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Thursday
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Agricultural Stabilization and Conservation Service

Air Pollution Control
Environmental Protection Agency

Animal Drugs
Food and Drug Administration

Antibiotics
Food and Drug Administration

Aviation Safety
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Customs Service

Freedom of Information
Agricultural Research Service

Hazardous Waste
Environmental Protection Agency

Loan Programs—Veterans
Veterans Administration

Marine Safety
Coast Guard

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

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Presidential Documents

Title 3—

The President

Proclamation 5171 of April 2, 1984

Pan American Day and Pan American Week, 1984

By the President of the United States of America

A Proclamation

The nations of the Western Hemisphere have been blessed with a common heritage that has bound them together in the pursuit of peace and harmony within the framework of democratic institutions. The annual proclamation of Pan American Day and Pan American Week has for 53 years stressed our unity of purpose and drawn the attention of the world to the significant achievements of the Inter-American system and the Organization of American States.

Through the OAS, the nations of the Americas have worked to fulfill their shared aspirations for peace, prosperity, and freedom. These goals form the cornerstone of the OAS and find eloquent expression in the OAS Charter. While other areas of the world have been fraught with strife, the OAS has been instrumental in maintaining the peace in this hemisphere. The peacekeeping mechanisms available to OAS member nations have proved responsive in a multitude of tests in the past, including those posed by the subversion and indirect aggression of Cuba and its partners. The continued strength and resilience of these peacekeeping mechanisms should be of primary importance to all the nations of the Americas as we deal with the current challenges to peace, prosperity and freedom, especially in Central America.

Because in this century our hemisphere has been spared the violence other regions have had to endure, we have been fortunate to be able to dedicate our energies to the important tasks of economic, social, scientific, educational, and cultural development of our nations. In this effort to better the lives of our people, the OAS, through its technical councils and specialized Inter-American agencies, has served as a model for others.

Consistent with the spirit of the Inter-American system as expressed in the OAS Charter, the peoples of this hemisphere are turning more and more to democratic institutions as a means of solving the difficult problems we face. This is a vote of confidence in democracy as an effective means of governing—a practical problem-solving mechanism—not just an abstract political ideal. The trend reinforces the bonds which unite us and strengthens our capacity for cooperation.

During the bicentennial year of the birth of the great Liberator, Simon Bolivar, it is appropriate that we rededicate ourselves to the spirit of hemispheric solidarity that he symbolized. His example serves as an inspiration for all Americans to face the difficult challenges of our time. Bolivar believed that diversity does not preclude unity. The kind of cooperation the Pan American nations enjoy today is based on mutual respect for the individual characteristics that distinguish us, as well as the long-standing ties that unite us. Pan American Day is a welcome opportunity to recognize this cooperation and the impressive progress we have made together.

On this Pan American Day of 1984, the people of the United States extend warm greetings to all of their neighbors in the Americas, and reaffirm their active support for the Organization of American States and the principles for which it stands.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim Saturday, April 14, 1984, as Pan American Day, and the week beginning April 8, 1984, as Pan American Week. I urge the Governors of the fifty States, and the Governor of the Commonwealth of Puerto Rico, and officials of the other areas under the flag of the United States of America to honor these observances with appropriate activities and ceremonies.

IN WITNESS WHEREOF, I have hereunto set my hand this 2nd day of April, in the year of our Lord nineteen hundred and eighty-four, and of the Independence of the United States of America the two hundred and eighth.

Ronald Reagan

[FR Doc. 84-9173
Filed 4-3-84; 10:37 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 5172 of April 3, 1984

National Child Abuse Prevention Month, 1984

By the President of the United States of America

A Proclamation

Abuse of children occurs in all segments of our society, in rural, suburban, and urban areas and among all racial, ethnic, and income groups. The time has come for Americans to unite in an all-out effort to eradicate child abuse, both physical and sexual, from the Nation.

Child abuse is a national concern, but it is a community and family problem first, and the answers must be found at the community level. Most physical and emotional violence takes place within the family. All Americans aware of the problem of child abuse must work for an end of this tragedy.

There is a place for everyone in this effort. By being a good neighbor to the family next door who may be under stress, Americans can be an enormous help. Our schools have an important role to play by educating children about parental roles and responsibilities, values, and appropriate behavior in the family setting. We must do what we can to reverse the trend of abused children becoming abusive parents. In addition, voluntary community self-help groups such as Parents Anonymous are taking positive steps to break this cycle.

In recognition of the need to find ways to prevent the agony of child abuse from continuing in future generations, the Congress, by Senate Joint Resolution 161, has designated the month of April 1984 as "National Child Abuse Prevention Month" and has authorized and requested the President to issue a proclamation in observance of this period.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the month of April 1984, as National Child Abuse Prevention Month. We must find a way to leave our future generations a priceless legacy—the confidence and trust resulting from a secure childhood.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of April, in the year of our Lord nineteen hundred and eighty-four, and of the Independence of the United States of America the two hundred and eighth.

Ronald Reagan

[FR Doc. 84-9283
Filed 4-3-84; 4:45 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 5173 of April 3, 1984

Mother's Day, 1984

By the President of the United States of America

A Proclamation

By tradition, the second Sunday in May is designated as Mother's Day, a day on which we honor and think about our mothers.

Almost every woman in our Nation looks forward to the rewards and joys of motherhood without overlooking the long-term effort that raising children demands. We are grateful to mothers for their willingness to give of themselves for their children's well-being, for their wholehearted belief in their offspring, for their love, for being wellsprings of hope, and for all the support they lend to us throughout life.

Motherhood is both a great responsibility and one of the most unique, rewarding, and pleasurable experiences life has to offer. Just as the family is the basis of a strong nation, so dedicated mothers are frequently the key to strong families. The quality and scope of their activities, as well as their overriding concern for the well-being of their families and the future of our country, inspire and strengthen us as individuals and as a Nation.

In recognition of the contributions of all mothers to their families and to the Nation, the Congress, by a joint resolution approved May 8, 1914 (38 Stat. 770), designated the second Sunday in May each year as Mother's Day and requested the President to call for its appropriate observance.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby request that Sunday, May 13, 1984, be observed as Mother's Day. I direct Government officials to display the flag of the United States on all Federal government buildings, and I urge all citizens to display the flag at their homes and other suitable places on that day.

IN WITNESS WHEREOF, I have hereunto set my hand this 3rd day of April, in the year of our Lord nineteen hundred and eighty-four, and of the Independence of the United States of America the two hundred and eighth.

Ronald Reagan

[FR Doc. 84-9284
Filed 4-3-84; 4:46 pm]
Billing code 3195-01-M

Presidential Documents

Executive Order 12472 of April 3, 1984

Assignment of National Security and Emergency Preparedness Telecommunications Functions

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Communications Act of 1934, as amended (47 U.S.C. 151), the National Security Act of 1947, as amended, the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061), the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2251), the Disaster Relief Act of 1974 (42 U.S.C. 5121), Section 5 of Reorganization Plan No. 1 of 1977 (3 C.F.R. 197, 1978 Comp.), and Section 203 of Reorganization Plan No. 3 of 1978 (3 C.F.R. 389, 1978 Comp.), and in order to provide for the consolidation of assignment and responsibility for improved execution of national security and emergency preparedness telecommunications functions, it is hereby ordered as follows:

Section 1. *The National Communications System.* (a) There is hereby established the National Communications System (NCS). The NCS shall consist of the telecommunications assets of the entities represented on the NCS Committee of Principals and an administrative structure consisting of the Executive Agent, the NCS Committee of Principals and the Manager. The NCS Committee of Principals shall consist of representatives from those Federal departments, agencies or entities, designated by the President, which lease or own telecommunications facilities or services of significance to national security or emergency preparedness, and, to the extent permitted by law, other Executive entities which bear policy, regulatory or enforcement responsibilities of importance to national security or emergency preparedness telecommunications capabilities.

(b) The mission of the NCS shall be to assist the President, the National Security Council, the Director of the Office of Science and Technology Policy and the Director of the Office of Management and Budget in:

(1) the exercise of the telecommunications functions and responsibilities set forth in Section 2 of this Order; and

(2) the coordination of the planning for and provision of national security and emergency preparedness communications for the Federal government under all circumstances, including crisis or emergency, attack, recovery and reconstitution.

(c) The NCS shall seek to ensure that a national telecommunications infrastructure is developed which:

(1) Is responsive to the national security and emergency preparedness needs of the President and the Federal departments, agencies and other entities, including telecommunications in support of national security leadership and continuity of government;

(2) Is capable of satisfying priority telecommunications requirements under all circumstances through use of commercial, government and privately owned telecommunications resources;

(3) Incorporates the necessary combination of hardness, redundancy, mobility, connectivity, interoperability, restorability and security to obtain, to the maximum extent practicable, the survivability of national security and emergency

preparedness telecommunications in all circumstances, including conditions of crisis or emergency; and

(4) Is consistent, to the maximum extent practicable, with other national telecommunications policies.

(d) To assist in accomplishing its mission, the NCS shall:

(1) serve as a focal point for joint industry-government national security and emergency preparedness telecommunications planning; and

(2) establish a joint industry-government National Coordinating Center which is capable of assisting in the initiation, coordination, restoration and reconstitution of national security or emergency preparedness telecommunications services or facilities under all conditions of crisis or emergency.

(e) The Secretary of Defense is designated as the Executive Agent for the NCS. The Executive Agent shall:

(1) Designate the Manager of the NCS;

(2) Ensure that the NCS conducts unified planning and operations, in order to coordinate the development and maintenance of an effective and responsive capability for meeting the domestic and international national security and emergency preparedness telecommunications needs of the Federal government;

(3) Ensure that the activities of the NCS are conducted in conjunction with the emergency management activities of the Federal Emergency Management Agency;

(4) Recommend, in consultation with the NCS Committee of Principals, to the National Security Council, the Director of the Office of Science and Technology Policy, or the Director of the Office of Management and Budget, as appropriate:

a. The assignment of implementation or other responsibilities to NCS member entities;

b. New initiatives to assist in the exercise of the functions specified in Section 2; and

c. Changes in the composition or structure of the NCS;

(5) Oversee the activities of and provide personnel and administrative support to the Manager of the NCS;

(6) Provide staff support and technical assistance to the National Security Telecommunications Advisory Committee established by Executive Order No. 12382, as amended; and

(7) Perform such other duties as are from time to time assigned by the President or his authorized designee.

(f) The NCS Committee of Principals shall:

(1) Serve as the forum in which each member of the Committee may review, evaluate, and present views, information and recommendations concerning ongoing or prospective national security or emergency preparedness telecommunications programs or activities of the NCS and the entities represented on the Committee;

(2) Serve as the forum in which each member of the Committee shall report on and explain ongoing or prospective telecommunications plans and programs developed or designed to achieve national security or emergency preparedness telecommunications objectives;

(3) Provide comments or recommendations, as appropriate, to the National Security Council, the Director of the Office of Science and Technology Policy, the Director of the Office of Management and Budget, the Executive Agent, or the Manager of the NCS, regarding ongoing or prospective activities of the NCS; and

(4) Perform such other duties as are from time to time assigned by the President or his authorized designee.

(g) The Manager of the NCS shall:

(1) Develop for consideration by the NCS Committee of Principals and the Executive Agent:

a. A recommended evolutionary telecommunications architecture designed to meet current and future Federal government national security and emergency preparedness telecommunications requirements;

b. Plans and procedures for the management, allocation and use, including the establishment of priorities or preferences, of Federally owned or leased telecommunications assets under all conditions of crisis or emergency;

c. Plans, procedures and standards for minimizing or removing technical impediments to the interoperability of government-owned and/or commercially-provided telecommunications systems;

d. Test and exercise programs and procedures for the evaluation of the capability of the Nation's telecommunications resources to meet national security or emergency preparedness telecommunications requirements; and

e. Alternative mechanisms for funding, through the budget review process, national security or emergency preparedness telecommunications initiatives which benefit multiple Federal departments, agencies, or entities. Those mechanisms recommended by the NCS Committee of Principals and the Executive Agent shall be submittted to the Director of the Office of Management and Budget.

(2) Implement and administer any approved plans or programs as assigned, including any system of priorities and preferences for the provision of communications service, in consultation with the NCS Committee of Principals and the Federal Communications Commission, to the extent practicable or otherwise required by law or regulation;

(3) Chair the NCS Committee of Principals and provide staff support and technical assistance thereto;

(4) Serve as a focal point for joint industry-government planning, including the dissemination of technical information, concerning the national security or emergency perparedness telecommunications requirements of the Federal government;

(5) Conduct technical studies or analyses, and examine research and development programs, for the purpose of identifying, for consideration by the NCS Committee of Principals and the Executive Agent, improved approaches which may assist Federal entities in fulfilling national security or emergency preparedness telecommunications objectives;

(6) Pursuant to the Federal Standardization Program of the General Services Administration, and in consultation with other appropriate entities of the Federal government including the NCS Committee of Principals, manage the Federal Telecommunications Standards Program, ensuring wherever feasible that existing or evolving industry, national, and international standards are used as the basis for Federal telecommunications standards; and

(7) Provide such reports and perform such other duties as are from time to time assigned by the President or his authorized designee, the Executive Agent, or the NCS Committee of Principals. Any such assignments of responsibility to, or reports made by, the Manager shall be transmitted through the Executive Agent.

Sec. 2. *Executive Office Responsibilities.* (a) *Wartime Emergency Functions.* (1) The National Security Council shall provide policy direction for the exercise of the war power functions of the President under Section 606 of the Communications Act of 1934, as amended (47 U.S.C. 606), should the President

issue implementing instructions in accordance with the National Emergencies Act (50 U.S.C. 1601).

(2) The Director of the Office of Science and Technology Policy shall direct the exercise of the war power functions of the President under Section 606 (a), (c)–(e), of the Communications Act of 1934, as amended (47 U.S.C. 606), should the President issue implementing instructions in accordance with the National Emergencies Act (50 U.S.C. 1601).

(b) *Non-Wartime Emergency Functions.* (1) The National Security Council shall:

a. Advise and assist the President in coordinating the development of policy, plans, programs and standards within the Federal government for the identification, allocation, and use of the Nation's telecommunications resources by the Federal government, and by State and local governments, private industry and volunteer organizations upon request, to the extent practicable and otherwise consistent with law, during those crises or emergencies in which the exercise of the President's war power functions is not required or permitted by law; and

b. Provide policy direction for the exercise of the President's non-wartime emergency telecommunications functions, should the President so instruct.

(2) The Director of the Office of Science and Technology Policy shall provide information, advice, guidance and assistance, as appropriate, to the President and to those Federal departments and agencies with responsibilities for the provision, management, or allocation of telecommunications resources, during those crises or emergencies in which the exercise of the President's war power functions is not required or permitted by law;

(3) The Director of the Office of Science and Technology Policy shall establish a Joint Telecommunications Resources Board (JTRB) to assist him in the exercise of the functions specified in this subsection. The Director of the Office of Science and Technology Policy shall serve as chairman of the JTRB; select those Federal departments, agencies, or entities which shall be members of the JTRB; and specify the functions it shall perform.

(c) *Planning and Oversight Responsibilities.* (1) The National Security Council shall advise and assist the President in:

a. Coordinating the development of policy, plans, programs and standards for the mobilization and use of the Nation's commercial, government, and privately owned telecommunications resources, in order to meet national security or emergency preparedness requirements;

b. Providing policy oversight and direction of the activities of the NCS; and

c. Providing policy oversight and guidance for the execution of the responsibilities assigned to the Federal departments and agencies by this Order.

(2) The Director of the Office of Science and Technology Policy shall make recommendations to the President with respect to the test, exercise and evaluation of the capability of existing and planned communications systems, networks or facilities to meet national security or emergency preparedness requirements and report the results of any such tests or evaluations and any recommended remedial actions to the President and to the National Security Council;

(3) The Director of the Office of Science and Technology Policy or his designee shall advise and assist the President in the administration of a system of radio spectrum priorities for those spectrum dependent telecommunications resources of the Federal government which support national security or emergency preparedness functions. The Director also shall certify or approve priorities for radio spectrum use by the Federal government, including the resolution of any conflicts in or among priorities, under all conditions of crisis or emergency; and

(4) The National Security Council, the Director of the Office of Science and Technology Policy and the Director of the Office of Management and Budget shall, in consultation with the Executive Agent for the NCS and the NCS Committee of Principals, determine what constitutes national security and emergency preparedness telecommunications requirements.

(d) *Consultation with Federal Departments and Agencies.* In performing the functions assigned under this Order, the National Security Council and the Director of the Office of Science and Technology Policy, in consultation with each other, shall:

(1) Consult, as appropriate, with the Director of the Office of Management and Budget; the Director of the Federal Emergency Management Agency with respect to the emergency management responsibilities assigned pursuant to Executive Order No. 12148, as amended; the Secretary of Commerce, with respect to responsibilities assigned pursuant to Executive Order No. 12046; the Secretary of Defense, with respect to communications security responsibilities assigned pursuant to Executive Order No. 12333; and the Chairman of the Federal Communications Commission or his authorized designee; and

(2) Establish arrangements for consultation among all interested Federal departments, agencies or entities to ensure that the national security and emergency preparedness communications needs of all Federal government entities are identified; that mechanisms to address such needs are incorporated into pertinent plans and procedures; and that such needs are met in a manner consistent, to the maximum extent practicable, with other national telecommunications policies.

(e) *Budgetary Guidelines.* The Director of the Office of Management and Budget, in consultation with the National Security Council and the NCS, will prescribe general guidelines and procedures for reviewing the financing of the NCS within the budgetary process and for preparation of budget estimates by participating agencies. These guidelines and procedures may provide for mechanisms for funding, through the budget review process, national security and emergency preparedness telecommunications initiatives which benefit multiple Federal departments, agencies, or entities.

Sec. 3. *Assignment of Responsibilities to Other Departments and Agencies.* In order to support and enhance the capability to satisfy the national security and emergency preparedness telecommunications needs of the Federal government, State and local governments, private industry and volunteer organizations, under all circumstances including those of crisis or emergency, the Federal departments and agencies shall perform the following functions:

(a) *Department of Commerce.* The Secretary of Commerce shall, for all conditions of crisis or emergency: (1) Develop plans and procedures concerning radio spectrum assignments, priorities and allocations for use by Federal departments, agencies and entities; and

(2) Develop, maintain and publish policy, plans, and procedures for the control and allocation of frequency assignments, including the authority to amend, modify or revoke such assignments, in those parts of the electromagnetic spectrum assigned to the Federal government.

(b) *Federal Emergency Management Agency.* The Director of the Federal Emergency Management Agency shall:

(1) Plan for and provide, operate and maintain telecommunications services and facilities, as part of its National Emergency Management System, adequate to support its assigned emergency management responsibilities;

(2) Advise and assist State and local governments and volunteer organizations, upon request and to the extent consistent with law, in developing plans and procedures for identifying and satisfying their national security or emergency preparedness telecommunications requirements;

(3) Ensure, to the maximum extent practicable, that national security and emergency preparedness telecommunications planning by State and local

governments and volunteer organizations is mutually supportive and consistent with the planning of the Federal government; and

(4) Develop, upon request and to the extent consistent with law and in consonance with regulations promulgated by and agreements with the Federal Communications Commission, plans and capabilities for, and provide policy and management oversight of, the Emergency Broadcast System, and advise and assist private radio licensees of the Commission in developing emergency communications plans, procedures and capabilities.

