with the exception of 4943.66 acres, which have been deleted from the State's application and are described as follows:

T. 5N., R.1W., G&SRM,
Sec. 5, Lots 2, 3, 4, SW¼NE¼,S½NW¼, N½SW¼NW¼SE¼;
Sec. 12, W½;
Sec. 14, SE¼SW¼,S½SE¼.
T. 6N., R.1W., G&SRM,
Sec. 29, W½SW¼;
Sec. 30, Lots 1, 2, 3, 4, E½W½,SE¼;
Sec. 31, Lots 1, 2, 3, 4, E½,E½W¼.
T. 6N., R.2W., G&SRM,
Sec. 23, S½;
Sec. 25, Lots 1, 2, E½NE¼,SW¼NE¼, NW¼NW¼,S½NW¼,S½;
Sec. 26, E½E½E½.
T. 7N., R.4W., G&SRM,
Sec. 5, Lots 2, 3, SW¼NE¼,SE¼NW¼,E½ SW¼NW¼.
T. 8N., R.4W., G&SRM,
Sec. 19, S½S½lot 1, lots 2, 3, 4, SE¼NW¼, SW¼NE¼,S½SE¼,NE¼E½SW¼,SE¼;
Sec. 20, W½SW¼NW¼,W½E½SW¼ NW¼,W½SW¼,SE¼SW¼,S½NE¼ SW¼,NW¼NW¼NE¼SW¼,S½NW¼ NE¼SW¼,SE¼SE¼NW¼NE¼,S½S½ NE¼NE¼,E½E½SW¼NE¼,W½SE¼ NE¼,NE¼SE¼NE¼,W½E¼,W¼SE¼, S½NW¼SE¼,E½NE¼NW¼SE¼;
Sec. 21, W½NW¼NW¼,N½S½NW¼;
Sec. 23, W½NW¼,S½SW¼SE¼NW¼, W½NE¼SW¼,NW¼NW¼;
Sec. 29, All;
Sec. 30, E½NE¼.

The areas described aggregate about 4943.66 acres in Maricopa and Yavapai Counties.

2. Subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law, the lands described in paragraph 1 were opened to the operation of the public land laws including the mining laws (Ch. 2, Title 30 U.S.C.) on August 27, 1983.

Appropriation of lands under the general mining laws between August 27, 1981 and August 26, 1983 was unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. Section 38, vested 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 had provided for such determination 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. 83-24975 Filed 9-13-83; 8:45 am]

BILLING CODE 4310-84-M

[CA-13747]

Realty Action; Cancellation of Noncompetitive Sale of Public Lands in San Bernardino County; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Realty action; noncompetitive sale of public lands in San Bernardino County; California—CA–13747.

SUMMARY: The Bureau of Land Management has cancelled the public land sale, Serial No. CA–13747 as published in FR Vol. 48, No. 141, page 33358, issue of Thursday, July 21, 1983.

Dated: September 1, 1983.

Hugh Riecken,

Associate District Manager.

[FR Doc. 83-24974 Filed 9-13-83; 8:45 am]

BILLING CODE 4310-84-M

[CA-13746]

Realty Action; Cancellation of Noncompetitive Sale of Public Lands in San Bernardino County; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Realty action; noncompetitive sale of public lands in San Bernardino County; California—CA–13746.

SUMMARY: The Bureau of Land Management has cancelled the public land sale, Serial No. CA–13746 as published in FR Vol. 48, No. 141, page 33358, issue of Thursday, July 21, 1983.

Dated: September 1, 1983.

Hugh Riecken,

Associate District Manager.

[FR Doc. 83-24973 Filed 9-13-83; 8:45 am]

BILLING CODE 4310-84-M

[CA-13745]

Realty Action; Cancellation of Noncompetitive Sale of Public Lands in San Bernardino County; California

AGENCY: Bureau of Land Management, Interior

ACTION: Realty action; Noncompetitive sale of public lands in San Bernardino County; California—CA–13745.

SUMMARY: The Bureau of Land Management has cancelled the public land sale, Serial No. CA–13745 as published in FR Vol. 48, No. 141, page 33358, issue of Thursday, July 21, 1983.

Dated: September 1, 1983.

Hugh Riecken,

Associate District Manager.

[FR Doc. 83-4972 Filed 9-13-83; 8:45 am]

BILLING CODE 4310-84-M

Regional Oil Shale Team; Meeting

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Regional Oil Shale Team Meeting.

SUMMARY: The Regional Oil Shale Team will review the oil shale management alternatives for the Bookcliffs Resource Management Plan (RMP), Utah, and the Piceance Basin Resource Management Plan, Colorado. Recommendations to the Bureau would be completed by the Team.

DATE: September 29, 1983, starting at 9:00 a.m., with the Bookcliffs RMP and the Piceance RMP at approximately 1:00 p.m.

ADDRESS: Sheraton Inn, 1684 West Highway 40, Vernal, Utah 84078, telephone: (801) 789–9550.

FOR FURTHER INFORMATION CONTACT: Robert E. Leopold, Oil Shale Program Manager, Bureau of Land Management, 1037 20th Street, Denver, Colorado 80202, telephone: (303) 837–5435.

Dated: September 8, 1983.

James M. Parker,

Acting Director.

[FR Doc. 83-24884 Filed 9-13-83; 8:45 am]

BILLING CODE 4310-84-M

Colorado; Proposed Continuation of Withdrawal

[C-28676]

Dated: September 7, 1983.

In accordance with the provisions of Section 204 of the Federal Land Policy and Management Act, the Department of Transportation, Federal Aviation Administration has filed a statement of justification for the continuation of their Air Navigation Site Withdrawal No. 233 created by section 4 of the Act of May 24, 1928 (45 Stat. 729 U.S.C. 214 (1964)), Secretary's Order of August 18, 1947. The following described land is included in the proposed continuation:

Sixth Principal Meridian

The area described aggregates 40 acres in Mesa County.

T. 11 S., R. 97 W., sec. 15, NE¼SW¼.

The Bureau proposes continuation of the withdrawal in its entirety for 20 years. The purpose of the withdrawal is for a remote center air/ground communication facilities site. The withdrawal closed the described land to all forms of appropriation under the public land laws, including the mining laws, but not the mineral leasing laws. No change in the segregative effect or use of the land would be affected by the continuation.

Notice is hereby given that a public hearing may be afforded in connection with the proposed withdrawal continuation. All interested persons who desire to be heard on the proposal must submit a written request for a hearing to the undersigned within 90 days of the publication of this notice. Upon a determination by the State Director, BLM, that a public hearing should be held, a notice will be published in the **Federal Register** giving the time and place of such hearing. Public hearings will be scheduled and conducted in accordance with BLM Manual 2351.16B. Additionally, all persons who wish to submit comments, suggestions or objections in connection with the proposed withdrawal continuation may present their views in writing to the undersigned authorized officer of the BLM within 90 days of the date of publication of this notice.

The authorized officer of the BLM will undertake such investigations as are necessary and prepare a report for consideration by the Office of the Secretary of the Interior. The final determination on the continuation of the withdrawal will be published in the **Federal Register.** The existing withdrawal will continue until such final determination is made.

All communications in connection with the proposed withdrawal continuation should be addressed to the undersigned officer, Bureau of Land Management, Colorado State Office, 1037 20th Street, Denver, Colorado 80202.

Robert D. Dinsmore,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 83-25008 Filed 9-13-83; 8:45 am]

BILLING CODE 4310-84-M

[AA-8482-A]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14 of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1611 (1976)) (ANCSA), and section 1427(e) of the Alaska National Interest Lands Conservation Act of December 2, 1980 (Public Law 96-487, 94 Stat. 2371, 2525-26) (ANILCA) will be issued to Ayakulik, Inc., for approximately 442 acres. The lands involved are within T. 34 S., R. 33 W., Seward Meridian, Alaska:

The decision to issue conveyance will be published once a week, for four (4) consecutive weeks, in the Kodiak Daily Mirror upon issuance of the decision. For information on how to obtain copies, contact the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513.

Any party claiming a property interest in lands affected by the decision, an agency of the Federal Government, or regional corporation may appeal the decision to the Interior Board of Land Appeals, Office of Hearings and Appeals, in accordance with the regulations in Title 43 Code of Federal Regulations (CFR), Part 4, Subpart E, as revised.

If an appeal is taken, the notice of appeal must be filed in the Bureau of Land Management, Alaska State Office, Division of Conveyance Management (960), 701 C Street, Box 13, Anchorage, Alaska 99513. Do not send the appeal directly to the Interior Board of Land Appeals. The appeal and copies of pertinent case files will be sent to the Board from the office. A copy of the appeal must be served upon the Regional Solicitor, 701 C Street, Box 34, Anchorage, Alaska 99513.

The time limits for filing an appeal are:

1. Parties receiving service of the decision by personal service or certified mail, return receipt requested, shall have thirty days from the receipt of the decision to file an appeal.

2. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who failed or refused to sign their return receipt, and parties who received a copy of the decision by regular mail which is not certified, return receipt requested, shall have until October 14, 1983, to file an appeal.

Any party known or unknown who is adversely affected by the decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Bureau of Land Management, Alaska State Office, Division of Conveyance Management.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeal. Further information on the manner of and requirements for filing an appeal may be obtained from the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513.

If an appeal is taken, the parties to be served with a copy of the notice of appeal are:

Ayakulik, Inc., Akhiok Rural Station, Akhiok, Alaska 99615

Koniag, Inc., Regional Native Corporation, P.O. Box 746, Kodiak, Alaska 99615

Ruth Stockie,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 83-25015 Filed 9-13-83; 8:45 am]

BILLING CODE 4310-84-M

Minerals Management Service

Advisory Committee on Minerals Accountability; Monthly Meeting

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of monthly meeting.

SUMMARY: The purpose of the Advisory Committee on Minerals Accountability is to develop over a 1-year period an expanded policy of cooperation with States and Indian Tribes in the royalty management area and to develop a detailed plan for carrying out Federal/State/Indian cooperation on a comprehensive basis.

The purpose of the Advisory Committee meeting will be to discuss several matters of business that the Committee members wish to review. They include but are not limited to the proposed draft of the Federal Oil and Gas Product Value Guidelines and Regulations, the proposed draft of Indian Oil and Gas Valuation Guidelines, the status and results of the Royalty Compliance Division of the Minerals Management Service, and the participation of the States and Indians in the cooperative audit process. The above mentioned topics will be discussed on the first day of the Advisory Committee meeting, Wednesday, September 28. The second day of the meeting, Thursday, September 29, will be a closed Executive Session of the Committee to discuss the final report of the Committee to the Secretary of the Interior.

Notice of the next monthly meeting will be published 15 days before the meeting is to take place.

DATE: Wednesday, September 28, and Thursday, September 29, 8:30 a.m.

ADDRESS: Sheraton Old Town, 800 Rio Grande Boulevard, N.W., Albuquerque, New Mexico.

FOR FURTHER INFORMATION CONTACT: John Sullivan, Department of the Interior, 18th & C Streets, N.W., Room 4216, Washington, D.C. 20240, telephone: (202) 343-3526.

SUPPLEMENTARY INFORMATION: The Advisory Committee was created by the Secretary of the Interior on November 15, 1982 (Order No. 3071).

The Committee will have one or more Executive Sessions at this meeting.

Dated: September 9, 1983.

John T. Sullivan, Jr.,

Assistant to the Director, Minerals Management Service.

[FR Doc. 83-24971 Filed 9-13-83; 8:45 am]

BILLING CODE 4310-MR-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development and production plan.

SUMMARY: Notice is hereby given that ARCO Oil and Gas Company has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OSC-G 4547, Block 668, Matagorda Island Area, offshore Texas.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Land Act Amendments of 1978, that the Minerals Management Service is considerating approval of the Plan and that it is available for public review at the Office of the Regional Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone (504) 838-0519.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and othe interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in a revised 250.34 of Title 30 of the Code of Federal Regulations.

Dated: September 6, 1983.

John L. Rankin,

Regional Manager, Gulf of Mexico OCS Region.

[FR Doc. 83-25011 Filed 9-13-83; 8:45 am]

BILLING CODE 4310-MR-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development and production plan.

SUMMARY: Notice is hereby given that Sohio Petroleum Company has submitted a Development and Protection Plan describing the activities it proposes to conduct on Lease OCS-G 4935, Block 20, Mississippi Canyon Area, offshore Louisiana.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the Plan and that it is available for public review at the Office of the Regional Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone (504) 838-0519.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in Development and Production Plans available to affected States, executives of affected local govenments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: September 6, 1983.

John L. Rankin,

Regional Manager, Gulf of Mexico OCS Region.

[FR Doc. 83-25012 Filed 9-13-83; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-144]

Certain Direct Current Brushless Axial Flow Fans; Order

For reasons of judicial economy, administrative necessity, and pursuant to my authority as Chief Administrative Law Judge, I hereby relieve Administrative Law Judge Janet D. Saxon and designate Administrative Law Judge John J. Mathias as Presiding Officer in this investigation effective on the date of issuance of this order.

The Secretary shall serve a copy of this order upon all parties of record and shall publish it in the **Federal Register.**

Issued: September 8, 1983.

Donald K. Duvall,

Chief Administrative Law Judge.

[FR Doc. 83-25061 Filed 9-13-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 701-TA-201 (Final)]

Certain Forged Undercarriage Components From Italy; Final Countervailing Duty Investigation; Hearing

AGENCY: International Trade Commission.

ACTION: Institution of final countervailing duty investigation and scheduling of a hearing to be held in connection with the investigation

EFFECTIVE DATE: September 9, 1983.

SUMMARY: As a result of an affirmative preliminary determination by the International Trade Administration, U.S. Department of Commerce that there is a reasonable basis to believe or suspect that benefits that constitute a subsidy within the meaning of section 701 of the Tariff Act of 1930 (19 U.S.C. 1671) are granted by the Government of Italy with respect to the manufacture, production, or exportation of semifinished forged links and rollers for the undercarriage of crawler-mounted machinery, [1] provided for in items 664.08, or 692.34, or 692.35 of the Tariff Schedules of the United States, the United States International Trade Commission hereby gives notice of the institution of investigation No. 701–TA–201 (Final) under section 705(b) of the act (19 U.S.C. 1671d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry is materially retarded, by reason of imports of such merchandise. Unless the investigation is extended, the Department of Commerce will make its final subsidy determination in the case on or before October 26, 1983, and the Commission will make its final injury determination by December 27, 1983 (19 CFR 207.25)

FOR FURTHER INFORMATION CONTACT: Ms. Miriam A. Bishop (202–523–0291), Office of Investigations, U.S. International Trade Commission.

SUPPLEMENTARY INFORMATION:

Background.—On June 6, 1983, the Commission determined, on the basis of the information developed during the course of its preliminary investigation, that there was a reasonable indication that an industry in the United States was materially injured by reason of allegedly subsidized imports of semifinished forged undercarriage links and rollers from Italy. The preliminary investigation was instituted in response to a petition filed on April 29, 1983, by counsel for Jernberg Forgings, Co., Lindell Drop Forge Co., Portec, Inc., Presrite Corp., Presrite of Jefferson, Inc., Walco Metal Forming Group, and Walker Forge Inc.

Participation in the investigation.—persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary of the Commission, as provided in § 201.11 of the Commission's Rules of Practice and Procedure (19 CFR 201.11), not later than 21 days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who shall determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Upon the expiration of the period for filing entries of appearance, the Secretary shall prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation, pursuant to §201.11(d) of the Commission's rules (19 CFR 201.11(d)). Each document filed by a party to this investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service (19 CFR 201.16(c), as amended by 47 FR 33682, Aug. 4, 1982).

Staff report.—A public version of the staff report containing preliminary findings of fact in this investigation will be placed in the public record on November 7, 1983, pursuant to § 207.21 of the Commission's Rules (19 CFR 207.21).

Hearing.—The Commission will hold a hearing in connection with this investigation beginning at 10:00 a.m. on November 22, 1983, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, D.C. 20436. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on November 8, 1983. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 10:00 a.m. on November 15, 1983, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is November 17, 1983.

Testimony at the public hearing is governed by section 207.23 of the Commission's rules (19 CFR 207.23, as amended by 47 FR 33682, Aug 4, 1982). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 (19 CFR 207.22, as amended by 47 FR 33682, Aug. 4, 1982). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on November 30, 1983.

Written submissions.—As mentioned, parties to the investigation may file prehearing and posthearing briefs by the dates shown above. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before November 30, 1983. A signed orginal and fourteen (14) true copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired shall be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of section 201.6 of the Commission's rules (19 CFR 201.6).

For further information concerning the conduct of the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and C (19 CFR Part 207, as amended by 47 FR 33682, Aug. 4, 1982), and part 201, subparts A through E (19 CFR Part 201, as amended by 47 FR 33682, Aug. 4, 1982).

This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Issued: September 9, 1983.

Kenneth R. Mason,

Secretary.

[FR Doc. 83-25058 Filed 9-13-83; 8:45 am]

BILLING CODE 7020-02-M

[1] For the purposes of this investigation, the term "semifinished" means forged articles that are not assembled, not machined to final dimensions, and not tempered, whether or not otherwise processed.

[Investigation No. 337-TA-156]

Certain Minutiae-Based Automated Fingerprint Identification Systems; Order No. 12

For reasons of judicial economy, administrative necessity, and pursuant to my authority as Chief Administrative Law Judge, I hereby relieve Administrative Law Judge Donald K. Duvall and designate Administrative Law Judge John J. Mathias as Presiding

Officer in this investigation effective on the date of issuance of this order.

The Secretary shall serve a copy of this order upon all parties of record and shall publish it in the **Federal Register**.

Issued: September 8, 1983.

Donald K. Duvall,

Chief Administrative Law Judge.

[FR Doc. 83-25055 Filed 9-13-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-163]

Certain Nutating Valve Actuators and Components Thereof; Notice of Investigation

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that on August 2, 1983, a complaint was filed with the U.S. International Trade Commission, under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), on behalf of Morgan Industries, Inc., 2212 South 144th, Seattle, Washington 98168. This complaint, together with later supplements filed on August 4, 16, and 22, 1983, alleges unfair methods of competition and unfair acts in the importation of certain nutating valve actuators and components thereof into the United States, or in their sale, by reason of alleged infringement of the claims of U.S. Letters Patent Nos. 4,330,725 and 4,360,752. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and a permanent cease and desist order.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in § 210.12 of the Commission's Rules of Practice and Procedure (19 CFR 210.12).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on September 1, 1983, ordered that:

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain nutating valve actuators and components thereof into the United States, or in their sale, by reason of infringement of the claims of U.S. Letters Patent Nos. 4,330,725 and 3,360,752, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Morgan Industries, Inc., 2212 South 144th, Seattle, Washington 98168.

(b) The respondent is the following company, alleged to be in violation of section 337, and is the party upon which the complaint is to be served: Automatic Accessories Pty., Ltd., 1 Cato Street, East Hawthorne, Victoria 3123, Commonwealth of Australia.

(c) Deborah S. Strauss, Unfair Import Investigations Division, U.S. International Trade Commission, 701 E Street, NW., Room 125, Washington, D.C. 20436, shall be the Commission investigative attorney, a party to this investigation; and

(3) For the investigation so instituted, Donald K. Duvall, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding officer.

Response must be submitted by the named respondents in accordance with § 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21). Pursuant to §§ 201.16(d) and 210.21(a) of the rules, such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting a response to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the presiding officer and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein, is 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., Room 156, Washington, D.C. 20436, telephone 202/523-0471.

FOR FURTHER INFORMATION CONTACT: Deborah S. Strauss, Unfair Import Investigations Division, U.S. International Trade Commission, telephone 202/523-1233.

By order of the Commission.

Issued: September 9, 1983

Kenneth R. Mason,

Secretary.

[FR Doc. 83-25060 Filed 9-13-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-147]

Certain Papermaking Machine Forming Sections for the Continuous Production of Paper and Components Thereof; Order

For reasons of judicial economy, administrative necessity, and pursuant to my authority as Chief Administrative Law Judge, I hereby relieve Administrative Law Judge Janet D. Saxon and designate Administrative Law Judge John J. Mathias as Presiding Officer in this investigation effective on the date of issuance of this order.

The Secretary shall serve a copy of this order upon all parties of record and shall publish it in the **Federal Register**.

Issued: September 8, 1983.

Donald K. Duvall,

Chief Administrative Law Judge.

[FR Doc. 83-25057 Filed 9-13-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-145]

Certain Rotary Wheel Printers; Order

For reasons of judicial economy, administrative necessity, and pursuant to my authority as Chief Administrative Law Judge, I hereby relieve Administrative Law Judge Janet D. Saxon and designate Administrative Law Judge John J. Mathias as Presiding Officer in this investigation effective on the date of issuance of this order.

The Secretary shall serve a copy of this order upon all parties of record and shall publish it in the **Federal Register**.

Issued: September 8, 1983.

Donald K. Duvall,

Chief Administrative Law Judge.

[FR Doc. 83-25056 Filed 9-13-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-101 (Final)]

Greige Polyester/Cotton Printcloth From the People's Republic of China

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines,[2] pursuant to section 735(b)(1) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)(1)), that an industry in the United States is materially injured by reason of imports of greige polyester/cotton printcloth [3] from the People's Republic of China (China) which have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective March 28, 1983, following a preliminary determination by the Department of Commerce that imports of greige polyester/cotton printcloth from China are being sold in the United States at LTFV.

Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, D.C., and by publishing the notice in the **Federal Register** on April 6, 1983 (48 FR 15017). The hearing was held in Washington, D.C. on July 28, 1983, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its report on the investigation to the Secretary of Commerce on September 6, 1983. A public version of the Commission's report, *Greige Polyester/Cotton Printcloth from the People's Republic of China* (investigation No. 731-TA-101 (Final), USITC Publication 1421, 1983), contains the views of the Commission and information developed during the investigation.

By Order of the Commission.

Issued: September 6, 1983.

Kenneth R. Mason,

Secretary.

[FR Doc. 83-25059 Filed 9-13-83; 8:45 am]

BILLING CODE 7020-02-M

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Commissioner Lodwick took his oath of office on August 12, 1983, but did not participate in this investigation.

[3] For purposes of this investigation, greige polyester/cotton printcloth covers unbleached and uncolored printcloth fabric in chief value of cotton, containing polyester, and provided for in items 326.20 through 326.40, with statistical suffix 32, of the Tariff Schedules of the United States Annotated.

INTERSTATE COMMERCE COMMISSION

Motor Carrier Permanent Authority Decisions; Decision Notice

Correction

In FR Doc. 83-22194 beginning on page 36914 in the issue of Monday, August 15, 1983, make the following correction:

On page 36917, third column, MC 169394, Loadmaster Trucking Corp., in the second line from the bottom of the paragraph, "NM, IA" should have read "MN, IA".

BILLING CODE 1505-01-M

Motor Carriers; Agricultural Cooperative; Intent To Perform Interstate Transportation for Certain Nonmembers

Dated: September 9, 1983.

The following Notices were filed in accordance with section 10526(a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperatives intending to perform nonmember, nonexempt, interstate transportation must file the Notice, Form BOP 102, with the Commission within 30 days of its annual meetings each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2), the location of the records (3), and the name and address of the person to whom inquiries and correspondence should be addressed (4), are published here for interested persons. Submission of information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, D.C. 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C.

(1) Spencer Trucking, Inc.

(2) Box 781 Boulder Canyon, Sturgis, SD 57785

(3) Box 781 Boulder Canyon, Sturgis, SD 57785

(4) David Robinson, 2228 W. Northern Ave., Phoenix, AZ 85201

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-24905 Filed 9-13-83; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30277]

Railroads; Pittsburgh and Lake Erie Railroad Company—Trackage Rights Exemption—Between Geneva, OH and Buffalo, NY

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirement of prior approval under 49 U.S.C. 11343 *et seq.* the acquisition by the Pittsburgh and Lake Erie Railroad Company of trackage rights over the Norfolk and Western Railway Company's line of track between milepost 138.3 at Geneva, OH, and milepost 1.5 at Buffalo Junction Yard, Buffalo, NY, subject to standard labor protection.

DATES: This exemption will be effective on September 14, 1983. Petitions to reopen this decision must be filed by October 4, 1983.

ADDRESSES: Send pleadings referring to Finance Docket No. 30277 to:

(1) Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representatives: Fritz R. Kahn, 1660 L Street, NW., Suite 1100, Washington, DC 20036

Richard R. Wilson, Suite 780 Commerce Court, Four Station Square, Pittsburgh, PA

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: September 7, 1983.

By the Commission, Chairman Taylor, Vice Chairman Sterrett, Commissioners Andre and Gradison.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-24906 Filed 9-13-83; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30150; Sub-1]

Railroads; St. Louis Southwestern Railway Company; Merger With St. Louis Southwestern Railway Company of Texas

AGENCY: Interstate Commerce Commission.

ACTION: Application accepted for consideration.

SUMMARY: The Commission is accepting for consideration the application for merger of the St. Louis Southwestern Rail Company (Cotton Belt) and the St. Louis Southwestern Railway Company of Texas.

DATES: Written comments must be filed by October 14, 1983.

ADDRESS: An original and 10 copies of all statements referring to Finance Docket No. 30150 (Sub-No. 1) should be sent to: Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (D.C. Metropolitan area) or toll free (8900) 424-5403.

Dated: September 9, 1983.

By the Commission, Chairman Taylor, Vice Chairman Sterrett, Commissioners Andre and Gradison.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-25137 Filed 9-13-83; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

National Institute of Justice

Unsolicited Research Program; Announcement of Competitive Research Grant Program; Notice of Solicitation

The National Institute of Justice (NIJ) announces a competitive research grant program, the Unsolicited Research Program (URP). Through this program, NIJ sponsors a limited number of projects that address significant issues pertaining to adult crime and criminal justice, that are of sound methodological design, and have potentially important implications for criminal justice policy, practice, research and/or theory.

During fiscal year 1984, two (2) funding cycles will be initiated. All papers postmarked before midnight December 1, 1983 will be considered for funding during Cycle 1. All papers postmarked after midnight December 1, 1983 and before June 1, 1984 will be considered for funding during Cycle 2.

At this time the NIJ appropriation for fiscal year 1984 has not been finalized. If the proposed request is adopted, the Institute will allocate approximately $1,000,000 for the URP, with approximately $500,000 available for each funding cycle. If a figure less than the amount requested is appropriated, this funding level will be modified and Cycle 2 funding may be eliminated. In either case, the total amount of awards will depend upon the receipt of high quality proposals that meet all criteria. Approximately one-third of the amount available during each cycle will be allocated for grants of $60,000 or under. The range of funding for each grant will be from $10,000 to $120,000 for research of up to two years' duration.

Copies of this solicitation may be obtained by sending a mailing label to: Announcement Requests—Unsolicited Research Program, National Criminal Justice Reference Service, Box 6000, Rockville, Maryland 20850.

Dated: September 7, 1983.

James K. Stewart,

Director, National Institute of Justice.

[FR Doc. 83-25010 Filed 9-13-83; 8:45 am]

BILLING CODE 4410-18-M

LIBRARY OF CONGRESS

American Folklife Center, Board of Trustees; Meeting

In accordance with P.L. 94-463, the Board of Trustees of the American Folklife Center announces its meeting to be held in Tucson, Arizona on Friday, October 14, from 9:30 a.m. to 4:30 p.m. in the Conquistador Room at the Tuscon Marriott Hotel. The meeting will be open to the public. It is suggested that persons planning to attend this meeting as observers contact Eleanor Sreb, American Folklife Center (202) 287-6590.

The American Folklife Center was created by the U.S. Congress with passage of Public Law 94-201, the American Folklife Preservation Act, in 1976. The Center is directed to "preserve and present American folklife" through programs of research, documentation, archival preservation, live presentation, exhibition, publications, dissemination, training, and other activities involving the many folk cultural traditions of the United States. The Center is under the general guidance of a Board of Trustees composed of members from Federal agencies and private life widely recognized for their interest in American folk traditions and arts.

The Center is structured with a small core group of versatile professionals who both carry out programs themselves and oversee projects done by contract by others. In the brief period of the Center's operation it has begun energetically to carry out its mandate with programs that provide coordination, assistance, and model projects for the field of American folklife.

Raymond L. Dockstader,

Deputy Director, American Folklife Center.

[FR Doc. 83-25009 Filed 9-13-83; 8:45 am]

BILLING CODE 1410-01-M

NATIONAL LABOR RELATIONS BOARD

Appointments of Individuals To Serve as Members of Performance Review Boards

5 U.S.C. 4314(c)(4) requires that the appointments of individuals to serve as members of performance review boards by published in the **Federal Register**. Therefore, in compliance with this requirement, notice is hereby given that the individuals whose names and position titles appear below have been appointed to serve as members of performance review boards in the National Labor Relations Board for the rating year beginning January 1, 1982 and ending December 31, 1982.

Name and Title

Jack B. Albanese—Chief Counsel to Chairman
Robert E. Allen—Associate General Counsel, Enforcement Litigation
William C. Baisinger—Chief Counsel to Board Member
Frederick J. Calatrello—Chief Counsel to Board Member
Harold J. Datz—Associate General Counsel, Advice
Joseph E. DeSio—Associate General Counsel, Operations Management
David Dunn—Chief Counsel to Board Member
John E. Higgins, Jr.—Deputy General Counsel
Harry M. Lett—Chief Counsel to Board Member
Paul E. Long—Deputy Director of Administration
Eugene L. Rosenfeld—Deputy Associate General Counsel, Operations Management
Ernest Russell—Director of Administration
Berton B. Subrin—Director, Office of Representation Appeals

John C. Truesdale—Executive Secretary
Robert F. Volger—Deputy Executive Secretary
Melvin J. Welles—Chief Administrative Law Judge

Dated: Washington, D.C.

By Direction of the Board.

Dated: September 6, 1983.

John C. Truesdale,

Executive Secretary.

[FR Doc. 83-26541 Filed 9-13-83; 8:45 am]

BILLING CODE 7545-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

Recommendation Responses; Availability

Recommendation Responses From:

Aviation—*Federal Aviation Administration: Aug. 26: A–82–90:* Airworthiness Directive 83–14–08, effective Aug. 26, 1983, requires the installation of two additional stall strips to the wing leading edge on Piper Model PA–38–112 airplanes, as well as corresponding changes in the airspeed indicator and Pilot's Operating Handbook. *Aug. 8: A–75–51:* The FAA's Small Airplane Certification Directorate in the Central Region has established a new "Special Projects Office" which will be responsive to crashworthiness issues relative to small airplanes. This office will study such subjects as dynamic testing of the seats on small airplanes. *Jul. 29: A–82–67 and –108:* Has initiated a review and analysis of cockpit voice recorders and flight data recorders for rotorcraft. *Jul. 25: A–83–34:* FAA's Small Airplane Certification Directorate is studying the recommendation to issue an airworthiness directive to make compliance with Cessna Service Letter SE69–16 compulsory. *Jul. 25: A–81–145:* A discussion paper on stress and fatigue is being disseminated to all controllers and supervisors to encourage discussion among employees on the management of stress, stimulate an awareness of possible stressful situations, and promote corrective actions. This will be followed by a 1-hour videotape presentation on stress and stress management. *A–81–147:* Is moving as rapidly as possible to remove supervisors from controller position coverage so they may devote full time to supervisory duties during volume traffic conditions. *A–81–156:* Implemented on Apr. 25, 1983, Standard Organization of Air Traffic Control Terminal Facilities, Order 1100.126E, and on Apr. 29, 1983, Standard Organization of Air Route Traffic Control Centers, Order 1100.123C, which provide for a Quality Assurance Division in centers and large terminal facilities that will conduct periodic formal evaluations to monitor the air traffic control practices and controller proficiency. *Jul. 15: A–80–116:* The testing of the National Weather Service weather radar color remote displays was conducted at the Cleveland Air Route Traffic Control Center from Apr. through Oct. 1981. The test proved that, with the present equipment, the dual display environment at the sector posed problems to the controller in terms of clutter and distraction. *A–80–117:* Development of graphic maps for correlation of weather on color displays and air traffic controller displays was successful. However, it was reported that the information on the color weather monitors presented too much clutter and could not satisfy the needs for graphic data on a separate display in a legible manner. The weather display monitor was too small to accomodate the requried amount of graphics. *A–80–118:* The effort to correlate weather and air traffic data will continue. *A–80–119:* Deliveries of the Radar Remote Weather Display System equipment is underway. *Jul. 21: A–83–13:* Has placed the Low Level Wind Shear Alert System on the National Airspace Performance Reporting System list which means that all deficiencies must be reported and repairs accomplished on a priority basis. *A–83–14:* Will amend FAA Handbook 7210.3F, paragraph 1222, to require issuance of a Letter to Airmen by all Low Level Wind Shear Alert System facilities. The letter will contain the location and designation of the remote sensors, the capabilities and limitations of the system, and the availability of current system remote sensor information. *A–83–15:* Is developing a plan to install data recorders on Low Level Wind Shear Alert Systems to tablulate the number of times wind shear alerts occurred, the shear velocity, and the duration of the event. *A–83–16:* Proposes to change the Airman's Information Manual, paragraph 520, to include wind shear as a reportable, significant flight condition and urge pilots to promptly provide the appropriate air traffic control facility with reports of wind shear. An article entitled "Low Level Wind Shear—Its Characteristics and the Controller's Responsibility" has been published in Air Traffic Service Bulletin Number 83–2, dated June 1983. Another article, "The Characteristics of Microbursts," was also published in the Bulletin. Advisory Circular 00–50A, "Low Level Wind Shear," addresses the subject of pilot reports (PIREPS) when encountering wind shear conditions. *A–83–17:* A change to Handbook 7210.3F, paragraph 1230, Automatic Terminal Information Service, effective Aug. 4, 1983, requires the appropriate controller to "broadcast once on all frequencies, except emergency frequencies, to advise aircraft of a change in the ATIS code/message." *A–83–18:* Believes the methods and procedures currently available to air carrier pilots usable for evaluation of convective weather patterns are adequate if utilized with conservative discretion commensurate with available technology. *A–83–19:* Evaluation of the data available from Low Level Wind Shear Alert Systems indicates that it is not feasible to establish operational limitations based on its use. *A–83–20:* Will evalute various displays of wind sensor information using an enhanced Low Level Wind Shear Alert System at New Orleans Airport. *A–83–21:* A National Academy of Sciences study is reviewing the state of knowledge of low level wind shear and variability that is potentially hazardous to aviation in the terminal area, including detection and measurement of wind hazards, communication of information, warnings to pilots and air traffic control personnel, piloting procedures and training needs, and implications for aircraft design, construction, and operation. The National Aeronautics and Space Administration is studying the aerodynamic penalties of precipitation on airplane performance. *A–83–22:* Plans an informational film for use by pilots and controllers detailing the hazards associated with convective weather. Data from the Joint Airport Weather Studies will be used to develop updated realistic microburst/downburst models to be used in simulator training of pilots. The National Aeronautics and Space Administration is developing design guidelines for changes needed to improve the performance of airborne Doppler radars. In promoting the development of airborne wind shear detection devices, FAA has circulated within industry Advisory Circular 120.XX which defines the criteria for such systems to be used in air carrier operations. *A–83–23:* Every effort is being made to expedite the procurement for development and production of the terminal Doppler weather radar by specifying a next generation derivative radar. More immediately available hardware such as add-on Doppler to existing weather radar would still require development of the software. *A–83–24:* Is reviewing recommendation to encourage industry to expedite the development of flight director systems such as MFD-delta-A and head-Up type displays which provide enhanced pitch guidance logic which responds to inertial speed/airspeed changes and ground proximity and encourages operators to install these systems. *A–83–25:* Will continue to encourage the air carriers to implement improved wind shear models for their simulators which may include microburst demonstrations. Definitive data on microbursts are being prepared by the National Center for Atmospheric Research. *A–83–26:* The air carrier training programs provide more than ample guidance to the pilots on meteorology. FAA will continue to provide emphasis to new information and technology in this area as it becomes available. *July 22: A–80–53:* Effective Feb. 7, 1983, Revision 3 to Airworthiness Directive 81–16–08–R3 allows Learjet Models 24E/F and 25D/F airplanes which were originally certificated to 51,000 feet altitude to resume operations above 45,000 feet if the following kits are installed: AMK 81–12 Engine Stall Warning System, AMK 82–4 Autopilot Pitch Nose Down Limits, and AMK 82–5 Autopilot Roll Rate Limiter. FAA has withdrawn a Notice of Proposed Rulemkaing, based on comments received, to require installation of several changes which would have affected the pitch axis systems in Learjet Models 35/35A/36/36A. Has issued an NPRM to require mandatory modifications in the pitch axis and autopilot systems of Learjet Model 24 series airplanes. No additional mandatory action is currently planned or anticipated on the Learjet Model 23 or Model 28/29 airplanes in regard to pitch axis system modifications. Has approved a "Softflite I" aerodynamic modification to the "straight wing" Learjet Model 25 airplanes that allows those airplanes to return to the

original speeds before they were increased by Airworthiness Directive 80-16-06. A similar modification is currently under development for Model 23 and 24 "straight wing" airplanes. Those airplanes that do not get the "Softflite I" modifications will be required by an Airworthiness Directive to undergo a permanent resetting of the pusher/shaker system to be compatible with the higher speeds. *Jul. 11: A-83-46:* Issued General Notice Number 8320.283, Aircraft Lavatory Maintenance/Inspection Program on Jul. 1, 1983, to initiate a special emphasis program to assure the fire containment integrity of aircraft lavatory trash receptacles of all transport category aircraft being operated by U.S.-certificated operators. *Jul. 14: A-83-12:* Has reviewed the design criteria for the aluminum hydraulic lines in Cessna Model 404 airplanes. The material involved, 5052 aluminum alloy in the 0 temper, has an acceptable margin of safety and is typically used for airplane hydraulic line applications. The bend radii of the affected lines were determined to be within the standards established for this type material. FAA has recommended that Cessna review its present maintenance procedures with the intent of developing an improved maintenance/inspection method of permit early identification of potential line failures. Issuance of an Airworthiness Directive requiring inspection of all hydraulic lines and tubing within 10 hours and every 50 hours thereafter does not appear warranted at this time. *Jul. 14: A-83-33:* Issued Notice of Proposed Rulemaking, Docket Number 83-NM-45-AD on Jun. 24, 1983, regarding mandatory inspection for incorrect sockets specified in Sundstrand Data Control Service Bulletin No. 23. *Jul. 14: A-82-70, -72, and -73:* Changes contained in FAA Order 8430.1C, "Inspection and Surveillance Procedures—Air Taxi Operators/Commuter Air Carriers" provide new guidance to FAA inspectors concerning oral briefings and briefing cards, location and use of fire extinguishers, articulation by crewmembers of passenger briefings, and emphasis on cabin safety and surveillance. Believes that the regulatory requirements in 14 CFR 135 are adequate in addressing the location and use of fire extinguishers. Change 1 to Order 8430.1C will include directions to principal inspectors to require operators to identify storage locations of fire extinguishers when their locations are less than obvious. *Jul. 5: A-82-151:* FAA Order 8340.1A, Change 72, will transmit Maintenance Bulletin No. 52-12 to Appendix 21 entitled Nihon YS-11 Aircraft Interior Overwing Exit Markings that directs FAA field inspectors to assure that their assigned operators are aware of the need to mark the catches on all emergency exits so they are easily located and distinguishable from exit handles and other components. *Jul. 7: A-81-157 through -160:* An Airworthiness Directive (Docket No. 82-CE-34-AD) effective Jun. 15, 1983, requires installation on Piper Models PA-24-400, PA-30, and PA-39 airplanes of an improved fuel selector valve strainer housing, placards prescribing, in detail, preflight fuel system drainage procedures and makes mandatory existing manufacturer's recommendations on fuel system maintenance. *Jul. 7: A-82-96 and -97:* Airworthiness Directive 83-10-03, effective Jun. 30, 1983, requires modification of the right-hand control wheel yoke in certain Cessna Models 172M, 172N, 172P, R172K, F172, and FR172 airplanes to eliminate the in-flight jamming of the control system by incorporating a stop in the control system. *Jul. 7: A-82-18:* Is evaluating the reliability of the deice system for the Cessna 1983 Model P210N with dual alternators and vacuum pumps. *A-82-21:* Is evaluating the failure mode and design adequacy of aircraft vacuum pumps produced by Airborne Manufacturing Company and the Edo-Aire Manufacturing Company. *A-82-22:* Is continuing its review of the regulations governing flight instruments and other equipment which use pneumatic power. *A-82-23:* Is continuing its monitoring of the extensive investigation and testing that the vacuum pump manufacturers are conducting relative to the effects of altitude and other factors on the performance and reliability of vacuum pumps. *Aug. 22: A-80-138:* FAA's Proposal AAT-364-82-2 on flight service station priority of duties was adopted and became effective on Dec. 23, 1982, in Handbook 7110.10F, Flight Services. A test program for Hazardous In-flight Weather Advisory Service in the Southern Region is being approved for national implementation. The program is designed to provide significant meteorological information (SIGMET) reports, convective SIGMET's, airmen's meteorological information (AIRMET) reports, and urgent pilot reports (PIREP) pertaining to the Air Route Traffic Control Center area in which the broadcast facility is located. *Aug. 22: A-83-12:* Issued an Airworthiness Alert in the August 1983 publication of the General Aviation Airworthiness Alert (AC-43-16) to direct attention to the Cessna Model 404 landing gear hydraulic lines. *Aug. 24: A-83-35:* A discussion paper on stress and fatigue is being desseminated to all controllers and supervisors to indicate situations that could increase stress and suggests recommendations to help alleviate these conditions, and will present a 1-hour videotape presentation on stress and stress management to all controllers and supervisors. *A-83-36:* Is developing a program that will have a Quality Assurance Staff in centers and large terminal facilities which will conduct periodic formal evaluations to monitor the air traffic control practices and controller proficiency. Performance standards and critical task areas inherent in operational error causal factors are being integrated into the task and skill evaluation techniques used during the Training Program and Technical Appraisal Program. *A-83-37:* The program to implement the use of air traffic control facilities' operational computers to help identify operational errors is being expedited. *A-83-38:* Is moving as rapidly as possible to remove supervisors from controller position coverage so they may devote full time to supervisory duties during volume traffic conditions. *A-83-39:* Nothing in the handbooks requires disciplinary action for controller performance leading to an operational error. Will review the appropriate handbooks to ensure that nothing contained in them implies that an operational error should result in disciplinary action. *A-83-40:* All facility evaluations conducted by the Air Traffic Service Quality Assurance Division include a check on the visibility and availability of report forms for the controller's use in reporting incidents under the Aviation Safety Reporting System. *A-83-41:* Automation systems to modernize flight service stations are under contract and installation will begin in 1984. Under the flight service station modernization plan, the existing workforce will be centralized to the 61 automated flight service stations in an evolutionary manner designed to maintain the integrity of the system during transition. *A-83-42:* FAA has been able to lift restrictions safely because controller staffing is augmented by supervisory and staff personnel working control positions and the imposition of strict flow control programs to level peaking. Supervisors and staff are expected to return to normal duties by July 1984. Traffic Management Units are being organized in all 20 air route traffic control centers and a select number of Level V facilities. The units consist of 8 to 15 highly trained air traffic management specialists whose main functions are to analyze center traffic flow and to ensure that traffic volume does not exceed sector controller capabilities. Ground delay procedures will continue to be used to ensure that traffic volume will not exceed system capacity. *A-83-43:* Will initiate a program to record data at all Automated Radar Terminal System IIIA facilities.

U.S. Virgin Islands: A-80-16 through -18: The Virgin Islands Port Authority has held training, hot drills, and periodic disaster drills for airplane crash emergencies. An address system was installed in the crash house with the activating microphone in the control tower. Portable multi-channel transceivers are located in the three emergency vehicles. Direct radio communication is provided between each vehicle and the police department, insular fire service, hospital, Civil Defense, and electric utility company.

Highway—*California Dept. of Transportation: Jul. 29: H-83-10 through -15:* Will review and evaluate the basis for each recommendation and take action where it is reasonable, economically feasible and within its legislative authority.

National Tank Truck Carriers, Inc.: July 22: H-83-34, which recommended assisting the American Association of Motor Vehicle Administrators in developing a program to encourage the States to implement a uniform program for specifically licensing or certifying truckdrivers to transport hazardous materials: The charge to the AAMVA is too broad. The Board should temporarily withdraw its recommendation, break down the issue into single constituent elements for specific comment and ask AAMVA to submit its findings based on that outline. In this way, both the lead association and those cooperating in the project will be better able to respond.

Louisiana Department of Transportation and Development: Jul. 22: H-83-26 through -29: Transmitted documents pertaining to the implementation of recommendations to advise maintenance personnel of the

circumstances of the accident in Lake Charles, Louisiana, on Aug. 27, 1981, and to emphasize the need for repair designs at bridges and all other repair sites that consider operational problems, repair personnel qualifications and the need for timely followup to temporary repairs; to establish a program to upgrade maintenance welder qualifications through certification in accordance with performance standards promulgated by the American Welding Society; to conduct a study to determine if it is structurally and operationally feasible and cost effective to provide a median opening on the I-10 Calcasieu River Bridge for emergency use; and to publicize the purpose of and need for compliance with the I-10/210 electronic, changeable message sign system through the local media.

State of New York Department of Motor Vehicles: Jul. 18: H-82-49: Section 6-5 on page 39 of the New York State Driver's Manual which has just been printed provides information on driver's responsibilities at grade crossings. The possibility of developing driver license written examination questions on this new material is still under review. *H-82-50:* Administrative considerations prevent the Department from implementing the recommendation to include in a future vehicle registration renewal mailing an informational flier explaning drivers' responsibilities at automatic railroad crossing gates and flashing lights.

International Association of Chiefs of Police, Inc.: Jul. 18: H-83-34: Has referred the recommendation to assist the American Association of Motor Vehicle Administrators in developing a program to encourage the States to implement a uniform program for specifically licensing or certifying truck-drivers to transport hazardous materials to is Highway Safety Committee for its review and consideration.

American Petroleum Institute: Jul. 15: H-83-34: Has requested the API's Central Committee on Highway Transportation to consider the recommendation to assist the American Association of Motor Vehicle Administrators in developing a program to encourage States to implement a uniform program for specifically licensing or certifying truck drivers to transport hazardous materials.

State of New York: Jul. 13: H-79-30: Its Centralized Local Accident Surveillance System is designed to locate and monitor the more than 350,000 accidents occurring each year on 92,000 miles of local streets and highways, and meets the requirements of Highway Safety Program Standards 9 and 10. *H-82-14:* An Operation Lifesaver Program was inaugurated in New York in July 1982. An education program for schoolbus drivers and children has been developed by the Education Program. Speakers have been sent to discuss the railroad crossing problem with many different audiences.

State of South Carolina: Jul. 18: H-82-40 through -44: Each Resident Maintenance Engineer now has adequate signs to properly identify construction sites as provided for in the South Carolina Manual on Uniform Traffic Control Devices. The practice of using Highway Patrol vehicles has been changed. Engineering Administrators have been instructed in the provisions and specifications of the South Carolina Manual on Uniform Traffic Control Devices, and in-service training will continue to provide instructions in safe and efficient traffic control in work zones.

State of Maryland: Jul. 7: H-80-1: Has amended its vehicle laws to redefine the terms "intoxicated" and "impaired by alcohol" to fit what we perceive to be current nationally accepted standard definitions. *H-81-71:* Reconstruction of the I-95/495 interchange is planned for Fiscal Year 1985. *H-82-33:* Analysis by Maryland Department of Transportation shows that grade crossing problems are not really significant in Maryland. The department's Division of Public Affairs with the State Railroad Administration and other divisions will continue to assist informally the efforts of "Operation Lifesaver."

Maryland Department of Transportation: Aug. 1: H-81-48: State Highway Administration personnel are instructed to remove the berm (silt buildup) adjacent to guardrails during routine maintenance procedures. *H-81-49:* Copies of the State Highway Administration Directives which outline its practice pertaining to replacing damaged guardrail are provided to field personnel responsible for maintenance activities. *H-81-50:* Due to the reduction of funds available for projects such as a systematic upgrading of guardrail, the State has found it necessary to place higher priorities on other types of projects. With the increase in the gasoline tax and more emphasis put on safety improvements, efforts will be directed to programming replacement and upgrading guardrail.

State of Wisconsin Department of Transportation: Jul. 8: H-82-31: Railroad grade crossing accidents do not constiture as serious a problem in Wisconsin as in other States. Will review its decision not to implement Operation Lifesaver at a late date.

State of New Jersey: Aug. 15: H-82-32: Has directed the Department of Transportation to assemble a permanent committee to imlement the Operation Lifesaver program to educate the public concerning potential danger involved at grade crossings and to promote traffic regulation enforcement at such crossings.

Tennessee Department of Safety: Aug. 16: H-79-33 through -35: If a fog situation occurs in the Calhoun fog area, public safety officials are notified by the Tennessee Highway Patrol dispatcher by radio or telephone. Local radio stations are advised of the situation and make spot announcements. The Tennessee Highway Patrol has a trooper on patrol in the area at all times, and a trooper is posted in the fog area from 5 a.m. to 9 a.m. daily. All necessary signs and postings have been erected for detouring traffic around the area. Meetings have been held with all local and State officials to complete a mutual assistance pact. Delineators have been set in the pavement at very close intervals. Flashing warning lights can be activated by a trooper in the north and southbound lanes of I-75 prior to the fog area.

Federal Highway Administration: Aug. 9: H-83-21: Is developing minimum training criteria and sample model curriculum for tractor-trailer driver training programs. *Jul. 14: H-81-18:* Federal Motor Carrier Safety Regulations require every motor carrier to systematically inspect, repair, and maintain all motor vehicles subject to its control. The regulations also require all parts and accessories to be in proper operating condition at all times. In view of this and the fact that the manufacturers of intercity coaches have the needed expertise to develop the specific procedures recommended and have, in fact, developed, published, and distributed such procedures, FHWA and the NHTSA see no justifiable need for further Federal intervention in an area sufficiently addressed by the private sector.

Note.—Single copies of these response letters are available on written request to: Public Inquiries Section, National Transportation Safety Board, Washington, D.C. 20594. Please include respondent's name, date of letter, and recommendation number(s) in your request. The photocopies will be billed at a cost of 20 cents per page ($2 minimum charge).

H. Ray Smith, Jr.,

Federal Register Liaison Officer.

September 8, 1983.

[FR Doc. 83-24935 Filed 9-13-83; 8:45 am]

BILLING CODE 4910-58-M

OFFICE OF THE FEDERAL INSPECTOR OF THE ALASKA NATURAL GAS TRANSPORTATION SYSTEM

Report on Results of Audit for Purposes of Rate Base Determination; Invitation for Comments and Granting Intervention

Issued: September 7, 1983.

AGENCY: Office of the Federal Inspector for the Alaska Natural Gas Transportation System.

ACTION: Tentative Determination.

DATES: Comments should be submitted on or before October 7, 1983; reply comments should be submitted on or before October 24, 1983.

ADDRESS: For filing comments: J. Richard Berman, Director, Office of Audit and Cost Analysis, Office of the Federal Inspector, ANGTS, 1200 Pennsylvania Ave., N.W., Room 3415, Washington, D.C. 20044.

FOR FURTHER INFORMATION CONTACT: J. Richard Berman, (202) 275-1157.

The Federal Inspector has received from the Office of Audit and Cost Analysis a Tentative Determination on the expenditures incurred by Pacific Gas Transmission Company (PGT) related to the Western segment of the Alaska Natural Gas Transportation System (ANGTS) during the period January 1,

1980 through May 31, 1982.[1] The report is based on two separate audit reports, copies of which can be acquired from Office of the Federal Inspector (OFI) Public Affairs Office: (202) 275–1157.

The two audit reports cover expenditures charged to the gas plant accounts incurred by PGT, including the Allowance for Funds Used During Construction (AFUDC), from January 1, 1980 through May 31, 1982. The Federal Energy Regulatory Commission (FERC) report covers the period January 1, 1980 through June 30, 1980, and the Office of the Federal Inspector (OFI) report covers the period July 1, 1980 through May 31, 1982.

In accordance with established FERC procedures[2] and the OFI's Statement of Policy on General Standards and Procedures for Rate Base Audit and Approval for the ANGTS, the reports express an opinion as to whether: expenditures are properly assignable to the project and of a nature that would qualify the expenditures for eventual inclusion in the rate base; the accounting used by the sponsors meets the Uniform System of Accounts and generally accepted accounting principles; the project sponsors are in compliance with other accounting and reporting regulations and requirements of the Natural Gas Act, the *Decision* and the certificate of public convenience and necessity; and the sponsor's management and cost control systems were in place and operating as planned during the period under review.

The Federal Inspector solicits:

(A) Within 30 days of the notice date the comments of any interested person or persons as to why, or why not, for purposes of rate base determination pursuant to OFI Order No. 3,[3] the tentative determination should be made final.

(B) No later then 45 days after the notice date, interested person may submit comments in response to any comment submitted within the 30-day period provided by paragraph (A) above.

[1] ANGTS was authorized by the Alaska Natural Gas Transportation Act (ANGTA) 15 U.S.C. §§ 719–7190 and the *President's Decision and Report to Congress on the Alaska Natural Gas Transportation System* (Executive Office of the President, Energy Policy and Planning, September 1977) as enacted into law by H.J. Res. 621, Pub. L. No. 95–108 (November 2, 1977). The FERC by an order issued December 16, 1977, in Docket No. CP78–123, *et al.*, issued conditional certificates of public convenience and necessity to construct and operate the ANGTS.

[2] FERC Directive to the Office of the Chief Accountant, Administrative Order No. 4, dated April 18, 1981.

[3] 10 CFR, Chapter XV, Order No. 3, Statement of Policy on General Standards for Rate Base Audit and Approval for the Alaska Natural Gas Transportation System, dated October 22, 1981.

Dated: September 12, 1983.

John T. Rhett,

Federal Inspector.

[FR Doc. 83-25289 Filed 9-13-83; 10:18 am]

BILLING CODE 6119-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-20150; File No. SR-Amex-83-19]

Self-Regulatory Organizations; Proposed Rule Change by American Stock Exchange, Inc.; Amendment of Exchange Rule 343

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on August 16, 1983, the American Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange, Inc. is proposing to amend Rule 343 to modify the qualification requirements for supervisory analyst candidates.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) *Purpose.* The Exchange is proposing the adoption of a rule change relating to supervisory analysts as part of its ongoing program to ensure that the Exchange's rules conform to similar rules of the New York Stock Exchange.

Amex Rule 343, Commentary .10, requires that a supervisory analyst candidate either submit evidence of appropriate experience and pass an Exchange Supervisory Analyst Examination, or submit evidence that he has earned a Chartered Financial Analyst ("CFA") designation and pass the portion of the Exchange Supervisory Analyst Examination that deals with Exchange rules on research standards and related matters.[1]

In order to obtain a CFA designation, an applicant must successfully complete Levels I, II, and III of the Chartered Financial Analyst Examination. Each Level tests an increasing degree of sophistication involving more complex investment and financial problems. An Examination Advisory Committee appointed by the New York Stock Exchange determined that completion of CFA Level I by a supervisory analyst candidate, would be sufficient to assure that an applicant possesses the analytical knowledge necessary to properly perform his tasks. The material covered by CFA Level I is substantially the same as the material covered by Part II of the Exchange Supervisory Analyst Examination. It is therefore proposed that Commentary .10 to Amex Rule 343 be amended to provide that a supervisory analyst candidate need only present evidence of appropriate experience (three years as a securities analyst) and successfully complete a specified level of the CFA Examination prescribed by the Exchange (currently CFA Level I), rather than earn the full CFA designation. The candidate would continue to be required to complete the portion of the Exchange Examination dealing with Exchange Rules. By making this amendment, the Exchange will not be lowering the qualification standards for supervisory analysts. It will simply be allowing a candidate to pass to Level of the CFA Examination most relevant to his job functions, instead of passing all three Levels.

The proposed amendments will conform this Rule to recent amendments made by the NYSE to its comparable Rule 344.

(2) *Basis.* The proposed amendment to Rule 343 is consistent with Sections 6(b)(5) of the Exchange Act in that by removing the Level 2 and 3 requirement, the Exchange can maintain investor protection in the area of examination of supervisory analysts without imposing unnecessary regulatory burdens.

[1] A supervisory analyst is an employee of a member organization who has responsibility for approving the research reports of that member organization.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will have a favorable impact on competition by removing excessive burdens imposed on supervisory analyst candidates and by equalizing the amount of knowledge required of all candidates.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, at the above address. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should be submitted within 21 days after the date of this publication.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 2, 1983.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-24970 Filed 9-13-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 20154; File No. SR-PSE-83-13]

Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Stock Exchange, Inc.

September 6, 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 August 16, 1983, the Pacific Stock Exchange, Inc. ("PSE"), 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 proposed rule change will require member firms executing trades on the exchange floor to use an automated system for reconciliation of uncompared options trades when such member firms are also clearing members of the Options Clearing Corporation. Members will be required to use exchange-provided data processing terminals in connection with the system and will have the direct cost of the terminal equipment passed through to them. The PSE expects this cost to be about $130 per month per terminal.

The PSE states that the rule change will improve the efficiency of the Exchange by providing a capability to reconcile uncompared trades as they occur and eliminating time-consuming manual procedures. The PSE also states that its proposed rule change comports with Sections 6(b) (4) and (5) of the Act in providing for equitable allocation of reasonable dues, fees and other charges, in facilitating securities transactions and in promoting the cooperation and coordination of persons engaged in securities transactions

The foregoing change has become effective, pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4 under the Act. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the submission 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-PSE-83-13.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change 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. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-24969 Filed 9-13-83; 8:45 am]

BILLING CODE 8010-01-M

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, Washington, D.C. 20549.

Revision 17 CFR Parts 256a and 257, No. 270-78—Part 256a, 270-252—Part 257.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for OMB approval revisions to 17 CFR Parts 256a and 257 under the Public Utility Holding Company Act of 1935 (15 U.S.C. 79a *et seq.*), the rules governing the preservation of records of registered holding companies and their mutual or subsidiary service companies.

Submitted comments to OMB Desk Officer: Mr. Robert Veeder, (202) 395-4814, Office of Information and

Regulatory Affairs, Room 3235 NEOB, Washington, D.C. 20503.

George A. Fitzsimmons,

Secretary.

September 7, 1983.

[FR Doc. 83-25051 Filed 9-13-83; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-20158; File No. S7-966]

Order Granting Approval of Plan Allocating Regulatory Responsibility

In the matter of the American Stock Exchange, Inc. ("Amex"); Chicago Board Options Exchange, Inc. ("CBOE"); Midwest Stock Exchange, Inc. ("MSE"); National Association of Securities Dealers, Inc., ("NASD"), New York Stock Exchange, Inc. ("NYSE")' Pacific Stock Exchange, Inc. ("PSE"); and Philadelphia Stock Exchange, Inc. ("Phlx").

Notice is hereby given that the Securities and Exchange Commission (the "Commission") has issued an Order, pursuant to Section 17(d)(1) of the Securities Exchange Act of 1934 ("the Act") (15 U.S.C. 78q(d)(1) and Rule 17d–2 under the Act, 17 CFR 240.17d–2, granting approval of a plan for allocating regulatory responsibity (the "plan") filed pursuant to Rule 17d–2 under the Securities Exchange Act of 1934 (the "Act") by the Amex, CBOE, MSE, NASD, NYSE, PSE and Phlx. The plan allocates regulatory responsibilies for certain options-related sales practice matters to one of the designated self-regulatory organizations ("SROs") which is a participant in the plan with respect to a broker or dealer which is a member of more than one SRO.

Accordingly, the SRO to whom a firm is designated shall assume, in addition to the regulatory responsibilities it otherwise has under the Act, regulatory responsibilities allocated to it by the plan. At the same time, any other SROs participating in the plan of which the firm is a member will be relieved of the regulatory responsibilities which have been allocated to the designated SRO with respect to the firm during the time that the firm is designated to the SRO.

I. Introduction

Section 19(g)(1) of the Act, among other things, requires every national securities exchange and registered securities association ("SRO") to examine for and enforce compliance by its members and persons associated with its members with the Act, the rules and regulations thereunder and the SROs own rules unless the SRO is relieved of this responsibility purusant to Section 17(d) or 19(g)(2) of the Act. For a broker or dealer that maintains membership in more than one SRO ("common member"), the statutory obligation of the individuals SROs, without this relief, could result in a pattern of multiple examinations of a common member. This would create unnecessary regulatory duplication and added expenses for a firm and the SROs.

Section 17(d)(1) of the Act was intended, in part, to eliminate overlaps and gaps in the regulatory pattern.[1] With respect to a common member, Section 17(d)(1) authorizes the Commission, by rule or order, to relieve an SRO of the responsibility to receive regulatory reports, to examine for and enforce compliance with applicable statutes, rules and regulations, or to perform other specified regulatory functions.

Rule 17d–1 under the Act, 17 CFR 240.17d–1, was adopted by the Commission on April 20, 1976. The rule authorizes the Commission to name a single SRO as the designated examining authority ("DEA") to examine common members for compliance with the Act and Commission and SRO rules and regulations relating to financial responsibility. When an SRO has been named as a common member's DEA, all other SROs to which the common member belongs are relieved of the responsibility to examine the firm for compliance with applicable financial responsibility rules.

On its face, Rule 17d–1 deals with financial responsibility compliance and no other aspect of SRO's responsibilities. Thus, every SRO continues to be obligated, whether or not it is the DEA for the common member, to examine a common member for compliance with its own rules and provisions of the Act and rules and regulations thereunder governing matters other than financial responsibility. Such matters include options-related sales practice matters.

On October 28, 1976, the Commission adopted Rule 17d–2 under the Act.[2] The rule permits SROs to join in proposing plans for allocating the regulatory responsibilities imposed by the Act with respect to common members. Rule 17d–2(c) provides that the Commission will publish notice of the filing of the proposed plan and provide an opportunity for comment on the plan. Commission approval of a plan filed pursuant to Rule 17d–2 relieves an SRO of those regulatory responsibilities allocated by the plan to another SRO.

On April 1, 1983, the Commisison published notice of the filing of the Amex/CBOE/MSE/NASD/NYSE/PSE/Phlx plan [3] as required by Rule 17d–2(c). No comments were received.

II. The Plan

The plan filed by the SROs is intended to reduce regulatory duplication for a large number of firms currently members of two or more SROs by allocating regulatory responsibility for certain options-related sales practice matters to one designated SRO.[4] A brief description of the general operation of the plan follows.

Under the plan, the SRO to whom a firm is designated [5] will be responsible for conducting options-related sales practice examinations and investigating options-related customer complaints and terminations for cause of associated persons during the time that the firm is designated to the SRO. After Commission approval of the plan, any other SRO of which the firm is a member will be relieved of such responsibility during the period the firm is assigned to a DOEA.

A. Examinations and Disciplinary Proceedings

The DOEA will be responsible for examining for compliance by a firm with the provisions of applicable federal securities laws and the rules and regulations thereunder, its own rules and the rules of any SRO of which the firm is a member.[6] The DOEA will have enforcement responsibility with respect to apparent violations of applicable federal securities laws and the rules and regulations thereunder, the DOEA's rules and the rules of any participating SRO which are comparable to a federal and/or DOEA rule. Violation of such rules will be enforced by, and disciplinary action taken by, the DOEA.[7] However, enforcement

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[1] Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing, and Urban Affairs to accompany S. 249, S. Rep. No. 94–75, 94th Cong., 1st Sess. 32 (1975).

[2] Securities Exchange Act Release No. 12935 (October 28, 1976), 41 FR 49093 (November 8, 1987).

[3] Securities Exchange Act Release No. 19644 (April 1, 1983), 48 FR 15759 (April 12, 1983).

[4] Unless otherwise indicated all of the responsibilities referred to in the release discussing the plan pertain to "options-related" sales practice activity.

[5] The responsible SRO will be known as the firm's "Designated Options Examining Authority" (the "DOEA"). Under the plan, only the Amex, CBOE, NASD and NYSE are DOEAs.

[6] By supplemental letters, the SROs: (i) Provided the Commission with a list of the options-related sales practice rules enforced under the plan and (ii) agreed to notify each other of any addition, deletion or change to their options-related sales practice rules.

[7] Such actions include Formal Complaints, Formal Charges or Letters of Admission, Waiver and Consent.

responsibility and disciplinary action for violations relating to transactions executed in the market of, and to unique rues of, an SRO other than the DOEA will remain that of the relevant SRO.

B. Procedures for Furnishing Examination Results

Reports on the results of examinations of firms subject to the plan (*i.e.*, firms which are members of two or more participating SROs) will be made in the following manner.

Apparent violations of a serious nature involving the market of a participating SRO other than the DOEA will be communicated to that SRO as soon as the problem has been identified by the DOEA.

A report of all examinations completed will be made by the DOEA to all participating SROs of which the examined firm is a member. This report will include the name of the firm examined and the examination results. If an examination results in the DOEA taking formal disciplinary action, a copy of the dispositive document will be forwarded routinely to all participating SROs of which the firm is a member.

Apparent violations of unique rules will be forwarded to the relevant SRO as soon as the examination report has been reviewed by an appropriate supervisory staff person of the DOEA.

In the event that the DOEA staff believe that an examination reveals a situation that may affect the ability of a firm to continue its public options business, all participating SROs of which the firm is a member will be notified promptly.

C. Access to Examination Reports

All examination reports relating to firms subject to the plan will be available for review, at any time, by all participating SROs of which the firm is a member.

D. Customer Complaints and Termination for Cause

Participating SROs are required to give the DOEA copies of all customer complaints not uniquely related to their market, as well as terminations for cause of registered personnel received by them relative to a member firm for which they are not designated the DOEA.

E. Special Situations

The parties have agreed to share information relative to potential violations of rules for which they have joint compliance responsibility, *i.e.*, not options sales practice related such as capping or pegging on the floors of one or more of the SROs, and will cooperate with each other in conducting examinations of or promptly providing relevant data related to such potential violations when requested to do so. Responsibility for the disciplinary process arising out of conduct central to or uniquely related to the market of a participating SRO, other than the DOEA, will be handled by the SRO in whose market the conduct occurred unless it chooses to allow the DOEA to handle such process.

F. The Allocation Procedure

In order to administer the allocation of responsibility, the SROs have formed an Options Self-Regulatory Council ("Council") composed of representatives from each of the participating SROs. The Council will periodically reallocate firms subject to the plan, *i.e.*, there will be some form of DOEA rotation among the SROs for firms which they have in common. The Council will reallocate the firms subject to the plan at least once every two years, but no sooner than one year following the prior general reallocation. Four factors will be considered when reallocating firms subject to the plan. They are:

1. Parity; [8]

2. Appointment as DOEA of common members will be rotated among those SROs which seek appointment as such;

3. If conditions warrant, an SRO may be continued as DOEA for one or more firms; and

4. If an SRO to which a common member belongs has not served as DOEA and requests to do so, such must be done, unless there are two or more SROs who qualify. If so, the Council will choose the DOEA.

III. Discussion—Conclusion

The Commission believes that the plan is an achievement in cooperation among the SROs. The Commission believes that the plan reduces unnecessary regulatory duplication by allocating to a designated SRO the responsibility for certain options-related sales practice matters which otherwise would be performed by multiple SROs. The plan promotes efficiency by reducing costs to both the members subject to the plan and SROs which have been granted relief from responsibility under them. Furthermore, by coordinating their regulatory functions in accordance with the plan, the SROs will promote investor protection.

This order gives effect to the plan and representations filed with the Commission which are contained in File No. S7-966. The participants in the plan shall notify all members affected by the plan of their rights and obligations under the plan.

It is therefore ordered, pursuant to Section 17(d) of the Act and Rule 17d-2 thereunder, that the plan of the Amex, CBOE, MSE, NASD, NYSE, PSE and Phlx filed pursuant to Rule 17d-2 is approved.

It is further ordered that those SROs which are from time to time participants in this Plan which are not the DOEA as to a particular member are relieved of those responsibilities allocated to the DOEA under the plan with respect to such member during the time the member is assigned to an SRO as DOEA.

Dated: September 8, 1983.

By the Commission.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-25075 Filed 9-13-83; 8:45 am]

BILLING CODE 8010-01-M

[8] Parity means that, to the extent feasible, each SRO shall, after the reallocation process, be the DOEA for the same number of firms as it was prior to such reallocation.

[Release No. 13485; 813-53]

Elfun Income Fund; Filing of Application

September 7, 1983.

Notice is hereby given that Elfun Income Fund (the "Fund"), c/o General Electric Company, 112 Prospect Street, P.O. Box 7900, Stamford, Connecticut 06904, registered under the Investment Company Act of 1940 (the "Act") as an open-end, diversified, management investment company, filed an application on April 13, 1983, and an amendment thereto on July 28, 1983, for an order of the Commission, pursuant to Section 6(b) of the Act, exempting the fund from the following provisions of the Act: Sections 10(a), 13(a)(4) to the extent required to permit the Fund to be terminated without a vote of the holders of units of the Fund ("Unitholders"), 15(a) to the extent required to allow the investment advisory agreement between the Fund and General Electric Investment Corporation ("GEIC") to go into effect without being approved by persons holding a majority of the Fund's outstanding unit, 15(c), 16(a), 30(d) to the extent required to permit the Fund to send a report to its Unitholders describing operations of the Fund only once a year, and 32(a) of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations made therein, which are summarized below, and to the Act and the Rules thereunder for further information as to

the provisions, including Section 6(b) of the Act, which are relevant to a consideration of the application.

The Fund states that it is a trust created pursuant to an agreement among the Trustees of Elfun Income Fund (the "Trustees"), dated December 22, 1982, and that it is organized as an "employees' securities company" within the meaning of Section 2(a)(13) of the Act. The Fund further states that its objective is to seek as high a level of income as is available over a long-term period consistent with a degree of risk determined by the Trustees to be acceptable and consistent with prudent investment management and preservation of capital.

The application states that units of the Fund may be purchased by regular and senior members of the Elfun Society, on behalf of trusts established for the exclusive benefit of such members, and by General Electric Company ("General Electric") and its subsidiary and controlled companies. Regular members of the Elfun Society are selected from among the higher level exempt-salaried employees of General Electric and its subsidiary and controlled companies and senior members are former regular members who have retired from those companies.

It is further stated that the Trustees have contracted for investment management services with GEIC, a wholly-owned subsidiary of General Electric which is a registered investment adviser. The application represents that the investment advisory services to be furnished to the Fund will be furnished at cost, and that it is unlikely that such a contract could be made with any entity other than one, such as GEIC, which is uniquely related to the needs and welfare of the Fund participants.

The application states that the Fund's four Trustees are all officers or employees of General Electric who have been assigned to the operations of GEIC, and who do not receive any compensation from the Fund for serving as Trustees, although the Fund is required to reimburse GEIC for the portion of the remuneration such persons receive from General Electric allocable to the time they spend on Fund matters in their capacity as GEIC officers. Applicant contends that the Trustees, GEIC, and General Electric all have a very strong interest in assuring that the Fund is well managed because of the investment opportunity it offers solely to certain General Electric employees, former employees, and their immediate relatives. It is further contended that it is not necessary for the protection of investors that one or more disinterested trustees be added, especially considering the additional cost to the Fund of outside trustees and, it is alleged, the lack of demonstrated advantages to the investors if such a restructing of the Trustees is required.

For the other reasons set forth more fully in the application, the Fund contends that granting all the requested exemptions is consistent with the protection of investors.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than October 3, 1983, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon the Fund at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-25072 Filed 9-13-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 13493; 811-3601]

Family Life Separate Account M; Filing of Application

September 8, 1983.

Notice is hereby given that Family Life Separate Account M ("Applicant"), Park Place, Seattle, Washington, 98101, a Separate Account of Family Life Insurance Company, registered under the Investment Company Act of 1940 ("Act") as a unit investment trust, filed an application on August 29, 1983, pursuant to Section 8(f) of the Act, for an order declaring that Applicant has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations contained threein, which are summarized below, and are referred to the Act for a statement of the relevant provision.

Applicant registered under the Act and filed a registration statement on November 18, 1982 pursuant to Section 8(b) of the Act. Applicant states that a registration statement was filed with respect to the Securities Act of 1933 on the same date. Applicant further states that such registration statement has not become effective and no public offering of its securities has been made, nor does Applicant intend to engage in business of any kind. Applicant also states that it has no assets, debts or other liabilities.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than September 30, 1983, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for this request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shal be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-25008 Filed 9-13-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 13490; 812-5627]

Investors Life Insurance Co.; Application of North America, et al.

September 8, 1983.

Notice is hereby given that Investors Life Insurance Company of North America ("Investors Life"), INA Security Corporation, and CIGNA Separate Account I ("CIGNA Account") (collectively, "Applicants"), 1600 Arch Street, Philadelphia, PA, 19101, filed an application on August 5, 1983 and an amendment thereto on September 9, 1983 pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act") for an order amending a prior order (Investment Company Act Rel. No. 12676, September 20, 1982) and exempting Applicants from Sections 26(a), 26(a)(2)(C), 26(a)(2)(D) and 27(c)(2) of the Act, to the extent necessary to permit Applicants' proposed offering of certain variable annuity contracts. All interested persons are referred to the application on file with the Commission for a statement of facts and representations contained therein, which are summarized below, and are

referred to the Act for a statement of the relevant statutory provisions.

Investors Life presently issues single premium individual variable annuity contracts through the CIGNA Account and now proposes to issue flexible payment individual variable annuity contracts ("New Contracts").

Pursuant to Section 6(c), Applicants request exemptions from the provisions of Sections 26(a)(2)(C) and 27(c)(2) to the extent necessary: to deduct from New Contract values the amount of any premium taxes imposed thereon; to deduct a $30 annual administrative charge at the end of each contract year; to deduct an additional $5 charge at the beginning of each contract year after the first for the second and each subsequent transfer of Contract values among CIGNA Account divisions; to deduct an amount equal on an annual basis to 1.2% of the net asset value of the CIGNA Account to compensate Investors Life for its assumption of mortality and expense risks under the New Contracts. Applicants state that charges under the New Contracts for administrative services and premium taxes, including charges for transfers of contract value among CIGNA Account divisions, are appropriate and will not exceed the expenses to be incurred by Investors Life for such items. Applicants also represent that the deduction of the mortality and expense risk charge is consistent with industry practice and reasonable in relation to the risks assumed by Investors Life under the New Contracts, based on a review of similar products currently available taking into consideration such factors as the manner of distribution, contract charges and the mortality basis for the annuity purchase rates. Investors Life will maintain at its Home Office a memorandum, available to the Commission, which describes the products analyzed, the methodology used, and the results of the review. In addition, Investors Life represents that this charge has a reasonable likelihood of benefitting new contractowners and will maintain in its Home Office a memorandum, available to the Commission, which sets forth the basis for this representation. As a condition for the relief requested, Applicants represent that CIGNA Account will invest in an open-end management fund only if such fund undertakes, in the event the fund implements a distribution plan within the meaning of Rule 12b–1 under the Act, to have a Board of Directors with a disinterested majority adopt and approve such plan, in accordance with Rule 12b–1.