(c) *Department of State.* The Secretary of State, in accordance with assigned responsibilities within the Diplomatic Telecommunications System, shall plan for and provide, operate and maintain rapid, reliable and secure telecommunications services to those Federal entities represented at United States diplomatic missions and consular offices overseas. This responsibility shall include the provision and operation of domestic telecommunications in support of assigned national security or emergency preparedness responsibilities.

(d) *Department of Defense.* In addition to the other responsibilities assigned by this Order, the Secretary of Defense shall:

(1) Plan for and provide, operate and maintain telecommunications services and facilities adequate to support the National Command Authorities and to execute the responsibilities assigned by Executive Order No. 12333; and

(2) Ensure that the Director of the National Security Agency provides the technical support necessary to develop and maintain plans adequate to provide for the security and protection of national security and emergency preparedness telecommunications.

(e) *Department of Justice.* The Attorney General shall, as necessary, review for legal sufficiency, including consistency with the antitrust laws, all policies, plans or procedures developed pursuant to responsibilities assigned by this Order.

(f) *Central Intelligence Agency.* The Director of Central Intelligence shall plan for and provide, operate, and maintain telecommunications services adequate to support its assigned responsibilities, including the dissemination of intelligence within the Federal government.

(g) *General Services Administration.* Except as otherwise assigned by this Order, the Administrator of General Services, consistent with policy guidance provided by the Director of the Office of Management and Budget, shall ensure that Federally owned or managed domestic communications facilities and services meet the national security and emergency preparedness requirements of the Federal civilian departments, agencies and entities.

(h) *Federal Communications Commission.* The Federal Communications Commission shall, consistent with Section 4(c) of this Order:

(1) Review the policies, plans and procedures of all entities licensed or regulated by the Commission that are developed to provide national security or emergency preparedness communications services, in order to ensure that such policies, plans and procedures are consistent with the public interest, convenience and necessity;

(2) Perform such functions as required by law with respect to all entities licensed or regulated by the Commission, including (but not limited to) the extension, discontinuance or reduction of common carrier facilities or services; the control of common carrier rates, charges, practices and classifications; the construction, authorization, activation, deactivation or closing of radio stations, services and facilities; the assignment of radio frequencies to Commission licensees; the investigation of violations of pertinent law and regulation; and the initiation of apppropriate enforcement actions;

(3) Develop policy, plans and procedures adequate to execute the responsibilities assigned in this Order under all conditions or crisis or emergency; and

(4) Consult as appropriate with the Executive Agent for the NCS and the NCS Committee of Principals to ensure continued coordination of their respective national security and emergency preparedness activities.

(i) All Federal departments and agencies, to the extent consistent with law (including those authorities and responsibilities set forth in Section 4(c) of this Order), shall:

(1) Determine their national security and emergency preparedness telecommunications requirements, and provide information regarding such requirements to the Manager of the NCS;

(2) Prepare policies, plans and procedures concerning telecommunications facilities, services or equipment under their management or operational control to maximize their capability of responding to the national security or emergency preparedness needs of the Federal government;

(3) Provide, after consultation with the Director of the Office of Management and Budget, resources to support their respective requirements for national security and emergency preparedness telecommunications; and provide personnel and staff support to the Manager of the NCS as required by the President;

(4) Make information available to, and consult with, the Manager of the NCS regarding agency telecommunications activities in support of national security or emergency preparedness;

(5) Consult, consistent with the provisions of Executive Order No. 12046, as amended, and in conjunction with the Manager of the NCS, with the Federal Communications Commission regarding execution of responsibilities assigned by this Order;

(6) Submit reports annually, or as otherwise requested, to the Manager of the NCS, regarding agency national security or emergency preparedness telecommunications activities; and

(7) Cooperate with and assist the Executive Agent for the NCS, the NCS Committee of Principals, the Manager of the NCS, and other departments and agencies in the execution of the functions set forth in this Order, furnishing them such information, support and assistance as may be required.

(j) Each Federal department or agency shall execute the responsibilities assigned by this Order in conjunction with the emergency management activities of the Federal Emergency Management Agency, and in regular consultation with the Executive Agent for the NCS and the NCS Committee of Principals to ensure continued coordination of NCS and individual agency telecommunications activities.

Sec. 4. *General Provisions.* (a) All Executive departments and agencies may issue such rules and regulations as may be necessary to carry out the functions assigned under this Order.

(b) In order to reflect the assignments of responsibility provided by this Order,

(1) Sections 2–414, 4–102, 4–103, 4–202, 4–302, 5–3, and 6–101 of Executive Order No. 12046, as amended, are revoked;

(2) The Presidential Memorandum of August 21, 1963, as amended, entitled "Establishment of the National Communications System", is hereby superseded; and

(3) Section 2–411 of Executive Order No. 12046, as amended, is further amended by deleting the period and inserting ", except as otherwise provided by Executive Order No. " and inserting the number assigned to this Order.

(c) Nothing in this Order shall be deemed to affect the authorities or responsibilities of the Director of the Office of Management and Budget, or any Office or official thereof; or reassign any function assigned any agency under the Federal Property and Administrative Services Act of 1949, as amended; or

under any other law; or any function vested by law in the Federal Communications Commission.

Sec. 5. This Order shall be effective upon publication in the Federal Register.

Ronald Reagan

THE WHITE HOUSE,
April 3, 1984.

[FR Doc. 84-9285
Filed 4-3-84; 4:47 p.m]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 49, No. 67
Thursday, April 5, 1984

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 week.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

7 CFR Part 713

Feed Grain, Rice, Upland Cotton, and Wheat Programs for Crop Years 1982–1985

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Final rule.

SUMMARY: An interim rule regarding feed grain, rice, upland cotton, and wheat programs published at 48 FR 1679 is adopted as a final rule with certain technical amendments. These amendments add and revise certain provisions of the regulation for clarification purposes and to give producers more flexibility in complying with program requirements. Other limited amendments have been made to improve the effectiveness of the program.

EFFECTIVE DATE: April 5, 1984.

FOR FURTHER INFORMATION CONTACT: William Harshaw, ASCS, (202) 382–9878.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures implementing Executive Order 12291 and Departmental Regulation No. 1512–1 and has been classified "not major." It has been determined that this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The titles and numbers of the Federal assistance program to which this final rule applies are: Cotton Production Stabilization, 10.052; Feed Grain Production Stabilization, 10.055; Rice Production Stabilization, 10.065; and Wheat Production Stabilization, 10.058; as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since the Agricultural Stabilization and Conservation Service (ASCS) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Discussion of Comments

An interim rule was published at 48 FR 1679, Jan. 14, 1983 which set forth the regulations governing the wheat, feed grain, upland cotton and rice programs and requested comments from interested persons. Only one written comment was received with respect to that interim rule. The commenter believed that the provisions of § 713.113 pertaining to assignments were also applicable to assignments under the special Payment-in-Kind Program. This is incorrect. The regulations governing the assignments of commodities to be received as payment-in-kind compensation are found at 7 CFR Part 770. Part 770 provides that commodities to be received as payment-in-kind compensation may be assigned only if the assignment is made on Form CCC–479, Assignment of Payment-In-Kind, is executed by the assignor and assignee and is filed with the county ASC committee.

Amendments to the Interim Rule

It has been determined after further review that certain technical revisions and clarifications should be made with respect to the provisions of the interim rule which were published at 48 FR 1679. It is not believed that these changes are of such significance that requesting further public comment would be necessary. The following is an explanation of the changes which have been made to the interim rule:

(a) Section 713.3 includes a definition of "considered planted acreage." Producers who participate in production adjustment programs and reduce their planted acreage of a crop are credited with having that acreage considered as planted to that crop for the purpose of determining production history in order to establish acreage bases for farms. This definition omitted acreage which is diverted from the production of crops under the PIK Program which is provided for in 7 CFR Part 770. If the acreage diverted from the production of crops under the PIK Program were not included in the definition of "considered planted acreage" for history purposes in the determination of acreage bases, producers would be discouraged from participation in any such program which is announced. Accordingly, the definition is expanded to include this acreage.

(b) Section 713.4 provides that mixtures of crops shall be considered to be the predominant crop for the purpose of determining the acreage of program crops (i.e., wheat, feed grains, upland cotton and rice). Popcorn and sweet corn are excluded from the definition of "corn" but may be harvested for silage in the same manner as field corn. Under the provisions of the interim rule, for example, producers could plant 60 percent popcorn and 40 percent field corn and have the entire acreage considered as devoted to popcorn and, therefore, not charged against the permitted acreage of corn. Such a producer would be in compliance with the acreage reduction program but would not have made a full reduction in the production of field corn. This would defeat the primary purpose of a production adjustment program. A similar situation exists with respect to the mixture of grain sorghum and sweet sorghum. Therefore, the treatment of mixtures of crops in § 713.4 has been revised to provide that a mixture of corn or grain sorghum with another crop will be considered to be a crop of corn or grain sorghum.

(c) Under the whole base phase of the 1983 PIK Program, the acreage of upland cotton planted on participating farms will be reduced to zero. In cases where no cotton was harvested on a farm in a crop year, § 713.6 of the interim rule provides that a yield, not in excess of the county weighted average yield, would be assigned to that farm for such year. Limiting the assigned farm yields to the county weighted average yield would be unfair to producers on those farms where the yields are above

average and where the producers have participated in the whole base phase of the 1983 PIK Program and reduced their planted acreage of upland cotton to zero. The limitation would mean that the yield for such farms for future years would be reduced below that for comparable farms where the producers did not participate in the program. In order to prevent this inequity, the limitation with respect to assigning yields has been deleted.

(d) Section 713.7 of the interim rule permitted adjustments in the rice acreage base for a farm if the farm was subject to red rice problems and no other land suitable for the production of red rice is available on the farm. This section has been revised to provide that any adjustments in the rice acreage base for a farm subject to red rice problems must be necessary to control red rice and such adjustments are applicable to the 1983 crop only.

(e) Paragraph (a)(2) of § 713.61 has been revised to delete the words "based crop rotation" which were included by error in the interim rule.

(f) Paragraph (b)(2) of § 713.61 permits the designation of existing hay ground as conservation use acreage provided an equivalent hay seeding is established on eligible acreage. This provision was stated in general terms in the interim rule. The paragraph has been expanded to specify the time the new seeding must be made, what must be seeded, and what constitutes an equivalent hay crop.

(g) In some crop rotations in areas which are prone to the erosion of soil by wind and water, small grains and row crops are grown on a given acreage for only 1 year during the rotation. Under the provisions of the interim rule, such acreage would not be eligible for designation as conservation use acreage. In order to avoid inequities, a new paragraph (d) has been added to § 713.61 to permit acreages which have only been cropped to small grains and row crops in 1 of the last 3 years to be designated as conservation use acreage.

(h) Paragraph (a)(2) of § 713.62 of the interim rule permits small grains to be an approved cover on conservation use acreage if the grain was disposed of before a specific deadline. However, important benefits can be derived by permitting small grains to mature. The mature grain can be utilized as food for wildlife and can result in a volunteer crop which will provide protection for the acreage through the winter. Delaying disposition of small grain on conservation use acreages also permits producers more flexibility in their farming operations. Accordingly, this paragraph has been revised to permit the deadline for the disposal of small grains on conservation use acreage to be extended if the producer requests the extension and pays the cost of a farm visit to verify that the grain was disposed of rather than harvested.

(i) Paragraph (c) of § 713.62 of the interim rule permits any crop to be used as a cover crop on conservation use acreage under certain conditions. This paragraph has been revised to prohibit the growing of any program crop, as well as soybeans, popcorn, sweet corn, and perennial or biennial vegetables, on conservation use acreage. It is recognized that closely sown corn or soybeans may be an adequate cover and have other benefits. However, permitting such crops to be grown on conservation use acreage encourages producers to delay a decision to comply with the program requirement until the final date for reporting crop acreages thus undermining the effectiveness of the program. Accordingly, the listed crops are prohibited from use as a cover crop on conservation use acreage. In addition, the use of vegetables as a cover crop is prohibited because of potentially expanded vegetable production and the resultant adverse economic impact on producers who currently rely on vegetable production for their income. The only exceptions to this rule are set forth in §§ 713.70 and 713.71.

(j) Section 713.65 of the interim rule permits orchards or vineyards to be established on conservation use acreage. This section has been revised to permit the State ASC committee to disapprove the designation of newly established orchards and vineyards as conservation use acreage when it is determined that establishing new orchards and vineyards on conservation use acreage would have an adverse economic impact on other growers.

(k) Sections 713.66–713.68 have been added which provide clarification of certain conservation use requirements and greater flexibility to producers in complying with program requirements. They include:

(1) Procedure for determining whether land which goes into nonagricultural uses during the current year would be eligible for designation as conservation use acreage,

(2) Authority for permitting the conservation use acreage to be hayed or grazed in emergency conditions, and

(3) Provisions for accepting as conservation use acreage land on which crops are grown for use as wildlife food or wildlife habitat.

The Office of Management and Budget has approved the information collection requirements contained in these regulations under the provisions of 44 U.S.C. Chapter 35 and OMB Numbers 0560–0092, 0560–0650, 0560–0091, 0560–0030, and 0560–0071 have been assigned.

List of Subjects in 7 CFR Part 713

Acreage allotments, Cotton, Feed Grains, Price support programs, Wheat and rice.

Accordingly the interim rule published at 48 FR 1679, Jan. 14, 1983 is hereby adopted as a final rule, with the following changes:

1. The table of contents is amended by adding §§ 713.66–713.68, and 713.116 to read as follows:

Sec.

* * * * *

713.66 Land going out of agricultural production.
713.67 Emergency grazing or harvesting.
713.68 Wildlife food or habitat.

* * * * *

713.116 Paperwork Reduction Act assigned numbers.

2. Section 713.3 is amended by revising paragraph (b)(2)(i) to read as follows:

§ 713.3 Definitions.

* * * * *

(b) * * *

(2) * * *

(i) Any acreage required to be devoted to conservation uses under a set-aside, acreage reduction, or diversion program as prescribed in this Part or under a payment-in-kind diversion program as prescribed in Part 770 of this Chapter.

* * * * *

3. Section 713.4 is amended by revising paragraph (c) to read as follows:

§ 713.4 Determining crop acreages.

* * * * *

(c) The county committee shall consider mixtures of crops to be the crop that is predominant in the mixture, except as follows:

(1) When a crop of barley, oats, or wheat is the first seeded crop in a mixture of small grains seeded or volunteered at different times, the mixture is considered to be the crop of barley, oats, or wheat which is first seeded.

(2) When corn or grain sorghum is mixed with another crop in the same row, the mixture shall be considered to be corn or grain sorghum, as applicable.

4. Section 713.6 is amended by revising paragraph (b)(1) and adding paragraph (b)(4) to read as follows:

§ 713.6 Farm yields.

* * * * *

(b) * * *

If no acreage of the crop was grown on the farm for a year, a yield for the crop may be assigned for the farm for such year based upon the actual yields for similar farms in the county or surrounding area.

* * * * *

(4) The Deputy Administrator may prescribe a limitation on the amount by which an upland cotton yield may be reduced from one year to the next year.

* * * * *

5. Section 713.7 is amended by revising paragraph (f) to read as follows:

§ 713.7 Crop acreage bases.

* * * * *

(f) For 1983, adjustments will be permitted in the rice acreage base established for a farm in accordance with instructions to be issued by the Deputy Administrator if the farm is subject to red rice problems and an adjustment is necessary to prevent or control such red rice problems.

6. Section 713.61 is amended by revising paragraphs (a)(2) and (b)(2) and adding paragraph (d) to read as follows:

§ 713.61 Eligible land.

Conservation use acreage:

(a) For 1982, must be cropland that was:

* * * * *

(2) Devoted to a small grain or row crop before the previous 2 years as part of an established crop rotation practice which is used by the county committee to establish the acreage base for the farm; or

* * * * *

(b) * * *

(2) Devoted to grasses or legumes for hay, seed, or pasture in 2 of the last 3 years in rotation with small grains or row crops if an equal replacement acreage is seeded to a cover of grasses, legumes, or a mixture of these in the spring or summer of the current year or the fall of the preceding year. Hay includes hay, green chop, silage, and processed hay, such as alfalfa pellets. The replacement acreage:

(i) Must be seeded on cropland that would have been eligible for designation as conservation use acreage under paragraph (a), (b), or (d) of this section.

(ii) May be seeded with a nurse crop, which may be harvested for grain.

(iii) Must be seeded to a perennial grass or legume crop if the old acreage was in a perennial grass or legume in 2 of the last 3 years.

(iv) May not also be designated as conservation use acreage.

* * * * *

(d) May be cropland that does not meet the requirements of paragraph (b) of this section if the conservation use acreage requirement exceeds the total of all of the cropland, including the cropland planted in the current year which is eligible to be designated according to paragraph (b) of this section. In these cases, the cropland must be designated in the following order:

(1) All cropland eligible under paragraph (b) of this section even though the acreage may already have been planted in the current year.

(2) All cropland that was devoted to small grains or row crops in 1 of the last 3 years.

(3) All cropland that was not devoted to small grains or row crops in the last 3 years.

7. Section 713.62 is amended by revising paragraph (a)(2) and (c) introductory text to read as follows:

§ 713.62 Approved cover and practices.

(a) * * *

(2) Small grains and rice, including volunteer stands other than weeds that meet the criteria set forth by the State committee, except that such grain (i) must have been planted too late to form grain, or (ii) must be disposed of before the disposal deadline, unless the producer requests an extension of the deadline and pays the cost of a farm visit to verify the later disposition of the grain; and

* * * * *

(c) Any nonprogram crop, except soybeans, popcorn, sweet corn and perennial or biennial vegetables, may be planted as a cover on conservation use acreage provided that the following conditions are met:

* * * * *

8. Section 713.65 is revised to read as follows:

§ 713.65 Orchards, vineyards, and nursery stock.

Unless the State committee determines otherwise, the entire area of an orchard, vineyard, or nursery meeting the minimum size requirements in Part 718 of this Chapter is eligible to be designated as conservation use acreage if the trees or vines were planted in the current year or the fall of the previous year and such land meets the eligibility requirements of § 713.61.

9. Sections 713.66 through 713.68 are added to read as follows:

§ 713.66 Land going out of agricultural production.

If the county committee determines that the designated conservation use acreage may be devoted to a nonagricultural use during the current year, the operator must establish that the land, in the absence of the program, would have been planted to a program crop.

§ 713.67 Emergency grazing or harvesting.

Conservation use acreage may be hayed or grazed in emergency conditions in accordance with guidelines issued by the Deputy Administrator.

§ 713.68 Wildlife food or habitat.

(a) Land devoted to wildlife food plots that meets requirements determined by the State ASC committee, in consultation with wildlife agencies, is eligible to be designated as conservation use acreage. Program crops may be grown on such acreage and small grains need not be disposed of by the disposal deadline. However, the requirements of § 713.61 must also be met.

(b) Land which is owned or operated by State or Federal agencies and which is planted to grain for wildlife for the agency is not eligible to be designated as conservation use acreage.

10. Section 713.116 is added to read as follows:

§ 713.116 Paperwork Reduction Act assigned numbers.

The information collection requirements contained in these regulations (7 CFR Part 713) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Control Numbers 0560–0092, 0560–0650, 0560–0091, 0560–0030, and 0560–0071.

(7 U.S.C. 1441, 1444, 1444d, 1445b–1, 1445b–2, 1445b, 1445h, 1421 note, 1501 note)

Signed at Washington, D.C. on March 23, 1984.

Everett Rank,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 84-9066 Filed 4-4-84; 8:45 am]

BILLING CODE 3410-05-M

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Reg. 600]

Navel Oranges Grown in Arizona and Designated part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona navel oranges that may be shipped to market during the period April 6–12, 1984. Such action is needed to provide for orderly marketing of fresh navel oranges for this period due to the marketing situation confronting the oranges industry.

EFFECTIVE DATE: April 6, 1984.

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

SUPPLEMENTARY INFORMATION: *Findings.* This rule has been reviewed under USDA procedures and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This regulation is issued under the marketing agreement, as amended, and Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and designated part of California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendation and information submitted by the Navel Orange Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the Act.

This action is consistent with the marketing policy for 1983–84. The marketing policy was recommended by the committee following discussion at a public meeting on September 27, 1983. The committee met again publicly on March 27, 1984, at Ventura, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of navel oranges deemed advisable to be handled during the specified week. The committee reports the demand for navel oranges is good.

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

List of subjects in 7 CFR Part 907

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

PART 907—[AMENDED]

1. Section 907.900 is added as follows:

§ 907.900 Navel Orange Regulation 600.

The quantities of navel oranges grown in California and Arizona which may be handled during the period April 6, 1984 through April 12, 1984, are established as follows:

(a) *District 1:* 1,800,000 cartons;
(b) *District 2:* Unlimited cartons;
(c) *District 3:* Unlimited cartons;
(d) *District 4:* Unlimited cartons.

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

Dated: March 30, 1984.

Russell L. Hawes,

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

[FR Doc. 84-9063 Filed 4-4-84; 8:45 am]
BILLING CODE 3410-02-M

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Reg. Z; TIL-1]

Truth in Lending; Official Staff Commentary Update

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final official staff interpretation.

SUMMARY: The Board is publishing in final form changes to the official staff commentary to Regulation Z (Truth in Lending), 12 CFR Part 226. The commentary applies and interprets the requirements of Regulation Z with regard to consumer credit transactions and is a substitute for individual staff interpretations of the regulation. The commentary revisions address a variety of questions that have arisen about the regulation, such as the proper treatment of certain mortgage guarantee insurance premiums and certain types of variable-rate transactions, and the disclosure of the "total of payments" in closed-end credit transactions. Final action is being delayed on the proposal regarding the disclosure of fees in interchange or shared systems.

EFFECTIVE DATE: April 1, 1984, but reliance optional until October 1, 1984.

FOR FURTHER INFORMATION CONTACT: The following attorneys in the Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, at (202) 452–2412 or (202) 452–3867:

Subpart A—Ruth Amberg, Steven Zeisel
Subpart B—Richard Garabedian, Lynn Goldfaden
Subpart C—Clarence Cain, Susan Werthan
Subpart D—Rugenia Silver

SUPPLEMENTARY INFORMATION:

I. General

Effective October 13, 1981, an official staff commentary was published to interpret Regulation Z (12 CFR Part 226). The commentary is designed to provide guidance to creditors in applying the regulation to specific transactions. The commentary is updated periodically to address significant questions that arise. This is the third update to the commentary; the first was in September 1982 (47 FR 41338) and the second was in April 1983 (48 FR 14882). The changes are effective on April 1, 1984. Although creditors are free to rely on the provisions as of that date and are protected if they do so, they need not follow the revisions until October 1, 1984, the uniform effective date provided for in Section 105(d) of the revised Truth in Lending Act.

II. Commentary revisions

Following is a brief description of the revisions to the commentary and how they differ, if at all, from those proposed.

Subpart A—General

Section 226.2—Definitions and Rules of Construction

2(a)(17) "Creditor". The last sentence of comment 2(a)(17)(i)–7 is deleted because it contains a cross-reference to the commentary discussing "arranger of credit," which was deleted in April 1983 (48 FR 14882). The sentence should have been deleted at that time.

Section 226.4—Finance Charge

4(b) Examples of Finance Charges

Paragraph 4(b)(2). No final action on proposed comment 4(b)(2)–2 is being taken at this time. The proposal excepts from the finance charge certain fees imposed on cardholders for accessing credit through electronic terminals in interchange or shared systems. Final action on this proposal is being postponed in order to consider the issues more fully and to further investigate operational concerns, as well as to consider any additional issues that might be raised in response to proposed

questions 7–15.5 and 9–31.5 of the update to the Regulation E commentary (49 FR 2204). Final action is also delayed on the proposed addition to comment 6(b)–1, which provides that certain disclosure requirements would be retained for fees excepted from the finance charge.

4(c) Charges Excluded From the Finance Charge

Paragraph 4(c)(5). Comment 4(c)(5)–2 is added to explain the correct treatment of mortgage insurance premiums and other charges when they are paid at or before settlement by the noncreditor seller. This is most likely to arise in the case of FHA mortgage insurance premiums, which the Department of Housing and Urban Development now collects in a lump sum rather than periodically. The creditor should treat the amount of the payment made by the seller as seller's points and exclude it from the finance charge.

The final comment has been revised from the proposal to eliminate some of the restrictions on the payments to which it applies and to explain the use of estimates when disclosures must be made before the creditor knows who will pay the fee.

Subpart B—Open-end Credit

Section 226.6—Initial Disclosure Statement

6(a) Finance Charge. Comment 6(a)(2)–10 is added to address the disclosure of discounted variable-rate plans on the initial disclosure statement. The comment has been expanded from the proposal to provide examples of the types of plans covered by the interpretation, to give additional guidance on the required disclosures, and to make clear that the creditor may use the disclosure options set forth in comment 6(a)(2)–3 in disclosing the current "Indexed" rate.

The staff is aware that, in the absence of any additional interpretive material, creditors could reasonably have applied the variable-rate provisions of the commentary in different ways to discounted variable-rate plans, and that, therefore, creditors may have given different disclosures for these plans. Because of possible confusion in this area, comment 6(a)(2)–10 has been added to explain creditors' initial disclosure statement responsibilities with regard to these plans.

6(b) Other Charges. No final action is being taken at this time on the proposed addition to comment 6(b)–1. The proposal provides that certain intercharge fees excepted from the finance charge under proposed comment 4(b)(2)–2 must still be disclosed as "other charges" under §§ 226.6(b) and 226.7(h). Final action is being delayed for the reasons set forth in the discussion of proposed comment 4(b)(2)–2.

Section 226.12—Special Credit Card Provisions

12(b)(3) Notification to Card Issuer. Comment 12(b)(3)–3 is added to point out that, under the regulation, the liability protections of § 226.12 are not dependent upon whether the consumer follows the error resolution procedures of § 226.13. Editorial changes were made to the proposal to clarify the relationship between §§ 226.12 and 226.13.

Section 226.13—Billing-Error Resolution

13(d)(1) Consumer's Right to Withhold Disputed Amount; Collection Action Prohibited. Language is added to comment 13(d)(1)–3 to clarify that finance or other charges cannot be imposed on undisputed balances, even in subsequent billing cycles, merely because the consumer withholds payment of a disputed amount. A sentence has been added to the proposal to further clarify this issue.

Paragraph 13(g)(1). Comment 13(g)(1)–1 is revised to make clear that, when the creditor notifies the consumer of amounts still owed from the resolution period, the creditor may not include finance or other charges imposed on the undisputed amounts solely because the consumer withheld payment of a disputed amount.

Section 226.14—Determination of Annual Percentage Rate

14(a) General Rule. Comment 14(a)–5 is added to clarify the circumstances under which creditors may utilize footnote 31a, regarding faulty calculation tools. The comment has been expanded from the proposal to provide further guidance on the types of errors that may be subject to the footnote.

Section 226.16—Advertising

A new comment 16–2 has been added to permit open-end credit advertisers to use readily understandable abbreviations, such as "APR", as an expression of the annual percentage rate.

16(b) Advertisement of Terms That Require Additional Disclosures. Comment 16(b)–4 is modified to describe several ways of satisfying the required disclosure of the annual percentage rate in an advertisement for a variable-rate plan. Language has been added to clarify that disclosure of both the current rate and the fact that the rate may vary is required in advertisements for variable-rate open-end credit plans.

Comment 16(b)–5 is added to explain how discounted variable-rate plans may be advertised. The comment has been expanded from the proposal 1) to clarify that an advertisement for a discounted variable-rate will be in effect; 2) to reflect that, as with any advertised variable rate, the current indexed rate must be accompanied by a disclosure that the rate may vary; and 3) to indicate that the options listed in comment 16(b)–4 for use in disclosing the annual percentage rate in an advertisement for a variable-rate plan are equally available in disclosing the current indexed rate in a discounted variable-rate plan.

Subpart C—Closed-End Credit

Section 226.17—General Disclosure Requirements

17(b) Time of Disclosures. Comment 17(b)–2 is revised to clarify the time of disclosure when an open-end credit account is converted to a closed-end transaction. Under some state laws, consummation of the closed-end transaction is deemed to occur at the same time as the opening of the open-end credit plan, even though the conversion may occur several years later. In these cases, the closed-end credit disclosures may be given at the time of the conversion.

Section 226.18—Content of Disclosures

18(f) Variable Rate. Comment 18(f)–8 is added to address the disclosure of discounted variable-rate transactions. The comment has been expanded from the proposal to provide examples and to respond to questions raised by the comments. The examples illustrate the use of a composite annual percentage rate and its effect on other calculations. As requested by commenters, the effect of a rate cap also has been shown in the example.

The staff is aware that, in the absence of any additional interpretive material, creditors could reasonably have applied the variable-rate provisions of the commentary in different ways to discounted variable-rate plans, and that, in fact, creditors have given different disclosures for these transactions. Because of confusion in this area, comment 18(f)–8 has been added to explain creditors' disclosure responsibilities with regard to these transactions.

18(g) Payment Schedule. Comment 18(g)–3 is added to make clear that creditors are not required to disclose the total number of payments in a

transaction involving several payment levels.

Section 226.22—Determination of the Annual Percentage Rate

22(a) Accuracy of the Annual Percentage Rate. Comment 22(a)(1)–5 is added to clarify the circumstances under which creditors may utilize footnote 45a, regarding faulty calculation tools. The comment has been expanded from the proposal to provide further guidance on the types of errors that may be subject to the footnote.

Section 226.24—Advertising

A comment has been added to the commentary to § 226.16 to permit the use of an abbreviation for "annual percentage rate" when that term is used in advertising open-end credit. Because of a difference in regulatory language between §§ 226.16 and 226.24, a companion provision to that comment has not been adopted for advertisements of closed-end credit. The issue will be considered for inclusion in any future regulatory revision.

24(b) Advertisement of Rate Finance Charge. Comment 24(b)–5 is added to explain how discounted variable-rate transactions may be advertised. In response to questions, the comment has been expanded from the proposal to describe more specifically the special rules for advertising these transactions, and to provide examples. Although a composite annual percentage rate must be shown, the discounted rate and payment amounts may be shown in conjunction with the higher rate and payments without triggering other terms under § 226.24(c). A sentence also has been added to the proposal stating that limits or caps on rates or payments need not be shown.

24(c) Advertisement of Terms that Require Additional Disclosure. The proposed revision to comment 24(c)(1)–1, which would have deleted the sentence limiting application of § 226.24(c)(1) to credit sales, has not been adopted. After consideration of the comments received, the staff believes that the proposed revision is not necessary or appropriate.

Subpart D—Miscellaneous

Section 226.28—Effect on State Laws

28(a) Inconsistent Disclosure Requirements. Comments 28(a)–11 and 28(a)–12 are added to reflect Board determinations on the effect of the Truth in Lending Act on the consumer credit laws of Mississippi and South Carolina.

List of Subjects in CFR Part 226

Advertising; Banks, banking; Consumer protection; Credit; Federal Reserve System; Finance; Penalties; Truth in lending.

III. Text of Revisions

The revisions to the commentary (Supplement I to Part 226) read as follows:

Supplement I—Official Staff Commentary—TIL–1

Subpart A—General

* * * * *

1. The commentary to section 226.2 is amended by removing the last sentence of comment 2(a)(17)(i)–7.

* * * * *

2. The commentary to section 226.4 is amended by adding comment 4(c)(5)–2, to read as follows:

Section 226.4—Finance Charge

* * * * *

4(c) Charges excluded from the finance charge.

* * * * *

Paragraph 4(c)(5).

* * * * *

2. *Other seller-paid amounts.* Mortgage insurance premiums and other charges are sometimes paid at or before consummation or settlement on the borrower's behalf by a noncreditor seller. In such cases, the creditor should treat the payment made by the seller as seller's points and exclude it from the finance charge. A creditor who gives disclosures before the payment has been made should base them on the best information reasonably available, as called for by the estimate provisions of the regulation.

* * * * *

Subpart B—Open-End Credit

* * * * *

3. The commentary to section 226.6 is amended by adding comment 6(a)(2)–10, to read as follows:

Section 226.6—Initial Disclosure Statement

* * * * *

Paragraph 6(a)(2).

* * * * *

10. *Discounted variable-rate plans.* In some variable-rate plans, creditors may set an initial interest rate that is not determined by the index or formula used to make later interest rate adjustments. Typically, this initial rate is lower than the rate would be if it were calculated using the index or formula.

• For example, a creditor may calculate interest rates according to a formula using the six-month Treasury bill rate plus a 2 percent margin. If the current Treasury bill rate is 10 percent, the creditor may forego the 2 percent spread and charge only 10 percent for a limited time, instead of setting an initial rate of 12 percent, or the creditor may disregard the index or formula and set the initial rate at 9 percent.

• When creditors use an initial rate that is not calculated using the index or formula for later rate adjustments, the initial disclosure statement should reflect: (1) The initial rate (expressed as a periodic rate and a corresponding annual percentage rate), together with a statement of how long it will remain in effect; (2) the current rate that would have been applied using the index or formula (also expressed as a periodic rate and a corresponding annual percentage rate); and (3) the other variable-rate information required by footnote 12 to § 226.6(a)(2).

• In disclosing the current periodic and annual percentage rates that would be applied using the index or formula, the creditor may use any of the disclosure options described in comment 6(a)(2)–3.

* * * * *

4. The commentary to section 226.12 is amended by adding comment 12(b)(3)–3, to read as follows:

Section 226.12—Special Credit Card Provisions

* * * * *

12(b) Liability of cardholder for unauthorized use.

* * * * *

12(b)(3) Notification to card issuer.

* * * * *

3. *Relationship to § 226.13.* The liability protections afforded to cardholders in § 226.12 do not depend upon the cardholder's following the error resolution procedures in § 226.13. For example, the written notification and time limit requirements of § 226.13 do not affect the section 226.12 protections.

* * * * *

5. The commentary to section 226.13 is amended by revising comments 13(d)(1)–3 and 13(g)(1)–1, to read as follows:

Section 226.13—Billing-Error Resolution

* * * * *

13(d) Rules pending resolution

* * * * *

13(d)(1) Consumer's right to withhold disputed amount; collection action prohibited.

* * * * *

3. *Imposition of additional charges on undisputed amounts.* The consumer's withholding of a disputed amount from the total bill cannot subject undisputed balances (including new purchases or cash advances made during the present or subsequent cycles) to the imposition of finance or other charges. For example, if on an account with a free-ride period (that is, an account in which paying the new balance in full allows the consumer to avoid the imposition of additional finance charges), a consumer disputes a $2 item out of a total bill of $300 and pays $298 within the free-ride period, the consumer would not lose the free-ride as to any undisputed amounts, even if the creditor determines later that no billing error occurred. Furthermore, finance or other charges may not be imposed on any new purchases or advances that, absent the unpaid disputed balance, would not have finance or other charges imposed on them.

Finance or other charges that would have been incurred even if the consumer had paid the disputed amount would not be affected.

* * * * *

13(g) Creditor's rights and duties after resolution.

Paragraph 13(g)(1).

1. *Amounts owed by consumer.* Amounts the consumer still owes may include both minimum periodic payments and related finance and other charges that accrued during the resolution period. As explained in the commentary to § 226.13(d)(1), even if the creditor later determines that no billing error occurred, the creditor may not include finance or other charges that are imposed on undisputed balances solely as a result of a consumer's withholding payment of a disputed amount.

* * * * *

6. The commentary to section 226.14 is amended by adding comment 14(a)–5, to read as follows:

Section 226.14—Determination of Annual Percentage Rate

14(a) General rule.

* * * * *

5. *Good faith reliance on faulty calculation tools.* Footnote 31a absolves a creditor of liability for an error in the annual percentage rate or finance charge that resulted from a corresponding error in a calculation tool used in good faith by the creditor. Whether or not the creditor's use of the tool was in good faith must be determined on a case-by-case basis, but the creditor must in any case have taken reasonable steps to verify the accuracy of the tool, including any instructions, before using it. Generally, the footnote is available only for errors directly attributable to the calculation tool itself, including software programs; it is not intended to absolve a creditor of liability for its own errors, or for errors arising from improper use of the tool, from incorrect data entry, or from misapplication of the law.

* * * * *

7. The commentary to section 226.16 is amended by adding comment 16–2, revising comment 16(b)–4, adding new comment 16(b)–5, and redesignating existing comments 16(b)–5 and 6 as 16(b)–6 and 7, to read as follows:

Section 226.16—Advertising

* * * * *

2. *Expressing the annual percentage rate in abbreviated form.* Whenever the annual percentage rate is used in an advertisement for open-end credit, it may be expressed using a readily understandable abbreviation such as "APR".

* * * * *

16(b) Advertisement of terms that require additional disclosures.

* * * * *

4. *Variable-rate plans.* In disclosing the annual percentage rate in an advertisement for a variable-rate plan, as required by § 226.16(b)(2), the creditor may use an insert showing the current rate; may give the rate as of a specified recent date; or may disclose an estimated rate under § 226.5(c). The additional requirement in § 226.16(b)(2) to disclose the variable-rate feature may be satisfied by disclosing that "the annual percentage rate may vary" or a similar statement, but the advertisement need not include the information required by footnote 12 to § 226.6(a)(2).

5. *Discounted variable-rate plans—disclosure of the annual percentage rates.* The advertised annual percentage rates for discounted variable-rate plans must, in accordance with comment 6(a)(2)–10, include both the initial rate (with the statement of how long it will remain in effect) and the current indexed rate (with the statement that this second rate may vary). The options listed in comment 16(b)–4 may be used in disclosing the current indexed rate.

* * * * *

Subpart C—Closed-End Credit

8. The commentary to section 226.17 is amended by revising comment 17(b)–2, to read as follows:

Section 226.17—General Disclosure Requirements

* * * * *

17(b) Time of disclosures.

* * * * *

2. *Converting open-end to closed-end credit.* If an open-end credit account is converted to a closed-end transaction under a written agreement with the consumer, the creditor must provide a set of closed-end credit disclosures before consummation of the closed-end transaction. If consummation of the closed-end transaction occurs at the same time as the consumer enters into the open-end agreement, the closed-end credit disclosures may be given at the time of conversion. (See the commentary to § 226.5 regarding conversion of closed-end to open-end credit.)