Pursuant to Section 6(c), Applicants also request exemptions from Sections 26(a) and 26(a)(2)(D) to the extent necessary to permit the CIGNA Account to hold its assets without an independent trustee or custodian and to hold the securities of the open-end management investment company in which it invests in open account in lieu of stock certificates.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than September 30, 1983, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for this request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83–25069 Filed 9–13–83; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 13491; 812–5563

Lomas Financial Security Insurance Company, et al.; Filing of Application

September 8 1983.

Notice is hereby given that Lomas Financial Security Insurance Company ("Insurance Company"), LFS Variable Account A ("Variable Account"), a separate account of the Insurance Company registered under the Investment Company Act of 1940 ("Act") as a management investment company, and, where applicable, Advance Financial Securities Corporation ("Broker-Dealer") filed an application on May 27, 1983 and an amendment thereto on August 24, 1983 for an order pursuant to Section 6(c) of the Act, amending a prior order granted on February 1, 1983 (Investment Company Act Release No. 13002, referred to herein as the "Prior Order"), to include exemptions from the provisions of Sections 12(b) and 27(c)(2) of the Act and Rule 12b–1 thereunder for certain similar transactions. Additionally, the application, as amended, includes requests by the Insurance Company, the Variable Account, The Lomas & Nettleton Company ("Mortgage Company"), Advance Asset Advisers, Inc. ("Investment Adviser"), and Advance Financial Securities Corporation (collectively, "Applicants") 2001 Bryan Tower, Dallas, Texas 75201, for an order of the Commission, pursuant to Sections 17(b) and 6(c) of the Act, for an exemption from Section 17(a) of the Act and, pursuant to Section 17(d) of the Act and Rule 17d–1 thereunder, amending the Prior Order to permit the Applicants to engage in certain transactions in the manner and subject to the conditions set forth in the application. All interest persons are referred to the application on file with the Commission for a statement of the facts and representations contained therein, which are summarized below, and are referred to the Act and Rules thereunder for a statement of the relevant statutory provisions.

According to Applicants, the Insurance Company is wholly owned by Advance Mortgage Corporation ("Advance"), which in turn is wholly owned by the Lomas/Advance Venture, which is a joint venture organized under Texas law. The Lomas/Advance is managed and controlled by the Lomas & Nettleton Financial Corporation, which through its subsidiaries, including the Mortgage Company, has a 50 percent nonpreferred joint venture interest in the Lomas/Advance Venture. The Broker-Dealer and the Investment Adviser are also wholly owned by Advance.

The Proposed Transactions With Affiliates

Applicants request an exemption from Sections 17(a) and 17(d) of the Act and Rule 17d–1 thereunder to permit the Variable Account to purchase both fixed and variable rate mortgage securities including: Conventional Mortgage Pass-Through Certificates ("Conventional Certificates"), Federal National Mortgage Association Guaranteed Mortgage Pass-Through Certificates ("FNMA Certificates"), Government National Mortgage Association Modified Pass-Through Mortgage-Backed Securities ("GNMA Securities"), and Federal Home Loan Mortgage Corporation Participation Certificates ("FHLMC Certificates") from the Mortgage Company (collectively, "Mortgage Securities"). All of the proposed transactions are in connection with variable annuity contracts ("Contracts") to be issued by the Insurance Company and the Variable Account.

The Prior Order permitted the Variable Account to purchase Mortgage Securities, other than FHLMC Certificates, from Advance. Applicants now seek amendment of the prior order to permit the Variable Account to purchase Mortgage Securities from a different affiliate. Applicants also represent that the Mortgage Company will obtain and sell FHLMC Certificates to the Variable Account. In this regard, Applicants represent that Advance is no longer actively engaged in originating mortgage loans and that the Mortgage Company is so engaged. Applicants request an exemption from the prohibitions of Section 17(a), subject to the same conditions imposed under the Prior Order and included in the present application. In addition, Applicants represent that in the event the Variable Account cannot comply with the conditions contained in the application because of a limited availability of a particular type of Mortgage Security, it will not purchase this type of Mortgage Security from the Mortgage Company. Similarly, Applicants request an exemption from the prohibitions of Section 17(d), as implemented in Rule 17d–1, subject to the same conditions contained in the Prior Order and included in the present application, to the extent necessary or appropriate to permit the Mortgage Company to engage in transactions with the Variable Account, as described in the application and summarized above.

Charges and Deductions Under the Contracts

The Prior Order granted exemptive relief in connection with the various fees and charges to be imposed under the contract, including a $25 annual contract maintenance charge and a daily mortality and expense risk charge at an effective annual rate of $1.00% of the value of the Variable Account assets. Applicants represent that based on recent estimates of anticipated costs, the current cost of purchasing administrative services has risen to $30 per Contract per year.

Applicants also represent that the Contracts have been amended since issuance of the Prior Order in a maner that imposes additional risks which, upon reevaluation, support imposition of a mortality and expense risk charge of 1.10% of the value of the Variable Account assets. Applicants request an exemption from the provision of Section 27(c)(2) to the extent necessary to permit the deduction of the charges in these increased amounts.

The Variable Account requests an exemption from the provisions of Section 12 of the Act and Rule 12b–1 thereunder insofar as distribution expenses in excess of the contingent deferred sales charges permitted under the Prior Order might be deemed to be financed, directly or indirectly, by the mortality and expense risk charge. Applicants do not anticipate that the contingent deferred sales charge will be sufficient to cover all costs of distributing the Contracts. The Insurance Company intends to make up the difference through use of general account funds, which are attributable in part to the mortality and expense risk charges assessed under the Contracts. In this regard, the Insurance Company represents that it has concluded that there is a reasonable likelihood that the proposed method of financing distribution expenses will benefit each of the separate accounts funding the Contracts and contractowners. The Insurance Company will maintain at its Home Office, available to the Commission, a memorandum setting forth the basis of this conclusion. The Variable Account represents that it will have a Board of Managers with a disinterested majority formulate and approve any plan under Rule 12b–1 to finance distribution expenses.

Notice is further given that any interested person wishing to request a hearing on the application may, not late than September 30, 1983, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request shall be served personally or by mail on Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders the hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-25070 Filed 9-13-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 13492; 812–5595]

Midwest Life Insurance Company, et al.; Application

September 8, 1983.

Notice is hereby given that the Midwest Life Insurance Company ("Midwest Life") and Midwest Life Variable Account ("Variable Account," collectively referred to as "Applicants,"), P.O. Box 1160, 100 Dain Tower, Minneapolis, Minnesota, 55440, filed an application on July 11, 1983 and an amendment thereto on August 19, 1983 for an order of the Commission pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act") granting exemptions, to the extent necessary, from certain provisions of Sections 26(a), 26(a)(2)(C), 26(a)(2)(D) and 27(c)(2) of the Act in connection with Applicants proposed offering of certain variable annuity contracts. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and are referred to the Act for a statement of the relevant provisions.

Pursuant to Section 6(c) of the Act, Applicants request exemptions from Sections 26(a)(2)(C) and 27(c)(2) to the extent necessary: to deduct from contract values the amount of any premium taxes imposed thereon; to impose a $25 annual contract administration charge, which cannot be increased for the duration of the contract and is designed to reimburse Midwest Life only for its actual expenses of administering the contract; to deduct from the Variable Account an amount equal on an annual basis to 1.4 percent of net asset value to compensate Midwest Life for its assumption of certain mortality and expense risks. In support of their request, Applicants represent that the mortality and expense risk charge is reasonable in amount as determined by industry practice with respect to comparable annuity products, and that the basis for this representation is reflected in documents maintained on file with Midwest Life and available to the Commission. Midwest Life also represent that it has concluded that there is a reasonable likelihood that the proposed use of a portion of the mortality and expense risk charge to finance distribution will benefit the Variable Account and the contractowners. Applicants represent that, as a condition of the exemptive relief, the Variable Account will invest only in mutual funds which undertake to have a Board of Trustees with a disinterested majority formulate and approve any plan under Rule 12b–1 under the Act to finance distribution expenses.

Pursuant to Section 6(c), Applicants also request exemptions from Sections 26(a) and 26(a)(2)(D) to the extent necessary to permit the Variable

Account to hold its assets without an independent trustee or custodian and to hold the securities of the open-end management investment companies in which it invests in open account in lieu of stock certificates.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than September 30, 1983, at 5:30 p.m., do so by shubmitting a written request setting forth the nature of his interest, the reasons for this request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Mangement, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-25071 Filed 9-13-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-20143; File No. SR-MSTC-83-15]

Self-Regulatory Organizations; Proposed Rule Change by Midwest Securities Trust Co. Relating To Transfer and Pledge of Securities by Bookkeeping Entry

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on August 8, 1983, the Midwest Securities Trust Company filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Rule 4, Section 1 of the Rules of the Midwest Securities Trust Company is hereby amended as follows:

Additions italicized—[Deletions Bracketed]

Transfer and Pledge of Securities by Bookkeeping Entry

Rule 4.

Sec. 1. A Depository Participant having a depository free position in a security may, by filing a Depository Delivery Instruction form with the Corporation, instruct the Corporation to transfer such security from the depository account of such Participant: (i) To a free position in an account of such Participant with MCC (if the Participant is also a Participant of MCC), or (ii) to a depository account of another Participant; provided, however, that if the receiving Participant shall have filed with the Corporation an instruction directing that all securities transferred to such Participant by bookentry be credited to the clearing free position of such Participant with MCC, the Corporation shall be authorized to comply with such instruction. *A receiving Participant may not reclaim a delivery of a registered security to the delivering Participant solely for the reason that the delivery was made via bookkeeping entry.*

Sec. 2. No change in text.

Sec. 3. No change in text.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) *Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Change.* The purpose of the proposed rule change is to reduce the physical movement of securities certificates. Recent industry developments have addressed this problem with the adoption of NYSE Rule 387 and similar rules of other self-regulatory organizations.

The proposed rule change addresses the problems associated with the redelivery by Participants of physical securities into the depository. These situations occur where a physical delivery is made to a receiving Participant, who in turn either deposits the physical certificates into his own account, or redelivers the certificates to a third party, who then deposits the certificates into the depository.

The proposed rule change will also reduce unnecessary cost associated with the physical settlement of securities transactions. Participants will not incur the expense of withdrawing physical certificates and the administrative cost associated with the clerical task of redelivering the certificates. In addition, Participants will not incur expenses in terms of time and money associated with lost certificates, lost documents or delays in delivery.

The proposed rule change is consistent with Section 17A of the Securities Exchange Act of 1934, in that it facilitates the prompt and accurate clearance and settlement of securities transactions, promotes more efficient, effective and safe clearance and settlement of securities transactions, and reduces the physical movement of securities certificates.

(B) *Self-Regulatory Organizations's Statement on Burden on Competition.* The Midwest Securities Trust Company does not believe that any burdens will be placed on competition as a result of the proposed rule change.

(C) *Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others.*

The Midwest Securities Trust Company sent and Administrative Bulletin dated April 19, 1983 soliciting comments on the proposed rule change requiring mandatory acceptance of bookentry deliveries. MSTC received a total of five comments. All five responses supported the rule change requiring acceptance of bookentry deliveries for all registered securities. Four of the comments did, however, believe that it would be inappropriate at this time to require bookentry delivery for bearer securities. MSTC's response to these comments was to propose the rule change for MSTC eligible registered securities, excluding bearer securities.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceeding to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted within 21 days after the date of this publication.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

September 1, 1983.

[FR Doc. 83-25077 Filed 9-13-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 20157; SR-NYSE-83-36]

New York Stock Exchange, Inc.; Filing and Order Granting Accelerated Approval of Proposed Rule Change

September 7, 1983.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 1, 1983, the New York Stock Exchange, Inc. ("NYSE"), 11 Wall Street, New York, New York 10005, filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The proposed rule change would extend the operation of the NYSE's Registered Representative Rapid Response Service ("R4") until October 31, 1983. R4 is currently a pilot program scheduled to terminate on September 5, 1983.[1] According to the NYSE, the purpose of the proposed rule change is to give the Commission time to consider the Exchange's recent proposal for a one-year extension of R4 and an expansion of its use. That rule filing (SR-NYSE-83-8) has been published for public comment,[2] and the Commission has solicited comment on whether to approve or disapprove that proposed rule change.[3] The NYSE in its filing states that the statutory basis of the proposed rule change is Section 11A(a)(1) and 17A(a)(1) 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, N.W., Washington, D.C. 20549. Reference should be made to File No. SR-NYSE-83-36.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission and all written communications relating to the proposed rule change 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, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the NYSE.

The Commission finds that the proposed rule change, in light of its limited purpose and experimental nature, 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 of the Act and the rules and regulations thereunder. In this respect, the Commission believes it is appropriate to extend the R4 pilot program to afford the Commission an opportunity to consider fully the comments received in connection with the proceedings on whether to approve or disapprove SR-NYSE-83-8.

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 NYSE R4 experiment is scheduled to expire on September 5, 1983, and an extension is necessary to allow the pilot to continue in its present form while the Commission considers the NYSE's proposal for a one-year extension and expansion of the system. The Commission expects to take action on the proposal before October 31, 1983. For this reason, the Commission believes it is appropriate to extend the R4 pilot program to October 31, 1983. In so finding, the Commission does not, however, reach any conclusion as to the consistency with the Act of a continuation of the R4 experiment beyond October 31, 1983.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change reference above be, and thereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-25076 Filed 9-13-83; 8:45 am]

BILLING CODE 8010-01-M

[1] On September 14, 1982, the Commission approved R4 as a six-month pilot program. Securities Exchange Act Release No. 19047 (September 14, 1982), 47 FR 41896. Thereafter, the Commission has approved extensions of the R4 pilot through May 1, 1983 (Securities Exchange Act Release No. 19593 (March 11, 1983), 48 FR 11544); through June 1, 1983 (Securities Exchange Act Release No. 19713 (April 27, 1983), 48 FR 20184); and through September 5, 1983 (Securities Exchange Act Release No. 19857 (June 9, 1983), 48 FR 27878).

[2] Securities Exchange Act Release No. 19573 (March 8, 1983), 48 FR 10788.

[3] Securities Exchange Act Release No. 19858 (June 9, 1983), 48 FR 27872.

[Release No. 20160; SR-NYSE-82-8]

New York Stock Exchange, Inc.; Order Approving Proposed Rule Change

September 8, 1983.

The New York Stock Exchange, Inc. ("NYSE"), 11 Wall Street, New York, NY 10005, submitted; on April 12, 1982, copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder, which, among other changes, would rescind NYSE Rule 424, which requires the reporting to the NYSE of members', allied members', and member organizations' interest in or knowledge of any substantial options related to listed securities; and rescind the provisions in NYSE Rule 433 detailing those conditions under which customers' long sales of securities may be effected.[1]

[1] In addition, the proposed rule change amended NYSE Rule 421 and rescinded NYSE Rule 440K.10. The Commission approved those rule changes in

Continued

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission Release (Securities Exchange Act Release No. 18652, April 15, 1982) and by publication in the **Federal Register** (47 FR 17702, April 23, 1982). No comments were received with respect to the proposed rule filing.

The Commission, in this order, is acting only upon that portion of the proposed rule change relating to NYSE Rule 433. With respect to that portion of the proposed rule change relating to Rule 424, the NYSE has consented to a 30-day extension for Commission action pursuant to Section 19(b)(2) of the Act.[2] The Commission therefore takes no action with respect to Rule 424.

The Commission finds that the proposed rule change, subject to the exception described above, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-25074 Filed 9-13-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 20052A; SR-NYSE-83-18]

New York Stock Exchange Inc.; Order Approving Proposed Rule Change

September 8, 1983.

On August 4, 1983, the Commission approved a proposed rule change (SR-NYSE-83-18) by the New York Stock Exchange, Inc. ("NYSE"), 11 Wall Street, New York, NY, 10005, amending NYSE Rule 345 (Securities Exchange Act Release No. 20052, August 4, 1983). The Commission's order was erroneously captioned as File No. SR-NYSE-83-11; the correct caption is File No. SR-NYSE-83-18.

Securities Exchange Act Release No. 19112 (October 7, 1982), 47 FR 46031 (October 14, 1982). The Commission took no action in that order with respect to those portions of the proposed rule change relating to Rules 424 and 433.

[2] *See* letter from James F. Swartz, Jr., Vice President, NYSE, to Thomas C. Etter, Division of Market Regulation, dated August 8, 1983.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-25073 Filed 9-13-83; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Application No. 06/06-0273]

Client Capital Corp.; Application for a License to Operate as a Small Business Investment Company

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to § 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. 661 *et seq.*), and the Rules and Regulations promulgated thereunder.

Applicant: Client Capital Corporation.

Address: 2123 Sidney Bakery Street, Kerrville, Texas 78028.

The officers, directors and stockholders are as follows:

Lloyd D. Brinkman, P.O. Box 163, Mt. Home, Texas 78028, Chairman and Director

Thomas G. Ratcliffe, 101 Larry Lee, Kerrville, Texas 78028, President and Director

Thad R. Finley, 33 Tierra Vista, Kerrville, Texas 78028, Senior Vice President and Director

L. D. Brinkman Corporation, 100 percent Shareholder

The applicant, a Texas corporation, with its principal place of business at 2123 Sidney Bakery Street, Kerrville, Texas 78028, will begin operations with $500,000 paid-in capital and paid-in surplus.

The applicant will conduct its activities principally in the State of Texas.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the 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 Associate Administrator for Finance & Investment, Small Business Administration, 1441 "L" Street, NW., Washington, D.C. 20416.

A copy of this notice should be published in a newspaper of general circulation in the Kerrville, Texas area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: August 31, 1983.

Edwin T. Holloway,

Associate Administrator for Finance and Investment.

[FR Doc. 83-25064 Filed 9-13-83; 8:45 am]

BILLING CODE 8020-01-M

[License No. 03/03-0160]

First Valley Capital Corp.; Issuance of License To Operate as a Small Business Investment Company

On June 21, 1983, a notice was published in the **Federal Register** (48 FR 28383), stating that an application had been filed by First Valley Capital Corporation, One Bethlehem Plaza, Bethlehem, Pennsylvania 18018, with the Small Business Administration (SBA) for a license to operate as a small business investment company (SBIC), pursuant to § 107.102 of the Regulations governing SBICs (13 CFR 107.102 (1983)).

Interested parties were given until the close of business July 6, 1983, to submit their written comments to SBA. No comments were received.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, and after having considered the application and all other information, SBA issued License No. 03/03-0160 on August 19, 1983, to First Valley Capital Corporation to operate as a SBIC.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: September 1, 1983.

Edwin T. Holloway,

Associate Administrator for Finance and Investment.

[FR Doc. 83-25067 Filed 9-13-83; 8:45 am]

BILLING CODE 8025-01-M

[License No. 09/09-0301]

HMS Capital, Ltd.; Application for a License To Operate as a Small Business Investment Company

An application for a license to operate as a small business investment company under the provisions of the Small Business Investment Act of 1958, as amended (15 U.S.C. 611 *et. seq.)* has been filed by HMS Capital, Ltd., 1500

Newell Avenue, Suite 702, Walnut Creek, California 94596 with the Small Business Administration (SBA), pursuant to 13 CFR 107.102 (1983)

The officers, directors and owners of the applicant are as follows:

Michael C. Hone, 99 Eucalyptus Road, Berkeley, California 94705, President, 10 Percent

Susan Hone, 3 Tanglewood Road, Berkeley, California 94705, Vice President & Secretary

Richard Pospisil, 16530 Stevens Canyon, Cupertino, California, Director, 5 Percent

William R. Shapiro, 3746—21st Street, San Francisco, California 94114, Director, 15 Percent

Jerome M. Paros, 1509 NE 69th Street, Redmond, Washington 98052, Director, 7 Percent

General Signal Corporation, High Ridge Park, Stamford, Connecticut 06904, 14 Percent

The Applicant, a California Corporation, with its principal place of business at 1500 Newell Avenue, Suite 702, Walnut Creek, California 94596, will begin operations with $1,657,000 paid-in capital and paid-in surplus.

The applicant will conduct its activities principally in the State of California.

Matters involved in SBA's consideration of the application include the general business reputation and character of proposed managers, and the probability of successful operation of the applicant under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is hereby given that any person may, not later than 15 days from the date of publication of this Notice, submit written comments to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, D.C. 20416.

A copy of this notice will be published in a newspaper of general circulation in Walnut Creek, California.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: September 8, 1983.

Edwin T. Holloway,

Associate Administrator for Finance and Investment.

[FR Doc. 83-25086 Filed 9-13-83; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2101; Amndt. #1]

Declaration of Disaster Loan Area; Texas

The above numbered declaration (48 FR 40337) is amended in accordance with the President's declaration of August 29, 1983, to include Liberty, Montgomery and San Jacinto, as a result of damage caused by Hurricane beginning on or about August 18, 1983. All other information remains the same, i.e., the termination date for filing applications for physical damage in the close of business on October 18, 1983, and for economic injury until the close of business on May 19, 1984.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: August 30, 1983.

Edward Van Schaick,

Acting Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 83-25085 Filed 9-13-83; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-83-21]

Petitions for Exemption; Summary of Petitions Received Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before October 4, 1983.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No.——, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 916, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-3644.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on September 2, 1983.

Richard C. Beitel,

Acting Assistant Chief Counsel, Regulations and Enforcement Division.

PETITIONS FOR EXEMPTIONS

Docket No.	Petitioner	Regulations affected	Description of relief sought
23191	Amerford Airways	14 CFR 135.5	To permit petitioner to engage in air transportation in accordance with a wetlease agreement with Air Vectors.
23707	Ford Motor Co	14 CFR 21.181	To permit petitioner to operate four Convair 580 aircraft using an FAA-approved minimum equipment list.
20452	Dresser Industries	14 CFR 61.58(c)	To extend Exemption 3061A, which expires November 30, 1983, to permit petitioners pilots-in-command (PIC) to complete their entire 24-month PIC check in an FAA-approved flight simulator subject to certain limitations.
23725	Purolator Courier Corp	14 CFR 121.3(e)	To allow petitioner to operate as a domestic air carrier by using aircraft chartered from operators who are certified by the FAA under the terms of air charter agreements which provide operational control of the aircraft by the certificated charter operator.
23728	Houston Helicopters, Inc	14 CFR para. 5(a) of SFAR 29-4	To allow petitioner to operate three newly acquired helicopters, which are not otherwise certified for IFR operations, in a limited IFR configuration under SFAR 29.
23688	Aviex Jet	14 CFR 135.261(a)(2)	To allow petitioner to operate under the flight time limitations of § 121.521 (a) and (b) instead of § 135.261(a)(2).

Dispositions of Petitions for Exemption

Docket No.	Petitioner	Regulations affected	Description of relief sought disposition
23599	David C. Goad	14 CFR 103.1(e)(2)	To permit petitioner to operate an ultralight aircraft which has a fuel capacity exceeding 5 U.S. gallons for the purpose of attempting to set several world records for ultralight aircraft. *DENIED 8/18/83.*
23295	Rosenbalm Aviation, Inc.	14 CFR 121.505, 121.511	To permit petitioner's pilts and flight engineers to operate its aircraft for more than 8 hours in a 24-hour period, without an intervening rest period at or before the end of 8 scheduled hours of flight duty. *DENIED 8/19/83.*
23395	Mission Aviation Fellowship	14 CFR 4(b) SFAR 13, & § 91.37(a)(1)	To permit petitioner to operate its DC-3 type aircraft, N92578, at a takeoff weight of 110 percent of its authorized maximum certificated takeoff weight (29,590 pounds) from the Opa Locka Int'l Airport, Opa Locka, Florida. *DENIED 8/19/83.*
23613	Sparky J. Imeson d.b.a. Imeson Aviation (IMESON).	14 CFR 91.15(c)	To permit petitioner to instruct students in certain primary aerobatic maneuvers without each occupant of the aircraft wearing a parachute. *DENIED 8/22/83.*
23644	The Dow Chemical Co.	14 CFR 21.181, 91.27(a)(1), 91.29, & 91.165	To permit petitioner to operate its 4 Falcon and 1 King Air aircraft in accordance with a minimum equipment list. *PARTIAL GRANT 8/25/83.*
23653	University of North Dakota	14 CFR Portions of Part 141, Appendices A, C, D, and F.	To permit the University of North Dakota to base graduation in certain curricula on the student's demonstration of proficiency to a specific performance level rather than the required minimum total flight time, which includes the minimum solo cross-country flight time requirements of Part 141. *PARTIAL GRANT 8/18/83.**
		*This exemption excludes relief from the minimum solo cross-country flight time requirements.	
21789	Air Transport Assn. of America (ATA)	14 CFR 61.49	To extend Exemption 3474 which permits applicants to retake a written or flight test without waiting 30 days provided that the Part 121 authorized instructor has given the applicant flight or ground instruction, as appropriate, and finds the applicant competent to pass the test. *PARTIAL GRANT 8/29/83.*
21802	Sowell Aviation Co.	14 CFR 141.65	To extend Exemption 3466, which expires 8/31/83, to permit petitioner to recommend graduates of its approved certification courses for flight instructor certificates and ratings and airline transport pilot certificates without taking the FAA's written tests. *GRANTED 8/24/83.*
22192	Richmor Aviation, Inc.	14 CFR 141.91(a)	To extend Exemption 3398 which permits petitioner to conduct flight training operations under its pilot school certificate, at satellite bases located more than 25 miles from the main base. The satellite bases are Saratoga County Airport, Ballston Spa, NY; Schenectady County Airport, Scotia, NY; and Dutchess County Airport, Poughkeepsie, NY. *GRANTED 8/18/83.*
21254	Renton Aviation, Inc.	14 CFR 135.203	To allow petitioner to conduct operations at an altitude below 500 feet over water outside the controlled airspace, subject to conditions and limitations. *GRANTED 8/18/83.*
23612	Rotor-Aire, Inc.	14 CFR 135.261	To permit petitioner to perform helicopter emergency medical evacuation service without complying with flight and duty time requirements of this section *GRANTED 8/18/83.*
23692	Midway Airlines, Inc.	14 CFR 121.589(d)	To permit petitioner to operate four DC-9 aircraft after August 31 without having provided a means to prevent articles of baggage stowed under seats from sliding sideward into the aisle. *GRANTED 8/18/83.*
23731	United Aircarriers, INc. d.b.a. Overseas National Airways, Inc., & Icelandair.	14 CFR 21.181, 43.3(f), 43.7(e) & 121.379	To permit Icelandairair to operate one leased U.S.-registered Douglas DC-8-71 aircraft, using an FAA-approved minimum equipment list and to allow ONA to maintain the aircraft in accordance with the ONA continuous airworthiness maintenance and inspection program. The aircraft will be leased from ONA *GRANTED 8/23/83.*
23694	Cayman Airways, Ltd.	14 CFR 21.181	To permit petitioner to operate and maintain two U.S.-registered Boeing 727-227 aircraft using an FAA-approved minimum equipment list. *GRANTED 8/25/83.*
23633	NewAir Flight, Inc.	14 CFR 121.61(c)(1)	To permit Mr. Larry D. Ross to serve as Director of Maintenance for NewAir Flight, Inc., although he does not meet experience requirements. *GRANTED 8/26/83.*
20090	Sierra Academy of Aeronautics	14 CFR 61.63(d) (2) & (3), 61.151(d)(1)	To permit petitioner to complete a portion of the practical test, for the issuance of an airline transport pilot certificate or a type rating to be added to any grade of pilot certificate, in an airplane simulator and to substitute for the flight tests required by § 61.63(d) (2) and (3) the test requirements in Appendix A to Part 61. *GRANTED 8/25/83.*
23722	Cargolux Airlines Int'l., S.A., CARGOLUX	14 CFR Portions of Part 21 & 91	To permit petitioner to operate 2 leased, U.S.-registered Boeing B-747-200 aircraft using an FAA-approved minimum equipment list and to maintain the aircraft in accordance with the Boeing Co. (Boeing) continuous airworthiness maintenance and inspection program. The aircraft will be leased from the Boeing Equipment Holding Co. *GRANTED 8/20/83*
23625	Jack Vance McCain	14 CFR 65.91(c)(1)	To enable petitioner to become eligible for renewal of his inspection authorization without complying with the requirements of this section. *GRANTED 8/26/83.*
23735	Cargolux Airlines	14 CFR 21.181	To permit petitioner to operate a leased, U.S.-registered Douglas DC-8-61 aircraft using the FAA-approved minimum equipment list and to maintain the aircraft in accordance with an FAA-approved continuous airworthiness maintenance and inspection program. *GRANTED 8/25/83.*
16955	American Airlines Training Corp.	14 CFR 61.58(c)	To extend Exemption 2473D, which permits petitioner's trainees to complete their entire 24-month pilot-in-command check in an FAA-approved flight simulator subject to conditions and limitations. *GRANTED 8/29/83.*
23447	Amway Corp.	14 CFR 21.181	To amend Exemption 3746 to permit petitioner to continue to operate several aircraft using an FAA-approved minimum equipment list. It would also allow petitioner to add additional aircraft to the original exemption and would consolidate all petitioners' exemptions into one document. *GRANTED 8/29/83.*
23720	American Trans Air	14 CFR 121.589(d)	To permit petitioner to operate a DC-10 aircraft for 60 days without the required aisle seat side restraints installed. *GRANTED 8/29/83.*
23691	Flying Tiger Line, Inc.	14 CFR 121.3	To extend Exemption 3810, which expires August 31, 1983, to conduct scheduled passenger service over certain routes, utilizing the flight control/dispatch procedures, communication procedures, and enroute servicing and maintenance procedures of Part 121 that are applicable to supplemental air carriers, subject to certain limitations. *GRANTED 8/29/83.*
23736	Global Int'l. Airways	14 CFR 121.589(d)	To permit petitioner to operate its Boeing 707 airplanes in Part 121 operations after August 31, 1983, with aisle seats that do not have a means to prevent articles of baggage stowed under them from sliding sideward into the aisle under certain conditions. *GRANTED 8/31/83.*

[FR Doc. 83-24948 Filed 9-13-83; 8:45 am]
BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA), Special Committee 153—Airborne VOR Equipment; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of RTCA Special Committee 153 on Airborne VOR Equipment to be held on October 5-7, 1983, in the RTCA Conference Room, One McPherson Square, 1425 K Street, N.W., Suite 500, Washington, D.C. commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Introductory Remarks; (2) Review Committee Terms of Reference; (3) Review First Draft of Committee Report on Minimum Operational Performance Standards for Airborne VOR Equipment; (4) Discuss Impact of FM Broadcast Interference on Airborne VOR Euipment; (5) Outline Committee Work Program and Schedule for Accomplishment; (6) Assignment of Tasks; and (7) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, N.W., Suite 500, Washington, D.C. 20005; [202] 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C., on September 6, 1983.

Karl F. Bierach,

Designated Officer.

[FR Doc. 83-24949 Filed 9-13-83; 8:45 am]

BILLING CODE 4910-13-M

Golden Triangle Regional Airport, Columbus-West Point-Starkville, Mississippi; FAA Acceptance of Noise Exposure Map; Receipt of Noise Compatibility Program and Request for Review

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its acceptance of noise exposure maps submitted by Golden Triangle Regional Airport (GTR) under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR Part 150. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for GTR under Part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before February 13, 1984.

EFFECTIVE DATE: The effective date of the FAA's acceptance of the GTR noise exposure maps and of the start of its review of the associated noise compatibility program is August 17, 1983. The public comment period ends October 14, 1983.

FOR FURTHER INFORMATION CONTACT: Elton Jay, Civil Engineer, Jackson Airports District Office, P.O. Box 6111, Pearl Branch, Jackson, Mississippi 39208, (601) 960-4628. Comments on the proposed noise compatibility program should also be submitted to that office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has accepted the noise exposure maps for GTR, effective August 17, 1983, and is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before February 13, 1984. This notice also announces the availability of this program for public review and comment.

Under Section 103 or Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA a noise exposure map which meets applicable regulations and which depicts noncompatible land uses as of the date of submission of such map, a description of projected aircraft operations, and the ways in which such operations will affect such map. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies and persons using the airport.

An airport operator who has submitted a noise exposure map that is accepted by FAA as meeting Federal Aviation Regulation Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

GTR submitted to the FAA on October 21, 1982, noise exposure maps, descriptions and other documentation which were produced during an airport noise control and land use compatibility (ANCLUC) study conducted at GTR from November 1981 to October 1982. It was requested that the FAA accept this material as a noise exposure map as described in Section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under Section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by GTR. The specific maps under consideration are depicted in Plates No. 5 (1981 Baseline) and No. 7 (1987) in the final report of the ANCLUC study. The FAA has accepted these materials as the noise exposure maps for GTR, effective on August 17, 1983.

FAA's acceptance of an airport operator's noise exposure map is limited to the determination that the map was developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such acceptance does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under Section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure map to resolve questions concerning, for example, which properties should be covered by the provisions of Section 107 of the Act. These functions are inseparable from the ultimate land use control and

planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's acceptance of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under Section 103 of the Act. The FAA has relied on the certification by the airport operator, under Section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Upon acceptance of the noise exposure maps, the FAA has formally received the noise compatibility program for GTR, also effective on August 17, 1983. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before February 13, 1984.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the accepted noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, National Headquarters, 800 Independence Avenue, SW, Room 615, Washington, D.C.

Federal Aviation Administration, Southern Regional Office, 3400 Norman Berry Drive, Room 673, East Point, Georgia 30334

Federal Aviation Administration, Jackson Airports District Office, FAA Building, Jackson Municipal Airport, Jackson, Mississippi

Golden Triangle Regional Airport, Airport Director's Office, Highway 82 West, Columbus, Mississippi

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in East Point, Georgia, August 24, 1983.

George R. LaCaille,

Acting Director, Southern Region.

[FR Doc. 83-24944 Filed 9-13-83; 8:45 am]

BILLING CODE 4910-13-M

Pine Belt Regional Airport, Laurel-Hattiesburg, Mississippi; FAA Acceptance of Noise Exposure Map; Receipt of Noise Compatibility Program and Request for Review

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its acceptance of noise exposure maps submitted by Pine Belt Regional Airport (PIB) under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR Part 150. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for PIB under Part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before February 13, 1984.

EFFECTIVE DATE: The effective date of the FAA's acceptance of the PIB noise exposure maps and of the start of its review of the associated noise compatibility program is August 17, 1983. The public comment period ends October 14, 1983.

FOR FURTHER INFORMATION CONTACT: Elton Jay, Civil Engineer, Jackson Airports District Office, P.O. Box 6111, Pearl Branch, Jackson, Mississippi 39208, (601) 960-4628. Comments on the proposed noise compatibility program should also be submitted to that office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has accepted the noise exposure maps for PIB, effective August 17, 1983, and is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before February 13, 1984. This notice also announces the availability of this program for public review and comment.

Under Section 103 or Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA a noise exposure map which meets applicable regulations and which depicts noncompatible land uses as of the date of submission of such map, a description of projected aircraft operations, and the ways in which such operations will affect such map. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies and persons using the airport.

An airport operator who has submitted a noise exposure map that is accepted by FAA as meeting Federal Aviation Regulation Part 150, promulgated pursuant to Title I of the Act, may submit a noise compabitility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

PIB submitted to the FAA on December 9, 1982, noise exposure maps, descriptions and other documentation which were produced during an airport noise control and land use compatibility (ANCLUC) study conducted at PIB from January 1982 to December 1982. It was requested that the FAA accept this material as a noise exposure map as described in Section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under Section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by PIB. The specific maps under consideration are depicted in Plates No. 7 (1981) and No. 9 (1987) in the final report of the ANCLUC study. The FAA has accepted these materials as the noise exposure maps for PIB, effective on August 17, 1983.

FAA's acceptance of an airport operator's noise exposure map is limited to the determination that the map was developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such acceptance does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under Section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties

with regard to the depicted noise contours, or in interpreting the noise exposure map to resolve questions concerning, for example, which properties should be covered by the provisions of Section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's acceptance of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under Section 103 of the Act. The FAA has relied on the certification by the airport operator, under Section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Upon acceptance of the noise exposure maps, the FAA has formally received the noise compatibility program for PIB, also effective on August 17, 1983. Preliminary review of the submitted material indicate that it conforms to the requirements for the submittal of noise compatability programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before February 13, 1984.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the accepted noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, National Headquarters, 800 Independence Avenue SW., Room 615, Washington, D.C.

Federal Aviation Administration, Southern Regional Office, 3400 Norman Berry Drive, Room 673, East Point, Georgia 30334

Federal Aviation Administration, Jackson Airports District Office, FAA Building, Jackson Municipal Airport, Jackson, Mississippi

Pine Belt Regional Airport, Executive Director's Office, Laurel-Hattiesburg, Mississippi.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in East Point, Georgia, August 24, 1983.

George R. LaCaille,

Acting Director, Southern Region.

[FR Doc. 83-24943 Filed 9-13-83; 8:45 am]

BILLING CODE 4910-13-M

Advisory Circular on Emergency Exits Openable From Outside for Small Airplanes

Correction

In FR Doc. 83-20528 appearing on page 34824 in the issue of Monday, August 1, 1983, make the following correction:

In the document heading and in the summary paragraph, change the word "exists" to read "exits" wherever it appears.

BILLING CODE 1505-01-M

Sunshine Act Meetings

Federal Register
Vol. 48, No. 179
Wednesday, September 14, 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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Federal Mine Safety and Health Review Commission	1
Federal Reserve System	2
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1

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

September 8, 1983.

TIME AND DATE:

1. 10 a.m., Thursday, September 15, 1983;

2. 2 p.m., Thursday, September 15, 1983; and

3. 10 a.m., Friday, September 16, 1983.

PLACE: U.S. Federal District Court, Room: (to be announced), U.S. Courthouse, 1929 Stout Street, Denver, Colorado.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral arguments in the following cases:

1. Secretary of Labor, MSHA v. Mid-Continent Resources, Inc., Docket No. WEST 82-174. (Issue is whether the judge properly found a violation of 30 CFR 75.511)

2. Secretary of Labor, MSHA v. Energy Fuels Nuclear, Inc., Docket No. WEST 81-385-M. (Issues include whether the judge erred in finding no violation of 30 CFR 57.6-116)

3. Secretary of Labor, MSHA on behalf of Chester (Sam) Jenkins v. Hecla-Day Mines Corporation, Docket No. WEST 81-323-DM. (Issues include whether the judge erred in dismissing the discrimination complaint.)

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653-5632.

[S-1287-83 Filed 9-12-83; 2:09 pm]

BILLING CODE 6735-01-M

2

FEDERAL RESERVE SYSTEM

Board of Governors

TIME AND DATE: 10 a.m., Monday, September 19, 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: September 9, 1983.

James McAfee,

Associate Secretary of the Board.

[S-1285-83 Filed 9-9-83; 4:36 pm]

BILLING CODE 6210-01-M

3

NATIONAL TRANSPORTATION SAFETY BOARD

[NM-83-22]

TIME AND DATE: 9 a.m., Tuesday, September 20, 1983.

PLACE: NTSB Board Room, eight floor, 800 Independence Avenue SW., Washington, D.C. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. *Highway Accident Report:* Jonesboro School District Schoolbus Run-Off-Road and Overturn, State Highway 214 at State Highway 18, near Newport, Arkansas, March 25, 1983.

2. *Highway Accident Report:* Humboldt County Dump Truck/Klamath-Trinity Unified District Schoolbus Collision, State Route 96, near Willow Creek, California, February 14, 1983.

3. *Marine Accident Report:* Explosion and Fire on Board the U.S. Tankship SS *Golden Dolphin* in the Atlantic Ocean, March 6, 1982, and Recommendations to Apex Marine Corporation and the U.S. Coast Guard.

CONTACT PERSON FOR MORE INFORMATION: Sharon Flemming (202) 382-6525.

September 9, 1983.

[S-1286-83 Filed 9-12-83; 12:12 pm]

BILLING CODE 4910-58-M

4

NUCLEAR REGULATORY COMMISSION

DATE: Week of September 12, 1983 (revised).

PLACE: Commissioners' Conference Room, 1717 H Street NW., Washington, D.C.

STATUS: Open and closed.

MATTERS TO BE DISCUSSED: *Monday, September 12:*

1:00 p.m.:
Status of NTOL Plants (Public Meeting) (As Announced)

2:00 p.m.:
Discussion of Status of Investigations (Closed—Exemptions 5 and 7) (As Announced)

Tuesday, September 13:

10:00 a.m.:
Staff and Teledyne Briefing on Status of IDVP for Diablo Canyon (Public Meeting) (Replaced Public Meeting on Diablo Canyon)

2:00 p.m.:
Continuation of Discussion of Management-Organization and Personnel Matters (Closed—Exemptions 2 and 6) (New Item)

Friday, September 16:

10:00 a.m.:
Discussion/Possible Vote on Full Power Operating License for San Onofre-3 (Public Meeting) (As Announced)

11:30 a.m.:
Affirmation/Discussion and Vote (Public Meeting) (Items Revised)
a. Final Rule—10 CFR 50—Fitness for Duty of NPP Personnel (*Postponed*)
b. Review of ALAB-734 (*Postponed* from September 8)
c. Final Rule—NRC Rulemaking To Amend 10 CFR 2.200 and 2.201 (*Postponed* from September 8)

1:30 p.m.:
Periodic Meeting with Advisory Panel on TMI-2 Cleanup (Public Meeting) (As Announced)

ADDITIONAL INFORMATION:

Affirmation of Final Rule on Temporary Operating Licensing Authority scheduled for September 8, *postponed.*

Discussion of Proposed Insider Safeguards Rule schedule for September 14, *postponed.*

AUTOMATIC TELEPHONE ANSWERING SERVICE FOR SCHEDULE UPDATE: (202) 634-1498. Those planning to attend a meeting should reverify the status on the day of the meeting.

CONTACT PERSON FOR MORE INFORMATION: Walter Magee (202) 634-1410.

Dated: September 12, 1983.

Walter Magee,

Office of the Secretary.

[S-1288-83 Filed 9-12-83; 3:54 pm]

BILLING CODE 7590-01-M

federal register

Wednesday
September 14, 1983

Part II

Department of Transportation

Federal Highway Administration

Truck Size and Weight; Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 658

[FHWA Docket No. 83-14]

Truck Size and Weight; Proposed Rulemaking

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes the final network of highways in 45 States, the District of Columbia, and Puerto Rico on which commercial vehicles with the dimensions authorized by the Surface Transportation Assistance Act of 1982 (STAA) may operate. Criteria for exceptions, additions to and deletions from the designated system are included. The proposed rule addresses width, length and weight of vehicles, grandfather clauses, reasonable access and specialized equipment. The proposed regulations will apply in all 50 States, the District of Columbia and Puerto Rico. A proposed final network for the States of Alabama, Florida, Georgia, Pennsylvania, and Vermont will be published at a later date.

DATE: Comments on this docket must be received on or before October 31, 1983.

ADDRESS: Submit written comments, preferably in triplicate, to FHWA Docket No. 83-14, Federal Highway Administration, Room 4205, HCC-10, 400 Seventh Street, SW., Washington, D.C. 20590. All comments received will be available for examination at the above address between 7:45 a.m. and 4:15 p.m., ET Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Harry B. Skinner, Office of Traffic Operations, (202) 426-1993, Mr. David C. Oliver, Office of the Chief Counsel, (202) 426-0825 or Mr. Sheldon G. Strickland, Office of Highway Planning, (202) 426-0153, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION:

Background

On January 6, 1983, the Surface Transportation Assistance Act of 1982, Public Law 97-424, 96 Stat. 2097 (STAA), became law. Several provisions of the law concern the length and weight of commercial motor vehicles. On April 5, 1983, Public Law 98-17, 97 Stat. 59, amended the STAA to include truck width provisions. Prior to the enactment of these laws, Federal involvement in these areas was limited to matters involving permissible vehicle weights and widths, and was limited in applicability to the National System of Interstate and Defense Highways. The permissive nature of the law resulted in the adoption of different limits by the States, mainly with respect to vehicle weights, which increasingly became an impediment to the free flow of interstate commerce. Although enforcement of weight limits remains a condition to the grant of Interstate construction funding, these limits are no longer permissive. State limits for weights may not now differ from the Federal maximums.

The changes created by the STAA with respect to width and the addition of length standards have been even more dramatic than those for weights, because the Congress has preempted State authority completely with respect to width, and partially with respect to length. Congress also extended the coverage of length and width controls to include at least portions of the Federal-Aid Primary system as designated by the Secretary of Transportation, and mandated injunctive relief rather than withholding of funds as the method for enforcing these provisions.

Congress has also provided for larger vehicle access from the Interstate and designated roads to terminals, facilities for food, fuel, repair and rest, and points of loading and unloading for household good carriers. The criterion Congress established for determining proper access is "reasonableness."

The initial FHWA notice of policy statement concerning implementation of the STAA was published in the **Federal Register** February 3, 1983 (48 FR 5210). That Notice established docket number 83-4 and set July 1 as a deadline for public comment. The docket has received over eighty comments. In addition, over 400 letters addressing relevant truck related issues have been received at other offices within FHWA. The comments have covered nearly every aspect of the truck size and weight legislation. More than half of the comments have focused on the Connecticut situation, supporting the recently enacted State law prohibiting truck tractor semitrailer-trailer combinations, i.e., "doubles." Comments by certain national organizations have covered several aspects, while many individual commentors have focused on a single aspect of concern to them. The comments to docket 83-4, this docket, and additional letters to FHWA will be combined, fully summarized and considered in preparing the final rule.

This proposed rulemaking implements those provisions of the STAA requiring the designation of a non-Interstate Federal-Aid Primary highway network and also addresses the treatment of specialized equipment and grandfather rights under the new law.

Designated Highways

Section 411(e) of the STAA requires the Secretary to issue final rules no later than 270 days from the date of enactment (i.e., October 3, 1983), designating qualifying Federal-aid Primary System highways (FAP) on which commercial vehicles of the lengths authorized in the STAA must be permitted to operate. Section 416 of the STAA provides for the designation of qualifying Federal-aid highways on which commercial vehicles of the width authorized in that Section must be allowed to operate.

The Federal-aid Primary System consists of principal and minor arterial highways that serve a substantial portion of commercial motor vehicle travel. There is no conclusive evidence that operation of the trucks authorized by the STAA will pose additional safety problems in comparison to vehicles presently allowed to operate by the States. Copies of relevant safety studies are available for inspection in the public docket.

The process of designating qualifying primary highways began with the February 3 Policy Statement (48 FR 5210). The premise of that statement was that all Interstate highways (excepting those segments on which no trucks were currently permitted) were eligible under the Act, and that, at a minimum, all highways constructed to similar design standards (four or more lanes, divided, full control of access) would also be designated. States were asked to add other qualifying highways to meet the intent of the Congress to provide a national network of highways to serve interstate commerce, and to indicate which, if any, of the four lane divided FAP highways they believed should not be included. Henceforth the term "National Network" will be used to reference the combination of the Interstate System and those portions of other Federal-aid highways designated by the Secretary on which commercial vehicles of the dimensions authorized by the STAA are allowed to operate.

The submissions from the States recommended almost 101,000 miles of qualifying highways, or about 40 percent of the non-Interstate FAP system. However, several States did not recommend any mileage other than Interstate, or recommended only small

and unconnected segments of FAP highways. A number of reasons were given for the lean submissions. A common one was that the State had no authority to recommend a network for commercial motor vehicles until State laws had been enacted. Another was the contention that only divided and access controlled highways were safe enough. After full consideration of these reasons, and in view of the short time frame Congress mandated for implementation, FHWA concluded that (a) because the STAA required an interim designation by April 6, 1983, FHWA could not wait for each State to modify its legislation, and (b) neither the language of the STAA, nor its intent, nor the practices of a majority of the States, support a position that only divided and access controlled highways are safe for the commercial motor vehicles authorized by the STAA. Thus FHWA was compelled to augment the submissions from several States, and approximately 38,000 miles were added to the State submissions.

On April 5, 1983, in the **Federal Register** (48 FR 14844) FHWA issued a refined policy statement concerning the basis and rationale for the interim network, and, in an Appendix, designated by State the routes on the interim national network. The policy statement also offered the States the opportunity to apply for the removal of specific routes where road segments would not safely accommodate the larger vehicles due to structural or geometric limitations.

Since publication of the initial interim network, modifying amendments have been published in the **Federal Register** (April 22, 1983 (48 FR 17347), May 3, 1983 (48 FR 20022), May 12, 1983 (48 FR 21317), May 24, 1983 (48 FR 23182), June 2, 1983 (48 FR 24852), July 8, 1983 (48 FR 31588), and August 30, 1983 (48 FR 39222)). The modifications have occurred for two basic reasons: Either because of legal actions challenging the April 5 designations; or because of refinements to the interim network and application of the de-designation criteria upon State request.

On July 8, 1983, in 48 FR 31588, FHWA published the official interim designated network for all 50 States, the District of Columbia, and Puerto Rico, as modified. Corrections in Idaho were published on August 4, 1983 (48 FR 35388). On August 30, 1983, in 48 FR 39222, FHWA published modifications to the interim network in the States of Delaware, New York, and Tennessee.

With respect to legal action, five States (Alabama, Florida, Georgia, Pennsylvania, and Vermont) commenced litigation in U.S. District Courts against the designation of routes added to the State submissions by FHWA. In addition, the FHWA—in cooperation with the Justice Department—initiated court action against Connecticut to enjoin the enforcement of the State's prohibition of "doubles." The court ruled in favor of the Federal Government, and doubles may now operate legally in Connecticut. In the six States with legal action pending FHWA amended the interim networks reverting to those originally proposed by the States.

On August 31, 1983, in 48 FR 39592, FHWA published a Notice of Proposed Rulemaking which proposes for public comment an interim highway system for the National Network in five of the six litigant States (Alabama, Florida, Georgia, Pennsylvania, and Vermont). The designation of an interim network, and ultimately a final network, for these five States is being separated at this time from the other 47 States and jurisdictions until the conclusion of that administrative procedure. Thus, while the timing of a final National Network in each State may not be the same, the rules as proposed under this rulemaking will apply to interim and final networks in every State.

Special notations in the appendix provide additional information as follows:

For the States of Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, and New York the proposed highway segments where disagreements exist between FHWA and the States with respect to designations are marked with an asterisk. It should be noted that these are proposed designations. For information about current interim designations, please refer to the July 8, 1983, **Federal Register** Notice (48 FR 31588), and the August 30, 1983, **Federal Register** Notice (48 FR 39222). Comments are specifically requested as to the desirability of including the routes identified with an asterisk as part of the final designated network.

The State of West Virginia has adopted special procedures whereby routes may be added to the final network. These special procedures are described in the Appendix. The special procedures are in addition to the formal procedures listed in § 658.11(b)(1). In the event that other States adopt special procedures, they will be placed in the docket for inspection.

Substantial or full agreement between FHWA and the States has been reached in 39 States, the District of Columbia and Puerto Rico with 117,640 miles of Federal-Aid Primary proposed to be placed on the National Network.

The criteria for de-designation are incorporated in Section 658.11 of this regulation and are proposed by FHWA to constitute the final criteria for eliminating a designated highway or highway segment from the National Network.

The FHWA has been and will continue to work with the States throughout the interim period in preparing an acceptable and uniform network for final designation. The FHWA actively seeks comment from all interested parties on the proposed final designations included in this NPRM, particularly the route designations noted by asterisk(s) in the States listed above. Such comments should focus on the following points:

1. Safety—Within the criteria set forth in § 658.11 can these routes safely accommodate the larger vehicles?

2. Interconnectivity—Do the routes provide for continuity of movement within and between States, particularly at State lines?

3. Service—Does the overall network provide access to major population and industrial centers?

The STAA leaves little administrative discretion to prohibit totally the use by vehicles authorized in the STAA of any Interstate segment currently used by trucks. However, we believe the STAA provides sufficient FHWA discretion to provide for necessary restrictions on Interstate System usage for documented safety, structural integrity or major traffic capacity problems. For example, States may continue to prohibit vehicles authorized under Sections 411 (a) and (c) and 416 of the STAA if all commercial motor vehicles were prohibited prior to January 6, 1983. Subject to FHWA approval, reasonable restrictions may be imposed during certain peak hours of travel or on specific travel lanes of multi-lane facilities. Other restrictions related to construction zones, seasonal operation, adverse weather conditions, e.g., high winds, or structural or clearance deficiencies may be imposed and enforced. Finally, States may restrict urban Interstate usage by vehicles authorized under the STAA by imposing and enforcing detours to circumferential or bypass Interstate routes for vehicles not destined to locations within the area to be bypassed. Prior FHWA approval will be required for restrictions other than those based on weight related structural inadequacy or vertical clearance on the National Network.

The FHWA has determined that it is impractical to establish one system of highways to accommodate vehicles subject to the length provisions of the

STAA and another system to accommodate vehicles subject to the width provisions. The FHWA therefore is proposing to designate one system of qualifying highways on which vehicles authorized by the length and width provisions of the STAA may operate. Some routes, however, are capable of safely accommodating some classes of vehicles of a larger dimension, but not others. For example, on a route with short radius curves, double trailer combinations may operate safely, but 48-foot single semi-trailers might have problems because of their off-tracking characteristics. Similarly, on some routes with narrow lanes, it may be desirable to prohibit 102-inch wide vehicles of any length.

Under the single designated system concept as reflected in the proposed rule, FHWA has generally excluded road segments unless they can safely accommodate all the larger dimensioned vehicles. An alternative interpretation would permit the designation of such routes, allowing restrictions by vehicle class. Under this alternative the State would impose exclusions by vehicle class from operation on designated routes. The FHWA seeks comments from the States and the trucking industry on matters of safety, administration, enforcement and productivity related to this issue.

Signs

The FHWA is currently considering the need for posting signs on National Network routes. The American Association of State Highway and Transportation Officials (AASHTO) Subcommittee on Traffic Engineering is also considering the issue of whether signs are needed to identify designated routes, and what design may be appropriate. An alternate to signing the designated routes might be for States to issue special maps of the designated routes within their borders. The FHWA seeks comments from interested parties on all aspects of the signing issue, particularly the following:

- In order to identify National Network routes and any operating restrictions is it necessary to post signs, or would specialized State maps be preferable?
- If signs are necessary to identify National Network routes, are signs needed to indentify non-Network intersecting routes from which the larger vehicles are prohibited?
- If States permit certain classes of the larger vehicles, e.g., 102-inch width trucks, on non-Network routes, how should those routes be identified?
- If States exclude certain classes of the larger vehicles from segments of the National Network that cannot safely accommodate them, how should those segments be identified?
- How should nondesignated routes that are used for access to terminals and facilities be identified?

Vehicle Length

The provisions of Section 411 apply to truck tractor-semitrailer configurations (semis) and truck tractor-semitrailer-trailer combinations (doubles). They do not apply to single unit trucks, triples, or trucks pulling semitrailer or trailer units. Thus, the States may continue to establish overall length limits on these other vehicles. Sections 411 (a), (b), and (c), read together, require: (1) That all States must permit the combinations known as "doubles" on Interstate and designated highways; (2) that States can no longer establish an overall maximum length limit for combination semis or doubles, and (3) that States can no longer establish length limitations for truck tractors in such combinations. Subsection (f) defines a truck tractor as a noncargo carrying power unit, and unless otherwise provided for under the specialized equipment provision in subsection (d), the States may continue to regulate cargo-carrying truck tractors.

The length limitations established by Section 411 apply to the trailer or semitrailer units and no State may impose a maximum length limit on a semitrailer in a semi combination of less than 48 feet, or on a trailer or semitrailer in a double combination of less than 28 feet, when operating on the National Network. In effect, Congress has established 48 feet (semi) and 28 feet (doubles) as the lowest maximum trailer length limits on these highways. The States may establish maximum length limits in excess of 48 feet (semis) or 28 feet (doubles) and designate networks for their operation at their option.

In addition, Congress provided two different grandfather rights in Section 411(b). The third sentence of that Section provides that States with trailer length limits on December 1, 1982, that were above those limits established by the STAA are prohibited from establishing limits below those in effect on that date. In establishing a uniform minimum length requirement, with a grandfather right to longer dimensions if in existence, Congress established a floor, rather than a ceiling, which requires States with regulation limits below the STAA limits to raise their limits to the STAA standards. States with regulation limits above the STAA limits would be required to establish limits which are at least consistent with existing State practices. The intent of this provision is to prohibit States from instituting a roll-back to more restrictive limits as a result of the STAA.

There will be difficulties in administering this provision in those States which did not regulate trailer length prior to the passage of the STAA. The majority of such States provided for an overall length limit of 60 or 65 feet. Industry sources, such as the 60 N.R. Committee (an Ad Hoc group of shippers and irregular route carriers concerned with truck dimension issues) report that some States have adopted a 48-foot trailer length maximum, which would exclude longer trailer lengths that were allegedly allowed to operate previously throughout the State. If such is the case, the State practice could be construed to violate the STAA.

The 60 N.R. Committee has provided a map showing trailer lengths that it claims were authorized in each State prior to enactment of the STAA. This map has been placed in the Docket. The Committee has also provided documentation from carriers or shippers supporting the lengths indicated. This documentation includes delivery receipts, bills of lading, drivers logs, motor vehicle comptroller's invoices and vehicle registrations and bills of sale. We would like to establish in the final rule the grandfather length for each State to avoid potential future confusion and conflict. We request comment from each State and the industry on the length of trailers legally in operation in each State on December 1, 1982.

In establishing these lengths, we interpret congressional intent as applying these grandfather provisions only to those trailers which were legal under State law. Thus, vehicles which may have been operating but in violation of State law are not entitled to grandfather status. Also, vehicles which were authorized pursuant to the issuance of a special permit were authorized in accordance with a discretionary power of the State, and we do not intend to interfere with such discretionary power. We expect that those States which previously issued permits for vehicles in excess of legal limits will continue to do so, but special permit *length* limits are not entitled to legal grandfather status under the provisions of the STAA.

Finally, several States did permit trailers with lengths in excess of 48 feet, but only if certain spacing requirements were met between the kingpin and last axle of the vehicle. In those States, which include California, Iowa, and Minnesota, the State may adopt a trailer length of 48 feet in compliance with the

STAA, but the larger trailers must be permitted if they comply with the previous kingpin to axle requirements.

The fourth sentence of Section 411(b) establishes another grandfather provision, which requires States to allow existing doubles with semitrailer and trailer lengths of 28½ feet, if in actual and lawful operation in any State on December 1, 1982, and if such trailer or semitrailers operated within a 65-foot overall length. There are two restrictions applicable to the grandfather right: (1) The trailers must have been in existence (thus only actual equipment is grandfathered), and (2) the trailers must have operated within a 65-foot overall length. We do not perceive any congressional intent to require that such trailers continue to operate in a 65-foot overall length. This equipment does not come under the category of specialized equipment as treated under 658.13(d), but is specifically grandfathered equipment.

Since enactment of the STAA, several States have adopted trailer or semitrailer length restrictions of 28 feet, others have adopted 28½ feet, yet others have adopted even longer maximum trailer lengths. The problem which is created is one of identification. We request comments as to how the grandfathered vehicles (i.e., trailers) would or should be identified. We also would like to know from the industry how many of these trailers and semi-trailers were in actual use on December 1, 1982, within a 65-foot overall length.

Section 411 establishes limits for the National Network only. Section 411(b) precludes State regulation of overall length and tractor length. We interpret Section 411(b) to be consistent with the rest of Section 411 and applicable only to the National Network. If a State chooses to extend its application to other roads, it retains that capability within the exercise of traditional State police power. We do not perceive any congressional intent to preempt State police power off the National Network.

Finally, the Secretary is authorized by Section 411(d) to make such determinations as are necessary to accommodate specialized equipment, for example, automobile transporters. The National Automobile Transporters Association (NATA) has requested clarification of dimensions under this provision. The NATA reports that 35 States presently allow the operation of 65-foot long equipment, with 30 States allowing some form of load extension at the front and rear of the unit. The power unit of these combinations is continually used with the same semi-trailer and is allowed to carry cargo. The NATA requests the establishment of a minimum length of 65 feet for conventional and so-called stinger-steered units (fifth wheel sets on a drop frame located behind and below the drive axles of the power unit), plus overhang. In addition, NATA members utilize an operation known as driveaway-towaway. This operation, also known as a triple-saddlemount, is currently permitted by many States within a 65-foot overall limit. The operation of this unit is similar to a double and is strictly regulated with regard to towing, stability, tracking, strength requirements and fullmount vehicles. The NATA has requested the establishment of a uniform length limit of 65 feet for the operation of triple saddlemounts or triple saddlemounts plus fullmounts, in a driveaway-towaway operation pursuant to Section 411(d). The proposed regulation below adopts these specifications and would require all States to allow such vehicles on the Interstate and designated FAP System highways. Further pursuant to Section 411(d) FHWA proposes to grandfather automobile transport vehicle configurations and sizes in actual and lawful use on December 1, 1982. A State by State listing of currently permitted dimensions prepared by NATA has been placed in the Docket.

One other common form of specialized equipment involves the attachment of a storage box known as a dromedary box to the truck-tractor unit. As the box is utilized for cargo, the length of a truck-tractor with a dromedary can be regulated by the States. Pursuant to the provisions of Section 411(d) of the STAA, FHWA intends to grandfather for their useful life units which were in actual and lawful operation on January 6, 1983. FHWA requests comments as to how the grandfathered equipment should be identified. This position is based on an FHWA desire to comply with the provisions of the legislation without causing undue hardship on the trucking industry and, subsequently, increased costs to the consumer. In addition, FHWA attempted to define future dromedary boxes as cargo or noncargo carrying units as a function of the size of the box. This was not possible since some larger boxes are not intended to carry cargo while some smaller boxes are. Therefore, it was concluded that the only way to relate a dromedary box definition to the legislative definition of a truck tractor is to specify that a truck tractor with a dromedary box carrying manifested property being transported as a part of a shipment constitutes a cargo carrying unit and, as such, does not fall under the requirements of the STAA but is controlled by State laws dealing with a single unit truck.

Vehicle Width

Public Law 98–17, 97 Stat. 59, amended the STAA to add Section 416, which requires all States except Hawaii to establish a vehicle width limitation of 102 inches on the Interstate and designated qualifying Federal-aid primary highways. Hawaii is authorized to retain its current maximum width of 108 inches. The States are authorized to issue special permits to motor vehicles in excess of 102 inches. In addition to preempting State requirements, the intent of adding this provision to the STAA was to provide a uniform effective date and enforcement mechanism for both length and width as well as provide for a uniform highway network on which vehicles with 48-foot semis, 28-foot doubles, and 102-inch wide dimensions could operate.

The FHWA has a long history of interpreting the width provision under prior law. From 1956 to 1979, it was the FHWA's interpretation that the then maximum width limit of 96 inches was inclusive of all safety devices, unless such were specifically exempted by virtue of the grandfather clause (permitted to exceed 96 inches on July 1, 1956). This was consonant with the recommended policy of the American Association of Highway and Tranportation Officials (AASHTO) at the time of enactment of the Federal law. However, AASHTO later amended its policy to exclude safety devices and tire bulge due to load. Reconsideration of the FHWA interpretation led to a modification (44 FR 37710, June 28, 1979) at which time the FHWA adopted the AASHTO definition of width, and in addition to tire bulge, accorded width-exclusion status to rear-view mirrors, turn signal lamps, and hand-holds for cab entry/egress.

As we received additional information on the subject of safety devices, a further modification was noted in 46 FR 32, on January 2, 1981, at which time the devices listed above were accorded continued excluded status and additional items to be determined by the States were also accorded that status. However, the additional items were permitted to extend no more than 3 inches on each side of the vehicle. This position was clarified in an interpretative memorandum of February 12, 1981, which established the FHWA policy as limiting State authorized safety devices to extending 3 inches beyond the vehicle maximum width on each side with the exceptions of load-induced tire-bulge, rearview mirrors,

turn signal lamps, and hand-holds for cab entry/egress, which could extend beyond the 3-inch limit. Section 4165 provides that certain safety devices which the Secretary determines are necessary for safe and efficient operation shall not be included in the calculation of width. We are retaining our previous interpretation for the new requirements of the STAA, with the addition of splash and spray suppressant devices to the list of safety items which can extend beyond the 3-inch limit.

The other issue with respect to width is the scope of coverage of the new section. Under the previous width restrictions in 23 U.S.C. 127, all vehicles operating on the Interstate System, whether incidentally or otherwise, and notwithstanding the commercial nature of the vehicles were restricted by the 96-inch limit. Accordingly, farm tractors, implements of husbandry and similar equipment which do not use the Interstate on any but an incidental basis were limited to the 96-inch width. However, the grandfather clause allowed those States which had made provision through State law or regulation for such specialized equipment on July 1, 1956, to continue to allow such operation on Interstate highways. The 1956 grandfather clause was not retained in Section 416 of the STAA. If this deletion were interpreted strictly many specialized operations could no longer use the Interstate and designated segments of the FAP system, even on an incidental basis, except under special permit. However, since Section 416 has been placed in Part B of Title IV of the STAA which provides for commercial motor vehicle limitations, and the section title accompanying the width provision cites "commercial motor vehicle width limits," we are proposing to exclude farm tractors and similar equipment from the definition of commercial motor vehicles and therefore from the scope of Section 416. Under this proposal States could continue to regulate such equipment.

Several inquiries have been received with respect to the width of the axle track on wider vehicles. Available evidence indicates that the stability of such vehicles will be enhanced if the wider axle tracks are used on the wider vehicles. This enhancement can be gained at minimal cost. At the same time, however, we are unaware of any safety risk which will result from using the current axle track on the wider vehicles. The requirement to use a wider axle track on wider vehicles may have implications for piggyback operations such as trailer-on-flat-car operations (TOFC). We are interested in the views of the States, the industry and the public regarding the advantages and disadvantages of allowing the operation of 102-inch wide vehicles with current axle tracks. Therefore we are requesting comments on whether wider vehicles should be required to have wider axle tracks.

The American National Metric Council and the Truck Trailer Manufacturer's Association have called attention to the practices of some Canadian trailer manufacturers to construct their trailers 2.6 meters wide. This dimension is equivalent to 102.36 inches. The FHWA is interested in knowing the advantages and disadvantages of allowing trailers of 102.36-inch widths on the roads as perceived by the State and the public, in general. The FHWA solicits comments on the question of allowing 102.36-inch wide trailers on the National Network.

Vehicle Weight

Section 133 of the STAA amends Section 127 of Title 23, U.S.C., and makes some important changes. The weight limitations apply only to the Interstate System of highways; however, the States are precluded from denying reasonable access to motor vehicles of such weight between the Interstate System and terminals and facilities for food, fuel, repairs, and rest.

The weight limits are no longer permissive. All states must now adopt maximum weight limits of 20,000 pounds on a single axle, 34,000 pounds on a tandem axle, 80,000 pounds gross weight, and the bridge formula as the standard Interstate weight limits or lose Federal-aid Interstate construction funding. The States can no longer establish maximum weight limits below these weights, or above, unless grandfathered. This section restates the requirement that tolerances must be included in calculating weighs. Several enforcement agencies have established an enforcement policy when using portable scales on according a 2 or 3 percent tolerance prior to issuing a citation. We do not object to such a policy, when it is based on equipment weight measurement errors. However, application of any tolerance by statute constitutes a violation of Section 127.

The bridge formula is a mandatory feature of the law. The formula governs the maximum gross weight on any group of axles and it is only the maximum weight calculated on the basis of the formula which is legal, but in no case can the total weight exceed 80,000 pounds unless a specific grandfather right has been established. All States must enforce the bridge formula and all States must apply the bridge formula to all vehicles, recognizing, however, any legitimate grandfather rights (single axle, tandem axle, or gross weight on July 1, 1956; or group of axles on January 4, 1975).

There are no longer any restrictions on the States in issuing special permits for those vehicles and loads which cannot be easily dismantled or divided; the determination of which vehicles qualify for such special permits is left to the States.

The past several years have seen the development of a number of controversies between the FHWA and the States over the issuance of special permits for gross weights in excess of 80,000 pounds. Several States have been issuing permits for weights over 100,000 pounds. Even in those States limitations have historically been applied for axle weight and spacing (bridge formula). A few States have issued such permits without regard to axle weight or spacing. This practice concerns the FHWA since it leads to premature deterioration of pavements and bridges.

The legislative history makes it clear that the FHWA should not intervene in situations where a State has determined it has a legitimate grandfather right to issue special permits for divisible loads with weights in excess of 80,000 pounds. 128 Cong. Rec. S14997 (daily ed. Dec. 16, 1982) (remarks of Sen. Symms). However, this was a qualified congressional expression, applicable to 16 States: Nebraska, Montana, South Dakota, Oklahoma, Rhode Island, Idaho, Oregon, New Mexico, Utah, Nevada, Massachusetts, Louisiana, Michigan, Hawaii, Washington, and Alaska. These States are the only States that we are aware of that issue divisible load permits or possess grandfather rights allowing gross weights in excess of 80,000 pounds.

Although legislative history suggests that FHWA not intervene in the final decision of the States, the Senate expressed the sense that the FHWA be actively involved in the State determination process. 128 Cong. Rec. S14997 (daily ed. Dec. 16, 1982) (remarks of Sen. Symms). Accordingly, those States listed above which determine that they have a grandfather right to issue special permits for weights in excess of 80,000 pounds should furnish the FHWA with an opinion of the State Attorney General or the highest court of jurisdiction in the State. In addition, all special permits for divisible loads in excess of 80,000 pounds must be issued on the basis of either Federal or grandfathered axle and bridge formula controls. Special permits for

nondivisible loads are now in separate category and no justification need be provided. The States are encouraged to continue routine practices in issuing nondivisible load permits, i.e., approval of routing and bridge inspection, but no requirements are imposed with respect to either axle or gross weights.

Finally, other grandfather rights as historically established, i.e., single and tandem axle weights, remain intact where the States permitted such axle weights above the Federal limits on July 1, 1956.

Reasonable Access

23 U.S.C. 127(b) provides that States may not deny reasonable access to vehicles of weights authorized by that Section between the Interstate System and terminals and facilities for food, fuel, repairs and rest. Similarly, Section 412 of the STAA provides that States may not deny reasonable access to commercial vehicles subject to Title IV of the Act (which includes length and width provisions) between the Interstate and designated Primary System highways and terminals, facilities for food, fuel, repairs and rest and points of loading and unloading for household goods carriers. It is our intent at this time to allow the States to establish individual reasonable access provisions. The current status by States of reasonable access provisions is listed in tabular form below. The FHWA specifically requests comments on all aspects of the reasonable access including the signing or mapping of reasonable access routes and segments and the need to define terminal.

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STATUS OF REASONABLE ACCESS PROVISIONS

STATE	Access Policy	Under discussion	½ mile	1 mile	3 miles	5 miles	10 miles	un-limited	Comments
ALABAMA	X			X					From identified designated interchanges
ALASKA	X							X	
ARIZONA	X							X	
ARKANSAS	X							X	Unless otherwise posted
CALIFORNIA	X		X						Terminal access beyond .5 mi. by signed routes
									from identified access points
COLORADO	X							X	Unless otherwise posted
CONNECTICUT									Pending appeal of Federal court case
DELAWARE	X								By permit only
DIST. OF COL.	X								By permit only
FLORIDA	X								From ident. interchanges: rural-1 mi.(2 lane) & 3 mi.
									(4 lane); urban-1 mi. on X-rds. w/12' lanes. Car-
									riers must petition if terminals outside above limits
GEORGIA	X			X					From identified designated interchanges
HAWAII	X							X	
IDAHO	X							X	
ILLINOIS	X					X			State highways, local roads by permission
INDIANA	X							X	All US and State routes
IOWA	X								1) 5 mi. from I System 2) All rds. & streets within
									cities served by I or other designated routes & 3-10
									mi. outside of cities depending on population.
KANSAS	X							X	All US and State routes
KENTUCKY		X							
LOUISIANA	X				X				
MAINE		X							Waiting for Federal definition in NPRM
MARYLAND	X								Shortest practical route to terminals, etc.
MASSACHUSETTS									Waiting for Federal definition in NPRM
MICHIGAN	X					X			
MINNESOTA									No action pending
MISSISSIPPI	X							X	
MISSOURI	X						X		
MONTANA	X							X	
NEBRASKA	X							X	All US and State routes
NEVADA	X							X	Permit required for width
NEW HAMPSHIRE	X								By permit only
NEW JERSEY	X								By permit only
NEW MEXICO		X							Interim instructions issued for Interstate only
NEW YORK	X								Permit required beyond 1500 feet
NORTH CAROLINA		X			X				For food, fuel, rest & lodging
NORTH DAKOTA		X					X		Draft has been prepared
OHIO	X							X	All US and State routes
OKLAHOMA	X								Very reasonable access
OREGON	X								Limited to designated system
PENNSYLVANIA	X								.2 mile from designated system
PUERTO RICO									Policy to be determined when need arises
RHODE ISLAND									Waiting for Federal definition in NPRM
SOUTH CAROLINA									No action pending
SOUTH DAKOTA	X							X	
TENNESSEE	X							X	Shortest reasonable route
TEXAS	X							X	Unless otherwise posted
UTAH	X							X	
VERMONT	X								.5 mi. on designated interchanges; permit on others
									& greater distance
VIRGINIA	X		X						Permit req'd beyond .5 mi. Permission must be obtain
									ed within towns, cities & Henrico & Arlington Co.
WASHINGTON	X							X	
WEST VIRGINIA									Anticipate definition by Oct. 1
WISCONSIN	X				X				Considering expansion to 5 miles
WYOMING									No action pending

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Regulatory Impact

The FHWA has considered the impacts of this proposal and has determined that it is a major rulemaking action within the meaning of E.O. 12291 and a significant rule under regulatory policies and procedures of the Department of Transportation (DOT). The agency's determination that this proposed rule is major and significant is based primarily on the substantial savings in transport costs expected to result from implementation of the proposal and on the controversy regarding route designations in selected locations. A preliminary regulatory impact anaylsis, initial regulatory flexibility analysis and an environmental assessment have been prepared and are available for inspection in the public docket.

With regard to the assessment of the impact this proposal will have on small entities pursuant to the Regulatory Flexibility Act (Pub. L. 96–354), the reasons for, objectives, and legal basis for this proposed action have been previously explained in this notice. This proposal does not impose any additional reporting, recordkeeping, or other compliance requirements on small entities and this proposal does not duplicate, overlap, or conflict with any other Federal rules. This proposal does not appear to have any adverse effect on small entities. This proposal will provide the opportunity for any carrier to increase productivity through the use of larger vehicles and therefore is not expected to have a significant adverse effect on any segment of the motor carrier industry. Also, this proposal allows the States to recommend deletion of segments of the system designated for use by commerical motor vehicles with dimensions authorized by the STAA if inclusion of such segments would create significant safety, structural integrity, or traffic congestion problems. Therefore, the proposed rule is not expected to have a significant adverse effect on small governmental jurisdictions. In keeping with the intent of the Regulatory Flexibility Act, the FHWA encourages all small entities to comment on these initial determinations of the impact of the NPRM.

The FHWA has initially determined that this proposal will allow the motor carrier industry to realize substantial productivity gains. These gains are expected to provide significant benefits to truckers, shippers, receivers, and consumers. In the absence of conclusive evidence attributing increased safety problems to the operation of the commerical motor vehicles with dimensions authorized by the STAA, and in recognition of the fact that the proposal provides a mechanism for deletion of potentially unsafe segments from the designated system, the FHWA has initially determined that any safety effects of this proposal will be minor compared to expected benefits. The safety issue is addressed further in the preliminary regulatory analysis.

Depending on the level and distribution of traffic by larger vehicles, this proposal may lead to somewhat higher highway maintenance and safety improvement costs as discussed in the preliminary regulatory impact analysis. The FHWA invites comments on its initial estimation of the effects of this proposal and views on who should bear increased costs for highway maintenance and safety improvements should they be incurred as a result of these regulations as proposed. Any information that will assist in an improved estimation of the effects described above, and any suggestions of additional areas that should be considered in the final regulatory impact analysis, regulatory flexibility analysis or the environmental assessment are invited.

In consideration of the foregoing and under the authority of §§ 133, 411, 412, 413, and 416 of the Surface Transportation Assistance Act of 1982 (STAA), Pub. L. 97–424, 96 Stat. 2097; 23 U.S.C. 315; and 49 CFR 1.48, the FHWA proposes to amend Chapter I of Title 23, Code of Federal Regulations, by adding a new Part 658 to read as set forth below.

List of Subjects in 23 CFR Part 658

Grant programs—transportation, Highways and roads, Motor carriers—size and weight.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 and former OMB Circular A–95 regarding intergovernmental consultation and Federal programs and activities apply to this program)

Issued on September 8, 1983.

R. A. Barnhart,

Federal Highway Administrator, Federal Highway Administration.

PART 658—TRUCK SIZE AND WEIGHT; ROUTE DESIGNATIONS— LENGTH, WIDTH, AND WEIGHT LIMITATIONS

Sec.

685.1 Scope and purpose.
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685.7 Applicability.
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685.13 Length.
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685.21 Signing.
Appendix—Other Designated Routes.

Authority: Secs. 133, 411, 412, 413 and 416 of Pub. L. 97–424, 96 Stat. 2097, as amended by Pub. L. 98–17, 97 Stat. 59; 23 U.S.C. 315; and 49 CFR 1.48.

§ 658.1 Scope and purpose.

To designate a National Network of routes available to vehicles authorized by provisions of the Surface Transportation Assistance Act of 1982 (STAA) (Pub. L. 97–424, 96 Stat. 2097) as amended by Pub. L. 98–17, and to interpret certain provisions of the STAA that govern truck size and weight.

§ 658.3 Policy statement.

Federal Highway Administration (FHWA) policy is to provide a safe and efficient National Network of highways for use by the larger vehicles authorized by the STAA. This network will include the Interstate Highway System plus other qualifying Federal-aid Primary System Highways (FAP). The FHWA intends to provide interconnectivity in routing among the States, so that a National Network, which facilitates commerce and safely accommodates the larger vehicles, will be created to meet the intent of the STAA.

§ 658.5 Definitions.

(a) *Bridge Gross Weight Formula*—the standard specifying the relationship between axle (or groups of axles) spacing and the gross weight that (those) axle(s) may carry expressed by the formula:

$$W = 500\left(\frac{LN}{N-1} + 12N + 36\right)$$

where W = overall gross weight on any group of two or more consecutive axles to the nearest 500 pounds, L = distance in feet between the extreme of any group of two or more consecutive axles, and N = number of axles in the group under consideration.

(b) *Commercial Motor Vehicle.* For purposes of this regulation a motor vehicle designed or regularly used for carrying freight, merchandise, or more than ten passengers, whether loaded or empty, including buses, but not including vanpools.

(c) *Federal-Aid Primary System.* The Federal-aid Highway System of rural arterials and their extensions into or through urban areas as described in subsection (b) of Section 103 of Title 23, U.S.C.

(d) *Interstate System.* The National System of Interstate and Defense Highways described in Sections 103(e) and 139(a) of Title 23, U.S.C. For the purpose of this regulation this system includes toll roads designated as Interstate.

(e) *Length Exclusive Devices.* For purposes of this regulation devices such as refrigeration and air compressors, heating units, wind deflectors, flexible fender extensions, mudflaps and splash and spray suppressant devices, and others designated by FHWA are to be excluded in determining the length of any commerical motor vehicle, semitrailer or trailer.

(f) *National Network.* The composite of the individual network of highways from each State on which vehicles authorized by the provisions of the STAA are allowed to operate. The network in each State will include, the Interstate System and those portions of the Federal-Aid Primary System designated by the FHWA in the Appendix to this Part.

(g) *Safety Devices—Width Exclusion.* Federally approved safety devices accorded width exclusion status include rear-view mirrors, turn signal lamps, hand-holds or cab entry/egress and splash and spray suppressant devices. Although not normally considered a safety device, load induced tire bulge is also excluded from consideration in determining vehicle width.

(h) *Single Axle Load.* The total weight transmitted by all wheels whose centers may be included between two parallel transverse vertical planes 40 inches apart, extending across the full width of the vehicle.The Federal single axle weight limit on the Interstate System is 20,000 pounds.

(i) *Special Mobile Equipment.* Every self-propelled vehicle not designed or used primarily for the transportation of persons or poperty and incidentally operated or moved over the highways, including military equipment, farm equipment, implements of husbandry, road construction or maintenance machinery, ditch-digging apparatus, stone crushers, air compressors, power shovels, cranes, graders, rollers, well-drillers, and wood-sawing equipment used for hire, asphalt spreaders, bituminous mixers, bucket loaders, ditchers, leveling graders, finishing machines, motor graders, road rollers, scarifiers, earth-moving carryalls, scrapers, drag lines, rock drilling and earth-moving equipment. This list is partial and not exclusive if such other vehicles as may fall within the general terms of this definition.

(j) *Tandem Axle Load.* The total weight transmitted to the road by two or more consecutive axles whose centers may be included between parallel vertical planes spaced more than 40 inches and not more than 96 inches apart, extending across the full width of the vehicle. The Federal tandem axle weight limit on the Interstate System is 34,000 pounds.

(k) *Tractor or Truck Tractor.* The noncargo carrying power unit that operates in combination with a semitrailer or trailer, except that a truck tractor and semitrailer engaged in the transportation of automobiles may transport motor vehicles on part of the power unit.

§ 658.7 Applicability.

Except as noted in § 658.17 the provisions of this regulation are applicable to the National Network and reasonable access thereto. This regulation deals with the allowance of commercial motor vehicles authorized by provisions of the STAA to operate on the National Network. However, nothing in this regulation shall be construed to prevent any State from applying any weight and size limits to other highways, except highways providing reasonable access to the National Network.

§ 658.9 Procedures for designation of the National Network.

(a) The National Network listed in the Appendix to this regulation is designated and available for use by commercial motor vehicles of the dimensions described in §§ 658.13 and 658.15 of this regulation. The routes described in the Appendix have to the maximum extent possible been designated based on consultation with the individual States, to provide a system of highways which meet the following criteria:

(1) Safety—Routes which can safely accommodate the larger dimensioned vehicles authorized by the STAA.

(2) Interconnectivity—Routes needed to ensure efficient movement of people, goods, and materials within and between States with particular emphasis on State line crossings and reasonably direct travel patterns.

(3) Service—Routes which provide access to major population and industrial centers.

(b) The States may allow commercial motor vehicles of lengths longer than the dimensions specified in § 658.13(b) on the National Network based on their own criteria.

§ 658.11 Additions, deletions, exceptions, and restrictions.

The procedures listed below are necessary to ensure that the National Network, subsequent to its designation by this regulation, remains substantially intact. FHWA will retain the authority to rule upon all requested additions and deletions to the National Network as well as approve of the imposition of restrictions. FHWA approval or disapproval will constitute the final decision of the U.S. Department of Transportation. Alterations to the National Network will become official on the date of publication of FHWA approval in the **Federal Register.**

(a) *Additions.* The States may, at their discretion, allow vehicles with dimensions authorized by the STAA to use any route not on the National Network. The States may propose and FHWA may designate such additional routes that meet the criteria of § 658.09(a). State requests for additions including the justifications therefor shall be submitted in writing to the FHWA Division Office. Requests for additions will be published at least once per year in the **Federal Register** for notice and comment. Formal additions to the National Network will be published periodically in the **Federal Register**, and become effective on the date of publication.

(b) *Deletions.* Changed conditions or additional information may require the deletion of a designated route or a portion thereof. The deletion of any route or route segment shall require FHWA approval. State requests to FHWA for deletion approval including the reason(s) for the deletion and recommendation(s) for an alternative routing shall be submitted in writing to the FHWA Division Office. If the proposed deletion is based on safety considerations, FHWA retains the authority to de-designate the route immediately on an emergency basis. In any event, all requests to delete routes will be published in the **Federal Register** for notice and comment. Deletions, whether treated as an Emergency Rule or as a Notice of Proposed Rulemaking will be published promptly in the **Federal Register.** All requests for deletion shall address at least the following points:

(1) Did the route segment prior to designation carry combination vehicles or 102-inch buses?

(2) Were truck restrictions in effect on the segment on January 6, 1983?

(3) What is the safety record of the segment, including current or anticipated safety problems? Specifically, is the route experiencing above normal accident rates and/or accident severities? Does analysis of the accident problem indicate that the addition of larger trucks will aggravate

existing accident problems? Does the route exhibit above normal truck accident frequency rate or severity?

(4) What are the geometric structural or traffic operations features that might preclude safe, efficient operation? Specifically consider lane widths, sight distance, severity and length of grades, horizontal curvature, shoulder width, narrow bridges, bridge clearances and load limits, traffic volumes and vehicle mix, intersection geometrics and vulnerability of roadside hardware.

(5) Is there a reasonable alternate routing available?

(6) If an alternate route is not available has consideration been given to implementing operational restrictions in lieu of deletion?

(c) *Exceptions.* Those portions of the Interstate and Federal-Aid Primary Systems which were subject to commercial motor vehicle bans on January 6, 1983, are not required to be included in a State's network. This also applies to future qualified highways built with commercial motor vehicle bans.

(d) *Restrictions.* Reasonable restrictions may be imposed during certain peak hours of travel or on specific travel lanes of multi-lane facilities. Other restrictions related to construction zones, seasonal operation, adverse weather conditions or structural or clearance deficiencies may be imposed and enforced. States may restrict urban Interstate usage by vehicles authorized under the STAA by imposing and enforcing detours to circumferential or bypass Interstate routes for vehicles not destined to locations within the area to be bypassed. With the exception of restrictions due to weight related structural inadequacy or vertical clearance deficiencies, all restrictions on the use of the National Network by vehicles authorized by the STAA require prior FHWA approval. Requests for restrictions on the National Network shall be submitted in writing to the FHWA Division Office. Approval of State requests for restrictions will be contingent on the State's ability to justify significant negative impact on safety, the environment and/or operational efficiency.

§ 658.13 Length.

(a) The length provisions of the STAA involve only the following types of vehicle combinations:

(1) Truck tractor-semitrailer,

(2) Truck tractor-semitrailer-trailer.

and only when these combinations are in use on the National Network or in transit between these highways and terminals or service locations pursuant to § 658.19.

(b) The length provisions referred to in paragraph (a) of this section include the following:

(1) No State shall impose a length limitation of less than 48 feet on a semitrailer operating in a truck tractor-semitrailer combination.

(2) No State shall impose a length limitation of less than 28 feet on any semitrailer or trailer operating in a truck tractor-semitrailer-trailer combination.

(3) No State shall impose an overall length limitation on commercial vehicles operating in truck tractor-semitrailer or truck tractor-semitrailer-trailer combinations.

(4) No State may prohibit commercial motor vehicles operating in truck tractor-semitrailer combinations.

(5) No State shall prohibit the operation of semitrailers or trailers which are 28½ feet long when operating in a truck tractor, semitrailer, trailer combination if such a trailer or semitrailer was in actual and lawful operation on December 1, 1982, within a 65-foot overall length.

(c) If a State had in existence on December 1, 1982, length limitations for the conditions described in paragraphs (b) (1) and (2) of this section, greater than 48 and 28 feet, respectively, that State shall not adopt lesser limits.

(d) *Specialized Equipment.*—(1) *Automobile Transporters.* (i) A truck tractor-semitrailer combination engaged in the transportation of motor vehicles shall not exceed a length of 65 feet, inclusive of front and rear bumbers, but this limitation shall be exclusive of the overhang of the transported vehicles.

(ii) The load upon the front vehicle of a combination of vehicles shall not extend more than 3 feet beyond the foremost part of the transporting vehicle and the load upon the rear vehicle of a combination of vehicles shall not extend more than 4 feet beyond the rear of the bed or body of such vehicle.

(iii) Notwithstanding other provisions of this section, a number of motor vehicles may be transported in combination over the highways subject to this regulation, utilizing saddlemount and fullmount mechanisms and utilizing the motive power of one of the vehicles in combination, provided such combination of vehicles shall not exceed a length of 65 feet, and provided further that the equipment used in such combinations shall comply with the safety regulations issued by the Bureau of Motor Carrier Safety of the U.S. Department of Transportation.

(iv) Vehicle configurations and sizes exceeding the dimensions in paragraphs (d)(1) (i), (ii) and (ii) of this section and legal in a State on December 1, 1982, may continue to operate in that State notwithstanding the provisions of this section.

(2) *Dromedary Tractors*—If a power unit vehicle is allowed to carry property which is manifested and transported as part of a shipment, it is not considered as a truck tractor as defined in Section 411(f) of the STAA. If allowed to carry cargo, such a vehicle is considered to be a single unit truck and subject to the laws of the State dealing with single unit trucks. However, dromedary tractor equipment which was in actual and lawful use on January 6, 1983, will be allowed to continue in operation throughout its useful life.

(e) The length limitations described in this section shall be exclusive of length exclusive devices defined in § 658.05(e), or which the Secretary may interpret as necessary for safe and efficient operation of commercial motor vehicles, except that no device excluded from the limitations of this section shall have by its design or use the capability to carry cargo.

§ 658.15 Width.

(a) The maximum total outside width of any vehicle (excluding special mobile equipment as defined in § 658.05(i)) or the load thereon shall be 102 inches on any segment of the National Network except for the State of Hawaii, which is allowed to keep the State's 108-inch width maximum by virtue of Section 416(a), Title IV of the STAA.

(b) Notwithstanding the provisions of this section or any other provision of law, safety devices, as defined in § 658.05(g) or as determined by the States as necessary for the safe and efficient operation of motor vehicles shall not be included in the calculation of width. Safety devices not specifically enumerated in § 658.05(g) may extend up to 3 inches or each side of a vehicle. No device included in this subsection shall have, by its design or use, the capability to carry cargo.

(c) Notwithstanding the provisions of this section or any other provision of law, a State may grant special use permits to motor vehicles that exceed 102 inches in width.

§ 653.17 Weight.

(a) The provisions of this section are applicable to the National System of Interstate and Defense Highways and reasonable access thereto.

(b) The maximum gross vehicle weight may be no less than 80,000 pounds except where a lower gross vehicle weight is dictated by the bridge formula.

(c) The maximum gross weight upon any one axle, including any one axle of a group of axles, or a vehicle is 20,000 pounds.

(d) The maximum gross weight on tandem axles is 34,000 pounds.

(e) No vehicles or combination of vehicles shall be moved or operated on any Interstate highway when the gross weight on two or more consecutive axles exceeds the limitations prescribed by the following formula, referred to as the Bridge Gross Weight Formula:

$$W = 500\left(\frac{LN}{N-1} + 12N + 36\right)$$

except that two consecutive sets of tandem axles may carry a gross load of 34,000 pounds each if the overall distance between the first and last axle is 36 feet or more.

(f) Notwithstanding the limitations prescribed by use of the bridge formula, in no case shall the total gross weight of a vehicle exceed 80,000 pounds.

(g) The weights in paragraphs (b), (c), (d), (e), and (f) of this section shall be inclusive of all tolerances, enforcement or otherwise, with the exception of a scale error factor when using portable scales (wheel-load weighers). The current accuracy of such scales is generally within 2 or 3 percent of actual weight, but in no case should an error factor in excess of 5 percent be applied. Penalty or fine schedules which impose no fine up to a specified threshold, i.e., 1,000 pounds, will be considered as tolerance provisions not authorized by 23 U.S.C. 127.

(h) States may issue special permits without regard to the axle, gross, or formula requirements for vehicles and loads which cannot be easily dismantled or divided. All permits for vehicles carrying divisible loads in excess of 80,000 pounds must conform to either Federal or grandfathered axle and bridge spacing requirements.

(i) The provisions of this section shall not apply to single, tandem, or gross weights legally authorized under State law or regulations on July 1, 1956. The group of axles requirements shall not apply to vehicles legally authorized under State groups of axles tables or formulas on January 4, 1975.

§ 658.19 Reasonable access.

(a) All States must allow vehicles with dimensions authorized by the STAA, reasonable access between the National Network described in this regulation and terminals, facilities for food, fuel, repairs, and rest. For household goods carriers, the length and width provisions require access to points of loading and unloading in addition to terminals and facilities at listed above.

(b) Information regarding reasonable access to and from the National Network shall be made available to commercial motor vehicle operators.

§ 658.21 Signing.

The use of signing to identify highways that are part of the National Network and reasonable access related thereto is a State option. However, exceptional conditions that exist locally on a route of the National Network shall be signed in accordance with the Manual on Uniform Traffic Control Devices. These conditions shall include but not be limited to:

(1) Operational restrictions designed to maximize the efficiency of the total traffic flow, such as time of day prohibitions, or lane use controls.

(2) Geometric and structural restrictions, such as vertical clearances, posted weight limits on bridges, or those caused by construction operations.

(3) Detours to urban Interstate bypass or circumferential routes for commercial motor vehicles not destined for the urban area to be bypassed.

APPENDIX.—OTHER DESIGNATED ROUTES

Posted route No.	From	To
Alaska		
AK 1	Anchorage	Palmer.
AK 2	Fairbanks	Delta Jct.
AD 3	Palmer at Jct. AK 1	Fairbanks at Jct. AK 2.
Arizona		
AZ 360	I-10 Phoenix	AZ 87 Mesa.
US 60	I-10 Brenda	I-17 Phoenix.
US 60	AZ 87 Mesa	Globe.
AZ 69	US 89 Prescott	I-17.
US 70	US 60 Globe	New Mexico St. Line.
US 80	AZ 92 Bisbee	New Mexico St. Line.
AZ 84	I-10 Picacho	AZ 87.
AZ 85	I-8 Gila Bend	I-10.
AZ 85	I-10 Avondale	I-17.
AZ 87	AZ 84 Picacho	AZ 387.
AZ 87	AZ 93 Chandler	US 60.
AZ 93	I-10	AZ 87 Chandler.
AZ 187	I-10	AZ 387.
AZ 287	AZ 87 Coolidge	US 89 Florence.
AZ 387	AZ 187	AZ 87.
US 89	I-10 Tucson	US 60.
US 89	AZ 69 Prescott	I-40.
US 89	I-40	Utah St. Line.
AZ 90	I-10	AZ 92 Sierra Vista.
AZ 92	AZ 90 Sierra Vista	US 80 Bisbee.
US 95	Mexican Border	I-8 Yuma.
US 160	US 86 Tuba City	New Mexico St. Line.
AZ 169	AZ 69 Dewey	I-17.
AZ 189	Mexican Border	I-19 Nogales.
AZ 504	US 160	New Mexico St. Line.
US 666	I-10	US 70 Safford.
US 666	US 60	I-40.
US B-666	Mexican Border	US 80 Douglas.
US 163	US 160 Kayenta	Utah St. Line.
AZ 77	US 60	I-40.
US 60	Show Low	New Mexico St. Line.
Arkansas		
US 49	Mississippi St. Line	US 82 Near Piggott.
US 61	I-55 Gilmore	I-55 Blytheville.
US 62	Oklahoma St. Line	Missouri St. Line.
US 63	I-55 Near Memphis	Missouri St. Line.

APPENDIX.—OTHER DESIGNATED ROUTES—Continued

Posted route No.	From	To
US 64	I-540 Ft. Smith	I-40 Lamar.
US 64	I-40 Near Conway	US 67 Near Beebe.
US 65	Louisiana St. Line	I-40 Little Rock.
US 65	I-40 Conway	Missouri St. Line.
US 64	US 67 Bald Knob	I-55 West Memphis.
US 67	US 82 Texarkana	I-30 Benton.
US 67	I-40 Little Rock	US 62.
US 67	US 62 Corning	Missouri St. Line.
US 70	Oklahoma St. Line	US 71 De Queen.
US 70	US 71 Provo	I-30 Benton.
US 71	Louisiana St. Line	I-540 Ft. Smith.
US 71	I-40 Alma	US 62 Fayetteville.
US 71	US 62 Rogers	Missouri St. Line.
US 79	Louisiana St. Line	I-40 Shearerville.
US 82	US 71 Texarkana	Mississippi St. Line.
US 70	I-440 Little Rock	I-40 Hicks Station.
US 412	US 67 Walnut Ridge	US 49 Paragould.
US 167	US 67 Bald Knob	US 62 Ash Flat.
US 167	Louisiana St. Line	US 65 Near Little Rock.
US 165	Louisiana St. Line	US 65 Dermott.
US 270	Oklahoma St. Line	US 71 Acorn.
US 270	US 71 "Y" City	US 65 Pine Bluff.
All other primary and secondary highways in Arkansas (with the following exceptions) are "qualifying" highways, but may have weight and speed limit restrictions.		
AR 88	Mena AR8	Oklahoma St. Line.
AR 22	I-540 Fort Smith	US 64.
US 64	AR 255	AR 22.
AR 59	I-40 Van Buren	Main Street Van Buren.
US 71	US 271	AR 22.
California		
CA 2	I-5	I-210 in Los Angeles.
CA 7	I-405	I-10.
I-10	US 101	I-5 in Los Angeles.
CA 11	I-10	US 101.
CA 15	I-5	I-805 in San Diego.
CA 17	I-280 in San Jose	I-80 in Oakland.
CA 22	I-405 in Seal Beach	CA 55 in Orange.
CA 24	I-580 in Oakland	I-680 in Walnut Creek.
CA 52	I-5	I-805 in San Diego.
CA 55	I-405 in Costa Mesa	CA 91 in Anaheim.
CA 57	I-5 in Santa Ana	I-210 in Pomona.
CA 60	I-5/10 in Los Angeles.	I-10 in Beaumont.
CA 71	I-10	CA 60 in Pomona.
CA 78	I-5 in Carlsbad	I-15 in Escondido.
Bus I-80	US 50/CA 99 in Sacramento.	I-80 Near Watt Ave.
CA 85	I-280	CA 101 in San Jose.
CA 91	I-110 in Los Angeles	CA 60/I-215 in Riverside.
CA 92	I-280 Near San Mateo.	CA 17 in Hayward.
CA 94	I-5	CA 125 in San Diego.
CA 99	I-5 Near Wheeler Ridge.	US 50 in Sacramento.
US 101	I-5/10 in Los Angeles.	I-80 in San Francisco.
CA 117	I-5	I-805 in San Diego.
CA 118	I-405 in Los Angeles	I-210 in San Fernando.
CA 125	CA 94	I-8 in La Mesa.
CA 133	I-405	I-5 Near El Toro.
CA 134	US 101 in Los Angeles.	I-210 in Pasadena.
CA 163	I-8	I-15 in San Diego.
CA 170	US 101	I-5 in Los Angeles.
CA 215	I-15 Near Temecula	CA 60 Near Riverside.
CA 238	I-580 in Castro Valley.	CA 17 in San Leandro.
CA 14	I-5 Near San Fernando.	US 395 Near Ridgecrest.
CA 58	CA 99 in Bakersfield	I-15 in Barstow.
CA 198	I-5 Coalinga	CA 99 in Visalia.
US 395	I-15 Near Victorville	Nevada St. Line.
US 95	I-40 Near Needles	Nevada St. Line.
US 6	US 395 Bishop	Nevada St. Line.
US 50	Sacramento	Sly Park Rd. Interchange.

APPENDIX.—OTHER DESIGNATED ROUTES—Continued

Posted route No.	From	To
Colorado		
All US and State numbered routes are designated with the following exceptions:		
CO 116	Jct. CO 69	Kansas St. Line.
CO 7	CO 72	Jct. US 36.
CO 72	Jct. CO 7	Jct. CO 119.
CO 119	Jct. US 6	Jct. CO 7.
US 40	Jct. I-70 Near Empire	Winter Park.
CO 6	Jct. I-70 Near Dillon	Jct. I-70 Near Silver Plume.
CO 82	Aspen	Jct. US 24.
CO 113	Jct. CO 92 Hotchkiss	Jct. CO 82 Carbondale.
CO 92	Jct. US 50 Sapinero	Jct. CO 133 Hotchkiss.
CO 149	US 160 Near Fork	Jct. US 50.
US 550	Jct. CO 110 Silverton	Jct. CO 361 Ouray.
CO 470	Jct. US 85	Jct. I-25.
CO 65	Jct. CO 92	Jct. CO 330.
CO 114	Jct. US 50	Jct. US 285.
CO 131	Jct. CO 134 at Toponas.	Jct. US 6 at Wolcott.
CO 83	Jct. CO 86 at Franktown.	Jct. I-25 North of Colo. Spgs.
The designated routes in Colorado include most of the Federal-aid Primary Routes as well as other routes designated by the State.		
Connecticut		
CT 2	Columbus Blvd. Hartford.	Jct. I-290 Norwich.
CT 8	I-95 Bridgeport	Jct. I-84 Waterbury.
CT 9	I-95 Old Saybrook	Jct. I-91 Cromwell.
CT 20	Jct. CT 401 (Bradley International Airport, Windsor Locks.	I-91 Windsor.
CT 401	Jct. CT 20 Windsor Locks.	Bradley International Airport Access Rd. Windsor Locks.
*CT 8	I-84 Waterbury	US 44 Winsted.
NOTE.—CT 52 was approved as part of the Interstate System on April 18, 1963.		
Delaware		
US 13	Jct. with I-495 South of Wilmington.	Maryland St. Line.
US 301	US 301S Mt. Pleasant.	Maryland St. Line.
US 202	I-95 Wilmington	Pennsylvania St. Line.
US 301S	US 301 Mt. Pleasant	US 13 Boyds Corner.
District of Columbia		
Anacostia Freeway/ Kenilworth Ave.	I-295	Maryland St. Line.
Hawaii		
61	Vineyard Boulevard	Kawainui Bridge in Kailua.
63	Nimitz Highway	Kahekili Highway (83).
64	Sand Island Park	Nimitz Highway (92).
72	Kailua-Waimanalo Junction (61).	Ainakoa.
83	Weed Junction	Kalanianaole Highway (61).
92	Pearl Harbor-Main Gate.	Kalakaua Avenue.
93	Beginning of Route H-1.	Makaha Bridge.
95	Route H1	Campbell Harbor.
99	Pearl Harbor Interchange.	Weed Junction.
78	Route H1 (H2 H)	Kamehameha Highway (90) in Aiea.

APPENDIX.—OTHER DESIGNATED ROUTES—Continued

Posted route No.	From	To
Idaho		
ID 16	ID 44	Emmett.
ID 19	Wilder	Caldwell.
US 2	Sandpoint	Dover.
US 20	Oregon St. Line	I-84 Near Boise.
US 20	Mountain Home	Montana St. Line.
ID 22	ID 33	Dubois.
ID 24	Rupert	Shoshone.
ID 25	Jerome	I-84 Rupert.
US 26	Bliss	Blackfoot.
ID 27	Oakley	Paul.
ID 28	Mud Lake	Salmon.
US 30	US 95	I-84.
US 30	Nampa	I-84.
US 30	Bliss	Burley.
US 30	McCammon	Wyoming St. Line.
ID 33	US 20	Wyoming St. Line.
ID 34	Utah St. Line	Conda.
ID 39	American Falls	Blackfoot.
ID 40	I-15	Downey.
ID 41	I-90	Newport.
ID 44	I-84	Boise.
ID 46	Wendell	US 20.
ID 48	Roberts	Rigby.
ID 50	US 30	ID 25.
ID 51	Nevada St. Line	Mountain Home.
ID 53	Washington St. Line	US 95.
ID 55	Marsing	Eagle.
ID 64	Craigmont	Nez Perce.
ID 67	Mountain Home AFB	Mountain Home.
ID 74	US 93	Twin Falls.
ID 75	Shoshone	Ketchum.
ID 77	Declo	I-84
ID 78	Marsing	ID 51.
ID 81	Malta	Burley.
ID 79	Jerome	South.
ID 87	US 20	Montana St. Line.
US 89	Utah St. Line	Montpelier.
US 91	Utah St. Line	I-15.
US 91	Pocatello	I-15 Bus.
US 93	Nevada St. Line	Shoshone.
US 95	Homedale	Wieser.
US 95	Grangeville	Moscow.
US 95	Coeur d'Alene	Bonners Ferry.
I-15 Bus	I-15	Idaho Falls.
I-84 Bus	I-84	Mountain Home.
Illinois		
IL Toll Highways.	All Routes	
IL 5	I-80	US 30.
IL 6	I-74	IL 88.
US 20	Bsn. US 20 west of Rockford.	I-90.
US 36	North of Winchester	I-55.
US 50	East of Lawrenceville	Indiana St. Line.
US 51	Bsn. US 51 south of Decatur.	I-72.
US 51	IL 5	US 20.
IL 53	Army Trail Rd.	IL 68.
IL 92	I-280	US 67
IL 336	IL 57	US 24.
IL 394	Sauk Trail Rd.	I-80.
IL 1	IL 146	US 24.
IL 2	US 30	US 20.
IL 3	I-57	I-55.
IL 3	I-55	US 67.
IL 4	IL 13/127	I-55.
IL 5	I-74	I-80.
US 6	IL 7	I-80/94.
IL 7	IL 53	US 6.
IL 9	US 67	IL 41.
IL 9	IL 78	IL 121.
IL 10	I-55	US 51.
US 12	IL 120	Indiana St. Line.
IL 13	IL 15	Harrisburg.
US 14	Wisconsin St. Line	IL 50.
IL 14	US 51	Indiana St. Line.
IL 15	I-55	East junction IL 13.
IL 16	IL 267	US 67.
IL 16	I-55	IL 1.
IL 17	I-55	IL 114.
IL 18	US 51	IL 23.
US 20	Iowa St. Line	Bsn. US 20 west of Rockford.
US 20	US 51 east of Rockford.	I-290.

APPENDIX.—OTHER DESIGNATED ROUTES—Continued

Posted route No.	From	To
Bus. US 20	IL 31	US 20 (east of Elgin).
IL 21	US 14	US 41.
IL 68	US 12	I-94.
IL 71	I-80	US 34.
IL 72	IL 59	US 45.
IL 78	US 67	IL 125.
IL 78	IL 9	I-80.
IL 78	IL 5	IL 64.
IL 78	US 20	Wisconsin St. Line.
IL 83	US 30	I-94.
IL 83	US 45	US 12.
IL 88	US 34	IL 5.
IL 92	US 67	I-74.
IL 97	IL 125	IL 29.
IL 100	US 36	IL 104.
IL 104	US 24	US 67.
IL 108	US 267	IL 4.
IL 111	I-55	US 67.
IL 114	IL 17	Indiana St. Line.
IL 116	IL 41	I-474.
IL 116	I-74	I-55.
IL 117	I-74	IL 116.
IL 119	IL 1	Indianas St. Line.
IL 120	IL 31	IL 131.
IL 121	I-74	I-72.
IL 121	US 36	IL 16.
IL 125	US 67	IL 97.
IL 127	IL 13	IL 16.
IL 130	IL 1	IL 33.
US 136	US 24	IL 1.
IL 140	US 67	I-55.
IL 141	US 45	Indiana St. Line.
IL 146	Missouri St. Line	I-57.
IL 146	Elizabethtown	IL 1.
IL 149	IL 3	IL 13.
US 150	IL 1	Indiana St. Line.
IL 150	Missouri St. Line	IL 4.
IL 152	IL 13	US 51.
IL 159	IL 3	IL 15.
IL 171	IL 7	IL 83.
IL 173	IL 251	US 41.
IL 176	US 20	IL 47.
IL 251	US 20	IL 75.
IL 336	US 36	IL 57.
Stoney Island Ave.	I-94	I-90.

NOTE.—The first 12 route descriptions (IL Toll highways through IL 394) are classified by current Illinois law as Class I and to all commercial vehicles defined by the STAA of 1982. The remaining route descriptions are classified by Illinois as Class II, and are restricted. Illinois law restricts Class II highways to a maximum allowable wheelbase of 55 feet for a tractor-semitrailer combination and 65 feet for a tractor-semitrailer-trailer combination. Specific comments are requested on the effect of the Illinois law.

Indiana

Indiana intends to designate all public roads, except those routes prohibited by State or local jurisdiction.

Iowa

IA 1	North Jct. IA 16	West Jct. IA 78.
IA 1	North Jct. IA 92	IA 22.
IA 1	North Jct. US 6 & US 218.	I-80.
IA 1	SCL Martelle	Jct. US 151.
IA 2	Missouri River Bridge	Jct. IA 25.
IA 2	Decatur Co. Line	Mississippi River Bridge.
IA 3	South Dakota	North Jct. IA 12.
IA 3	Jct. US 75	Jct. IA 7.
IA 3	East Jct. IA 17	West Jct. IA 13.
IA 4	Jct. IA 3	East Jct. US 18.
IA 4	SCL Wallingford	Minnesota.
IA 5	Missouri	ECL Cincinnati.
IA 5	Jct. IA 2	Jct. I-35.
US 6	Nebraska	Jct. I-80.
US 6	Jct. IA 48	South Jct. US 71.
US 6	I-80 (Dexter)	I-80 (Altoona).
US 6	IA 14	I-80 (Cedar Co.).
US 6	Jct. IA 130	Jct. I-74.
IA 7	Jct. IA 3	North Jct. US 71.
IA 7	Barnum Road	US 20.
IA 8	US 63	US 218.
IA 9	IA 60	North Jct. US 69.
IA 9	South Jct. US 69	I-35.

APPENDIX.—OTHER DESIGNATED ROUTES—Continued

Posted route No.	From	To
IA 9	East Jct. US 218	ECL Riceville.
IA 9	US 63	Lansing.
IA 10	East Jct. US 59	ECL Sutherland.
IA 12	US 20	NCL Sioux City.
IA 13	US 30	NCL Manchester.
IA 13	West Jct. IA 3	US 52.
IA 14	IA 163	NCL Newton.
IA 14	US 30	West Jct. IA 175.
IA 14	East Jct. IA 175	IA 57.
IA 15	East Jct. US 18	West Jct. IA 9.
IA 16	NCL Eldon	North Jct. IA 1.
IA 16	Denmark	US 61.
IA 17	IA 141	East Jct. US 20.
IA 17	West Jct. US 20	East Jct. IA 3.
US 18	WCL Rock Valley	North Jct. US 71.
US 18	South Jct. US 71	North Jct. US 218.
US 18	South Jct. US 218	ECL Bassett.
US 18	South Jct. US 63	Wisconsin.
US 20	I-29	Illinois.
IA 21	SCL What Cheer	West Jct. US 6.
IA 21	East Jct. US 6	East Jct. IA 8.
IA 21	West Jct. IA 8	IA 412.
IA 22	WCL Wellman	West Jct. IA 79.
IA 23	Jct. US 63	Jct. IA 137.
IA 25	IA 2	IA 92.
IA 25	West Jct. IA 925	IA 44.
IA 26	IA 9	Minnesota.
IA 28	IA 92	East Jct. IA 5.
IA 28	West Jct. IA 5	US 6.
US 30	Missouri River Bridge	Illinois.
IA 31	SCL Corectionville	US 59.
US 34	Missouri River Bridge	South Jct. IA 25.
US 34	North Jct. IA 25	Illinois.
IA 37	WCL Earling	US 59.
IA 38	US 61	I-80.
IA 38	SCL Tipton	East Jct. US 30.
IA 38	US 59	Deloit.
IA 40	Begin Route	IA 2.
IA 44	US 71	IA 141.
IA 46	IA 5	IA 163.
IA 48	US 59	NCL Essex.
IA 48	US 34	US 6.
IA 49	SCL Lenox	US 34.
IA 51	US 18	IA 9.
US 52	North Jct. US 61	North Jct. IA 386.
US 52	West Jct. IA 3	East Jct. US 18.
US 52	ECL Calmar	Minnesota.
IA 55	Begin Route	IA 2.
IA 57	IA 14	US 20.
US 59	Missouri	IA 184.
US 59	IA 92	North Jct. US 6.
US 59	IA 83	South Jct. US 30.
US 59	West Jct. US 20	IA 3.
US 59	East Jct. IA 10	East Jct. US 18.
IA 60	US 75	Minnesota.
US 61	Des Moines River Bridge.	South Jct. IA 2.
US 61	East Jct. IA 2	Wisconsin.
IA 62	US 61	US 52.
US 63	Missouri	West Jct. IA 2.
US 63	East Jct. IA 2	East Jct. US 34.
US 63	West Jct. US 34	IA 146.
US 63	I-80	East Jct. US 6.
US 63	West Jct. US 6	Minnesota.
IA 64	US 151	US 61.
US 65	North Jct. US 34	West Jct. US 6.
US 65	I-80	IA 117.
US 65	US 30	South Jct. US 20.
US 65	North Jct. US 20	Sheffield.
US 65	SCL Mason City	Minnesota.
US 67	Mississippi River	South Jct. US 30.
US 67	East Jct. US 30	4.64 miles North of Clinton.
US 69	SCL Lamoni	I-35.
US 69	North Jct. US 65	Minnesota.
IA 70	Begin Route	West Jct. IA 22.
US 71	Missouri	West Jct. IA 2.
US 71	East Jct. IA 2	IA 196.
US 71	North Jct. US 20	West Jct. IA 9.
US 71	East Jct. IA 9	Minnesota.
US 75	North Jct. I-29	Minnesota.
US 77	Nebraska	I-29.
IA 77	IA 92	Keota.
IA 78	IA 149	North Jct. US 218.
IA 78	South Jct. US 218	IA 249.
IA 78	WCL Morning Sun	US 61.
IA 83	US 59	West Jct. US 6.
IA 85	US 63	IA 21.
IA 86	US 71	IA 9.
IA 87	US 69	I-35.

APPENDIX.—OTHER DESIGNATED ROUTES—Continued

Posted route No.	From	To
IA 92	Nebraska	IA 48.
IA 92	WCL Fontanelle	West Jct. IA 5.
IA 92	East Jct. IA 5	North Jct. IA 1.
IA 92	South Jct. IA 1	Cotter.
IA 93	WCL Sumner	IA 150.
IA 94	Palo	I-380.
IA 95	Carbon	IA 148.
IA 96	Gladbrook	US 63.
IA 99	Toolesboro	Wapello.
IA 101	US 218	IA 150.
IA 103	US 218	US 61.
IA 105	US 65	US 218.
IA 107	SCL Thornton	US 18.
IA 110	US 20	IA 7.
IA 111	US 18	Woden.
IA 117	IA 163	US 65.
IA 127	South Jct. IA 163	US 30.
IA 130	US 67	I-80.
IA 133	US 30	Nevada.
US 136	East Jct. US 61	Mississippi River Bridge.
IA 136	ECL Delmar	WCL Lost Nation.
IA 136	SCL Worthington	IA 3.
IA 137	IA 5	IA 23.
IA 141	I-29	North Jct. US 30.
IA 141	WCL Manning	West Jct. US 71.
IA 141	East Jct. US 71	West Jct. IA 161.
IA 141	IA 141	US 169.
IA 141	IA 210	I-35.
IA 144	IA 141	NCL Dana.
IA 145	I-35	ECL Thurman.
IA 148	US 63	Dunbar.
IA 148	West Jct. IA 2	US 34.
IA 148	IA 95	I-80.
IA 149	US 63	IA 78.
IA 149	SCL Williamsburg	West Jct. US 6.
IA 149	East Jct. US 6	US 30.
IA 150	IA 151	IA 283.
IA 150	North Jct. US 20	South Jct. IA 3.
IA 150	North Jct. IA 3	US 18.
US 151	US 30	South Jct. US 61.
IA 157	US 63	Lime Springs.
IA 160	IA 415	I-35.
IA 161	West Jct. IA 141	SCL Dedham.
IA 163	US 65	IA 92.
US 169	Missouri	NCL Mt. Ayr.
US 169	SCL Arispe	West Jct. US 34.
US 169	East Jct. US 34	South Jct. IA 92.
US 169	SCL DeSoto	I-80.
US 169	US 6	IA 141.
US 169	West Jct. US 30	IA 3.
US 169	US 18	West Jct. IA 9.
IA 173	IA 83	I-80.
IA 175	Nebraska	ECL Onawa.
IA 175	South Jct. US 71	ECL Lake City.
IA 175	Gowrie	West Jct. US 169.
IA 175	East Jct. US 169	ECL Dayton.
IA 175	WCL Stratford	South Jct. IA 17.
IA 175	North Jct. IA 17	South Jct. US 69.
IA 175	North Jct. US 69	ECL Radcliffe.
IA 175	North Jct. US 65	US 63.
IA 181	Dallas	IA 5.
IA 183	North Jct. IA 127	NCL Pisgah.
IA 184	WCL Randolph	US 59.
IA 188	SCL Clarksville	US 63.
IA 191	NCL Council Bluffs	NCL Neola.
IA 192	I-29	East Jct. US 6.
IA 192	West Jct. US 6	I-29.
IA 196	US 71	US 20.
IA 205	US 65	Milo.
IA 210	IA 141	NCL Woodward.
IA 210	North Jct. IA 17	ECL Slater.
IA 214	IA 175	Wellsburg.
IA 215	Union	IA 175.
US 218	US 136	South Jct. US 61.
US 218	North Jct. US 61	IA 92.
US 218	Relocation IA 22	I-380.
US 218	I-80	East Jct. US 30.
US 218	West Jct. US 30	IA 227.
IA 220	US 6	IA 149.
IA 221	I-35	Roland.
IA 277	US 218	Stacyville.
IA 236	IA 141	Templeton.
IA 244	I-80	IA 191.
IA 249	IA 78	Winfield.
IA 272	Elma	US 63.
IA 273	WCL Drakesville	US 63.
US 275	Missouri	NCL Hamburg.
IA 276	US 71	Minnesota.
IA 279	US 30	Atkins.

APPENDIX.—OTHER DESIGNATED ROUTES—Continued

Posted route No.	From	To
IA 281	WCL Fairbank	IA 150.
IA 283	Brandon	IA 150.
IA 287	US 30	Newhall.
IA 299	New Providence	IA 175.
IA 300	Modale	I-29.
IA 301	I-29	Little Sioux.
IA 316	IA 5	NCL Runnells.
IA 325	Spillville	US 52.
IA 330	US 65	US 30.
IA 363	IA 101	Urbana.
IA 383	US 59	Randall.
IA 386	South Jct. US 52	North Jct. US 52.
IA 394	Missouri	US 218.
IA 401	US 6	Johnston.
IA 404	US 61	Montrose.
IA 405	Lone Tree	IA 22.
IA 406	US 34	US 61.
IA 412	US 63	US 218.
IA 415	US 6	NCL Polk City.
IA 927	IA 38	I-280.
IA 926	West Jct. US 20	East Jct. US 20.
IA 930	US 30	Ames.
IA 939	IA 150	IA 187.
IA 964	IA 5	IA 975.
IA 967	US 20	Farley.
IA 970	Monona Co	US 75.
IA 975	IA 5	IA 964.

Kansas

All US and State numbered routes are designated. This includes all Federal-aid primary routes as well as other routes designated by the State.

Kentucky

Jackson Purchase Pkwy.	Tennessee St. Line W. of Fulton.	US 45 Bypass.
US 45B	Jackson Purchase Pkwy W. of Mayfield.	Jackson Purchase Pkwy N. of Mayfield.
Jackson Purchase Pkwy.	US 45 Bypass	I-24 in Marshall County.
Western Kentucky Pkwy.	I-24 S. of Eddyville	US 31 W in Hardin County.
Blue Grass Pkwy.	I-65	US 60 near Versailles.
Green River Pkwy.	I-65	US 60 Bypass in Owensboro.
Mountain Pkwy.	I-64 of Winchester	KY 15 N. of Campton.
KY 4, Pennyrile Pkwy.	Entire Circle of Lexington US 41 A S. City limits of Hopkinsville.	US 41 S. of Nortonville.
US 41	Pennyrile Pkwy near Western Kentucky Pkwy.	Pennyrile Pkwy at Madisonville.
Pennyrile Pkwy.	US 41 near City limits of Madisonville.	US 41 in Henderson.
US 41, Audubon Pkwy.	Pennyrile Pkwy in Henderson.	Indiana St. Line, US 60 Bypass in Owensboro.
Cumberland Pkwy.	I-65 at Warren County Line.	US 27 W. of Somerset.
I-471 Connector.	US 27	I-471.
KY 841	Taylorsville Rd. (KY 155).	US 42.
KY 10	New Construction 4.21 miles E. of Bracken County line (MP 4.21).	US 62-68 at Maysville (MP 10.12).
KY 11	KY 3170 at Lewisburg.	US 62 and US 68 in Maysville.
KY 15	Mountain Pkwy at Campton.	US 119 in Whitesburg.
KY 18	KY 338 at Burlington	US 25 in Florence.
KY 21	I-75 near Berea	US 25 in Berea (US 25 S.).
US 23	Ohio St. Line	US 119 N. of Pikeville.
US 23	US 119 near Jenkins	Virginia St. Line.
US 23 Spur	Ohio River Bridge at Ashland.	

APPENDIX.—OTHER DESIGNATED ROUTES—Continued

Posted route No.	From	To
US 25	US 421 S. of Richmond.	KY 876 in Richmond.
US 25	KY 418	Nandino Blvd., in Lexington (via KY 4).
US 25	US 42 in Florence	Ohio St. Line.
US 25E	Virginia St. Line	I-75 of Corbin.
US 27	Tennessee St. Line	Ohio St. Line (via KY 4 in Lexington).
US 31 W	Tennessee St. Line	KY 255 at Park City (via US 31 W. Bypass in Bowling Green).
US 31 W	US 31 W. Bypass in Elizabethtown.	I-264.
US 31 W Bypass.	Western Kentucky Pkwy.	US 31 W in Elizabethtown.
KY 32	I-64	US 60 at Morehead.
KY 35	US 127 at Bromley	I-71.
KY 36	I-64	US 60 at Owingsville.
KY 36	US 42 in Carrollton	KY 227.
US 41	US 68 (Main Street) Hopkinsville.	US 68 (McLean Ave.) Hopkinsville.
US 119	US 23 at Pikeville	KY 1441.
US 127	Tennessee St. Line	US 60 in Frankfort (via Danville & Lawrenceburg Bypasses).
US 127	US 460 in Frankfort	I-71.
US 127	US 127 S. of Danville	US 127 N. of Danville.
US 127 Bypass.	US 127 S. of Lawrenceburg.	US 127 N. of Lawrenceburg.
KY 144	KY 448	US 60.
US 150	US 31 E at Bardstown.	US 27 N. City Limits of Stanford (via Danville Bypass).
US 79	Tennessee St. Line	US 68 Russellville.
KY 151	US 127 near Lawrenceburg.	I-64 near Graefenburg.
KY 180	I-64 Interchange near Cannonsburg (MP O.63).	Junction US 60 and KY 180 at Cannonsburg.
KY 192	I-75 S. of London	Daniel Boone Pkwy E. of London.
KY 205	Mountain Pkwy at Helechawa.	US 460 W. of Index.
KY 212	KY 20	Greater Cincinnati Airport.
KY 227	Ky 355 near Worthville.	KY 36 at Carrollton.
US 231	US 60 Bypass in Owensboro.	Indiana St. Line.
US 231	I-65	US 31 W Bypass at Bowling Green.
KY 236	KY 212	US 25 at Erlanger.
KY 237	KY 16	I-275 Boone County.
KY 245	I-65	US 62 at Bardstown.
KY 255	US 31 W at Park City	I-65.
KY 259	Western Kentucky Pkwy.	US 62 in Leithchfield.
KY 341	US 421 near Midway	I-64 near Midway.
KY 348	Jackson Purchase Pkwy W. of Benton.	US 641 in Benton.
KY 418	US 25 S. of Lexington.	I-75 S. of Lexington.
KY 421	US 119	0.1 mile S. of Harlan Appalachian Regional Hospital.
US 421 & KY 80	Daniel Boone Pkwy	2nd Street in Manchester.
US 421	KY 4 in Lexington	KY 341 near Midway.
US 421	US 460 in Frankfort	Broadway at railroad bridge.
US 431	US 60 Bypass in Owensboro.	US 60 (4th Street) Owensboro.
US 41A	Tennessee St. Line	Pennyrile Pkwy S. City Limits, Hopkinsville.
US 41A	KY 112 in Earlington	KY 281 and KY 1751, Madisonville.
US 42	I-264	Oldham County Line.
US 42	KY 55 at Carrollton	KY 47 at Ghent
US 45	US 45 Bypass N. of Mayfield.	US 62 in Paducah.
KY 52	KY 876 in Richmond	KY 499 at Irvine.
KY 55	Cumberland Pkwy in Columbia.	US 150 at Springfield.
US 60	US 60 Bypass W. of Owensboro.	KY 69, Hawesville.

APPENDIX.—OTHER DESIGNATED ROUTES—Continued

Posted route No.	From	To
US 60	I-264	KY 1531 at Eastwood.
US 60	US 421 at Frankfort	I-75 near Lexington (via Versailles and KY 4 in Lexington).
US 60	Junction of KY 180 near Cannonsburg.	US 23 in Ashland.
US 60	Ky 144 in Meade County. US 31 W at Ft. Knox.	
US 60 Bypass.	US 60 W. of Owensboro.	US 60 E. of Owensboro.
KY 61	Tennessee St. Line	KY 90 at Burkesville.
US 62	I-24 at Paducah	Western Kentucky Pkwy.
US 62	KY 245 at Bardstown	US 150 at Bardstown.
US 62	KY 353	US 27 at Cynthiana.
US 68	I-24 in Trigg County	Green River Pkwy at Bowling Green.
US 68	US 27 at Paris	Ohio St. Line at Maysville (via Paris Bypass).
KY 69	US 60 at Hawesville	Indiana St. Line.
KY 79	KY 1051 in Bradenburg.	Indiana St. Line.
KY 80	US 27 at Somerset	US 25 N. of London.
KY 80	KY 15 at Hazard	US 23 at Allen.
KY 90	I-65	Cumberland Pkwy at Glasgow.
KY 90	KY 61 at Burkesville	US 27 at Burnside.
KY 114	US 460 E. of Salyersville.	US 23-460 at Prestonsburg.
KY 118	Daniel Boone Pkwy	US 421 and KY 80 NW of Hyden.
US 119	KY 15 at Whitesburg	US 23 at Jenkins.
US 119	US 25E S. of Pineville.	US 421 at Harlan.
KY 446	US 31 W NW of Bowling Green.	I-65.
KY 448	KY 1051 at Branenburg.	KY 144.
US 460	I-64	KY 686 N. of Mt. Sterling.
US 460	Mountain Pkwy Extension.	US 23 near Paintsville.
KY 555	US 150 at Springfield	Bluegrass Pkwy.
US 641	Tennessee St. Line	KY 348 in Benton.
KY 676	US 127 in Frankfort	US 60.
KY 686	KY 11 S. of Mt. Sterling.	US 460 N. of Mt. Sterling.
KY 876	I-75 at Richmond	KY 52 E. of Richmond.
KY 922	KY 4 in Lexington	I-64 and I-75.
KY 1051	KY 448 S. of Brandenburg.	KY 79.
KY 1682	US 68 W. of Hopkinsville.	Pennyrile Pkwy N. City Limits of Hopkinsville.
KY 1958	KY 627 S. of Winchester.	I-64 at Winchester.
KY 1998	US 27 at Cold Springs.	KY 9.
Daniel Boone Pkwy.	US 25 N. of London	KY 15 N. of Hazard.
Mountain Pkwy Extension.	End of Mountain Pkwy at Campton.	US 460 at Salyersville.

Louisiana

LA 1	US 71 in Alexandria	US 71 near Shreveport.
LA 7	I-20	US 79 in Minden.
LA 8	Texas St. Line	LA 28 near Leesville.
LA 10	Proposed I-49 near Beggs.	US 71 Lebeau.
LA 14	US 90	I-210 in Lake Charles.
LA 15	US 65 Clayton	US 80 in Monore.
LA 28	LA 8 near Leesville	US 84 near Archie.
US 65	Mississippi St. Line	LA 15 Clayton.
US 65	I-20 in Tallulah	Arkansas St. Line.
US 71	US 190 near Krotz Springs.	US 165 in Pineville.
US 71	LA 1 near Shreveport	Arkansas St. Line.
US 79	LA 7 in Minden	Arkansas St. Line.
US 80	LA 15	US 165 in Monore.

APPENDIX.—OTHER DESIGNATED ROUTES—Continued

Posted route No.	From	To
US 84	LA 28 near Archie	US 65 in Ferriday.
US 90	US 167 in Lafayette	New Orleans.
US 165	I-10 near Iowa	Arkansas St. Line.
US 167	US 71	Arkansas St. Line.
US 171	US 90 in Lake Charles.	US 80 in Shreveport.
LA 511	LA 3132	US 71 in Shreveport.
LA 3094	US 80	US 71 in Shreveport.
LA 3132	I-20	LA 511 in Shreveport.
LA 3052	LA 24 near Houma	US 90 near Raceland.
LA 3	I-20	I-220 in Bossier City.
LA 13	US 90	I-10 in Crowley.
LA 20	LA 24 near Thibodaux.	LA 1 in Thibodaux.
LA 23	Deer Range	US 90 Bus. in Gretna.
LA 24	US 90 in Houma	LA 20 near Thibodaux.
LA 30	LA 42	LA 73 in Baton Rouge.
LA 39	I-10 in New Orleans.	LA 46 near Poydras.
LA 45	US 90 Bus. in Marrero.	LA 3134 near Marrero.
LA 46	LA 39 in New Orleans.	LA 47 in Chalmette.
LA 47	LA 46 in Chalmette	Proposed I-510 in New Orleans.
LA 48	US 90	LA 49 near New Orleans.
US 61	US 90 in New Orleans.	Mississippi St. Line.
LA 67	LA 408 in Baton Rouge.	Baker.
US 80	LA 72 in Bossier City	I-20 in Minden.
LA 83	US 90 near Baldwin	LA 182 in Baldwin.
US 90 Bus	US 90 in New Orleans.	I-10 in New Orleans.
LA 108	LA 27 in Sulphur	I-10 in Maplewood.
LA 137	I-20	US 80 in Rayville.
US 167	LA 14 Bypass in Abbeville.	I-10 in Lafayette.
US 190	Eunice	LA 1032 in Denham Springs.
US 190	I-55	LA 443 in Hammond.
US 190	LA 21 in Covington	LA 22 near Chinchuba.
LA 408	US 61	LA 67 in Baton Rouge.
LA 433	I-10	US 11 in Slidell.
LA 526	LA 3132	I-20 in Shreveport.
LA 3002	I-12	US 190 in Denham Springs.
LA 3021	LA 39	US 90 in New Orleans.
LA 3032	LA 1 in Shreveport	US 71 in Bossier City.
LA 3040	The Houma Tunnel	LA 24 in Houma.
LA 3064	LA 427	LA 73 in Baton Rouge.
LA 3105	US 71	US 80 in Bossier City.
LA 3134	LA 45	LA 45 near Marrero.
LA 3211	US 90	LA 182 near Franklin.
LA 1	South of Plaquemine	US 190 north of Port Allen.
LA 1	South Alexandria	US 167 Alexandria.
US 71	LA 612 in Curtis	I-20 in Bossier City.

Maine

Scarboro Connector.	I-295 South Portland	US 1 South Portland.
South Portland Spur.	I-95 South Portland	US 1 South Portland.
Maine Turnpike.	I-95 Portland	I-95 near Gardiner.
US 1	I-95 Yarmouth	I-95 Freeport.
US 1	I-95 Brunswick	Old US 1 (vicinity of Congress St.) Bath.
*US 1	I-95 Houlton	Canada Border, Fort Kent.

*The State has not agreed with the designation of this route. Comments are specifically requested as to the desirability of including this route on the National network.

APPENDIX.—OTHER DESIGNATED ROUTES—Continued

Posted route No.	From	To
Maryland		
US 48	West Virginia St. Line	MD 639 at Cumberland.
US 340	MD 67 at Weverton	US 40 at Frederick.
US 40	MD 639 at Cumberland.	I-70 at Hancock.
US 40	US 340 in Frederick	I-70 in Frederick.
US 15	US 340 at Frederick	MD 26 North of Frederick.
MD 4	US 301 at Upper Marlboro.	MD 223 near Mellwood.
US 50	MD 201 Kenilworth Ave. Cheverly.	MD 2 near Annapolis.
MD 3	US 50/301 Bowie	I-695 near Glen Burnie.
MD 100	MD 607 at Jacobsville.	MD 3.
MD 10	MD 648 in Glen Burnie.	MD 695 Glen Burnie.
MD 295	I-695 Linthicum	I-95 in Baltimore.
MD 702	MD 695 East of Baltimore.	Old Eastern Avenue.
US 13	Virginia St. Line	Delawsre St. Line.
US 301	Virginia St. Line	US 50 at Bowie.
US 301	MD 2 near Annapolis	Delaware St. Line.
MD 4	MD 223	I-95.
US 50	US 301 near Queenstown.	US 13 (Bypass) Salisbury.
MD 201 (Kenilworth Ave.).	US 50 Cheverly	DC Line.
MD 695	I-695 at MD 3 near Glen Burnie.	I-695 at I-95 near Kenwood.
Massachusetts		
*MA 2	I-190 Leominister	I-495 Littleton.
*US 3	I-95 Burlington	New Hampshire St. Line.
*US 1	I-95 S. Lynnfied at MA 128.	I-95 Winona Street, West Peabody.
*MA 24	I-195 Fall River	I-93 Randolph.
*MA 140	I-195 New Bedford	MA 24 Taunton.

NOTE.—MA 52 was approved as part of the Interstate system on April 18, 1983.

Michigan		
MI 1	US 10 BR & I-75BL: Pontiac.	Adams Street, Detroit.
US 2	Wisconsin St. Line, Ironwood.	Wisconsin St. Line, Crystal Falls.
US 2	Wisconsin St. Line, Iron Mountain.	International Boundary.
MI 3	Clark Street, I-75 in Detroit.	MI-29 & I-94.
MI 4	US 24	Orchard Lake Road.
MI 5	MI 102 Oakland-Wayne County Line.	I-96 at Schaffer Road.
US 8	US 2, Iron Mountain	Wisconsin St. Line.
US 10	Ludington	Jct I-375, Detroit.
US 10BR	South Jct. US 10, Pontiac.	MI 1, Pontiac.
US 12	Indiana St. Line	Jefferson Ave., Detroit.
MI 13	I-69, Lennon	US 23, Standish.
MI 14	I-94	I-275.
MI 15	US 10, Clarkston	MI 25, Bay City.
MI 18	US 10	MI 61 Gladwin.
MI 20	US 31 New Era	MI 37 White Cloud.
MI 20	US 27, Mt Pleasant	US 10 Midland.
MI 21	I-96 near Grand Rapids.	MI 25, Port Huron.
US 23	Ohio St. Line	Mackinaw Bridge.
MI 24	I-75 Connector near Lake Orion.	MI 21, Lapeer.
MI 24	MI 46	MI 81, Caro.
US 24	Ohio St. Line	US 10BR, Pontiac.
MI 26	US 45	MI 38.
MI 27	I-75	US 23, Cheboygan.
US 27	Indiana St. Line	I-75 N. Higgins Lake.
MI 28	US 2, Wakefield	I-75.
US 31	Indiana St. Line	Manistee.
US 31	MI 37, Grawn	S. Approach Mackinaw Bridge.
MI 32	Hillman	Alpena.
MI 33	Mio	Fairview.
US 33	Indiana St. Line	I-196.
MI 35	US 2 & US 41, Escanaba.	US 2 & US 41, Gladstone.
MI 36	US 127, Mason	Dansville.
MI 37	MI 55	US 31 & MI 72 Traverse City.
MI 37	I-96, Grand Rapids	MI 46, Kent City.
MI 38	US 45	US 41, Baraga.
MI 39	Lafayette St/Lincoln Park, Detroit.	US 10.
MI 40	Allegan	US 31BR & I-196BL, Holland.
US 41	Wisconsin St. Line	Houghton.
MI 43	MI 37, Hastings	US 127, Lansing.
US 45	Wisconsin St. Line	Rockland.
MI 46	Cedar Springs	Port Sanilac.
MI 47	MI 46	US 10.
MI 50	MI 43 & MI 66, Woodbury.	Eaton Rapids.
MI 50	N. Jct. US 127	I-94.
MI 50	S. Jct. US 127	I-75.
MI 51	Niles	I-94.
MI 52	Ohio St. Line	US 12.
MI 52	I-96	MI 46.
MI 53	MI 3, Detroit	MI 25, Port Austin.
MI 55	US 31, Manistee	US 131, Cadillac.
MI 55	US 27	I-75.
MI 55	MI 65	Tawas City.
MI 56	MI 13 & MI 21	MI 54BR.
MI 57	US 131	US 27.
MI 57	MI 52	I-75.
MI 59	US 10BR, Pontiac	I-94.
MI 60	MI 62, Cassopolis	I-69 & US 27.
MI 61	MI 115	US 27, Harrison.
MI 61	MI 18, Gladwin	US 23, Standish.
MI 62	Indiana St. Line	US 12.
MI 64	US 2, Marenisco	US 2.
MI 64	MI 28, Merriweather	MI 28, Bergland.
MI 65	US 23, Omer	MI 55.
MI 65	MI 72	MI 32.
MI 65	Posen	US 23, North of Posen.
MI 66	Indiana St. Line	US 12.
MI 66	Battle Creek	MI 78.
MI 66	MI 43	MI 46.
MI 66	US 131, Mancelona	US 131, Kalkaska.
MI 67	US 41 Trenary	MI 94 Chatham.
MI 68	US 31 & US 131, Petoskey.	US 23 Rogers City.
MI 69	US 2 & US 141, Crystal Falls.	MI 95 Sagola.
MI 72	I-75	US 23, Harrisville.
MI 77	US 2	MI 28.
MI 78	MI 66	I-69.
MI 81	MI 24, Caro	MI 53.
MI 82	MI 37	US 131.
MI 83	Frankenmuth	I-75.
MI 84	I-75	MI 25.
MI 85	I-75, Woodhaven	I-75, Detroit.
MI 89	Allegan	US 131.
MI 90	MI 53	MI 53, Burnside.
MI 94	US 41	MI 28.
MI 95	US 2	US 41 & MI 28.
MI 97	MI 102	MI 59.
MI 102	I-96 & I-696	I-94.
MI 103	Indiana St. Line	US 12.
MI 104	US 31	I-96.
MI 115	US 27	MI 22.
MI 117	US 2	MI 28.
MI 123	I-75	MI 28.
US 127	Ohio St. Line	US 27.
US 131	Indiana St. Line	US 31, Petoskey.
US 141	Wisconsin St. Line South of Crystal Falls.	US 41 & MI 28.
MI 142	MI 25 near Bayport	MI 53.
MI 205	Indiana St. Line	US 12.
US 223	US 23	US 12.
I-75 Conn.	US 10BR, Pontiac	I-75.
Minnesota		
US 2	North Dakota St. Line, Grand Forks.	I-35 at Duluth.
MN 3	I-494 at Inver Grove Heights.	I-94 at St. Paul.
MN 5	I-494 at Bloomington	I-35E at St. Paul.
MN 7	US 75 near Odessa	US 59 at Montevideo.
MN 7	US 59 at Montevideo	MN 100 at St. Louis Park.
MN 9	US 12 at Benson	US 59 at Morris.
US 10	Clay County State Aid Highway 11, E. of Moorhead.	I-694 at Arden Hills.
US 12	MN 9 at Benson	I-94 at Minneapolis.
US 12	I-694 at Woodbury	Wisconsin St. Line.
MN 13	MN 101 at Savage	I-35W at Barnesville.
US 14	US 75 at Lake Benton.	I-35 at Owatonna.
US 14	US 218 near Owatonna.	I-35 at Owatonna.
MN 23	US 12 at Willmar	I-35 near Hinckley.
MN 24	I-94 at Clearwater	US 10 at Clear Lake.
MN 27	N. Jct. MN 29 at Alexandria.	MN 127 at Osakis.
MN 27	US 71 at Long Prairie	US 10 at Little Falls.
MN 28	MN 27 at Browns Valley.	I-94 at Sauk Centre.
MN 29	I-94 at Alexandria	N. Jct. MN 27 at Alexandria.
MN 33	I-35 at Cloquet	US 53 at Independence.
MN 36	I-35W at Roseville	MN 95 at Oak Park Heights.
MN 41	US 212 near Chaska	US 169 near Chaska.
MN 43	I-90 at Wilson	US 61 at Winona.
MN 51	MN 5 at St. Paul	I-694 at Arden Hills.
US 52	US 63 at Rochester	MN 110 at Inver Grove Heights.
US 53	I-35 at Duluth	S. Jct. US 169 at Virginia.
MN 55	MN 28 at Glenwood	7th St. N. in Minneapolis.
MN 55	E. Jct. I-94 in Minneapolis.	MN 3 at Inver Grove Heights.
MN 56	US 52 at Inver Grove Heights.	MN 3 at St. Paul.
US 59	I-90 at Worthington	MN 30 at Slayton.
US 59	I-94 at Fergus Falls	US 2 at Erskine.
MN 60	Iowa St. Line at Bigelow.	N. Jct. US 169 at Mankato.
US 61	MN 16 at La Crescent.	Wisconsin St. Line.
US 61	I-90 north La Crescent.	Wisconsin St. Line.
US 61	Jct. I-35 at Mesaba in Duluth.	Two Harbors (Jct. CSAA 2).
US 63	MN 58 at Red Wing	Wisconsin St. Line.
US 63	I-90	US 52 at Rochester.
MN 65	MN 23 at Mora	I-694 at Fridley.
US 71	Iowa St. Line	I-90 at Jackson.
US 71	I-94 at Sauk Centre	MN 27 at Long Prairie.
US 75	MN 7 near Odessa	I-94 at Moorhead.
US 77	I-35E at Eagan	I-494 at Bloomington.
MN 100	I-494 at Bloomington	I-694 at Brooklyn Center.
MN 101	US 169 at Shakopee	MN 13 at Savage.
MN 110	MN 55 at Mendota Heights.	US 52 at Inver Grove Heights.
MN 127	MN 27 at Osakis	I-94 at Osakis.
US 169	N. Jct. MN 60 at Mankato.	MN 101 at Shakopee.
US 169	MN 95 at Princeton	US 10 at Elk River.
US 169	MN 210 at Aitkin	S. Jct. US 53 at Virginia.
US 169	I-494 at Eden Prairie	MN 100 at Edina.
US 169	MN 100 at Robbinsdale.	I-94 at Brooklyn Park.
MN 210	US 75 at Brechenridge.	MN 59 at Fergus Falls.
MN 210	US 10 at Motley	US 169 at Aitkin.
US 212	South Dakota St. Line.	I-494 at Eden Prairie.
US 218	I-90 at Austin	US 14 E. of Owatonna.
MN 371	US 10 at Little Falls	E. Jct. MN 210 at Brainerd.
MN 371	W. Jct. MN 210 at Brainerd.	US 2 at Cass Lake.

NOTE: All public roads available to 102 inch wide vehicles (subject to local ordinance).

APPENDIX.—OTHER DESIGNATED ROUTES—Continued

Posted route No.	From	To
Mississippi		
All U.S. and State numbered routes are available. This includes the Federal-Aid Primary System and other routes designated by the State.		
Missouri		
US 36	Kansas St. Line	Illinois St. Line.
US 40	I-70 St. Charles County.	I-55/70 St. Louis.
US 169	I-29 at Kansas City	MO 152 at Kansas City.
MO 725	US 40 at St. Louis	St. Louis Co. Route D.
US 67	Arkansas St. Line	Exit 174 on I-55.
US 61	I-70 St. Charles County.	Iowa St. Line.
US 63	Arkansas St. Line	Iowa St. Line.
US 65	Arkansas St. Line	Iowa St. Line.
US 71	Arkansas St. Line	I-435 Kansas City.
US 71	Exit 53 on I-29	US 136 Maryville.
Alt. US 71	I-44	US 71 Carthage.
US 136	Nebraska St. Line	Exit 110 on I-29.
US 54	South Junction US BR 54 at Lake Ozark.	Illinois St. Line.
US 60	MO 37 Monett	US 63 Cabool.
US 24	I-435 Kansas City	US 65 Waverly.
MO 7	US 71 Harrisonville	MO 13 Clinton.
MO 13	I-44 Springfield	US 24 Lexington.
US 50	Exit 7 I-470 Kansas City.	Exit 247 on I-44.
US 60	Oklahoma St. Line	US 71.
US 67	MO 367	Illinois St. Line.
US 412	Arkansas St. Line	Exit 19 on I-55.
MO 84	Arkansas St. Line	US 412 near Kennett.
MO 25	US 412 near Kennett	US 60 at Dexter.
MO 5	Arkansas St. Line	US 60.
MO 47	US 50 at Union	MO 100 at Washington.
MO 100	MO 47 at Washington.	I-44.
MO 367	I-270	US 67.
US 166	Kansas St. Line	I-44.
MO 171	Kansas St. Line at KS 57.	US 71 Webb City.
US 60	2 mi. E. of MO 21	I-55/57 near Sikeston.
US 24	US 61 Taylor	Illinois St. Line.
MO 37	MO 76 Cassville	US 60 Monett.
US 59	Kansas St. Line	I-229 St. Joseph.
US 24	East Junction US 24 and US 36 in Marion County.	South Junction of US 24 and US 61 west of Hannibal.
Montana		
US 2	Idaho St. Line	North Dakota St. Line.
US 12	Idaho St. Line	North Dakota St. Line.
US 89	Canadian Border	Wyoming St. Line.
US 310	Wyoming St. Line	Laurel.
MT 200	Idaho St. Line	North Dakota St. Line.
US 93	Idaho St. Line	Canadian Border.
US 287	Wyoming St. Line	Choteau.
US 87	Wyoming St. Line	Havre.
US 20	Targhee Pass	West Yellowstone.
MT 87	Raynolds Pass	US 287.
MT 117	Fort Peck	Nashua.
MT 22	Miles City	Jordon.
MT 15	Conrad	Conrad.
MT 5	Scobey	North Dakota St. Line.
MT 59	Miles City	Wyoming St. Line.
MT 23	Sidney	North Dakota St. Line.
MT 7	Ekalaka	Wibaux.
US 10	North Dakota St. Line	Idaho St. Line.
MT 24	Canadian Border	MT 200.
MT 13	Circle	Canadian Border.
MT 37	Libby	Eureka.
MT 135	St. Regis	Paradise.
MT 28	Plains	Elmo.
US 212	Crow Agency	Wyoming St. Line.

APPENDIX.—OTHER DESIGNATED ROUTES—Continued

Posted route No.	From	To
MT 40	Whitefish	Columbia Falls.
MT 39	Lame Deer	Forsyth.
MT 141	Avon	MT 200.
MT 44	US 89	US 15.
US 191	West Yellowstone	Malta.
MT 43	Idaho St. Line	US 15 Divide.
MT 48	Anaconda	Warm Springs.
MT 47	Hardin	Custer.
MT 41	Dillon	US 10.
MT 16	Canadian Border	Glendive.
MT 35	Polson	US 2.
MT 3	Billings	Lavina.
MT 55	MT 41 Whitehall	Whitehall.
MT 56	MT 200	US 2.
MT 64	Big Sky	Mountain Valley.
MT 68	US 191	Fort Belknap.
MT 67	US 2 in Shelby	MT 15.
MT 69	Whitehall	Boulder.
MT 90	I-90 Missoula	Missoula.
MT 72	Wyoming St. Line	US 310.
MT 73	I-90 Lodge Grass	US 87.
MT 74	I-90	I-90 Wyola.
MT 77	MT 28 Hot Springs	Hot Springs.
MT 78	Red Lodge	Columbus.
MT 80	Fort Benton	Stanford.
MT 81	MT 80	US 191.
MT 82	Somers	MT 35 Big Fork.
MT 83	MT 200	MT 35 Big Fork.
MT 85	US 191 I-90	Belgrade.
MT 86	Bozeman	US 89.
MT 12	I-90 Garrison	Near I-90.
MT 89	Dillon	Near MT 15.
US 212	Wyoming St. Line	US 310.
MT 287	Ennis	Twin Bridges.
MT 19	MT 200 Grassrange	US 191 near Roy.
MT 200S	Circle	Glendive.
US 10A	I-90	Drummond.
MT 40	I-94	Terry.
MT 79	I-94	Hysham.
Nebraska		
All U.S. and State numbered routes are designated, with the following exceptions:		
● US 159 from the junction with US 73 in Falls City east to Missouri		
● State Highway 2 from the junction with US 73/75 in Nebraska City east to Iowa		
● US 34 from the junction with L-13G in Plattsmouth east to Iowa		
● US 30 from east the junction with US 73 in the City of Blair east to Iowa		
Nevada		
US 395	California St. Line	US 50 Stewart.
US 395	US 50 Carson City	California St. Line.
US 50	California St. Line	Utah St. Line.
US 95	California St. Line	I-80.
US 95	I-80	Oregon St. Line.
US 6	California St. Line	US 95 Coaldale.
US 6	US 95 Tonopah	US 50 Ely.
US 93	Buchanan Blvd. Boulder City.	US 95.
US 93	I-15	US 50.
US 93	US 50	Idaho St. Line.
US 95 Alt.	US 95 Schurz	I-80.
US 50 Alt.	I-80	US 50.
US 93 Alt.	US 93	I-80 Wendover.
New Hampshire		
US 3	Massachusetts St. Line.	101A Nashua.
Everett Turnpike.	101A Nashua	I-293 Bedford.
*NH 101	West End Milford Bypass.	I-293 Bedford.
*NH 9	Vermont St. Line	NE Junction of NH 9 & NH 10 Keene.
*NH 9	West End Henniker Bypass.	I-89 Hopkinton.
*NH 101	I-93 Manchester	NH 51 Exeter.
NH 51	NH 101 Exeter	US 1 Hampton.
Spaulding Turnpike.	US 4 Dover	NH 125 Rochester.