* * * * *

9. The commentary to section 226.18 is amended by adding comments 18(f)–8 and 18(g)–3, to read as follows:

Section 226.18—Content of Disclosures

* * * * *

18(f) Variable rate.

* * * * *

8. *Discounted variable-rate transactions.* In some variable-rate transactions, creditors may set an initial interest rate that is not determined by the index or formula used to make later interest rate adjustments. Typically, this initial rate is lower than the rate would be if it were calculated using the index or formula. For example, a creditor may calculate interest rates according to a formula using the six-month Treasury bill rate plus a 2 percent margin. If the current Treasury bill rate is 10 percent, the creditor may forego the 2 percent spread and charge only 10 percent for a limited time, instead of setting an initial rate of 12 percent.

• When creditors use an initial rate that is not calculated using the index or formula for later rate adjustments, the disclosures should reflect a composite annual percentage rate based on the initial rate for as long as it is applied and, for the remainder of the term, the rate that would have been applied using the index or formula at the time of consummation.

• The effect of the multiple rates must also be reflected in the calculation and disclosure of the finance charge, total of payments, and payment schedule.

• If a loan contains a rate or payment cap that would prevent the initial rate or payment, at the time of the first adjustment, from changing to the rate determined by the index or formula at consummation, the effect of that rate or payment cap should be reflected in the disclosures.

• Because these transactions involve irregular payment amounts, an annual percentage rate tolerance of ¼ of 1 percent applies, in accordance with § 226.22(a)(3) of the regulation.

• Examples of discounted variable-rate transactions include:

—A 30-year loan for $100,000 with no prepaid finance charges and rates determined by the Treasury bill rate plus 2 percent. Rate and payment adjustments are made annually. Although the Treasury bill rate at the time of consummation is 10 percent, the creditor sets the rate for one year at 9 percent, instead of 12 percent according to the formula. The disclosures should reflect a composite annual percentage rate of 11.63 percent based on 9 percent for one year and 12 percent for 29 years. Reflecting those two rate levels, the payment schedule should show 12 payments of $804.62 and 348 payments of $1,025.31. The finance charge should be $266,463.32 and the total of payments $366,463.32.

—Same loan as above, except with a 2 percent rate cap on periodic adjustments. The disclosures should reflect a composite annual percentage rate of 11.53 percent based on 9 percent for the first year, 11 percent for the second year, and 12 percent for the remaining 28 years. Reflecting those three rate levels, the payment schedule should show 12 payments of $804.62, 12 payments of $950.09, and 336 payments of $1,024.34. The finance charge should be $265,234.76, and the total of payments $365,234.76.

* * * * *

18(g) Payment schedule.

* * * * *

3. *Total number of payments.* In disclosing the number of payments for transactions with more than one payment level, creditors may but need not disclose as a single figure the total number of payments for all levels. For example, in a transaction calling for 108 payments of $350, 240 payments of $335, and 12 payments of $330, the creditor need not state that there will be a total of 360 payments.

* * * * *

10. The commentary to section 226.22 is amended by adding comment 22(a)(1)–5, to read as follows:

Section 226.22—Determination of the Annual Percentage Rate 22(a) Accuracy of the annual percentage rate.

Paragraph 22(a)(1).

* * * * *

5. *Good faith reliance on faulty calculation tools.* Footnote 45a absolves a creditor of liability for an error in the annual percentage rate or finance charge that resulted from a corresponding error in a calculation tool used in good faith by the creditor. Whether or not the creditor's use of the tool was in good faith must be determined on a case-by-case basis, but the creditor must in any case have taken reasonable steps to verify the accuracy of the tool, including any instructions, before using it. Generally, the footnote is available only for errors directly attributable to the calculation tool itself, including software programs; it is not intended to absolve a creditor of liability for its own errors, or for errors arising from improper use of the tool, from incorrect data entry, or from misapplication of the law.

* * * * *

11. The commentary to section 226.24 is amended by adding comment 24(b)–5, to read as follows:

Section 226.24—Advertising

* * * * *

24(b) Advertisement of rate of finance charge.

* * * * *

5. *Discounted variable-rate transactions.* The advertised annual percentage rate for discounted variable-rate transactions must be determined in accordance with comment 18(f)–8 regarding the basis of transactional disclosures for such financing. A creditor or seller may promote the availability of the initial rate reduction in such transactions by advertising the reduced initial rate, provided the advertisement shows the limited term to which the reduced rate applies.

• Limits or caps on periodic rate or payment adjustments need not be stated. To illustrate using the second example in comment 18(f)–8, the fact that the rate is presumed to be 11 percent in the second year and 12 percent for the remaining 28 years need not be included in the advertisement.

• The advertisement may also show the effect of the discount on the payment schedule for the discount period without triggering the additional disclosures under § 226.24(c). For example, the advertisement may state that "with this discount, your monthly payments for the first year of the mortgage term will be only $577" or "this discount will reduce your monthly payments for the first year of the mortgage term by $223."

* * * * *

Subpart D—Miscellaneous

* * * * *

12. The commentary to section 226.28 is amended by adding comments 28(a)–11 and 12, to read as follows:

Section 226.28—Effect on State Laws

28(a) Inconsistent disclosure requirements.

* * * * *

11. *Preemption determination—Mississippi.* Effective October 1, 1984, the Board has determined that the following provision in the state law of Mississippi is preempted by the federal law:

• Section 63–19–31(2)(g)—Disclosure of finance charge. This disclosure is preempted in those cases in which the term "finance charge" would be used under state law to describe a different amount than the finance charge disclosed under federal law.

12. *Preemption determination—South Carolina.* Effective October 1, 1984, the Board has determined that the following provision in the state law of South Carolina is preempted by the federal law.

• Section 37–10–102(c)—Disclosure of due-on-sale clause. This provision is preempted, but only to the extent that the creditor is required to include the disclosure with the segregated federal disclosures, the state law is not preempted.

* * * * *

Board of Governors of the Federal Reserve System, March 30, 1984.

William W. Wiles,

Secretary of the Board.

[FR Doc. 84-9058 Filed 4-4-84; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 84-CE-8-AD; Amendment 39-4839]

Airworthiness Directives; Parachute Harnesses Manufactured Under TSO-C23b

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to parachute harnesses manufactured under Technical Standard Order (TSO) C23b by certain United States parachute manufacturers. It requires pull testing of all 3-Ring Inc. Part Number RW–1–82 or RW–1–83 Large Rings installed on these harnesses and removal of those which are elongated beyond acceptable limits. Some rings shipped by the ring supplier without receiving proper heat treatment may be elongated by unusually large parachute opening loads and prevent proper operation of the main canopy emergency disconnect. The required action will assure immediate release of the main parachute under emergency conditions.

DATES: Effective Date: April 9, 1984.

Compliance: As prescribed in the body of the AD.

ADDRESSES: The 3-Ring Incorporated Safety Bulletin No. 3 dated February 15, 1984, applicable to this AD may be obtained from 3-Ring, Inc., 1725 North Lexington Avenue, Deland, Florida 32720; Telephone (904) 736–8721, or its authorized dealers. A copy of this information is also contained in the Rules Docket, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Jerry Boutwell, Aerospace Engineer, Aircraft Certification Office, FAA, Central Region, 1075 Inner Loop Road, College Park, Georgia 30337; Telephone (404) 763–7407.

SUPPLEMENTARY INFORMATION: There have been reports that some of the large rings (Part Number RW–1–82 or RW–1–83) of the 3-Ring Inc. emergency release system have elongated under the opening load imposed by the main parachute. This condition may prevent the proper operation of the 3-Ring Inc. release system during an emergency by restricting or preventing passage of the second ring through the large ring. This is required for proper release of the main parachute to occur. If it is necessary to use the reserve parachute, and the main parachute cannot be released, it is highly possible that the reserve parachute will tangle with the main parachute and render both ineffective.

Investigations following such an incident disclosed that the fabrication process of the large ring was changed in the early part of 1982. After annealing of the large rings, in order to bend them, the heat treating step was unintentionally bypassed. Approximately 20% of 20,000 parts are believed to have been in the annealed state when shipped to the United States parachute harness manufacturers listed below:

Adventure Loft, Inc., Aerotech Inc., Altitude Shop, The Annex, Bill Coe, Bureau of Land Management, Rec Whse, The Chute Shop, Embury Sky Systems, Flying High, G.Q. Security Parachutes, Inc., LLB Enterprise, McLaughlin Para Center, National Parachute Supply, Inc., North American Aerodynamics, Nytech Inc., Parachute Associates, Inc., Para Flite, Inc., Para Gear Equipment Co., Para Phernalia, Para Wing SA, Pioneer Parachute Co., Inc., Ray Hara C/O Cazer Para Loft, Reltny Parachute Service, Relative Workshop, Inc., Rogersport, Sky Supplies, SSK Industries Inc., Strong Enterprises, Inc., Thomas Sports Equipment LTD, Weckbecker, Westgaard Parachute Enterprise, Westway Parachuting Enterprise.

Should these rings be elongated by an unusually large opening shock, and this condition not noted, an emergency

necessitating release of the main parachute could result in a jumper fatality. Since this condition is likely to exist on all FAA TSO C23b parachute harnesses using the 3-Ring Inc. release system, an AD is being issued applicable to the harnesses produced by the aforementioned parachute manufacturers, which requires the testing and replacement as necessary of all 3-Ring Inc. Part Numbers RW–1–82 or RW–1–83 large rings.

Because an emergency condition exists that requires the immediate adoption of the 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, Parachutes

Adoption of the Amendment

PART 39—[AMENDED]

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

PARACHUTE HARNESSES MANUFACTURED UNDER TSO–C23B

Applies to all of the following manufacturer's parachute harnesses using the 3-Ring Inc. release system:

Adventure Loft, Inc., Aerotech Inc., Altitude Shop, The Annex, Bill Coe, Bureau of Land Management, Rec Whse, The Chute Shop, Embury Sky Systems, Flying High, G.Q. Security Parachutes, Inc., LLB Enterprise, McLaughlin Para Center, National Parachute Supply, Inc., North American Aerodynamics, Nytech Inc., Parachute Associates, Inc., Para Flite, Inc., Para Gear Equipment Co., Para Phernalia, Para Wing SA, Pioneer Parachute Co., Inc., Ray Hara C/O Cazer Para Loft, Reltny Parachute Service, Relative Workshop, Inc., Rogersport, Sky Supplies, SSK Industries Inc., Strong Enterprise, Inc., Thomas Sports Equipment LTD, Weckbecker, Westgaard Parachute Enterprise, Westway Parachuting Enterprise

Compliance: Required prior to next jump, unless already accomplished. To prevent possible fouling of a reserve parachute canopy by a main canopy which cannot be separated from the harness, accomplish the following:

(a) Visually inspect the harness to determine whether or not it incorporates a 3-Ring Inc. release system, and if incorporated, whether or not the large ring of this assembly is identified by either Part Number RW–1–82 or RW–1–83.

(b) If either finding of the inspection in paragraph (a) is negative, no further action is required.

(c) If both findings of the inspection in paragraph (a) are positive, replace or test the large rings in accordance with 3-Ring Safety Bulletin No. 3 dated February 15, 1984.

(1) Replace defective rings or identify acceptable rings in accordance with the instructions in this bulletin.

(d) Replacement and testing of the large rings must be accomplished by an FAA certified Parachute Rigger, an FAA certificated Parachute Loft or the manufacturer of the parachute harness involved.

(e) An equivalent means of compliance with this AD may be used if approved by the Manager, Atlanta Aircraft Certification Office, 1075 Inner Loop Road, College Park, Georgia 30337.

This amendment becomes effective on April 9, 1984.

(Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421 and 1423); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); § 11.89 of the Federal Aviation Regulations (14 CFR Sec. 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 parachutes. 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 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 Rules Docket under the caption "ADDRESSES" at the location identified.

Issued in Kansas City, Missouri, on March 23, 1984.

Murray E. Smith,

Director, Central Region.

[FR Doc. 84–8994 Filed 4–4–84; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 83–ANE–29; Amdt. 39–4840]

Airworthiness Directives; Garrett Turbine Engine Company Model TPE331 Series Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires removal from service of certain high pressure fuel pump output drive shafts on Garrett Turbine Engine Company TPE331 series engines. The AD is prompted by reports of high pressure fuel pump output drive shaft failure which could result in engine failure.

DATES: Effective April 18, 1984.

Compliance schedule—As prescribed in body of AD.

Incorporation of Reference—The Director of the Federal Register approved the incorporation of reference of the manufacturer's service bulletin (SB) referred in this AD on April 18, 1984.

ADDRESSSES: The applicable SB may be obtained from Garrett Turbine Engine Company, 111 South 34th St., P.O. Box 5217, Phoenix, Arizona 85010; telephone (602) 231–1000.

A copy of the SB is contained in the FAA Rules Docket, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Bob Liddiard, Aerospace Engineer, ANM–174W, Western Aircraft Certification Office, Northwest Mountain Region, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009; telephone (213) 536–6380.

SUPPLEMENTARY INFORMATION: There have been 12 reports of high pressure fuel pump output drive shaft failure. This shaft drives the fuel control unit engine underspeed and overspeed governors. The high pressure fuel pump drive shaft, which is a grease packed blind assembly, can be inadvertently assembled with entrapped air. This produces high internal loads, particularly on the pump stationary bushing and increases resistance to rotation. Engineering tests have demonstrated that the shaft failure can occur as a result of this increased load on the stationary bushing. The AD requires an inspection of the fuel control/pump assembly running torque to establish whether or not the unit may be continued in service until its mandatory replacement during a routine maintenance activity. The inspection is required earlier on newer installations because improperly assembled shafts would tend to fail early in service. An unsafe condition can result from failure of the fuel pump drive shaft which provides speed signal inputs to both the fuel control overspeed and underspeed governors. The underspeed governor, upon sensing an underspeed condition (reduced or zero engine rotational speed), attempts to set fuel flow at the maximum scheduled flow rate. The disabled overspeed governor is unable to decrease this fuel flow. During takeoff or during flight, the unscheduled power can create an unsafe asymetrical power

condition for the aircraft. When the propeller is on the start locks during engine starting, the engine can accelerate to a destructive overspeed.

The Garrett Turbine Engine Company (GTEC) has issued Operating Information OI 331–10 dated September 1, 1983, to emphasize the condition and describe the effects of a shaft failure. GTEC SB TPE331–73–0121, Revision 1 dated Jan. 3, 1984, contains instructions related to this AD.

Since this condition is likely to exist or develop on other engines of the same type design, an AD is being issued which requires removal of certain high pressure fuel pump drive shafts from service on GTEC model TPE331 series engines.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedures 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

Engines, Air transportation, Aircraft, Aviation safety, Incorporation by reference.

Adoption of the Amendment

PART 39—[AMENDED]

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

Garrett Turbine Engine Company (GTEC, formerly AiResearch Manufacturing Company of Arizona)

Applicable to all series of engine models TPE331–25, –43, –47, –55, –61, –1, –2, –3, –5, –6, –10, and –11 with high pressure fuel pump drive shaft Garrett Part Number (P/N) 869196–1 installed.

Compliance is required as indicated unless already accomplished.

To prevent possible engine failure, accomplish the following:

(a) Inspect low-time engine fuel control/pump assembly to determine drive shaft running torque as specified in section 2.A.(2), "Accomplishment Instructions," of GTEC SB TPE331–73–0121, Revision 1 dated Jan. 3, 1984, equivalent approved by the Manager, Western Aircraft Certification Office, in accordance with the schedule below:

Control/pump assembly total time in service-hours	Inspect within the next
Less than 200	100 hours.
200 or more and less than 1,000	200 hours.

Remove from further service fuel control/pump assemblies having unsatisfactory inspection results.

Fuel control/pump assemblies having satisfactory inspection results may be continued in service until removed per Paragraph (b) below.

(b) Remove from service P/N 869196–1 high pressure fuel pump drive shaft at next hot section inspection, gearbox inspection, fuel pump overhaul, or engine overhaul, whichever occurs first. Replace with GTEC high pressure fuel pump drive shaft, P/N 897601–1, or equivalent approved by the Manager, Western Aircraft Certification Office.

(c) Special flight permits may be issued in accordance with Federal Aviation Regulation FAR 21.197 and FAR 21.199 to ferry aircraft to a maintenance base in order to comply with the requirements of this AD.

(d) Alternative means of compliance providing an equivalent level of safety may be used when approved by the Manager, Western Aircraft Certification Office, FAA, Northwest Mountain Region.

(e) Upon request of the operator, an FAA Maintenance Inspector, subject to prior approval of the Manager, Aircraft Certification Division, FAA, New England Region, may adjust the compliance schedule specified in this AD to permit compliance at an established inspection period of the operator if the request contains substantiating data to justify the adjustment for that operator.

The manufacturer's specifications and procedures identified and described in this directive are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1).

All persons affected by this directive who have not already received this document from the manufacturer may obtain copies upon request to Garrett Turbine Engine Company, 111 South 34th St., P.O. Box 5217, Phoenix, Arizona 85010; telephone (602) 231–1000. This document also may be examined at FAA Rules Docket 83–ANE–29, New England Region Office of the Regional Counsel, 12 New England Executive Park, Burlington, Massachusetts 01803.

This amendment becomes effective April 18, 1984.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); (49 U.S.C. 106(g) revised, Pub. L. 97–449, January 12, 1983); 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 action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11035; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

Issued in Burlington, Massachusetts, on March 23, 1984.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 84–8996 Filed 4–4–84; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 83–CE–12–AD; Amdt. 39–4830]

Airworthiness Directives; SIAI-Marchetti Models F260, F260B, and F260C (Including SF260) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises Airworthiness Directive (AD) 83–06–05, Amendment 39–4591 applicable to SIAI-Marchetti Models F260, F260B and F260C (including SF260) airplanes by deleting the repetitive dye-penetrant inspection for cracks of the nose-gear barrel joint weld at the attachment plate after these units are replaced by improved parts. Subsequent to issuance of AD 83–06–05 the manufacturer has made available a nose gear barrel which does not require inspection. This revision now makes the AD consistent with current parts availability and airworthiness requirements.

EFFECTIVE DATE: April 12, 1984.

Compliance: As prescribed in the body of the AD.

ADDRESSES: A copy of SIAI-Marchetti Service Bulletin (SB) No. 260B34A, dated October 14, 1983, applicable to this AD may be obtained from SIAI-Marchetti S.P.A., V–12070 via Indipendenza, 2, 21018 Sesto Calenda, Italy. A copy of this information is also contained in the Rules Docket, Office of the Regional Counsel, FAA, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. A. Astorga, Aircraft Certification Staff, AEU–100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium, Telephone 513.38.30; or Mr. Paul Cormaci, FAA, ACE–109, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374–6932.

SUPPLEMENTARY INFORMATION: AD 83–04–05, Amendment 39–4591 (48 FR 12343, 12344), applicable to SIAI-Marchetti Models F260, F260B and F260C airplanes requires initial and repetitive dye-penetrant inspections of the nose-gear barrels. If a crack is found, the part must

be replaced prior to further flight. Subsequent to the issuance of this AD, SIAI-Marchetti has made available improved replacement parts.