APPENDIX.—OTHER DESIGNATED ROUTES—Continued

Posted route No.	From	To
*Spaulding Turnpike.	NH 125 Rochester	NH 16 Laskey Corner.
US 4	Exit 6 Spaulding Turnpike.	I-95 Portsmouth.
US 3	I-93 North Woodstock.	I-93 near Franconia.
*US 3	I-93 near Franconia	US 302 Twin Mountain.
NH 18	Vermont St. Line	I-93 Littleton.
New Jersey		
Atlantic City Expressway.	Baltic Avenue in Atlantic City.	NJ 42 Turnersville.
NJ 42	Atlantic City Expressway at NJ 168 Washington.	I-295 Bellmawr.
*US 322	Pennsylvania St. Line	I-295 Logan Township.
*US 130	US 322 Bridgeport	I-295 Logan Township.
*US 130	NJ 44 West Deptford	I-295 West Deptford.
New Jersey Turnpike.	I-295 Deepwater	I-95 Exit 6 Mansfield.
*NJ 18	US 1 New Brunswick	Wayside Road, Tinton Falls.
*US 1	Pennsylvania St. Line	I-287 Edison.
*NJ 440	I-95 Edison	New York St. Line at Outer Bridge.
*US 22	Pennsylvania St. Line Phillipsburg.	I-78 Greenwich.
*NJ 495	I-95 Secaucus	I-495 Weehawken.
*NJ 3	US 1 North Bergen	Sports Complex East Rutherford.
*NJ 17	I-80 Hackensack	New York St. Line.
The following two sections of the New Jersey Turnpike were recently added to of the Interstate System, and are unsigned. The route segments are listed since the public may be unaware of this designation.		
New Jersey Turnpike.	Pennsylvania St. Line	Exit 6 Mansfield.
New Jersey Turnpike.	Exit 6 Mansfield	Exit 10 Edison.
*The State has not agreed with the designation of this route. Comments are specifically requested on the desirability of including this route on the national network.		
New Mexico		
US 56	I-25 Springer	Oklahoma St. Line.
US 62	US 285 Carlsbad	Texas St. Line.
US 70	I-10 Las Cruces	US 84 Clovis.
US 84	I-40 Santa Rosa	Texas St. Line.
US 87	US 56 Clayton	Texas St. Line.
US 285	Colorado St. Line	Texas St. Line.
US 550	US 666 Shiprock	Colorado St. Line.
US 666	I-40 Gallup	Colorado St. Line.
US 60	Arizona St. Line	I-25 Socorro.
US 84	I-40	Colorado St. Line.
US 70	Lordsburg	Arizona St. Line.
US 80	Arizona St. Line	I-10.
NM 504	Arizona St. Line	Shiprock.
US 160	Arizona St. Line	Colorado St. Line.
New York		
*NY 17	US 219 Carollton	Exit 24 Allegany.
NY 17	Exit 24 Allegany	I-87 Thruway Exit 16 at Harriman.
*US 219	Pennsylvania St. Line	NY 39 Springville.
US 219	NY 39 Springville	I-90 Thruway Exit 55.
NY 400	I-90 Thruway Exit 54	NY 16 South Wales.
NY 198	I-90 Thruway Exit N11.	NY 33 Buffalo.
NY 33	Michigan Avenue Buffalo.	Greater Buffalo International Airport.
NY 179	NY 5 Windom	I-90 Windom.
NY 75	NY 5 Mount Vernon	US 20 Mount Vernon.
Walden Avenue.	I-90 Thruway Exit 52	NY 277, Cheektowaga.
NY 277	0.4 miles south of NY 130, Cheektowaga.	Walden Avenue, Cheektowaga.
NY 266	Buffalo City Limit	NY 325 Tonawanda.

APPENDIX.—OTHER DESIGNATED ROUTES—Continued

Posted route No.	From	To
NY 325	NY 266 Tonawanda	Kenmore Avenue Tonawanda.
NY 390	I-490 Rochester	NY 18 North Greece.
NY 590	I-490 Rochester	NY 104 Irondequoit.
Inner Loop	I-490 Rochester	I-490 Rochester.
NY 15	Commerce Drive Rochester.	NY 252 Rochester.
NY 15A	NY 252 Rochester	I-390 Rochester.
NY 204	NY 33A Gates	I-490 Gates.
NY 252	NY 15 Rochester	NY 15A Rochester.
NY 441	I-490 East Rochester	NY 253 East Rochester.
NY 690	I-90 Lakeland	NY 370 Baldwinsville.
NY 481	I-81 North Syracuse	NY 3 Fulton.
NY 695	NY 5 Fairmont	I-690 Solvay.
NY 5	Maple Avenue Camillus.	West Genessee Street Fairmont.
NY 298	I-690 Syracuse	I-81 Syracuse.
US 15	Interchange in Presho.	NY 17 Corning.
NY 7	I-81 Binghamton	I-88 Port Dickinson.
NY 12	I-790 near I-90 Utica	Putnam Road Trenton.
NY 8	County Road 9 Sauguoit.	I-790 Utica.
NY 26	NY 365 Rome	NY 46 Rome.
NY 365	I-90 Thruway Exit 33	NY 49 Rome.
NY 49	NY 365 Rome	NY 291 near Oriskany.
North Genessee Arterial.	NY 5 S Utica	NY 5 Utica.
NY 254	I-87 Glens Falls	0.3 miles East of US 9.
*NY 254	0.3 mile East of US. 9.	U.S. 4 Hudson Falls.
*US 4	NY 254 Hudson Falls	Vermont St. Line.
Berkshire Thruway.	I-87 Thruway Exit 21A.	I-90 Thruway Exit B1.
US 9	0.6 mile South of NY 254.	0.5 mile North of NY 254.
NY 7	Schenectady-Albany County Line.	West City Line of Watervliet.
NY 5	East City Line of Schenectady.	North City Line of Albany.
Wolf Road	NY 5 at I-87 Colonie	I-87 at NY 155 Colonie.
*NY 440	New Jersey St. Line	I-278 Staten Island Expressway.
*NY 495	I-278 Brooklyn-Queens Expressway.	I-678 Van Wyck Expressway.
*NY 495	I-295 Clearview Expressway.	NY 25 Riverhead Suffolk.
*NY 17	New Jersey St. Line	I-87 Suffern.
NY 104	Maplewood Drive Rochester.	Monroe-Wayne County Line.
NY 5	NY 19 Windom	NY 75 Mount Vernon.
US 20	NY 75 Mount Vernon	Howard Road Mount Vernon.

North Carolina

US 19	US 64 near Ranger	US 19A near Bryson City.
US 19A	US 19 near Bryson City.	US 19 near Lake Junaluska.
US 25	South Carolina St. Line.	I-26 near East Flat Rock.
US 221	Rutherfordton	I-40 near Marion.
US 1	US 74 at Rockingham.	I-85 near Henderson.
US 15	US 401 near Laurinburg.	US 1 Aberdeen.
US 15	US 1 Northview	US 64 Pittsboro.
US 401	South Carolina St. Line.	I-40 Raleigh.
US 17	South Carolina St. Line.	Jct. US 74/76 West of Wilmington.
US 17	SR 1409	Virginia St. Line.
US 76	Jct. US 17/74 West of Wilmington	SR 1409.
SR 1409 (Truck Rt.).	US 76	US 17.
US 64	Tennessee St. Line	Jct. US 19/129 near Ranger.

APPENDIX.—OTHER DESIGNATED ROUTES—Continued

Posted route No.	From	To
US 64	US 1/70/401 Raleigh	US 17 Williamston.
US 64	US 29 Lexington	US 15 Pittsboro.
US 258	NC 24 near Richlands.	US 64 Tarboro.
US 601	South Carolina St. Line.	US 74 near Monroe.
US 74	US 221 Rutherford-ton near Kings Mountain.	
US 220	US 74 in Rockingham.	Virginia St. Line.
NC 49	I-85 Charlotte	US 52 Richfield.
NC 18	I-40 near Morgantown.	US 321 near Lenoir.
US 321	I-40 near Hickory	NC 90 near Lenoir.
US 321	South Carolina St. Line.	I-85 near Gastonia.
US 52	NC 24/27 Albemarle	Virginia St. Line.
NC 87	NC 24/27 Spout Springs.	US 1 Sanford.
US 158	I-40 Winston-Salem	US 29 Reidsville.
US 158	I-85 Henderson	US 258 Murfreesboro.
I-40 Conn	US 19 near Lake Junaluska.	I-40 West of Clyde.
US 70	US 70A near Smithfield.	I-85 Durham.
US 70A	US 70 near Princeton	US 70 near Smithfield.
I-95 Bus	Kenly	Gold Rock.
US 74	I-277, Charlotte	US 17 near Wilmington.
US 23	US 19A Dillsboro	US 441 Franklin.
US 29	US 52 Lexington	I-85 Greensboro.
US 258	US 158 Murfreesboro	Virginia St. Line.
US 521	South Carolina St. Line.	I-77.
NC 24	US 74 Charlotte	US 52 Albemarle.
US 29	I-85 Greensboro	Virginia St. Line.
US 264	US 17 Washington	US 64 near Zebulon.
NC 11	US 70 Kinston	US 264 Greenville.
SR 1728	US 1 Raleigh	I-40.
SR 1959-2028.	US 70 Bethesda	I-40.
I-85 Connector (SR 1007).	I-85 Salisbury	US 29-601 Salisbury.
US 70	US 29-601 Salisbury	I-77 Statesville.
US 421	Kure Beach	I-95 Dunn.
US 421	US 1 Sanford	US 64 Siler City.
US 421	I-40 Winston-Salem	Wilkesboro.
NC 24	US 70 Mansfield	US 421 Clinton.
NC 24	I-95 Fayetteville	Spout Springs.
US 70	Beaufort	US 70A near Princeton.
US 19	I-240 Asheville	Jct. US 19-23 near Mars Hill.
US 25-70	US 19-23 at Weaverville.	US 25-70 Bypass at Marshall.
I-95 Bus	I-95 N. of Fayetteville.	I-95 S. of Fayetteville.

North Dakota

US 85	South Dakota St. Line.	Canadian Border.
US 83	South Dakota St. Line.	I-94 Jct.
US 83	I-94 Jct./Bismarck	Canadian Border.
US 281	South Dakota St. Line.	I-94 Jct./Jamestown.
US 52/281	I-94 Jct./Jamestown	Carrington.
US 281	Carrington	Canadian Border.
US 81	I-29 Jct./Manvel	I-29 Jct./Joliette.
US 2	Montana Border	US 85 Jct./Williston.
US 2	US 85 Jct.	Minnesota St. Line.
US 52	Carrington	US 2 Jct./Minot.
US 52	US 2 Jct./Burlington	Canadian Border.
US 12	Montana Border	South Dakota St. Line.
US 10	I-94 Jct.	Minnesota St. Line.
ND 68	Montana St. Line	US 85.
ND 13	I-29 Mooreton	Minnesota St. Line.

APPENDIX.—OTHER DESIGNATED ROUTES—Continued

Posted route No.	From	To
Ohio		
All public highways, except where posted or within certain municipalities where there are restrictions.		
Oklahoma		
US 56	New Mexico St. Line	Kansas St. Line.
US 54	Texas St. Line	Kansas St. Line.
US 59	US 270 Heavener	I-44 Afton
US 59	OK 10 Welch	Kansas St. Line.
US 60	Texas St. Line	US 283 Ellis Co.
US 60	US 81 Pond Creek	Missouri St. Line.
US 62	Texas St. Line	US 281 Lawton.
US 64	US 56 Boise City	OK 8 Alfalfa County.
US 54	US 81 Enid	I-35 Noble Co.
US 64	OK 99 Pawnee County.	US 69 Muskogee.
US 66	US 69 Commerce	Kansas St. Line.
US 62	US 69 Muskogee	Arkansas St. Line.
US 70	US 81 Waurika	Arkansas St. Line.
US 81	Texas St. Line	Kansas St. Line.
US 83	OK 3 Bryan's Corner	Kansas St. Line.
US 75	Texas St. Line	Kansas St. Line.
US 169	I-244 Tulsa	Kansas St. Line.
US 177	US 70 Dickson	US 60 Ponca City.
US 69	US 75 Atoka	Kansas St. Line.
US 77	OK 11 Kildare	Kansas St. Line.
US 183	Texas St. Line	US 270 Selling.
US 271	US 270 Wister	US 59 Poteau.
US 270	US 177 Tecumseh	Akansas St. Line.
US 259	Texas St. Line	US 270 Leflore Co.
US 281	OK 5 Walters	Kansas St. Line.
US 271	OK 3 Antlers	Arkansas St. Line.
US 283	Texas St. Line	Kansas St. Line.
US 287	Texas St. Line	Colorado St. Line.
OK 3	US 54 Guymon	US 177 Shawnee.
OK 3W	US 177 Asher	OK 99 Ada.
OK 3	OK 99 Ada	Arkansas St. Line.
OK 15	US 283 Shattuck	US 64 Enid.
OK 33	US 183 near Custer City.	Akansas St. Line.
OK 34	I-40 Elk City	US 64 Harper Co.
OK 8	OK 58 Fairview	US 64 Alfalfa Co.
OK 11	US 64 Cherokee	US north 77 of Ponca Cl.
OK 11	OK 99 Osage County	OK 20 Skiatook.
OK 45	US 281 Woods Co.	OK 8 Alfalfa Co.
OK 51A	US 270 Watonga	OK 58 Major Co.
OK 53	OK 76 Fox	I-35 Springer.
OK 58	OK 51 A	OK 8 Fairview.
OK 5	US 183 Frederick	OK 53 Walters.
OK 67	US 75 Glenpool	US 64 Bixby.
OK 29	US 81 Marlow	I-35 near Wynnewood.
OK 76	OK 7 Ratliff City	OK 53 Fox.
OK 7	I-35 near Davis	OK 1 Johnston Co.
OK 7	US 281 Lawton	OK 76 Ratliff City.
OK 6	US 283 Greer Co.	I-40 Elk City.
OK 9	OK 44 Lone Wolf	US 177 Tecumseh.
OK 9	US 69 Pittsburg Co.	US 59 LeFlore Co.
OK 39	OK 9 Tabler	OK 3W Asher.
OK 44	US 283 Greer Co.	9 Lonewolf.
OK 53	OK 5 Walters	US 81 Comanche.
OK 36	OK 5 Tilman Co.	US 281 near Lawton.
OK	OK 51 Payne Co.	US 60 Osage Co.
OK 1	OK 7 Johnston Co.	US 270 Calvin.
OK 20	OK 11 Skiatook	US 75 Tulsa County.
OK 48	I-44 Bristow	US 64 Pawnee Co.
OK 51	I-35 Payne Co.	Muscogee Turnpike/ Tulsa County.
OK 51	Muscogee Turnpike, Wagoner County.	US 62 Tahlequah.
OK 16	US 75 Preston	US 64 Jamesville.
OK 10	OK 2 Welch	US 59 Miami.
OK 2	US 60 Vinita	OK 10 Welch.
OK 2	US 271 Clayton	I-40 Warner.
OK 19	I-35 Paul's Valley	OK 3W Ada.
OK 99	US 70 Madill	OK 11 Osage Co.
OK 199	I-35 Ardmore	US 70 Oakland.
Cimarron Turnpike	I-35 Noble Co.	US 64 at OK 48.
Muscogee Turnpike	OK 51 Broken Arrow	I-40 Webers Falls.
US 271	Texas St. Line	US 70 Hugo.
Indian Nation Turnpike.	US 70 Hugo	I-40 Henryetta.

APPENDIX.—OTHER DESIGNATED ROUTES—Continued

Posted route No.	From	To
Cimarron Turnpike Connection.	US 77 north of Stillwater N.E.	Cimarron Turnpike.

Oregon

OR 99E	Portland	Salem.
OR 99W	Portland	Eugene.
US 730	I-84 Boardman	Washington St. Line.
US 30	Portland	Astoria.
US 97	Washington St. Line	Worden.
US 20	Bend	Idaho St. Line.
US 20	Sisters	US 97 near Bend.
US 20	Newport	Sweet Home.
OR 11	Washington St. Line	Pendleton.
US 101	Washington St. Line	Cannon Beach Jct.
US 101	OR 18 at Otis	Newport.
US 101	Florence	Port Orford.
US 101	Gold Beach	Harbor
OR 126	Florence	Prineville.
OR 58	Eugene	US 97 near Chemult.
OR 31	La Pine	US 395 Valley Falls.
OR 62	Medford	Trail.
US 199	Grants Pass	Elk Creek.
US 26	Cannon Beach Jct.	US 97 near Madras.
US 26	US 97 Metolius	Mitchell.
US 395	Umatilla	Stanfield.
US 395	Pendleton	Long Creek.
US 395	John Day	Burns.
US 395	Riley	California St. Line.
OR 8	Beaverton	Forest Grove.
OR 22	OR 18 near Willamina.	Salem.
OR 42	Coos Bay	Coquille.
OR 6	Tillamook	US 26 near Banks.
OR 18	US 101 Alls	Dayton.
OR 10	Portland	Beaverton.
US 197	I-84 Seufort	OR 216 Maupin.
OR 216	US 26 Warm Springs Jct.	Maupin.
OR 38	Reedsport	Anlauf.
OR 140	Klamath Falls	OR 39
OR 39	OR 140	Merrill.
US 99E	ALbany	Junction City.
US 30 Bus	OR 99E	US 30 Bypass in Portland.
OR 99	Grants Pass	I-5.
US 30	North Powder	Baker.
US 30	In City of Pendleton	
OR 214	Woodburn	Silverton.
OR 217	US 26	I-5.
OR 22	Salem	Santiam Jct.
OR 223	Dallas	Rickreall.
OR 224	OR 99E	Clackamas.
OR 99	Central Point	Ashland.
OR 34	Corvallis	Lebanon.
OR 138	Elkton	I-5.
OR 99	OR 42	I-5.
OR 99	OR 38	I-5.
US 30	In City of Cascade Lock.	
OR 206	Wasco	Heppner.
OR 207	Cold Springs Jct.	Kinzua Road.
OR 78	Burns	US 95, Burns Junction.
US 95	OR 78, Burns Junction.	Nevada St. Line.

NOTE.— Qualified but unmarked routes have not been listed. In addition extensive partially qualifying routes have been identified by the State. Full information on Oregon's truck route system is available from the Oregon Division of Highways.

Puerto Rico

PR 2	PR 22 San Juan	PR 1 Ponce.
PR 3	PR 31 near Ceiba	PR 26 Carolina.
PR 52	PR 1 Ponce	PR 18 San Juan.
PR 18	PR 52 San Juan	PR 22 San Juan.
PR 22	PR 2 San Juan	PR 26 Jan Juan.
PR 26	PR 22 San Juan	PR 3 Carolina.
PR 1	PR 2 Ponce	PR 52 Ponce.

Rhode Island

RI 37	I-295 Cranston	I-95 near Lincoln Park.
RI 195	I-295 Johnston	RI 10 Providence.

APPENDIX.—OTHER DESIGNATED ROUTES—Continued

Posted route No.	From	To
RI 10	RI 195 Providence	I-95 Cranston.
RI 146	I-95 Providence	I-295 near Lime Rock.

South Carolina

US 76	Georgia St. Line	I-95 St. George.
US 378	Georgia St. Line	SC 121 Saluda.
US 378	SC 262 Columbia	US 501 Conway.
SC 72	Georgia St. Line	I-77 Rockhill.
US 123	Georgia St. Line	US 25 Greenville.
US 76	US 52 Florence	SC 576 near Marion.
US 25	North Carolinas St. Line.	Georgia St. Line.
SC 121	SC 72 Whitmire	US 25 Trenton.
US 321	I-26 South of Columbia.	I-95 near Hardeeville.
US 601	North Carolina St. Line.	SC 9 Pageland.
SC 151	SC 9 Pageland	US 52 Darlington.
US 52	US 15 Society Hill	US 52/I-26 Connector at Goose Creek.
US 17	I-95 near Pocotaligo	US 21 Gardens Corner.
US 17	I-26 Charleston	North Carolina St. Line.
US 501	SC 576 Marion	US 17 Myrtle Beach.
SC 576	US 76 near Marion	US 501 near Marion.
US 21	US 17 Garden Corner.	SC 170 Beaufort.
US 276	I-85 Greenville	I-26 near Laurens.
US 521	I-20 Camden	North Carolina St. Line.
US 15	US 52 Society Hill	North Carolina St. Line.
US 301	Georgia St. Line	US 321 Ulmer.
SC 277	I-77 near Columbia	I-126 near Columbia.

South Dakota

All roads in the State are designated. This includes all Federal-aid Primary Routes as well as other routes designated by the State.

Tennessee

Briley Pkwy	I-40 near Nashville	I-65 near Nashville, Tennessee, St. Line.
TN 137, US 23.	TN 67 Johnson City	TN 1, Kingsport.
US 51	Near Memphis	Purchase Pkwy, Kentucky St. Line.
US 45	Mississippi St. Line	Near Jackson.
US 45/45W Bypass.	Near Jackson	Union City near TN 22.
US 79	Memphis near I-40	Guthrie at US 41 Kentucky St. Line.
US 641	I-40 near Natchez Trace State Park.	Kentucky St. Line near TN 140.
US 231	Alabama St. Line near Fayettville.	Kentucky St. Line near TN 52.
US 127	TN 27 Spur near Chattanooga.	Static at Kentucky St. Line.
US 27	Walden	Kentucky St. Line.
US 25E	I-81	Harrogate at Virginia St. Line.
US 70 Alt.	Atwood at US 79	Huntingdon at TN 22.
US 70	Huntingdon at TN 22	Dickson.
US 70	Sparta at TN 111	Crossville at US 127.
US 70 S.	Murfreesboro at US 231.	Sparta at TN 111.
US 64/41	Memphis at TN 15	I-24 at Monteagle.
US 64	Cleveland near I-40	Near Bolltown at North Carolina St. Line.
US 43	Near St. Joseph at Alabama St. Line.	Lawrenceburg at US 64.
US 72	Alabama St. Line	I-24.
TN 153	I-75	US 27 at Walden.
TN 96	US 70	I-40.
US 70	Briley Pkwy	Sparta.
TN 27 Spur	I-124	US 127.
US 41/70 S	US 23, Murfreesboro	TN 102 in Smyrna.

APPENDIX.—OTHER DESIGNATED ROUTES—Continued

Posted route No.	From	To
Texas		
US 59	I-35 Laredo	Arkansas St. Line at Red River.
US 60	New Mexico St. Line	Oklahoma St. Line.
US 62	New Mexico St. Line	Jct. US 87 Lubbock.
US 67	US 87 San Angelo	Jct. US 84 Santa Anna.
US 69	TX 87 Port Arthur	I-20 near Tyler.
US 75	Jct. I-30 Dallas	Oklahoma St. Line.
US 77	Mexico Border	I-35 Waco.
US 82	US 87 Lubbock	Jct. US 277 Seymour.
US 82	Jct. US 287 near Henrietta.	US 75 Sherman.
US 83	US 77 in Harlinger	Jct. I-35 Laredo.
US 83	Jct. US 67 Ballinger	I-20 Abilene.
US 84	New Mexico St. Line	I-20 near Roscoe.
US 84	US 67 Santa Anna	I-35 Waco.
US 87	US 67 San Angelo	I-27 in Lubbock.
US 87	I-40 Amarillo	New Mexico St. Line.
US 90	US 277 Del Rio	I-35 San Antonio.
US 183	I-35 Austin	US 84 Goldthwaite.
US 259	US 59 Nacogdoches	Oklahoma St. Line.
US 277	US 277 Spur Del Rio	US 67 San Angelo.
US 277	I-20 Abilene	Oklahoma St. Line.
US 281	US 83 Pharr	I-37 near Three Rivers.
US 290	I-10 near Mountain Home.	I-610 Houston.
US 287	I-40 Amarillo	I-35W Ft. Worth.
US 385	I-10 Ft. Stockton	US 62 Seminole.
US 285	New Mexico St. Line	I-20 Pecos.
TX 19	I-30 Sulphur Springs	US 271 Paris.
US 81	US 287 Bowie	Oklahoma St. Line.
US 283	US 287 Vernon	Oklahoma St. Line.
US 83	US 287	US 60.
US 62	US 83	Oklahoma St. Line.
US 287	Dumas	Oklahoma St. Line.
US 54	Dalhart	Texhoma.
US 277 Spur	US 277 Del Rio	Mexico Border.
US 271	TX 19 Paris	Oklahoma St. Line.
Virginia		
US 1	Route 150	1.5 miles S. of Route 150.
US 1	Route 54 (Ashland)	1.99 miles N. Route 54.
US 1	Route 30	Route 738.
US 1 (Bypass).	Fall Hill Avenue (Fredericksburg).	Route 3.
VA 3	Route 1 By-pass (Fredericksburg).	Route 20 at Wilderness.
VA 7	Route I-81 (Winchester).	0.68 mile W. of W.C.L. Round Hill.
VA 10	Route 58 By-pass (Suffolk).	Route 65 (1.24 miles N. of Route 258 Bus. at Smithfield).
VA 10	E.C.L. Hopewell	0.37 mile W. Route 156 in Hopewell.
VA 10	Route 1	Route 827 (0.56 mile W. of W.C.L. of Hopewell).
US 11	0.62 Mile South of Route 612 (Verona).	Route 612.
US 11	N. Intersection Rt. 220 Alt.	2.15 miles S. of N. Intersection Route 220 Alt.
US 13	E.B.L. Route I-64 (Norfolk).	Maryland St. Line.
US 17	Route I-95	Route 29 at Opal.
US 19	Route I-81 via Routes 11 and 140 (Abingdon).	Temp. Route 460 (Route 720) (Bluefield).
US 23	Tennessee St. Line	Route Alt. 58 (Big Stone Gap).
US 23	Route Alt. 58 (Norton).	Kentucky St. Line.
US 29	North Carolina St. Line.	Route I-66 (Gainesville).
VA 30	Route I-95	Route 1
US 33	North Carlton Street (Harrisonburg).	Route 340 (Elkton).
US 33	Route I-295	0.96 miles W. I-295.
VA 33	Route I-64	Route 30 E. Intersection (West Point).

APPENDIX.—OTHER DESIGNATED ROUTES—Continued

Posted route No.	From	To
VA 36	Route I-95 (Petersburg).	Route 156 E. Intersection (Hopewell).
VA 37	Route I-81 S. of Winchester.	Route I-81 N. of Winchester via Route 11.
VA 42	Route 257 (Bridgewater).	Route 290 (Dayton).
US 50	Route 259 at Gore	Route 37.
VA 54	Route I-95	Route 1.
VA 57	Route 220 at Bassett Forks.	Route 666 at Bassett.
US 58	Access to Rt. 58 from Route 220 at Bassett Forks (Via Routes 220 Bus., 667, 1112, Commonwealth Boulevard and Fairy Street).	Routes 13 & I-264 at Bowers Hill.
US 58	Laigh Street (Portsmouth).	Route 239.
Alt. US 58	Route 19 at Hansonville.	Route 23 (Norton).
US 60	Route 150	Route 522 W. of Powhatan.
VA 76	Route I-195	Route 150.
VA 86	Route 29 (Danville)	North Carolina St. Line.
VA 100	Route I-81	Route 11 (Dublin).
VA 108	Route 57 (Martinsville).	Clearview Drive.
VA 146	Route 76	Route 195.
VA 150	Route 76	Route I-95.
VA 156	Route 10 (Hopewell)	Route 35 (Hopewell).
VA 168	Route 13	Bayside Road (Va. Beach).
VA 195	Route I-195	Route I-95.
VA 199	Route I-64	Route 60.
VA 207	Route I-95	Routes 2 and 301 at Bowling Green.
US 220	North Carolina St. Line.	Route I-581 (Roanoke).
US 220	Route I-81	S.C.L. of Fincastle.
Alt. US 220	Route I-81	Route 11.
VA 224	Route 460	Route 29.
VA 239	Route 58 (Portsmouth).	Route I-264.
VA 257	I-81 (Via Route 11)	Route 42.
US 258	North Carolina St. Line.	Route 58—Franklin By-pass.
US 258	I-64 (Hampton)	Route 10 (Benns Church).
US 301	Routes 2 and 207 at Bowling Green.	Maryland St. Line.
US 301	I-295	Route 1250.
US 340	Route 7 By-pass (Berryville).	West Virginia St. Line.
US 340	I-66	2.85 miles N. of I-66.
US 360	Route I-64	Route 627 at Village.
US 360	Route 58 (South Boston).	Route 150.
US 460	Route 67 at Raven	Route 19 at Claypool Hill.
US 460	Route 19 at Bluefield via Route 720 (Temp. Route 460).	West Virginia St. Line.
US 460	West Virginia St. Line	Route I-81 at Christiansburg.
US 460	Route I-581 at Roanoke.	Route I-85 S. of Petersburg.
US 460	Route I-95 (Petersburg).	Route 58 (Suffolk).
US 501	Route 360 S. Int. (Halifax).	Route 58 (South Boston).
US 522	Route 37	1.07 miles N. of Rt. 705 at Cross Junction.
VA 612	Route I-81 (Augusta Co.).	Route 11 (Verona).

APPENDIX.—OTHER DESIGNATED ROUTES—Continued

Posted route No.	From	To
VA 737	Route 86 (Pittsylvania Co.).	0.90 mile E. Route 86.
VA 738	Route 1 (Hanover Co.).	1.90 miles E. of Route 1.
VA 1250	Route 301 (Hanover Co.).	End of Route.

Utah

US 6	I-15 Near Spanish Fork.	I-70 Near Green River.
US 40	I-190 Silver Creek Jct.	Colorado St. Line Near Dinosaur, CO.
US 89/UT 28.	I-70 Salina Interchange.	I-15 Near Nephi.
US 91	I-15 Perry-Brigham Interchange.	Idaho St. Line near Franklin, Idaho.
UT 201	I-80 Lake Point Interchange.	I-15 2100 S. Interchange, Salt Lake City.
US 50	Nevada St. Line	I-70 Near Salina.
US 666	Monticello	Colorado St. Line.
US 163	Arizona St. Line	I-170 Crescent Junction.
US 89	Arizona St. Line	Sevier.

Washington

All US and State numbered routes are designated. This includes all Federal-aid primary routes and additional routes designated by the State.

West Virginia

US 19	Jct. I-77 Bradley	Jct. I-79 Gassaway.
US 48	I-79 Morgantown	Maryland St. Line.
US 50	I-77 Parkersburg	I-79 Clarksburg.
US 460	Virginia St. Line at Bluefield.	Virginia St. Line Near Kelleysville.
WV 34	I-64 Putnam County	Jct. US 35 Winfield.
US 35	Jct. WV 34 Winfield	Ohio St. Line.

NOTE: The Governor has established a task group composed of the Department of Highway Commissioner, the Director of the Office of Economic and Community Development and the Superintendent of the Department of Public Safety to review and evaluate additional route designations. The task group will report its findings directly to the Governor.

Wisconsin

US 2	Superior	Michigan St. Line at Hurley.
US 2	Michigan St. Line W. of Florence.	Michigan St. Line E. of Florence.
US 8	US 63 in Turtle Lake	Michigan St. Line.
US 10	US 53 in Osseo	I-43 N. of Manitowoc.
WI 11	US 61 near Dubuque	US 51 in Janesville.
WI 11	I-90 near Janesville	US 14-WI 89, 5 miles west of Delavan.
WI 11	WI 15 near Elkhorn	WI 31 in Racine.
US 12	I-94 and County Hwy EE W. of Eau Claire.	US 53 in Eau Claire.
US 12	WI 67, 2 miles N. of Elkhorn.	Illinois St. Line.
WI 13	WI 21 N. of Friendship.	US 2 in Ashland.
US 14	US 51 at Janesville	I-90 at Janesville.
US 14	WI 11-89, 5 miles W. of Delavan.	WI 15 at Darien.
WI 15	I-90 at Beloit	US 45 in Greenfield.
WI 16	WI 78 at Portage	I-94 N. of Waukesha.
WI 17	US 8 in Rhinelander	US 45 in Eagle River.
US 18	Iowa St. Line	I-90 E. of Madison.
WI 20	I-94 W. of Racine	WI 31 in Racine.
WI 21	WI 27 in Sparta	US 41 at Oshkosh.
WI 23	WI 32 N. of Sheboygan Falls.	Taylor Drive in Sheboygan.
WI 26	I-94 at Johnson Creek.	WI 16 at Watertown.
WI 26	US 151 N.E. of Waupun.	US 41 S.W. of Oshkosh.
WI 27	US 14 at Westby	US 10 E. of Fairchild.
WI 28	US 41 E. of Theresa	Kewaskum.
WI 29	I-94 W. of Elk Mound	US 53 at Chippewa Falls.
WI 29	WI 124 S. of Chippewa Falls.	US 41 in Green Bay.
WI 30	Madison	I-90 & I-94 E. of Madison.
WI 31	WI 11 in Racine	WI 20 in Racine.
WI 32	WI 29 W. of Green Bay.	Gillett.
WI 34	WI 13 in Wisconsin Rapids.	US 51 N.E. of Knowlton.
US 41	National Ave. in Milwaukee.	Garfield Ave. in Milwaukee.
US 41	107th St. in Milwaukee.	Michigan St. Line.
WI 42	I-43 W. of Manitowoc.	WI 57 S.W. of Sturgeon Bay.
US 45	US 45 Illinois St. Line	WI 28 in Kewaskum.
US 45	WI 29 in Wittenberg	Michigan St. Line.
WI 47	US 41 at Appleton	WI 29 in Bonduel.
WI 50	I-94 W. of Kenosha	45th Ave. in Kenosha.
US 51	South Corporate Limits of Janesville.	US 14 at Janesville.
US 51	WI 78 at Portage	US 2 near Hurley.
US 53	US 61 in La Crosse	US 10 in Osseo.
US 53	I-94 S.E. of Eau Claire.	I-535 in Superior.
WI 54	WI 13 in Wisconsin* Rapids.	US 51 near Plover.
WI 57	I-43 in Green Bay	Sturgeon Bay.
US 61	Iowa St. Line	WI 129 S.E. of Lancaster.
US 61	WI 129 N.E. of Lancaster.	Minnesota St. Line.
US 63	Minnesota St. Line	US 2 W. of Ashland.
WI 69	WI 11 at Monroe	County Hwy. "PB" at Paoli.
WI 73	US 51 at Plainfield	WI 54 in Wisconsin Rapids.
WI 78	I-90 & I-94 S. Portage.	US 51 N. of Portage.
WI 80	I-90 & I-94 N. of New Lisbon.	WI 13 near Pittsville.
WI 119	I-94 in Milwaukee	WI 38 in Milwaukee.
WI 124	US 53 N. of Eau Claire.	WI 29 S. of Chippewa Falls.
WI 129	US 61 S.E. of Lancaster.	US 61 N.E. of Lancaster.
WI 139	US 8 near Cavour	Long Lake.
US 141	US 41 at Abrams	US 8 South of Niagara.
WI 145	Broadway in Milwaukee.	US 41-45 in Milwaukee.
US 151	Iowa St. Line	US 18 E. of Dodgeville.
US 151	I-90 & I-94 in Madison.	US 41 at Fond du Lac.
WI 172	US 41 in Ashwaubenon.	County Hwy. "X" S. of Green Bay.
County Hwy "PB".	WI 69 at Paoli	US 18 E. of Verona.

Wyoming

All US and State numbered routes are designated with the exception of US 89/287 and US 212 in Yellowstone National Park. This includes all Federal-aid Primary Routes under the jurisdiction of the State of Wyoming as well as other routes designated by the State.

*The State has not agreed with the designation of this route. Comments are specifically requested as to the desirability of including this route on the national network.

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Wednesday
September 14, 1983

Part III

Environmental Protection Agency

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[AMS-FRL-2370-5]

Control of Air Pollution from New Motor Vehicles and New Motor Vehicle Engines; Designation of High-Altitude Locations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule revises the present designation of high-altitude locations to exclude those counties in states which do not have an auto-related air quality problem at high altitude. Specifically, it excludes all of the currently designated high-altitude counties in Arizona, Idaho, Montana, Nebraska, Oregon, Texas, and Wyoming. This redesignation applies to the sale of 1983 model year light-duty vehicles (LDVs) and 1983 and later model year light-duty trucks (LDTs). The sale of both low-altitude and high-altitude vehicles is allowed in areas excluded from the high-altitude requirements.

DATE: This final rule is effective October 14, 1983.

ADDRESS: Copies of material relevant to this rulemaking are contained in Public Docket No. A-82-31 at the U.S. Environmental Protection Agency, West Tower Lobby, Gallery I, 401 M Street, SW., Washington, D.C. 20460. The docket may be inspected between 8 a.m. and 4 p.m. on weekdays. As provided in 40 CFR Part 2, a reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: Mr. Richard S. Wilcox, Emission Control Technology Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, MI 48105, (313) 668-4390.

SUPPLEMENTARY INFORMATION:

I. Background

On November 10, 1982, EPA proposed to revise the present designation of counties in which high-altitude vehicles are required to be sold (47 FR 50929). This rulemaking action promulgates that proposed revision. Before presenting the details of this revision, however, it will be helpful to explore the basis for EPA's high-altitude motor vehicle program and those details which specifically relate to the designation of high-altitude counties.

A. Need for High-Altitude Emission Standards

Light-duty motor vehicles demonstrating compliance with only low-altitude emission standards generally emit about 50 percent more exhaust hydrocarbons (HC) and 100 percent more carbon monoxide (CO) when tested at 5,300 feet above sea level. At the same time, in most high-altitude urban areas, motor vehicles account for more than half of total HC emissions and almost all CO emissions. The HC emissions in the presence of summer sunlight contribute to numerous violations of the National Ambient Air Quality Standard (NAAQS) for ozone in certain high-altitude metropolitan areas. Similarly, CO emissions in stable winter atmospheric conditions cause numerous violations of the NAAQS for CO. Although progress is being made in reducing the severity of air pollution episodes in these metropolitan areas, specifically controlled emissions from high-altitude motor vehicles is needed to help assure that the NAAQS for ozone and CO are attained and maintained in the future.

B. 1982-83 High-Altitude Program

Mandatory high-altitude emission standards for 1982-83 light-duty motor vehicles were promulgated along with regulations to implement the standards on October 8, 1980 (45 FR 66984) under EPA's general rulemaking authority contained in Section 202(a) of the Clean Air Act ("the Act"). These rules were structured to comply with the requirements for such standards contained in Section 202(f) of the Act.

The regulations implementing the 1982-83 high-altitude standards were carefully designed to maximize model availability in high-altitude areas (a problem with EPA's 1977 high-altitude regulations), while at the same time minimizing the cost of the regulations and avoiding any adverse impact on the low-altitude fleet. One of the regulatory provisions included to achieve these goals was a requirement that, in order to market a vehicle anywhere in the nation, the vehicle must either automatically meet both the low- and high-altitude standards, or be capable of being modified to do so. This protects model availability at high altitude since manufacturers must certify vehicles to the high-altitude standards in order to sell them at low altitude. Once resources for certification are expended, manufacturers are likely to sell such vehicles at high altitude to recover their investment. Also, by allowing vehicles to be modified from their low-altitude configurations to comply with the standards at high altitude, the cost of these regulations to the nation is minimized since high-altitude emission control hardware is required only on those vehicles sold in high-altitude areas. However, the regulations generally restrict any such modifications to engine operating parameters, such as the air/fuel ratio of the carburator, so that the vehicle modifications are not excessively expensive.

These provisions, in most cases, result in two different versions of the same model being sold in various parts of the nation: a low-altitude version and a high-altitude version. This requires that certain areas be designated as "high-altitude" areas and that low-altitude vehicles be prohibited from being sold there. The criteria used to designate high-altitude counties up to this time have focused solely on the altitude of the county; specifically whether 75 percent or more of both the land area and population residence were above 4,000 feet (45 FR 14079). The criteria did not address each county's need for the emmission reductions resulting from the program since: (1) the cost of the program was expected to be small and would actually improve vehicle fuel economy, and (2) no adverse comments were received when the criteria were proposed.

In a petition to the Administrator dated April 6, 1982, the Arizona Congressional Delegation requested that EPA amend its criteria for designating certain locations as "high-altitude" areas. In that petition, the delegation stated that the five Arizona counties currently obligated to comply with EPA's high-altitude regulations have no record of violation of the NAAQS for CO or ozone. They further commented that high-altitude regulations were designed to alleviate problems in metropolitan areas such as Denver and Salt Lake City. Therefore, they recommended that areas without automobile-related air quality problems be eliminated from the present high-altitude regulations. After careful consideration of their request, the Agency agreed with the delegation's basic premise that Section 202(f)(3) of the Act specifically requires the Administrator to consider the air quality effects of high-altitude regulations on any area in which such regulations apply. (This requirement is discussed in greater detail in Section IX of this Preamble.) As a result, EPA committed to proposed new criteria for the designation of high-altitude areas. A Notice of Proposed Rulemaking (NPRM) containing the revised criteria was published in the Federal Register on November 11, 1982 (47 FR 50929).

C. 1984 and Later LDT High-Altitude Program

The high-altitude program for 1984 and later model year LDTs, which was published in the **Federal Register** on January 12, 1983 (48 FR 1418), follows the same approach as that described above for the 1982–83 program. These LDT standards were also promulgated under EPA's general rulemaking authority contained in Section 202(a). Therefore, any revision to the designation of high-altitude counties will affect the sale of high-altitude LDTs well into the future.

D. 1984 and Later LDV High-Altitude Program

As discussed earlier, the NPRM applied only to 1983 LDVs and 1983 and later LDTs. It did not apply to 1984 and later LDVs, because these are subject to Section 206(f) of the Act, which requires that each 1984 and later LDV meet the same emission standards at both high and low altitudes. This approach eliminates the need to designate high-altitude areas, except in certain cases when low-power, high fuel economy vehicles are exempted from the "all-altitude" requirement. These exempted vehicles only meet emission standards at low altitude and cannot be sold in high-altitude areas. Therefore, the designation of high-altitude locations is also an issue for 1984 and later model year LDVs.

The Agency is addressing the issue of designating high-altitude locations where exempted vehicles could not be sold in the all-altitude rulemakings for 1984 and later LDVs (48 FR 7392 and 48 FR 7399). Presently, two possible interpretations of Section 206(f) have been identified regarding this issue. Under a narrow reading of this section, high-altitude areas could be defined only on the basis of altitude. This interpretation would result in retaining the original list of designated counties for 1984 and later LDVs. Second, a less restrictive interpretation has been suggested by some commenters that would allow the consideration of air quality need in designating high-altitude locations for these vehicles. This interpretation would permit EPA to adopt, for 1984 and later LDVs, the revised list of designated counties which is being promulgated in this final rule for 1983 LDVs.

As alluded to above, the Agency will publish a decision on this issue as part of all-altitude rulemaking actions for 1984 and later LDVs.

II. Description of the Redesignation NPRM

A. Issues

In the proposal, EPA identified the two most important issues affecting the designation of high-altitude counties as: (1) Whether the emission reductions of EPA's high-altitude program are needed to attain and maintain adequate air quality within a particular area, and (2) whether an area with clean air should be included in the program to attain adequate air quality elsewhere.

The Agency addressed the first question by identifying the high-altitude counties which will be in compliance with the NAAQS for CO and ozone by the 1982 statutory deadline. Regarding the maintenance of clean air in these counties, EPA found that newer vehicles, regardless of whether or not their emissions at high altitude are specifically controlled, will emit less than the vehicles they replace. Also, stationary source contributions to CO and ozone levels in the atmosphere are not expected to be a problem. Thus, continued attainment in the future should be assured. Those high-altitude counties currently out of compliance are sufficiently out of compliance that they clearly should be retained in the program.

The second question regarding whether an area should be included in the high-altitude program to attain clean air elsewhere is more difficult to address. The primary concern here is that high-altitude residents from a county with an air quality problem might purchase vehicles in another county that is in compliance with the NAAQS and, hence, is excluded from the program. This practice may result in a significant number of higher emitting (low-altitude) vehicles being driven primarily in an area with poor air qualtiy, exacerbating an already difficult situation.

B. Alternatives Considered

The Agency identified two alternative designation criteria in the NPRM. The first alternative would exclude all of the high-altitude counties in a state when no such county in that state was in violation of the NAAQS for CO and ozone (state-line option). This approach would exclude all of the current high-altitude counties in seven states: Idaho, Montana, Nebraska, Oregon, Texas, Arizona, and Wyoming. The second alternative would exclude these counties and, in addition, those counties in the remaining four states (Colorado, Nevada, New Mexico, and Utah) which were sufficiently distant from violating cities (state-line and distance option). The difference between the two alternative approaches is that the state-line and distance option would exclude additional high-altitude counties in the four states with air quality violations on the basis that counties sufficiently distant have no effect on the violation areas.

This state-line and distant option has the advantage that it would exclude additional counties from the high-altitude program that might not need the emission control provided. One disadvantage of this option is that it would be difficult to define a sufficient distance that did not appear somewhat arbitrary. A second disadvantage is that the exclusion of the additional counties could reduce the market for vehicles with high-altitude configurations by up to 50 percent from present levels, as opposed to 20 percent for the state-line option. A reduction of this size could reduce model availability adversely and increase the cost of the program in the remaining areas significantly.

In the NPRM, EPA proposed the state-line option which would exclude all of the present high-altitude counties in the seven states, because the disadvantages of the state-line and distance option appeared to outweigh its advantages. However, EPA request comment on the state-line and distance option as well.

III. Public Participation and Issues Affecting the Rule

A number of organizations participated in the public comment period following the NPRM. Written comments were submitted by 15 parties. Oral comments were presented by nine representatives of organizations at a public hearing held in Denver, Colorado on January 11, 1983. Of all the organizations that submitted written and oral comments, seven were state automobile dealer associations, five were owners of high-altitude automobile dealerships, four were automobile manufacturers, and two were state environmental agencies. In addition, comments were received from a Congressman and an individual.

Generally, most commenters overwhelmingly supported the need to revise the high-altitude designation criteria so that some counties without air quality problems would be excluded from the high-altitude regulations. However, only a few comments specifically addressed whether the state-line and distance option would be an improvement over the proposed state-line option. One commenter did state that the state-line and distance option would eliminate several more counties, but would also significantly

restrict the market for some high-altitude dealerships. Therefore, this commenter preferred the state-line option.

Although other commenters did not directly address their preference for the two options, they did state that model availability problems and cost increases should be kept to a minimum. As indicated in the proposal, EPA expects that the state-line option would reduce the market for high-altitude vehicles by only 20 percent (as opposed to up to 50 percent under the state-line and distance option), and therefore, would have the smaller effect on model availability and unit cost.

Consequently, EPA concludes that the proposed state-line option is still preferable to the state-line and distance option. The state-line option provides a substantial reduction in the number of counties required to sell high-altitude vehicles, without greatly affecting model availability or cost for those areas remaining in the program. In addition, this option received no adverse comments during the public comment period. However, some commenters did express concern about the overall effect of redesignation on model availability, cost, and other issues. These comments will be addressed below in the discussions of the various aspects and impacts of this action.

IV. Contents of this Final Rule

Based on the preceding analysis, the Agency is adopting the "state-line" designation criteria as originally proposed. These new criteria exclude from EPA's high-altitude program the sale of 1983 LDVs and LDTs and 1984 and later LDTs for the counties currently designated in seven states: Arizona, Idaho, Montana, Nebraska, Oregon, Texas, and Wyoming. These states do not have any high-altitude counties which are in violation of the NAAQS for CO and ozone. The four remaining states, Colorado, Nevada, New Mexico, and Utah, all have a number of high-altitude areas in violation of these standards.

V. Implementation and Leadtime

EPA plans to effect the revised designation criteria 30 days subsequent to the publication of this final rulemaking in order to realize its benefits as soon as possible in the 1983 model year. This expeditious implementation should not have any adverse impacts since the final rulemaking action does not impose any added restrictions, but only grants additional flexibility. Specifically, while auto dealers in the exempted counties would be able to sell low-altitude vehicles, they would still be allowed to sell high-altitude vehicles. If manufacturers were committed to the production of a fixed number of 1983 high-altitude configurations, these vehicles could still be marketed and no adverse impact should occur. All of these comments received which addressed this area recommended adoption of the revised designation criteria as soon as possible.

VI. Model Availability

EPA does not expect that model availability in the remaining four high-altitude states will be affected by this action, because only 20 percent of current high-altitude sales will be affected. Some comments from dealer associations disagreed with this, saying that the smaller number of counties in which to market high-altitude vehicles would cause manufacturers to limit production of certain vehicle models. However, General Motors (GM) and Chrysler clearly stated that the redesignation should not affect the availability of high-altitude vehicles from the factory. GM explained that the smaller geographical area defined by the redesignation would actually simplify its distribution situation, and the demand for high-altitude vehicles would not be significantly different, since most of the sales occur in the densely populated locations remaining in the program. Also, according to the National Automobile Dealers Association, other manufacturers do not expect to limit production because of the redesignation.

Another concern in this area raised by commenters was that dealer trades at high altitude could be severely limited. EPA does not expect this to occur. Dealer trades with low-altitude dealers should be essentially unaffected because all vehicles must meet or be capable of being modified to meet high-altitude standards, unless they are exempted from certification at high altitude. The redesignation of counties does not change this current requirement. Dealer trades with other high-altitude dealers should also not be affected because all of the current high-altitude counties in that state will remain in the program, including at least one large metropolitan area, thus providing an ample number of other high-altitude dealers with which to trade.

VII. Economic Impact

The Agency expects this proposed action to produce a small net savings for the nation of approximately $700,000 per year. Fewer high-altitude vehicles (approximately 50,000–60,000 vehicles per year) will be sold and the additional cost of high-altitude modifications for these vehicles (approximately $23 per vehicle on the average) will be avoided. At the same time, the cost for the remaining high-altitude vehicles (200,000–250,000 vehicles per year) could increase somewhat (at most $2–3 per vehicle).

Some commenters expressed concern that the remaining high-altitude vehicles would experience an increase in price because fixed costs would be spread over fewer vehicles. However, the reduction of high-altitude vehicle sales is expected to be only 20 percent, and this reduction should not increase allocated fixed costs more than the $2–3 per vehicle mentioned above. Even with this increase, the high-altitude program in the remaining areas will still be cost effective. Also, if a manufacturer chooses to spread the costs over the entire national fleet, which has occured in some instances, the allocated cost per vehicle would not change and vehicle prices would not increase at all. Therefore, any adverse economic impact in the remaining areas will be small and should be more than offset by the savings in the excluded areas.

VIII. Environmental Impact

The Agency expects no significant adverse environmental impact to result from this action. The two state environmental agencies (Arizona and Oregon) that submitted comments on the proposal also agreed that no air quality problems would result from this rulemaking. CO and HC emissions may increase somewhat in the excluded areas over that which would have occured without the revision. However, as alluded to previously, the ambient concentrations of CO and ozone in these areas are already below the NAAQS for these pollutants and further emission reductions are not needed. Also, the CO and HC emissions of the 1983 and later model year low-altitude vehicles which would be sold under this action are still lower than those of the older vehicles being replaced. Thus, EPA expects that air quality in the excluded areas will still improve in the future even without the benefit of EPA's high-altitude program.

A few commenters also stated that if an excluded county does violate the auto-related NAAQS in the future, provisions should be made to include such counties as "designated high-altitude counties." EPA does not expect that this situation will occur. However, in the unlikely event that an excluded county does violate the NAAQS in the future, then EPA will take action at that time to include that county in the high-

altitude program if such action is warranted.

IX. Authority

Statutory authority for this regulation is provided by Sections 202 and 301(a) of the Clean Air Act (42 U.S.C. 7521 and 7601). This action is also in accordance with the guidelines for establishing high-altitude regulations provided in Section 202(f)(3) of the Clean Air Act. Specifically, the Administrator is required to consider and make a finding with respect to several factors, including "the likelihood that the adoption of such a high-altitude regulation will result in any significant improvement in air quality in any area to which it shall apply."

Congress, therefore, intended that EPA consider the effects of high-altitude regulations on areas in which those regulations would apply. As discussed above, the regulations would not have any significant effect vis-a-vis the NAAQS in the counties which would be excluded from the high-altitude regulations. Even without high-altitude regulations, these counties should continue to experience reductions in vehicle-related pollutants.

Judicial Review: Under Section 307(b)(1) of the Act, EPA hereby finds that these regulations are of national applicability. Accordingly, judicial review of this action is available only by the filing of a petition for review in the United States Court of Appeals for the District of Columbia Circuit within 60 days of publication. Under Section 307(b)(2) of the Act, the requirements which are the subject of today's notice may not be challenged later in judicial proceedings brought by EPA to enforce these requirements.

Administrative Designation: Under Executive Order 12291 EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because it involves no negative cost impacts and has no significant adverse effect on competition, productivity, investment, employment, or innovation.

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291. Any comments from OMB to EPA and any EPA response to those comments are available for public inspection in the docket cited at the beginning of this preamble.

Effect on Small Entities: Section 605 of the Regulatory Flexibility Act requires that the Administrator certify that these regulations do not have a significant impact on a substantial number of small entities. I certify that this regulation does not have any significant impact on small entities.

The small entities affected by this action are the passenger car and LDT dealers located in high-altitude counties. These dealers could be either positively or negatively affected in terms of model availability, availability of dealer trades, and sales due to emission control costs.

As indicated above in the discussions of model availability (Section VI) and economic impacts (Section VII), those dealers in areas which will be excluded from EPA's high-altitude program will be positively affected by this action. Model availability will improve, since low-altitude vehicles will be available, sales may improve due to the removal of high-altitude emission controls ($23 per vehicle), and the ability to trade between dealers will improve due to an increased number of dealers being available for trading. While none of these effects will be large, since the negative aspects of the high-altitude program were not large to begin with, they will be positive, nonetheless. All comments received on this issue supported this.

Also as discussed earlier, there could be negative effects on the high-altitude dealers in the remaining four states. However, these effects should be almost imperceptible. Manufacturers have stated that they will not reduce the number of high-altitude models available due to this action. While the cost of these dealers' vehicles could increase $2–3 each, this should not affect sales. Also, the great majority of the original high-altitude dealers available for trading will still be available. Some commenters representing dealers from these areas expressed general concerns about these effects, but still generally supported the revised designation criteria. One of these commenters went further to state that the negative effects of redesignation on model availability, cost, and dealer trading would be very small and probably not affect dealer sales at all. Therefore, based on both EPA's own analysis and the comments on the proposal, any negative impacts on the high-altitude dealers should not be significant.

Impacts of Reporting Requirements: This rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 86

Administrative practice and procedure, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: August 18, 1983.

William D. Ruckelshaus,

Administrator.

PART 86—[AMENDED]

For the reasons set forth in the Preamble, Part 86 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

1. Section 86.083–30 is added as set forth below. (The only difference between this section and § 86.082–30 is the amendment of paragraph (a)(5)).

§ 86.083–30 Certification.

(a)(1) If, after a review of the test reports and data submitted by the manufacturer, data derived from any inspection carried out under § 86.078–7(c), and any other pertinent data or information, the Administrator determines that a test vehicle(s) or test engine(s) meet(s) the requirements of the Act and of this subpart, he will issue a certificate of conformity with respect to such vehicle(s) or engine(s) except in cases covered by paragraph (c) of this section.

(i) Each certificate of conformity shall state the altitude(s) at which the vehicle(s) covered by the certificate has demonstrated compliance with the applicable emission standards.

(ii) [Reserved]

(2) Such certificate will be issued for such period not to exceed one model year as the Administrator may determine and upon such terms as he may deem necessary to assure that any new motor vehicle (or new motor vehicle engine) covered by the certificate will meet the requirements of the Act and of this part.

(3) One such certificate will be issued for each engine family. For gasoline-fueled light-duty vehicles and light-duty trucks, one such certificate will be issued for each engine family-evaporative emission family combination. Each certificate will certify compliance with no more that one set of standards except for low-altitude standards and high-altitude standards. The certificate shall cover vehicles sold or delivered to an ultimate purchaser for principal use at a designated high-altitude location only if the vehicle conforms in all material respects to the design specification that applied to those vehicles described in the application for certification at high altitude.

(4) The adjustment or modification of any light-duty vehicle or light-duty truck in accordance with instructions provided by the manufacturer as approved by EPA for the altitude where

the vehicle is principally used will not be considered a violation of Section 203(a)(3) of the Clean Air Act. A violation of Section 203(a)(1) of the Clean Air Act occurs when any manufacturer sells or delivers to an ultimate purchaser, any light-duty vehicle or light-duty truck, subject to the regulations under the Act which is not configured to meet high-altitude requirements:

(i) At a designated high-altitude location, unless such manufacturer has substantial reason to believe that such motor vehicle will not be used principally at a designated high-altitude location; or

(ii) At an other-than-designated high-altitude location, when such manufacturer has reason to believe that such motor vehicle will be used principally at a designated high-altitude location.

(5)(i) For the purpose of paragraph (a) of this section, a "designated high-altitude location" is any county which has substantially all of its area located above 1,219 meters (4,000 feet) and:

(A) Requested an extension past the attainment date of December 31, 1982, for compliance with either the National Ambient Air Quality Standards for carbon monoxide or ozone, as indicated in Part 52 (Approval and Promulgation of Implementation Plans) of this title; or

(B) Is in the same state as a county designated as a high-altitude location according to paragraph (a)(5)(i)(A) of this section.

(ii) The designated high-altitude locations defined in paragraph (a)(5)(i) are listed below:

Designated High-Altitude Locations (Counties)

State of Colorado

Adams	Kit Carson
Alamosa	Lake
Arapahoe	La Plata
Archuleta	Larimer
Boulder	Las Animas
Chaffee	Lincoln
Cheyenne	Mesa
Clear Creek	Mineral
Conejos	Moffat
Costilla	Montezuma
Crowley	Montrose
Custer	Morgan
Delta	Otero
Denver	Ouray
Dolores	Park
Douglas	Pitkin
Eagle	Pueblo
Elbert	Rio Blanco
El Paso	Rio Grande
Fremont	Routt
Garfield	Saguache
Gilpin	San Juan
Grand	San Miguel
Gunnison	Summit
Hinsdale	Teller
Huerfano	Washington
Jackson	Weld
Jefferson	

State of Nevada

Carson City	Lyon
Douglas	Mineral
Elko	Nye
Esmeralda	Pershing
Eureka	Storey
Humboldt	Washoe
Lander	White Pine
Lincoln	

State of New Mexico

Bernalillo	Mora
Catron	Rio Arriba
Colfax	Roosevelt
Curry	Sandoval
De Baca	San Juan
Grant	San Miguel
Guadalupe	Santa Fe
Harding	Sierra
Hidalgo	Socorro
Lincoln	Taos
Los Alamos	Torrance
Luna	Union
McKinley	Valencia
Otero	

State of Utah

Beaver	Morgan
Box Elder	Piute
Cache	Rich
Carbon	Salt Lake
Daggett	San Juan
Davis	Sanpete
Duchesne	Sevier
Emery	Summit
Garfield	Tooele
Grand	Uintah
Iron	Utah
Juab	Wasatch
Kane	Wayne
Millard	Weber

(6) The provisions of paragraph (a)(4) of this section shall not apply to any light-duty vehicle or light-duty truck sold, offered for sale, introduced, or delivered for introduction into commerce in California provided that the vehicle is covered by a certificate of conformity with emission standards in effect in California.

(7) Catalyst-equipped vehicles, otherwise covered by a certificate, which are driven outside the United States, Canada, and Mexico will be presumed to have been operated on leaded gasoline resulting in deactivation of the catalysts. If these vehicles are imported or offered for the importation without retrofit of the catalyst, they will be considered not to be within the coverage of the certificate unless included in a catalyst control program operated by a manufacturer or a United States Government Agency and approved by the Administrator.

(8) For incomplete light-duty trucks, a certificate covers only those new motor vehicles which, when completed by having the primary load-carrying device or container attached, conform to the maximum curb weight and frontal area limitations described in the application for certification as required in § 86.082-21(d).

(9) For heavy-duty engines, a certificate covers only those new motor vehicle engines installed in heavy-duty vehicles which conform to the minimum gross vehicle weight rating, curb weight, or frontal area limitations for heavy-duty vehicles described in § 86.082-2.

(b)(1) The Administrator will determine whether a vehicle (or engine) covered by the application complies with applicable standards by observing the following relationships:

(i) Light-duty vehicles and light-duty trucks. (A) The durability-data vehicle(s) selected under § 86.082-24(c)(1)(i) shall represent all vehicles of the same engine-system combination.

(B) The emission-data vehicle(s) selected under § 86.082-24 (b)(1)(ii) through (b)(1)(v) shall represent all vehicles of the same engine-system combination as applicable.

(C) The emission-data vehicle(s) selected under § 86.082-24(b)(1)(vii) shall represent all vehicles of the same evaporative control system within the evaporative emission family, as applicable.

(D) The emission-data vehicle(s) selected under § 86.082-24(b)(1)(v) shall represent all vehicles of the same engine-system combination to be sold at high altitude.

(E) The emission-data vehicle(s) selected under § 86.082-24(b)(1)(vii)(D) shall represent all vehicles of the same evaporative control system within the evaporative family sold at high altitude.

(ii)(A) Gasoline-fueled heavy-duty engines. A test engine selected under § 86.082-24(b)(2) (ii) and (iv) shall represent all engines in the same engine family of the same engine displacement-exhaust emission control system combination.

(B) A test engine selected under § 86.082-24(b)(2)(iii) shall represent all engines in the same engine family of the same engine displacement-exhaust emission control system combination.

(C) A test engine selected under § 86.082-24(c)(2)(i) shall represent all engines of the same engine-system combination.

(iii)(A) Diesel heavy-duty engines. A test engine selected under § 86.082-24(b)(3)(ii) shall represent all engines in the same engine-system combination.

(B) A test engine selected under § 86.082-24(b)(3)(iii) shall represent all engines of that emission control system at the rated fuel delivery of the test engines.

(C) A test engine selected under § 86.082-24(c)(3)(i) shall represent all engines of the same engine-system combination.

(2) The Administrator will proceed as in paragraph (a) of this section with respect to the vehicles (or engines) belonging to an engine family or engine family-evaporative emission family combination (as applicable), all of which comply with all applicable standards.

(3) If, after a review of the test reports and data submitted by the manufacturer, data derived from any additional testing conducted pursuant to § 86.079–29, data or information derived from any inspection carried out under § 86.078–7(c) or any other pertinent data or information, the Administrator determines that one or more test vehicles (or test engines) of the certification test fleet do not meet applicable standards, he will notify the manufacturer in writing, setting forth the basis for his determination. Within 30 days following receipt of the notification, the manufacturer may request a hearing on the Administrator's determination. The request shall be in writing, signed by an authorized representative of the manufacturer and shall include a statement specifying the manufacturer's objections. If, after a review of the request and supporting data, the Administrator finds that the request raises a substantial factual issue, he shall provide the manufacturer a hearing in accordance with § 86.078–6 with respect to such issue.

(4) For light-duty vehicles and light-duty trucks the manufacturer may, at his option, proceed with any of the following alternatives with respect to an emission-data vehicle determined not in compliance with all applicable standards for which it was tested:

(i) Request a hearing under § 86.078–6; or

(ii) Remove the vehicle configuration (or evaporative vehicle configuration, as applicable) which failed, from his application;

(A) If the failed vehicle was tested for compliance with exhaust emission standards only: The Administrator may select, in place of the failed vehicle, in accordance with the selection criteria employed in selecting the failed vehicle, a new emission-data vehicle to be tested for exhaust emission compliance only.

(B) If the failed vehicle was tested for compliance with both exhaust and evaporative emission standards: The Administrator may select, in place of the failed vehicle, in accordance with the selection criteria employed in selecting the failed vehicle, a new emission-data vehicle which will be tested for compliance with both exhaust and evaporative emission standards. If one vehicle cannot be selected in accordance with the selection criteria employed in selecting the failed vehicle, then two vehicles may be selected (i.e., one vehicle to satisfy the exhaust emission vehicle selection criteria and one vehicle to satisfy the evaporative emission vehicle selection criteria). The vehicle selected to satisfy the exhaust emission vehicle selection criteria will be tested for compliance with exhaust emission standards only. The vehicle selected to satisfy the evaporative emission vehicle selection criteria will be tested for compliance with both exhaust and evaporative emission standards; or

(iii) Remove the vehicle configuration (or evaporative vehicle configuration, as applicable) which failed from the application and add a vehicle configuration(s) (or evaporative vehicle configuration(s), as applicable) not previously listed. The Administrator may require, if applicable, that the failed vehicle be modified to the new engine code (or evaporative emission code, as applicable) and demonstrate by testing that it meets applicable standards for which it was originally tested. In addition, the Administrator may select, in accordance with the vehicle selection criteria given, in § 865.082–24(b), a new emission-data vehicle or vehicles. The vehicles selected to satisfy the exhaust emission vehicle selection criteria will be tested for compliance with exhaust emission standards only. The vehicles selected to satisfy the evaporative emission vehicle selection criteria will be tested for compliance with both exhaust and evaporative emission standards; or

(iv) Correct a component or system malfunction and show that with a correctly functioning system or component the failed vehicle meets applicable standards for which it was originally tested. The Administrator may require a new emission-data vehicle, of identical configuration (or evaporative vehicle configuration, as applicable) to the failed vehicle, to be operated and tested for compliance with the applicable standards for which the failed vehicle was originally tested.

(5) For heavy-duty engines the manufacturer may, at his option, proceed with any of the following alternatives with respect to any engine family represented by a test engine(s) determined not in compliance with applicable standards:

(i) Request a hearing under § 86.078–6; or

(ii) Delete from the application for certification the engines represented by the failing test engine. (Engines so deleted may be included in a later request for certification under § 86.079–32). The Administrator may then select in place of each failing engine an alternate engine chosen in accordance with selection criteria employed in selecting the engine that failed; or

(iii) Modify the test engine and demonstrate by testing that it meets applicable standards. Another engine, which is in all material respects the same as the first engine, as modified, may then be operated and tested in accordance with applicable test procedures.

(6) If the manufacturer does not request a hearing or present the required data under paragraphs (b)(4) or (b)(5) (as applicable) of this section, the Administrator will deny certification.

(c)(1) Notwithstanding the fact that any certification vehicle(s) (or certification engine(s)) may comply with other provisions of this subpart, the Administrator may withhold or deny the issuance of a certificate of conformity (or suspend or revoke any such certificate which has been issued) with respect to any such vehicle(s) (or engine(s) if:

(i) The manufacturer submits false or incomplete information in his application for certification thereof;

(ii) The manufacturer renders inaccurate any test data which he submits pertaining thereto or otherwise circumvents the intent of the Act, or of this part with respect to such vehicle (or engine);

(iii) Any EPA Enforcement Officer is denied access on the terms specified in § 86.078–7(c) to any facility or portion thereof which contains any of the following:

(A) The vehicle (or engine);

(B) Any components used or considered for use in its modification or buildup into a certification vehicle (or certification engine);

(C) Any production vehicle (or production engine) which is or will be claimed by the manufacturer to be covered by the certificate;

(D) Any step in the construction of a vehicle (or engine) described in paragraph (c)(1)(iii)(C) of this section;

(E) Any records, documents, reports, or histories required by this part to be kept concerning any of the above;

(iv) Any EPA Enforcement Officer is denied "reasonable assistance" (as defined in § 86.078–7(c)) in examining any of the items listed in paragraph (c)(1)(iii) of this section.

(2) The sanctions of withholding, denying, revoking, or suspending of a certificate may be imposed for the reasons in paragraph (c)(1) (i), (ii), (iii), or (iv) of this section only when the infraction is substantial.

(3) In any case in which a manufacturer knowingly submits false

or inaccurate information or knowingly renders inaccurate or invalid any test data or commits any other fraudulent acts and such acts contribute substantially to the Administrator's decision to issue a certificate of conformity, the Administrator may deem such certificate void ab initio.

(4) In any case in which certification of a vehicle (or engine) is proposed to be withheld, denied, revoked, or suspended under paragraph (c)(1)(iii) or (c)(1)(iv) of this section, and in which the Administrator has presented to the manfacturer involved reasonable evidence that a violation of §-86.078–7(c) in fact occurred, the manufacturer, if he wishes to contend that, even though the violation occurred, the vehicle (or engine) in question was not involved in the violation to a degree that would warrant withholding denial, revocation, or suspension of certification under either paragraph (c)(1)(iii) or (c)(1)(iv) of this section, shall have the burden of establishing that contention to the satisfaction of the Administrator.

(5) Any revocation or suspension of certification under paragraph (c)(1) of this section shall:

(i) Be made only after the manufacturer concerned has been offered an opportunity for a hearing conducted in accordance with § 86.078–6 hereof.

(ii) Extend no further than to forbid the introduction into commerce of vehicles (or engines) previously covered by the certification which are still in the hands of the manufacturer, except in cases of such fraud or other misconduct as makes the certification invalid ab initio.

(6) The manufacturer may request in the form and manner specified in paragraph (b)(3) of this section that any determination made by the Administrator under paragraph (c)(1) of this section to withhold or deny certification be reviewed in a hearing conducted in accordance with § 86.078–6. If the Administrator finds, after a review of the request and supporting data, that the request raises a substantial factual issue, he will grant the request with respect to such issue.

(d)(1) Notwithstanding the fact that any vehicle configuration or engine family may be covered by a valid outstanding certificate of conformity, the Administrator may suspend such outstanding certificate of conformity in whole or in part with respect to such vehicle configuration or engine family if:

(i) The manufacturer refuses to comply with the provisions of a test order issued by the Administrator pursuant to § 86.603; or

(ii) The manufacturer refuses to comply with any of the requirements of § 86.603; or

(iii) The manufacturer submits false or incomplete information in any report of infirmation provided pursuant to the requirement of § 86.609; or

(iv) The manufacturer renders inaccurate any test data which he submits pursuant to the requirements of § 86.609; or

(v) Any EPA Enforcement Officer is denied access to a facility on the terms specified in § 86.606; or

(vi) Any EPA Enforcement Officer is denied the opportunity on the terms specified in § 86.606, to:

(A) Monitor vehicle selection pursuant to § 86.607, or

(B) Select vehicles for testing pursuant to § 86.607, or

(C) Monitor vehicle testing performed to satisfy any of the requirements of this part, or

(vii) Any EPA Enforcement Officer is denied "reasonable assistance" as defined in § 86.606 in examining any of the items listed in that section; or

(viii) The manufacturer refuses to comply with the requirements of §§ 86.604(a), 86.605, and 86.607, 86.608, 86.610, or 86.611.

(2) The sanction of suspending a certificate may not be imposed for the reasons in paragraphs (d)(1) (i), (ii), or (viii) of this section where such refusal is caused by conditions and circumstances outside the control of the manufacturer which renders it impossible to comply with those requirements. Such conditions and circumstances shall include, but not be limited to, any uncontrollable factors which result in the temporary unavailability of equipment and personnel needed to conduct the required tests, such as equipment breakdown or failure or illness of personnel, but shall not include failure of the manufacturer to adquately plan for and provide the equipment and personnel needed to conduct the tests. The manufacturer will bear the burden of establishing the presence of the conditions and circumstances required by this paragraph.

(3) The sanctions of suspending a certificate may be imposed for the reasons in paragraphs (d)(1) (iii), (iv), (v), (vi), or (vii) of this section only when the infraction is substantial.

(4) In any case in which a manufacturer knowingly submitted false or inaccurate information or knowingly rendered inaccurate any test data or committed any other fraudulent acts, and such acts contributed substantially to the Administrator's original decision not to suspend or revoke a certificate of conformity in whole or in part, the Administrator may deem such certificate void from the date of such fraudulent act.

(5) In any case in which certification of a vehicle is proposed to be suspended under paragraph (d)(1)(v), (d)(1)(vi), or (d)(1)(vii) of this section, and in which the Administrator has presented to the manufacturer involved reasonable evidence that a violation of § 86.606 in fact occurred, the manufacturer, if he wishes to contend that even though the violation occurred, the vehicle configuration or engine family in question was not involved in the violation to the degree that would warrant suspension of certification under either paragraph (d)(1)(v), (d)(1)(vi), or (d)(1)(vii) of this section, shall have the burden of establishing that contention to the satisfaction of the Administrator.

(6) Any suspension of certification under paragraph (d)(1) of this section shall:

(i) Be made only after the manufacturer concerned has been offered an opportunity for a hearing conducted in accordance with § 86.613 hereof, and

(ii) Not apply to vehicles no longer in the hands of the manufacturer.

2. Section 86.084–30 is amended by revising paragraph (a)(5) as follows:

§ 86.084–30 Certification.

(a) * * *

(5)(i) For the purpose of paragraph (a) of this section, a "designated high-altitude location" is any county which has substantially all of its area located above 1,219 meters (4,000 feet) and:

(A) Requested an extension past the attainment date of December 31, 1982, for compliance with either the National Ambient Air Quality Standards for carbon monoxide or ozone, as indicated in Part 52 (Approval and Promulgation of Implementation Plans) of this title; or

(B) Is in the same state as a county designated as a high-altitude location according to paragraph (a)(5)(i)(A) of this section.

(ii) The designated high-altitude locations defined in paragraph (a)(5)(i) of this section are listed below:

Designated High-Altitude Locations (counties) for Light-Duty Trucks

State of Colorado

Adams	Costilla
Alamosa	Crowley
Arapahoe	Custer
Archuleta	Delta
Boulder	Denver
Chaffee	Dolores
Cheyenne	Douglas
Clear Creek	Eagle
Conejos	Elbert

El Paso	Montezuma
Fremont	Montrose
Garfield	Morgan
Gilpin	Otero
Grand	Ouray
Gunnison	Park
Hinsdale	Pitkin
Huerfano	Pueblo
Jackson	Rio Blanco
Jefferson	Rio Grande
Kit Carson	Routt
Lake	Saguache
La Plata	San Juan
Larimer	San Miguel
Las Animas	Summit
Lincoln	Teller
Mesa	Washington
Mineral	Weld
Moffat	

State of Nevada

Carson City	Lyon
Douglas	Mineral
Elko	Nye
Esmeralda	Pershing
Eureka	Storey
Humboldt	Washoe
Lander	White Pine
Lincoln	

State of New Mexico

Bernalillo	Mora
Catron	Rio Arriba
Colfax	Roosevelt
Curry	Sandoval
De Baca	San Juan
Grant	San Miguel
Guadalupe	Santa Fe
Harding	Sierra
Hidalgo	Socorro
Lincoln	Taos
Los Alamos	Torrance
Luna	Union
McKinley	Valencia
Otero	

State of Utah

Beaver	Morgan
Box Elder	Piute
Cache	Rich
Carbon	Salt Lake
Daggett	San Juan
Davis	Sanpete
Duchesne	Sevier
Emery	Summit
Garfield	Tooele
Grand	Uintah
Iron	Utah
Juab	Wasatch
Kane	Wayne
Millard	Weber

* * * * *

3. Section 86.085–30 is amended by revising paragraph (a)(5) as follows:

§ 86.085–30 Certification.

(a) * * *

(5)(i) For the purpose of paragraph (a) of this section, a "designated high-altitude location" is any county which has substantially all of its area located above 1,219 meters (4,000 feet) and:

(A) Requested an extension past the attainment date of December 31, 1982, for compliance with either the National Ambient Air Quality Standards for carbon monoxide or ozone, as indicated in Part 52 (Approval and Promulgation of Implemention Plans) of this title; or

(B) Is in the same state as a county designated as a high-altitude location according to paragraph (a)(5)(i)(A) of this section.

(ii) The designated high-altitude locations defined in paragraph (a)(5)(i) of this section are listed below:

Designated High-Altitude Locations (counties) for Light-Duty Trucks

State of Colorado

Adams	Kit Carson
Alamosa	Lake
Arapahoe	La Plata
Archuleta	Larimer
Boulder	Las Animas
Chaffee	Lincoln
Cheyenne	Mesa
Clear Creek	Mineral
Conejos	Moffat
Costilla	Montezuma
Crowley	Montrose
Custer	Morgan
Delta	Otero
Denver	Ouray
Dolores	Park
Douglas	Pitkin
Eagle	Pueblo
Elbert	Rio Blanco
El Paso	Rio Grande
Fremont	Routt
Garfield	Saguache
Gilpin	San Juan
Grand	San Miguel
Gunnison	Summit
Hinsdale	Teller
Huerfano	Washington
Jackson	Weld
Jefferson	

State of Nevada

Carson City	Lyon
Douglas	Mineral
Elko	Nye
Esmeralda	Pershing
Eureka	Storey
Humboldt	Washoe
Lander	White Pine
Lincoln	

State of New Mexico

Bernalillo	Otero
Catron	Rio Arriba
Colfax	Roosevelt
Curry	Sandoval
De Baca	San Juan
Grant	San Miguel
Guadalupe	Santa Fe
Harding	Sierra
Hidalgo	Socorro
Lincoln	Taos
Los Alamos	Torrance
Luna	Union
McKinley	Valencia
Mora	

State of Utah

Beaver	Juab
Box Elder	Kane
Cache	Millard
Carbon	Morgan
Daggett	Piute
Davis	Rich
Duchesne	Salt Lake
Emery	San Juan
Garfield	Sanpete
Grand	Sevier
Iron	Summit
Tooele	Wasatch
Uintah	Wayne
Utah	Weber

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(42 U.S.C. 7521 and 7601)

[FR Doc. 83-24620 Filed 9-13-83; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 86

[AMS-FRL-2354-7]

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; High-Altitude Emission Standards for 1982 and Later Model Year Motor Vehicles

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action amends §§ 86.082–30(a)(4), 86.084–30(a)(4) and 86.085–30(a)(4), and creates § 86.083–30 of the Environmental Protection Agency's regulations for vehicles sold in high-altitude areas, found in 40 CFR Part 86, Subpart A. These changes establish steps a manufacturer may take which, if taken, would assure the manufacturer that it would be in compliance with certain regulatory requirements regarding the sale and delivery of such vehicles. The result of manufacturers taking these steps should be that significant numbers of motor vehicles sold to ultimate purchasers for principal use at high-altitude are configured to meet high-altitude emission standards.

DATES: These changes are effective October 14, 1983.

ADDRESSES: Copies of the material relevant to this rulemaking are contained in Public Docket No. EN–82–04 at the U.S. Environmental Protection Agency, Central Docket Section (A–130), West Tower Lobby, Gallery I, 401 M Street, SW., Washington, D.C. 20460, telephone number (202) 382–7548. The docket may be inspected between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Mary T. Smith, Attorney/Advisor, Manufacturers Operations Division (EN 340), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460, (202) 382–2514.

SUPPLEMENTARY INFORMATION:

1982 and 1983 Model Year Light-Duty Vehicles and Light-Duty Trucks

OMB Control No. 2060-0049

For a background on the need for amendments to § 86.082-30(a)(4), and an explanation of the amendments, see the notice of proposed rulemaking (NPRM) for 1982 and 1983 model year high-altitude light-duty vehicles and light-duty trucks, 47 FR 47445 (October 26, 1982).

EPA received no comments in opposition to its proposed amendments. Two vehicle manufacturers endorsed the adoption of these amendments since they set forth with more particularity the steps manufacturers could take to insulate themselves from liability under section 203(a) of the Clean Air Act for certain vehicles.

As a result, there were no changes to the proposed amendments to § 86.082-30(a)(4). Because of the need to create § 86.083-30, for purposes of redesignating high-altitude areas for the 1983 model year, published elsewhere in this issue of the **Federal Register**, language identical to that used in the proposed § 86.082-30(a)(4) has been added to § 86.083-30(a)(4).

1984 and Later Model Year Light-Duty Trucks

On January 12, 1983, EPA published in the **Federal Register**, 48 FR 1418, final rules establishing requirements for 1984 and later model year light-duty trucks sold in high-altitude areas. These rules contained the "substantial reason to believe" language of § 86.082-30(a)(4) which was the subject of litigation by the Motor Vehicle Manufacturers Association (MVMA) concerning 1982 and 1983 model year light-duty vehicles and light-duty trucks. This litigation precipitated the need for amendments to § 86.082-30(a)(4) announced herein. Because the considerations supporting amendment of the 1982 and 1983 model year high-altitude light-duty vehicle and light-duty truck regulations apply to the 1984 and later model year light-duty truck regulations as well, EPA is also amending §§ 86.084-30(a)(4) and 86.085-30(a)(4) of the light-duty truck regulations to parallel the changes made to § 86.082-30(a)(4).

Pursuant to 5 U.S.C. 553(b), EPA finds that it is unnecessary to publish a notice of proposed rulemaking and provide an opportunity to comment on the amendments to §§ 86.084-30(a)(4) and 86.085-30(a)(4). EPA provided full notice and opportunity for comment on amendments to the virtually identical provisions of § 86.082-30(a)(4), and received no adverse comments. The manufacturers, dealers, and other parties affected by both regulations are the same, as are the considerations supporting both sets of amendments. Accordingly, there is "good cause" to omit notice and opportunity for public comment.

Regulatory Analysis

Section 3(b) of Executive Order 12291, 46 FR 13193 (February 19, 1981), requires EPA to determine initially whether a rule that it intends to issue is a major rule and to prepare regulatory impact analyses for all major rules. EPA has determined that these amendments are not major rules. As discussed above, these amendments simply provide better guidance on how manufacturers may comply with the substantive requirements already present in the original rule. Accordingly, a Regulatory Impact Analysis has not been prepared for these amendments. This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291. Any comments from OMB to EPA and any EPA response to those comments are available for public inspection at the Central Docket Section (See **ADDRESSES**).

Under the Regulatory Flexibility Act, 5 U.S.C. section 601, *et seq.*, EPA is required to determine whether a regulation will have a significant economic impact on a substantial number of small entities so as to require a regulatory analysis. These amendments do not impose any substantive or reporting requirements on small entities in addition to those under the original rule. Therefore, pursuant to 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities.

In accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, the recordkeeping requirements contained in this package have been assigned OMB Control No. 2060-0059.

This notice announces a nationally applicable regulation. Under section 307(b)(1) of the Clean Air Act, judicial review may be sought only in the United States Court of Appeals for the District of Columbia Circuit within 60 days of September 14, 1983. This action may not be challenged later in an EPA enforcement action.

These amendments are issued pursuant to sections 202, 203(a) and 301(a) of the Clean Air Act, as amended, 42 U.S.C. 7521, 7522(a) and 7601(a).

List of Subjects in 40 CFR Part 86

Administrative practice and procedure, Labelling, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: August 18, 1983.

William D. Ruckelshaus,

Administrator.

PART 86—[AMENDED]

For the reasons set forth in the preamble 40 CFR Part 86 is amended as follows:

1. Paragraph (a)(4) of 40 CFR 86.082-30 is revised to read as follows:

§ 86.082-30 Certification.

(a) * * *

(4) The adjustment or modification of any light-duty vehicle or light-duty truck in accordance with instructions provided by the manufacturer as approved by EPA for the altitude where the vehicle is principally used will not be considered a violation of section 203(a)(3) of the Clean Air Act.

(i) A violation of section 203(a)(1) of the Clean Air Act occurs, except as provided for in § 86.082-9(g)(3), when any manufacturer sells or delivers to an ultimate purchaser any light-duty vehicle or light-duty truck, subject to the regulations under the Act, which is not configured to meet high-altitude requirements:

(A) At a designated high-altitude location, unless such manufacturer has reason to believe that such motor vehicle will not be sold to an ultimate purchaser for principal use at a designated high-altitude location; or

(B) At a location other than a designated high-altitude location, when such manufacturer has reason to believe that such motor vehicle will be sold to an ultimate purchaser for principal use at a designated high-altitude location.

(ii) A manufacturer shall be deemed to have reason to believe that a motor vehicle which is not configured to meet high-altitude requirements will not be sold to an ultimate purchaser for principal use at a designated high-altitude location if the manufacturer has informed its dealers and field representatives about the terms of these high-altitude regulations, has not caused the improper sale itself, and has taken reasonable action which shall include, but not be limited to, either paragraph (a)(4)(ii) (A) or (B), and (C) of this section.

(A) Requiring dealers in designated high-altitude locations to submit written statements to the manufacturer signed by the ultimate purchaser that a motor vehicle which is not configured to meet high-altitude requirements will not be used principally at a designated high-altitutde location; requiring dealers in counties contiguous to designated high-altitude locations to submit written

statements to the manufacturer, signed by the ultimate purchaser who represents to the dealer in the normal course of business that he or she resides in a designated high-altitude location, that a motor vehicle which is not configured to meet high-altitude requirements will not be used principally at a designated high-altitude location; and for each sale or delivery of fleets of 10 or more such vehicles in a high-altitude location or in counties contiguous to high-altitude locations, requiring either the selling dealer or the delivering to submit written statements to the manufacturer, signed by the ultimate purchaser who represents to the dealer in the normal course of business that he or she resides in a designated high-altitude location, that a vehicle which is not configured to meet high-altitude requirements will not be used principally at a designated high-altitude location. In addition, the manufacturer will make available to EPA, upon reasonable written request (but not more frequently than quarterly, unless EPA has demonstrated that it has substantial reason to believe that an improperly configured vehicle has been sold), sales, warranty, or other information pertaining to sales of vehicles by the dealers described above maintained by the manufacturer in the normal course of business relating to the altitude configuration of vehicles and the locations of ultimate purchasers; or

(B) Implementing a system which monitors factory orders of low-altitude vehicles by high-altitude dealers, or through other means, identifies dealers that may have sold or delivered a vehicle not configured to meet the high-altitude requirements to an ultimate purchaser for principal use at a designated high-altitude location and making such information available to EPA upon reasonable written request (but not more frequently than quarterly, unless EPA has demonstrated that it has substantial reason to believe that an improperly configured vehicle has been sold); and

(C) Within a reasonable time after receiving written notice from EPA or a State or local government agency that a dealer may have improperly sold or delivered a vehicle not configured to meet the high-altitude requirements to an ultimate purchaser residing in a designated high-altitude location, or based on information obtained pursuant to paragraph (a)(4)(ii) of this section that a dealer may have improperly sold or delivered a significant number of such vehicles to ultimate purchasers so residing, reminding the dealer in writing of the requirements of these regulations, and, where appropriate, warning the dealer that sale by the dealer of vehicles not configured to meet high-altitude requirements may be contrary to the terms of its franchise agreement with the manufacturer and the dealer certification requirements of § 85.2108 of this chapter.

* * * * *

2. 40 CFR § 86.083–30 is revised to read as follows:

§ 86.083–30 Certification.

(a)(1) If, after a review of the test reports and data submitted by the manufacturer, data derived from any inspection carried out under § 86.078–7(c), and any other pertinent data or information, the Administrator determines that a test vehicle(s) or test engine(s) meet(s) the requirements of the Act and of this subpart, he will issue a certificate of conformity wih respect to such vehicle(s) or engine(s) except in cases covered by paragraph (c) of this section.

(i) Each certificate of conformity shall state the altitude(s) at which the vehicle(s) covered by the certificate has demonstrated compliance with the applicable emission standards.

(2) Such certificate will be issued for such period not to exceed one model year as the Administrator may determine and upon such terms as he may deem necessary to assure that any new motor vehicle (or new motor vehicle engine) covered by the certificate will meet the requirements of the Act and of this part.

(3) One such certificate will be issued for each engine family. For gasoline-fueled light-duty vehicles and light-duty trucks, one such certificate will be issued for each engine family-evaporative emission family combination. Each certificate will certify compliance with no more than one set of standards except for low-altitude standards and high-altitude standards. The certificate shall cover vehicles sold or delivered to an ultimate purchaser for principal use at a designated high-altitude location only if the vehicle conforms in all material respects to the design specification that applied to those vehicles described in the application for certification at high altitude.

(4) The adjustment or modification of any light-duty vehicle or light-duty truck in accordance with instructions provided by the manufacturer as approved by EPA for the altitude where the vehicle is prinicpally used will not be considered a violation of section 203(a)(3) of the Clean Air Act.

(i) A violation of section 203(a)(1) of the Clean Air Act occurs, except as provided for in § 86.083–9(g)(3), when any manufacturer sells or delivers to an ultimate purchaser any light-duty vehicle or light-duty truck, subject to the regulations under the Act, which is not configured to meet high-altitude requirements:

(A) At a designated high-altitude location unless such manufacturer has reason to believe that such motor vehicle will not be sold to an ultimate purchaser for principal use at a designated high-altitude location; or

(B) At a location other than a designated high-altitude location, when such manufacturer has reason to believe that such motor vehicle will be sold to an ultimate purchaser for principal use at a designated high-altitude location.

(ii) A manufacturer shall be deemed to have reason to believe that a motor vehicle which is not configured to meet high-altitude requirements will not be sold to an ultimate purchaser for principal use at a designated high-altitude location if the manufacturer has informed its dealers and field representatives about the terms of these high-altitude regulations, has not caused the improper sale itself, and has taken reasonable action which shall include, but not be limited to, either paragraph (a)(4)(ii)(A) or (B), and (C) of the following:

(A) Requiring dealers in designated high-altitude locations to submit written statements to the manufacturer signed by the ultimate purchaser that a motor vehicle which is not configured to meet high altitude requirements will not be used principally at a designated high-altitude location; requiring dealers in counties contiguous to designated high-altitude locations to submit written statements to the manufacturer, signed by the ultimate purchaser who represents to the dealer in the normal course of business that he or she resides in a designated high-altitude location, that a motor vehicle which is not configured to meet high-altitude requirements will not be used principally at a designated high-altitude location; and for each sale or delivery of fleets of 10 or more such vehicles in a high-altitude location or in counties contiguous to high-altitude locations, requiring either the selling dealer or the delivering dealer to submit written statements to the manufacturer, signed by the ultimate purchaser who represents to the dealer in the normal course of business that he or she resides in a designated high-altitude location, that a vehicle which is not configured to meet high-altitude requirements will not

be used principally at a designated high-altitude location. In addition, the manufacturer will make available to EPA, upon reasonable written request (but not more frequently than quarterly, unless EPA has demonstrated that it has substantial reason to believe that an improperly configured vehicle has been sold), sales, warrantly, or other information pertaining to sales of vehicles by the dealers described above maintained by the manufacturer in the normal course of business relating to the altitude configuration of vehicles and the locations of ultimate purchasers; or

(B) Implementing a system which monitors factory orders of low-altitude vehicles by high-altitude dealers, or through other means, identifies dealers that may have sold or delivered a vehicle not configured to meet the high-altitude requirements to an ultimate purchaser for principal use at a designated high-altitude location; and making such information available to EPA upon reasonable written request (but not more frequently than quarterly, unless EPA has demonstrated that it has substantial reason to believe that an improperly configured vehicle has been sold); and

(C) Within a reasonable time after receiving written notice from EPA or a State or local government agency that a dealer may have improperly sold or delivered a vehicle not configured to meet the high-altitude requirements to an ultimate purchaser residing in a designated high-altitude location, or based on information obtained pursuant to paragraph (a)(4)(ii) of this section that a dealer may have improperly sold or delivered a significant number of such vehicles to ultimate purchasers so residing, reminding the dealer in writing of the requirements of these regulations, and, where appropriate, warning the dealer that sale by the dealer of vehicles not configured to meet high-altitude requirements may be contrary to the terms of its franchise agreement with the manufacturer and the dealer certification requirements of § 85.2108 of this chapter.

(5)(i) For the purpose of paragraph (a) of this section, a "designated high-altitude location" is any county which has substantially all of its area located above 1,219 meters (4,000 feet) and:

(A) Requested an extension past the attainment date of December 31, 1982, for compliance with either the National Ambient Air Quality Standards for carbon monoxide or ozone, as indicated in Part 52 (Approval and Promulgation of Implementation Plans) of this title; or

(B) Is in the same state as a county designated as a high-altitude location according to paragraph (a)(5)(i) of this section.

(ii) The designated high-altitude locations defined in paragraph (a)(5)(i)(A) of this section are listed below:

Designated High-Altitude Locations (counties)

State of Colorado

Adams	Kit Carson
Alamosa	Lake
Arapahoe	La Plata
Archuleta	Larimer
Boulder	Las Animas
Chaffee	Lincoln
Cheyenne	Mesa
Clear Creek	Mineral
Conejos	Moffat
Costilla	Montezuma
Crowley	Montrose
Custer	Morgan
Delta	Otero
Denver	Ouray
Dolores	Park
Douglas	Pitkin
Eagle	Pueblo
Elbert	Rio Blanco
El Paso	Rio Grande
Fremont	Routt
Garfield	Saguache
Gilpin	San Juan
Grand	San Miguel
Gunnison	Summit
Hinsdale	Teller
Huerfano	Washington
Jackson	Weld
Jefferson	

State of Nevada

Carson City	Lyon
Douglas	Mineral
Elko	Nye
Esmeralda	Pershing
Eureka	Storey
Humboldt	Washoe
Lander	White Pine
Lincoln	

State of New Mexico

Bernalillo	Mora
Catron	Rio Arriba
Colfax	Roosevelt
Curry	Sandoval
De Baca	San Juan
Grant	San Miguel
Guadalupe	Santa Fe
Harding	Sierra
Hidalgo	Socorro
Lincoln	Taos
Los Alamos	Torrance
Luna	Union
McKinley	Valencia
Otero	

State of Utah

Beaver	Morgan
Box Elder	Piute
Cache	Rich
Carbon	Salt Lake
Daggett	San Juan
Davis	Sanpete
Duchesne	Sevier
Emery	Summit
Garfield	Tooele
Grand	Uintah
Iron	Utah
Juab	Wasatch
Kane	Wayne
Millard	Weber

(6) The provisions of paragraph (a)(4) of this section shall not apply to any light-duty vehicle or light-duty truck sold, offered for sale, introduced, or delivered for introduction into commerce in California provided that the vehicle is covered by a certificate of conformity with emission standards in effect in California.

(7) Catalyst-equipped vehicles, otherwise covered by a certificate, which are driven outside the United States, Canada, and Mexico will be presumed to have been operated on leaded gasoline resulting in deactivation of the catalysts. If these vehicles are imported or offered for the importation without retrofit of the catalyst, they will be considered not to be within the coverage of the certificate unless included in a catalyst control program operated by a manufacturer or a United States Government Agency and approved by the Administrator.

(8) For incomplete light-duty trucks, a certificate covers only those new motor vehicles which, when completed by having the primary load-carrying device or container attached, conform to the maximum curb weight and frontal area limitations described in the application for certification as required in § 86.082-21(d).

(9) For heavy-duty engines, a certificate covers only those new motor vehicle engines installed in heavy-duty vehicles which conform to the minimum gross vehicle weight rating, curb weight, or frontal area limitations for heavy-duty vehicles described in § 86.082-2.

(b)(1) The Administrator will determine whether a vehicle (or engine) covered by the application complies with applicable standards by observing the following relationships:

(i) *Light-duty vehicles and Light-duty trucks.* (A) The durability-data vehicle(s) selected under § 86.082-24(c)(1)(i) shall represent all vehicles of the same engine-system combination.

(B) The emission-data vehicles(s) selected under § 86.082-24(b)(1)(ii) through (b)(1)(v) shall represent all vehicles of the same engine-system combination as applicable.

(C) The emission-data vehicle(s) selected under § 86.082-24(b)(1)(vii) shall represent all vehicles of the same evaporative control system within the evaporative emission family, as applicable.

(D) The emission-data vehicle(s) selected under § 86.082-24(b)(1)(v) shall represent all vehicles of the same engine-system combination to be sold at high altitude.

(E) The emission-data vehicle(s) selected under § 86.082–24(b)(1)(vii) (D) shall represent all vehicles of the same evaporative control system within the evaporative family sold at high altitude.

(ii)(A) *Gasoline-fueled heavy-duty engines.* A test engine selected under § 86.082–24(b)(2)(ii) and (iv) shall represent all engines in the same engine family of the same engine displacement-exhaust emission control system combination.

(B) A test engine selected under § 86.082–24(b)(2)(iii) shall represent all engines in the same engine family of the same engine displacement-exhaust emission control system combination.

(C) A test engine selected under § 86.082–24(c)(2)(i) shall represent all engines of the same engine-system combination.

(iii)(A) *Diesel heavy-duty engines.* A test engine selected under § 86.082–24(b)(3)(ii) shall represent all engines in the same engine-system combination.

(B) A test engine selected under § 86.082–24(b)(3)(iii) shall represent all engines of that emission control system at the rated fuel delivery of the test engines.

(C) A test engine selected under § 86.082–24(c)(3)(i) shall represent all engines of the same engine-system combination.

(2) The Administrator will proceed as in paragraph (a) of this section with respect to the vehicles (or engines) belonging to an engine family or engine family-evaporative emission family combination (as applicable), all of which comply with all applicable standards.

(3) If, after a review of the test reports and data submitted by the manufacturer, data derived from any additional testing conducted pursuant to § 86.079–29, data or information derived from any inspection carried out under § 86.078–7(c) or any other pertinent data or information, the Administrator determines that one or more test vehicles (or test engines) of the certification test fleet do not meet applicable standards, he will notify the manufacturer in writing, setting forth the basis for his determination. Within 30 days following receipt of the notification, the manufacturer may request a hearing on the Administrator's determination. The request shall be in writing, signed by an authorized representative of the manufacturer and shall include a statement specifying the manufacturer's objections. If, after a review of the request and supporting data, the Administrator finds that the request raises a substantial factual issue, he shall provide the manufacturer a hearing in accordance with § 86.078–6 with respect to such issue.

(4) For light-duty vehicles and light-duty trucks the manufacturer may, at his option, proceed with any of the following alternatives with respect to an emission-data vehicle determined not in compliance with all applicable standards for which it was tested:

(i) Request a hearing under § 86.078–6; or

(ii) Remove the vehicle configuration (or evaporative vehicle configuration, as applicable) which failed, from his application;

(A) If the failed vehicle was tested for compliance with exhaust emission standards only: The Administrator may select, in place of the failed vehicle, in accordance with the selection criteria employed in selecting the failed vehicle, a new emission-data vehicle to be tested for exhaust emission compliance only.

(B) If the failed vehicle was tested for compliance with both exhaust and evaporative emission standards: The Administrator may select, in place of the failed vehicle, in accordance with the selection criteria employed in selecting the failed vehicle, a new emission-data vehicle which will be tested for compliance with both exhaust and evaporative emission standards. If one vehicle cannot be selected in accordance with the selection criteria employed in selecting the failed vehicle, then two vehicles may be selected (i.e., one vehicle to satisfy the exhaust emission vehicle selection criteria and one vehicle to satisfy the evaporative emission vehicle selection criteria). The vehicle selected to satisfy the exhaust emission vehicle selection criteria will be tested for compliance with exhaust emission standards only. The vehicle selected to satisfy the evaporative emission vehicle selection criteria will be tested for compliance with both exhaust and evaporative emission standards; or

(iii) Remove the vehicle configuration (or evaporative vehicle configuration, as applicable) which failed from the application and add a vehicle configuration(s) (or evaporative vehicle configuration(s), as applicable) not previously listed. The Administrator may require, if applicable, that the failed vehicle be modified to the new engine code (or evaporative emission code, as applicable) and demonstrate by testing that it meets applicable standards for which it was originally tested. In addition, the Administrator may select, in accordance with the vehicle selection criteria given in § 86.082–24(b), a new emission-data vehicle or vehicles. The vehicles selected to satisfy the exhaust emission vehicle selection criteria will be tested for compliance with exhaust emission standards only. The vehicles selected to satisfy the evaporative emission vehicle selection criteria will be tested for compliance with both exhaust and evaporative emission standards; or

(iv) Correct a component or system malfunction and show that with a correctly functioning system or component the failed vehicle meets applicable standards for which it was originally tested. The Administrator may require a new emission-data vehicle, of identical vehicle configuration (or evaporative vehicle configuration, as applicable) to the failed vehicle, to be operated and tested for compliance with the applicable standards for which the failed vehicle was originally tested.

(5) For heavy-duty engines the manufacturer may, at his option, proceed with any of the following alternatives with respect to any engine family represented by a test engine(s) determined not in compliance with applicable standards:

(i) Request a hearing under § 86.078–6; or

(ii) Delete from the application for certification the engines represented by the failing test engine. (Engines so deleted may be included in a later request for certification under § 86.079–32.) The Administrator may then select in place of each failing engine an alternate engine chosen in accordance with selection criteria employed in selecting the engine that failed; or

(iii) Modify the test engine and demonstrate by testing that it meets applicable standards. Another engine, which is in all material respects the same as the first engine, as modified, may then be operated and tested in accordance with applicable test procedures.

(6) If the manufacturer does not request a hearing or present the required data under paragraph (b)(4) or (b)(5) (as applicable) of this section, the Administrator will deny certification.

(c)(1) Notwithstanding the fact that any certification vehicle(s) (or certification engine(s)) may comply with other provisions of this subpart, the Administrator may withhold or deny the issuance of a certificate of conformity (or suspend or revoke any such certificate which has been issued) with respect to any such vehicle(s) (or engine(s)) if:

(i) The manufacturer submits false or incomplete information in his application for certification thereof;

(ii) The manufacturer renders inaccurate any test data which he submits pertaining thereto or otherwise circumvents the intent of the Act, or of

this part with respect to such vehicle (or engine);

(iii) Any EPA Enforcement Officer is denied access on the terms specified in § 86.078–7(c) to any facility or portion thereof which contains any of the following:

(A) The vehicle (or engine);

(B) Any components used or considered for use in its modification or buildup into a certification vehicle (or certification engine);

(C) Any production vehicle (or production engine) which is or will be claimed by the manufacturer to be covered by the certificate;

(D) Any step in the construction of a vehicle (or engine) described in paragraph (c)(1)(iii)(C) of this section;

(E) Any records, documents, reports, or histories required by this part to be kept concerning any of the above;

(iv) Any EPA Enforcement Officer is denied "reasonable assistance" (as defined in § 86.078–7(c)) in examining any of the items listed in paragraph (c)(1)(iii) of this section.

(2) The sanctions of withholding, denying, revoking, or suspending a certificate may be imposed for the reasons in paragaph (c)(1) (i), (ii), (iii), or (iv) of this section only when the infraction is substantial.

(3) In any case in which a manufacturer knowingly submits false or inaccurate information or knowingly renders inaccurate or invalid any test data or commits any other fraudulent acts and such acts contribute substantially to the Administrator's decision to issue a certificate of conformity, the Administrator may deem such certificate void ab initio.

(4) In any case in which certification of a vehicle (or engine) is proposed to be withheld, denied, revoked, or suspended under paragraph (c)(1)(iii) or (c)(1)(iv) of this section, and in which the Administrator has presented to the manufacturer involved reasonable evidence that a violation of § 86.078–7(c) in fact occurred, the manufacturer, if he wishes to contend that, even though the violation occurred, the vehicle (or engine) in question was not involved in the violation to a degree that would warrant withholding denial, revocation, or suspension of certification under either paragraph (c)(1)(iii) or (c)(1)(iv) of this section, shall have the burden of establishing that contention to the satisfaction of the Administrator.

(5) Any revocation of suspension of certification under paragraph (c)(1) of this section shall:

(i) Be made only after the manufacturer concerned has been offered an opportunity for a hearing conducted in accordance with § 86.078–6 hereof.

(ii) Extend no further than to forbid the introduction into commerce of vehicles (or engines) previously covered by the certification which are still in the hands of the manufacturer, except in cases of such fraud or other misconduct as makes the certification invalid ab initio.

(6) The manufacturer may request in the form and manner specified in paragraph (b)(3) of this section that any determination made by the Administrator under paragraph (c)(1) of this section to withhold or deny certification be reviewed in a hearing conducted in accordance with § 86.078–6. If the Administrator finds, after a review of the request and supporting data, that the request raises a substantial factual issue, he will grant the request with respect to such issue.

(d)(1) Notwithstanding the fact that any vehicle configuration or engine family may be covered by a valid outstanding certificate of conformity, the Administrator may suspend such outstanding certificate of conformity in whole or in part with respect to such vehicle configuration or engine family if:

(i) The manufacturer refuses to comply with the provisions of a test order issued by the Administrator pursuant to § 86.603; or

(ii) The manufacturer refuses to comply with any of the requirements of § 86.603; or

(iii) The manufacturer submits false or incomplete information in any report of information provided pursuant to the requirement of § 86.609; or

(iv) The manufacturer renders inaccurate any test data which he submits pursuant to the requirements of § 86.609; or

(v) Any EPA Enforcement Officer is denied access to a facility on the terms specified in § 86.606; or

(vi) Any EPA Enforcement Officer is denied the opportunity on the terms specified in § 86.606, to:

(A) Monitor vehicle selection pursuant to § 86.607, or

(B) Select vehicles for testing pursuant to § 86.607, or

(C) Monitor vehicle testing performed to satisfy any of the requirements of this part; or

(vii) Any EPA Enforcement Officer is denied "reasonable assistance" as defined in § 86.606 in examining any of the items listed in that section; or

(viii) The manufacturer refuses to comply with the requirements of §§ 86.604(a), 86.605, and 86.607, 86.608, 86.610, or 86.611.

(2) The sanction of suspending a certificate may not be imposed for the reasons in paragraphs (d)(1)(i), (ii), or (viii) of this section where such refusal is caused by conditions and circumstances outside the control of the manufacturer which renders it impossible to comply with those requirements. Such conditions and circumstances shall include, but not be limited to, any uncontrollable factors which results in the temporary unavailability of equipment and personnel needed to conduct the required tests, such as equipment breakdown or failure or illness of personnel, but shall not include failure of the manufacturer to adequately plan for and provide the equipment and personnel needed to conduct the tests. The manufacturer will bear the burden of establishing the presence of the conditions and circumstances required by this paragraph.

(3) The sanctions of suspending a certificate may be imposed for the reasons in paragraphs (d)(1) (iii), (iv), (v), (vi), or (vii) of this section only when the infraction is substantial.

(4) In any case in which a manufacturer knowingly submitted false or inaccurate information or knowingly rendered inaccurate any test data or committed any other fraudulent acts, and such acts contributed substantially to the Administrator's original decision not to suspend or revoke a certificate of conformity in whole or in part, the Administrator may deem such certificate void from the date of such frandulent act.

(5) In any case in which certification of a vehicle is proposed to be suspended under paragraph (d)(1)(v), (d)(1)(vi), or (d)(1)(vii) of this section, and in which the Administrator has presented to the manufacturer involved reasonable evidence that a violation of § 86.606 in fact occurred, the manufacturer, if he wishes to contend that even though the violation occurred, the vehicle configuration or engine family in question was not involved in the violation to the degree that would warrant suspension of certification under either paragraph (d)(1)(v), (d)(1)(vi), or (d)(1)(vii) of this section, shall have the burden of establishing that contention to the satisfaction of the Administrator.

(6) Any suspension of certification under paragraph (d)(1) of this section shall:

(i) Be made only after the manufacturer concerned has been offered an opportunity for a hearing conducted in accordance with § 86.613 hereof, and

(ii) Not apply to vehicles no longer in the hands of the manufacturer.

3. Paragraph (a)(4) of 40 CFR § 86.084–30 is revised to read as follows:

§ 86.084–30 Certification.

(a) * * *

(4) The adjustment or modification of any light-duty truck in accordance with instructions provided by the manufacturer as approved by EPA for the altitude where the vehicle is principally used will not be considered a violation of section 203(a)(3) of the Clean Air Act.

(i) A violation of section 203(a)(1) of the Clean Air Act occurs, except as provided for in § 86.084–9(g)(3), when a manufacturer sells or delivers to an ultimate purchaser any light-duty truck, subject to the regulations under the Act, which is not configured to meet high-altitude requirements:

(A) At a designated high-altitude location, unless such manufacturer has reason to believe that such light-duty truck will not be sold to an ultimate purchaser for principal use at a designated high-altitude location; or

(B) At a location other than a designated high-altitude location, when such manufacturer has reason to believe that such light-duty truck will be sold to an ultimate purchaser for principal use at a designated high-altitude location.

(ii) A manufacturer shall be deemed to have reason to believe that a light-duty truck which is not configured to meet high-altitude requirements will not be sold to an ultimate purchaser for principal use at a designated high-altitude location if the manufacturer has informed its dealers and field representatives about the terms of these high-altitude regulations, has not caused the improper sale itself, and has taken reasonable action which shall include, but not be limited to, either paragraph (a)(4)(ii) (A) or (B), and (C) of this section.

(A) Requiring dealers in designated high-altitude locations to submit written statements to the manufacturer signed by the ultimate purchaser that a light-duty truck which is not configured to meet high-altitude requirements will not be used principally at a designated high-altitude location; requiring dealers in counties contiguous to designated high-altitude locations to submit written statements to the manufacturer, signed by the ultimate purchaser who represents to the dealer in the normal course of business that he or she resides in a designated high-altitude location, that a light-duty truck which is not configured to meet high-altitude requirements will not be used principally at a designated high-altitude location; and for each sale or delivery of fleets of 10 or more such light-duty trucks in a high-altitude location or in counties contiguous to high-altitude locations, requiring either the selling dealer or the delivering dealer to submit written statements to the manufacturer, signed by the ultimate purchaser who represents to the dealer in the normal course of business that he or she resides in a designated high-altitude location, that a light-duty truck which is not configured to meet high-altitude requirements will not be used principally at a designated high-altitude location. In addition, the manufacturer will make available to EPA, upon reasonable written request (but not more frequently than quarterly, unless EPA has demonstrated that it has substantial reason to believe that an improperly configured light-duty truck has been sold), sale, warranty, or other information pertaining to sales of light-duty trucks by the dealers described above maintained by the manufacturer in the normal course of business relating to the altitude configuration of vehicles and the locations of ultimate purchasers; or

(B) Implementing a system which monitors factory orders of low-altitude light-duty trucks by high-altitude dealers, or through other means, identifies dealers that may have sold or delivered a light-duty truck not configured to meet the high-altitude requirements to an ultimate purchaser for principal use at a designated high-altitude location; and making such information available to EPA upon reasonable written request (but not more frequently than quarterly, unless EPA has demonstrated that it has substantial reason to believe that an improperly configured light-duty truck has been sold); and

(C) Within a reasonable time after receiving written notice from EPA or a State or local government agency that a dealer may have improperly sold or delivered a light-duty truck not configured to meet the high-altitude requirements to an ultimate purchaser residing in a designated high-altitude location, or based on information obtained pursuant to paragraph (a)(4)(ii) of this section that a dealer may have improperly sold or delivered a significant number of such light-duty trucks to ultimate purchasers so residing, reminding the dealer in writing of the requirements of these regulations, and, where appropriate, warning the dealer that sale by the dealer of light-duty trucks not configured to meet the high-altitude requirements may be contrary to the terms of its franchise agreement with the manufacturer and the dealer certification requirements of § 85.2108 of this chapter.

* * * * *

4. Paragraph (a)(4) of 40 CFR § 86.085–30 is revised to read as follows:

§ 86.085–30 Certification.

(a) * * *

(4) The adjustment or modification of any light-duty truck in accordance with instructions provided by the manufacturer as approved by EPA for the altitude where the vehicle is principally used will not be considered a violation of section 203(a)(3) of the Clean Air Act.

(i) A violation of section 203(a)(1) of the Clean Air Act occurs, except as provided for in § 86.085–9(g)(3), when a manufacturer sells or delivers to an ultimate purchaser any light-duty truck, subject to the regulations under the Act, which is not configured to meet high-altitude requirements:

(A) At a designated high-altitude location, unless such manufacturer has reason to believe that such light-duty truck will not be sold to an ultimate purchaser for principal use at a designated high-altitude location; or

(B) At a location other than a designated high-altitude location, when such manufacturer has reason to believe that such light-duty truck will be sold to an ultimate purchaser for principal use at a designated high-altitude location.

(ii) A manufacturer shall be deemed to have reason to believe that a light-duty truck which is not configured to meet high-altitude requirements will not be sold to an ultimate purchaser for principal use at a designated high-altitude location if the manufacturer has informed its dealers and field representatives about the terms of these high-altitude regulations, has not caused the improper sale itself, and has taken reasonable action which shall include, but not be limited to, either paragraph (a)(4)(ii) (A) or (B), and (C) of this section:

(A) Requiring dealers in designated high-altitude locations to submit written statements to the manufacturer signed by the ultimate purchaser that a light-duty truck which is not configured to meet high-altitude requirements will not be used principally at a designated high-altitude location; requiring dealers in counties contiguous to designated high-altitude locations to submit written statements to the manufacturer, signed by the ultimate purchaser who represents to the dealer in the normal course of business that he or she resides in a designated high-altitude location, that a light-duty truck which is not configured to meet high-altitude

requirements will not be used principally at a designated high-altitude location; and for each sale or delivery of fleets of 10 or more such light-duty trucks in a high-altitude location or in counties contiguous to high-altitude locations, requiring either the selling dealer or the delivering dealer to submit written statements to the manufacturer, signed by the ultimate purchaser who represents to the dealer in the normal course of business that he or she resides in a designated high-altitude location, that a light-duty truck which is not configured to meet high-altitude requirements will not be used principally at a designated high-altitude location. In addition, the manufacturer will make available to EPA, upon reasonable written request (but not more frequently than quarterly, unless EPA has demonstrated that it has substantial reason to believe that an improperly configured light-duty truck has been sold), sale, warranty, or other information pertaining to sales of light-duty trucks by the dealers described above maintained by the manufacturer in the normal course of business relating to the altitude configuration of vehicles and the locations of ultimate purchasers; or

(B) Implementing a system which monitors factory orders of low-altitude light-duty trucks by high-altitude dealers, or through other means, identifies dealers that may have sold or delivered a light-duty truck not configured to meet the high-altitude requirements to an ultimate purchaser for principal use at a designated high-altitude location; and making such information available to EPA upon reasonable written request (but not more frequently than quarterly, unless EPA has demonstrated that it has substantial reason to believe that an improperly configured light-duty truck has been sold); and

(C) Within a reasonable time after receiving written notice from EPA or a State or local government agency that a dealer may have improperly sold or delivered a light-duty truck not configured to meet the high-altitude requirements to an ultimate purchaser residing in a designated high-altitude location, or based on information obtained pursuant to paragraph (a)(4)(ii) of this section that a dealer may have improperly sold or delivered a significant number of such light-duty trucks to ultimate purchasers so residing, reminding the dealer in writing of the requirements of these regulations, and, where appropriate, warning the dealer that sale by the dealer of light-duty trucks not configured to meet high-altitude requirements may be contrary to the terms of its franchise agreement with the manufacturer and the dealer certification requirements of § 85.2108 of this chapter.

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federal register

Wednesday
September 14, 1983

Part IV

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

Areas Unsuitable for Surface Coal Mining: Areas Designated by Act of Congress; Criteria for Designating Areas; State Processes for Designating Areas; Designating Lands as Unsuitable Under a Federal Program for a State; and Petition Process for Designation of Federal Lands

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 736, 760, 761, 762, 764, 765, 769, 779 and 783

Areas Unsuitable for Surface Coal Mining: Areas Designated by Act of Congress; Criteria for Designating Areas; State Processes for Designating Areas; Designating Lands as Unsuitable Under a Federal Program for a State; and Petition Process for Designation of Federal Lands

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

ACTION: Final rules.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is amending its permanent program rules which establish procedures for implementing the requirements of the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act) for designating lands unsuitable for all or certain types of surface coal mining operations, for terminating such designations, for identifying lands on which surface coal mining operations are limited or prohibited, and for implementing those limits and prohibitions. The final rules afford States greater flexibility to accommodate unique State circumstances and will also enable OSM to implement the unsuitability process for Federal lands more efficiently.

EFFECTIVE DATE: October 14, 1983.

FOR FURTHER INFORMATION CONTACT: Carl C. Close, Program Operations and Inspection, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, D.C. 20240; 202–343–4225.

SUPPLEMENTARY INFORMATION:

I. Background.
II. Rules Adopted and Responses to Public Comments on Proposed Rules.
III. Procedural Matters.

I. Background

A. Introduction

Section 522 of SMCRA establishes a process through which mining may be limited or prohibited where other values are found to be more important than mining and specifies certain areas as unsuitable for mining. Section 522(a) of the Act establishes requirements for State regulatory programs and specifies the criteria for determining whether an area may be declared unsuitable for mining. Section 522(b) of the Act establishes a review process to determine whether there are Federal lands which are unsuitable for mining. Section 522(c) of the Act describes the procedures and requirements for submitting and reviewing petitions to have areas designated as unsuitable for mining. Section 522(d) of the Act requires the consideration of certain factors prior to designating an area as unsuitable. Section 522(e) of the Act forbids mining in areas expressly designated by Congress as unsuitable for mining, with certain exceptions.

On March 13, 1979, the Secretary promulgated final rules (30 CFR Chapter VII) for the permanent regulatory program under the Act. A portion of these rules (30 CFR Parts 760 through 769) provided for the designation of lands as unsuitable for all or certain types of surface coal mining operations, for terminating such designations, for identifying lands on which surface coal mining operations are limited or prohibited under section 522(e) of the Act, and for implementing those limits and prohibitions.

On June 10, 1982 (47 FR 25278), OSM published a notice of proposed rulemaking to amend 30 CFR Chapter VII, Subchapter F. OSM today adopts final rules on these areas, amending the rules originally promulgated by the Secretary on March 13, 1979. All of Subchapter F is being repromulgated for convenience to the reader. Where there have been no changes proposed and made, no discussion appears in this preamble.

B. Public Participation

The June 10, 1982 **Federal Register** notice solicited written public comments and specified that the comment period would remain open until the close of the comment period on the draft supplemental environmental impact statement (EIS) that considered the proposed rules. The comment period on the draft EIS (and the proposed rules) closed on August 25, 1982 (47 FR 30266). The comment period was reopened during September 7–10, 1982 (47 FR 39201, September 7, 1982) to allow for further comment which was expected to be received at oversight hearings scheduled for September 9 and 10 by the United States House of Representatives Committee on Interior and Insular Affairs. Relevant portions of the transcripts of the hearings, as well as all other comments received during the period, were inserted in the Administrative Record and considered in developing the final rules. OSM received more than 175 comments on the June 10, 1982 proposed rules.

The June 10, 1982 notice also announced that public hearings would be held only if a timely request for a hearing was received and noted that if only one person requested a hearing, a public meeting, rather than a hearing, might be held. OSM received no requests for a public hearing and none was held. However, two public meetings were held in Pittsburgh, Pennsylvania and Washington, D.C. A written summary of each public meeting was placed in the Administrative Record.

II. Rules Adopted and Responses to Public Comments on Proposed Rules

A. Summary of Rules Adopted

These final rules modify the requirements to provide States with new flexibility in carrying out the requirements of the Act. In some cases, the rules allow regulatory authorities to modify procedural requirements for determining areas designated unsuitable by Act of Congress and processes for designating areas unsuitable for surface coal mining operations. Specifically, the changes—

1. Eliminate duplicative regulatory language, or modify such language to more accurately reflect provisions of the Act;

2. Modify definitions and requirements, including the definition of the term "valid existing rights" (VER);

3. Give States and OSM (in a Federal program or Federal lands program) an opportunity to require more information from the petitioners for complete petitions;

4. Allow States to suspend and OSM to reject petitions where no real and foreseeable potential for mining to occur is found;

5. Revise standing requirements for persons to submit a petition or intervene in the petition evaluation process;

6. Provide States and OSM with more flexibility regarding the fulfillment of public notice obligations;

7. Provide States and OSM with greater flexibility in the implementation of the unsuitability process, including acceptance of petitions and the nature of the hearing to be held on petitions for designation and termination of designation;

8. Provide States and OSM with the authority to withhold historic resources information from public disclosure, where such disclosure would expose the resources to substantial risk of harm or destruction (pursuant to 1980 Amendments to the National Historic Preservation Act); and

9. Streamline the petition process on Federal lands.

States may, of course, have rules which are different from the Federal requirements as long as they are consistent with them. "Consistent with" is defined by 30 CFR 730.5, as amended October 28, 1981 (46 FR 53376 *et seq.*), as "no less effective than." Thus, some States may wish to retain existing requirements even though this rulemaking would allow change. The changes and the public comments received are discussed below.

OSM has made numerous changes for editorial clarity. Those which have no substance are not specifically discussed. For example, wherever the term "Regional Director" was used, the term is changed to "OSM" or "Director" to reflect the September 13, 1981, reorganization of OSM.

B. Discussion of Final Rules and Comments

Part 736—Federal Program for a State

Section 736.15 Implementation, Enforcement, and Maintenance of a Federal Program

OSM has revised § 736.15 to include the effective date for a Federal program for designating lands unsuitable for mining. This requirement had been included in § 765.13(a), which is being removed. In response to comment, the amended rule provides that when a Federal program is promulgated for a State which has not previously had a State program, the designation process shall not apply for a period of one year following implementation of the Federal program. However, when a complete or partial Federal program is promulgated for a State which has failed adequately to maintain or enforce its approved State program, the designation provisions will be implemented to the same extent and at the same time that other aspects of surface coal mining operations are to be regulated by the Director.

One commenter observed that the proposed rule, which would have delayed implementation of an unsuitability program for one year in all cases where a Federal program is required for a State, could disrupt an unsuitability program already in place. Such action could result in a one year moratorium on designations as a result of State failure to carry out a designation program.

The commenter noted that OSM's preamble to the original rule states that "although Section 504 of the Act provides that impementation of Section 522 (a), (c) and (d) shall be delayed for one year after a Federal program is implemented, that provision of the Act does not address the situation where the failure of a State designation program is the reason for implementing the Federal program. Rather, it envisions that a State designation program would already be in place and should not be dismantled by the Federal program. But, where there is no adequate State designation program, it is essential that a Federal designation program be implemented immediately in order to satisfy the mandate of Section 504 of the Act that all aspects of the permanent program be fully in place by 34 months after enactment." (44 FR 15007, March 13, 1979).

OSM agrees with the commenter that it was not Congress' intent to disrupt an unsuitability program already in place, or to cause a moratorium when a State fails to carry out an adequate program. The final rule therefore requires that Federal program provisions become effective immediately when the reason for the Federal program is a State failure.

Part 760—General

OSM is removing all of Part 760, consisting of §§ 760.1, 760.2, 760.3 and 760.4. Each of these sections repeats information contained elsewhere in Subchapter F, merely explains requirements which follow, or does not contain substantive requirements.

OSM received no comments specifically addressed to the changes to this part, although one commenter generally supported all the proposed changes which would eliminate duplicative regulatory language.

Part 761—Areas Designated by Act of Congress

Sections 761.2 and 761.4

As proposed, §§ 761.2 and 761.4 are being removed to streamline the regulations by deleting redundant material. OSM received no comments specifically addressed to these changes, although one commenter generally supported all the proposed changes to eliminate duplicative regulatory language.

Section 761.3 Authority

Previous § 761.3 provided that the State regulatory authority or the Secretary is authorized by section 522(e) of the Act to prohibit or limit surface coal mining operations on or near certain private, Federal, and other public lands, except for those operations which existed on August 3, 1977, or were subject to valid existing rights (VER) on that date. The modifications to the definition of valid existing rights allow valid existing rights to be vested after August 3, 1977, pursuant to circumstances specified in § 761.5. In correlation with these modifications, § 761.3 is being amended to provide that the State regulatory authority or the Secretary has the authority to prohibit or limit operations, subject to valid existing rights and except for those operations which existed on August 3, 1977.

Section 761.5 Definitions: Valid Existing Rights

OSM proposed three alternatives to the definition of valid existing rights—a modification of the "all permits" test, ownership of coal, and ownership plus right to mine. Based on the extensive comments received, OSM has decided that none of the proposed definitions adequately defines VER. As indicated in the legislative history of the Act and the preamble to the previous definition, VER was included in section 522(e) of the Act to avoid "takings" for which compensation would be required through application of the prohibitions in section 522(e). Consequently, OSM has decided that VER is best defined as those rights, which if denied by the application of section 522(e), would require compensation under the Fifth and Fourteenth Amendments to the U.S. Constitution.

OSM has recognized from the outset that Congress created the valid existing rights exemption of section 522(e) to avoid potential legislative takings of property interests through inverse condemnations which would require compensation under the Fifth and Fourteenth Amendments to the U.S. Constitution. Congress recognized that the mining prohibitions established in section 522(e), if applied to certain existing property interests, would deprive the property owner of all reasonable beneficial use of the property, and thus entitle the owner to just compensation. Congress chose not to define further the types of property rights which qualify as "valid existing rights." Thus, it falls to OSM to define valid existing rights in a manner which avoids all potential takings through inverse condemnations, but otherwise gives full force to the prohibitions contained in section 522(e).

Relying upon the Act's legislative history, "valid existing rights" with regard to protected areas existing on the date of enactment, August 3, 1977, may be generally defined as property rights existing on that date which, if affected by the prohibitions established in section 522(e), would entitle the property owner to payment of just compensation under the 5th and 14th Amendments. If OSM is to craft a more particular

definition, the agency must identify those circumstances in which application of the mining prohibitions contained in section 522(e) would invariably result in a compensable taking under the Fifth and Fourteenth Amendments. Such a definition would have to encompass every such circumstance in order to avoid the creation of valid "takings" claims by owners of property interests excluded from the definition.

OSM's first attempt to define "valid existing rights" was an unsuccessful effort to specifically limit the exemption to those property rights in existence on August 3, 1977, the owners of which either had obtained all necessary mining permits on or before August 3, 1977, or could demonstrate that the coal for which the exemption was sought was both needed for and immediately adjacent to, a mining operation in existence prior to August 3, 1977. Both of these classes of circumstances describe property interests which, if affected by section 522(e) prohibitions, would invariably entitle an owner to payment of just compensation under the Fifth Amendment. The definition failed on judicial review, however, because it omitted other types of circumstances in which application of these mining prohibitions would result in takings. *In re Permanent Surface Mining Regulation Litigation*, No. 79-1144 (D.D.C. Feb. 26, 1980) at p. 20.

The three options identified in OSM's proposed rulemaking were attempts to identify the class or classes of circumstances which include all potential takings under section 522(e), but exclude all else. Commenters have criticized each of these options as either overinclusive or underinclusive. Many raised the issue of taking without compensation on one or more of the proposed options. These comments have led OSM to examine the nature of the case law applying the "just compensation clause" of the Fifth Amendment. This body of law is unusual in its case-by-case approach. The courts uniformly refuse to establish specific formulas for determining whether a taking will occur in a broad class of circumstances, preferring instead to examine the particular facts of each case.

As a result of its examination of the case law on takings, OSM has determined that there is an insufficient legal basis for defining "valid existing rights" in terms of any class of circumstances. Because the courts refuse to prescribe set formulas for takings, OSM is convinced that it cannot specifically delineate a class of circumstances with the assurance that the class is neither overinclusive or underinclusive of all potential takings which might result from section 522(e) prohibitions. For this reason, OSM has adopted a definition of "valid existing rights" as those rights which, if affected by the prohibitions in section 522(e), would entitle the owner to payment of just compensation under the Fifth and Fourteenth Amendments. This definition permits OSM to approach the determination of valid existing rights in the same case-by-case manner in which the courts approach related takings questions under the Fifth and Fourteenth Amendments. Indeed, the definition which OSM adopts today will allow the agency to conform the determination of valid existing rights to the continuing development of takings law in the courts.

OSM plans to apply this standard on a case-by-case basis. Any person who proposes to conduct surface coal mining and reclamation operations in an area where such mining would be prohibited by section 522(e) except for valid existing rights first must seek a determination of VER from the regulatory authority. No permit to mine may be issued for a prohibited area unless such a determination has been made. Under recently revised Federal lands rules, 30 CFR 740.4 and 745.13, determinations of VER regarding Federal lands subject to the prohibitions of sections 522(e)(1) and (e)(2) of the Act will always be made by OSM. (See 48 FR 6912, February 16, 1983.)

A VER determination may be requested either in advance or at the time a permit application is submitted. Advance determinations have the advantage that no funds will be wasted in developing or reviewing a permit application for an area for which there are no valid existing rights. While OSM will not delay the processing of a permit application until a VER finding is made, it strongly encourages operators to seek advance determinations.

A person who seeks a VER determination is responsible for compiling and submitting to the decisionmaker all information necessary to make a finding. The types of information which should be submitted include:

(1) A description of the land in question, including the area(s) and corresponding coal seam(s) for which a VER determination is required.

(2) The name of the owner(s) of record of the mineral rights on August 3, 1977, and a copy of the legally binding conveyance, lease, deed, contract, or other document granting those rights.

(3) The name of the current owner of the mineral rights in question, if different from the person(s) identified in (2), and a copy of the legally binding conveyance, lease, deed, contract, or other document granting those rights.

(4) The current status of the applicant's interest in the land, and intended future status (ownership, lease, etc.).

(5) Application, approval and issuance dates, and identification numbers of all permits and amendments, etc., held or applied for by the applicant or by any successor(s) in interest, including:

(a) Surface and/or underground (as appropriate) coal mining permit from the State;

(b) NPDES permit;

(c) States air pollution control permit; and,

(d) Any other applicable Federal permits (e.g., Special Use Permit from U.S. Forest Service).

The applicant should specify whether the land in question is included wholly in these permits and whether additional land is also included.

(6) Any other information which the applicant believes will support his or her claim.

OSM or the regulatory authority will review the information submitted for each claim to determine whether the application of the prohibition in section 522(e) would result in a taking under the Fifth and Fourteenth Amendments to the U.S. Constitution. No permit will be issued unless and unitl VER is found. Any decision made on VER is administratively and judicially reviewable. Further procedures regarding VER determinations are expected to be proposed in the near future.

Continually Created VER

Paragraph (a) of the VER definition applies to situations where the protected activities existed on August 3, 1977, the date the Act was enacted. Paragraph (d) of the definition relates to protected activity that began after the date of enactment. OSM proposed a new provision which would protect a right to mine once a permit had been issued even though some third party might later establish a dwelling, cemetery or other activity on adjoining property which would limit mining under section 522(e). Comments received were sharply divided on the basic issue. Many commenters strongly supported the proposal, and recommended that the protection be extended to the time a permit application is filed, rather than a permit issued. Others opposed any such

protection, stating that it is not explicitly authorized by the Act.

OSM has adopted a modification of the proposed regulation in paragraph (d) of the VER definition. OSM has not adopted the suggestion of some commenters that the protection be extended to the date when the permit application is filed, because it would be inconsistent with the "takings" test established in paragraph (a) for determining VER. However, to the extent that a validly authorized surface coal mining and reclamation operation exists on the date a protected activity begins, OSM has concluded that there would be a taking if one of the prohibitions or limitations of section 522(e) resulting from the protected activity were applied to deprive the operator of the right to mine. If on the date the protected activity begins, no such operation is in existence, then under the second part of the paragraph the "takings" test would be applied to determine whether under the specific fact situation, a taking would occur. Thus, the existence of VER created after August 3, 1977 does not relate specifically to the issuance of, or an application for, a surface coal mining permit, but rather relates to whether on the date the protected activity begins the operation is legally in existence or, if it is not, whether a "taking" would occur if it is prohibited. There are the same considerations OSM examines for determining VER regarding areas for which protected activities existed on August 3, 1977.

Without the protection provided by this provision, it would be possible, for instance, for a person who objected to a mining operation to move a mobile home to the edge of the property adjoining a mine, and occupy it, thereby forcing the operator to cease all operations within 300 feet of this occupied dwelling. OSM does not believe that this is the intended result of section 522(e) of the Act. Congress provided the public ample opportunity to review and make objections to any proposed mining operation through the permitting process. The regulatory authority is required to seek and consider the views of the public it issues or denies a permit. To allow any person the opportunity to take extraordinary means to disrupt mining or deprive the operator of a right to mine after the operator has made the substantial investments required to obtain a permit and begin operations is totally inconsistent with the framework of protection the Act gives to both operators and citizens.

Neither paragraph (a) nor paragraph (d) of the VER definition may be used to create rights where none would otherwise exist. For example, if a person owns both the surface and mineral rights within an area where mining is prohibited by Section 522(e)(1), and it is determined that the person has no valid existing rights to mine the minerals because such a prohibition would not constitute a compensable taking, the person may not sever the mineral rights and sell them to another person and thereby create a new right to mine. Since no valid existing right existed prior to sale of the minerals, there would be no valid existing right after the transaction. The transaction cannot create new rights; it can only tranfer existing ones.

Interpretation of Documents

Previous paragraph (c) of the VER definition at 30 CFR 761.5 provided that interpretation of the document relied upon to establish VER under paragraph (a) would be based upon the usage and custom at the time and place where the document came into existence and upon a showing by the applicant that the parties to the document actually contemplated a right to conduct the same mining activities for which the applicant claims VER. As proposed, paragraph (c) is redesignated paragraph (e) and amended to provide that where a State has statutory or case law establishing some standard for interpreting documents conveying mineral rights, that law will be used to interpret documents executed in that State. Only if no such statutory or case law exists, will custom and usage be relied upon for interpretation. This change is made to implement Congress' intent that State case law on interpretation of documents not be overruled. As stated in the 1974 Conference Committee Report to a predecessor of the Act, "the language of 522(e) is in no way intended to affect or abrogate any previous State court decisions." (H. Rept. No. 93–1522, 93rd Cong., 2nd sess. 85 (1974)).

Preclusion of Mining in Protected Areas

OSM has included § 761.11(h) in response to voluminous comments by persons who fear that mining or drilling may occur in the National Parks or other statutorily protected areas. There will be no surface coal mining, permitting, licensing or exploration of Federal lands in the National Park System, National Wildlife Refuge System, National System of Trails, National Wilderness Preservation System, Wild and Scenic Rivers System, or National Recreation Areas unless called for by Acts of Congress. The Secretary will employ the full range of his legal capabilities to meet this objective. If any person successfully establishes valid existing rights to conduct mining operations within these areas, the Secretary may use authority granted under other statutes to acquire these rights by purchase, exchange, or condemnation so that mining does not occur.

The National Park Service was concerned that it be given an adequate opportunity to prevent mining on any lands within the boundaries of units of the National Park System when persons may be determined to possess valid existing rights (VER) to mine within such units. In response to this concern, OSM has agreed to ensure that the National Park Service receives notice of permit applications in which it may have an interest. This change will be made in § 773.13(a)(3)(ii) of the final permitting rules. This notification at the beginning of the application review process will enable the National Park Service to take any action at its disposal, including possible acquisition of the property, to protect the National Park System. Additional, notification of the National Park Service and U.S. Fish and Wildlife Service will be required for any request for a determination that a person has valid existing rights under 30 CFR 761.5 for any lands within the boundaries of units of the National Park System and the National Wildlife Refuge Systems. This notification requirement has been added to final § 761.12(b)(2).

Other Changes

No change was proposed for the provision defining VER for haul roads in paragraph (b) of the VER definition. Some commenters proposed that mine access roads also be included. However, this suggestion is beyond the scope of the proposed rulemaking, and has not been adopted. VER for haul roads included as part of an operation established after August 3, 1977, would also be determined under paragraph (d) of the definition.

OSM proposed a minor addition to the portion of the VER definition which included coal both needed for and immediately adjacent to an ongoing surface coal mining operation existing on August 3, 1977. OSM proposed to define the term "needed for" to require a finding that the extension of mining is essential to make the operation as a whole economically viable. One commenter suggested that the definition be based on maximum utilization and conservation of the coal to minimize future land disturbances. OSM applauds this commenter's aim to reduce future disturbances; however, this provision

sets forth a highly specific example of VER, which is a set of particular legal rights—not a set of environmental objectives, no matter how worthy. Therefore, OSM has adopted the proposed language in paragraph (c) of the VER definition.

Another commenter proposed that the concept of coal needed for an ongoing operation be expanded to cover rights acquired after August 3, 1977. Such an interpretation is inconsistent with the statutory requirement that VER cannot be created after August 3, 1977 for areas which were subject to the protections of section 522(e) on that date. In some instances, there may be valid existing rights associated with lands acquired after August 3, 1977; however, that would have to be determined case by case using the definition set forth in paragraph (a).

Where a person claims VER on the basis that the coal from the proposed operation is "needed for" an ongoing operation, information regarding the size of the proposed site and the proportion it represents of the whole operation is helpful to evaluate this claim. In addition, the information described above in the list of information needed for a general VER claim is required on the "immediately adjacent" ongoing surface coal mining operation to establish VER for that operation, if applicable. Further, OSM needs documentation to verify the location of any such operations with respect to the proposed area and the coal seam(s) into which the proposed operation is directed. Maps or diagrams of the areas should be submitted if they would clarify or establish the proximity of the ongoing operation to that which has been proposed.

Relationship to "Substantial Legal and Financial Commitments"

In the preamble to the proposed rules (47 FR 25280, June 10, 1982), OSM discussed its original rationale for the linkage of the previous definition of valid existing rights to the concept of substantial legal and financial commitments in section 522(a)(6) of the Act, as defined in 30 CFR 762.5. Section 522(a)(6) exempts lands from the unsuitability petition process (but not from the section 522(e) prohibitions) if substantial legal and financial commitments has been made in such operations prior to January 4, 1977.

When the previous VER definition was developed, OSM reasoned that to be entitled to an exemption from the area where Congress had prohibited mining, property owners "must have a property interest in the mine that is even greater than the substantial legal and financial commitments needed to mine despite a designation by petition under section 522(a). Thus, OSM believe[d] that VER must be more than 'significant investment, that have been made on the basis of a long-term coal contract, in powerplants, railroads, coal preparation, extraction, handling and storage facilities, and other capital-intensive activities * * *.'" (44 FR 14991–2; March 13, 1979).

However, OSM reexamined the definition of VER and determined that the relationship between VER and substantial legal and financial commitments is not suggested by the legislative history. Both concepts were covered repeatedly in the long legislative history. Each was discussed separately in every case. Nowhere in the legislative history does Congress compare the two concepts. Thus, the two concepts are separate and distinct.

Private Inholdings Within National Forests

OSM proposed to clarify, in the VER defintion, that the Act's section 522(e) prohibition on mining within national forest boundaries does not apply to private inholdings. The legislative history makes clear that Congress did not intend that private inholdings be covered by section 522(e)(2) of the Act. House Report 95–218 (95th Cong., 1st sess., p. 95 (1977)) states "it is not the intent, nor is it the effect of this provision to preclude surface coal mining on private inholdings within the national forests."

However, OSM has decided that the language of section 522(e)(2) is sufficiently clear as it prohibits surface coal mining operations "on any Federal lands within the boundaries of any national forest." Therefore, OSM is not adopting the proposed change to amend the rule language itself. This requirement is also clearly stated in § 761.11(b).

It should be noted that the Act clearly distinguishes between private inholdings within the boundaries of a national forest and private inholdings within the boundaries of the National Park System and the other statutorily protected areas of section 522(e)(1). Subject to valid existing rights, section 522(e)(2) prohibits mining on any *Federal* lands within national forests, while section 522(e)(1) prohibits mining on *any* lands within the boundaries of units of the National Park System and other areas.

Section 761.5 Definitions: No Significant Recreational, Timber, Economic, or Other Values Incompatible With Surface Coal Mining Operations

This provision defines those values that might be damaged by mining and are not compatible with mining for the purposes of determining when mining could be allowed in national forests, under § 761.12(b). Four changes were proposed to the previous definition. First, the use of the word "no" in the previous rule was not necessary to the term to be defined and was proposed to be eliminated. "No" refers to the type of findings to be made, not to the phrase requiring definition. Second, the term "damaged" was proposed to be changed to "irreparable damaged," to reflect the fact that, under the Act, mining is intended to be a temporary use of the land. Third, the term "offsite areas," which in the previous definition indicated that values outside the permit are to be considered, was proposed to be changed to "affected areas," a more precise and usable term. Finally, paragraph (d) was proposed to be changed to "other values which may be incompatible with surface mining operations" from the previous paragraph listing a number of such values. This was proposed to reflect the specific language of SMCRA.

The final rule adopted today is a hybrid of the previous rule and the proposed rule. The word "no" is eliminated from the term being defined and the term "offsite areas" is changed to "affected areas," as proposed. However, instead of modifying the word damaged with the term "irreparably," the term is changed to "damaged beyond an operator's ability to repair or restore." This is meant to include a determination of whether such repair or restoration is possible using available reclamation practices. Whether a particular operator can and will use such practices will be part of the findings necessary for a permit to be issued. Finally, instead of substituting the phrase "other values" for a specific list of values, the list will be retained. Both of these modifications are a result of public comment received on the proposed rule.

A number of commenters objected to the proposed amendments, with the exception of dropping the word "no" from the definition. The majority of these commenters stated that addition of the word "irreparably" was inappropriate and disagreed with OSM's reasoning, in the preamble to the proposed rules, that mining is intented

to be a temporary use of the land which when fully repaired, is consistent with the standards of the Act. First, the commenters questioned the idea that "temporary" disruption is acceptable, noting that temporary could mean a very long period of time. Second, the commenters objected that conceivably any impact is reparable by natural processes, given enough time, and therefore "irreparable" damage is a much stricter standards than Congress intended be met in order to prevent mining. One commenter noted that, contrary to OSM's statement, Congress evinced a belief that mining, even though temporary, is not necessarily an appropriate use of land and may be prohibited even where reclamation is feasible. The commenter quoted from a report on H.R. 25 by the House Committee on Interior and Insular Affairs:

"While coal surface mining may be an important and productive use of land, it also involves certain hazards and is but one of many alternative land uses. In some circumstances, therefore, *coal surface mining should give way to competing uses of higher benefit.*" H.R. Rep. No. 94–45, 94th Cong., 1st Sess. 90 (1975); (emphasis added).

OSM agrees that the proposed word "irreparably" was not precise. As the commenters noted, conceivably any damage can be repaired given sufficient time and resources. Therefore, OSM is adopting the term "damage beyond an operator's ability to repair or restore," which is a clearer standard. To the extent an operator completely repairs the damage caused by mining, then the values will ultimately be compatible with the mining operation. During mining itself there could be a temporary interruption of important activities. However, the mere interruption does not necessarily make the mining incompatible with the long-term resumption of the activity. In each instance, a determination must be made whether the values affected are significant, whether damage to them can be repaired or restored by an operator, and whether such values are capable of existing together with surface coal mining operations because of the undesirable effects mining would have on those values. It should be noted that this definition applies only to Federal lands within the boundaries of a national forest and only for the purpose of determining whether there are significant values which would be incompatible with surface coal mining operations. It is, therefore, only one of a number of ways in which the Act and regulations address other land uses. OSM continues to believe that mining is an acceptable temporary use of the land in most situations. Mining, even when fully reclaimed, may result in permanent changes which may be undesirable. In such cases, this definition and other provisions allow for protection.

Several commenters objected to substituting the term "affected areas" for "offsite areas," stating that the existing term is clear and unambiguous because it is qualified in the definition as those offsite areas which could be affected by mining.

However, OSM believes that "offsite areas" is imprecise and could imply coverage of an undefined, perhaps remote, area away from the minesite. By contrast, "affected areas" is a more precise term which draws more closely the relationship to the surface coal mining operation. Therefore, the final rule uses the term "affected areas".

Finally, several commenters objected to the proposed change to refer to "other values" which may be incompatible with surface mining operations, rather than specifying that "other values" includes scenic, historic, archaeologic, esthetic, fish, wildlife, plants or cultural interests. The commenters stated that the proposed elimination of specific values is arbitrary and vague and would result in inadequate consideration of these values.

OSM has decided to retain the list of examples which constitute "other values" which may be incompatible with surface coal mining. A rule containing a list of examples could tend to limit the scope of the inquiry into other values. On the other hand, OSM did not intend to suggest by proposing to eliminate the examples that adequate consideration should not be afforded them. Therefore, the final rule includes a list of values, but should not be considered limited to those examples. Neither should the existence of one of the values listed be construed to require a prohibition of mining; each must be evaluated for its importance and the nature and extent of the impact which would occur.

Several commenters supported the proposed definition and addition of the modifier "irreparably" to reflect that mining is an appropriate temporary use of the land. For the reasons noted above, OSM has decided to adopt the phrase "damaged beyond an operator's ability to repair or restore." Two commenters also suggested that although the preamble is clear, OSM should clarify in the rule itself that the definition applies only to areas within a national forest. OSM believes that the definition, coupled with the use of the defined phrase in § 761.11(c) sufficiently clarifies that it applies only to Federal lands within a national forest. Thus, the language of the rule has not been modified as suggested by the comments.

Section 761.5 Definitions: Occupied Dwelling

Section 522(e) of SMCRA prohibits mining within 300 feet of an occupied dwelling. The previous rules defined an occupied dwelling as "any building that is currently being used on a regular or temporary basis for human habitation."

OSM proposed to clarify the term "occupied dwelling" by defining the term "temporary" to mean that the dwelling is used for human habitation for not less than three consecutive months each year. The 3-month standard was suggested because it corresponds to a full season of use. OSM reasoned that less than 3 months suggests intermittent use, which would not expose an occupant to the steady impact of nearby mining. OSM requested comments on other periods of time which would be an appropriate standard for temporary use.

Several commenters opposed the proposed definition stating that the proposal would violate Congress' intent that occupants be spared the impacts of mining within 300 feet of their dwellings. The commenters disagreed with OSM's assumption in the preamble to the proposed rules that the intent of section 522(e) was to prevent only the "steady" impacts of mining on nearby residents. Rather, the commenters argued that Congress intended to prevent all impacts within 300 feet of an occupied dwelling.

One commenter noted that the proposed definition would allow mining to the borders of the Santa Ana Pueblo, a historic pueblo maintained as a ceremonial village which is occupied for only a few days each year. The commenter also noted that under the proposal mining would be permitted near numerous hogans and other small dwellings which are occupied on an irregular basis by farmers, herders, or migrant laborers.

Several commenters stated that the existing definition should be retained as it provides States with the flexibility to determine, on a case-by-case basis, the circumstances under which a dwelling is, in fact, occupied. One commenter suggested that temporary be defined as an aggregate of three months rather than three consecutive months.

Several commenters supported adoption of the proposed definition and several suggested further changes. Two commenters suggested the definition be

revised to mean "any building that is currently being used on a *permanent* or temporary basis for human habitation. Temporary means that the dwelling is used as the *occupant's principal residence* for not less than three consecutive months each year." The word "permanent" would be substituted for regular to prevent a situation where a dwelling is occupied only on the opening day of hunting season each year, thus qualifying as "regular" use. The second change would avoid the need for a buffer zone around cabins or weekend homes which are occupied for only a couple of weekends during certain seasons.

Several other commenters suggested further changes to the proposed rule to clarify that three consecutive months means continuous habitation or close to 90 days of habitation. One commenter suggested clarifying that the definition excludes buildings such as barns or other outbuildings not specifically occupied by humans as residences. Outbuildings and barns not occupied by humans as residences have never been considered to be included in the definition. Other commenters suggested specifically including summer and weekend homes in the definition.

The very diverse comments received on the proposed rule indicate that there is no consensus on how the term "temporary" should be defined. No compelling case has been presented to support either the proposed change or any alternative to it. Consequently, OSM has decided to retain the existing definition. The existing definition, as pointed out by several commenters, provides the regulatory authority with the flexibility to determine, on a case-by-case basis, what constitutes an occupied dwelling and what temporary use means.

Section 761.5 Definitions: Public Building

Section 522(e)(5) of the Act forbids mining within 300 feet of public buildings. "Public building" was previously defined as "any structure that is owned by a public agency or used principally for public business, meetings, or other group gatherings." OSM proposed two options to amend the definition of public building. Option 1 would have defined public building to mean "any structure that is owned, leased, or principally used by a governmental agency for public business, meetings, or other group gatherings." This revision would have modified the previous definition by including structures not only owned or used but also those leased by government agencies for public purposes. Modifying the term "public" to "governmental" would eliminate certain community buildings from consideration in this context. However, community and institutional buildings are covered in a separate definition.

Option 2 would have revised the definition to encompass only those structures that are owned by a public agency. Under this revision, the definition would have narrowed considerably the application of the prohibition on mining within 300 feet of a public building.

OSM requested comments on these two proposed options and whether the existing definition was satisfactory. OSM has decided to adopt Option 1, with two modifications suggested by commenters.

A number of commenters opposed revising the definition because they believed it would eliminate community and institutional buildings from the protections of section 522(e)(5) of SMCRA. However, as noted above, community and institutional buildings are covered by a separate definition in § 761.5, which is not being revised, and a separate prohibition in § 761.11(f). Two commenters expressed concern that rest homes, hospitals and nursing homes would be excluded. These types of facilities are included in the definition of community or institutional building.

Several commenters supported Option 1, because they believed Option 2 was too narrow, as it would eliminate leased buildings. However, several modifications to Option 1 were suggested. A number of commenters recommended requiring both some property interest (ownership or lease) *and* use by a governmental agency to prevent unnecessary protection of garages or warehouses. One of these commenters suggested deleting the term "or other group gatherings" because it is vague and adds nothing to the concept of public building. OSM agrees with these suggestions and has adopted them for the final rule. Three commenters supported adoption of Option 2, because ownership of a building indicates commitment and because a narrower definition would allow more development of the coal resource. However, as several commenters noted, government agencies frequently lease, rather than own, the buildings they occupy and this flexibility is necessary. OSM believes that public buildings should be protected regardless of the nature of the property interest involved.

Section 761.5 Definitions: Public Park and Publicly Owned Parks

Section 522(e)(5) of the Act prohibits mining within 300 feet of public parks. The previous definition of "public park" included areas dedicated or designated by a public agency for public recreation, including lands leased, reserved or held open for that use. OSM proposed two options to modify the definition. First, OSM considered eliminating the existing reference to lands "held open to the public" because it is not clear that Congress intended to cover private lands that have not been designated as a public park by a government agency. OSM rejected similar comments in the preamble to the previous rules (44 FR 14991, March 13, 1979) by noting that lands which are owned by nonprofit organizations whose primary purpose is the protection of natural resources, and which are open to the public, should be protected as provided under this definition since they are dedicated for public purposes. Such lands have no official status as parks, however, and could include areas which could not meet the usual governmental standards for public recreation areas.

The second option considered by OSM would limit the definition of public park to areas or portions of areas "dedicated or designated by any Federal, State, or local agency primarily for public recreational use * * *." This suggestion was based on concerns that, under the previous definition, in some circumstances, lands which are reserved as watershed property or other public service facility areas may be considered public parks. In some cases, parts of a broader area might be designated as a public park under the proposed revision, allowing other parts of the area to be managed for other purposes. Also, certain areas are devoted to mixed uses, which, at the discretion of the regulatory authority, may be deemed public parks.

In addition to these two options, OSM considered another option which would allow the classification of multiple use areas to change, depending upon the use which is dominant at the time. For example, the use of an area might shift from timber management to wildlife to public recreation; it might be designated as a public park only during the recreation phase.