As a result SIAI-Marchetti has issued SB No. 260B34A which deletes the requirement for repetitive inspections after the new replacement parts as listed in Table "A" of the SB are installed. The Registro Aeronautico Italiano (RAI) who has responsibility and authority to maintain the continuing airworthiness of these airplanes has issued RAI AD 83-173/F260-26 Revision 1 incorporating this same information. On airplanes operated under Italian registration, this action is comparable to revision of an AD by the FAA. The FAA relies upon the findings and actions of the RAI together with FAA review of pertinent information in updating, correcting or modifying action to maintain the continued airworthiness of airplanes operated in the United States. Also, the FAA has determined that confusion may occur on certain F260 series airplanes registered in the U.S. because they may be identified and referred to by the model designation SF260 used in the country of manufacture. Therefore, the FAA is revising AD 83-06-05 by changing paragraph (a)(1) to reflect the current SIAI-Marchetti service bulletin revision; inserting a new paragraph (c) which deletes the requirement for repetitive inspections after new replacement parts, as listed in Table "A" of the SB, have been installed; reidentifying the remaining paragraphs; and including parenthetical reference to the SF260 in the applicability statements.

This amendment updates the AD and makes it consistent with presently acceptable corrective action by deleting the requirement for periodic inspections when the new replacement parts are installed. It imposes no additional burden on any person and reduces the burden on those persons installing the improved part. It also incorporates an option which provides an equal or greater level of safety that may be selected by the operator at reduced cost depending upon the usage of the airplane. Therefore, notice and public procedure hereon are unnecessary, contrary to the public interest, 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 and pursuant to the authority delegated to me by the Administrator, AD 83-06-05, Amendment 39-4591, § 39.13 of the Federal Aviation Regulations (14 CFR Section 39.13), is revised and reissued in its entirety as follows:

SIAI-Marchetti: Applies to Models F260, F260B and F260C (including SF260), (Serial Numbers up to 774 inclusive) airplanes certificated in any category.

Compliance: Required as indicated, unless already accomplished.

To preclude failure of the nose-gear barrel joint weld, accomplish the following:

(a) Within the next 100 hours time-in-service on those barrels having 400 or more hours time-in-service on the effective date of this AD or prior to the accumulation of 500 hours time-in-service on those barrels having less than 400 hours time-in-service on the effective date of this AD and thereafter at intervals not exceeding 100 hours time-in-service accomplish the following:

(1) Using a dye-penetrant method, inspect the nose-gear barrel joint weld at the attachment plate for cracks. Perform the inspection in accordance with the "Instructions" section of SIAI-Marchetti SB No. 260B34A, dated October 1, 1983, or an FAA approved equivalent.

(i) If a crack is found, prior to further flight replace the nose-gear barrel in accordance with the applicable paragraph of SB No. 260B34A.

(b) Operators who have not kept records of hours time-in-service for the nose-gear barrel must substitute airplane hours time-in-service.

(c) Replacement of the barrels in accordance with Table "A" of the SIAI-Marchetti SB No. 260B34A eliminates the requirement for the periodic inspections in paragraph (a).

(d) The intervals between the repetitive inspections required by this AD may be adjusted up to 10 percent of the specified interval to allow accomplishing these inspections concurrent with other scheduled maintenance of the airplane.

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

(f) An equivalent method of compliance with this AD may be used if approved by Manager, Aircraft Certification Staff, AEU-100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium.

This amendment revises AD 83-06-05, Amendment 39-4591, in its entirety.

This amendment becomes effective April 12, 1984.

(Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421 and 1423); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); Sec. 11.89 of the Federal Aviation Regulations (14 CFR Sec. 11.89))

Note.—The FAA has determined that this document involves an amendment that increases the level of safety in the operation of the affected aircraft by updating the AD in accordance with the latest information available to the FAA and imposes no additional burden on any person. Therefore, (1) it is not a major rule under Executive Order 12291 because no additional cost is imposed by this action, and (2) it is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Because it's anticipated impact is so minimal, it does not warrant preparation of a regulatory evaluation. Since this rule does not change the economic impact of the basic AD, and because it involves few, if any, small entities, I certify it will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Kansas City, Missouri, on March 27, 1984.

John E. Shaw,

Acting Director, Central Region.

[FR Doc. 84-8990 Filed 4-4-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 84-ASO-11]

Alteration of Transition Area, Statesboro, Georgia

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment alters the Statesboro, Georgia, transition area by revising the geographical coordinates of the Statesboro Municipal Airport and revoking two transition area arrival extensions. The coordinates of the airport are improperly listed and this action will correct the deficiency. The arrival extensions were previously designated to provide controlled airspace for aircraft executing instrument approach procedures to the airport. However, as the non-Federal radio beacon upon which the procedures were predicated has been relocated to an off-airport site, the arrival extensions are no longer required.

DATE: *Effective Date:* 0901 G.m.t., July 5, 1984.

Comments must be received on or before June 5, 1984.

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

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

FOR FURTHER INFORMATION CONTACT: Donald Ross, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box

20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

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

The Rule

The purpose of this amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to revise the coordinates of the Statesboro Municipal Airport and to raise the floor of controlled airspace from 700 to 1,200 feet above the surface in an area of approximately 12 square miles northwest and southeast of the airport. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Advisory Circular AC 70-3A dated January 3, 1983. Under the circumstances presented, the FAA concludes that there is a need to properly list the coordinates of the airport and raise the floor of controlled airspace in the vicinity of the airport. The changes relieve a restriction and are so minor I find that notice or public procedure under 5 U.S.C. 553(b) is unnecessary.

List of Subjects in 14 CFR Part 71

Aviation safety, Airspace, Transition area.

Adoption of the Amendment

§ 71.181 [Amended]

Accordingly, pursuant to the authority delegated to me, the Statesboro, Georgia, transition area under § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) (as amended) is further amended, effective 0901 G.m.t., July 5, 1984, as follows:

Statesboro, GA—[Revised]

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Statesboro Municipal Airport (Lat. 32°29'00" N., Long. 81°44'16" W.).

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); 49 U.S.C. 106(g) (Revised, Public Law 97-449, January 12, 1983))

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

Issued in East Point, Georgia, on March 26, 1984.

George R. LaCaille,

Acting Director, Southern Region.

[FR Doc. 84-8991 Filed 4-4-84; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 18

[T.D. 84-77]

Customs Regulations Amendments Relating to the Entry of Explosives for Transportation and Exportation

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to permit explosives, for which an intransit license or permit has been issued by the Department of State or the Bureau of Alcohol, Tobacco, and Firearms, to be shipped through the United States under a Transportation and Exportation entry. This action is being taken to allow importers of explosives and other prohibited merchandise that have obtained written authority to do so, to transport the articles through the United States and export them.

EFFECTIVE DATE: May 7, 1984.

FOR FURTHER INFORMATION CONTRACT: Jerry Laderberg, Entry Procedures and Penalties Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5765).

SUPPLEMENTARY INFORMATION:

Background

Section 18.21(b), Customs Regulations (19 CFR 18.21(b)), provides that narcotics and other prohibited articles may be entered into the commerce of the United States for transportation and exportation only upon written authority from the proper governmental agency and/or compliance with the regulations of such agency. However, section 553, Tariff Act of 1930, as amended (19 U.S.C. 1553), provides, in part, that *"Any merchandise, other than explosives and merchandise the importation of which is prohibited,* shown by the manifest, bill of lading, shipping receipt, or other document to be destined to a foreign country, may be entered for transportation in bond through the United States by a bonded carrier without appraisement or the payment of duties and exported under such regulations as the Secretary of the Treasury shall prescribe * * *" (Emphasis supplied.) Thus, it would appear that 19 U.S.C. 1553 prohibits the in-bond transportation of explosives, even though a license or permit is issued by the proper governmental agency authorizing the movement.

Further, 22 U.S.C. 2778, relating to the control of exports and imports of defense articles and services, provides in paragraph (a) that the President is authorized to designate those items which shall be considered as defense articles and services. The items so designated constitute the U.S. Munitions List. Paragraph (b) of 22 U.S.C. 2778 provides that with certain specified exemptions, no defense articles or services on the U.S. Munitions List may be exported or imported without a license issued in accordance with the statute or regulations issued under the statute.

The Department of State regulations set forth in 22 CFR 121.20, 123.02, and 123.03, provide that items on the U.S. Munitions List temporarily entering the United States in transit to another country, shall constitute a temporary import for which a Department of State Intransit License shall be required.

Under a well-recognized principle of legislative construction, when two provisions of statutory law appear to be in conflict, but can be interpreted to be in conformity, they should be so interpreted. Section 553, Tariff Act of 1930, predates 22 U.S.C. 2778 and its predecessor statute, 22 U.S.C. 1934, and when enacted, Congress did not contemplate the licensing procedures

implemented by the State Department with regard to the transportation and exportation of defense articles such as explosives.

While 19 U.S.C. 1553 clearly prohibits the shipment of explosives under a Transportation and Exportation (T&E) entry, § 18.21(b), Customs Regulations, allows the transportation and exportation of prohibited merchandise upon written authority from the proper governmental agency and/or compliance with the regulations of such agency.

Accordingly, by ruling #715801 M, dated October 28, 1981, Customs ruled that explosives, for which an intransit license has been issued by the Department of State, Office of Munitions Control, may be transported under a T&E entry (Customs Form 7512). The ruling involved a request by a Canadian manufacturer for permission to transport through the United States explosives manufactured in his plant in Canada and destined for exportation outside the United States. Most of the shipments were for North American Treaty Organization purposes. In effect, such transportation and exportation movement is made under the authority of the laws and regulations governing the agency which, in these circumstances, Customs believes overrides the prohibition set forth in 19 U.S.C. 1553. In the absence of such authorization from the governmental agency, the transportation and exportation movement would, of course, be denied.

Customs believes that the principles enunciated in that ruling should apply also to shipments of explosives authorized by the Bureau of Alcohol, Tobacco and Firearms (BATF) (see 27 CFR Part 47.). Thus, the issuance of the appropriate license by the Department of State or BATF would be their authorization of the requested movement of explosives under a T&E entry. Without the change to § 18.21, Customs Regulations, the public would be precluded from using the T&E procedures to ship explosives through the United States, and thus the license or permit issued by these agencies would be meaningless.

Therefore, to clarify the apparent statutory conflict, by notice published in the Federal Register on January 18, 1983 (48 FR 2134), Customs proposed to amend § 18.21 by adding a new paragraph (d) to permit explosives to be entered under a T&E entry.

Also, it was proposed to amend § 18.25, Customs Regulations (19 CFR 18.25), by removing paragraph (e) which relates only to the limited situation whereby explosives are entered on arrival from a foreign port for immediate exportation under bond by sea and are transferred directly from the importing to the exporting vessel for exportation.

Two comments were received in response to the notice. One suggested that the regulations be amended to define "explosives" because the information available is either vague or non-existent.

The issue before Customs is whether the merchandise is prohibited from entry and/or transportation in the United States. As was pointed out in ruling #715801, explosives are not *per se* prohibited from entry and/or transportation in the United States by 19 U.S.C. 1553. Customs does not believe it is necessary to define explosives in its regulations; and to do so could conflict with definitions of the term used by other agencies.

The other commenter requested that the proposal be clarified to ensure that all explosives appearing on the BATF list of explosive materials contained in 27 CFR 47.21, and other explosive materials meeting the definitions in sections 841 (C), (D), (E), and (F), title 18, U.S.C., be allowed T&E entry privileges. The same commenter also requested that the regulation provide a Department of Transportation waiver to allow T&E entries for all truck and rail shipments of explosives from Canada.

Customs believes that both of these requests are more properly addressed to the agencies having jurisdiction over explosives. For this reason, § 18.21 is revised so that the importer is directed to obtain a license or permit from the proper governmental agency. This will obviate the necessity of amending the regulations in the future if statutory or regulatory schemes are changed, or if additional agencies acquire jurisdiction over the articles.

After consideration of the comments and further review of the matter, it has been determined to adopt the proposal with the change noted above. In addition, because situations may arise in which the procedure set forth in paragraph (e) to § 18.25 may be used, it has been determined not to delete the paragraph.

Executive Order 12291

Because this document will not result in a regulation which would be a "major" rule as defined by section 1(b) of E.O. 12291, a regulatory impact analysis and review as prescribed by section 3 of the E.O. is not required.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this rule because the amendment is not expected to have significant secondary or incidental effects on a substantial number of small entities or impose or otherwise cause a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Accordingly, it is certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that the amendment will not have a significant economic impact on a substantial number of small entities.

Drafting Information

The principal author of this document was Glen E. Vereb, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Part 18

Customs duties and inspection, Explosives, Imports, Importers.

Amendments to the Regulations

Part 18, Customs Regulations (19 CFR Part 18), is amended as set forth below

Dated: March 16, 1984.

William von Raab,

Commissioner of Customs.

Approved: March 16, 1984.

John M. Walker, Jr.,

Assistant Secretary of the Treasury

PART 18—TRANSPORTATION IN BOND AND MERCHANDISE IN TRANSIT

Section 18.21 is amended by adding a new paragraph (d) to read as follows:

§ 18.21 Restricted and prohibited merchandise.

* * * * *

(d) Explosives shall not be entered for transportation and/or exportation under a transportation and exportation entry, or an immediate transportation entry unless the importer has first obtained a license or permit from the proper governmental agency.

(R.S. 251, as amended (19 U.S.C. 66), sections 502, 624, 46 Stat. 731, as amended, 759 (19 U.S.C. 1502, 1624), 77A Stat. 14 (19 U.S.C. 1202))

[FR Doc. 84-8710 Filed 4-4-84; 8:45 am]

BILLING CODE 4820-02-M

19 CFR Part 162

[T.D. 84-78]

Customs Regulations Amendment Concerning Disposition of Proceeds of Sale of Property Seized and Forfeited Other Than Under 19 U.S.C. 1952

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations concerning the disposition of the proceeds of the sale of property seized and forfeited under laws other than 19 U.S.C. 1592, when no application for remission and restoration is filed, or the application is denied. The amendment eliminates language which precludes the recovery of expenses incurred for Government labor and storage on Government-owned or Government-leased property. This change is necessary inasmuch as the prohibition of the current regulation has hindered Government enforcement efforts.

EFFECTIVE DATE: May 7, 1984.

FOR FURTHER INFORMATION CONTACT: Robert J. Pisani, Entry Procedures and Penalties Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229 (202-566-8317).

SUPPLEMENTARY INFORMATION:

Background

Section 162.51(a)(2)(iv), Customs Regulations (19 CFR 162.51(a)(2)(iv)), which was amended by T.D. 79-160, published in the **Federal Register** on June 4, 1979 (44 FR 31950), provides that the Government may not recover expenses incurred for Government labor and storage on Government-owned or Government-leased property from the proceeds of the sale of property seized and forfeited under laws enforced or administered by Customs other than under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), when no application for remission and restoration is filed or the application is denied. Prior to T.D. 79-160, section 162.51 had stated that if the forfeited property is cleared for sale, the Customs appropriation shall be reimbursed from the proceeds of the sale for *all* expenses paid from such appropriation in connection with the seizure and forfeiture of such property.

The restriction of present § 162.51(a)(2)(iv) is not contained in section 613, Tariff Act of 1930, as amended (19 U.S.C. 1613), which provides for the payment of all proper expenses of the proceedings and sale, including expenses of maintaining custody of the property.

The inability to recover expenses incurred for Government labor and storage on Government-owned or Government-leased property has hindered Government enforcement efforts, inasmuch as those expenses must be paid with funds appropriated for other purposes such as enforcement efforts. The total cost of storing and maintaining conveyances in the Southeast Customs Region (Miami) alone has exceeded $2,000,000 per year.

Accordingly, by notice published in the **Federal Register** on September 9, 1983 (48 FR 40740), it was proposed to amend § 162.51(a)(2)(iv) to eliminate the language which precludes the recovery of such expenses. Interested parties were given until November 8, 1983, to submit comments with respect to the proposed change. No comments were received in response to the notice. The amendment, therefore, is adopted as proposed.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in section 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to initial and final regulatory flexibility analyses (5 U.S.C. 603, 604) are not applicable to this change because the rule will not have a significant economic impact on a substantial number of small entities. The amendment is not expected to have significant secondary or incidental effects on a substantial number of small entities or to impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that the rule will not have a significant economic impact on a substantial number of small entities.

Drafting Information

The principal author of this document was Susan S. Terranova, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Part 162

Customs duties and inspection, Imports, Seizures and forfeitures.

Amendment to the Regulations

Part 162, Customs Regulations (19 CFR Part 162), is amended as set forth below.

Approved: March 16, 1984.

William von Raab,

Commissioner of Customs.

John M. Walker, Jr.,

Assistant Secretary of the Treasury.

PART 162—RECORDKEEPING, INSPECTION, SEARCH, AND SEIZURE

Section 162.51(a)(2)(iv) is revised to read as follows:

§ 162.51 Disposition of proceeds of sale of property seized and forfeited other than under 19 U.S.C. 1592.

(a) * * *

(2) * * *

(iv) Expenses of cartage, storage, and labor. When the proceeds are insufficient to pay these expenses fully, they shall be paid pro rata.

* * * * *

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

[FR Doc. 84-9113 Filed 4-4-84; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 442

[Docket No. 84N-0084]

Antibiotic Drugs; Cephalothin Sodium Injection

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations to provide for the inclusion of accepted standards for two new strengths of cephalothin sodium injection and two new diluents for this drug product. The manufacturer has supplied sufficient data and information to establish the drug's safety and efficacy.

DATES: Effective April 5, 1984; comments, notice of participation, and request for hearing by May 7, 1984; data, information, and analyses to justify a hearing by June 4, 1984.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joan M. Eckert, Center for Drugs and

Biologics (formerly National Center for Drugs and Biologics) (HFN–140), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4290.

SUPPLEMENTARY INFORMATION: FDA has evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to a request for approval of two new strengths (20 milligrams and 40 milligrams per milliliter) of cephalothin sodium injection and two new diluents (dextrose solution and sodium chloride solution) for this drug product. The agency has concluded that the data supplied by the manufacturer concerning this antibiotic drug are adequate to establish its safety and efficacy when the drug is used as directed in the labeling and that the regulations should be amended in Part 442 (21 CFR Part 442) to provide for the inclusion of accepted standards for the product.

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

List of Subjects in 21 CFR Part 442

Antibiotics, Cepha.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 507, 701 (f) and (g), 52 Stat. 1055–1056 as amended, 59 Stat. 463 as amended (21 U.S.C. 357, 371 (f) and (g))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), § 442.225b is amended by revising paragraph (a)(1) to read as follows:

PART 442—CEPHA ANTIBIOTIC DRUGS

§ 442.225b Cephalothin sodium injection.

(a) * * *

(1) *Standards of identity, strength, quality, and purity.* Cephalothin sodium injection is a frozen aqueous solution of cephalothin sodium with one or more suitable and harmless buffer substances. It may contain sodium chloride or dextrose. Each milliliter contains cephalothin sodium equivalent to 20 milligrams, 40 milligrams, or 100 milligrams of cephalothin. Its potency is satisfactory if it is not less than 90 percent and not more than 115 percent of the number of milligrams of cephalothin that it is represented to contain. It is sterile. It is nonpyrogenic. It passes the safety test. Its pH is not less than 6.0 and not more than 8.5. The cephalothin sodium used conforms to the standards prescribed by § 442.25a(a)(1).