Several commenters opposed revising the definition and favored retention of the previous definition, which was not limited to sites with public ownership or particular uses. One of these commenters noted that the National Park Service (NPS) often enters into contracts with private landowners to maintain areas in or adjacent to NPS units. These interests are acquired to protect the associated natural and scenic resources or rights of public access across lands and are generally

more cost effective than outright fee purchase. The commenter objected that neither of the proposed options would include these areas because they are not "dedicated or designated" by a governmental agency. However, less than fee interests can qualify as public parks if other conditions are met. Contractual arrangements with NPS or other governmental agencies could be used to dedicate an area for public recreational use. A second problem raised by the commenter concerned the proposed language "primarily for recreational use." The commenter noted that many units of the National Park System were established for a variety of purposes, and that public recreation is not usually the primary purpose for establishment. Therefore, the commenter stated that the proposed definition would be more restrictive than anticipated by the language of section 522(e)(3) of the Act.

OSM disagrees with the comment concerning the relationship of the term "primarily for public recreational use" with the protection provided to units of the National Park System. Section 522(e)(3) of the Act is principally for the protection of publicly owned parks other than units of the National Park System. The various units of the National Park System specifically are protected by the Congress through Section 522(e)(1) of the Act.

Another commenter also noted that the National Park Foundation, a non-profit organization, purchases land for public use and holds the land until the NPS wishes to add the land to the National Park System. The commenter suggested that OSM should distinguish between such arrangements and the situation where a private landowner or group labels an area "open to the public" in order to prevent its being mined. OSM agrees that such arrangements could qualify as public parks only if a public agency in some way dedicates or designates its public recreational status, and believes that the definition adopted today includes such arrangements.

A number of commenters supported Options 1 or 2 and some suggested further modifications. Some commenters suggested that a public park be one designated *solely* for public recreational use, or where the dominant use is not recreation, those portions of the area designated and managed for high density recreational use as determined by the regulatory authority. The commenters stated that this definition recognizes the concept of multiple use, eliminates lands "leased or reserved", which may never be used for recreational purposes, and tightens up the definition by using the term "managed" to recognize the fact that public parks are not primitive unused areas.

The concept of a pubic park as one designated *solely* for recreational use goes beyond the accepted idea of a park. Parks are established for many reasons and often for multiple uses. Under the definition adopted today, parts of a broader area may be designated as a park, allowing other parts to be managed for other purposes. OSM believes primitive areas may be public parks if so designated.

Several commenters supported Option 2 and suggested deleting the phrase "held open to the public" for the same reasons it was deleted from Option 1. OSM is retaining this phrase but such lands must be recognized as being dedicated or designated primarily for public recreational use by a public agency. Such a requirement will prevent the situation where a private landowner labels an area "open to the public" in order to prevent its being mined. Two commenters suggested that actual public use of the area be considered a criterion. One commenter urged OSM to limit the definition to lands owned by governmental entities. OSM believes these suggestions limit the definition too much. Actual public use should not be controlling as it may ebb and flow over time. Ownership is not the key criterion because as noted above, contractual arrangements may provide for recognition of less than fee interests. Another objected that numerous reservoirs exist which were primarily authorized for flood control, yet are among the most frequently used recreational areas, which would satisfy the average person's idea of a public park. Under the definition adopted today, the regulatory authority will have the flexibility to determine whether such an area qualifies as a public park, or whether mining can occur.

Based on these comments, OSM has decided to adopt Option 2, which defines public park as areas or portions of areas dedicated or designated by any Federal, State, or local agency primarily for public recreational use, whether or not such use is limited to certain times or day, including any land leased, reserved, or held open to the public because of that use. This definition provides the flexibility for the regulatory authority to determine on a case-by-case basis whether a particular area or portion of an area should be defined as a public park.

Section 522(e)(3) of the Act prevents surface coal mining operations from adversely affecting any "publicly owned park." Commenters confused this term with the term "public park" in Section 522(e)(5). To resolve the confusion over these related terms and to establish consistency in their relationship, this final rule includes a definition of "publicly owned park." "Publicly owned park" is defined to mean "a public park that is owned by a Federal, State or local governmental entity."

Section 761.5 Definitions: Public Road

OSM proposed to delete the definition of "public road" and use the definition of "road" and the public road concept contained in the definition of "affected area" to define public roads in the future.

However, as a result of public comment, OSM has decided to retain a definition of public road in this section, and to define it in accordance with the preamble discussion of the definition of "affected area" published on August 2, 1982 (47 FR 33424). Only two commenters supported deletion of the definition. [134B, 100E] Numerous commenters urged that a definition of public road be retained, as it is used repeatedly throughout the regulations and is significant enough to warrant separate consideration and attention. A few of these commenters suggested that the previous definition should be retained. However, the previous definition was suspended on November 27, 1979 (44 FR 77447) as a result of a litigation challenge in *In re Permanent Surface Mining Regulation Litigation*, No. 79–1144 (D.D.C. Feb 26, 1980) at p. 23. Other commenters suggested adopting a definition similar to that discussed in the January 4, 1982 and August 2, 1982 **Federal Register** (47 FR 41 and 47 FR 33424). The August 2 **Federal Register** discussed the definition of public road in the context of the definition of affected area for the purpose of clarifying which roads are to be included in a operator's "affected area." In the January 4, 1982 **Federal Register**, OSM proposed four alternatives for the definition of which roads are to be considered included in the "affected area."

The first alternative would have excluded from the "affected area" any part of a road used for coal haulage or access which is owned unconditionally, controlled and maintained by a public entity, used frequently for purposes other than coal haulage or access, and maintained (using public funds) in a manner similar to other public roads of a similar nature in the jurisdiction.

The second alternative would have excluded from the "affected area" any

part of a road which: (a) Was designated as a public road pursuant to the laws of the jurisdiction in which it is located; (b) is maintained with public funds in a manner similar to other public roads of the same classification within the jurisdiction; (c) there is substantial (more than incidental) public use; and (d) meets road construction standards at least as a stringent as the standards applicable to access and haul roads under the State program.

The third alternative replaced the public use and road construction criteria of the second alternative with a requirement that the road be paved. "Paved" meant that the entire length of the road be surfaced with all weather surfacing material of asphalt, concrete or similar consolidated, hard and durable material. The placement of gravel, rock or other unconsolidated material would not constitute paving.

The fourth alternative replaced the paving requirement of alternative three with the requirement that the road meet the road classification standards for a class 1, 2, or 3 road under the mapping system established by the U.S. Geological Survey for 7.5 minute topographic maps.

OSM stated in the August 2, 1982 **Federal Register** that it intended to adopt a final rule similar to the second alternative. Specifically, a road would be excluded from the "affected area" for a mine if it met three criteria: (a) The road has been designated as a public road pursuant to the laws of the jurisdiction in which it is located; (b) the road is maintained with public funds, and constructed, in a manner similar to other public roads of the same classification within the jurisdiction in which it is located; and (c) there is substantial (more than incidental) public use of the road. OSM is incorporating these concepts in its definition adopted today. Comments received in response to this proposed change were addressed in detail in the August 2, 1982 **Federal Register** and need not be repeated here.

Section 761.5 Definitions: Cemetery

OMS proposed to revise the definition of "cemetery" to reflect the August 6, 1981, decision of the United States Court of Appeals for the Sixth Circuit. *Holmes Limestone Co. v. Watt*, 655 F. 2nd 732 (6th Cir. 1981).

In that decision, the Court distinguished between public cemeteries and private family burial plots. It stated "There is no evidence that Congress ever intended to regulate private family burial plots not open to the public. It can hardly be claimed that the mining close to the graves on private property interferes with interstate commerce." Id. at 738.

In reviewing the legislative history, OSM found no statement that indicated Congress intended that private family burial grounds should be considered cemeteries for the purpose of section 522(e) of the Act. Accordingly, OSM proposed to add to the existing definition the phrase "but does not include family burial grounds."

The majority of commenters opposed excluding family burial grounds from the definition of cemetery. A number of these commenters pointed out that the impact of the proposed change would be especially acute in Appalachia or in areas where the predominant cultural groups do not recognize communal burial as part of their traditional practices. A number of comments cited the extensive amount of testimony offered at Congressional hearings, concerning past disturbances of family and private burial grounds, to demonstrate that the legislative history shows Congress intended to include family burial plots under the protection of section 522(e). However, testimony often includes material on both sides of issues, and is not by itself an indication of Congressional intent. Two commenters discussed the *Holmes Limestone* case, to which OSM referred in the preamble to the proposed rules. These commenters noted that while the U.S. Supreme Court declined to hear the case, it considered only the question of the Ohio district court's jurisdiction to review a permanent program rule and did not reach the merits of the definition of the word cemetery. One of the commenters suggested that if OSM decided to promulgate a new definition, it should be limited to the fact situation of the *Holmes Limestone* case. That decision concerned only those private cemeteries where the owner of the cemetery and the mineral estate underlying the land also owns and resides on adjacent land. However, this suggestion is not responsive to the findings of the Circuit Court. Finally, one commenter who supported the previous definition suggested that a waiver should be provided for, to allow mining within a closer distance to the cemetery. OSM has no authority under section 522(e)(5) of the Act to provide for a waiver. The Act provides for a waiver of protection afforded under section 522(e)(5) of the Act only in the situation of an occupied dwelling.

Several commenters supported the proposed amendment and some suggested the proposal be further clarified or amended. Two commenters suggested that cemetery be defined as any *identifiable* area of land where human bodies are interred, but not to include family burial grounds. The commenters stated that adding this term would prevent rumored burial grounds from being included and would necessitate some physical evidence or readily observable markers. OSM intends that the new definition applies only to "identifiable" burial grounds. One commenter suggested that "abandoned" cemeteries be excluded from the definition, but offered no criteria to be used in deciding what constitutes and abandoned cemetery. One commenter suggested that OSM provide for a waiver and allow the operator or owner of the cemetery to agree to move the interred bodies. OSM has no authority, as noted above, to provide for a waiver. However, graves may be moved if State law allows.

One commenter who supported the proposal suggested that the prohibited distance should be measured from the nearest grave within a cemetery rather than the boundary of the cemetery itself. The commenter stated that many cemeteries consist of large tracts of land, but may only have graves within a small portion of that area. Adopting this suggestion, the commenter stated, would adequately protect the graves, as well as the public's access to them, while at the same time allowing cemetery owners who wish to do so to allow mining under certain portions of their property. OSM rejects this suggestion because the Act's protection extends to lands within 100 feet from a "cemetery" not from the nearest gravesite.

OSM has decided to adopt the proposed definition, with a slight modification to exclude private family burial grounds, to reflect the decision of the Sixth Circuit. However, in response to those comments concerned with elimination of protection for private family burial grounds, the permitting process will provide an additional level of protection for private family burial grounds. A new requirement is being added to §§ 779.24(j) and 783.24(j) to require the permit applicant to identify all private family burial grounds in or within 100 feet of the proposed permit area. These two revisions are included as a part of this final rule. New § 773.15(c)(11) will require the regulatory authority to find, prior to issuing a permit, that mining activities would not adversely affect private family burial grounds. If the regulatory authority finds that the mining operation would adversely affect a private family burial ground, the burial ground may be relocated if allowed by State law, and if performed in accordance with State law. If the burial ground cannot be moved, no

mining which would adversely affect the burial ground may be permitted. This recognizes OSM's intent that, although not statutorily protected under section 522(e) of the Act, these sensitive areas will receive the necessary degree of protection. For convenience, the regulatory language in § 773.15 will be included as part of the revisions to 30 CFR Chapter VII, Subchapter G in which a new Part 773 is being promulgated.

Section 761.11 Areas Where Mining is Prohibited or Limited

Section 761.11(a): Wild and Scenic Rivers

Section 761.11(a) provides that, subject to valid existing rights, no surface coal mining operations shall be conducted withn the boundaries of certain national systems, such as the Wild and Scenic Rivers System, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1276(a)). A proposed boundary for rivers under study for wild and scenic designation has been identified by the National Park Service (NPS) in guidelines published in the **Federal Register** on January 28, 1981 (46 FR 9148).

The study area defined by NPS would cover, at a minimum, a corridor extending the length of the study segment and extending in width one-quarter mile from each bank of the river. Accordingly, OSM proposed to revise § 761.11(a) to include this clarification, which would give States discretion to establish these boundaries or others which would exceed the minimum standard established by NPS. As a result of public comment, the final rule provides that the corridor for study rivers shall not *exceed*, one-quarter mile from each bank of the river.

Some commenters had no objection to the proposed rule. One commenter supported the previous rule, arguing that there is no authority in the Act to provide buffer zones for study rivers. The corridor, however, is not a buffer zone—rather, it is an integral part of the study river. The commenter noted that the proposed rule contained minimum, but no maximum boundaries, and therefore, it is conceivable that the buffer zone could be larger than the actual area of land to be protected. OSM has modified the final rule to provide that the one-quarter mile corridor will be the *maximum* limitation.

Several commenters objected that the one-quarter mile boundary was too inflexible. The commenters noted that in some cases the corridor might not protect the values under consideration, while in other cases it might be too restrictive. These commenters suggested that no boundary be specified, but that it be determined on a case-by-case basis, perhaps by the regulatory authority in consultation with the NPS.

A standard corridor for study rivers will provide greater certainty and uniformity in establishing the prohibition on mining. Historically there have been long delays in establishing a specific study corridor. This definition sets the corridor within which mining cannot occur, avoids delay and uncertainty, and affords the needed protection. One commenter suggested specifying that the quarter-mile boundary would exist only during the time a river was under study and once a corridor was determined then the actual corridor would become the boundary.

OSM agrees with the commenter's statement, but believes the rule language is sufficiently clear on this point. Clearly, the one-quarter mile corridor applies only to study rivers. Once a river is designated as wild or scenic river, its actual corridor is set by law and will become the official boundary.

Section 761.11(c): National Register of Historic Places

Section 522(e)(3) of the Act prohibits, subject to valid existing rights, surface coal mining operations "which will adversely affect any publicly owned park or places included in the National Register of Historic Sites [sic] unless approved jointly by the regulatory authority and the Federal, State, or local agency with jurisdiction over the park or the historic site." When promulgating § 761.11(c) of the permanent program rules, OSM interpreted section 522(e)(3) to be as broad as the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), and thus to include privately owned properties listed in the National Register and properties, publicly or privately owned, eligible for listing in the National Register. As a result of a litigation challenge in the United States District Court for the District of Columbia, *In re Permanent Surface Mining Regulation Litigation*, No. 79–1144 (D.D.C. 1980), OSM suspended § 761.11(c) on November 27, 1979 (44 FR 67942) insofar as it covered areas eligible for listing in the National Register and privately owned properties listed in the National Register. OSM is today finalizing those earlier suspensions by amending § 761.11(c) to apply only to publicly owned properties listed on the National Register.

The change deletes privately owned properties listed in the National Register and all eligible properties from the prohibition and procedures established in section 522(e)(3) of the Act and Part 761. This amended language is consistent with OSM's present interpretation of section 522(e)(3) of the Act and with the amendment to § 761.12(f)(1), discussed below. A number of commenters objected to adopting a rule which excludes privately owned properties and all eligible properties from the areas where mining is prohibited. Other commenters argue that the word "publicly" in section 522(e)(3) of the Act also applies to places listed in the National Register, as well as to parks. One commenter noted that the phrase "publicly owned park" was an attempt to distinguish between parks that are privately owned, such as amusement parks, and parks owned by public agencies of some kind. Other commenters maintained that the type of ownership is irrelevant to the protection required by the National Historic Preservation Act of 1966. They asserted that because more than 90% of all properties listed are privately owned, it could not have been Congress' intention to protect only publicly owned places. OSM disagrees with these commenters. When the language of section 522(e)(3) of the Act is read in its entirety, it supports the interpretation that "publicly owned" applies to places as well as parks. Section 522(e)(3) of the Act prohibits mining operations "which will adversely affect any publicly owned park or places included in the National Historic Sites [sic] unless approved jointly by the regulatory authority *and the Federal, State, or local agency with jurisdiction over the park or the historic site*" (emphasis added). The implication from the latter phrase is that a governmental agency will have legal authority or control over the historic site, not just an interest or affinity. A number of the commenters who objected to the proposed rule, as well as several who supported the deletions, noted that OSM has a responsibility, apart from SMCRA, under the National Historic Preservation Act of 1966 (NHPA) to protect historic properties. These commenters noted that a mechanism already exists for OSM to carry out its responsibilities, in the form of a Programmatic Memorandum of Agreement (PMOA) ratified by OSM and the Advisory Council on Historic Preservation. The commenters suggested that the PMOA be implemented as signed or that OSM develop implementing regulations.

OSM does not agree with those commenters who object that the rule changes abrogate OSM's responsibility under the NHPA. The rule changes implement SMCRA only. OSM agrees

that it has a responsibility under section 106 of the NHPA to consider historic properties in decisions that it makes. However, this responsibility is separate both from the protections provided by section 522(e) of the Act and from the regulations in Part 761. OSM currently renegotiating the PMOA and will take any actions needed in the future to comply with the NHPA.

One commenter urged that the prohibition be amended to require a showing of "significant and irreparable adverse effects" on public parks and public places before mining would be prohibited. The commenter stated that such a requirement would be consistent with certain other OSM proposed changes, that under the Act, mining is a temporary use of the land which when fully repaired is not a matter of serious concern. However, the actual language of section 522(e)(3) is "adversely affect." If Congress had intended to require a showing of greater impact, it would have so specified.

One commenter had no specific objection to the changes proposed, but believed that delays in mining might result if the regulations are changed because there would be no need to survey the permit area for cultural resources. The changes being made to the unsuitability regulations do not change the permit requirements to identify cultural resources.

Section 761.11(d)(2): Public Road Decisions

Previous § 761.11(d)(2) provided that, subject to valid existing rights, no surface coal mining operations shall be conducted after August 3, 1977, within 100 feet, measured horizontally, of the outside right-of-way line of any public road, except where the regulatory authority allows the public road to be relocated or the area affected to be within 100 feet of the road. OSM has found that decisions regarding public road relocations are rarely made solely by the regulatory authority but are typically made by a public road authority in coordination with the regulatory authority. Thus, OSM proposed amending § 761.11(d)(2) by providing that the regulatory authority, or public road authority upon being designated as the responsible agency by the regulatory authority, may take action provided that the procedures in § 761.11(d) are followed. In addition, this section was proposed to be modified to allow roads to be closed as an alternative to relocation.

The final rule is adopted as proposed. Several commenters supported allowing the public road authority to take action upon being designated as the responsible agency. Several commenters opposed allowing roads to be closed as an alternative to relocation. These commenters argued that section 522(e)(4) of the Act does not authorize the closing of public roads. One commenter asserted that road closures are governed by state statutes and once a public road is closed pursuant to law, there is no "public road" to be regulated under section 522(e)(4) of the Act.

OSM agrees with the latter commenter. In allowing the relocation of roads, Section 522(e)(4) of the Act does not preclude road closings undertaken in accordance with the applicable State laws or local ordinances, so long as the interests of the affected public and landowners are protected.

Section 761.11(e): 300-Foot Limitation on Mining

Previous § 761.11(e) provided that, subject to valid existing rights, no surface coal mining operations shall be conducted after August 3, 1977, unless those operations existed on that date, within 300 feet, measured horizontally, of any occupied dwelling, except when the owner thereof has provided a written waiver consenting to operations closer than 300 feet. OSM is adding a second exception for haul roads and access roads which connect with public roads opposite occupied dwellings.

This provision addresses the issue of whether an existing public road adjacent to and within 300 feet of an occupied dwelling essentially negates the purposes of prohibiting a haul road that intersects the public road on the opposite side and within 300 feet of the dwelling. Such a haul road does not bring impacts any closer to a dwelling on the opposite side of the road, because the dwelling is already subject to the impacts of public road use, including traffic that uses the haul road.

Several commenters supported the proposed amendment and some suggested that this exception be further amended to include mine access roads, roads located on the same side of the public road as the occupied dwelling, and other coal transport systems such as conveyors or slurry lines. OSM has accepted the suggestion that acess roads as well as haul roads should be excepted from the prohibition. All mine roads, whether access or haul roads, would not bring the impacts of mining any closer to the dwelling. OSM does not believe the same rationale holds true for mine operations on the same side of the public road and has not adopted that suggestion. OSM also has not adopted the suggestion that other coal transport systems be excepted from the prohibition. Other transport systems involve impacts different in nature from the impacts associated with roads. In addition, there are many more options for the location of other transport systems than there are for mine roads.

Several commenters objected to excepting haul roads from the prohibition, noting that the impacts of haul roads are different and more severe than those of public roads. The commenters stated that increased usage would produce greater noise and dust and a potential for safety problems for normal traffic. The commenters argued that the proposed change would violate section 522(e)(5) of SMCRA, which prohibits surface coal mining operations within 300 feet of an occupied dwelling. OSM believes, however, that the change is consistent with SMCRA in that the impacts of mining will not be any closer to the dwelling because the dwelling is already subject to the impacts of public road use. While the impacts of coal trucks may be more severe, those same trucks will be using the public roads whether or not a haul road is permitted within 300 feet of the dwelling.

Section 761.11(h): Areas Where Mining Is Prohibited

A new § 761.11(h) is added. See the discussion under § 761.5, Definition of Valid Existing Rights.

Sections 761.12 (a), (b) and (d): Procedures for Reviewing Permit Applications

Section 761.12(a)

Section 761.12(a), which is not being amended at this time, requires the regulatory authority, upon receipt of a permit application, to review the application to determine whether the proposed operation would be limited or prohibited under section 522(e) of the Act. Section 761.12(a) is a non-exclusive means for an operator to obtain a VER determination. To avoid the expense of an operator preparing and submitting permit applications based on uncertain claims of VER, OSM strongly encourages operators to seek advance determinations of VER. The recent amendments to OSM's Federal lands rules (48 FR 6912, February 16, 1983) explicitly reserve to the Federal government the responsibility to make VER determinations for Federal lands on which the prohibitions of sections 522(e)(1) or (2) of the Act apply. Thus, for States that have entered into cooperative agreements with OSM in which the State regulatory authority administers the permanent program regulations on Federal lands, OSM, not the State regulatory authority, will make the VER determination.

Section 761.12(b)

Previous § 761.12(b) provided that, where a proposed surface coal mining operation would be located on any lands listed in § 761.11 (a), (f), or (g), the regulatory authority shall reject the application if the applicant had no valid existing rights for the area on August 3, 1977, or if the operation did not exist on that date. The modifications to the definition of valid existing rights allow valid existing rights to be vested after August 3, 1977, pursuant to circumstances specified in § 761.5. In correlation with these modifications, § 761.12(b)(1) is being amended to provide that the regulatory authority shall reject the application if the applicant has no valid existing rights for the area or if the operation did not exist on August 3, 1977. Section 761.12(b)(2) provides that, when the regulatory authority is unable to determine whether the proposed operation is located within the boundaries of certain prohibited or limited areas, it will transmit information to the appropriate agency, which must respond within 30 days of receipt of the request.

Section 761.12(b)(2) is being revised to provide that the appropriate agency has 30 days from receipt of the request in which to respond or the regulatory authority may make a determination based on available information. In response to comments, an additional amendment is being made to allow the regulatory authority to grant an extension, upon request of the appropriate agency, of up to 30 days.

This change would clarify that regulatory authorities have the discretion to proceed with determining areas prohibited or limited by Congress when response from outside agencies is not forthcoming within the designated comment period or the extended period granted by the regulatory authority. In any event, regulatory authorities are responsible for making sure that section 522(e) of the Act is not violated.

Two commenters supported the proposed amendment to § 761.12(b)(1), but one noted that instead of rejecting an application outright, the applicant should be allowed to modify the application to exclude any area for which the applicant has no valid existing rights.

A regulatory authority could allow an applicant to modify its application if a portion of the permit area contained lands on which mining was prohibited. Only if the permit area was composed entirely of lands for which the applicant had no valid existing rights would the application be rejected. OSM strongly encourages operators to seek advance determinations of VER. Two commenters objected to the proposed change because of their objection to the changes to the definition of VER in § 761.5.

Several commenters supported the amendment to § 761.12(b)(2). One commenter suggested that an extension of time be allowed for the appropriate agency to respond. This suggestion has been adopted. One commenter recommended that the regulatory authority be required to make the determination if a response is not forthcoming. This recommendation has not been adopted. Although the regulatory authority has the discretion to make the determination, it is responsible for assuring that section 522(e) of the Act is not violated. To require the regulatory authority to make a determination based on inadequate information might result in the issuance or denial of a permit which would not be in accordance with either the Act or the regulations.

Three commenters opposed the amendment and suggested that additional time be granted on a case-by-case basis. In response to these comments, OSM has added a provision whereby the appropriate agency may request an extension of time.

Section 761.12(c)

Section 761.12(c) requires a person to file a permit application before a determination may be made that mining on Federal lands within a national forest may be allowed under § 761.11(b). OSM expects to propose procedures that will allow a determination of rights under § 761.11(b) in advance of the filing of a permit application.

Section 761.12(d)

Section 761.12(d) provides procedures for obtaining approval to mine within 100 feet of a public road or to relocate public roads. OSM is revising this section to reflect the change to Section 761.11(d) to allow a public road authority, as appropriate, to act on road relocation and to include the additional option of closing a road. Actions involving roads generally are required to be coordinated with the agency responsible for public roads. OSM believes that there is no need for regulatory authorities to duplicate the actions of a road authority. If the road authority provides the opportunity, notice, and findings consistent with these rules to protect the interests of the public and landowners, the road authority should be able to take action. OSM also is allowing roads to be closed using the same procedures. Road closings are presently available to States to deal with other problems. Provided that the public interest is protected, OSM believes that closings should be available to deal with mining problems.

Sections 761.12(d) (2) and (3) are being revised for clarity. No substantive change is intended.

One commenter objected that OSM has exceeded the requirements of the Act by requiring an additional two-week notice of a public hearing on a road decision. The commenter suggested that once the initial notice is published, providing the opportunity for a public hearing, those persons concerned can be notified directly. However, notice of a public hearing must be provided in advance to all who might wish to participate or attend. Therefore, this suggestion was not adopted.

Section 761.12(d)(4) specifies that a written finding will be made based upon information received at the public hearing within 30 days after completion of the hearing as to whether the interests of the public and affected landowners will be protected from the proposed mining operations. This section is being revised in conjunction with the changes to § 761.12(d) (2) and (3) to provide that a finding will be made within 30 days after completion of the hearing, or after the public comment period ends if no hearing is held.

One commenter supported the amendments to § 761.12(d), except for the amendment to § 761.12(d)(4), which the commenter believed to be too restrictive on the regulatory authority. The amendment is being made to clarify that if no hearing is held, the regulatory authority must make a decision after the public comment period ends. If the amendment were not made, there would be no requirement that the regulatory authority make a decision in those cases where no hearing is held.

Section 761.12(e): Waivers

Section 761.12(e) provides requirements for obtaining waivers from the prohibition on mining within 300 feet, measured horizontally, of an occupied dwelling. OSM previously proposed changes for this section (45 FR 8240–8245, February 6, 1980) and reproposed these and additional amendments in the June 10, 1982 **Federal Register**. OSM is adopting Option 2 for § 761.12(e)(1), as proposed on June 10. Second, OSM is adopting the proposals for new paragraphs (e)(2) and (e)(3). The final rule provides the following:

Previously § 761.12(e) is redesignated as § 761.12(e)(1), providing that where proposed surface coal mining operations will be conducted within 300 feet,

measured horizontally, of any occupied dwelling, the permit applicant shall submit with the application a written waiver by lease, deed, or other conveyance from the owner of the dwelling, clarifying that the owner and signator had the legal right to deny mining and knowingly waived that right. The waiver shall allow such operations within a closer distance of the dwelling as specified.

A new § 761.12(e)(2) is added providing that where an applicant for a permit after August 3, 1977, had obtained a valid waiver from the owner of an occupied dwelling prior to August 3, 1977, a new waiver will not be required to mine within 300 feet of that dwelling.

A new § 761.12(e)(3)(i) is added, which provides that where an applicant for a permit after August 3, 1977, had obtained a valid waiver, the waiver will remain effective against subsequent purchasers who had actual or constructive knowledge of the existing waiver at the time of purchase. New § 761.12(e)(3)(ii) provides that a subsequent purchaser shall be deemed to have constructive knowledge if the waiver has been properly filed in public property records pursuant to State laws or if mining has already proceeded to within the prohibited distance at the time of purchase.

A number of commenters opposed the proposed amendment to § 761.12(e)(1) that provided that the waiver could be submitted as part of a lease, deed, or other conveyance and that clarified that the owner and signator had the legal right to deny mining and must knowingly waive that right. The commenters objected that this specificity exceeds the requirement of section 522(e)(5) of the Act which does not specify the form or language of the waiver. One commenter noted that the change appears unnecessary since the previous regulatory language already provided that the "waiver must be knowingly made and separate from a lease or deed *unless the lease or deed contains an explicit waiver.*" (emphasis added by commenter). Finally, one of these commenters noted that a waiver is in the nature of a license which is not an estate in land such as would be transferred by a lease, deed, or other conveyance.

The final rule specifies the minimum requirements necessary to interpret the waiver provision of section 522(e)(5) of the Act and does not specify in detail the form or language required. The term "other conveyance" is intended to cover any written instrument, not just land conveyance procedures. Therefore, in those States where waivers would not normally be found in deeds, or leases, the regulation provides an alternative means for the owner to waive the distance limitation.

Several commenters supported the proposed amendments to § 761.12 (e)(2) and (e)(3).

Two of these commenters suggested that constructive notice of a waiver should not include mining has already proceeded to within the 300 foot limit. One of them stated that open, visible mining is actual notice, not constructive notfce and suggested that instead, constructive notice should include "if mining within the 300-foot limit has been proposed in a permit application on file with the regulatory authority." OSM agrees that visible mining is actual notice of mining, but it is constructive notice that a waiver exists. For example, an owner waives the right to prohibit mining within 300-feet of his dwelling and allows the operator to mine to within 200 feet of his dwelling. A subsequent purchaser is not told of the written waiver, but upon inspecting the property prior to settlement sees that mining has been conducted within 250 feet of the dwelling. The purchaser would then be deemed to have constructive notice of the waiver and would be well-advised to discover the exact provisions of it prior to purchase.

The other commenter who objected to this provision stated that there would be nothing to prohibit an operator who has mined within 295 feet of an occupied dwelling with the knowledge of the previous owner to continue to mine to within 50 feet of the dwelling when a subsequent purchaser has moved in. The commenter has misunderstood the provision. Constructive notice can only be based upon an actual, written waiver which specifies the distance to which the operator may mine. Illegal mining to within 295 feet of the dwelling does not give rise to an implied waiver. An operator who has mined to within 295 feet of an occupied dwelling without valid existing rights or a written waiver, is either operating under an invalid permit or is outside the approved pemit area.

Finally, one commenter was disturbed by the sentence in the preamble to the proposed rules which stated: "It should be noted that a valid waiver may encompass the transfer of both valid leases and permits." The commenter expressed concern that this sentence might mean that waivers are assignable and may be transferred to other operators. The commenter stated that waivers are a personal right which cannot be assigned. As an example, the commenter noted that it was possible that an owner might allow a reputable coal company to mine within 300 feet of his dwelling, but would not want less reputable operators to do so.

The Act does not preclude a waiver from being assigned or transferred. The Act is also silent as to whether the waiver can or must be irrevocable. The specific terms of the waiver must be based upon local law. Section 510(b)(6) of the Act clearly provides that "nothing in this Act shall be construed to authorize the regulatory authority to adjudicate property rights disputes." However, the waiver must remain valid during the time that mining occurs within 300 feet of the occupied dwelling.

Section 761.12(f): Agency Review of National Register of Historic Places

Section 761.12(f)(1) establishes requirements and procedures for consulting with agencies which have responsibility for reviewing the impact of mining on public parks and historic places. OSM is revising this section to eliminate reference to privately owned places or to places eligible for listing on the National Register of Historic Places. This reflects a change similar to that for § 761.11(c), discussed above. This amendment also modifies the language to "Where the regulatory authority determines that the proposed surface coal mining operation *will* adversely affect any public park or any publicly owned site * * *." (Emphasis added.) The previous rules used "may" rather than "will." These changes are made to reflect the actual wording of section 522(e)(3) of the Act. The change further provides that the regulatory authority will make the determination of whether the proposed operation will adversely affect the park or place. Having the regulatory authority make this determination will reduce the number of permit applications that will have to be referred to consulting agencies.

A number of commenters objected to substituting the word "will" for "may" since the change will allow the regulatory authority to prejudge the impact of mining without the benefit of the input from the agency with expertise. The language change, however, reflects the actual wording of the Act. If it appears that a public park will be adversely affected by a proposed mining operation, the regulatory authority must seek joint approval. In addition, concerned agencies will have an opportunity to comment on all permit applications during the public comment period. One commenter stated that the National Park Service (NPS) Regional Director should have the opportunity to make a case-by-case determination as to whether a proposed operation will

adversely affect any unit of the National Park System, and that upon such a finding, the regulations should provide that the NPS Regional Director have consent authority over issuance of the permit. The determination of whether a proposed operation will adversely affect an NPS unit will be made by the regulatory authority. The NPS will be afforded the opportunity to comment as an affected agency. The regulations provide that a permit shall not be issued for an operation which will adversely affect any publicly-owned park or publicly owned place listed on the National Register unless approved jointly by all affected agencies. For NPS units, this will include the National Park Service.

OSM is also revising this section to provide that where other agencies with jurisdiction over parks or places on the National Register fail to interpose an objection within 30 days from receipt of the request, this will constitute approval of the proposed permit, subject to final regulatory authority determination. This change is made because a lack of agency action could otherwise result in long delays to permit approval. It is important to establish a regularized procedure that will allow timely decision making, which at the same time does not impose an unrealistic deadline upon the responsible agencies. This rule sets such a procedure. One additional change is made, as a result of public comment, to allow the regulatory authority to grant, upon request by the appropriate agency, an additional 30 days extension of time within which to respond. Sixty days should be sufficient to overcome administrative delays, do necessary analysis, and, at the very least, interpose an interim objection.

Several commenters objected to requiring the affected agency to respond within 30 days or the lack of response would be considered approval of the permit application. These commenters suggested additional flexibility in the form of an extension of time. OSM agrees and has provided that the regulatory authority, upon request, may grant an extension of up to 30 additional days. Three commenters maintained that under no circumstances should a non-response be considered an approval. These commenters argued that the Act requires affirmative action and that silence should constitute disapproval. Although the suggestion is not accepted, OSM agrees that an agency which objects to a mining operation should do so promptly, directly, and on the record, rather than through inaction.

On the other hand, while OSM recognizes that uninformed inaction would not constitute the requisite approval, the rule includes sufficient safeguards to avoid this outcome. By providing that the regulatory authority shall specifically request the reviewing agency's approval or disapproval, the rule provides for actual notice that a decision is required. By providing that the applicable parts of the permit application shall accompany this request, the rule insures that the reviewing agency will have the information necessary to make its decision. By providing for notice that the agency has 30 days in which to respond, *and* that failure to respond within this or an extended period shall constitute approval, the rule underscores the consequences of inaction. And by providing for a thirty-day extension upon request, the rule gives even a hard-pressed agency ample time in which to respond. Moreover, if an agency needs additional time for deliberations, it is not precluded from interposing an interim objection until it is ready to make a final decision.

The Congress itself has explicitly recognized by statute that administrative failure to interpose an objection in the face of a stated deadline can be a legitimate mechanism for signifying lack of objection, and thus, approval. *See*, 42 U.S.C. § 1973c, *and interpretation thereof in United States v. Board of Commissioners of Sheffield, Ala.*, 435 U.S. 110, 136 (1978). Furthermore, in analogous situations, the U.S. Supreme Court has held repeatedly that informed inaction by the Congress can constitute approval of the interpretation given to legislation by the Executive Branch. *See, e.g., Bob Jones University v. United States*, ——— U.S. ———, (1983); *Haig* v. *Agee*, 453 U.S. 280, 297–298 (1981). Thus, OSM has ample precedent for employing this approval mechanism in order to establish an orderly procedure for timely decisionmaking.

Section 761.12(f)(2) is revised to delete the words "mine plan approval or" from the requirement that a mine plan approval or permit for the operation shall not be issued unless jointly approved by all affected agencies. This change is made to be consistent with rules published April 5, 1983 (48 FR 14814) which delete the definition of mine plan area and the use of the phrase "mine plan" in all of 30 CFR Chapter VII.

OSM also considered clarifying what are the "affected agencies" which must approve of a permit where the proposed operation will adversely affect places listed on the National Register. However, the term "affected agencies" is adequately defined in paragraph (f)(1) as "the Federal, State, or local agency with jurisdiction over the publicly owned park or publicly owned National Register place." In the June 10 preamble, OSM stated that proposed paragraph (f)(1) would read "the Federal, State, or local agencies with jurisdiction over, *or a statutory or regulatory responsibility for*, the public park or publicly owned National Register site." (emphasis added). However, the underlined phrase was suspended on November 27, 1979, as a result of the litigation on the permanent program rules. (44 FR 67942). The phrase was inadvertently included in the proposed rule and therefore it is not being adopted today.

OSM received a number of comments objecting to the elimination from § 761.12(f) of privately owned places listed on the NRHP and privately or publicly owned places eligible for listing on the NRHP. Several commenters supported the proposed changes. These comments are addressed in the discussion of the amendments to Section 761.11(c), as are comments relating to OSM's responsibility under the National Historic Preservation Act.

Section 761.12(h): Administrative and Judicial Review

Section 761.12(h) is being amended to reflect the expected revision of 30 CFR Parts 787 and 788, which will be consolidated into a new Part 775. No substantive change is being made to § 761.12(h); the revisions are the cross-references to new Part 775.

Part 762—Criteria for Designating Areas As Unsuitable for Surface Coal Mining Operations

Section 762.5: Definitions

Fragile Lands: Previous § 762.5 provided that the term "fragile lands" means geographic areas containing natural, ecologic, scientific, or esthetic resources that could be damaged or destroyed by surface coal mining operations. A number of examples were then provided, including uncommon geologic formations and buffer zones adjacent to the boundaries of areas where surface coal mining operations are prohibited. OSM proposed two alternative revisions to this definition and is adopting Option 1 with one modification.

In Option 1, as proposed, the term "damaged" was proposed to be modified by adding "irreparably" to reflect the fact that mining is an appropriate temporary use of the land

and should not be prohibited where adequate reclamation can be accomplished. Instead of adding the work "irreparably," OSM in response to numerous comments has decided to add the modifier "beyond an operator's ability to repair or restore." This phrase is a clearer standard consistent with OSM's reasoning that mining is a appropriate temporary use of the land in most situations. An interruption of certain activities or a diminution of particular values during mining is not sufficient to classify the land as fragile if the activities or values can be restored. However, mining, even when fully reclaimed, may result in permanent changes which may be undesirable. In such cases, this definition and other provisions allow for protection. In addition, the "fragile lands" example of "areas where mining may cause flooding" is changed, as proposed, to "areas where mining may result in flooding" as mining may not in itself be the direct cause.

Several commenters suggested that OSM delete all definitions in § 762.5, including the definition of fragile lands. These commenters contended that the States are better equipped to define these terms on the basis of local variables, and Congress intended the States to be responsible for implementing the designation process by applying the criteria on a petition-by-petition basis. The commenters argued that the definitions exceed Congressional inent and are unnecessary because decisions must be made on a case-by-case basis. These commenters suggested that if the definitions are retained, the examples listed should be completely eliminated, because they are unnecessary or beg further definition. OSM agrees that petition decisions are made on a case-by-case basis, but some standard is needed to assist regulatory authorities. Thus, OSM has decided to retain the list of examples, at the request of other commenters who find the examples helpful. The list of examples is not intended to be all-inclusive. Rather, the examples are intended to assist States, petitioners and operators in interpreting the Act's use of the phrase "fragile lands."

A number of commenters supported adoption of Option 2. Option 2, as proposed, would have narrowed the definition still further from the changes proposed for Option 1. In addition to those changes, the qualifying words "important" and "significantly" would be added so that the definition would have read: Fragile lands means geographic areas containing *important* natural, ecologic, scientific or esthetic resources that could be irreparably and *significantly* damaged or destroyed by surface coal mining operations. Adding the words "important" and "significantly" would parallel the wording of section 522(a)(3)(B) of the Act. However, OSM is not adopting the modifiers "important" and "significantly" because these qualifying terms are already included in the criteria of § 762.11 to ensure that areas lacking important values are not designated unsuitable. OSM also proposed in Option 2 to eliminate the reference to "buffer zones" since Congress specifically included certain buffer zones in the limitations of section 522(e) where it wanted to establish such buffer zones.

One of the commenters who supported Option 2 recommended deleting "ecologic" resources, as the term is not used in the Act or defined in the rules. The term "ecologic" is generally defined as the branch of biology dealing with the relations between organisms and their environment. OSM believes the meaning ot the term is generally understood and has decided to retain it.

Commenters suggested deleting the examples of "environmental corridors containing a concentration of ecologic and esthetic features" and "areas of recreational value due to high environmental quality" as being vague and overly difficult to interpret. As noted above, however, OSM has decided to retain the examples, while emphasizing that the list is not all-inclusive.

One commenter suggested deleting the example of "areas where mining may result on flooding" as the concept of flood damage would be more appropriate under the definition of natural hazard lands. However, the two concepts of flood damage are dissimilar. In the case of natural hazard lands, the danger of flooding is inherent. In fragile lands, the potential danger is produced by artificial means.

Several commenters supported deletion of the example of buffer zones. Other commenters strongly supported retention of the example because of Congress' interest in protecting the areas adjactent to areas where mining is prohibited or limited in section 522(e) of the Act. As one commenter noted, OSM's statement in the previous preamble (March 13, 1979) was that "(b)y providing for buffer zones, OSM is ensuring that areas around national parks and other section 522(e) areas not be overlooked as fragile lands. (I)ncluding these areas as examples (of fragile lands) does not mean that they would automatically be designated unsuitable." 44 FR 14996. OSM has decided to retain the example, but has modified the language to indicate expressly that buffer zones do not automatically qualify as fragile lands. Buffer zones adjacent to the boundaries of Congressionally protected areas in section 522(e) may be considered fragile lands if the protected areas have characteristics which require additional areal protection or if the buffer zones themselves contain fragile resources.

Several commenters objected to any revision in the definition and particularly urged that the word "irreparably" not be added to modify the term "damaged". These commenters disputed OSM's statement in the preamble to the proposed rules that "mining is an appropriate temporary use of land and should not be prohibited where adequate reclamation is possible." 47 FR 25286. The commenters noted that the mandatory "reclamation" criteria of section 522(a)(2) of the Act for designating lands unsuitable are distinct from the discretionary bases of impacts on fragile and historic lands in section 522(a)(3) of the Act and should not be linked by the word "irreparable".

In response to these comments and for the reasons noted above, OSM has decided to substitute the phrase "damaged beyond an operator's ability to repair or restore" in place of "irreparably damaged". OSM agrees that the mandatory criteria in section 522(a)(2) are distinct from the discretionary criteria in section 522(a)(3) of the Act. However, clarifying the definition does not diminish the discretion of the regulatory authority to designate areas as unsuitable.

Historic Lands: The previous definition of "historic lands" included a broad array of historic, cultural, and scientific areas.

OSM proposed to define "historic lands" to mean "important historic, cultural, and scientific areas that could be irreparably damaged or destroyed by surface coal mining operations. Examples of historic lands include sites listed on the National Register of Historic Places, National Historic Landmark sites, and sites for which historic designation is pending." This change would have added the terms "important" and "irreparably" to make clear that areas of minor importance or temporary disruptions would not qualify a site for designation. In addition, OSM proposed to reduce the list of examples to the types of areas which would clearly qualify for designation and

delete the term "eligible for listing" to eliminate confusion over its meaning.

OSM has chosen to adopt a final definition which parallels the final definition for "fragile lands". Instead of adding the term "irreparably", OSM is substituting the phrase "damaged beyond an operator's ability to repair or restore" which is consistent with OSM's belief that mining is an appropriate use of the land in most situations. OSM is not adopting the modifier "important" because this qualifying term is already included in the criteria of § 762.11 to ensure that areas lacking important values are not designated unsuitable.

As with the definition of "fragile lands", the list of examples is being retained at the request of commenters who find it helpful. The comments received on this definition are substantively identical to those received on the definition of "fragile lands" and are discussed above under that definition.

Renewable Resource Lands: OSM proposed to add a definition of the term "renewable resource lands" to clarify its use as a discretionary basis for designation of unsuitability under the Act (section 522(a)(3)(C)). "Renewable resource lands" was proposed to mean "geographic areas which contribute significantly to the long-range productivity of water supply or of food or fiber products, such lands to include aquifers and aquifer recharge areas." OSM is adopting the definition as proposed. Two commenters suggested that the term "geographic areas" should be further defined. The term is generally understood to mean an area defined by its physical or natural characteristics and OSM believes further definition is unnecessary. One commenter suggested substituting the word "substantially" for the word "significantly" and modifying aquifers with the word "important". However, the word "substantial" is more appropriate to the criteria to be used by the regulatory authority and is already included in § 762.11. The phrase "such lands to include aquifers and aquifer recharge areas" is the actual wording used in section 522(a)(3)(C), so OSM is not adding the modifier "important". For this reason, OSM also rejected the suggestion of another commenter who advocated expanding the definition to include watershed lands and cultural or grazing lands. While these types of lands may, on a case-by-case basis, be determined to be renewable resource lands, there is no reason to list them specifically in the rule. One commenter objected to inclusion of the qualifier "significantly", for the same reasons that the commenter objected to the definitions of "fragile lands" and "historic lands". OSM believes, however, that some qualification is necessary to provide guidance to the regulatory authority.

Substantial Legal and Financial Commitments: OSM proposed to revise the definition of substantial legal and financial commitments (SLFC). The existing definition requires both investments and commitments in capital-intensive activities and a long-term coal contract. The proposed revision would have recognized that substantial commitments can be made with or without a long-term coal contract.

Following a review of the legislative history, OSM has decided to retain the existing definition.

Several commenters contradicted OSM's statement in the preamble to the June 10 proposed rules that the House committee which discussed the role of contracts may have been merely describing an example of the type of commitment required (H. Rept. No. 95–218, 95th Cong., 1st Sess. 95 (1977)). The commenters noted that the House Report states:

> The phrase *substantial legal and financial commitments* in the designation section and other provisions of the Act is intended to apply to situations where, on the basis of a long-term coal contract, investments have been made in power plants, railroads, coal handling and storage facilities and other capital-intensive activities. The Committee does not intend that mere ownership or acquisition costs of the coal itself or the right to mine it should constitute "substantial legal and financial commitments".

The commenters further note that it was the House bill that was adopted by the Conference Committee and passed by the Senate. Moreover, the statutory phrase "substantial legal and financial commitments" orignated in the first version of SMCRA in S. 425 in 1973. The Senate Report on S. 425 stated:

> Mere ownership of the coal resource with the intent to surface mine would not qualify for the exemption from designation as unsuitable for surface mining based on "firm plans for and substantial legal and financial commitments". In order to preclude designation, it must be established that specific plans and specific contracts for sale of coal and purchase of necessary equipment for an actual mining operation were in existence on the date of enactment.
>
> S. Rept. No. 93–402, 93rd Cong., 1st Sess. 68 (1973).

The coal contract requirement as a precondition to granting an exemption from designation on the grounds of substantial legal and financial commitments, is repeated throughout the legislative history. See, *e.g.*, H. R. Rept. 94–95, 94th Cong., 1st Sess. 91 (1975).

Therefore, OSM is retaining the existing definition.

Natural Hazard Lands: OSM proposed no change to the definition of "natural hazard lands". Two commenters suggesting deleting all the definitions in § 762.5. However, as stated in the discussion of "fragile lands", OSM has decided to retain the definitions.

Section 762.11: Criteria for Designating Lands as Unsuitable

OSM considered revising § 761.11(b) to provide that lands should be designated only on the basis of allegations raised in the petition rather than on the basis of any or all criteria for designation specified in the Act, regardless of whether or not they were alleged by the petitioner. This concept would deny regulatory authorities the discretion to designate areas on the basis of information or allegations not provided in a petition. OSM has chosen, as discussed in the proposed rules, to maintain the existing rule intact, at the request of States which want an opportunity to implement the processes for designating lands unsuitable under the identified criteria in a variety of acceptable ways.

Section 762.12 Additional Criteria

Section 762.12 provides that State regulatory authorities and the Secretary may establish additional criteria for determining whether lands within their jurisdiction should be designated as unsuitable for surface mining operations. As noted in the June 10, 1982 preamble to the proposed rules, OSM has received comments requesting deletion of this section. However, OSM notes that, as stated by the court in *In re Permanent Surface Mining Regulation Litigation*, No. 79–1144 (D.D.C. Feb. 26, 1980 at p. 26), section 523(a) of the Act states: "The Federal lands program shall, at a minimum, incorporate all of the requirements of this act * * *." The decision goes on to state that "The language 'at a minimum' indicates Congressional authorization for the Secretary to establish additional criteria for Federal lands. Similarly, the language 'more stringent' in section 505(b) of the Act, permits State regulatory authorities to promulgate factors in addition to those enumerated in the SMCRA." The provisions of additional criteria are at the discretion of the States. Therefore, no change was proposed for or is being made to § 762.12.

Part 764—State Processes for Designating Areas Unsuitable for Surface Coal Mining Operations

Previous Sections 764.2 and 764.3

As proposed, previous §§ 764.2 and 764.4, entitled "Objective" and "Authority," are removed to streamline the chapter by eliminating unnecessary and redundant provisions.

Section 764.13(a): Right to petition

Section 764.13(a) specifies who has the right to petition to have an area designated unsuitable. OSM proposed to restrict the right to petition (standing) to persons having a property interest in land or mineral resources which is or may be adversely affected. This would have limited the right to petition to persons with tangible ownership interests in land or mineral resources. The proposal was an effort to balance the interests of potential mine operators or mineral owners with the non-economic interests usually represented in petitions. OSM was concerned that the previous rule was so broadly stated that persons with a very minor interest might be able to prevent mining. Several commenters also expressed this concern and suggested the petitioner be directly impacted by potential mining. Most commenters, however, opposed the proposal, and pointed out that there is no basis in the Act or its legislative history for such a restrictive position.

The majority of commenters opposed the proposed property ownership restriction; however, a few commenters supported limiting standing to property ownership. One commenter suggested that "water rights" be included with land and mineral resources. Another commenter recommended that standing be limited to owners of land adjacent to the minesite. One commenter suggested that other "real legal interests" be added to land and mineral resources. Several commenters support restricting standing to individuals suffering a direct injury but not bound to property ownership. Several commenters warned OSM of the need to restrict standing to avoid harassment petitions.

OSM has decided to adopt an "injury in fact" test to ensure that petitioners have a significant interest, but not necessarily a property interest. The "injury in fact" test requires the petitioner to demonstrate that he or she is among the injured and how the alleged adverse impact will directly affect him or her. OSM will not adopt the property ownership restriction or other like limitations. A review of legislative history indicates that Congress did not intend to place such specific restrictions on who may petition for an area to be designated as unsuitable for mining. The House Committee Report No. 95–218, April 22, 1977, states that "a number of decisions to be made by the regulatory authority in the designation process is contingent on the outcome of land use issues which require analyses of various local and regional consideration and that citizen involvement in all phases of the regulatory scheme will help ensure that the decisions and actions of the regulatory authority are grounded upon complete and full information." The Committee further stated that "any person having an interest which is or may be adversely affected" shall be construed to be coterminous with the broadest standing requirements enunciated by the U.S. Supreme Court. The Court sanctioned broad priciples of standing in *Association of Data Processing Service v. Camp*, 397 U.S. 150 (1970), and held that in the absence of a given statute's intent to narrow the availability of judicial review, standing is extended to any person who (a) suffered "injury in fact" and (b) the interest is arguably within the zone of interests to be protected or regulated under that substantive statute governing the agency's action. The legislative history and the Supreme Court rulings reflect that standing should not be limited to property owners but to those suffering direct injury.

The rule adopted is equivalent to an "injury in fact" test. This will ensure that petitioners have legitimate interests in the specific area being petitioned as unsuitable for surface coal mining operations. The "injury in fact" test requires more than an injury to a cognizable interest. It requires the party seeking review to be himself among the injured. "Injury in fact" had been previously defined by the U.S. Supreme Court in *Association of Data Processing Service v. Camp, supra* and in *Barlow v. Collins*, 397 U.S. 150 (1970), to mean that the person seeking review alleges the challenged action caused or will cause him "injury in fact" and the alleged injury was to an interest arguably within the zone of interests to be protected or regulated by statute. The test adopted will limit standing only to persons who are or will be directly injured by surface coal mining operations in a specific area and encourage petitions that have serious merit.

Section 764.13(b): Designation petitions

Section 764.13(b) lists the information that a petitioner must set forth in a petition. OSM proposed two options to revised existing requirements, primarily by providing the State regulatory authority flexibility to impose additional information requirements and to require more substantive information for designation petitions.

OSM will adopt a combination of Option 1 and Option 2 as the final rule. The requirements being adopted for the contents of a petition are intended to provide substantive facts for the regulatory authority to evaluate the petition, to emphasise the importance of the petition, and to provide a specific presentation of allegations as they relate to the petitioner's described interests and to the criteria specified in the Act.

First, OSM will adopt the requirement the petitioner(s)' signature(s) be notarized. Most commenters support this requirement. A notarized signature will emphasize the importance of the petition and the need for a serious document. The requirement for notarized signatures will also prevent the inclusion of unauthorized names on a petition.

Second, OSM is adopting a requirement that the petition area be identified on a U.S. Geological Survey (USGS) topographic map outlining the perimeter of the petitioned area. This change is specifically supported by some commenters and will assist both the petitioner and the regulatory authority in identifying the petition area. Such maps are inexpensive and easily obtained.

Third, OSM is adopting a requirement that the petitioner demonstrate how he or she meets the "injury in fact" test provided in § 764.13(a). This is no more than a showing that the petitioner has interests that would be directly affected. Such showings are fully consistent with judicial requirements for standing and are neither unusual nor onerous.

Fourth, OSM is adding a requirement that the facts and evidence provided cover the entire petitioned area. Without this requirement, it is possible for a petitioner to include large areas for which allegations are made but no evidence presented. Section 522(c) of the Act specifically requires both allegations of fact and supporting evidence. It is neither logical nor proper to include areas in a petition which are not covered by such evidence. In effect it would allow a person to submit a petition without meeting the requirements of the Act.

Fifth, OSM is adding a requirement that the petitioner assume contemporary mining practices required under the applicable regulatory program will be followed. That is, any mine would have to meet the requirements of the Act; a petitioner may not assume mining impacts that would be prevented by the environmental protection requirements

mandated by the Act. Any petition based upon such preventable impacts would have no merit.

Sixth, petitioners will be required to relate allegations and evidence to the criteria for designating an area unsuitable for mining. This requires no new evidence; rather, a petitioner must describe how the problems presented meet one or more of the mandatory or discretionary criteria for designation. This will help focus the evidence presented and avoid collection or consideration of materials which are not relevant. If a planned mining operation is known, the allegations should relate to the specifics of the operation.

Many commenters supported retaining the previous regulation with minor changes such as adding the requirement to identify the area by legal description. These commenters argued the previous regulation was adequate and that the proposed options would stifle the petition process. OSM disagrees that the proposed substantive informational requirements will adversely affect the petition process. The changes require little additional detail; rather, the petitioner is being required to relate the facts presented in the petition to the requirements of the Act. Substantive information requirements that are not onerous will improve the quality of the petition process. OSM has found that under the previous regulation, very large areas for which no evidence was presented were included in petition areas (Alton petition, Tongue River petition), thus requiring significant efforts by OSM and other interested parties on issues of questionable merit. Also, some petition allegations have been based on mining damage which would be prevented or mitigated by following the requirements of the Act. The adopted informational requirements will require little or no additional information gathering on the part of a petitioner, but will require the petitioner to focus the allegations and supporting evidence to demonstrate that mining in this specific area will result in a direct injury to the petitioner's interests and that the area is worthy of designation under the criteria specified by the Act.

Several commenters supported Option 1 or Option 2 with various minor modifications. A combination of these options will be adopted to assure that the requirements are specific, address relevant issues, identify the specific area petitioned for designation, and allow the State regulatory authority flexibility to request additional supplementary information.

One commenter suggested that the regulatory authority require county plat maps as well as USGS topographical maps. The regulatory authority has the discretion in § 764.13(b)(2) to require these maps, if desired, so long as they are readily available to the petitioner.

Some commenters questioned the definition of the term "contemporary mining practices." These commenters contended that the term "contemporary mining practices" is vague, subjective and an indefensible concept that varies with local geographic and economic conditions. The commenters urged that the regulatory authority specify what constitutes "contemporary mining practices" in the specific surface coal mining areas. Surface mining operations are required to conform to contemporary mining practice as required by States' regulatory programs. Each regulatory authority defines required contemporary mining practices under its applicable regulatory program. Petitioners should assume that such practices will be followed by a potential mining operation when determining possible adverse effects of the surface mining operations.

Some commenters wanted the State regulatory authorities to have no discretion in petition content or procedures. These commenters contended nationwide consistency will be impossible if discretion is given to regulatory authorities. Several commenters supported this flexibility for the State. OSM agrees with the latter commenters that discretion to address specific needs of the particular State will enhance the petition process. OSM is providing a list of basic petition requirements for State regulatory authorities. States may modify this so long as the result is no less effective than the Federal requirement. That is, the petition process must be open and available to the public, yet sufficiently focused to permit rational decision making. These requirements will foster a high degree of nationwide consistency.

Some commenters endorsed the proposed restrictions and safeguards to guarantee that the petition process be a serious one. OSM agrees that the petition process is indeed a serious matter and the provisions adopted are intended to safeguard the process.

One commenter recommended that proposed § 764.13(b)(1)(v) be amended by removing the words "has affected" from the provision that reads "* * * how mining of the area has affected or may adversely affect people, * * *." OSM rejects this suggestion. The proposed language has been adopted in § 764.13(b)(1)(iv). The language "has affected" is useful to show that what has happened in the past may recur if not precluded by designation.

Another commenter urged that petitioners not be required to notify property owners of the petition. The commenter believed that Congress implied that the State give proper notice. OSM agrees that notice is potentially too heavy a burden for a petitioner and is likely to discourage or prevent certain individuals from petitioning. It is more appropriately a government function and should not fall on the petitioner. Consequently, OSM has not adopted this proposed provision. The regulatory authority will be required to notify the general public, interested governmental agencies, intervenors, persons with an ownership interest of record, and other persons pursuant to the criteria set forth in § 764.15.

Several commenters wanted to require petition allegations to be based on competent information and scientifically sound data. Section 764.13(b)(1)(v) requires allegations of fact and supporting evidence which tend to establish that the area is unsuitable for all or certain types of surface coal mining operations. Section 522(c) of the Act mandates that the petition contain allegations of facts with supporting evidence which would tend to establish the validity of the allegations. The language from the Act is used in the final regulation for petition requirements. Section 522(a)(1) provides for the State regulatory authority to make designation decisions based on competent and scientifically sound data and information. The regulatory authority is required to evaluate sound information and scientific data from all sources, including its own files and investigations. Petitioners are required to submit sound information. However, many sound presentations can be made without "scientific" data, if that term is used in a restrictive sense. Scientific data will not be required as this type of requirement could potentially limit citizen participation in the designation process, thereby defeating the purpose of the process.

Section 764.13(c): Termination Petitions

Section 764.13(c) identifies information required in petitions for the termination of unsuitability designations. Like § 764.13(b), this section was proposed to be amended in its entirety to allow regulatory authorities to expand the information requirements for termination petitions. The proposed changes are similar to those proposed in Option 1 for designation petitions. The main difference is that allegations of facts and supporting evidence must be focused on the reasons why the designation now is inappropriate and should be terminated.

OSM is adopting the proposals for § 764.13(c)(1) with only a minor modification to § 764.13(c)(1)(iii) and by adding a sentence to clarify the nature of designation in § 764.13(c)(1)(iv). A complete petition for termination must include: (1) petitioner's name, address, telephone number, and notarized signature, (2) an identification of the petitioned area, including its location and size and a U.S. Geological Survey topographic map outlining the perimeter of the petitioned area, (3) an identification of the petitioner's interest which is or may be adversely affected by the continuation of the designation, (4) and specific allegations of facts included for all lands for which the termination is proposed with supporting evidence not contained in the record of the proceeding in which the area was designated unsuitable that tend to establish that the designation should be terminated. OMS believes that petition requirements should be consistent for termination and designation petitions.

OSM is also adopting the portion of proposed § 764.13(c)(2) that required that the petition include allegations of fact with supporting evidence that tends to establish that the petitioner has an interest which may be adversely affected by the continuation of the designation. This requirement is now included in § 764.13(c)(1)(iii). OSM is also adopting a provision requiring that allegations be specific as to the portions of the designated area to which they apply and be supported by evidence that tends to establish the validity of the allegations for the portion of the designated area, assuming that contemporary mining practices required under applicable regulatory programs would be followed if the area were to be mined. This provision, which is now included in paragraph (c)(1)(iv), will provide States a focused presentation of allegations, reasons for the determination designating the area as unsuitable, and the reasons the designation should now be terminated. For areas previously and unsuccessfully proposed for termination, significant new allegations of fact and supporting evidence must be presented in the petition.

OSM is adopting the proposal in § 764.13(c)(3), now renumbered (c)(2), that allows the regulatory authority to request the petitioner to provide other supplementary information which is readily available. Readily available information could include public documents or other publicly available information which can be obtained and used by a person who has no special training or knowledge. Failure to include such information will not make a petition incomplete.

Several commenters urged that termination petition requirements be consistent with those adopted for designation petitions. OSM agrees with these commenters. The changes described above will make the requirements consistent.

Comments that address both designation and termination petitions will not be discussed separately for termination petitions when the discussion under designation petitions would also apply to termination petitions. These issues include the discussion for requiring the petitioner to use competent and sound data, regulatory authority flexibility to require additional information, specific identification of the area being petitioned, and property ownership to restrict standing.

One commenter urged that the previous requirements be retained for termination petitions. The same commenter asserted that the proposed changes are consistent with Option 1 for designation petitions and have no legal, substantive or procedural justification for the added information requirements. A detailed analysis of the proposed information requirements for designation petition can be found in the discussion of comments for § 764.13(b). OSM is adopting requirements that are consistent for both types of petitions.

One petitioner recommended that OSM adopt requirements similar to Option 2 proposed requirements for designation petitions because it requires the most information. This commenter urged that petitioners be required to provide complete available information. OSM is adopting some Option 2 requirements for termination and designation petitions as described above.

Section 764.15: Procedures

Section 764.15(a)(1) Completeness Finding

Previous § 764.15(a)(1) provided a 30-day time limit within which the regulatory authority must notify the petitioner by certified mail as to whether the petition is complete. OSM proposed and will adopt an amendment to allow the regulatory authority 60 days to make a completeness determination. The extended time limit will allow use of new initial hearing procedures and more extensive analysis of the requirements provided in § 764.13 (b). Additionally, OSM will adopt the proposal defining "complete," to mean that the information required under § 764.13 (b) or (c) is contained in the petition.

Commenters expressed various ideas for the completeness review proposal. Some commenters support allowing 60 days for a completeness review as a measure to ensure that a complete initial scrutiny of the petition can be accomplished before beginning the next step in the process. Some supported the extended review period, but opposed a hearing. Other commenters oppose extending the time to 60 days. These commenters see the extension as increasing the vulnerability for surface coal mining operators.

Sixty days will allow the regulatory authority to make a detailed review of the petition for completeness, and decrease the vulnerability of operators by screening out incomplete petitions early in the process. Operators and petitioners are exposed to less financial or opportunity risk when a "completeness" determination can be made during the initial steps of the process.

This hearing and extended completeness review process is a discretionary means of helping the regulatory authority make its initial determination. It is not specifically required by the Act. Moreover, a hearing on completeness does not substitute for the later hearing on substantive issues, and is not itself the appropriate means to consider substantive issues.

Some commenters urged that completeness be more specifically defined. The completeness definition adopted is adequately specific to identify the information required. Additional detail would unnecessarily limit regulatory authority descretion.

Section 764.15(a)(2)

Section 764.15(a)(2) has been retained unchanged.

Section 764.15(a)(3) Real and Forseeable Potential

Final § 764.15(a)(3) is being adopted to enable the regulatory authority to suspend petitions on lands where there is no real and foreseeable potential for surface coal mining operations to occur. "Real and forseeable" potential means that the petitioned lands are likely to be subject to leasing or mining activity within 5 years. This concept will allow regulatory authorities to set a time frame for evaluating petitions in relation to the likelihood of mining activity. Unless regulatory authorities can limit their evaluation of petitions to areas where mining is likely to occur within a reasonable period of time, they could be obligated to process unsuitability

petitions immediately for which a clear need could not be shown. OSM considered various other options, which would have given regulatory authorities discretion to define "real and foreseeable potential," including 1 year, 10 years, and no specific time frame. Any such provision would have had to include a requirement that no mining could occur until any suspended petition was evaluated.

If a petition is suspend under § 764.15(a)(3) because there is no real or foreseeable potential for mining to occur, once a year the petitioner may request the regulatory authority to reaffirm its earlier determination. If it is determined that there is a real or foreseeable potential for mining to occur, processing of the petitions would continue. New § 764.15(a)(8) clarifies that when a petition has been suspended pursuant to § 764.15(a)(3), the regulatory authority will activate the suspended petition for review upon the filing of a permit application. A decision must be made on the petition before a decision is made on any permit application received for land included in the previously suspended petition.

Some commenters supported the proposal to provide for suspension of petitions on lands with "no real or foreseeable potential" for mining. OSM agrees that the concept will provide a more flexible petitioning process while also protecting the petitioners' interests.

One commenter was concerned that this provision will in effect only allow consideration of a petition to designate lands unsuitable after mining has begun. One commenter objected to OSM providing that petitions may be disallowed for lands that have no real or foreseeable potential for mining. Another commenter believes that suspension of a petition for over a period of one year is illegal. This commenter referred to Senate Report 94–28, March 7, 1975, and maintained that Congress intended to impose a one-year deadline on petition decisions. OSM agrees that Senate Reports 94–28 and the more recent S. Rep. No. 95–128, 95th Cong., 1st Sess. (May 10, 1977), convey the intention that the State regulatory authority should be prevented from making an indefinite review by imposition of a one-year deadline on all decisions as to designations. However, the Senate connected this requirement with its intent to prevent the forestalling of coal production needlessly. OSM disagrees with the assertion that the suspension of a petition pending an imminent need for review is contrary to the Act. The real and foreseeable potential concept carries out the Congress' intent by allowing for a prudent and timely review process. OSM is not providing for petitions to be rejected, but is allowing the regulatory authority to suspend the review of petitions until the area petitioned is determined by the regulatory authority to have a real or foreseeable potential for surface coal mining operations. Once this potential is realized, the petition will be processed according to the time limitations provided by the Act and 30 CFR Part 764. The petition will then be reviewed in the same manner as petitions that are not suspended. No permit may be issued in an area covered by a suspended petition until the petition is processed (§ 764.15(a)(8)). Section 764.15(a)(3) will facilitate efficient administration of the petition process.

Some commenters endorsed the concept of real and foreseeable potential, but were not comfortable with the proposed five-year time period. Some commenters thought that there is no consistent method available to judge an appropriate time period for real and foreseeable potential. One commenter warned that the five-year time period may interfere with the land use planning process. Another commenter recommended a two-year period based on the permitting process instead of the five years. The same commenter suggested that petitions not be accepted until leasing has actually occurred. The commenter reasoned that until the lease has been negotiated and a mine plan developed, there can be no real or foreseeable potential for the area to be mined. One commenter objected to the use of the term "leasing" because mining may not occur for many years after a lease is negotiated. OSM believes the recommendation to assess real and foreseeable potential solely by the leasing process will not necessarily decrease the time period and in some cases might extend it. Leasing and imminent mining activity are not always synonymous, particularly if there are no Federal lands involved. The proposed language is being adopted to provide the broadest possible protection by allowing real or foreseeable potential to be based on either leasing or mining activity. The five-year time period will not prejudice long-term land use planning programs but actually may benefit such programs by early identification of land requiring designation review. OSM agrees that in some cases a five-year time period is not needed. However, in other cases it will prove to benefit the operator, the petitioner and the State.

One possible benefit of such forecasting and early identification could be the conservation of resources for potential petitioners. By focusing on areas where mining is a real possibility, petitioners can avoid costly and time consuming petitions for areas which will not be affected.

One commenter suggests the concept of "frivolous" be utilized to dispose of petitions where there is no real and foreseeable potential. Frivolous and real and foreseeable potential are two separate concepts with completely different purposes. The "frivolous" standard is utilized to reject a petition lacking serious merit, whereas the "real and foreseeable" standard only suspends the review of a petition until there is a real and foreseeable potential for surface coal mining operations to exist. Merging the two concepts would not be consistent with OSM's intent.

Section 764.15(a)(4) Rejection of Petitions

Previous § 764.15(a)(3), which is renumbered § 764.15(a)(4), has been expanded. It requires petitions to be returned if the regulatory authority determines that a petition is incomplete, frivolous, or that the petitioner has not adequately described his or her specific affected interest and demonstrated the nature of the injury. Incomplete petitions must be returned with a written statement of the reasons for the determination and the categories of information needed to make the petition complete. The provision requiring the return of incomplete petitions is the necessary complement to § 764.15(a)(1). Section 764.15(a)(4) also provides the standard for determining if a petition is "frivolous." Frivolous was proposed to mean that a petition or the allegations of fact and supporting evidence are "trivial, insignificant, or unworthy of serious attention" (47 FR 25302). OSM is adopting language to define a "frivolous" petition as one in which the allegations of harm lack serious merit. The concept of "frivolous" is intended to assist the States in determining if petitions lack merit. This procedure will enable the States to return petitions to the petitioner if the allegations lack serious merit. Petitions not warranting serious consideration can be identified early in the designation process. This process will enable States to allocate their resources more efficiently.

One commenter proposed that OSM adopt criteria similar to the "sufficient merit" test proposed in § 769.14(a)(3) for frivolous. Some commenters supported the "frivolous" provision as proposed. A few commenters opposed the "frivolous" provision on the grounds that it will curb the petitioning process and lead to the

establishment of a subjective petition process. Some commenters thought the use of the word "frivolous" denotes cultural or non-economic values as trivial or unworthy of serious consideration. This interpretation of frivolous was not the intent of OSM. OSM, in proposing a "frivolous" definition, was attempting to comply with the intent of Congress that criteria be adopted to preclude the consideration of frivolous petitions. See Senate Report 95–128, 95th Congress, 1st sess., 94 (1977). Most commenters supported the concept of "frivolous" but did not believe the proposed definition adequately described the process. OSM has defined frivolous in the final regulation to mean that the allegations in the petition lack serious merit. The regulatory authority must carefully evaluate the petition allegations and determine if the allegations have a serious basis for the area being petitioned. The adoption of the "frivolous" standard is not intended to exclude cultural, aesthetic or any other valid set of values from being considered in the petition process. All allegations must stand on their own merit for the specific area being petitioned as unsuitable.

Section 764.15(a)(5) Previously Petitioned Areas

Previous paragraph (a)(4) of § 764.15 is renumbered paragraph (a)(5) and modified to allow the regulatory authority not to consider a designation petition for an area which has been previously and unsuccessfully petitioned that does not contain new significant allegations of fact, together with supporting evidence. OSM is adopting this provision as proposed to provide regulatory authorities the discretion to determine whether allegations for a repetitioned area are nontrivial, substantive in nature, and warrant in-depth review.

Only a few comments were received on this proposal, but these comments were sharply divided. Some commenters opposed discretion for the regulatory authority to choose not to consider the petition. These commenters suggested the phrase "significant new allegations of facts" be defined to prevent ill-advised value judgments by a regulatory authority which would preclude the consideration of the petition. Other commenters recommended that discretion not be allowed and that regulatory authorities be required not to process petitions when no new allegations are presented. These commenters believed this discretion opens the door for the same lands to be subjected to review over and over without a valid reason.

In the preamble for the proposal, OSM characterized "significant" to mean allegations which are nontrivial and substantive in nature, warranting in-depth review (47 FR 25289). This characterization remains valid. The regulatory authority must evaluate the allegations in the previous unsuccessful petition as they relate to the new petition and determine if the new allegations present a basis to re-evaluate the area. Regulatory authorities must have the discretion to decide when areas warrant further review. However, regulatory authorities should not reopen an area for review without just cause.

Section 746.15(a)(7) Timing

Paragraph (a)(7) of § 764.15 was proposed to be renumbered paragraph (a)(8) for editorial purposes. However, in the final rule the section number will remain § 764.15 (a)(7).

Two options for revising the previous regulation were proposed. The previous § 764.15(a)(7) allowed the regulatory authority to proceed with permit decisions if a petition is received after the end of the public comment period. Proposed Option 1 would allow the regulatory authority not to process any petition which pertains to lands for which an administratively complete permit application had been filed and the first newspaper notice had been published. Based on such a determination, the regulatory authority could issue a decision on such a permit application and return the petition to the petitioner with a statement explaining why the regulatory authority could not consider it. This provision was proposed to protect the interests of operators who have invested significant expense and time in preparing and submitting extensive documentation and information required for a permit application. This provision would not be applicable in cases where a permit application is filed for an area after the suspension of a petition due to a determination that no real and foreseeable potential to mine exists. In such cases, the regulatory authority is required to immediately initiate petition review upon receipt of a permit application and not issue any permit until a decision has been made on the petition.

Option 2 would provide, as did the previous rule, that any petition received after the close of the public comment period on a permit application relating to the same permit area will not prevent the regulatory authority from issuing a decision on that permit application. Under this option, OSM redefined "close of the public comment period" to mean 30 days after the last advertisement giving notice of filing of a permit application under § 786.11(a). The previous regulation defined "close of the public comment period" as the close of any informal conference held under § 786.14, or, if no conference is requested, at the close of the period for filing written comments and objections under §§ 786.12 and 786.13. An informal conference must be requested within 30 days of the last advertisement giving notice of the filing, but may be held at an unspecified later date. The close of the period for filing written comments was not specified; the regulatory authority was required only to provide a "reasonable time." Option 2 was proposed in response to concerns that the close of the public comment period, as defined in the previous rules, was too vague for the purpose of implementing the unsuitability process requirements. Other potential cutoff points for the public comment period were also considered.

OSM is adopting Option 1 with only a slight modification which does not change the substance of the provision. OSM is deleting the provision to return the petition to the petitioner in cases where the regulatory authority determines not to process the petition. OSM is also adding the word "insofar," to clarify that the provision applies only to lands for which an administratively complete permit application has been received and the first newspaper notice published. A petition which included lands in addition to those covered by the permit application could be processed for consideration of these other lands. Returning the petition would be unnecessary in such cases.