* * * * *

This regulation announces standards that FDA has accepted in a request for approval of an antibiotic drug. Because this regulation is not controversial and because when effective it provides notice of accepted standards, notice and comment procedure and delayed effective date are found to be unnecessary and not in the public interest. The amendment, therefore, is effective April 5, 1984. Interested persons may, however, on or before May 7, 1984, submit written comments to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file: (1) On or before May 7, 1984, a written notice of participation and request for hearing, and (2) on or before June 4, 1984, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 430.20. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this order and filed with the Dockets Management Branch.

The procedures and requirements governing this order, a notice of participation and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 430.20.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall be effective April 5, 1984.

(Secs. 507, 701 (f) and (g), 52 Stat. 1055–1056 as amended, 59 Stat. 463 as amended (21 U.S.C. 357, 371 (f) and (g)))

Dated: March 26, 1984.

Daniel L. Michels,

Director, Office of Compliance, Center for Drugs and Biologics.

[FR Doc. 84–8045 Filed 4–4–84; 8:45 am]

BILLING CODE 4160–01–M

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21 CFR Parts 510 and 529

Animal Drugs, Feeds, and Related Products; Change of Sponsor

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for enflurane from Pitman-Moore, Inc., to Ohio Medical Anesthetics, Division of BOC, Inc.

EFFECTIVE DATE: April 5, 1984.

FOR FURTHER INFORMATION CONTACT: David L. Gordon, Center for Veterinary Medicine (formerly Bureau of Veterinary Medicine) (HFV–238), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6243.

SUPPLEMENTARY INFORMATION: Ohio Medical Anesthetics, Division of BOC, Inc., 100 Mountain Ave., Murray Hill, New Providence, NJ 07974, has informed FDA of a change in sponsor for new animal drug application (NADA) 121–291 from Pitman-Moore, Inc. Pitman-Moore, Inc., has confirmed the change of sponsor. The NADA covers use of enflurane as an inhalation anesthetic for horses.

This is an administrative change that does not in any other way affect the approval of the firm's NADA. The agency is amending the regulations to reflect the change. In addition, Ohio Medical Anesthetics, Division of BOC, Inc., has not been previously added to 21 CFR 510.600(c). Part 510 is amended to add the new sponsor.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting requirements.

21 CFR Part 529

Animal drugs, Miscellaneous use.

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 Center for Veterinary Medicine (21 CFR 5.83), Parts 510 and 529 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. Part 510 is amended in § 510.600 in paragraph (c)(1) by adding a new entry alphabetically and in paragraph (c)(2) by adding a new entry numerically to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * *	
Ohio Medical Anesthetics, Division of BOC, Inc., 100 Mountain Ave., Murray Hill, New Providence, NJ 07974	010019
* * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * *	
010019	Ohio Medical Anesthetics, Division of BOC, Inc., 100 Mountain Ave., Murray Hill, New Providence, NJ 07974.
* * * * *	

PART 529—CERTAIN OTHER DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

§ 529.810 [Amended]

2. Part 529 is amended in § 529.810 *Enflurane* in paragraph (b) by removing "011716" and inserting in its place "010019".

Effective date. April 5, 1984.

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

Dated: March 29, 1984.

William B. Bixler,

Associate Director for Surveillance and Compliance, Center for Veterinary Medicine.

[FR Doc. 84-9040 Filed 4-4-84; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Pyrantel Tartrate

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 for I.M.S., Inc., providing for safe and effective use of a 48-gram-per-pound pyrantel tartrate premix in making 9.6- and 19.2-gram-per-pound pyrantel tartrate intermediate premixes. The intermediate premixes are subsequently used to make complete swine feeds.

EFFECTIVE DATE: April 5, 1984.

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

SUPPLEMENTARY INFORMATION: I.M.S. Inc., 13619 Industrial Rd., Omaha, NE 68137, is sponsor of NADA 136-601 submitted on its behalf by Pfizer, Inc. The NADA provides for use of a 48-gram-per-pound pyrantel tartrate premix in making 9.6- and 19.2-gram-per-pound pyrantel tartrate intermediate premixes. The intermediate premixes are used in making complete swine feeds used for aid in prevention of migration and establishment of large roundworm (*Ascaris suum*) infections; for aid in prevention of establishment, removal, and control of nodular worm (*Oesophagostomum* spp.) infections; and for removal and control of large roundworm (*Ascaris suum*) infections.

The NADA is approved and the regulations are amended to reflect this approval. The basis for approval is discussed in the freedom of information summary.

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

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

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.83), § 558.485 is amended by adding new paragraph (a)(20) to read as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

§ 558.485 Pyrantel tartrate.

(a) * * *

(20) To 050639: 9.6 and 19.2 grams per pound, paragraph (e)(1) through (3) of this section.

* * * * *

Effective date. April 5, 1984.

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

Dated: March 28, 1984.

Gerald B. Guest,

Acting Director, Bureau of Veterinary Medicine.

[FR Doc. 84-9041 Filed 4-4-84; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

Illinois Permanent Regulatory Program

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

ACTION: Final rule.

SUMMARY: OSM is announcing a decision by the Secretary of the Interior pursuant to the Remand Order in *Illinois South Project, et al.* v. *Watt* litigation.

On July 29, 1982, the Illinois South Project, Inc. and nine other Illinois organizations challenged the June 1, 1982 decision of the Secretary of the Interior approving the Illinois permanent regulatory program (Illinois program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or "the Act"). On November 30, 1983, the United States District Court for the Central District of Illinois, at the request of the Secretary, remanded the case to the Secretary to review the issues raised by the plaintiffs in light of the legal development since June 1, 1982. OSM published a notice in the Federal

Register on December 14, 1983, requesting public comment on the substantive issues contained in the litigation.

After carefully considering the public comments and conducting a thorough review of the issues, the Secretary has made his decision on the issues. As a result of the review, the Secretary has determined that the Illinois program is not fully consistent with the current Federal permanent regulatory program. Accordingly, the Director of OSM has informed the State of Illinois, pursuant to 30 CFR 732.17, of required program amendments. Illinois must, pursuant to 30 CFR 732.17(f), respond to this notification within 60 days.

The Federal rules at 30 CFR Part 913 which codify decisions concerning the Illinois program are being amended to implement this decision.

EFFECTIVE DATE: April 5, 1984.

FOR FURTHER INFORMATION CONTACT: James Fulton, Field Office Director, Springfield Field Office, Office of Surface Mining, 600 E. Monroe Street, Springfield, Illinois 62701; Telephone: (217) 492–4495.

SUPPLEMENTARY INFORMATION:

I. Background of the Illinois Program

On March 3, 1980, OSM received a proposed regulatory program from the State of Illinois. On October 31, 1980, following a review of the proposed program as outlined in 30 CFR Part 732, the Secretary of the Interior approved in part and disapproved in part the proposed program (45 FR 72468).

On December 19, 1980, the State of Illinois sued OSM and the Department of Interior, alleging that the Secretary's initial decision was procedurally incomplete in that it failed, among other things, to specify those parts of the Illinois submittal which were specifically approved, to consider alternatives submitted, and to include sufficient detail to enable the State to prepare properly a resubmittal. The Secretary determined that his action was procedurally incomplete, as alledged, and a Stipulation for Consent Decree was approved and entered by Judge J. Waldo Ackerman in the U.S. District Court for the Central District of Illinois on August 14, 1981. Under the Consent decree, the parties agreed to a number of items, including the following:

1. That in the October 31, 1980 initial decision, the Secretary failed to indicate those postions of the Illinois program that were approved he did not cosider as "state windows" the alternatives to the Secretary's regulations submitted by Illinois, and he did not take into account the regulations submitted to OSM on July 30, 1980.

2. The Illinois program submittal should be completely reexamined.

3. In order to provide for the resubmission of Illinois' program, the parties would initiate a series of meetings and discussions to reexamine the program to identify approved portions and review and identify those revised provisions which appear approvable, subject to any public comments or new information brought to OSM's attention during the formal review of Illinois' resubmission.

4. Illinois would resubmit its proposed program to the Secretary a soon as the injunction is lifted.

5. Meetings pursuant to the Consent Decree would be conducted in accordance with the Secretary's guidelines for contacts with Interior Department employees and officials during consideration of State permanent regulatory programs (44 FR 54444–54445, September 19, 1979).

In accordance with the procedures set forth in 30 CFR 732.13(f), the State of Illinois originally had 60 days from the date of publication of the Secretary's partial approval decision on October 31, 1980, to resubmit a revised program for consideration. On December 11, 1980, the Seventh Judicial Circuit Court of Sangamon County, Illinois enjoined the Illinois Department of Mines and Minerals (IDMM) from submitting or resubmitting to OSM the Illinois program until June 11, 1981. The injunction was late extended for an additional six months, to December 11, 1981. Under the general statement of policy issued by OSM on August 26, 1981 (46 FR 43041–43043), the State had sixty days from the date the injunction was lifted within which to resubmit its program. The State submitted its revised program for consideration on December 22, 1981.

After providing notice and opportunity to comment, including a public hearing, the Secretary approved the Illinois program subject to the correction of five minor deficiencies. The approval was effective upon publication of the notice of conditional approval in the June 1, 1982 **Federal Register** (47 FR 23858). Since that approval, three of the conditions have been removed (48 FR 23412, May 25, 1983 and 48 FR 51619, November 10, 1983) and two amendments have been approved (47 FR 52698, November 23, 1982, and 48 FR 46258, October 13, 1983). Conditions (b) and (c) are due June 1, 1984.

II. Litigation

On July 29, 1982, the Illinois South Project, Inc. (Illinois South) and nine other Illinois organizations filed suit in the United States District Court for the Central District of Illinois challenging the Secretary's decision. *Illinois South Project* v. *Watt* (C.D. Illinois, Civil Action No. 82–2229). The plaintiffs alleged numerous substantive and procedural deficiencies in the Secretary's decision. On June 24, 1983, a hearing on the case was held in Danville, Illinois, at which time the parties agreed to a schedule for filing motions for summary judgment and supporting memoranda. Subsequently, the Federal defendants filed a motion requesting that the issues in the case be remanded for further consideration in light of legal developments that have occurred since June 1, 1982. The request was made because after the Secretary's approval of the Illinois program, revised Federal rules were issued and many of the revised rules have a bearing on the substantive issues contained in the Illinois South litigation. On November 30, 1983, the District Court ordered the case remanded to the Secretary to review the issues raised by the plaintiffs in their complaint and motion for summary judgment in light of the revised Federal rules. The order of remand stated that within two weeks the Secretary would publish a notice in the **Federal Register** requesting comment on the substantive issues in the case. In order to assist in identifying the issues in the case, the District Court ordered that the **Federal Register** notice contain the Table of Contents to plaintiffs' memorandum in support of their motion for summary judgment. On December 14, 1983 (48 FR 55580) OSM published notice requesting comments on the substantive issues. The public comment period closed on January 13, 1984. A public meeting was held on January 13, 1984, in Springfield, Illinois, attended by representatives from IDMM and members of the public. Minutes of the meeting were placed in the Administrative Record (ILL–0814). On March 9, 1984, an executive session meeting was held in Springfield, Illinois, between representatives from IDMM and the Department of the Interior. The purpose of the meeting was to discuss OSM's review of the substantive issues. The State of Illinois did not provide any new or additional materials concerning the issues on remand. The meeting was conducted in accordance with the Secretary's guidelines for contacts with Interior Department employees and officials during consideration of State

permanent regulatory programs (44 FR 54444, September 19, 1979). In keeping with those guidelines, a summary of the executive session was placed in the Administrative Record (ILL-0813), and because no new information was submitted, the Department determined that an additional comment period was not necessary to ensure public participation.

III. Secretary's Findings and Response to Comments

General Findings and Procedural Issues

Pursuant to the Remand Order of November 30, 1983, the Secretary must "review the issues raised by the plaintiffs in their complaint and motion for summary judgment in light of the administrative record and legal developments since June 1, 1982." The Secretary had requested the Remand because of the extensive revisions, starting in 1981, and completed on September 30, 1983, to the Federal regulations implementing SMCRA. The Remand Order also states that the "Secretary will issue his decision on remand not later than 120 days from the date of (the) order * * *." This notice announces that decision.

Amax Coal Company (AMAX) (ILL-0811), the Illinois Coal Association (ICA) (ILL-0809), the Illinois Department of Mines and Minerals (IDMM) (ILL-0808) and the Illinois South Project, et al. (ISP) (ILL-0810) submitted to the Secretary comments on the substantive issues in the lawsuit. ISP incorporated by reference its memorandum in support of its motion for summary judgment (ISP brief). All of the commenters incorporated by reference portions of the administrative record, and IDMM, ICA, and ISP incorporated by reference other material, including court briefs and OSM reports. The Secretary has also considered these materials, and responded to them where appropriate and relevant. The Secretary has also considered the entire administrative record for his 1982 decision.

ISP commented throughout its comments that they "stand by the positions taken in [their August 30, 1983] brief." They also assert that the "Secretary must respond to each of the arguments set forth in the brief * * *." The Secretary has responded to the arguments raised in the ISP brief, with the exception of comments based on Federal rules which have been revised or otherwise modified since the June 1, 1982, decision. Those ISP comments which compare the Illinois program to superseded Federal requirements are not relevant to the Secretary's consideration on remand of the issues in litigation in light of legal developments since June 1, 1982.

ISP also requested that the Secretary address, during this remand of the issues in litigation, the Annual Evaluation Report (AER) compiled by the OSM field office in 1983. The AER, a report on the functions of the Illinois regulatory authority, presents a narrative summary for use in the Secretary's oversight responsibilities. It has limited relevance to the issues at hand during this remand. To address the AER outside the normal course of the Secretary's oversight responsibilities would render the Secretary's Federal role on oversight in Illinois different from his role in any other of the coal-producing States with program primacy. It would also place in this litigation questions of fact and application of the Illinois program provisions that are not appropriate for the record review of the Secretary's approval process. ISP alleges that the AER is a "legal development" occurring since June 1, 1982. On the contrary, it is a summary of factual developments reported to the Secretary for his use in Federal oversight. To include it as a legal development to be addressed during this remand would place issues of possibly contested facts before the court. As such, the complexity and scope of review of this case would increase significantly. The reasonable and appropriate approach to the AER places it in the record for the Secretary's oversight role, not in the record of issues for comparing whether the Illinois program provisions under the Remand Order are appropriate in light of the Secretary's present regulations. The Secretary here is deciding program approval, not program oversight, matters.

ISP also requested in their comments that the Secretary withhold his decision on a number of issues until after the U.S. District Court for the District of Columbia renders its decision in *In Re: Permanent Surface Mining Regulations Litigation II*, Civil No. 79-1144 (D.D.C.) (Under Remand and Consolidated). ISP did not explain why it requested postponement of decision only for some of the issues and not other issues similarly situated where the underlying Federal rule has been challenged in the D.C. Circuit. To grant this request for some of the issues and make a decision for others would appear contrary to the Remand Order. It would need approval from the U.S. District Court for the Central District of Illinois. Moreover, the Secretary takes the position that the final Federal rules, although challenged in the D.C. Circuit, are the current standard for State program review until such time as any of them are held invalid by a court or modified by future rulemaking.

The Secretary notes at the outset that several of the Illinois program provisions not challenged in this litigation and not subject to the Remand Order do not mirror the new Federal provisions for the regulation of surface coal mining and reclamation operations. Those provisions will be reviewed by OSM to determine their consistency with the revised Federal rules in the normal course of reviewing all State programs under 30 CFR 732.17 to determine what changes may be necessary as the result of OSM's regulatory reform.

Standard for Review

IDMM, ICA, and ISP commented extensively on the standard for review and approval of State programs. Under Section 503(a) of SMCRA, a State program must include, among other things, a State law which is *in accordance with* the requirements of SMCRA, and rules and regulations *consistent with* regulations issued by the Secretary. Sections 518(i) and 521(d) of SMCRA require a State program to incorporate penalties and sanctions no less stringent than those in the Act, and to contain the same or similar procedural requirements. The Federal rules implementing Section 503(a), at 30 CFR 730.5, as revised on October 28, 1981 (46 FR 53376), define "in accordance with" and "consistent with" to mean:

(a) With regard to the Act, the State laws and regulations are no less stringent than, meet the minimum requirements of and include all applicable provisions of the Act, and

(b) With regard to the Secretary's regulations, the State laws and regulations are *no less effective than* the Secretary's regulations in meeting the requirements of the Act. (emphasis added)

The revised Federal rules substituted an "effectiveness" standard for the previous "stringency" standard. Thus, the State program need not mirror the Federal regulations, as long as it meets the Act's requirements and its approach is no less effective than the Federal regulations. The only exception to this "effectiveness" standard is that the enforcement provisions of a State program must incorporate sanctions and penalties no less stringent than the Act and contain the same or similar procedural requirements.

Departure From Previous Decision

The ISP brief points out that the October 31, 1980 decision by the Secretary of the interior differs from the June 1, 1982 decision by the Secretary. ISP requested that the Secretary explain his departures from the previous decision, and asserted that this is required of an agency which is reversing a prior decision. However, as discussed above, the standard for comparing State provisions to Federal provisions changed between the October 1980 decision and the June 1982 decision. In addition, under the court Consent Decree, the Secretary agreed to completely reexamine the Illinois program, which was resubmitted with additional explanation, supporting documentation, and promulgated regulations on December 22, 1981. Not only did the standard for reviewing State programs change, but also the record before the Secretary changed, (see, e.g. Illinois Legal Opinion, submitted December 22, 1981, Vol. R5; ISP letter of March 15, 1982, reference to "massive resubmittal"). Implicit in the ISP request that the Secretary "must explain [his] departure from numerous aspects of [his October 31, 1980] decision" (cover letter of January 13, 1984, p. 2) are asssumptions that the October 31, 1980, proposed rulemaking decision was a final rulemaking and continues to constitute the sole basis for the Secretary's decision, despite a changed record and a new standard for program approval. Neither assumption is correct.

The October 31, 1980, Federal Register notice, entitled "Proposed rulemaking" set forth initial findings concerning an incomplete Illinois submission. As such, its requested status as a benchmark for reviewing and judging the present Illinois program in light of the Secretary's regulations after 1980 is not relevant. ISP's request for specific explanations of the Secretary's alleged departure from 73 findings in the October 31, 1980, review is not appropriate. No rules were promulgated and no final decisions were made on October 31, 1980. The Stipulation for Consent Degree entered by the U.S. District Court for the Central District of Illinois effectively moots this issue.

Response to All Comments

ISP stated in its brief that the Secretary did not respond adequately to the comments ISP submitted during the initial comment period on the resubmission, and did not respond at all to ISP's supplemental comments filed during the second comment period. ISP stated that in the June 1, 1982, decision, the Secretary made repeated references to ISP's initial comments (ILL–0412), but never referred to ISP's supplemental comments (ISP–0467). Although the Secretary did not distinguish between ISP's initial and supplemental comments, the Secretary referenced all of ISP's comments by using the administrative record number for ISP's initial comments (ILL–0412) as a matter of editorial convenience. However, all of ISP's comments were entered in the Administrative Record and considered by the Secretary in reaching his decision. ISP alleged several specific instances where they think that the Secretary did not respond adequately, or at all, to their comments. For those specific instances at issue in this litigation, the Secretary has addressed all of ISP's substantive comments. For the alleged instances of no responses to comments on Illinois program provisions not at issue in this litigation, the Secretary does not believe that any further response is either necessary or appropriate.

ISP also stated that the Secretary did not respond to other allegations raised in the cover letter to their initial comments (ILL–0412). These allegations were: (1) That the Illinois program was resubmitted in bad faith; (2) OSM failed to afford public participation in accordance with the Act; (3) OSM prejudged the adequacy of the Illinois program prior to conducting its substantive review or considering public comments; and (4) OSM unreasonably restricted the opportunity for public comment given its failure to assure a timely decision on the resubmitted program.

These allegations do not take into account the Consent Decree entered by the District Court, under which the Secretary and the State of Illinois agreed to a number of items, including a complete reexamination of the Illinois program and a series of meetings to identify approved portions of the program and those portions of the program which appeared approvable subject to public comment. Moreover, Illinois agreed to resubmit its program as soon as the injuction was lifted. The injuction was lifted on December 11, 1981, and the program was resubmitted December 22, 1981, even though under OSM's statement of policy the State would have had 60 days from the date the injuction was lifted within which to resubmit its program.

As to the fourth allegation, OSM provided an initial 30-day comment period from December 24, 1981, to January 25, 1982, although under 30 CFR 732.13(f), the period for public review and comment need not exceed 15 days. OSM provided an additional 15-day comment period from April 14 through April 29, 1982.

Agreement to Meet Conditions

In its brief, ISP alleged that Illinois failed to agree in writing to meet the five conditions of approval as required by 30 CFR 732.13(j). The May 11, 1982, letter from IDMM indicated that Illinois agreed to conditions (a) and (d), but objected to conditions (b), (c), and (e). However, IDMM also stated that because of the obvious importance to Illinois of approval of the permanent regulatory program, IDMM cannot refuse the offer of conditional approval. In fact, Illinois has removed conditions (a), (d), and (e) and are actively enforcing conditions (b) and (c) due June 1, 1984, because the State must comply with the terms of the conditions until such time as the conditions are satisfied.

SUBSTANTIVE ISSUES

Issue IV.A.1.

Definition of "Affected Area"

The issue is whether the definition of "affected area" in Illinois Rule (IR) 1701.5 renders the Illinois program no less effective than the definition of "affected area" in the Federal rules in meeting the requirements of the Federal Act. For the reasons explained below, the Secretary finds the definition no less effective than the Federal definition in meeting the Act's requirements.

In their January 1984 comments, ISP asserts that the Illinois definition of the term "affected area" is inconsistent with the Federal regulations because (1) the Illinois statutory definition of "affected land" excludes water and thus conflicts with the Illinois regulatory definition of the term "affected area;" and (2) the definitions of the Illinois term "affected land" and "affected area" exclude land above the underground workings. These comments are unpersuasive.

The Illinois statute (IS) sets forth a definition of "affected land" which differs from the definition of "affected area" in the Illinois regulations (IR). Merely because the terms differ is not cause for the Secretary to find conflict. The scope of the Illinois provisions when read together apparently includes water bodies. The Illinois term "natural land surface" in IS 1.03 (a)(24)(B) and (a)(1)(B) when implemented by regulation to encompass water on the surface does not differ from the Federal term "natural land surface" in Section 701(28) of the Federal Act as implemented by the Federal regulations.

ISP correctly notes that the Illinois definition of "affected area" does not include areas overlying underground mine workings. Specifically, the Illinois definition states that affected area "means, with respect to surface mining activities, any land or water upon or in which these activities are conducted or located. With respect to underground mining activities, affected area means: "Any water or surface lands upon which those activities are conducted or located." On the other hand, the Federal definition of "affected area" promulgated April 5, 1983 (48 FR 14821), includes land and water areas overlying underground mine workings. Specifically, the Federal definition of "affected area" states at 30 CFR 701.5, 48 FR 13921–22, April 5, 1983, that it means: "Any lands or water surface area which is used to facilitate, or is physically altered by, surface coal mining and reclamation operations. The affected area includes the disturbed area; any area upon which surface coal mining and operations are conducted; any adjacent lands the use of which is incidental to surface coal mining and reclamation operations; and the area located above underground workings * * *."

Whether the Illinois definition of affected area is less effective than the Federal definition of that term depends upon the purpose of the Federal definition. Under the Secretary's revised rules, the Federal definition of "affected area" is used to delimit the scope of the "two-acre" exemption specified in Section 528(2) of the Federal Act and implemented at 30 CFR 700.11(b) (46 FR 33423, 33432, August 2, 1982). Under that rule, operations with an affected area of two acres or less are exempt from the requirements of the Federal Act. Although the Federal definition of the term "permit area," previously encompassed the entire "affected area," the April 5, 1983, definition of the term "permit area" does not include the "affected area."

The Illinois program does not contain any exemption for operations of two acres or less in size. Thus, the Illinois "affected area" definition is no less effective than the Federal definition of that term.

A number of the commenters addressed the relationship of the Illinois "affected area" definition to the permitting and bonding requirements for underground mines. The Secretary is currently examining the Illinois permitting and bonding requirements for underground mines in light of the revisions to the Federal definitions of the terms "permit area" and "adjacent area," set forth at 30 CFR 701.5 (48 FR 14814, April 5, 1983), and the revision to the Federal bonding rules in 30 CFR Part 800 (48 FR 32932, July 19, 1983). This examination, which is part of the secretary's evaluation of all State programs following his comprehensive regulatory changes, involves a number of Illinois provisions that relate to requirements for underground mines in addition to the definition of "affected area." Thus, the Secretary, in the normal course of State program review, will inform Illinois of any needed program amendments.

Issue IV.A.2.

Definition of "Intermittent Stream"

At issue is whether, due to the Illinois definition of the term "intermittent stream," the Illinois rules employing this term are rendered less effective than the Federal rules in meeting the requirements of the Act. Affected rules are IR 1816.57: Stream Buffer Zones; IR 1816.44: Stream Channel Diversions; and the similar requirements at IR 1817.57 and IR 1817.44.

The sole difference between the Federal and Illinois versions of the definition is the criterion for the minimum drainage area. The Federal definition includes all streams whose drainage area exceeds one square mile whereas Illinois limits the definition to streams with a drainage area greater than three square miles. It is thus clear that many streams which would otherwise be subject to the Federal rules governing impacts to intermittent streams would not be regulated the same under the Illinois rules.

At the time of conditional approval the Secretary found that the Illinois definition was acceptable and was not inconsistent with the Federal rules (Comment 20, 47 FR 23869). However, subsequent rulemakings (June 30, 1983, 48 FR 30312 and September 26, 1983, 48 FR 43992) reconsidered the definition of the term "intermittent stream" and its impact on the final Federal rules.

IDMM, ICA, and AMAX submitted comments which advanced arguments disputing the technical merit of the Federal definition at 30 CFR 701.5 and favoring the three-square mile criterion. OSM has previously rejected the same or similar comments in the preamble to the revised rules, 48 FR 30313, June 30, 1983, and has not changed its definition. OSM has retained its definition to avoid problems of interpretation among the various States. OSM believes that the flexibility provided by new final rule 30 CFR 816.57 will allow the regulatory authority to determine which streams merit protection without categorically denying such protection to streams which would otherwise not receive it (48 FR 30313). Thus, OSM has not accepted comments aimed at the technical merit of the Federal protection.

ISP commented that they stand by the position put forward in their brief and asserted that, due to the Illinois definition, streams whose drainage areas do not meet the Illinois limit are ignored by the Illinois Rules. This is not the case. *All* streams are regulated by both the State and Federal rules but all are not subject to the same design and performance standards.

The final Federal rules at 30 CFR 816.43 and 817.43 make several important distinctions between perennial and intermittent streams, and lesser streams described as "miscellaneous flows." Before authorizing diversion of intermittent streams the regulatory authority must make the finding required by 30 CFR 816.57 [30 CFR 816.43(b)(1)]. Designs for permanent and temporary diversions of intermittent streams must meet more stringent performance standards to provide protection against flooding and resultant damage to life and property [30 CFR 816.43(b)(3)]. Diversion designs for intermittent streams must also be certified by a registered professional engineer as meeting required design and performance standards. In promulgating these final rules, OSM determined that the peak flows of intermittent streams as defined by it at 30 CFR 701.5 are of such magnitude and potential hazard to the public and the environment as to merit more stringent performance standards. Use of a definition which excludes a significant member of these streams from application of the revised Federal rules would not be consistent with their intent.

AMAX argued in favor of the three square mile criterion, asserting that regional differences in topography and climate permit the application of differing criteria since these factors significantly impact peak flows from precipitation events. While it is undeniably true that peak flows will not be the same in areas of different topography and climate, it is inappropriate to conclude that uniform application of a drainage area criterion is unjustified. Factors impacting peak flows from precipitation events should be considered in the design of diversion structures. The Federal rules allow wide latitude in the design of diversion structures as long as performance standards are met.

ICA's comments interpreted the Federal rules to allow regulatory authorities to "lawfully deviate from the

strict application of the one square mile rule * * *"

The definition of intermittent stream triggers a number of performance standards which, while perhaps not resulting in preservation of the original stream channel, may not be ignored by either the permittee or the regulatory authority.

In summary, in its rulemakings subsequent to the conditional approval of the Illinois program, OSM has determined that streams draining areas of a size meeting its definition of intermittent stream should be subject to more stringent performance standards in order to minimize impacts on the hydrologic balance, to prevent damage to the environment, and to minimize hazards to the public. Use of the Illinois definition could result in a lower level of protection and is thus less effective than the Federal rules in implementing the requirements of the Act.

Issue IV.A.3.

Definition of "Valid Existing Rights"

The issue is whether the Illinois definition of "valid existing rights" is no less effective than the Federal definition in meeting the Act's requirements. Section 522(e) of SMCRA provides that no surface coal mining operations shall be permitted on certain private, Federal and other public lands after August 3, 1977, except those which existed on August 3, 1977, and subject to valid existing rights. The intent of the "valid existing rights" exemption was to avoid a legislative taking of property for which compensation would have to be paid under the Fifth and Fourteenth Amendments of the U.S. Constitution. The term "valid existing rights" is not defined in the Act. The Federal rules at 30 CFR 761.5 originally defined "valid existing rights" (VER) as 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. (44 FR 15341, March 13, 1979) As a result of judicial review, the VER definition was later modified to require only a good faith effort to obtain all permits (August 4, 1980, 45 FR 51548).

After proposing a number of options, OSM, further amended the VER definition of September 14, 1983 (48 FR 41312). The revised definition does not attempt to identify all the classes of circumstances which would result in a finding of VER. Rather, the definition provides that a person possess VER for in area protected under section 522(e) of SMCRA on August 3, 1977, if the application of any of the prohibitions contained in that section to the property interest that existed on the 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 U.S. Constitution. The definition thus allows VER determinations to be made on a case-by-case basis, considering the particular facts of each case. In addition, the revise definition allows VER to be created after August 3, 1977. Paragraph (d) of the definition provides that where an area comes under the protection of section 522(e) after August 3, 1977, VER shall be found if (1) on the date the protection comes into existence, a validly authorized surface coal mining operation exists on the area, or (2) the section 522(e) prohibition, if applied to the property interest that exists on that date, would effect a taking under the Constitution. The VER definition contained in the Illinois program at rule 1701.5 is similar to OSM's original definition as modified on August 4, 1980. The Illinois definition contains two differences not found in OSM's original definition. The Illinois rule, at paragraph (a)(3), allows VER to attach after August 3, 1977, if the person proposing to conduct surface coal mining operations can demonstrate that the operation was under construction or operating (in effect, "exists") at the time a protected activity came into existence. The Illinois rule also provides, at paragraph (e), that notwithstanding the specific circumstances identified in paragraphs (a) through (d), VER will include those private property rights for which, in effect, a judicial finding of a taking of property would be made, and a payment of just compensation would be ordered pursuant to the Illinois Constitution if surface coal mining operations were prohibited. The rule provides further that in the case of a final judicial order, to which the IDMM is a party, that the prohibition of mining by the IDMM constitutes under the Illinois Constitution an unconstitutional "taking or damaging" of property shall be deemed to establish VER and to eliminate the prohibition.

Both the Illinois and Federal definitions allow VER to be created after August 3, 1977, if a surface coal mining operation existed or if property rights existed that would be taken at the time protected activity begins.

The Federal definition uses a "taking" test to determine if VER attaches. The Illinois rule specifies certain circumstances under which VER will always attach, and adds a general proviso to cover other types of circumstances in which application of the section 522(e) prohibitions would result in takings. The difference in the Illinois rule is that paragraph (e) would allow a VER determination where a judicial finding of a "taking *or damaging*" of property would be made under the Illinois Constitution. The Federal definition and U.S. Constitution limit payment of compensation to takings.

When the Secretary originally approved the Illinois program on June 1, 1982, he explained in Finding 30.2 that Illinois had provided a policy statement (ILL–0451) to explain this difference. In the policy statement, Illinois explained that its VER definition is based on Article I, Section 15 of the Illinois Constitution, which requires payment of just compensation when property is "taken or damaged." The provision requiring compensation when property is damaged was added in 1870, because prior to that time recovery for a "taking" was not allowed unless there had been a *physical* injury or possession, even though the property interest had been destroyed. Without the addition of a "damaging" criterion, there could be no recovery for deprivation of a property right, absent a physical invasion of the property, including the application of the prohibitions of section 522(e). The Illinois case law indicates that no "damaging" occurs by an exercise of the police power in setting environmental standards. For instance, in Illinois the prevention of drilling and recovering oil and gas under Illinois law is *not* a taking or damage. *City of West Frankfort* v. *Fullop*, 6 Ill.2d 609, 129 N.E.2d 682 (1955). Moreover, the "taking or damage" clause of the Illinois Constitution is made subject to exercise of the police power. The Illinois Court of Appeals has held that, under Illinois law, when the State or other governmental entity is exercising police powers of the State pursuant to Article XI, § 1 of the Illinois Constitution, rights guaranteed by Article I, § 15 are subordinated to the interest of public welfare as expressed through the exercise of the police power. *Corbin* v. *Pollution Control Board*, 16 Ill. App. 3d 958, 307 N.E. 2d 191, 199 (1974).

The Illinois criteria of "taking or damaging" are thus equivalent to the Federal concept of "taking." The Secretary therefore finds that the Illinois definition of VER is no less effective than the Federal definition in meeting the purposes of section 522(e) of SMCRA.

ISP stated that they stand by the position in their brief and made a number of comments on the Illinois VER

definition as it related to the previous Federal definition (March 13, 1979, as modified on August 4, 1980). To the extent that those comments are not relevant to consideration of the Illinois definition in light of the revised Federal definition (September 14, 1983), the Secretary is not responding to them.

ISP objected that the Illinois definition allows an administrative determination of a "taking" to substitute for the VER criteria set out in the Federal regulations, and states that there is no basis in the Federal law or regulations for allowing the regulatory authority board discretion to predict the outcome of a judicial proceeding, and render a decision based on that prediction. ISP also charged that the process violates the concept of separation of powers and places the regulatory authority in the position of making legal determinations in an area with which the courts have wrestled with great difficulty for years. As discussed above, the Federal definition has been amended to eliminate the specific criteria and substitutes a taking test to make VER determinations. The Federal rules clearly envision that the regulatory authority will make that determination based on the facts in a particular situation. The preamble to the revised Federal rules (48 FR 41314, September 14, 1983) states that any person who proposes to conduct surface coal mining operations in an area where such mining would be prohibited or limited by section 522(e) except for valid existing rights first must seek a determination of VER from the regulatory authority. The person seeking a VER determination is responsible for compiling and submitting to the decisionmaker all information necessary to make a finding. OSM (in the case of Federal lands) 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. The Illinois provision therfore is no less effective than the Federal definition in meeting the purposes of SMCRA.

ISP also commented that the Illinois Constitution appears to permit a determination that a taking has occurred for circumstances beyond that which is allowed under the U.S. Constitution because the Illinois Constitution requires compensation for a taking *or damaging* of property while the Federal Constitution limits compensation to the *taking* of property. ISP notes that in the Illinois policy statement relied upon by the Secretary in his previous finding, in its discussion of Illinois case law on taking or damaging, Illinois cited two cases to show that "setting environmental standards on use of private property is not a taking or damaging in Illinois." ISP states that if the limited prohibitions on mining near homes and parks are not deemed compensable under Illinois law, this is all the more reason that the State agency should not have independent authority to render judicial findings that these prohibitions are a taking or damaging. The Secretary has found that the Illinois criterion of "taking or damaging" is functionally equivalent to the Federal concept of "taking." The case law cited by Illinois supports the proposition that the Illinois Constitution does not allow determinations that a taking has occurred for circumstances beyond those permitted under the U.S. Constitution. Moreover, as ISP itself notes, the Illinois case law may well be more restrictive as to what constitutes a taking or damaging than is the Federal case law. Therefore, the Secretary does not agree that the Illinois definition is any less effective than the Federal regulations.

ISP commented that the Illinois definition is less effective than the new Federal rules because the Illinois definition is open-ended. That is, the definition states that VER means, *but is not limited to,* the existence of the following facts or circumstances, whereas the new Federal rules provide and describe limited situations where VER applies. The Secretary disagrees. First, the new Federal rule does not provide limited situations where VER applies. Rather, it provides that VER shall be determined in a case-by-case manner, based on the facts of a particular situation. Second, the Illinois rule was adopted prior to the new Federal rule and patterned after the then-existing Federal rule. Illinois modified that Federal definition to clarify that while certain specific circumstances (which are listed in the Illinois rule) would invariably result in VER, there could be other sets of circumstances which would also result in VER. The dilemma was recognized by OSM when it promulgated its revised definition and rather than describe specific criteria, the Federal definition relies on a finding that a taking would occur. Therefore, the Illinois rule is no less effective than the Federal definition. The Secretary notes that the Illinois provisions contain the "permits" test of the earlier Federal rules. The relative effectiveness of that test is currently under review during the regulatory reform analysis of all State programs.

ICA stated that section 522(e) of SMCRA comtemplates that mining will not be permitted if all three of the following criteria come into play: (1) The surface coal mining operation in question did not exist on August 3, 1977, (2) no valid existing rights exist, and (3) the land on which surface coal mining operations are to be conducted is referenced in one of subsections (1)–(5) to section 522(e).

ICA commented that by providing that all three of the criteria must attach before mining operations will be prohibited Congress clearly contemplated that VER can attach after the date of enactment of the Federal Act. Otherwise, if VER could only arise for operations which existed on or before August 3, 1977, such a requirement would be superfluous to the requirement that the surface coal mining operations must not be in existence on the date of the Act. Therefore, ICA contends that VER is a dynamic concept which OSM has in fact recognized and adopted in the new Federal definition. ICA commented that the Illinois rule made three changes to the original Federal rule: (1) Deleted the requirement that property rights be in existence on August 3, 1977, (2) added, as VER, operations under construction or in operation at the time of an unsuitability designation; and (3) added a provision allowing VER to be created by a judicial finding of a taking or damaging of property under the Illinois Constitution. ICA notes that all these concepts were adopted by the new Federal definition. ICA pointed out that the regulatory authority's VER determination occurs during the permit process, which is subject to public participation, and any interested person aggrieved by the decision may file for judicial review. ICA also stated that administrative agencies, in adjudicatory matters, are frequently called upon to interpret the law. Finally, ICA commented that the two concepts—that of "taking" under the Fifth Amendment and that of "taking or damaging" under Section 15, Article I of the Illinois Constitution are functionally equivalent.