Several commenters opposed Option 1 because it would allow the regulatory authority not to process any petition received after a complete permit application has been filed and the first newspaper notice has been published. These commenters believed potential petitioners will be unjustly precluded from the petition process because of inadequate knowledge of the permit status. One commenter believes the proposals will undermine the preservation of historic areas.

OSM disagrees with these comments. The provision recognizes the time after which the filing and consideration of a petition will preclude action on a permit application. The new provision will prevent the administrative processing of petitions from being used to impede surface mining operations on lands for which petitioners could earlier have filed petitions. It does not take away the

right for citizen participation, but does set limits on the effects the timing of a petition filing as on a permit application. The petition process is more a general land-use planning tool than it is a means to make site specific decisions. The types of information required, the balancing of interests, the non-adjudicatory hearing and other factors all emphasize the planning nature of the process. Petitioners should be looking ahead to identifying areas which should not be mined, not reacting on a site-by-site basis. The House Committee Report No. 95–218 (1977) on page 95 states "It should be noted that the designation process is structured to be applied on an area basis, rather than a site-by-site determination which presents issues more appropriately addressed in the permit application process." This new rule does not mean, however, that important issues will not be considered or that the public will be excluded in the consideration of permits. The permit review process includes means for citizen input and for consideration of important issues. Permits may be conditioned or denied as needed to meet the requirements of the Act. Thus, although the means for participation and consideration of issues change, they are not eliminated. A further discussion of the impacts of this rule and its alternatives is contained in the "Final Environmental Impact Statement, OSM–EIS–1: Supplement." Volume I, p. IV–44.

Several commenters supported Option 1 because it recognizes the very real implications a petition has on an operator who has expended substantial resources to prepare and submit a complete permit application. One commenter compared this situation to Judge Flannery's holding (described earlier in the discussion of VER) that a "good faith" effort to obtain all permits to mine was sufficient to confer valid existing rights in areas in which Congress prohibited mining. This commenter thought no stricter rule should apply for discretionary prohibitions on mining. A few commenters supported Option 1 but recommended that it be mandatory, not discretionary, for the regulatory authority not to process any petition received which pertains to lands for which a complete permit application has been filed and the first newspaper notice has been published. Some commenters stated that any person really interested in protecting an area from surface coal mining should file a petition and not wait for mining company to begin preparing to permit the area.

The filing of a permit application does not confer statutory immunity from the filing of unsuitability petitions. Such a right exists only where an operation satisfies the criteria set forth in § 762.13. This rule is the result of the reasonable exercise of OSM's discretion in implementing the Act. OSM has determined that the State regulatory authority should have the discretion to consider petitions filed after the publication of the first newspaper notice on a permit application if the regulatory authority believes the area warrants review. But OSM agrees generally that petitions should be submitted at an earlier time and can be so submitted without significantly disrupting the petition process. The final rule will strike a fair balance between the petitioner's interest and an operator's commitment to mine.

One commenter provided OSM with an example of how the previous designation process had delayed a specific permit decision. The petition was filed on the date of the public hearing for the permit application. This timing delayed extensively the completion of a nearly completed permit review. The "timing" provisions adopted in this section will reduce the opportunity for intentionally causing this type of delay by giving the regulatory authority the discretion to not process a petiton filed after a complete permit application has been received and the first newspaper notice published.

One commenter recommended Option 1, but cautioned that it should be consistent with the proposed revisions to the permit regulations which use the concept of "administratively complete". OSM agrees and is adopting the requirement that an administratively complete permit application has been filed.

Another commenter suggested Option 1 be adopted excepting the last proposed sentence which provides for automatic petition review in cases where a petition has been suspended pending real and foreseeable potential. The commenter urged that these conflicts can be addressed during normal permit application review.

OSM rejects this suggestion and has adopted § 764.15(a)(8), described above. OSM's intention in providing for suspension of petitions pending a real need for review is not to circumvent the petition process. The purpose is to review the petition in a more timely manner as the regulatory authority becomes aware that a real and foreseeable potential for mining exists. Petitions that have been suspended under §764.15(a)(3) should generally be processed prior to the permit application review stage, but if they have not, they must be considered on their own merit and according to the petition provisions and not be made part of the permit review process. This does not preclude the two processes from being conducted simultaneously if the regulatory authority wishes.

One commenter was concerned that after an initial petition is rejected, the petitioner could continue to raise new issues in subsequent petitions, thereby blocking permits year after year. OSM agrees that this type of situation would be undesirable and has included several safeguards to help prevent this type of situation, including the provision to allow the regulatory authority to determine not to process any petition received insofar as it pertains to lands for which a complete permit application has been filed and the first newspaper notice published. Also § 764.15(a)(5) allows the regulatory authority to choose not to consider a petition filed for an area which was previously unsuccessfully petitioned if the subsequent petition does not contain significant new allegations of facts with evidence which tends to establish the allegations. This commenter also recommended that OSM adopt a provision that subsequent petitions be considered frivolous and rejected if they make allegations which could have been raised in an earlier petition. Such a restriction would be impractical and unenforceable. Further, it is unreasonable to require a petitioner to have knowledge of all possible bases for a petition. This commenter also urged that for subsequent petitions for the same area there be no "permit block." OSM believes that it has established a reasonable safeguard by providing the regulatory authority the discretion to not process any petition received insofar as it pertains to lands for which an administratively complete permit application has been filed and the first newspaper notice published and in adopting a "frivolous" petition determination and procedures in § 764.15(a)(4). The commenter also wanted the regulatory authority to be given the discretion to require a petitioner to post bond for injury caused any person resulting from a petition being filed if it is subsequently rejected. OSM has rejected this suggestion because Congress intended the lands unsuitable process to be open to public participation. To require the petitioner to post bond would be contrary to the intent of Congress and would preclude

persons with limited financial resources from petitioning.

Several commenters were concerned with protecting operators who have made substantial legal and financial commitments for a surface coal mining operation before the petition to designate the area as unsuitable was filed. One commenter suggested that OSM adopt a requirement that the petition must be filed before the company files notice of exploration. OSM has not accepted this comment, as exploration is often speculative, may be years in advance of mining and does not otherwise provide a reasonable basis for cutting off an important citizen right.

Option 2 also would have amended § 764.15(a)(7) by providing that, if a petition submitted during the public comment period on a permit application (*i.e.*, prior to the filing deadline), is deemed incomplete, the State regulatory authority may allow the petitioner to resubmit the petition within 15 days from the date of rejection, even if the deadline for petition submission has passed. The proposal would have allowed a petitioner, in any case, to submit a revised petition prior to the deadline. Resubmissions after the deadline would have been solely for the purpose of clarifying or refining the materials which were originally submitted; new allegations as the basis of the petition would not be accepted. The proposal was not intended to allow petitioners to correct frivolous petitions or petitions where no apparent effort was made to meet minimum requirements. This proposed option was intended to give petitioners an opportunity to adequately respond to the requirements for completeness in proposed § 764.13. The previous rule did not provide any mechanism for resubmission of incomplete petitions.

A few commenters supported Option 2 based on the increased discretion provided the regulatory authority. The "increased" discretion is the provision that enables the regulatory to allow a resubmission of an incomplete petition in 15 days regardless of the end of the public comment period. Some commenters opposed the proposal because they believe it would encourage petitioners to harass operators. OSM will not adopt this provision due to the increased administrative burden on the States and the possibility of harassment of operators. By making it clear that petitioners have an obligation to submit complete substantive petitions in a timely manner based on the requirements specified in § 764.13(b), OSM is providing an additional incentive for potential petitioners to file as soon as they can reasonably do so.

Section 764.15(a)(8) Permit Decision When Petition Suspended

See discussion under § 764.15(a)(3).

Section 764.15(a)(9) Land Use Planning

Section 764.15(a)(9) was initially proposed in the June 10, 1982, **Federal Register** (47 FR 25301). OSM proposed to allow the regulatory authority to incorporate petitions into State or local land use planning programs provided such programs have protections equivalent to the petition process. To be acceptable for this purpose, a State or local land use planning program would have had to include policies and procedures consistent with those required in Parts 762 and 764 of this subchapter. OSM has decided not to adopt this provision. Commenters raised numerous objections to the proposal, and there was little support for it. No land use program which would meet the criteria set forth in the proposal was brought to OSM's attention.

Many commenters expressed tentative support for the land use planning concept, but raised concerns about how such a broad ranging idea could be effectively administered and monitored. One commenter offered an additional sentence to clarify that the procedure provide for the land use planning process only if it would be completed prior to mining. OSM never intended for this process to allow mining before a determination would be made.

Several commenters opposed the land use planning alternative. Some feared that the proposed process would not provide timely petition decisions and would allow a designation determination to be made in the absence of a petition. These commenters also were concerned that areas subject to land use planning would not receive the same consideration or level of protection as provided for by the lands unsuitable process under Part 764 administered by the State regulatory authority. Another commenter believed this process conflicts with the Act by stifling the narrow-focus petition process in favor of a broad-focus land use planning process. Other commenters asserted that the land use planning process may unnecessarily delay determination decisions and stymie the permit process. A few commenters also believed the provision would lengthen the time for designation decisions and for permit issuance. OSM agrees that an increased delay in either the permitting or petitioning process is undesirable. One commenter was concerned that an operator could begin mining before a land use planning agency had made a determination only to have the land use planning agency declare the area as unsuitable at some later date. This situation would not have occurred because of the requirements which the proposal would have imposed. One commenter suggested regulatory language to clarify the rule. OSM thanks the commenter, but has decided this type of an alternative is clearly too burdensome to adopt.

Given the number of concerns expressed, the lack of support for the proposal, and the apparent absence of any land use planning programs which would meet the criteria in the proposed rule, OSM has decided not to adopt this provision.

Section 764.15(b) Notification and Completeness Procedures

New § 764.15(b) provides additional procedures for public participation in the completeness decision. The final rule is adopted with minor changes from the proposed rule. Specific proposed time periods within which regulatory authorities have to provide notice have not been adopted. The regulatory authority will have to act in a timely fashion, but not within 3 or 5 weeks as was proposed. This flexibility will be useful to the regulatory authorities and is consistent with the Act so long as the time periods specified in section 522(c) of the Act are met. For clarity, the discretionary procedure allowing public involvement in the completeness determination is separately included in § 764.15(b)(2).

Under the new rule, if the regulatory authority desires to conduct a "completeness" hearing or solicit written comments it will be required to inform the specified persons and governmental agencies of the opportunity to request to participate in a completeness hearing, or to provide written comments. A completeness hearing, if scheduled, will be announced by a newspaper advertisement placed in the newspaper providing broadest circulation in the region of the petitioned area and in any State register of public notices. The petitioner is to be notified of the hearing by certified mail. The regulatory authority is required to notify a petitioner whether a petition is complete within 60 days after petition filing, as specified in § 764.15(a)(1). Thus, a regulatory authority may hold a completeness hearing or solicit comments on completeness, but it must reach its decision on completeness within 60 days.

Several commenters opposed public participation in the completeness determination. These commenters generally believed the proposal represents an attempt to afford coal operators an opportunity to confuse and convolute the process intended by Congress to be a simple means of designating certain lands as unsuitable for surface coal mining activities. Other commenters thought the proposed public participation procedures will place a substantial burden on the State regulatory authority. One commenter alleged it is improper to allow anyone to contest the completeness of a petition when only persons having a property interest can petition. Commenters also asserted the proposal runs counter to an effort to reduce burdensome and counterproductive regulations. Other commenters believed a "completeness" hearing will drag out the petition process. However, several commenters supported the proposal to allow the public an opportunity to comment on the completeness of a petition.

The new rule is intended to allow regulatory authorities to provide all interested persons, citizens and coal companies alike, the opportunity to comment on whether the petition is complete. The preamble to the proposed regulation explicitly stated that this process is not to be turned "into a complex battle of evidence and counterevidence over whether the area should be designated." (47 FR 25290). The hearing or written comments should address only the completeness of the petition as it relates to the petition criteria identified in § 764.13(b). This information is not "intangible" and does not call for "arbitrary decisions" as some commenters suggested. While the presence or absence of materials to meet some requirements can be verified easily, such as the requirement for a notarized signature, the presence or absence of allegations and supporting evidence, and similar requirements, is subject to some judgment. The rule allow the regulatory authority the option to allow public participation in the completeness determination. This flexibility to tailor the designation process should not be construed as burdensome or counterproductive, as the regulatory authority has the discretion to adopt or decline this procedure according to its own needs and capabilities. OSM disagrees that a hearing will increase the time required to process a petition. The State regulatory authority is required, regardless whether a hearing is held, in § 764.15(a)(1) to notify the petitioner within 60 days of receipt of the petition whether the petition is complete. The substance of the comment regarding property ownership is moot since OSM is not adopting the property interest restriction as the criterion to determine who has standing.

One commenter was confused as to why some provisions are triggered by receipt of a petition and others by receipt of a "complete" petition. Sections 764.13 and 764.15 provide rules for the designation and termination petition process from the initial receipt of the petition, prior to a completeness determination. It is appropriate to use receipt of the "petition" in these sections because these sections apply to all petitions. There is no conflict in using the word "complete" petition in §§ 764.17 and 764.19. These sections follow in sequence after the completeness determination. If a petition is found to be imcomplete under § 764.15, it will not be eligible for the hearing provided in § 764.17 or a decision as provided in § 764.19.

The proposed § 764.15(b)(2) is renumbered § 764.15(b)(3). Section 764.15(b)(3) requires the regulatory authority to seek relevant information on a complete petition from the general public. The previous rule required the regulatory authority to seek information within 3 weeks of a determination of completeness. The previous time period placed an unneeded administrative burden on the regulatory authority. The final rule requires that the regulatory authority act promptly, but does not specify a particular time period.

The previous regulation also required publication of a newspaper advertisement in the locale of the area covered by the petition, in the newspaper of largest circulation in the State, and in any official State register of public notices. OSM proposed to modify this provision by requiring notice in the newspaper providing broadest circulation in the region of the petitioned area rather than the newspaper with largest circulation in the State. The proposal has been adopted. In the context of this rule, "region" is intended to encompass a wider geographic area than the locale of the area covered by the petition; in any case, the advertisement should be placed in the newspaper generally read by residents of the area potentially affected by the designation petition. This change is intended to accommodate the need for adequate notice to persons with an interest in unsuitability proceedings. Publication in the newspaper of largest circulation in the State does not, in a number of circumstances, reach those persons with an interest in such proceedings. Several comments were received on the type of newspaper in which the notices should appear.

One commenter advised that if Option 2 were selected for § 764.13(b), the newspaper notice should be deleted. Option 2 was not selected. The newspaper notice is needed to request the general public to submit relevant information on the complete petition.

Several comments were received regarding the type and the length of the newspaper notification. One commenter recommended the previous rule be retained which provides one notice for two consecutive weeks within three weeks after the completeness determination is made. One commenter suggested the regulatory authority, in addition to the newspaper notice, furnish copies of the petition to all property and mineral owners. Section 764.15(b)(1) provides for the regulatory authority to provide copies of the petition to interested governmental agencies, intervenors, persons with an ownership interest of record, and other persons known to the regulatory authority to have an interest in the property. There is no need to furnish the copies a second time. Additionally, the petition is available for inspection and for copying during normal business hours at the main office of the regulatory authority. The regulatory authority has several notification and processing requirements to accomplish within a relatively short time period after the petition if filed. Although the time to notify the general public and request submission of relevant information is not being specified other than by a promptness standard, the advertisement is still required once for two consecutive weeks. The notice requirements adopted in § 764.15(b)(1), (b)(2), and (b)(3) are sufficient to ensure that the public will be notified of the petition and will be given an opportunity to provide relevant information.

Section 764.15(c) Intervenors

Previous § 764.15(c) provided that "any person" may intervene in an unsuitability proceeding. The proposed revision would have allowed "any person having a property interest in land or mineral resources which is or may be adversely affected" to intervene in an unsuitability proceeding. This revision was consistent with the proposal for a designation petition. OSM is not adopting the property interest limitation in § 764.13(a), and will not adopt it in this section. The final rule provides for any person to intervene by filing allegations of facts describing how the designation determination will directly

affect the person intervening, supporting evidence, a short statement identifying the petition, and the intervenor's name, address and telephone number. OSM is attempting to provide similar requirements for persons filing designation petitions or termination petitions and for intervenors in an effort to be consistent to all persons potentially involved in the process.

Many commenters advanced identical arguments for the property restrictions proposed for standing to petition, addressed in § 764.13(a), and standing to intervene. Rather than reiterate those responses here, they are in the discussion of § 764.13(a). A few commenters urged that "standing requirements" for intervenors be consistent with those adopted for designation petitioners. OSM agrees. OSM is adopting standing requirements consistent with those enunciated by the Supreme Court for both designation and termination petitions. Because the comments support consistent criteria to determine standing for petitioners and intervenors, OSM is adopting the same standard for intervenors.

One commenter stated the time period allowing an intervenor to file should be three weeks instead of three days before the hearing held pursuant to § 764.17. The commenter believed 3 days will not allow the regulatory authority adequate time to prepare for the hearing. However, there is no requirement for the regulatory authority to address such filings at the hearing. Accordingly, OSM believes that three days is not a significant burden to the regulatory authority and will provide the broadest possible citizen input.

Section 764.15(d) Petition Record

Previous § 764.15(d) required the development, maintenance, and availability of a public record both at a central location of the county or multicounty area in which the petitioned land is located and at the main office of the regulatory authority. OSM has received a number of questions regarding the practicality and desirability of maintaining more than one complete public record for each petition. OSM proposed and is adopting a provision that requires the complete record be available to the public for inspection free of charge and for copying at reasonable cost, during all normal business hours at the main office of the regulatory authority. The regulatory authority will also be required to maintain information in or near the area in which the petitioned land is located. This information, at a minimum, will include a copy of the petition and must also be available for inspection and copying. OSM also considered but will not adopt the requirement that copies of the petition be mailed to interested persons and that other information be made available at no expense. OSM believes this requirement would be both burdensome and costly to the State regulatory authority.

Commenters generally supported the proposal to maintain one complete record located at the main office of the State regulatory authority and a partial record consisting, at a minimum, of a copy of the petition at or near the area in which the petitioned land is located. OSM agrees that it is more practical for the regulatory authority to maintain one complete record which is available for public inspection and for copying at a reasonable cost. One commenter noted that mailing copies to the general public or interested persons may at times be necessary. OSM will not require the regulatory authority to make copies for anyone. The regulatory authority is required to make the information available at the specified locations for inspection and for copying at a reasonable cost. Regulatory authorities may not have the additional time or resources required to comply with unlimited public requests for research and copying.

Section 764.17: Hearing Requirements

Section 764.17(a) Hearing Procedures

Previous § 764.17(a) required a legislative hearing be held after receipt of a complete petition. OSM proposed three options that would amend the previous requirement that hearings be purely legislative in nature. Each of the three options proposed that a record of the hearing be made and preserved according to State law, and that no relevant part of the data base and inventory system or public comments would be excluded from consideration in decisions on the petition. Nonrelevant portions of the data base and inventory system have no bearing on the decision and should appropriately be excluded. Factual challenges to the relevant portions of the data base and inventory system would be allowable.

The differences among the three options pertained to subpoena of witnesses, cross-examination of witnesses and burden of proof. Option 1 would have provided that no cross-examination of witnesses would be allowed. Such a provision was included in the previous rules in response to concern that cross-examination procedures would intimidate some interested or affected parties, thus discouraging public participation and cutting off sources of potentially valuable information. Option 1 also had no provision to subpoena witnesses. This option also provided that no party would bear the burden of proof or persuasion.

Option 2 provided for the regulatory authority to subpoena witnesses as necessary and for cross-examination of expert witnesses. Under this option, only those persons qualifying and testifying as expert witnesses would be subject to cross-examination. In addition, the prohibition against imposing a burden of proof on any party would have been deleted, giving the regulatory authority discretion to determine who, if anyone, should bear this responsibility.

Option 3 would have provided for subpoena and cross-examination of all witnesses as an acceptable procedure. The regulatory authority and any party to the petition would have been allowed to cross-examine any or all available witnesses. Additionally, the burden of proof would have been assigned to the petitioner.

Options 2 and 3 provided regulatory authorities with the flexibility to employ a broader range of hearing procedures. These attributes of quasijudicial hearing procedures are viewed by some States as desirable for resolving factual disputes, assuring due process for landowners where property uses may be limited, and for developing a more complete record by eliciting more information during the hearing.

OSM also proposed to revise the time from when the 10-month period begins for holding the public hearing required by the Act. Options 1, 2, and 3 and previous § 764.14(a) all required the hearing to be held within 10 months of the receipt of a complete petition. Under this variant, the hearing would have to be held within 10 months after the petition is determined to be complete. The completeness determination can come as long as 60 days after the petition is received. OSM was concerned that a detailed study of a complex petition may require a full 10 months; therefore, the time extension was proposed to allow the regulatory authority to wait until after the completeness determination to begin such a study and still have a full 10 months before the hearing. This variant has not been adopted.

OSM has decided to adopt a modified version of Option 2 that provides:

1. All relevant parts of the data base and inventory system and all public comments received shall be included in the record.

2. The regulatory authority may subpoena witnesses.

3. Only expert witnesses may be cross-examined.

4. No person will bear the burden of proof or persuasion.

5. The hearing must be held within 10 months of the receipt of a complete petition.

Although an informal legislative-type hearing meets the requirements of the Act, some of the techniques of formal hearings can be useful in clarifying factual issues. The inclusion of only some of these techniques in these final rules is based, in part, upon Congressional intent to encourage broad citizen participation and to ensure that decisions are based on all relevant information available.

Commenters were sharply divided on whether the hearing should be "of record." Some commenters believed an informal hearing would provide the best atmosphere for discussions involving conflicting value determinations. Other commenters wanted more formal procedures to document decisions that affect the availability of valuable resources and possibly terminate property rights of certain persons. OSM is adopting a hearing "of record" according to applicable State law. Information received relevant to the petition decision should be preserved and available for review.

One commenter stated that a hearing "of record" poses serious procedural problems when entering the entire data base and inventory system. The commenter contended this process will be costly and time consuming. The commenter opposed the regulatory authority discretion to exclude from the record non-relevant portions of the data base and inventory system. Other commenters recommended that the parties directly involved in the petition process be allowed to stipulate what parts of the date base and inventory system should be made part of the record. OSM believes a complete record of relevent information pertaining to designation decisions must be preserved for future review and agrees that entering the entire data base and inventory system could be overly burdensome. The regulatory authority is in an objective position to decide the relevance of the information contained in the date base and inventory system to the specific petition. One commenter also expressed concern that the regulatory authority would have to defend the data contained in the data base and inventory system. The purposes of the record is not to defend the data base, but to preseve a complete record of the data relevant to the petition decision for review by the public and the courts. Regardless of any record requirement, the regulatory authority is responsible for properly evaluating the capacity of the petitioned land areas to support and permit reclamation of surface coal mining operations based upon an adequate data base and inventory system.

One commenter supported subpoena authority for the States as a way to dissuade frivolous and unwarranted petitions from being filed. OSM is providing subpoena authority because States should have the ability to subpoena witnesses who may have information relevant to the petition and may othewise be unavailable. It is not intended to discourage the filing of any serious petition.

Comments were distinctly divided on the cross-examination options. Some commenters urged that cross-examination not be adopted due to possible intimidation of some witnesses. Other commenters wanted to allow cross-examination only of expert witnesses. These commenters believed that experts have a more substantial basis for their testimony and are better qualified to deal with cross-examination procedures. The commenters believed non-expert witnesses should be able to come forward and voice an opinion without the threat of intimidation. Other commenters urged that cross-examination be allowed for all witnesses. These commenters asserted that cross-examination of all witnesses will provide the regulatory authority a direct means of fact-finding from any party involved in the petition process.

Expert witnesses generally do present information of a more substantive nature and are better prepared to testify on specialized or highly technical aspects of the specific conditions alleged by the petition. Therefore, OSM is adopting a provision allowing for cross-examination of expert witnesses only. OSM believes this provision will allow the States adequate opportunity to clarify relevant facts while encouraging broad citizen participation.

Commenters were similarly divided on assigning the burden of proof. Some commenters argued that the petitioner should be required to prove the allegations made in the petition. They asserted that some hearing procedures do assign such a responsibility and that there are at least two reasons for assigning the burden of proof to the petitioner: (1) such a responsibility would discourage frivolous petitions, and (2) it would tend to minimize the disruption that the filing of a petition has on the permitting process. Other commenters believed that petitioners, if assigned the burden of proof, would be severely impaired in their ability to participate in the designation process.

If the burden of proof were to be assigned to petitioners, the petitioning process might be closed off to citizens with limited resources. OSM wants to provide for broad citizen participation in proceedings that encourage disclosure of a full set of facts. Moreover, the petition process resembles long range planning, and provides for the weighing and balancing of many factors. The regulatory authority is required to consider many competing interests. Thus it is inappropriate to assign burden of proof or persuasion to the petitioner or any other person.

Only a few commenters supported the proposal to extend the time to conduct the hearing. These commenters believed the extended time would allow a more complete technical study. The majority of commenters opposed the proposal. These commenters contended that the proposed extended time to conduct the hearing is contrary to the time provision contained in section 522(c) of the Act. The Act specifically provides for the hearing to be conducted "within 10 months after receipt of the petition." OSM agrees that the proposal to extend the time is inconsistent with the Act and the proposal is not being adopted. Another commenter suggested providing more flexibility for the hearing deadline by adding a provision to allow the 10 month deadline to be waived by the petitioner and other interested parties. This alternative is also inconsistent with section 522(c) of the Act, and has not been accepted.

Section 764.17(b) Hearing Notification

Previous § 764.17(b)(1)(iii) required notice of the public hearing to any person who has an ownership or other interest known to the regulatory authority in the area covered by the petition. The proposal required notice only to persons with a property interest of record in the property covered by the petition and other persons known to the regulatory authority to have an ownership interest in the property. It also provided that notice to persons with an ownership interest of record be made according to applicable State law. This proposed change was intended to limit notification under § 764.17(b)(1)(iii) to persons who have a know property interest and to delete the somewhat vague "other interest" category. OSM has decided to adopt a final rule requiring notice to persons with known property interests in the petitioned area.

Proposed § 764.17(b)(2) provided that notice of the hearing be sent by certified mail to petitioners and intervenors only.

Property owners and government agencies would receive notice by regular mail postmarked at least 30 days before the scheduled hearing date. The previous requirement provided for notices of the hearing to be sent by certified mail to any person required to receive notice. The revision is being adopted as proposed. To require notification by certified mail, other than to those persons who have a direct stake in the petition, has been found by OSM to be burdensome and costly for the regulatory authority.

Only a few comments were received for proposed changes to § 764.17(b). Most commenters supported the proposal to notify only the petitioners and intervenors by certified mail. Some commenters seemed to believe the proposal would limit notification only to persons with a known property interest. One commenter suggested notice be made according to applicable State law. The proposal does not limit notification to persons with a known property interest. In addition to the notification requirement of § 764.17(b)(1)(iii), the requirements of § 764.17(b)(1) (i) and (ii) apply. Notice of the hearing must be provided to petitioners and intervenors and to interested government agencies. Moreover, the general public is notified by newspaper advertisement.

Section 764.19: Decision Procedures

Section 764.19 sets forth procedures to be followed by the regulatory authority in deciding whether to designate lands unsuitable for mining. OSM proposed changes to §§ 764.19(a)(3), (b), and (c). Section 764.19(a)(3) was proposed to be amended by clarifying that in reaching a decision, the detailed statement required by § 764.17(e) on the coal resources, demand for coal, and impacts on the area will be considered only when it is prepared pursuant to section 522(d) of the Act prior to a designation of unsuitability. This change was proposed to reflect the wording of section 522(d) of the Act, which states that the detailed statement shall be prepared prior to designating any land area as unsuitable for surface coal mining operations. The change clarifies when the detailed statement is required. The proposed change is being adopted in the final rule. Three comments were received. All supported the proposal that the statement should only be prepared for those petitions which will cause a designation action. One noted that this change will result in significant cost savings for the regulatory authority.

Section 764.19(b) was proposed to be amended by eliminating the requirement that the decision be sent by certified mail to every party to the proceeding and the Regional Director (OSM), as this could be burdensome and costly. This proposal has been adopted. The amended section requires that the decision be sent by certified mail to the petitioner and intervenors and by regular mail to all other persons involved in the petition. The requirement to furnish a copy of the decision to OSM has been deleted, as it duplicates reporting requirements being developed for oversight of approved State programs. Section 764.19(b) also requires a decision within 12 months of receipt of a complete petition if no hearing is held. The proposed rule would have required that where no hearing is held, the decision must be made within 12 months after a petition is determined to be complete. The proposal was intended to allow the regulatory authority to adopt a broader review for completeness without reducing the time to study a petition. This portion of the proposal has not been adopted.

The majority of commenters stated their support of the previous rule which provides for the decision to be made within 12 months after receipt of a complete petition. These commenters urged that the time allowed for the completeness hearing is not an addition to the total time allowed for the determination. Some commenters believed the proposed rule would serve only to further delay the decision. One commenter supported the proposal because the additional time would decrease some of the administrative burden on the regulatory authority. OSM will not adopt the proposed extended time period.

Section 522(c) of the Act specifies a time period not to exceed one year for a designation decision. Congress did not intend for the designation process to continue longer and the legislative history speaks to the concern about delaying the permit process.

The other proposed change for § 764.19(b), providing certified mailing of the decision only to the petitioner and intervenor, received support from the majority of commenters. Commenters generally stated that mass certified mailing of the decision is extremely burdensome and costly for the regulatory authority. No commenters opposed the proposal. OSM will adopt the proposal in an effort to alleviate some of the administrative burden on the regulatory authority.

Section 764.19(c) provides that State regulatory authority decisions with respect to a petition, or failure to act within time limits set forth in § 764.19(c), be subject to judicial review by a court of competent jurisdiction. An amendment was proposed to require that all relevant portions of the data base and inventory system and public comments received during the public comment period be included in the record of the administrative proceeding. This proposed change is being adopted. It is necessary to ensure that courts review the record as a whole in making their findings as required under Section 526 of the Act. A corresponding change is being made in § 764.17(a) to ensure that all relevant parts of the data base, inventory system, and public comments be included in the public record.

Commenters supported the proposal to include all relevant portions of the data base and inventory system and public comments in the record. These commenters believed that all data used in the decision process should be available for public review and for judicial review. OSM is adopting the proposal to ensure that all the information germane to the designation decision is of record and available for review.

One commenter urged OSM to provide for immediate judicial review of designation decisions. OSM did not propose to change this provision. The commenter stated that the existing rule provides for eventual review when a permit application is rejected on the grounds that the permit area includes an area designated unsuitable for mining.

Section 764.19(c) already provides for judicial review by a court of competent jurisdiction in accordance with State law under Section 526(e) of the Act and soon to be revised 30 CFR 775.13 of a State regulatory authority decision with respect to a petition or the failure of the regulatory authority to act within the specified time limits. There is no requirement for a prior administrative review, but a regulatory authority may logically provide for such review if it wishes. Therefore, no change is being made to this section. Another commenter suggested two new subsections for Section 764.19 to provide bonding requirements for the petitioner. OSM did not propose "bonding requirements" for petitioners; therefore, the issue is outside the scope of this rulemaking. As indicated earlier, it could also limit participation by the public in the petition process.

Section 764.23: Public Information

Section 764.23(a) requires the regulatory authority to make the information and data base system developed under § 764.21 available to the public for inspection free of charge and for copying at a reasonable cost. OSM proposed and will adopt the

amendment to modify public disclosure requirements regarding historic resources information. These changes comply with section 304 of the National Historic Preservation Act Amendments of 1980 (Public Law 96-515) and afford regulatory authorities the discretion to withhold historic resources information from the public where disclosure would expose the resources to risk of harm or destruction. The change will encompass all protected cultural and archeological sites proposed to be nominated to, or listed on the National Register of Historic Places. The regulatory authority, with the assistance of the State Historic Preservation Officer, will make the determinations regarding the withholding of such information and which information must be disclosed when a potential designation for unsuitability rests primarily on an allegation based on that data. This change was made in conformity with the National Park Service Interim Rules on the National Register of Historic Places (46 FR 56191, Nov. 18, 1981; 38 CFR 60.6(x)). All comments supported the proposal. The commenters believed the proposal is consistent with section 304 of the National Historic Preservation Act of 1966, as amended, and stated the proposal provides the required protection of these places from risk or harm.

Section 764.25: Maps

Section 764.25 was proposed to be amended by requiring States to maintain maps "or other unified and cumulative record" of areas designated unsuitable for all or certain types of surface coal mining operations. The previous rule provided that the regulatory authority must maintain maps of designated areas. The change is being adopted to provided regulatory authorities with additional flexibility concerning the type of records to be maintained. Commenters supported the proposal. The commenters urged that a mapping system alone is too limited. However, two commenters recommended a State or local "land use planning" amendment to accompany the proposed requirement. OSM is not adopting the "state or local land use planning" amendment. OSM has decided not to incorporate a state or local land use planning process into the designation process. The discussion for this issue is in the preamble for Section 764.15(a)(9).

Part 765

OSM is removing all of Part 765, consisting of §§ 765.1, 765.11, 765.12, and 765.13. This part contained provisions for designating lands unsuitable under a Federal program for a State. The substantive provisions of this part are generally covered by Part 736, Federal Program for a State. By adding to Part 736 the requirement to implement a program for designating lands unsuitable one year after a Federal program is established (with the exceptions noted under § 736.15), all of Part 765 becomes unnecessary. The change to Part 736 is discussed earlier in this preamble.

Part 769—Petition Process for Designation of Federal Lands as Unsuitable for all or Certain Types of Surface Coal Mining Operations and for Termination of Previous Designations

Part 769

Revised 30 CFR Part 769 modifies the previous petition process for designation of Federal lands as unsuitable for mining and for termination of such designations. The process is similar to that required of States in revised 30 CFR Part 764, but with such changes as are needed to reflect the differences between Federal and non-Federal lands, and the organization and management of the process within the Department of the Interior. This section of the preamble discusses in detail only those changes to the rules on Federal lands which are not equivalent to changes for non-Federal lands. Comments which were received on Part 769 that also apply to the revisions to Part 764 are discussed in the preamble to Part 764.

The most significant issue discussed in the proposed rule was whether the petition process applies to Federal lands. That is, should persons having an interest which is or may be adversely affected by surface coal mining operations be allowed to petition to have Federal lands designated as unsuitable for such operations? OSM requested the public to consider two major alternatives on this issue. The first alternative, which OSM has adopted, was to streamline but retain the petition process. The second alternative would have eliminated the petition process for Federal lands. Comments were sharply divided on this issue. Several commenters suggested deleting the entire Part 769 (petition process on Federal lands) for the reasons OSM cited in the preamble to the proposed rule supporting that alternative, and for other reasons. Other commenters suggested that Congress intended that there be a petition process on Federal lands and therefore recommended its retention.

OSM has decided to retain the petition process for Federal lands. In addition, the Secretary of the Interior has directed OSM and the Bureau of Land Management (BLM) to develop another alternative to administering the petition process. That alternative is expected to be proposed by BLM contemporaneously with the issuance of this final rule and would consist of a method of determining the suitability or unsuitability of land for surface coal mining through the land use planning process, because such a process would ensure consideration of unsuitability in a broader context than the site-specific focus of a petition. The new alternative would permit the unsuitability issue to be considered prior to significant expenditures of funds and labor by the Department (through the conduct of the leasing process), industry (through participation in the leasing process and in the preparation of permit applications), and citizens (through having to respond to two different processes). The final rules for Part 769 adopted today will remain effective until a final decision is reached on whether and how the Act's requirements for designating Federal lands unsuitable for surface coal mining operations can be further integrated into the land use planning process administered by BLM.

The Department of the Interior agrees with the commenters who stated that the permit application review process allows a decision to be made with complete and detailed data available prior to mining on specific areas and that by incorporating the petition process into the BLM land use planning process conflict could be avoided and better public participation would result. It is for that reason that the Secretary has directed the development of the new alternative. The Department of the Interior believes that uniform planning and advance conflict resolution are desirable.

Several commenters expressed concern for designation of Federal lands on "checkerboard" areas of intermingled Federal and non-Federal lands. One commenter stated that without joint, simultaneous consideration of unsuitability by State and Federal government agencies of checkerboard areas, they might make their unsuitability decisions at different times and based upon different data. Experience indicates that the previous petition process on land with intermingled Federal and non-Federal ownership has created that very problem. The Red Rim petition, for example, covers both Federal and private land in the State of Wyoming, and was originally received by the State for the intermingled private land only. In that situation, there has been joint, simultaneous consideration of the

intermingled Federal land. Retention of the petition process will allow such joint considerations to continue.

One commenter proposed that the unsuitability regulations be revised to allow the Secretary to use his discretion to enter into an unsuitability analysis on intermingled Federal lands when State lands have been petitioned. The new alternative to be proposed by BLM would allow for this through land use planning. Further, State-Federal cooperative agreements developed pursuant to section 523(c) of the Act would allow joint action, or a State lead, as long as the Secretary retained the final decision.

Another commenter recommended that if the petition process is retained for Federal lands, it should be more closely coordinated with land use planning, as was recommended in the proposed rule. OSM and BLM agree and are working closely to coordinate the petition process with land use planning.

A commenter thought that even if OSM selected the alternative in the proposed rule which does not eliminate the petition process, citizens would be prevented from petitioning to stop mining on Federal land, making it more difficult to block environmentally threatening mining projects. OSM disagrees. Citizens will not be prevented from petitioning under the revised rule, particularly in view of the modifications made from the proposal that parallel those made in Part 764.

Several commenters thought that petitioning is the best form of public input in the decisions as to which lands should be designated as unsuitable for surface coal mining and that it is important that citizens, as owners of public lands, have a voice in their use or potential abuse. Another commenter thought that formal citizen participation occurs during land use planning when BLM, through notice in the **Federal Register**, calls for Coal Resource Information (43 CFR 3420.1–2(a)). In addition, during land use planning, qualified surface owners are consulted throughout the process for their consent or refusal to permit mining on their lands (43 CFR 3420.1–2(e)(4)(i)). Any qualified surface owner unwilling to consent to mining on his land of coal owned by the United States is protected by section 714 of the Act and his land is subsequently dropped from further consideration for leasing. Another commenter stated his belief that collectively, mine plan reviews, NEPA studies, BLM's review and the Secretary's review are the full equivalent of the citizen petition process. OSM agrees with the need for strong citizen participation, and because Congress provided the petition process as a unique and significant form of citizen involvement, has retained the petition process in the final rule.

One commenter stated that in an unsuitability action on Federal lands, OSM would rely on the same agencies that prepared the land use plans to assist in the evaluation of and to receive guidance on the technical issues brought forward in the petition; and that it is to be expected that these agencies would develop positions based on their land use planning activities, which assess unsuitability criteria in relation to coal leasing potential. OSM-administered unsuitability petitions, the commenter added, are therefore unnecessary. The Secretary agrees with this comment, and for that reason has directed the creation of a new alternative in which BLM would be responsible for the petition process.

Another commenter gave the following as justification for eliminating the petition process: Section 522(a) of the Act, which pertains to State programs, or Federal programs imposed in lieu of a State program, provide for unsuitability petitions, referring to section 522(c) of the Act. Section 522(c) provides that a person whose interest may be adversely affected has the right to file a petition to designate lands unsuitable for surface coal mining operations with the regulatory authority. There is no mention of the Secretary or OSM Director.

The commenter continued that section 701(22) of the Act defines "regulatory authority" as:

> [T]he state regulatory authority where the state is administering this Act under an approved state program or the Secretary where the Secretary is administering this Act under a Federal program.

This definition does not include the Federal lands program, which applies to Federal lands. Furthermore, section 701(6) of the Act defines "Federal program" as:

> [A] program established by the Secretary pursuant to [s]ection 504 to regulate surface coal mining and reclamation operations on lands within a state in accordance with the requirement of this Act.

The comment concluded that section 504 of the Act pertains to a Federal program when there is no State program and does not refer to the Federal lands program which is covered by section 523 of the Act.

The commenter further argued that this interpretation appears confirmed by the Conference Report (page 110–111) which states:

> State regulatory programs must include a responsible process to respond to petitions to designate areas unsuitable for all or certain types of surface coal mine operations and criteria and procedures for designation are set forth.

With respect to such designation of Federal lands, the report references section 522(b) and notes that it provides that "The Secretary shall conduct a review of the Federal lands to determine * * *." The only reference to the Secretary and the petition process is when the Secretary promulgates a Federal program for a State.

The commenter then concluded that it was clear from the language of the Act that Congress only intended for the petition process to designate lands as unsuitable for surface coal mining operations to apply to lands subject to a State program or a Federal program imposed in lieu of a State program, neither of which cover Federal lands.

Other commenters cited legislative history to support the retention of the petition process for Federal lands. Specifically, Senate Report, Number 95–128, 95th Congress, 1st Session 54 (1977), states that:

> A decision to permit surface mining of coal is a land use decision, and as such may at times conflict with other demands on scarce or valued land resources. For this reason, *the bill provides for a mechanism—on both State and Federal lands—for citizens to petition* that certain areas be designated unsuitable for surface coal mining (emphasis added).

House Report Number 94–45, 94th Congress, 1st Session 206 (1975) states that:

> The Secretary of the Interior is to review Federal lands and make some determinations based on the standards set forth above. Any person having an interest which may be adversely affected *may petition either the State or Federal Government to have an area so designated or to have a designation terminated* (emphasis added).

OSM has decided to retain the process to meet many of the concerns of these commenters.

One commenter stated that the Federal lands review process is adequate to protect lands that are not suited for mining; Part 769 should therefore be eliminated from the rules, thereby delegating the review process for Federal lands to BLM with input from and coordination with the various land managing agencies. Conversely, another commenter stated that if OSM decides to delete the petition process for Federal lands, the regulations should reflect the requirement that any determination of unsuitability must be based on all of the criteria of section 522 of the Act; and that the Secretary cannot merely mimic or adopt the BLM Federal lands review determination. The

Secretary disagrees with these comments because they confuse two separate requirements of section 522 of the Act. Section 522(b) requires the Secretary to conduct a review of Federal lands to determine whether certain areas should be designated as unsuitable for all or stipulated methods of coal mining. Section 522(c) provides persons having an interest which is or may be adversely affected with a right to petition the regulatory authority to have an area designated as unsuitable or to have such a designation terminated. The Secretary, however, agrees that these two processes should be coordinated more closely, and has directed the BLM to develop an alternative regulatory approach which would incorporate the petition process into the BLM land use planning process. The BLM proposed regulations are being published contemporaneously with these final regulations.

Section 769.3 Authority.

As proposed, this section has been deleted to streamline the chapter by eliminating redundant and unnecessary provisions.

Section 769.4 Responsibility.

As proposed, this section has been deleted to streamline the chapter by eliminating unnecessary provisions.

Section 769.7 Regulatory policy.

As proposed, paragraphs (a) (c), and (d), which established procedures for maintaining maps, review of permanent program permit applications and review of interim program mining plans, have been removed because they are unnecessary. Paragraph (b), which requires that mining be prohibited or limited in areas designated as unsuitable, has been revised, as proposed, to remove the term "mine plan," which no longer is used under the revised rules for Federal lands. Paragraph (b), as proposed, has been placed in the last paragraph of § 769.19.

Section 769.11 Who may submit a petition.

This section, which contains the provision known as "standing" or "interest," enables any person having an interest which is or may be adversely affected by surface coal mining operations to be conducted on Federal lands to petition the Secretary to have an area designated as unsuitable for all or certain types of surface coal mining operations or to have an existing designation terminated. In addition, for the purpose of the section, a person having an interest must pass an "injury in fact" test that requires the party seeking review to be among the injured and to demonstrate what the injury is and how the injury adversely affects him. A discussion and analysis of the comments received on standing may be found in the preamble to Part 764. Although this section was not proposed for revision in the proposed rule, it has nevertheless been revised, for consistency, to reflect related changes in revised § 769.13 which was proposed for revision.

Section 769.12 Where to submit petitions.

As proposed, this section has been revised to reflect OSM's September 13, 1981, reorganization.

Section 769.13 Contents of petitions.

OSM proposed two options for revising the content requirements for petitions to designate areas unsuitable for mining. Option 1 was intended primarily to focus and clarify what information is needed. Option 2 would have imposed additional requirements on the petitioner. The regulation being adopted today is a combination of the two options, and is identical to the provision being adopted for State unsuitability processes. Rather than repeat the language from the State requirements, it has been cross-referenced. The comments received and the rationale for the requirements adopted are discussed in the preamble to Part 764.

Revisions proposed for the content of termination petitions were intended to focus the information needed to make informed decisions on such petitions. The changes proposed were parallel to those proposal for State termination petitions. The final regulation is identical to the State requirements, and the language of the State requirement has been included by cross reference. The comments received and the rational for the requirements adopted are discussed in the preamble to Part 764.

Section 769.14(a) Initial processing, recordkeeping, and notification requirements.

In order to improve coordination between the petition process and the BLM land use planning and coal leasing processes, OSM proposed that a petition, to be accepted, would have to meet criteria for completeness, ripeness and sufficient merit. Under the proposal, to be complete, a petition would need to contain all of the information required by § 764.13 (b) or (c). To be ripe, there would have to be real and foreseeable potential for mining within 5 years; that is, the petitioned area would have to be leased, subject to a preference right lease application, included in an area for which land use planning has been completed and the tract was available for further consideration for leasing, or subject to non-competitive leasing. Under the proposed rule, to have sufficient merit, the petition would have to include new allegations and evidence not considered in a previous petition or Federal lands review, demonstrate that the petitioner has interests which are or may be adversely affected by surface coal mining operations and include lands containing mineable coal or lands which would be subject to impacts incident to an underground coal mine.

The final rule includes all of the concepts expressed in the proposal; however, they have been edited and reordered and the term "sufficient merit" has been dropped. Those items previously included under sufficient merit are now covered under "completeness" and "frivolous" criteria. The demonstration of impact on the petitioner's interest and requirements for new allegations and evidence where lands have been previously considered in a petition or Federal lands review are now included under the completeness criterion. If the petition area does not include mineable coal or lands which would be subject to surface impacts from underground mines or adjoining surface mines, the petition will be considered frivolous.

The language proposed for § 769.14(a) is being adopted with minor changes to reflect elimination of the term "sufficient merit", inclusion of the term "frivolous" and the non-adoption of the proposed requirement in § 769.14(e) for a "completeness" hearing by shortening the time limits for a decision from 60 days to 30 days. No comments were received on this proposed change.

Completeness

The language proposed for the meaning of the word "complete" § 769.14(a)(2) has been expanded to cover the requirement that a petitioner submit new significant allegations of fact and supporting evidence not considered in any previous unsuccessful petition or Federal Lands review conducted under Section 522(b) of the Act. This had been proposed as part of the "sufficient merit" criterion. Although the wording of this requirement has been modified from the proposal, no substantive change is intended.

The proposed revisions included language under "sufficient merit" for termination petitions which would have required significant new evidence not considered in a Federal lands review. One commenter stated that this

requirement should not be adopted since a termination petition seeks to reverse the decision made in response to a designation petition. The designation petition evaluation would consider any evidence provided by the Federal lands review conducted by the land management agency, but this evidence would become part of the designation evidence. The proper procedure then, the commenter suggested, is for a termination petition to contain significant new evidence not evaluated in the designation process. The same commenter stated further that the wording of the proposed rule created confusion since it could be misinterpreted to mean that a termination petition is somehow used in an attempt to reverse an unsuitability assessment by a land management agency. The commenter reasoned that this would be a totally incorrect interpretation under the current division of responsibilities between BLM and OSM, since OSM is not bound to act on BLM's assessment in land use planning with either a designation or a termination petition. The commenter then suggested that a new paragraph was needed which would require a termination petition to contain significant new evidence not considered in the designation petition evaluation. OSM agrees and has made the appropriate revision, which is now contained in the completeness criterion and is part of the information required under § 764.13(c).

Another commenter cited the existing regulation as already authorizing rejection, as Congress intended, of frivolous and incomplete petitions. The commenter argued that nothing in section 522(c) of the Act supports the additional "merit" criteria that have been proposed. OSM agrees that no separate "merit" criterion is specifically mentioned by Section 522(c), and that the use of the term could imply judgments that are not appropriate at this stage in the petition process. The term has therefore been dropped. However, the requirements covered under the proposed "sufficient merit" criterion are relevant and useful as measures of completeness and seriousness; they are now included under the "complete" and "frivolous" criteria. This commenter also stated that the sufficient merit requirement regarding standing for petitioners is inappropriate, as the Act authorizes only the "adversely affected" criterion. The issue of standing is addressed in the discussion of comment for § 764.13(a). Material required to demonstrate the standing requirements which are being adopted is listed in § 764.13(b), *Contents of petitions.* The initial processing requirements for this material, therefore, have been moved to the criteria for "complete" petitions.

Another commenter stated that to avoid abuse by multiple petitions, the regulatory authority should have the authority to deny future petitions on the grounds that the later petition could have been included in an earlier petition. While OSM is deeply concerned about the potential problem of multiple, serial or successive petitions, denial of future petitions would be a highly questionable solution. It would be unreasonable to require that a potential petitioner know of all possible grounds for a petition. The range of issues which might appropriately merit consideration through the petition process is broad and complex, and generally would not be known to potential petitioners. To require such knowledge would deny the petition process to most citizens, which is clearly contrary to the specific language of Section 522(c) of the Act which allows "Any person having an interest * * * shall have the right to petition * * *". Further, such a restriction would preclude the use of information developed at a later date which is relevant to the issue.

Ripeness

Another major issue discussed in the proposed rule concerned the integration of the petition process with land use planning. Proposed § 769.14 stated that, with certain exceptions, petitions would be accepted only if a "real and foreseeable potential exists for surface coal mining operations to occur within 5 years on the lands subject to the petition." In addition, ripeness, as defined in the proposed rule, would mean that formal land use planning by the land management agency had been completed for the area being petitioned, that the petitioned lands are subject to a Federal coal lease, that the area was covered by a Preference Right Lease Application (PRLA) lease issued prior to 1979 or that the area is subject to noncompetitive leasing.

The rule adopted states that ripeness, for a designation petition, means that the petitioned lands are (i) subject to a Federal coal lease; (ii) included in a tract for which land use planning has been completed and which tract is available for further consideration for Federal coal leasing; (iii) not required to be leased because the mineral rights are not owned by the United States; or (iv) subject to surface distubances over unleased Federal coal.

In commenting on this issue, one commenter suggested that the revised rule should only contain two of the four ripeness criteria that were listed in the proposed rule so that real and foreseeable potential would mean that petitioned lands are A) subject to a Federal coal lease; or B) included in a tract for which land use planning has been completed and which tract is available for further consideration for coal leasing. Since PRLA's would continue to have the unsuitability criteria of 43 CFR 3461 applied to them during processing, it would be premature to accept a petition on PRLA land prior to the completion of the application of the criteria (which is usually done during land use planning). In addition, the commenter suggested the deletion of the ripeness criterion that included lands subject to noncompetitive leasing procedures since even noncompetitive leasing usually only takes place in areas with a completed land use plan. OSM agrees with the commenter and has accordingly deleted the two criteria.

Several commenters thought that the ripeness provision and the related preamble discussion needed clarification of the proposed five year limitation; for example, the proposed revision stated that "petitions would be accepted only if a real and foreseeable potential exists for surface coal mining operations to occur within 5 years on the lands subject to the petition." Literally interpreted, one commenter continued, this language would force a petitioner and the government to forecast the date of commencement of mining operations—a date which only the lessee/operator is reasonably sure of. An error in predicting the date of mining operations, the commenter reasoned, could result in embarrassment to the governement. Federal coal leases are issued with a requirement that the lessee produce commercial quantities of coal within 10 years of lease issuance (diligence); mining operations could therefore commence during any of the 10 years. A petitioner who submits a petition in year one of the diligence period is predicting that for the petition to be ripe, operations will commence by no later than the fifth year. The government in turn would, therefore, have to verify the petitioner's forecast and process the petition, or forecast a more distant start-up date and reject the petition. In the latter instance the government's prediction may prove an embarrassment if the lessee/operator elects to commence mining operations during the first five years. OSM agrees with the commenters against using the

"real and foreseeable potential" requirement and has consequently deleted from the ripeness definition in the revised rule all references to any number of years being required for a petition to be ripe. The new requirement allowing OSM to suspend the processing of petitions until after land use planning has been completed is adequate protection against petitions which are received for land on which there is no likelihood of mining.

A commenter suggested that OSM include a provision in the revised rule as to when a termination petition is ripe, and also recommended an option: a termination petition would be ripe one or more years after OSM designates an area to be unsuitable. OSM has declined to accept this suggestion because the key threshold issue regarding termination petitions is whether there is significant new evidence which needs to be considered and not whether a specific period has elapsed. There is no need to make a mining company, or anyone else, wait one year after land has been designated before it may submit a termination petition. The same commenter stated that the legal and administrative differences between being "assessed" unsuitable and being "designated" unsuitable needed clarification. OSM agrees. In addition to the descriptions of "assessment" and "designation" contained in the preamble to the proposed rule, an unsuitability assessment is made pursuant to a number of environmental statutes (only one of which is SMCRA) and executive orders; whereas an unsuitability designation is based solely on section 552(c) of SMCRA.

Another commenter asserted that if petitions were not allowed to be filed before the Federal land use planning process is completed, tracts may be assessed as suitable for leasing and subsequently leased under the Federal Coal Management Program. Since this may occur after a coal operator had purchased the lease and made other financial commitments, an unsuitability designation at this point would cause a financial burden on the local operator unless a mechanism existed to refund the amount paid for the lease. The commenter recommended that OSM, therefore, clarify that petitions may and should be submitted prior to any lease sale so as to prevent this from happening. The Secretary agrees that the petition process needs to be fully coordinated with the land use planning process, and has directed the BLM to develop regulations to do so. BLM, therefore, is proposing regulations for this purpose concurrently with this final regulation. Under these rules however, petitions must be accepted and processed prior to the issuance of a permit unless they pertain to lands for which an administratively complete permit application has been filed and the first newspaper advertisement has been published.

One commenter believes that a petition received for an area that does not fall into one of the categories for ripeness should be placed in a "pending" file and reactivated if the status of the Federal land changes and it becomes ripe. OSM has adopted this suggestion and has added a suspension provision similar to that found in the lands unsuitable regulation for State programs. Where the processing of a petition is suspended under § 769.14(b)(2) because it is not ripe, under § 769.14(h) no surface mining and reclamation operation permit may be issued until a decision is reached on the petition.

The same commenter questioned how ripeness would be applied to lands in which the surface rights are owned by the Federal government but the mineral rights are in private ownership, as are substantial amounts of land within the Daniel Boone National Forest in Kentucky which fall into this latter category. This situation was not covered in the proposed rule; accordingly OSM has added a provision to the final rule to make clear that lands underlain by privately owned coal are ripe for petitioning. OSM has also clarified that lands containing unleased Federal coal, the surface of which may be disturbed by operations on adjoining lands, are also ripe for petitioning.

Another commenter stated that the discussion of ripeness in the preamble appeared to relate more to administrative convenience than it did to the needs of other agencies and to the public. The commenter elaborated that if an area of coal lands were adjacent to a National Park and mining would have a high potential for adversely affecting the park when there was a real and foreseeable potential for mining in five years, it would be in the interest of the public to allow petitioning at any time. Moreover, the commenter thought that the designation of certain lands as unsuitable would result in savings over time for the Federal land managing agency because it would be unnecessary to conduct a complete Federal lands review for designated lands.

OSM has decided not to accept this idea. Federal lands located adjacent to a National Park may not be mined until they are leased. They cannot be leased until land use planning is completed. Under § 769.14(b)(2), if a petition is filed before land use planning is complete, OSM will advise the land management agency of the issues raised by the petition and will request the agency to consider such issues in its planning efforts. Moreover, the petitioner will be advised of the opportunity for public participation in the land use planning process.

Thus, the reasons for adopting the ripeness criterion go far beyond mere convenience. Coordination of land use planning and the petition process will eliminate duplicative efforts and reduce costs. This change will eliminate the unnecessary expense of processing petitions for land assessed as unsuitable as part of the land use planning process. Moreover, the fact that designated lands do not require a Federal lands review is offset by the fact that processing and unsuitability petition is much more costly (on a per-acre basis) than conducting a Federal lands review. Moreover, an unsuitability designation does not exempt an area from land use planning, which is conducted for many purposes.

Several commenters stated that there is simply not statutory authority whatsoever for the concept of ripeness in the petition process and that contrary to OSM's suggestion in the preamble to the proposed rule that SMCRA implies postponing the petition process, the requirement of section 522(a)(5) for integrating the petition process with land use planning suggests the opposite. The commenter stated that Congress envisioned that land use planning would occur long before coal lands were even subject to lease and thus intended that the petition process would be available to citizens as early as possible in the land use planning process. The proposed rule would postpone the petition process until so close to the commencement of mining that there would be very little opportunity for citizens to utilize this important mechanism for citizen participation. OSM disagrees. The statutory authority for the ripeness criterion is section 522(a)(5) of the Act, which states that "determinations of the unsuitability of land for surface coal mining shall be integrated as closely as possible with present *and future* land use planning * * *." (emphasis supplied) The basic principle in section 522(a)(5) is the integration of unsuitability determinations with land use planning. In addition, citizens have ample opportunity for participation in land use planning. BLM goes to great lengths in soliciting public participation for its existing land use planning process.

One commenter stated that the new ripeness criterion will foreclose the opportunity for citizens to petition certain lands for unsuitability under any circumstances. For example, in a case where private coal lands are interspersed with Federal coal lands and mining on the private coal lands is imminent, but planning for mining on the Federal lands has not yet been completed, the proposed rule would preclude petitioners from identifying all lands that could be affected by the proposed mining operation in the area. OSM understands the concerns of the commenter but believes that by being discretionary the suspension provision in the revised rule will enable OSM to consider petitions for lands not otherwise ripe for petitioning if a compelling reason exists for doing so. One example in which OSM probably would choose not to suspend a petition would relate to a petition on Federal lands located in a "checkerboard" pattern with non-Federal lands. In such a situation, if a petition has also been filed with the State regulatory authority for the non-Federal lands, simultaneous consideration of the two petitions is logical even if land use planning is not complete for the Federal lands. In addition, the new alternative being developed to allow BLM to process petitions at some point in their land use planning process will help cover such situations.

The same commenter continued by stating that the new ripeness criterion would force citizens to wait until mining is virtually imminent before a petition could be filed. In light of the long lead times needed to plan for a new mine and the advance investments that must be made in all of the equipment and facilities for a new mine, in most cases a potential mine operator will have spent substantial sums of money in acquiring coal rights in the new mine before the proposed ripeness test could be met by citizens. Consequently, the mine would be exempt from an unsuitability designation and the entire petition process on Federal lands would be rendered meaningless. OSM disagrees with this comment. The commenter apparently misunderstands the "substantial legal and financial commitments" exemption as enumerated in section 522(a)(6) of SMCRA. Spending substantial sums of money in acquiring coal rights and preparing to mine does not preclude an area from being petitioned unless it was spent prior to January 4, 1977. In addition, requiring land use planning on an area prior to considering petitions for that area does not mean, as the commenter has suggested, that mining is virtually imminent or that substantial investments and commitments have been made.

Prior to Federal coal being mined, it must be leased by BLM, which is responsible for leasing all Federal coal except that of the Tennessee Valley Authority (TVA). Before the land is leased, BLM or the Federal land management agency administering the land must conduct land use planning pursuant to the Federal Coal Leasing Admendments Act (FCLAA), and the Federal Land Policy and Management Act (30 U.S.C. 1701). Pursuant to section 522(b) of SMCRA, the BLM applies unsuitability criteria (43 CFR 3461) during land use planning on any coal lands, as part of a Federal lands review. The full Federal lands review is not completed for a parcel of land until land use planning (43 CFR 3420.1) and activity planning (under 43 CFR 3420.3 pursuant to the National Environmental Policy Act, SMCRA, MLA and the FCLAA) has been completed and BLM has given its concurrence to the approval of the permit application package covering that land. Land may be leased after it undergoes activity planning. It still may be petitioned and designated as unsuitable, however, even after it has been leased.

The same commenter suggested that because BLM has recently revised its coal leasing process for Federal lands, the effects of these new regulations are unknown and the petition process is therefore all the more important as a mechanism for identifying Federal lands that are potentially unsuitable for coal mining under the criteria of section 522(a). It is, therefore, all the more crucial, according to the commenter, that the proposed ripeness criterion not be adopted so that the designation process can be initiated at an early stage. This result, as the previous regulation has demonstrated, serves the interests of both citizens and potential mine operators. OSM has rejected this suggestion because under the revised rule all interested parties are given an opportunity to petition. BLM procedures, moreover, provide for substantial citizen input during the land use planning process, and for full consideration of allegations that land is unsuitable for mining. Thus, in most instances, petitions will no longer be processed prior to land use planning.

One commenter expressed concerned that, under the proposesd rule, OSM would not process petitions because of limited funds or for other administrative reasons, but instead would suspend petitions until the permit review and mine plan approval stage. The commenter thought that this would merely result in passing the responsibility to the State regulatory authority to make the unsuitability determination at a later date—at which point the stakes for a coal company and the State would be much higher. OSM believes that this potential problem is unfounded. Under the revised regulations, petitons may only be suspended until after land use planning if they are found to be not ripe; they cannot simply be ignored or not processed.

Frivolous. The previous rule did not contain a "sufficient merit" criterion. As stated in the preamble to the proposed rule, sufficient merit was intended as an aid in eliminating frivolous petitions. As stated above, OSM has deleted the term sufficient merit and placed the relevant requirements under completeness and frivolousness criteria. Those requirements moved to the completeness category are discussed above.

As with petitions filed under Part 764, a "frivolous" petiton is one in which the allegations of harm lack serious merit. In addition, the requirement regarding the existence of minerable coal has been placed under the frivolous criterion. Unless there is "mineable" coal in the petition area or the petioned area is or could be subject to related surface operations and surface impacts incident to an underground coal mine or an adjoining surface mine there is no reason to accept or process the petition. Such a petition may accurately be described as "frivolous".

A commenter suggested that the reference to Known Recoverable Coal Resource Area (KRCRA) be deleted from the definition of mineable coal because Federal coal leasing is no longer tied to KRCRA's in 43 CFR Part 3400; hence there may in the future be mineable coal under lease outside KRCRA's. In addition, the commenter thought that the discussion of "mineability" in the preamble was unclear. OSM agrees with the commenter and has deleted the reference to "Known Recoverable Coal Resource Area" and clarified the meaning of "mineability" to read as follows: "Mineable coal is coal with development potential as mapped or reported by the Bureau of Land Management under 43 CFR 3420.1–5(e)(1); and privately owned coal under land owned by the United States."

Two commenters stated that the proposed section on sufficient merit for a termination petition was difficult to follow since it used the word "or"

between paragraphs, rather than the word "and," which appears to be more appropriate. OSM agrees with the commenter and has included the necessary criteria as part of the completeness criterion under § 769.14(a)(2) which cross-references § 764.13(c).

Section 769.14(b).

Section 769.14(b)(1) is being adopted with minor revisions to reflect the changes to the criteria on ripeness, completeness, sufficient merit and frivolousness discussed above. It also reflects the decision to allow the suspension (discussed in the following paragraph), rather than to require the rejection, of petitions which are not ripe. The last two proposed words "appropriate remedies" have been clarified by using instead the words "deficiencies cured."

Paragraph (b)(2) has been revised to allow for suspension rather than rejection of petitions which are not ripe. This change responds to the comments on ripeness discussed above, which indicated a concern that ripeness would be used to defer or delay petitions to the point where they would become, in effect, meaningless. By allowing for periodic reexamination of ripeness, OSM can help assure that the issues raised by suspended petitions are considered at the appropriate time.

One commenter expressed concern that not all issues are appropriately addressed during land use planning; some may best be done at the permit review stage. Thus, the commenter suggests that the language requiring that the planning agency give consideration to the issues requested by the Director be revised to "the planning agency shall give consideration, to the extent practical, to the issues contained in the Director's request." OSM agrees that in some instances it may not be possible to fully consider or resolve issues at the planning stage; however, the proposed language requiring consideration does not demand that the planning agency resolve every issue. Appropriate consideration may be that the issue is best left to a subsequent petition or permit review stage; thus the proposal has not been accepted.

Section 769.14(c) is adopted with minor editorial revisions to reflect the changes to § 769.14(a) and for clarity.

Section 769.14(d) is adopted with minor editorial revisions.

Proposed § 769.14(e) that would have provided for "completeness" hearings is not adopted. Public participation in a decision to accept a petition on Federal lands is of limited value. The decision is based largely on information contained in Federal agency files and on relatively straightforward technical and administrative determinations where public input would be limited in scope and value. In addition, a completeness hearing would delay the evaluation of the merits of the petition, and might focus undue attention on completeness at the expense of the evaluation, which is where public input is most needed. In place of the proposed language, OSM has retained the requirement for public soliciting of public comment on the merits of the petition which was previously included in paragraph (f). This requirement was inadvertently deleted in the proposal. Instead of a 3-week period for soliciting information, the rule requires that such requests be made "promptly" after deciding to process the petition further.

Section 769.14(f) is adopted as proposed with editing for clarity. One commenter questioned the basis of the provision in § 769.14(f) of the proposed rule to refer a copy of the petition only to other Federal land management agencies who have land intermingled with the petitioned land. The commenter questioned why the provision was limited only to intermingled Federal land and suggested that there should be a provision for referral to the State where the area contains intermingled Federal and non-Federal lands. OSM has declined to accept this suggestion since it already follows this practice informally as good management. It is therefore not necessary to be in the regulations.

Section 769.14(g).

In addition to the major changes made in § 769.14, OSM has deleted, as proposed, some of the internal administrative procedures contained in that previous section related to assembling information on the petitioned area. OSM believes that these internal procedures should instead be dealt with by agency and interagency memoranda and directives.

Two options were proposed for § 769.14(g) which addressed the timeliness of petitions. The revised rule states that OSM may determine not to process any petition received insofar as it pertains to lands for which an administratively complete permit application has been filed and the first newspaper notice has been published. The comments received on these options and an explanation of the option selected is contained in the preamble to Part 764.

Final § 769.14(h) provides that when a permit application is filed for an area where a petition has been suspended pursuant to § 769.14(b)(2), OSM shall initiate petition review and not issue a permit until a decision is made on the petition. This is a necessary concomitant for petitions suspended which were not ripe for processing.

Section 769.15 Intervention.

Section 769.15, pertaining to intervention, has been adopted in the same form as § 764.15(c). As explanation of § 764.15(c) is included earlier in this preamble. It is not substantially different from the previous section except for a statement describing how the designation directly affects the intervenor.

Section 769.16 Public information.

Section 769.16(a), which is adopted substantially as proposed, continues the requirement of previous § 769.16(a) that after determining the petition is complete, OSM shall promptly notify the general public of the receipt of the petition and request submission of the relevant information by a newspaper advertisement placed once a week for two consecutive weeks and by a **Federal Register** notice. "Prompt" notice is substituted for the proposed notice within 5 weeks. The provision adds that the notices must include a description of the boundaries of the petitioned area, the allegations of fact and information regarding where the petition is available for public review. Final § 769.16(b)(1) retains previous § 769.16(b) concerning the requirement to maintain a public record and its availability. Final § 769.16 (b)(1) and (b)(2) have the same exception as is contained in § 764.23 for specific information pertaining to property proposed to be nominated to be listed, or listed, in the National Register of Historic Places, if it is determined that disclosure of such information would create a risk of destruction or harm to such properties. Withheld information must be disclosed when a designation of unsuitability would rest primarily on an allegation based on that information. A discussion of the comments OSM received on this exception is found in the preamble to revised § 764.23.

Section 769.17 Hearing requirements.

This revised section is substantially the same as that for § 764.17. A discussion of the comments received on the proposed and final revisions are found in the preamble to revised § 764.17.

Section 769.18 Decisions on petitions.

The substance of final § 769.18 is similar to previous § 769.18, with a change pertaining to mailing of

decisions. A discussion and an analysis of the comments OSM received concerning the revision to this section, and the rationale for the revised procedure OSM has selected, are found in the preamble to § 764.19.

Section 769.19 Regulatory policy.

As proposed, this section has been revised to ensure that permits and coal leases are conditioned to limit or prohibit surface coal mining operations on land designated as unsuitable for surface coal mining operations.

III. Procedural Matters

A. *Paperwork Reduction Act.* There are no information collection requirements in 30 CFR Part 761 or 762. The information collection requirements contained in 30 CFR 764.13, 764.15 and Part 769 do not require approval by the Office of Management and Budget under 44 U.S.C. 3507, because there are fewer than 10 respondents annually.

The information collection requirements contained in 30 CFR Part 764 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1029–0030. The information is necessary to establish minimum standards to be included in each State program for designating non-Federal and non-Indian lands in a State as unsuitable for all or certain types of surface coal mining operations and for terminating designations. The information required by 30 CFR Part 764 is mandatory. OSM has codified the OMB approval under a new § 764.10.

The information collection requirements in 30 CFR Parts 779 and 783 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance numbers 1029–35 and 1029–38, respectively. The information is collected to meet the requirements of sections 507 and 508 of SMCRA, which require the permit applicant to present an adequate description of the existing pre-mining environmental resources within and around the proposed permit area. The information will be used by the regulatory authority to determine whether the applicant can comply with the performance standards. The obligation to respond is mandatory. The OMB approval was codified under §§ 779.10 and 783.10 on August 4, 1982 (47 FR 33683).

B. *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 rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, Pub. L. 96–354 (5 U.S.C. 601 *et seq.*). States will incur reduced costs because fewer inadequate petitions will be processed under the revised criteria that a petition must meet of being complete and not frivolous. Costs to the coal industry should also be reduced as industry involvement is decreased in responding to petition allegations and because fewer disruptions and delays in coal development should incur. "Small operators" costs will decrease as fewer inadequate petitions are processed and small operators should be better able to plan and finance their capital needs for coal mine development. Since 1980, fewer than 20 petitions have been received by States and only 5 petitions have been filed with OSM.

C. *National Environmental Policy Act.* OSM prepared a draft supplemental environmental impact statement under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(c), on the cumulative impacts of these and other proposed rules that was made publicly available on June 18, 1982. The "Final Environmental Impact Statement OSM EIS–1: Supplement" (FEIS) was prepared and made publicly available on January 20, 1983. The FEIS discusses the impacts that these final rules will have on the quality of the human environment. The FEIS is available in OSM's Administrative Record in Room 5315, 1100 L Street, NW., Washington, D.C., or by mail request to the Branch of Environmental Analysis, Room 134, Interior South Building, Office of Surface Mining, 1951 Constitution Ave., NW., Washington, D.C. 20240. This preamble serves as the record of decision under NEPA. It differs from the preferred alternative draft final rules published in Volume III of the FEIS in the following ways:

1. Paragraph (a) of the definition of "valid existing rights" no longer has the phrase "that the regulatory authority shall determine," includes the clarifying references that it applies to areas protected on August 3, 1977 and that the takings analysis applies to property interests that existed on that date. This paragraph also includes a reference to the 14th Amendment to the U.S. Constitution, in addition to the FEIS reference to the Fifth Amendment. The impacts of these changes are all included within the FEIS analysis of the preferred alternative.

2. Paragraph (d) of the definition of VER is clarified to provide that it applies to areas to which the protections of Section 522(e) of the Act first apply after August 3, 1977. VER for existing operations is changed to include only "validly authorized" existing operations. The filing of a permit application and publication of the first accompanying newspaper notice is not a basis for VER; instead a "takings" test similar to paragraph (a) of the VER definition has been adopted. Final Paragraph (d) is more environmentally protective than the preferred alternative for that paragraph. Its impacts are within the scope of the discussion of the VER definition in the FEIS.

3. Paragraph (e) of the final VER definition, although not included in the preferred alternative, was proposed and included in Alternative C of the FEIS. It is therefore within the scope of the FEIS.

4. A number of definitions, or portions thereof, were not included in Volume III of the FEIS, but are being reprinted essentially unchanged from the previous rules. These include definitions of the terms "Surface operations and impacts incident to an underground coal mine," "Significant forest cover," "Occupied dwelling," "Community or institutional building," "Surface coal mining operations which exist on the date of enactment," and the listing of values in the definition of "Significant recreational, timber, economic, or other values incompatible with surface coal mining operations." These have no environmental impact and are included under the minimum action/no action alternative.

5. A definition of the term "publicly-owned park" is added that is consistent with the definition of "public park," but narrower because governmental ownership is required. This new definition will have no environmental effect beyond that associated with the new definition of the term "public park" because the requirement for governmental ownership of the park has already been used in implementing the prohibition in § 761.11(c).

6. The final definition for the word "cemetery" does not include a cross reference to the permitting requirements regarding cemeteries. This has no environmental effect.

7. In § 764.13(a), the characterization " 'injury in fact' test" has been added, but the substance is the same as the preferred alternative in the FEIS. Similarly, in § 764.13(b)(1)(iii), the same phrase has been removed. These changes have no environmental effect.

8. In § 764.13(b)(1)(iv), a number of minor changes have been made which should have negligible environmental effect as compared to the preferred alternative in the FEIS. Language has been added to clarify that allegations of fact and supporting evidence cover "all lands in the petition area" and "tend to

establish that the area is unsuitable for all or certain types of surface coal mining operations." Under the final rule, allegations "should," rather than "shall" be specific and relate to the mining operation "if known" rather than "if any."

9. In § 764.13(c)(1)(iv), language has been added to require petitions to terminate an unsuitability designation to include new evidence that was not contained in the designation proceeding and any previous unsuccessful termination proceeding. This provision is expected to have a slightly more environmentally protective effect than the preferred alternative in the FEIS.

10. In § 764.15(a)(3), language has been added clarifying that when there is a real and foreseeable potential for mining, the processing of the designation petition will proceed. This change has no environmental effect.

11. In § 764.15(a)(4), the reference to the injury in fact test is replaced with a reference to § 764.13(a). The description of a frivolous petition has also been revised. These changes are not substantive and thus have no environmental effects.

12. In § 764.15(a)(7) (and in § 769.14(g)) language has been added to provide that a petition need not be processed after the filing of an "administratively complete" permit application and publication of the first newspaper advertisement. The language in the FEIS preferred alternative referred to a "complete" permit application. This change, which is made to provide consistency with the expected revisions to OSM's permitting rules (see 30 CFR 773.13(a) of the draft final rules in the FEIS) is not expected to have environmental impacts beyond those analyzed in the FEIS discussion of the preferred alternative. Under the existing permitting rules that allow publication of newspaper advertisements only upon the filing of a complete permit application (30 CFR 786.11(a)), regulatory authorities have allowed publication of such advertisements upon the filing of permit applications that would qualify as being administratively complete. The formalization of this practice and the changed wording in §§ 764.15 and 769.14 should not lead to any substantial impacts.

13. In a number of sections in Parts 764 and 769, the final rule requires "prompt" action by a regulatory authority, rather than specifying a time for action, as was contained in the FEIS. In one provision, § 764.15(b)(1), a six-week limit for requesting a completeness hearing and providing comments on the completeness of a petition has been removed and left to the discretion of the regulatory authority. These changes are not expected to have any effect on the environment.

14. In final § 764.15(b)(3), the regulatory authority, while being required to make a completeness determination, is not obligated to issue, upon request, a written decision that a petition is complete. If a petition is incomplete, § 764.15(a)(4) continues to require a written statement. This change from the FEIS in § 764.15(b)(3) is not expected to have any environmental effect.

15. In final § 764.17(b)(1)(iii), the notice requirement no longer specifically includes persons with an "ownership interest," but such persons are included in the class of persons with a "property interest." Thus this change has no effect.

16. In § 769.11, a clarification is included stating that the right to petition under SMCRA is independent of areas set aside from surface coal mining operations under laws other than the Act. This new sentence has no environmental effect. In that same section of the final rule, a specific reference to an " 'injury infact' test" has been included, but the substantive requirements are the same as in the preferred alternative in the FEIS.

17. In final § 769.14(a)(1), the time for determining a petition is complete has been reduced from 60 days under the preferred alternative of the FEIS to 30 days, the time period appearing in the previous rules. This provision is within the scope of the EIS. A clarifying sentence has been added providing that a request for supplementary information will not affect OSM's determination that a petition is complete. This sentence has no environmental effect.

18. In § 769.14(a), the FEIS preferred alternative concept of "sufficient merit" has been merged into the concept of "complete" under § 769.14(a)(2) and "frivolous" under § 769.14(a)(4). The concept of "mineable coal" has been expanded to include privately owned coal under land owned by the United States. This narrows the grounds for rejection of a petition and thus is more environmentally protective than the preferred alternative in the FEIS.

19. The concept of "ripe" under § 769.14(a)(3) has been expanded from the FEIS preferred alternative to include petitioned lands not required to be leased because the mineral rights are not owned by the United States or are owned by the Tennessee Valley Authority and lands over unleased Federal coal that are subject to surface disturbances from neighboring surface coal mining operations. These changes expand the amount of lands for which potential petitions are ripe for processing and thus are more environmentally protective than the preferred alternative.

20. In § 769.14(a)(4), the concept of "frivolous," in addition to the components taken from the proposed concept of "sufficient merit," also includes petitions whose allegations of harm lack serious merit. This new description, together with final § 769.14(b)(1) which requires the rejection of frivolous petitions, are within the ambit of previous § 769.14(b). Thus these provisions will have little environmental effect.

21. Under final § 769.14(b)(2), suspension of unripe petitions is discretionary rather than mandatory, as appeared in the preferred alternative of the FEIS. Advancing the time when petitions may be considered is not likely to have any substantial environmental impact because under the preferred alternative, unripe petitions were only suspended and not rejected and have to be considered as soon as they become ripe.

22. In § 769.14(c), the replacement of the term "sufficient merit" with the term "frivolous" has no environmental effect given the changed meaning of the word "complete" and the meaning of "frivolous."

23. Section 769.14(e) in the FEIS preferred alternative contained a mandatory procedure for notifying the public and requesting information on the completeness, ripeness and sufficient merit of a petition. That procedure has not been adopted. Its omission will have no environmental effect because OSM will continue to be responsible for making the requisite determinations and such a procedure was not included under the previous rules.

24. Final § 769.14(e) includes provisions from previous § 769.14(f) and thus has no environmental impacts.

25. Final § 769.16(b)(2) is more environmentally protective than the corresponding provision in the FEIS preferred alternative because it does not include the FEIS exceptions which would have required disclosure of certain information which could create a risk of destruction or harm to properties listed, or eligible for listing, on the National Register of Historic Places.

26. In final § 769.17(a), OSM has added a provision that at the hearing on the petition, "[n]o person shall bear the burden of proof or persuasion." Inclusion of this protection for petitioners is more environmentally protective than the FEIS preferred alternative and the previous rule.

27. Final § 761.12(b) provides 60 days notice to the National Park Service and U.S. Fish and Wildlife Service of VER requests for any lands within the boundaries of areas under their jurisdiction. This is more environmentally protective than the FEIS preferred alternative or the previous rules.

List of Subjects

30 CFR Part 736

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

30 CFR Part 760

Historic preservation, Monuments and memorials, National forests, National parks, Surface mining, Underground mining, Wildlife refuges.

30 CFR Parts 761 and 762

Coal mining, Historic preservation, Monuments and memorials, National forests, National parks, Reporting and recordkeeping requirements, Surface mining, Underground mining, Wildlife refuges.

30 CFR Part 765

Surface mining, Underground mining.

30 CFR Parts 764 and 769

Administrative practice and procedure, Coal mining, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 779

Coal mining, Environmental protection, Reporting and recordkeeping requirements, Surface mining.

30 CFR Part 783

Coal mining, Environmental protection, reporting and recordkeeping requirements, Underground mining.

Accordingly, 30 CFR Parts 736, 760, 761, 762, 764, 765, 769, 779, and 783 are amended as set forth herein.

Dated: September 9, 1983.

W. L. Dare,

Acting Deputy Assistant Secretary for Energy and Minerals.

PART 736—FEDERAL PROGRAM FOR A STATE

1. Section 736.15 is revised to read as follows:

§ 736.15 Implementation, enforcement, and maintenance of a Federal program.

(a) The Director shall implement, administer, enforce, and maintain a Federal program or any revision thereto not later than 30 days after a Federal program is promulgated or revised.

(b)(1) Except as provided in paragraph (b)(2) of this section, the Director shall implement the procedures and criteria of a Federal program for a State for designating lands unsuitable for all or certain types of surface coal mining one year after a Federal program is made effective for a State.

(2) When a complete or partial Federal program is promulgated because of a State's failure to implement, maintain, or enforce adequately all or a part of its State program, all applicable portions of the Federal program for the State under this part shall be effective immediately upon implementation of the Federal program.

2. Subchapter F of 30 CFR Chapter VII is amended by removing Parts 760 and 765 and revising Parts 761, 762, 764 and 769 as follows:

PART 761—AREAS DESIGNATED BY ACT OF CONGRESS

Sec.

761.1 Scope.
761.3 Authority.
761.5 Definitions.
761.11 Areas where mining is prohibited or limited.
761.12 Procedures.

Authority: Sec. 102, 201, 501(b), 503, 504, 510, 512, 513, 514, 522 and 701 of Pub. L. 95-87, 91 Stat. 448, 449, 468, 470, 471, 480, 483, 484, 485, 507 and 518 (30 U.S.C. 1202, 1211, 1251, 1253, 1254, 1260, 1262, 1263, 1264, 1272, and 1291).

§ 761.1 Scope.

This part establishes the procedures and standards to be followed in determining whether a proposed surface coal mining and reclamation operation can be authorized in light of the prohibitions and limitations in section 522(e) of the Act for those types of operations on certain Federal, public and private lands.

§ 761.3 Authority.

The State regulatory authority or the Secretary is authorized by section 522(e) of the Act (30 U.S.C. 1272(e)) to prohibit or limit surface coal mining operations on or near certain private, Federal, and other public lands, subject to valid existing rights and except for those operations which existed on August 3, 1977.

§ 761.5 Definitions.

For the purposes of this part—

Cemetery means any area of land where human bodies are interred, except for private family burial grounds.

Community or institutional building means any structure, other than a public building or an occupied dwelling, which is used primarily for meetings, gatherings or functions of local civic organizations or other community groups; functions as an educational, cultural, historic, religious, scientific, correctional, mental-health or physical health care facility; or is used for public services, including, but not limited to, water supply, power generation or sewage treatment.

Occupied dwelling means any building that is currently being used on a regular or temporary basis for human habitation.

Public building means any structure that is owned or leased, and principally used by a governmental agency for public business or meetings.

Public park means an area or portion of an area dedicated or designated by any Federal, State, or local agency primarily for public recreational use, whether or not such use is limited to certain times or days, including any land leased, reserved, or held open to the public because of that use.

Public road means a road (a) which has been designated as a public road pursuant to the laws of the jurisdiction in which it is located; (b) which is maintained with public funds in a manner similar to other public roads of the same classification within the jurisdiction; (c) for which there is substantial (more than incidental) public use; and (d) which meets road construction standards for other public roads of the same classification in the local jurisdiction.

Publicly-owned park means a public park that is owned by a Federal, State or local governmental entity.

Significant forest cover means an existing plant community consisting predominantly of trees and other woody vegetation. The Secretary of Agriculture shall decide on a case-by-case basis whether the forest cover is significant within those national forests west of the 100th meridian.

Significant recreational, timber, economic, or other values incompatible with surface coal mining operations means those values to be evaluated for their significance which could be damaged beyond an operator's ability to repair or restore by, and are not capable of existing together with, surface coal mining operations because of the undesirable effects mining would have on those values, either on the area included in the permit application or on other affected areas. Those values to be evaluated for their importance include:

(a) Recreation, including hiking, boating, camping, skiing or other related outdoor activities;

(b) Timber manager and silviculture;

(c) Agriculture, aquaculture or production of other natural, processed

or manufactured products which enter commerce;

(d) Scenic, historic, archeologic, esthetic, fish, wildlife, plants or cultural interests.

Surface coal mining operations which exist on the date of enactment means all surface coal mining operations which were being conducted on August 3, 1977.

Surface operations and impacts incident to an underground coal mine means all activities involved in or related to underground coal mining which are either conducted on the surface of the land, produce changes in the land surface or disturb the surface, air or water resources of the area, including all activities listed in section 701(28) of the Act and the definition of surface coal mining operations appearing in § 700.5 of this chapter.

Valid existing rights means:

(a) Except for haul roads, that a person possesses valid existing rights for an area protected under section 522(e) of the Act on August 3, 1977, if the application of any of the prohibitions contained in that section to the property interest that existed on that date would effect a taking of the person's property which would entitle the person to just compensation under the Fifth and Fourteenth Amendments to the United States Constitution;

(b) For haul roads,

(1) A recorded right of way, recorded easement or a permit for a coal haul road recorded as of August 3, 1977, or

(2) Any other road in existence as of August 3, 1977;

(c) A person possesses valid existing rights if the person proposing to conduct surface coal mining operations can demonstrate that the coal is both needed for, and immediately adjacent to, an ongoing surface coal mining operation which existed on August 3, 1977. A determination that coal is "needed for" will be based upon a finding that the extension of mining is essential to make the surface coal mining operation as a whole economically viable;

(d) Where an area comes under the protection of Section 522(e) of the Act after August 3, 1977, valid existing rights shall be found if—

(1) On the date the protection comes into existence, a validly authorized surface coal mining operation exists on that area; or

(2) The prohibition caused by Section 522(e) of the Act, if applied to the property interest that exists on the date the protection comes into existence, would effect a taking of the person's property which would entitle the person to just compensation under the Fifth and Fourteenth Amendments to the United States Constitution.

(e) Interpretation of the terms of the document relied upon to establish the rights to which the standard of paragraphs (a) and (d) of this section applies shall be based either upon applicable State statutory or case law concerning interpretation of documents conveying mineral rights or, where no applicable State law exists, upon the usage and custom at the time and place it came into existence.

§ 761.11 Areas where mining is prohibited or limited.

Subject to valid existing rights, no surface coal mining operations shall be conducted after August, 3, 1977, unless those operations existed on the date of enactment:

(a) On any lands within the boundaries of the National Park System, the National Wildlife Refuge System, The National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers System including, for study rivers designated under section 5(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1276(a)), a corridor extending not more than one-quarter mile from each bank for the length of the segment being studied, and National Recreation Areas designated by Act of Congress;

(b) On any Federal lands within the boundaries of any national forest; *provided, however,* that surface coal mining operations may be permitted on such lands, if the Secretary finds that there are no significant recreational, timber, economic, or other values which may be incompatible with surface coal mining operations; and

(1) Surface operations and impacts are incident to an underground coal mine; or

(2) The Secretary of Agriculture determines, with respect to lands which do not have significant forest cover within those national forests west of the 100th meridian, that surface coal mining operations comply with the Multiple-Use Sustained Yield Act of 1960 (16 U.S.C. 528–531), the Federal Coal Leasing Amendments Act of 1975 (Pub. L. 94–377, 30 U.S.C. 201 *et seq.*), the National Forest Mangement Act of 1976 (90 Stat. 2949), and the provisions of the Act. No surface coal mining operation may be permitted within the boundaries of the Custer National Forest;

(c) On any lands where mining will adversely affect any publicly owned park or any publicly owned places included in the National Register of Historic Places, unless approved jointly by the regulatory authority and the Federal, State, or local agency with jurisdiction over the park or place;

(d) Within 100 feet, measured horizontally, of the outside right-of-way line of any public road, except—

(1) Where mine access roads or haulage roads join such right-of-way line; or

(2) Where the regulatory authority or the appropriate public road authority, pursuant to being designated as the responsible agency by the regulatory authority, allows the public road to be relocated, closed, or the area affected to be within 100 feet of such road, after—

(i) Public notice and opportunity for a public hearing in accordance with § 761.12(d); and

(ii) Making a written finding that the interests of the affected public and landowners will be protected;

(e) Within 300 feet, measured horizontally, of any occupied dwelling, except when—

(1) The owner thereof has provided a written waiver consenting to surface coal mining operations closer than 300 feet; or

(2) The part of the mining operation which is within 300 feet of the dwelling is a haul road or access road which connects with an existing public road on the side of the public road opposite the dwelling;

(f) Within 300 feet measured horizontally of any public building, school, church, community or institutional building or public park; or

(g) Within 100 feet measured horizontally of a cemetery;

(h) There will be no surface coal mining, permitting, licensing or exploration of Federal lands in the National Park System, National Wildlife Refuge System, National System of Trials, National Wilderness Preservation System, Wild and Scenic Rivers System, or National Recreation Areas, unless called for by Acts of Congress.

§ 761.12 Procedures.

(a) Upon receipt of a complete application for a surface coal mining and reclamation operation permit, the regulatory authority shall review the application to determine whether surface coal mining operations are limited or prohibited under § 761.11 on the lands which would be disturbed by the proposed operations.

(b)(1) Where the proposed operation would be located on any lands listed in § 761.11(a), (f), or (g), the regulatory authority shall reject the application if the applicant has no valid existing rights for the area, or if the operation did not exist on August 3, 1977.

(2) If the regulatory authority is unable to determine whether the

proposed operation is located within the boundaries of any of the lands in § 761.11(a) or closer than the limits provided in § 761.11 (f) and (g), the regulatory authority shall transmit a copy of the relevant portions of the permit application to the appropriate Federal, State, or local government agency for a determination or clarification of the relevant boundaries or distances, with a notice to the appropriate agency that it has 30 days from receipt of the request in which to respond. The National Park Service or the U.S. Fish and Wildlife Service shall be notified of any request for a determination of valid existing rights pertaining to areas within the boundaries of areas under their jurisdiction and shall have 30 days from receipt of the notification in which to respond. The regulatory authority, upon request by the appropriate agency, shall grant an extension to the 30-day period of an additional 30 days. If no response is received within 30-day period or within the extended period granted, the regulatory authority may make the necessary determination based on the information it has available.

(c) Where the proposed operation would include Federal lands within the boundaries of any national forest, and the applicant seeks a determination that mining is permissible under § 761.11(b), the applicant shall submit a permit application to the Director for processing under Subchapter D of this chapter. Before acting on the permit application, the Director shall ensure that the Secretary's determination has been received and the findings required by section 522(e)(2) of the Act have been made.

(d) Where the mining operation is proposed to be conducted within 100 feet, measured horizontally, of the outside right-of-way line of any public road (except as provided in § 761.11(d)(2)) or where the applicant proposes to relocate or close any public road, the regulatory authority or public road authority designated by the regulatory authority shall—

(1) Require the applicant to obtain necessary approvals of the authority with jurisdiction over the public road;

(2) Provide an opportunity for a public hearing in the locality of the proposed mining operation for the purpose of determining whether the interests of the public and affected landowners will be protected;

(3) If a public hearing is requested, provide appropriate advance notice of the public hearing, to be published in a newspaper of general circulation in the affected locale at least 2 weeks prior to the hearing; and

(4) Make a written finding based upon information received at the public hearing within 30 days after completion of the hearing, or after any public comment period ends if no hearing is held, as to whether the interests of the public and affected landowners will be protected from the proposed mining operation. No mining shall be allowed within 100 feet of the outside right-of-way line of a road, nor may a road be relocated or closed, unless the regulatory authority or public road authority determines that the interests of the public and affected landowners will be protected.

(e)(1) Where the proposed surface coal mining operations would be conducted within 300 feet, measured horizontally, of any occupied dwelling, the permit applicant shall submit with the application a written waiver by lease, deed, or other conveyance from the owner of the dwelling, clarifying that the owner and signator had the legal right to deny mining and knowingly waived that right. The waiver shall act as consent to such operations within a closer distance of the dwelling as specified.

(2) Where the applicant for a permit after August 3, 1977, had obtained a valid waiver prior to August 3, 1977, from the owner of an occupied dwelling to mine within 300 feet of such dwelling, a new waiver shall not be required.

(3)(i) Where the applicant for a permit after August 3, 1977, had obtained a valid waiver from the owner of an occupied dwelling, that waiver shall remain effective against subsequent purchasers who had actual or constructive knowledge of the existing waiver at the time of purchase.

(ii) A subsequent purchaser shall be deemed to have constructive knowledge if the waiver has been properly filed in public property records pursuant to State laws or if the mining has proceeded to within the 300-foot limit prior to the date of purchase.

(f)(1) Where the regulatory authority determines that the proposed surface coal mining operation will adversely affect any publicly owned park or any publicly owned place included in the National Register of Historic Places, the regulatory authority shall transmit to the Federal, State, or local agency with jurisdiction over the publicly owned park or publicly owned National Register place a copy of applicable parts of the permit application, together with a request for that agency's approval or disapproval of the operation, and a notice to that agency that it has 30 days from receipt of the request within which to respond and that failure to interpose a timely objection will constitute approval. The regulatory authority, upon request by the appropriate agency, may grant an extension to the 30-day period of an additional 30 days. Failure to interpose an objection within 30 days or the extended period granted shall constitute an approval of the proposed permit.

(2) A permit for the operation shall not be issued unless jointly approved by all affected agencies.

(g) If the regulatory authority determines that the proposed surface coal mining operation is not prohibited under section 522(e) of the Act and this part, it may nevertheless, pursuant to appropriate petitions, designate such lands as unsuitable for all or certain types of surface coal mining operations pursuant to Part 762, 764 or 769 of this chapter.

(h) A determination by the regulatory authority that a person holds or does not hold valid existing rights or that surface coal mining operations did or did not exist on the date of enactment shall be subject to administrative and judicial review under §§ 775.11 and 775.13 of this chapter.

PART 762—CRITERIA FOR DESIGNATING AREAS AS UNSUITABLE FOR SURFACE COAL MINING OPERATIONS

Sec.

762.1 Scope.
762.4 Responsibility.
762.5 Definitions.
762.11 Criteria for designating lands as unsuitable.
762.12 Additional criteria.
762.13 Land exempt from designation as nsuitable for surface coal mining operations.
762.14 Exploration on land designated as unsuitable for surface coal mining operations.

Authority: Sec. 102, 201, 501(b), 503, 504, 512 and 522 of Pub. L. 95–87, 91 Stat. 448, 449, 468, 470, 471, 483, 507, (30 U.S.C. 1201, 1211, 1251, 1253, 1254, 1262 and 1272).

§ 762.1 Scope.

This part establishes the minimum criteria to be used in determining whether lands should be designated as unsuitable for all or certain types of surface coal mining operations.

§ 762.4 Responsibility.

The regulatory authority or OSM shall use the criteria in this part for the evaluation of each petition for the designation of areas as unsuitable for surface coal mining operations.

762.5 Definitions.

For purposes of this part:

Frogile lands means geographic areas containing natural, ecologic, scientific, or esthetic resources that could be damaged beyond an operator's ability to repair or restore or be destroyed by surface coal mining operations. Examples of fragile lands include valuable habitats for fish or wildlife, critical habitats for endangered or threatened species of animals or plants, uncommon geologic formations, National Natural Landmark sites, areas where mining may result in flooding, environmental corridors containing a concentration of ecologic and esthetic features, areas of recreational value due to high environmental quality, and buffer zones adjacent to the boundaries of areas where surface coal mining operations are prohibited under section 522(e) of the Act and Part 761 of this chapter, if those areas have characteristics requiring additional areal protection or if the buffer zone itself contains fragile resources.

Historic lands means historic, cultural, and scientific areas that could be damaged beyond an operator's ability to repair or restore, or be destroyed by surface coal mining operations. Examples of historic lands include archeological and paleontological sites, sites listed on or eligible for listing on a State or National Register of Historic Places, National Historic Landmark sites, sites having religious or cultural significance to native Americans or religious groups, and sites for which historic designation is pending.

Natural hazard lands means geographic areas in which natural conditions exist which pose or, as a result of surface coal mining operations, may pose a threat to the health, safety or welfare of people, property or the environment, including areas subject to landslides, cave-ins, large or encroaching sand dunes, severe wind or soil erosion, frequent flooding, avalanches and areas of unstable geology.

Renewable resource lands means geographic areas which contribute significantly to the long-range productivity of water supply or of food or fiber products, such lands to include aquifers and aquifer recharge areas.

Substantial legal and financial commitments in a surface coal mining operation means significant investments that have been made on the basis of a long-term coal contract in power plants, railroads, coal-handling, preparation, extraction or storage facilities and other capital-intensive activities. An example would be an existing mine, not actually producing coal, but in a substantial stage of development prior to production. Costs of acquiring the coal in place or the right to mine it without an existing mine, as described in the above example, alone are not sufficient to constitute substantial legal and financial commitments.

§ 762.11 Criteria for designating lands as unsuitable.

(a) Upon petition an area shall be designated as unsuitable for all or certain types of surface coal mining operations, if the regulatory authority determines that reclamation is not technologically and economically feasible under the Act, this chapter or an approved State program.

(b) Upon petition an area may be (but is not required to be) designated as unsuitable for certain types of surface coal mining operations, if the operations will—

(1) Be incompatible with existing State or local land use plans or programs;

(2) Affect fragile or historic lands in which the operations could result in significant damage to important historic, cultural, scientific, or esthetic values or natural systems;

(3) Affect renewable resource lands in which the operations could result in a substantial loss or reduction of long-range productivity of water supply or of food or fiber products; or

(4) Affect natural hazard lands in which the operations could substantially endanger life and property, such lands to include areas subject to frequent flooding and areas of unstable geology.

§ 762.12 Additional criteria.

(a) A State regulatory authority may establish additional or more stringent criteria for determining whether lands within the State should be designated as unsuitable for coal mining operations. Such criteria shall be approved pursuant to Subchapter C of this chapter.

(b) The Secretary may establish additional criteria for determining whether Federal lands should be designated as unsuitable for surface mining operations.

(c) Additional criteria will be determined to be more stringent on the basis of whether they provide for greater protection of the public health, safety and welfare or the environment, such that areas beyond those specified in the criteria of this part would be designated as unsuitable for surface coal mining operations.

§ 762.13 Land exempt from designation as unsuitable for surface coal mining operations.

The requirements of this part do not apply to—

(a) Lands on which surface coal mining operations were being conducted on the date of enactment of the Act;

(b) Lands covered by a permit issued under the Act; or

(c) Lands where substantial legal and financial commitments in surface coal mining operations were in existence prior to January 4, 1977.

§ 762.14 Exploration on land designated as unsuitable for surface coal mining operations.

Designation of any area as unsuitable for all or certain types of surface coal mining operations pursuant to section 522 of the Act and regulations of this subchapter does not prohibit coal exploration operations in the area, if conducted in accordance with the Act, this chapter, any approved State or Federal program, and other applicable requirements. Exploration operations on any lands designated unsuitable for surface coal mining operations must be approved by the regulatory authority under Part 772 of this chapter, to ensure that exploration does not interfere with any value for which the area has been designated unsuitable for surface coal mining.

PART 764—STATE PROCESSES FOR DESIGNATING AREAS UNSUITABLE FOR SURFACE COAL MINING OPERATIONS

Sec.

764.1 Scope.
764.10 Information collection.
764.11 General process requirements.
764.13 Petitions.
764.15 Initial processing, recordkeeping, and notification requirements.
764.17 Hearing requirements.
764.19 Decision.
764.21 Data base and inventory system requirements.
764.23 Public information.
764.25 Regulatory authority responsibility for implementation.

Authority: Sections 102, 201, 503, 510 and 522 of Pub. L. 95-87, 91 Stat. 448, 449, 470, 480 and 507 (30 U.S.C. 1202, 1211, 1253, 1260 and 1272).

§ 764.1 Scope.

This part establishes minimum procedures and standards to be included in each approved State program for designating non-Federal and non-Indian lands in a State as unsuitable for all or certain types of surface coal mining operations and for terminating designations.

§ 764.10 Information collection.

The information collection requirements contained in Sections 764.21 and 764.25(b) have been approved by the Office of Management and

Budget under 44 U.S.C. 3507 and assigned clearance number 1029–0030. The information required in Section 764.21 is necessary to allow the regulatory authority to develop a data base and inventory system to evaluate whether reclamation is feasible in areas covered by petitions. The information required in Section 764.25(b) is necessary to allow the regulatory authority to determine, when a permit application is filed, whether it includes any areas designated as unsuitable for surface coal mining.

§ 764.11 General process requirements.

Each State shall establish a process enabling objective decisions to be made on which, if any, land areas of the State are unsuitable for all or certain types of surface coal mining operations. These decisions shall be based on competent, scientifically sound data and other relevant information. This process shall include the requirements listed in this part.

§ 764.13 Petitions.

(a) *Right to petition.* Any person having an interest which is or may be adversely affected has the right to petition the regulatory authority to have an area designated as unsuitable for surface coal mining operations, or to have an existing designation terminated. For the purpose of this Action, a person having an interest which is or may be adversely affected must demonstrate how he or she meets an "injury in fact" test by describing the injury to his or her specific affected interests and demonstrate how he or she is among the injured.

(b) *Designation.* The regulatory authority shall determine what information must be provided by the petitioner to have an area designated as unsuitable for surface coal mining operations.

(1) At a minimum, a complete petition for designation shall include—

(i) The petitioner's name, address, telephone number, and notarized signature;

(ii) Identification of the petitioned areas, including its location and size, and a U.S. Geological Survey topographic map outlining the perimeter of the petitioned area;

(iii) An identification of the petitioner's interest which is or may be adversely affected by surface coal mining operations, including a statement demonstrating how the petitioner satisfies the requirements of paragraph (a) of this section;

(iv) A description of how mining of the area has affected of may adversely affect people, land, air, water, or other resources, including the petitioner's interests; and

(v) Allegations of fact and supporting evidence, covering all lands in the petition area, which tend to establish that the area is unsuitable for all or certain types of surface coal mining operations, pursuant to specific criteria of sections 522(a) (2) and (3) of the Act, assuming that contemporary mining practices required under applicable regulatory programs would be followed if the area were to be mined. Each of the allegations of fact should be specific as to the mining operation, if known, and the portion(s) of the petitioned area and petitioner's interests to which the allegation applies and be supported by evidence that tends to establish the validity of the allegations for the mining operation or portion of the petitioned areas.

(2) The regulatory authority may request that the petitioner provide other supplementary information which is readily available.

(c) *Termination.* The regulatory authority shall determine what information must be provided by the petitioner to terminate designations of lands as unsuitable for surface coal mining operations.

(1) At a minimum, a complete petition for termination shall include—

(i) The petitioner's name, address, telephone number, and notarized signature;

(ii) Identification of the petitioned area, including its location and size and a U.S. Geological Survey topographic map outlining the perimeter of the petitioned area to which the termination petition applies;

(iii) An identification of the petitioner's interest which is or may be adversely affected by the designation that the area is unsuitable for surface coal mining operations including a statement demonstrating how the petitioner satisfies the requirements of paragraph (a) of this section;

(iv) Allegations of facts covering all lands for which the termination is proposed. Each of the allegations of fact shall be specific as to the mining operation, if any, and to portions of the petitioned area and petitioner's interests to which the allegation applies. The allegations shall be supported by evidence, not contained in the record of the designation proceeding, that tends to establish the validity of the allegations for the mining operation or portion of the petitioned area, assuming that contemporary mining practices required under applicable regulatory programs would be followed were the area to be mined. For areas previously and unsuccessfully proposed for termination, significant new allegations of facts and supporting evidence must be presented in the petition. Allegations and supporting evidence should also be specific to the basis for which the designation was made and tend to establish that the designation should be terminated on the following bases:

(A) Nature or abundance of the protected resource or condition or other basis of the designation if the designation was based on criteria found in § 762.11(b) of this chapter;

(B) Reclamation now being technologically and economically feasible if the designation was based on the criteria found in § 762.11(a) of this chapter; or

(C) Resources or conditions not being affected by surface coal mining operations, or in the case of land use plans, not being incompatible with surface coal mining operations during and after mining, if the designation was based on the criteria found in § 762.11(b) of this chapter;

(2) The State regulatory authority may request that the petitioner provide other supplementary information which is readily available.

§ 764.15 Initial processing, recordkeeping, and notification requirements.

(a)(1) Within 60 days of receipt of a petition, the regulatory authority shall notify the petitioner by certified mail whether or not the petition is complete under § 764.13 (b) or (c). Complete, for a designation or termination petition, means that the information required under § 764.13 (b) or (c) has been provided.

(2) The regulatory authority shall determine whether any identified coal resources exist in the area covered by the petition, without requiring any showing from the petitioner. If the regulatory authority finds there are not any identified coal resources in that area, it shall return the petition to the petitioner with a statement of the findings.

(3) The regulatory authority may suspend petitions related to lands where it finds there is no real or forseeable potential for surface coal mining operations to occur. Real and foreseeble potential means that the petitioned lands are likely to be subject to leasing or mining activity within 5 years. Where petitions are suspended, the regulatory authority, upon request of the petitioner but not more than once each year, will determine whether there is real and foreseeable potential for surface coal mining operations to occur. If it is determined that there is a real or foreseeable potential for surface coal

mining operations to occur, processing of the petition shall proceed.

(4) If the regulatory authority determines that the petition is incomplete, frivolous, or that the petitioner does not meet the requirements of § 764.13(a), it shall return the petition to the petitioner with a written statement of the reasons for the determination and the categories of information needed to make the petition complete. A frivolous petition is one in which the allegations of harm lack serious merit.

(5) When considering a petition for an area which was previously and unsuccessfully proposed for designation, the regulatory authority shall determine if the new petition presents significant new allegations of facts with evidence which tends to establish the allegations. If the petition does not contain such material, the regulatory authority may choose not to consider the petition and may return the petition to the petitioner, with a statement of its findings and a reference to the record of the previous designation proceedings where the facts were considered.

(6) The regulatory authority shall notify the person who submits a petition of any application for a permit received which includes any area covered by the petition.

(7) The regulatory authority may determine not to process any petition received insofar as it pertains to lands for which an administratively complete permit application has been filed and the first newspaper notice has been published. Based on such a determination, the regulatory authority may issue a decision on a complete and accurate permit application and shall inform the petitioner why the regulatory authority cannot consider the part of the petition pertaining to the proposed permit area.

(8) When a permit application is filed for an area where a petition has been suspended pursuant to § 764.15(a)(3), the regulatory authority shall initiate petition review and not issue a permit until a decision is made on the petition.

(b)(1) Promptly after a petition is received, the regulatory authority shall notify the general public of the receipt of the petition by a newspaper advertisement placed in the locale of the area covered by the petition, in the newspaper providing broadest circulation in the region of the petitioned area and in any official State register of public notices. The regulatory authority shall make copies of the petition available to the public and shall provide copies of the petition to other interested governmental agencies, intervenors, persons with an ownership interest of record in the property, and other persons known to the regulatory authority to have an interest in the property. Proper notice to persons with an ownership interest of record in the property shall comply with the requirements of applicable State law.

(2) The regulatory authority may provide for a hearing or a period of written comments on completeness of petitions. If a hearing or comment period on completeness is provided, the regulatory authority shall inform interested governmental agencies, intervenors, persons with an ownership interest of record in the property, and other persons known to the regulatory authority to have an interest in the property of the opportunity to request to participate in such a hearing or provide written comments. Proper notice to persons with an ownership interest of record in the property shall comply with the requirements of applicable State law. Notice of such a hearing shall be made by a newspaper advertisement placed in the locale of the area cover by the petition, in the newspaper providing broadest circulation in the region of the petitioned area and in any official State register of public notices. The regulatory authority shall notify the petitioner of such a hearing by certified mail. On the basis of regulatory authority review as well as consideration of all comments, the regulatory authority shall determine whether the petition is complete.

(3) Promptly after the determination that a petition is complete, the regulatory authority shall request submissions from the general public of relevant information by a newspaper advertisement placed once a week for two consecutive weeks in the locale of the area covered by the petition, in the newspaper providing broadest circulation in the region of the petitioned area, and in any offical State register of public notices.

(c) Until three days before the regulatory authority holds a hearing under § 764.17, any person may intervene in the proceeding by filing allegations of facts describing how the designation determination directly affects the intervenor, supporting evidence, a short statement identifying the petition to which the allegations pertain, and the intervenor's name, address and telephone number.

(d) Beginning from the date a petition is filed, the regulatory authority shall compile and maintain a record consisting of all documents relating to the petition filed with or prepared by the regulatory authority. The regulatory authority shall make the record available to the public for inspection free of charge and for copying at reasonable cost during all normal hours at the main office of the regulatory authority. The regulatory authority shall also maintain information at or near the area in which the petitioned land is located and make this information available to the public for inspection free of charge and for copying at reasonable cost during all normal business hours. At a minimum, this information shall include a copy of the petition.

§ 764.17 Hearing requirements.

(a) Within 10 months after receipt of a complete petition, the regulatory authority shall hold a public hearing in the locality of the area covered by the petition. If all petitioners and intervenors agree, the hearing need not be held. The regulatory authority may subpoena witnesses as necessary. The hearing may be conducted with cross-examination of expert witnesses only. A record of the hearing shall be made and preserved according to State law. No person shall bear the burden of proof or persuasion. All relevant parts of the data base and inventory system and all public comments received during the public comment period shall be included in the record and considered by the regulatory authority in its decision on the petition.

(b)(1) The regulatory authority shall give notice of the date, time, and location of the hearing to:

(i) Local, State, and Federal agencies which may have an interest in the decision on the petition;

(ii) The petitioner and the intervenors; and

(iii) Any person known by the regulatory authority to have a property interest in the petitioned area. Proper notice to persons with an ownership interest of record shall comply with the requirements of applicable State law.

(2) Notice of the hearing shall be sent by certified mail to petitioners and intervenors, and by regular mail to government agencies and property owners involved in the proceeding, and postmarked not less than 30 days before the scheduled date of the hearing.

(c) The regulatory authority shall notify the general public of the date, time, and location of the hearing by placing a newspaper advertisement once a week for 2 consecutive weeks in the locale of the area covered by the petition and once during the week prior to the public hearing. The consecutive weekly advertisement must begin between 4 and 5 weeks before the scheduled date of the public hearing.

(d) The regulatory authority may consolidate in a single hearing the

hearings required for each of several petitions which relate to areas in the same locale.

(e) Prior to designating any land areas as unsuitable for surface coal mining operations, the regulatory authority shall prepare a detailed statement, using existing and available information on the potential coal resources of the area, the demand for coal resources, and the impact of such designation on the environment, the economy, and the supply of coal.

(f) In the event that all petitioners and intervenors stipulate agreement prior to the hearing, the petition may be withdrawn from consideration.

§ 764.19 Decision.

(a) In reaching its decision, the regulatory authority shall use—

(1) The information contained in the data base and inventory system;

(2) Information provided by other governmental agencies;

(3) The detailed statement when it is prepared under § 764.17(e); and

(4) Any other relevant information submitted during the comment period.

(b) A final written decision shall be issued by the regulatory authority, including a statemtent of reasons, within 60 days of completion of the public hearing, or, if no public hearing is held, then within 12 months after receipt of the complete petition. The regulatory authority shall simultaneously send the decision by certified mail to the petitioner and intervenors and by regular mail to all other persons involved in the proceeding.

(c) The decision of the State regulatory authority with respect to a petition, or the failure of the regulatory authority to act within the time limits set forth in this section, shall be subject to judicial review by a court of competent jurisdiction in accordance with State law under section 526(e) of the Act and §775.13 of this chapter. All relevant portions of the data base, inventory system, and public comments received during the public comment period set by the regulatory authority shall be considered and included in the record of the administrative proceeding.

§ 764.21 Data base and inventory system requirements.

(a) The regulatory authority shall develop a data base and inventory system which will permit evaluation of whether reclamation is feasible in areas covered by petitions.

(b) The regulatory authority shall include in the system information relevant to the criteria in Section 762.11 of this chapter, including, but not limited to, information received from the United States Fish and Wildlife Service, the State Historic Preservation Officer, and the agency administering section 127 of the Clean Air Act, as amended (42 U.S.C. 7470 *et seq.*).

(c) The regulatory authority shall add to the data base and inventory system information—

(1) On potential coal resources of the State, demand for those resources, the environment, the economy and the supply of coal, sufficient to enable the regulatory authority to prepare the statements required by § 764.17(e); and

(2) That becomes available from petitions, publications, experiments, permit application, mining and reclamation operations, and other sources.

§ 764.23 Public information.

The regulatory authority shall:

(a) Make the information in the data base and inventory system developed under § 764.21 available to the public for inspection free of charge and for copying at reasonsable cost, except that specifc information relating to location of properties proposed to be nominated to, or listed in, the National Register of Historic Places need not be disclosed if the regulatory authority determines that the disclosure of such information would create a risk of destruction or harm to such properties;

(b) Provide information to the public on the petition procedures necessary to have an area designated as unsuitable for all or certain types of surface coal mining operations or to have designations terminated and describe how the inventory and data base system can be used.

§ 764.25 Regulatory authority responsibility for implementation.

(a) The regulatory authority shall not issue permits which are inconsistent with designations made pursuant to Part 761, 762, or 764 of this chapter.

(b) The regulatory authority shall maintain a map or other unified and cumulative record of areas designated unsuitable for all or certain types of surface coal mining operations.

(c) The regulatory authority shall make available to any person any information within its control regarding designations, including mineral or elemental content which is potentially toxic in the environment but excepting proprietary information on the chemical and physical properties of the coal.

PART 769—PETITION PROCESS FOR DESIGNATION OF FEDERAL LANDS AS UNSUITABLE FOR ALL OR CERTAIN TYPES OF SURFACE COAL MINING OPERATIONS AND FOR TERMINATION OF PREVIOUS DESIGNATIONS

Sec.

769.1 Scope.
769.10 Information collection
769.11 Who may submit a petition.
769.12 Where to submit petitions.
769.13 Contents of petitions.
769.14 Initial processing, recordkeeping, and notification requirements.
769.15 Intervention.
769.16 Public information.
769.17 Hearing requirements.
769.18 Decisions on petitions.
769.19 Regulatory policy.

Authority: Secs. 102, 201, 501, 510, 517, 522, and 523 of Pub. L. 95–87, 91 Stat. 448, 449, 468, 480, 498, 507, 510 (30 U.S.C. 1202, 1211, 1251, 1260, 1267, 1272, and 1273).

§ 769.1 Scope.

This part establishes minimum procedures and standards for designating Federal lands as unsuitable for all or certain types of surface coal mining operations and for terminating designations pursuant to petition.

§ 769.10 Information collection.

The information collection requirements in this part do not require approval of the Office of Management and Budget under 44 U.S.C. 3507 because there are fewer than 10 respondents annually.

§ 769.11 Who may submit a petition.

Any person having an interest which is or may be adversely affected by surface coal mining operations to be conducted on Federal lands may petition the Secretary to have an area designated as unsuitable for all or certain types of surface coal mining operations, or to have an existing designation terminated. This right does not apply to areas set aside from surface coal mining operations under laws other than the Act. For the purpose of this section, a person having an interest which is or may be adversely affected must demonstrate how he or she meets an "injury in fact" test by describing the injury to his or her specific affected interests and demonstrate how he or she is among the injured.

§ 769.12 Where to submit petitions.

Each petition to have an area of Federal lands designated as unsuitable or to terminate an existing designation shall be submitted to the Director of the OSM Field Office responsible for that

area where the Federal lands are located.

§ 769.13 Contents of petitions.

(a) *Designation.* The only information that a petitioner need provide to designate lands is that required under § 764.13(b) of this chapter.

(b) *Termination.* The only information that a petitioner need provide to terminate a designation is that required by § 764.13(c) of this chapter.

§ 769.14 Initial processing, recordkeeping, and notification requirements.

(a)(1) Within 30 days of receipt of a petition, OSM shall determine whether the petition is complete, ripe for further processing, and not frivolous. OSM may request other supplementary information which is readily available to be provided by the petitioner. Any request for such supplementary information from the petitioner shall not affect OSM's determination that the petition is complete for further processing.

(2) *Complete,* (i) for a designation petition, means that (A) all information required under § 764.13(b) of this chapter has been provided and (B) the information submitted by the petitioner contains significant new allegations of fact and supporting evidence not considered in any previous unsuccessful petition of Federal lands review conducted under Section 522(b) of the Act, that tends to establish that the lands are unsuitable for surface coal mining operations; and (ii) for a termination petition, means that all information required under § 764.13(c) has been provided.

(3) *Ripe,* for a designation petition, means that the petitioned lands are (i) subject to a Federal coal lease; (ii) included in a tract for which land use planning has been completed and which tract is available for further consideration for Federal coal leasing; (iii) not required to be leased because the mineral rights are not owned by the United States or are owned by the Tennessee Valley Authority; or (iv) over unleased Federal coal and are subject to surface disturbances from neighboring surface coal mining operations.

(4) *Frivolous,* for a designation or termination petition, means that: (i) The allegations of harm lack serious merit; or (ii) available information shows that no "mineable" coal resources exist in the petitioned area or that the petitioned area is not or could not be subject to related surface operations and surface impacts incident to an underground coal mine or an adjoining surface mine (mineable coal is coal with development potential as mapped or reported by the Bureau of Land Management under 43 CFR 3420.1–5(e)(1); and privately owned coal under land owned by the United States).

(b)(1) When the Director finds that the petition is incomplete or frivolous, he or she shall reject the petition with a written statement of reasons and advise the petitioner, via certified mail, that the petition may be reconsidered upon resubmittal with deficiencies cured.

(2) When the Director finds that a petition is not ripe, he or she may suspend the petition and notify the petitioner via certified mail. Where petitions are suspended, OSM, upon request of the petitioner but not more than once each year, will review the petition to determine whether it is ripe. When lack of ripeness is based on land use planning not having occurred yet on unleased Federal land, the Director shall advise the petitioner of his or her opportunity to participate in the planning process. In addition, the Director shall advise the land management agency of the issues raised by the petitioner and will request the agency to consider the issues so raised in its planning effort and to advise the petitioner of all public participation activities for the planning unit.

(c) When the Director finds that the petition is complete, ripe and not frivolous, he or she shall initiate the petition review and so advise the petitioner via certified mail.

(d)(1) Within 2 weeks after accepting the petition for further processing, OSM shall send a copy of the petition to the authorized officer of the land management agency for the officer's recommendation on the petition.

(2) The authorized officer of the appropriate Federal land management agency shall furnish a recommendation on the petition to OSM within 30 days of its receipt, if the area covered by the petition has been included in a completed Federal lands review or within 9 months, if the area has not been included in a Federal lands review.

(e) Promptly after accepting a petition for further processing, OSM shall circulate copies of the petition to, and request submissions of relevant information from, other interested governmental agencies, the petitioner, intervenors, and any person, known to OSM to have an ownership interest in the property.

(f) Where lands administered by the Department of the Interior and other Federal land management agencies are contiguous or intermingled or where the Department's resource management could affect resources on the other's land, the Director of OSM shall refer a copy of the petition to the other Federal land management agency and shall consider the agency's recommendations about designating those lands unsuitable for all or certain types of surface coal mining or terminating such designations.

(g) OSM may determine not to process any petition received insofar as it pertains to lands for which an administratively complete permit application has been filed and the first newspaper notice has been published. Based on such a determination, OSM may issue a decision on a complete and accurate permit application and shall inform the petitioner why OSM cannot consider the part of the petition pertaining to the proposed permit area.

(h) When a permit application is filed for an area where a petition has been suspended pursuant to § 769.14(b)(2), OSM shall initiate petition review and not issue a permit until a decision is made on the petition.

§ 769.15 Intervention.

Up to 3 days before the OSM holds a hearing on a petition under § 769.17, any person may intervene in the proceeding by filing a statement describing how the designation directly affects the intervenor, allegations of facts and supporting evidence, a short statement identifying the petition to which the allegations pertain, and the intervenor's name, address and telephone number.

§ 769.16 Public information.

(a) Promptly after determining that a petition is complete, the Director shall notify the general public of the receipt of the petition and request submissions of the relevant information by a newspaper advertisement placed once a week for two consecutive weeks in the newspaper providing broadest circulation in the region of the petitioned area, and in the **Federal Register.** The advertisement and **Federal Register** notice shall include a description of the boundaries of the petitioned area, the allegations of fact, and information regarding where the petition is available for public review.

(b)(1) Beginning immediately after a petition is filed, OSM shall compile and maintain a record consisting of all documents relating to the petition filed with or prepared by OSM with the exception of that information excluded under § 769.16(b)(2). OSM shall make the record available to the public for inspection free of charge and for copying at a reasonable cost during all normal business hours at its Washington, D.C. office. OSM shall also maintain information in or near the area in which the petitioned land is located; this

information shall be available for public inspection, free of charge, and for copying at reasonable cost during all normal business hours. At a minimum, this information shall include a copy of the petition.

(2) OSM need not make available to any person or entity the specific location of property proposed to be nominated to be listed or listed in the National Register of Historic Places if it is determined that disclosure of that information would create a risk of destruction or harm to such properties. Withheld information must be disclosed when a designation of unsuitability would rest primarily on an allegation based on that information.

§ 769.17 Hearing requirements.

(a) Within 10 months after receipt of a complete petition, OSM shall hold a public hearing in the locality of the area covered by the petition. If all petitioners and intervenors agree, the hearing need not be held. OSM may subpoena witnesses as necessary. The hearing may be conducted with cross-examination of expert witnesses only. A record of the hearing shall be made and preserved. No person shall bear the burden of proof or persuasion. All relevant parts of the data base and inventory system and all public comments received during the public comment period shall be included in the record and considered by OSM in deciding the petition.

(b)(1) OSM shall give notice of the date, time, and location of the hearing to:

(i) Local, State, and Federal agencies which may have an interest in the decision on the petition;

(ii) The petitioner and the intervenors; and

(iii) Any person known by OSM to have a property interest in the petitioned area.

(2) Notice of the hearing shall be sent by certified mail to the petitioner and intervenors, and by regular mail to other persons involved in the proceeding, and postmarked not less than 30 days before the scheduled date of the hearing.

(3) OSM shall notify the general public of the date, time, and location of the hearing by placing a newspaper advertisement once a week for 2 consecutive weeks prior to the scheduled date of the public hearing in the locale of the area covered by the petition and once during the week prior to the scheduled date of the public hearing. The consecutive weekly advertisements must begin between 4 and 5 weeks prior to the scheduled date of the public hearing.

(c) OSM may consolidate into a single hearing the hearings required for each of several petitions which relate to areas in the same locale.

(d) If any petitions relates to an area of Federal lands which is the subject of a pending surface coal mining and reclamation operations permit application, OSM may, with consent of all petitioners and intervenors, coordinate the hearing on the petition required under paragraph (a) of this section with any hearing on the permit application or informal conference held in accordance with section 513(b) of the Act and § 740.13 of this chapter on the permit application. Nothing in this paragraph shall relieve an applicant for a permit from the burden of establishing that his or her application is in compliance with the requirements of the Federal lands program.

(e) Prior to designating any lands as unsuitable for surface coal mining operations, OSM shall issue a detailed statement on the abundance of coal resources of the area, the demand for coal resources, and the impact of such designation on the environment, the economy, and the supply of coal.

§ 769.18 Decisions on petitions.

(a) In reaching his or her decision, the Director shall use the information and consider the recommendation provided by the Federal land management agency, information provided by other governmental agencies, the detailed statement, when it is prepared under § 769.17(e), and any other relevant information submitted during the comment period.

(b) A final written decision shall be issued by the Director, including a statement of reasons, within 60 days of completion of the public hearing, or if no public hearing is held, within 12 months after receipt of the complete petition. The Director shall simultaneously send the decision by certified mail to the petitioner and the intervenors and by regular mail to all other persons involved in the proceeding.

(c) If the Director concurs with the recommendation of the surface managing agency, the Director's decision becomes final. If the Director does not concur with the recommendation, he or she shall notify the Director of the surface managing agency within 30 days after the public hearing, if any. The decision at the same time will be referred to the Secretary through respective agency heads for resolution and issuance of a final decision within 60 days after the hearing, if any.

(d) A final decision of the Director or the Secretary is subject to judicial review in accordance with § 775.13 of this chapter and section 526(a)(2) and (b) of the Act.

§ 769.19 Regulatory policy

Once an area of Federal lands is designated as unsuitable for all or certain types of surface coal mining operations, any permit or lease shall be conditioned in a manner so as to limit or prohibit surface coal mining operations on the designated areas in accordance with the designation.

PART 779—SURFACE MINING PERMIT APPLICATIONS—MINIMUM REQUIREMENTS FOR INFORMATION ON ENVIRONMENTAL RESOURCES

3. Section 779.24 is amended by revising paragraph (j) to read as follows:

§ 779.24 Maps: General requirements.

* * * * *

(j) Each public or private cemetery, Indian burial ground, or other area where human bodies are interred, that is located in or within 100 feet of the proposed permit area;

* * * * *

PART 783—UNDERGROUND MINING PERMIT APPLICATIONS—MINIMUM REQUIREMENTS FOR INFORMATION ON ENVIRONMENTAL RESOURCES

4. Section 783.24 is amended by revising paragraph (j) to read as follows:

§ 783.24 Maps: General requirements.

* * * * *

(j) Each public or private cemetery, Indian burial ground, or other area where human bodies are interred, that is located in or within 100 feet of the proposed permit area;

* * * * *

Pub. L. 95-87; 30 U.S.C. Section 1201 *et seq.)*

[FR Doc. 83-24937 Filed 9-13-83; 8:45 am]

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federal register

Wednesday
September 14, 1983

Part V

Office of Management and Budget

Cumulative Report on Budget Rescissions and Deferrals

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Budget Rescissions and Deferrals

September 1, 1983.

This report is submitted in fulfillment of the requirements of Section 1014(e) of the Impoundment Control Act of 1974 (Pub. L. 93–344). Section 1014(e) provides for a monthly report listing all budget authority for this fiscal year with respect to which, as of the first day of the month, a special message has been transmitted to the Congress.

This report gives the status as of September 1, 1983 of 21 rescission proposals and 83 deferrals contained in the first eleven special messages of FY 1983. These messages were transmitted to the Congress on October 1 and December 7 and 16, 1982, and January 5, February 1, March 9, April 21, May 19, July 7, July 28, and August 18, 1983.

Rescissions (Table A and Attachment A)

One rescission proposal totaling $15 million is currently pending before the Congress. Table A summarizes the status of the 21 rescissions proposed by the President as of September 1, 1983, while Attachment A shows the history and status of each rescission proposed during FY 1983.

Deferrals (Table B and Attachment B)

As of September 1, 1983, $2,091.9 million in 1983 budget authority was being deferred from obligation and another $7.2 million in 1983 obligations was being deferred from expenditure. Attachment B shows the history and status of each deferral reported during FY 1983.

Information From Special Messages

The special messages containing information on the rescissions and the deferrals covered by the cumulative report are printed in the **Federal Registers** listed below:

Vol. 47, FR p. 44524, Thursday, October 7, 1982
Vol. 47, FR p. 55602, Friday, December 10, 1982
Vol. 47, FR p. 57230, Wednesday, December 22, 1982
Vol. 48, FR p. 1266, Tuesday, January 11, 1983
Vol. 48, FR p. 5474, Friday, February 4, 1983
Vol. 48, FR p. 11244, Wednesday, March 16, 1983
Vol. 48, FR p. 18978, Tuesday, April 26, 1983
Vol. 48, FR p. 23374, Tuesday, May 24, 1983
Vol. 48, FR p. 32154, Wednesday, July 13, 1983
Vol. 48, FR p. 36996, Monday, August 15, 1983
Vol. 48, FR p. 38444, Tuesday, August 23, 1983

David A. Stockman,

Director, Office of Management and Budget.

BILLING CODE 3110-01-M

TABLE A

STATUS OF 1983 RESCISSIONS

	Amount (In millions of dollars)
Rescissions proposed by the President.....	$1,569.0
Accepted by the Congress.....	-0-
Rejected by the Congress.....	-1,554.0
Pending before the Congress.....	$ 15.0

****

TABLE B

STATUS OF 1983 DEFERRALS

	Amount (In millions of dollars)
Deferrals proposed by the President.....	$13,559.5
Routine Executive releases ($8,182.3 million) and adjustments (+$716.3 million) through September 1, 1983.....	-7,466.0
Overturned by the Congress.....	-3,994.3
Currently before the Congress.....	$2,099.2 a/

a/ This amount includes $7.2 million in outlays for a Department of the Treasury deferral (D83-16B).

Attachments

ATTACHMENT A - STATUS OF RESCISSIONS - FISCAL YEAR 1983

AS OF SEPTEMBER 1, 1983 AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT	RESCISSION NUMBER	AMOUNT PREVIOUSLY CONSIDERED BY CONGRESS	AMOUNT CURRENTLY BEFORE THE CONGRESS	DATE OF MESSAGE MO DA YR	AMOUNT RESCINDED	AMOUNT MADE AVAILABLE	DATE MADE AVAILABLE MO DA YR
FUNDS APPROPRIATED TO THE PRESIDENT							
Appalachian Regional Development Programs							
Appalachian Regional Development programs BA	R83- 2	15,133		2 1 83		15,133	4 13 83
FUNDS APPROPRIATED TO THE PRESIDENT TOTAL BA		15,133				15,133	
DEPARTMENT OF AGRICULTURE							
Agricultural Research Service							
Buildings and facilities BA	R83- 3	1,927		2 1 83		1,927	4 13 83
Soil Conservation Service							
Watershed and flood prevention operations BA	R83- 4	68,995		2 1 83		68,995	4 13 83
Resource conservation and development BA	R83- 5	5,600		2 1 83		5,600	4 13 83
Agricultural Cooperative Service							
Salaries and expenses BA	R83- 6	779		2 1 83		779	4 13 83
DEPARTMENT OF AGRICULTURE TOTAL BA		77,301				77,301	
DEPARTMENT OF COMMERCE							
National Oceanic and Atmospheric Administration							
Construction BA	R83- 1	2,000		12 16 82		2,000	3 25 83
DEPARTMENT OF COMMERCE TOTAL BA		2,000				2,000	
DEPARTMENT OF EDUCATION							
Office of Elementary and Secondary Education							
Compensatory education for the disadvantaged BA	R83- 7	133,925		2 1 83		133,925	4 13 83
School assistance in federally affected areas BA	R83- 8	5,000		2 1 83		5,000	4 13 83
Special programs and populations BA	R83- 9	56,639		2 1 83		56,639	4 13 83
Indian education BA	R83- 10	16,128		2 1 83		16,128	4 13 83
Off. of Bilingual Educ. & Minority Lang. Affairs							
Bilingual eduation BA	R83- 11	43,523		2 1 83		43,523	4 13 83
Office of Postsecondary Education							
Guaranteed student loans BA	R83- 12	900,000		2 1 83		900,000	4 13 83
Higher and continuing education BA	R83- 13	68,941		2 1 83		68,941	4 13 83

AS OF SEPTEMBER 1, 1983 AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT	RESCISSION NUMBER	AMOUNT PREVIOUSLY CONSIDERED BY CONGRESS	AMOUNT CURRENTLY BEFORE THE CONGRESS	DATE OF MESSAGE MO DA YR	AMOUNT RESCINDED	AMOUNT MADE AVAILABLE	DATE MADE AVAILABLE MO DA YR
Office of Educational Research and Improvement							
Educational research and statistics							
BA	R83- 14	6,225		2 1 83		6,225	4 13 83
DEPARTMENT OF EDUCATION TOTAL BA		1,230,381				1,230,381	
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT							
Housing Programs							
Payments for oper. of low income housing proj							
BA	R83- 15	69,000		2 1 83		69,000	4 13 83
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT TOTAL BA		69,000				69,000	
DEPARTMENT OF THE INTERIOR							
National Park Service							
Construction							
BA	R83- 16	63,600		2 1 83		63,600	4 13 83
DEPARTMENT OF THE INTERIOR TOTAL BA		63,600				63,600	
DEPARTMENT OF STATE							
Bureau of Refugee Programs							
Migration and refugee assistance							
BA	R83- 21		15,000	7 7 83			
DEPARTMENT OF TRANSPORTATION							
Federal Highway Administration							
Federal-aid highways (trust fund)							
BA	R83- 17	23,200		2 1 83		23,200	4 13 83
Coast Guard							
Nat l recreat. boat. safety & facil. improv.							
BA	R83- 18	5,000		2 1 83		5,000	4 13 83
DEPARTMENT OF TRANSPORTATION TOTAL BA		28,200				28,200	
OTHER INDEPENDENT AGENCIES							
Corporation for Public Broadcasting							
Public broadcasting fund							
BA	R83- 19	45,000a		2 1 83			
OTHER INDEPENDENT AGENCIES TOTAL BA		45,000					
OFF-BUDGET FEDERAL ENTITIES							
Department of Agriculture							
Rural telephone bank							
BA	R83- 20	23,400		2 1 83		23,400	4 13 83

AS OF SEPTEMBER 1, 1983 AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT	RESCISSION NUMBER	AMOUNT PREVIOUSLY CONSIDERED BY CONGRESS	AMOUNT CURRENTLY BEFORE THE CONGRESS	DATE OF MESSAGE MO DA YR	AMOUNT RESCINDED	AMOUNT MADE AVAILABLE	DATE MADE AVAILABLE MO DA YR
OFF BUDGET FEDERAL ENTITIES							
TOTAL BA		23,400				23,400	
TOTAL BA		1,554,015	15,000			1,509,015 [b]	

a This is a rescission of FY 1985 funds.

b. Excludes $45.0 million of advance funding for the Corporation for Public Broadcasting that cannot be made available for obligation until FY 1985.

ATTACHMENT B - STATUS OF DEFERRALS - FISCAL YEAR 1983

AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT	DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULATIVE OMB /AGENCY RELEASES	CONGRESSIONALLY REQUIRED RELEASES	CUMULATIVE ADJUSTMENTS	AMOUNT DEFERRED AS OF 9-1-83
FUNDS APPROPRIATED TO THE PRESIDENT								
Appalachian Regional Development Programs								
Appalachian regional development programs								
BA	D83- 40	10,000		2 1 83				10,000
International Security Assistance								
Foreign military sales credit								
BA	D83- 21	165,000		12 7 82				
BA	D83- 21A		1,010,000	2 1 83	-1,175,000			
Economic support fund								
BA	D83- 22	554,720		12 7 82				
BA	D83- 22A		1,347,130	2 1 83	-2,416,705		588,450	73,595
Military assistance								
BA	D83- 29	11,650		12 7 82				
BA	D83- 29A		221,350	2 1 83	-247,650		14,650	
International Development Assistance								
Functional development assistance program								
BA	D83- 1	8,129		10 1 82	-8,129			
FUNDS APPROPRIATED TO THE PRESIDENT TOTAL BA		749,499	2,578,480		-3,847,484		603,100	83,595
DEPARTMENT OF AGRICULTURE								
Agricultural Stabilization & Conservation Service								
Dairy and beekeeper indemnity programs								
BA	D83- 36	-7,000		1 5 83		-7,000		
Soil Conservation Sevice								
Watershed and flood prevention operations								
BA	D83- 41	10,329		2 1 83		-10,329		
Animal and Plant Health Inspection Service								
Salaries and expenses								
BA	D83- 34	2,134		12 16 82				
BA	D83- 34A		4,066	2 1 83	-6,200			
Forest Service								
National forest system								
BA	D83- 42	108,035		2 1 83	-21,022			87,013
Timber salvage sales								
BA	D83- 2	10,002		10 1 82				
BA	D83- 2A		3,105	2 1 83	-6,897			6,210
Expenses, brush disposal								
BA	D83- 3	44,575		10 1 82	-10,042		8,126	42,659
BA	0000							
DEPARTMENT OF AGRICULTURE TOTAL BA		182,075	7,171		-44,161	-17,329	8,126	135,882
DEPARTMENT OF COMMERCE								
Economic Development Administration								
Economic development assistance programs								
BA	D83- 43	181,900		2 1 83		-181,900		
Economic development revolving fund								
BA	D83- 37	25,350		1 5 83	-25,350			
International Trade Administration								
Operations and administration								
BA	D83- 44	20,100		2 1 83		-20,100		
Participation in U.S. expositions								
BA	D83- 4	3,356		10 1 82	-571			2,785
National Oceanic and Atmospheric Administration								
Operations, research, and facilities								
BA	D83- 71	2,965		4 21 83				2,965
Construction								
BA	D83- 45	3,000		2 1 83				3,000

AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT	DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULATIVE OMB /AGENCY RELEASES	CONGRESSIONALLY REQUIRED RELEASES	CUMULATIVE ADJUSTMENTS	AMOUNT DEFERRED AS OF 9-1-83
Promote and develop fishery products and research								
BA	D83- 5	30,619		10 1 82	-30,619			
National Bureau of Standards								
Scientific & technical research & services								
BA	D83- 38	6,500		1 5 83				6,500
DEPARTMENT OF COMMERCE TOTAL BA		273,790			-56,540	-202,000		15,250
DEPARTMENT OF DEFENSE-MILITARY								
Procurement								
Shipbuilding and conversion, Navy								
BA	D83- 46	2,400,000		2 1 83	-2,400,000			
Military Construction								
Military construction, all services								
BA	D83- 6	64,063		10 1 82				
BA	D83- 6A		1,166,415	12 7 82	-933,867		103,136	399,747
Family Housing, Defense								
Family housing, Defense								
BA	D83- 23	161,640		12 7 82	-108,640			53,000
BA	0000							
DEPARTMENT OF DEFENSE-MILITARY TOTAL BA		2,625,703	1,166,415		-3,442,507		103,136	452,747
DEPARTMENT OF DEFENSE-CIVIL								
Corps of Engineers								
Construction, general								
BA	D83- 47	180,000		2 1 83				180,000
Wildlife Conservation, Military Reservations								
Wildlife conservation								
BA	D83- 7	1,061		10 1 82	-229		-50a	782
BA	0000							
DEPARTMENT OF DEFENSE-CIVIL TOTAL BA		181,061			-229		-50	180,782
DEPARTMENT OF ENERGY								
Atomic Energy Defense Activities								
Atomic energy defense activities								
BA	D83- 70	50,000		3 9 83	-50,000			
Energy Programs								
Energy supply R&D-operating expenses								
BA	D83- 72	15,226		4 21 83	-11,000a			4,226
Energy supply R&D-plant and capital equip								
BA	D83- 48	91,107		2 1 83				
BA	D83- 48A		b	5 19 83	-49,095		18,540	60,552
Fossil energy research and development								
BA	D83- 8	20,136		10 1 82				
BA	D83- 8A		b	2 1 83	-15,136			5,000
BA	D83- 73	8,750		4 21 83		-8,750		
BA	D83- 80	15,326		7 7 83				15,326
Fossil energy construction								
BA	D83- 49	20,000		2 1 83				
BA	D83- 49A		6,000	4 21 83				26,000
Energy conservation								
BA	D83- 24	22,803		12 7 82	-22,803			
BA	D83- 74	4,500		4 21 83		-4,500		
BA	D83- 76	3,050		7 7 83				3,050
Strategic Petroleum Reserve								
BA	D83- 50	57,400		2 1 83		-57,400		
Alternative fuels production								
BA	D83- 77	13,000		7 7 83				13,000

AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT		DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULATIVE OMB /AGENCY RELEASES	CONGRESSIONALLY REQUIRED RELEASES	CUMULATIVE ADJUSTMENTS	AMOUNT DEFERRED AS OF 9-1-83
Departmental Administration									
Depart admin., operating expenses	BA	D83- 51	21,767		2 1 83	-11,173			10,594
Depart admin., plant & capital equipment	BA	D83- 52	12,693		2 1 83				12,693
	BA	0000							
DEPARTMENT OF ENERGY TOTAL BA			355,758	6,000		-159,207	-70,650	18,540	150,441
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Centers for Disease Control									
Preventive Health Services	BA	D83- 78	15,560		7 7 83	-15,560			
Alcohol, Drug Abuse & Mental Health Administration									
Construction & renovation, St Elizabeths Hospital	BA	D83- 9	9,714		10 1 82				9,714
Office of Assistant Secretary for Health									
Special foreign currency program	BA	D83- 10	6,420		10 1 82				6,420
Social Security Administration									
Limitation on administrative expenses	BA	D83- 53	9,633		2 1 83				9,633
DEPARTMENT OF HEALTH AND HUMAN SERVICES TOTAL BA			41,327			-15,560			25,767
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT									
Housing Programs									
Subsidized housing programs	BA	D83- 54	3,081,153		2 1 83		-3,081,153		
Payments for operation of low income housing	BA	D83- 30	150,000		12 7 82	-150,000			
Community Planning and Development									
Community development grants	BA	D83- 31	221,000		12 7 82	-221,000			
Urban development action grants	BA	D83- 32	234,000		12 7 82				
	BA	D83- 32A		10,000	1 5 83		-244,000		
Urban homesteading	BA	D83- 33	8,000		12 7 82	-8,000			
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT TOTAL BA			3,694,153	10,000		-379,000	-3,325,153		
DEPARTMENT OF THE INTERIOR									
Office of Water Research & Technology									
Salaries and expenses	BA	D83- 25	2,545		12 7 82	-2,545			
National Park Service									
Land acquisition and state assistance	BA	D83- 11	30,000		10 1 82				
	BA	D83- 11A		3,000	2 1 83			-30,000 [d]	3,000
Minerals Management Service									
Payments from proceeds, sale of water	BA	D83- 39	48		1 5 83				48
Office of Territorial Affairs									
Administration of territories	BA	D83- 55	3,188		2 1 83		-3,188		
DEPARTMENT OF THE INTERIOR TOTAL BA			35,781	3,000		-2,545	-3,188	-30,000	3,048

AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT		DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULATIVE OMB /AGENCY RELEASES	CONGRESSIONALLY REQUIRED RELEASES	CUMULATIVE ADJUSTMENTS	AMOUNT DEFERRED AS OF 9-1-83
DEPARTMENT OF JUSTICE									
Legal Activities									
Salaries and expenses, Gen. Legal Activities	BA	D83- 81	561		7 7 83	-561			
Salaries and expenses, Antitrust Division	BA	D83- 82	231		7 7 83	-231			
Interagency Law Enforcement									
Organized crime drug enforcement	BA	D83- 56	13,656		2 1 83				13,656
Federal Prison System									
Buildings and facilities	BA	D83- 35	16,330		12 16 82				
	BA	D83- 35A		51,507	5 19 83				67,837
DEPARTMENT OF JUSTICE TOTAL BA			30,778	51,507		-792			81,493
DEPARTMENT OF STATE									
International Organizations and Conferences									
Contributions to international organizations	BA	D83- 57	8,111		2 1 83	-8,111			
Other									
Emergency refugee and migration assistance fund	BA	D83- 12	37,692		10 1 82			-1,844c	35,848
U S. bilateral science and technology agreements	BA	D83- 58	2,000		2 1 83				2,000
	BA	0000							
DEPARTMENT OF STATE TOTAL BA			47,803			-8,111		-1,844	37,848
DEPARTMENT OF TRANSPORTATION									
Urban Mass Transportation Administration									
Urban mass capital fund	BA	D83- 59	229,000		2 1 83		-229,000		
Federal Aviation Administration									
Construction, Metropolitan Washington Airports	BA	D83- 59	500		2 1 83				500
Civil supersonic aircraft development termination	BA	D83- 13	46		10 1 82				46
Facilities & equip. (Airport & airway trust fund)	BA	D83- 14	158,485		10 1 82				
	BA	D83- 14A		566,751	2 1 83				725,236
Coast Guard									
Natl recreat. boat safety & facil. improv.	BA	D83- 61	40,000		2 1 83				40,000
	BA	0000							
DEPARTMENT OF TRANSPORTATION TOTAL BA			428,031	566,751			-229,000		765,782
DEPARTMENT OF THE TREASURY									
Office of Revenue Sharing									
State and local government fiscal assistance fund	BA	D83- 15	106,474		10 1 82				
	BA	D83- 15A		305	12 7 82	-52,544		415	54,650
	O	D83- 16	7,909		10 1 82				
	O	D83- 16A		6,537	12 7 82				
	O	D83- 16B		1,498	3 9 83	-23,569		14,834	7,209

AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT		DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULATIVE OMB /AGENCY RELEASES	CONGRESSIONALLY REQUIRED RELEASES	CUMULATIVE ADJUSTMENTS	AMOUNT DEFERRED AS OF 9-1-83
Federal Law Enforcement Training Center									
Construction	BA	D83- 17	3,078		10 1 82	-678			2,400
DEPARTMENT OF THE TREASURY									
TOTAL	BA		109,552	305		-53,222		415	57,050
TOTAL	O		7,909	8,035		-23,569		14,834	7,209
NATIONAL AERONAUTICS & SPACE ADMINISTRATION									
Research and development	BA	D83- 26	34,500		12 7 82	-26,000			8,500
72 9999	BA	0000							
VETERANS ADMINISTRATION									
Construction, major projects	BA	D83- 27	4,000		12 7 82				4,000
72 9999	BA	0000							
OTHER INDEPENDENT AGENCIES									
Board for International Broadcasting									
Grants and expenses	BA	D83- 79	-3,185		7 7 83				3,185
District of Columbia									
Loans to DC for capital investment	BA	D83- 18	38,832		10 1 82	-38,832			
Interstate Commission on the Potomac River Basin									
Contrib to Interst. Comm. on Potomac Riv. Basin	BA	D83- 28	12		12 7 82	-12			
Pennsylvania Avenue Development Corporation									
Land acquisition and development fund	BA	D83- 19	17,949		10 1 82				
	BA	D83- 19A		4,409	12 16 82				22,358
Railroad Retirement Board									
Milwaukee railroad restructuring, administration	BA	D83- 20	240		10 1 82				
	BA	D83- 20A		250	2 1 83				490
Limitation on administration	BA	D83- 75		2,750	5 19 83	-750			2,000
Limitation on Rail Unemp. Ins. Admin. Fund	BA	D83- 83	165		8 18 83	-165			
Small Business Administration									
Business loan and investment fund	BA	D83- 62	143,000		2 1 83		-143,000		
Surety bond guarantees revolving fund	BA	D83- 63	3,000		2 1 83		-3,000		
Pollu cont equip contract guar revolv	BA	D83- 64	1,000		2 1 83		-1,000		
Motor Carrier Ratemaking Study Commission									
Salaries and Expenses	BA	D83- 65	282		2 1 83				282
Tennessee Valley Authority									
Tennessee Valley Authority fund	BA	D83- 66	47,271		2 1 83				17,271
United States Information Agency									
Salaries and expenses (spec for curr. prog.)	BA	D83- 67	1,344		2 1 83				1,344
Acquis and construction of radio facilities	BA	D83- 68	12,437		2 1 83				12,437

AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT		DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULATIVE OMB /AGENCY RELEASES	CONGRESSIONALLY REQUIRED RELEASES	CUMULATIVE ADJUSTMENTS	AMOUNT DEFERRED AS OF 9-1-83
United States Railway Association									
Payments for purchase of Conrail securities									
	BA	D83- 69	84,000		2 1 83	-83,600			400
84-99									
	BA	0000							
OTHER INDEPENDENT AGENCIES									
	TOTAL BA		352,717	7,409		-123,359	-147,000		89,767
83-55									
84-99									
	BA	0000							
	TOTAL BA		9,146,528	4,397,038		-8,158,717	-3,994,320	701,423	2,091,952
	TOTAL O		7,909	8,035		-23,569		14,834	7,209

a. $5 million of this amount was released prior to transmittal of the message reporting the withholding of $15.2 million.

b. This revision is a technical adjustment that did not increase the amount deferred.

c. This adjustment is being made to reflect actual unobligated balances available on October 1, 1982. All unobligated balances are being withheld from obligation.

d. This adjustment is being made to reflect the amount of the deferral that was rescinded by Congress pursuant to P.L. 98-63.

END OF REPORT

[FR Doc. 83-25078 Filed 9-13-83; 8:45 am]
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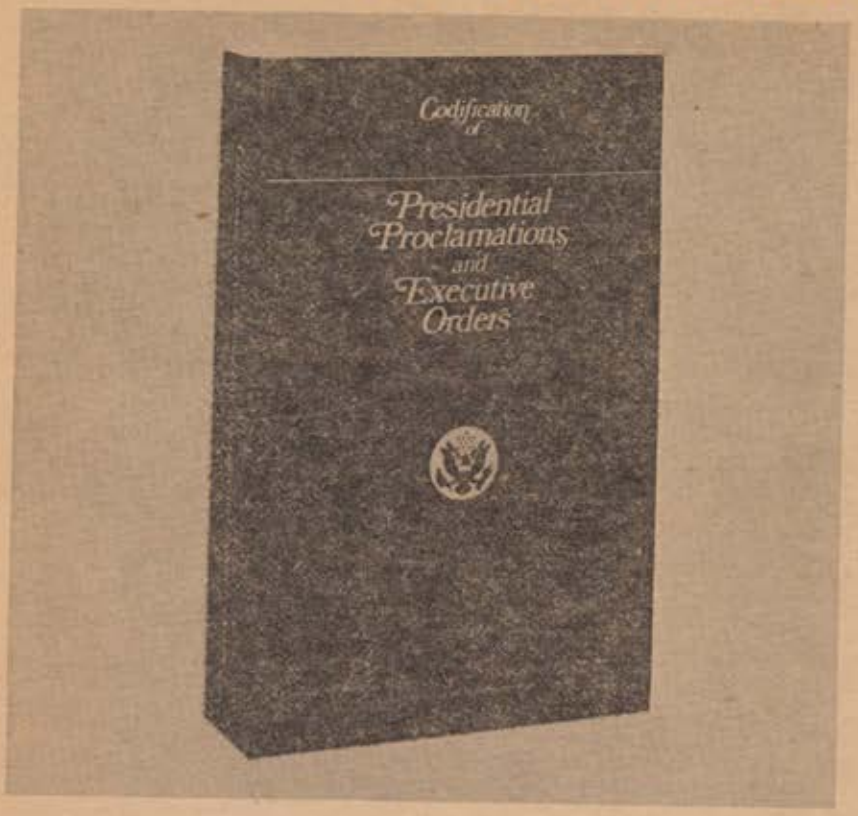

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