ICA stated that an examination of Federal and Illinois case law demonstrates that there is no difference between the two, and in fact, Federal case law may require compensation in instances where Illinois does not. In general, the Secretary agrees with ICA's comments.

AMAX commented that the new Federal rule provided for "continually created" VER, which is the only interpretation consistent with the intent of the Act—to avoid a taking of property

for which the Constitution requires just compensation. AMAX stated that the Illinois rule also provides for continually created VER and therefore is as effective as the Federal rule in protecting such rights. The Secretary agrees with the comment. AMAX also stated that the Illinois rule is more stringent in its protection of valid existing rights because the Illinois Constitution requires compensation for both taking and damaging. The Secretary does not agree that the Illinois provision is more stringent. Rather, the Secretary has found that the Ilinois critieria of "taking or damaging" are equivalent to the Federal concept of "taking."

Issue IV.B.1.

Deferral of Unsuitability Petitions

Issue B.1. presents the question of whether the Illinois program provisions on the consideration of petitions to designate lands unsuitable for mining are no less effective than the Federal rules in meeting the Act's requirements for consideration of the petitions. The Federal rules, at 30 CFR 764.15, promulgated on September 14, 1983, 48 FR 41312, allow suspension of consideration of petitions to declare lands unsuitable for surface coal mining. The Illinois rules at IR 1764.15 also allow suspension of consideration of the petitions. The new Federal rules provide that the regulatory authority may suspend petitions when it finds that "no real or foreseeable potential for surface coal mining operations to occur" exists. The purpose of Section 522(c) is to provide a means to protect areas of fragile or historic lands or areas where mining could result in a significant damage to important historic, cultural, scientific and esthetic values and natural systems. To delay processing of petitions until mining is shown likely maintains the protection of those interests which Congress intended to protect by the petitioning process. Similarly, the Illinois provisions protect areas covered by deferred petitions in IS 2.08(b)(4) and IR 1764.15(e)(1) by prohibiting any permit to issue for any mining of land within an area petitioned. For the regulatory authority to defer action on a petition without harm to the petitioner or the petitioned area until evidence that there may be harm to the petitioner's interest appears a proper, reasonable, and efficient management practice. It is neither inconsistent with the Act nor outside the scope of administrative discretion. Petitioners are not harmed as long as mining cannot be approved and mining will not be approved during the deferral period. The Illinois petitioning process provides the same result as the Federal rules. Thus, the Illinois provisions for deferral of designation petitions are no less effective than the Secretary's regulations in meeting the requirements of the Act.

ISP commented that they maintain their brief's position and that the Federal Act requires a decision in one year. Further, they stated that the Illinois provisions allowing deferral of petitions are inconsistent with and less effective than the Federal rules because Illinois places the burden on petitioners to show that mining or leasing may occur and that they may be harmed by such potential mining. ISP also comments that the Illinois rules do not have certain alleged safeguards contained in the Federal rules such as a definition of real or foreseeable potential for surface coal mining operations, a guarantee that requests for reconsideration of deferrals will be acted on, and a definition of "frivolous."

The Secretary recognizes that the Illinois program provisions are not a mirror image of the Federal rules. The Act's 12-month deadline is not violated by a deferral which places the petitioned area "under study" for designation. Effectively, an administrative action has been taken which prevents mining from occurring during the deferral period. The burden of showing an interest and a possible harm to petitioners is contained in 30 CFR 764.13(a) of the Federal rules. The Illinois rules require no more. In fact, under IR 1764.13(b)(5) only an allegation of adversely affected interests is needed to protect the lands from mining during the petition processing or deferred rather than the Federal requirement that the petitioner must demonstrate an "injury in fact" test. As for safeguards, the Illinois rules provide the maximum amount of protection—no mining—during petition deferral. Rather than establishing definitions of "real or foreseeable potential for mining" or "frivolous," the Illinois rules require from the regulatory authority a written explanation and the categories of information needed to make the petition complete. Furthermore, the Illinois rules provide for reconsideration of deferral decisions. *See* IR 1764.15(e), 1764.19(d).

ICA, AMAX, and IDMM each commented that the Illinois rules for deferral of designation petitions were no less effective than the Federal rules in meeting the Act's requirements. The Secretary has considered these comments, agrees with them, and has found the Illinois rules approvable.

Issue IV.B.2.

Designation Hearing

The issue is whether the Illinois regulations at IR 1764.17(a)(1) and the Illinois Statute at IS 7.03(c) and IS 8.09 on procedures for designation hearings are no less effective than the Federal rules on hearings found at 30 CFR 764.17 (48 FR 41337), promulgated September 14, 1983, in meeting the Act's requirements.

The initial Federal rule provided for designation hearings to be legislative in nature and did not provide for cross-examination of witnesses. The rule was challenged as contrary to the Act in the first *In Re: Permanent Surface Mining Regulation Litigation* C.A. 79–1144 (D.D.C. 1979). Illinois contended that the Act requires adjudicatory hearings for designation hearings. Among other things, the Secretary took the position that the 1979 Federal rule providing legislative hearings did not preclude a State regulatory authority from providing additional procedural safeguards for designation hearings. The District Court for the District of Columbia ruled that Section 522(c) did not require adjudicatory hearings and that legislative hearings did not conflict with the Act. *In Re: supra,* 14 ERC 1083, 1092, 1093 (D.D.C. Feb. 26, 1980).

Section 522(c) of the Act provides the authority for public hearings on designation petitions and includes terms such as "allegations of facts with supporting evidence" and "a written decision regarding the petition." It does not specify what type of public hearing the regulatory authority must hold.

State regulatory authorities that wanted to provide additional procedural safeguards could and did. The States of Illinois and Virginia submitted program provisions to the Secretary which provided for adjudicatory hearings and cross-examination of witnesses in designation hearings. Upon judicial review of the Secretary's approval of the Virginia program provision, the court upheld the Secretary's action and noted that the availability of cross-examination is of significant utility in accurate fact finding *Virginia Citizens for Better Reclamation, Inc.* v. *Watt,* 19 ERC 1382, 1386 (E.D. Va. 1983). In *Utah International* v. *Department of the Interior,* 19 ERC 1305 (1982), the court upheld the Secretary's legislative type hearing, but indicated that adjudicatory hearings could provide more due process procedural safeguards. *Id.* at 1310–1311.

Section 522 of the Act presents a balancing of two important competing interests: (1) Environmental interests in

preserving the lands that are unsuitable for mining, and (2) property interests in mining coal. Congress could have stated specifically that the public hearing would be "of record;" but it did not. Nor did it state in Section 522 that the hearing should be "informal" in nature. Instead, Congress chose to be silent on the exact requirements of the public hearing. The Federal rules on designation hearings allow States to perform a similar balancing. It was not the Secretary's intent to preclude cross-examination in such hearings in special or unusual circumstances.

In approving the Illinois provisions on designation hearings, the Secretary noted in Finding No. 22.5, 47 FR 23865 (June 1, 1982) that:

> The Secretary may approve State programs providing quasi-adjudicatory hearings provided they contain adequate safeguards to protect witnesses from intimidation and to insure that the State procedure is as effective, as the Federal. * * * The parties may elect to use such techniques specified in the Federal Rule, so long as use of these techniques does not chill the petition process.

On September 14, 1983, the Federal rules were amended to change the Federal and State designation petition process. The Federal rules provide quasi-adjudicatory proceedings, issuance of subpoenas, and "cross examination of expert witnesses only." 30 CFR 764.17(a), 48 FR 41312. The Federal rules for these proceedings do not preclude States from choosing different, but appropriate proceedings. The preamble to the revised Federal rules states:

> 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. * * * OSM is adopting a hearing "of record" according to applicable State law. * * * Comments were distinctly divided on the cross-examination options. * * * 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. *Id.* at 41337.

Illinois has chosen to allow cross-examination of all witnesses in a manner consistent with its State court proceedings. It also allows for "evidence not admissible under [circuit court] rules of evidence, including, without limitation, citizen opinion on whether lands fall within the criteria for unsuitability and should be designated * * * [to] be admitted if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs." Thus, Illinois rules are no less effective than the Federal rules in allowing the opportunity for clarification of relevant facts while encouraging broad citizen participation. If, as the Secretary noted in 1982, the actual application of Illinois rules in designation hearings does have the effect of intimidating witnesses, the Secretary, in his oversight role, will act to prevent it.

Moreover, the procedures have worked in practice. Recently IDMM has conducted a designation process for the Rice Lake petition filed by the Save Rice Lake Association. Considerable public participation occurred. Citizens came forward to testify, and no apparent chilling effect on public participation was evident from the Rice Lake process. The Secretary will, however, continue to monitor the designation procedures in Illinois.

The Secretary finds that the Illinois program provisions on designation hearings which provide for quasi-adjudicatory proceedings differ from the Federal rules in meeting the Act's requirements, but are no less effective in meeting those requirements.

Comments received from ICA, IDMM and AMAX emphasized the importance of balancing vital property and financial interests against the protection of the environment during the petition process. They urged that the Secretary allow Illinois to require the most effective means of fact finding available, namely the adoption of the formal adjudicatory hearing format used in all courts of the United States, which includes the right to cross-examine all witnesses.

ISP commented that they stand by the position in their brief and stated that the Illinois rule allowing adjudicatory hearings exceeds the intent of the Federal rule, which allows only a few formal hearing techniques for the purposes of clarifying factual issues. ISP stated that the Illinois rule therefore intimidates citizens and hence does not and cannot meet the congressional intent of encouraging broad citizen participation.

The Secretary disagrees. Unquestionably, cross-examination is one of the most effective methods of determining facts. Allowing cross-examination of non-expert witnesses will not necessarily discourage their participation. The mere assertion to the contrary is unpersuasive. Although the Secretary has decided to allow cross-examination of expert witnesses only in Federal designation petition hearings, his choice was based on an administratively convenient way to gather the facts which would also encourage citizen participation. The new specification in the Federal rules serves to emphasize that expert witnesses may be cross-examined routinely. It was not meant to imply that cross-examination of all witnesses cannot be used as effectively in State proceedings.

For the reasons explained above, the Secretary's position is that the Illinois rules providing for cross-examination of all witnesses at a hearing on a petition to designated lands unsuitable for mining is within the State agency's discretion, subject to Federal oversight, and is no less effective than the Federal rule.

Issue IV.C.1.a.

Definition of Complete Application

The issue is whether the Illinois provisions on complete permit applications are no less effective than the Federal counterpart in meeting the Act's requirements. Illinois rule 1771.11(a) defines a complete application as one on which the applicant has made an apparent good-faith effort to address adequately the portions of the application pertaining to the operation to be permitted. The definition is used in IR 1771.23(a) which requires all permanent program permit applications that are filed to be complete. This requirement applies both to applications submitted by operators with interim permits who wish to continue mining and persons who wish to initiate new operations after implementation of the permanent program. The concept of "completeness" is important in two respects: it triggers the processing and public review requirements, and a complete application is necessary in order for the regulatory authority to make a final decision.

The Federal rules employ the concept of "completeness" in two phases—initial processing and final decisionmaking. The Federal rules at 30 CFR 773.13, 48 FR 44344, promulgated September 28, 1983, provide that application processing and public participation commence "(U)pon submission of an administratively complete application * * *." The Federal rules at 30 CFR 773.15(c)(1) provide that the regulatory authority shall not approve an application unless it finds in writing that the application is complete and accurate.

The terms "administratively complete application" and "complete and accurate application" are defined at 30 CFR 701.5, 48 FR 44344, September 28, 1983. An "administratively complete

application" is defined as an application which the regulatory authority determines to contain information addressing each application requirement of the regulatory program and to contain all information necessary to initiate processing and public review. A "complete and accurate application" is defined as an application which the regulatory authority determines to contain all information required under the Act, the subchapter, and the regulatory program that is necessary to make a decision on permit issuance.

The Secretary is thus presented with the issue of whether the Illinois definition of a "complete application" is no less effective than the Secretary's definitions of "administratively complete application" and "complete and accurate application" as used in the Federal rules. For the purposes of the first phase—initial processing—the Federal standard is "administratively complete." Both the Illinois and Federal definitions include the requirement to address the pertinent application requirements and Illinois adds a requirement that they be "adequately" addressed. Illinois has also added the phrase "apparent good-faith effort" to modify the requirement. The Secretary believes that a good-faith effort means one where the applicant has made a diligent, substantial effort and that a good-faith effort would not be present where the application failed to address all necessary information requirements. The Secretary further believes that the use of the qualifier "apparent" means that the applicant's good-faith effort must be obvious; that is, it must be plainly evident from the application itself.

For the purposes of the second phase—final decisionmaking—the Federal standard is a "complete and accurate application." Both Illinois rule 1786.19 and Federal rule 773.15 provide that no application may be approved unless the application affirmatively demonstrates and the regulatory authority finds in writing, on the basis of information set forth in the application or from information otherwise available that is documented in the approval, that the application is complete and accurate.

The Secretary believes that in order for the application to affirmatively demonstrate that it is complete, it must of necessity contain all the required information to make a decision. Thus, the Illinois standard for making a permit decision is functionally equivalent to the Secretary's definition. Therefore, the Secretary finds that the Illinois definition of complete application is no less effective than the Secretary's corresponding definitions in meeting the requirements of the Act.

ISP again referenced the position in their brief and commented that the Illinois definition is inconsistent with the Federal rules because under the Illinois program an operator need not submit a complete application. ISP argued that "an apparent good-faith effort" to address requirements provides no assurances that the application will contain adequate information to ensure that the public has sufficient information to comment. The Secretary disagrees and, as stated above, has found that the Illinois definition is no less effective than the Federal rules.

IDM and ICA commented that IR 1171.11(a)(1) and 30 CFR 770.5 have always been functionally equivalent and that the promulgation of the new Federal definition of a "administratively complete application" means that the application need not be complete and accurate in every regard for initial review and therefore the Illinois rule is no less effective than the Federal regulations. The Secretary agrees as discussed above.

Issue IV.C.1.b.

Revision of a Pending Permit Application

This issue presents the question of whether the Illinois program provisions for permit application revisions are no less effective than the Federal rules in meeting the Act's requirements for permit revisions. Illinois rule 1786.11(a) provides that an applicant for a permit shall place an advertisement in a local newspaper to run once a week for four consecutive weeks at the same time that the complete permit application is filed with the IDMM. The advertisement must contain a statement that the application is subject to revision by the applicant until 20 days after the last newspaper publication of the advertisement, and that comments or objections may be filed until 30 days after the last newspaper notice.

The Federal rule at 30 CFR 773.13(a)(1), (48 FR 44344, promulgated September 28, 1983) requires that upon submission of an administratively complete application, an applicant for a permit shall place an advertisement in a local newspaper at least once a week for four consecutive weeks. The Federal rule at 773.13(a)(2) also requires the applicant to file any changes to the application with the public office where the permit application is filed at the same time the change is submitted to the regulatory authority.

The Federal rule further provides that written objections may be submitted to the regulatory authority within 30 days after the last newspaper notice. There is no requirement in the Federal rules that the applicant give notice to the public in the newspaper advertisement, or by any other means, that changes to the application may be or have been made. The Secretary finds that the Illinois provision is no less effective than the Federal rule in providing for public notice and participation in permit processing.

ISP again referenced their brief's position and commented that while the Federal rules contemplate revisions to permits, they also require that the original application upon which the revisions are proposed be complete. ISP contends that while a revision under the Federal rules is essentially an alteration of a portion of the mining plan, under the Illinois rules, because of its definition of a complete application, a revision can be new material submitted to address a significant omission from the initial application. Because the Illinois definition of complete application requires such applications to address all of the important informational requirements and thus is no less effective than the Federal regulations (see Issue IV.C.1.a. above), no significant omissions should exist. Therefore, revision to a pending permit application under either the Federal or Illinois rules may encompass alterations or changes to all or a portion of the permit application but would in no case constitute material intended to address significant omissions without further opportunity for public comment.

ISP also stated that under the Federal rules, any significant revision to a permit must be treated as a new permit application, and that Section 511(a)(2) of the Act requires that any revisions that propose significant alterations in the reclamation plan shall be subject to notice and hearing requirements. This comment is not on point. The Federal rules in 30 CFR 774.13 (48 FR 44396, September 28, 1983), and Section 511 of the Act referred to by ISP apply to revisions of *already-issued* permits, not to revisions of pending permit applications.

IDMM and ICA commented that the Illinois provision is no less effective than the Federal regulations and in fact provides greater opportunity for public participation than the Federal rules require since revisions must be made available to the public for at least ten days, whereas under the Federal rule no such requirement exists. As discussed above, the Secretary has found that the

Illinois rule is no less effective than the Federal rule.

Issue IV.C.2.

Substituting Public Hearing for the Informal Conference

The issue raised is whether the Illinois rule which provides for the cancellation of the informal conference for permit applications if a subsequent request for a public hearing is filed and approved is no less effective than the Federal rules in meeting the Act's requirements for public participation in permit processing. The Federal rules at 30 CFR 773.13(c) provide for an informal conference. However, they do not provide for a public hearing for permit applications, significant revisions to a permit, or renewal of a permit. The Federal rules provide that the informal conference be held to allow any persons with an interest to offer oral or written statements and other relevant information on the above documents. Both the informal conference and the public hearing as provided by Illinois rules 1786.14 and 1786.16 allow interested persons the opportunity for presenting their views consistent with the Federal rule. The Secretary also notes the functional efficiency and consistency between IR 1786.16(i) and 30 CFR 773.13(c)(4).

The Federal rules further provide that the regulatory authority *may* arrange for interested parties requesting an informal conference to have access to the proposed mining area. The State rules explicitly provide this opportunity for parties to the informal conference but not for parties to the public hearing. Given the optional language of the Federal rules, the Secretary finds the Illinois rule consistent with the Federal rules on this issue.

ISP commented that they stand by the positions in their brief and that the Illinois rule concerning informal conference is restrictive, in addition to the cancellation process, because of the quasi-adjudicatory nature of the public hearing held in lieu of the informal conference and because of the ability of the parties requesting the hearing to cancel the hearing. Illinois Rule 1786.16(f) concerning the conduct of such hearings specifically states that the hearing shall be informal. Illinois rules further provide for procedures to allow for representation by counsel, questioning of witnesses, and exclusion of incompetent, immaterial, irrelevant, or unduly repetitious statements or data. The Federal rules do not preclude such procedures and such techniques in the informal setting required by the Illinois rules. IR 1786.16(g) specifically directs that strict rules of presentation shall not apply and the evidence of a type commonly relied on by reasonably prudent men in the conduct of their affairs may be admitted. This would not hamper the public participation process or place an unfair burden on any party. ISP expressed the concern that the hearing could be cancelled by the operator-applicant as the requestor of the hearing and thus thwart the opportunity for public comment by those initially requesting the informal conference. The Secretary and Illinois read IR 1786.16(h) which refers to all parties requesting a hearing as those who must withdraw the request for the hearing, to include the original parties to the informal conference. Thus, ISP's concern lacks a basis.

ICA noted the functional identity of the informal conference and public hearing in the Illinois program and supported the informal and legislative format to ensure an orderly and productive public forum for permit review.

Issue IV.C.3.

Identification of Other Licenses and Permits

This issue presents the question of whether the Illinois program provisions to avoid duplication and coordinate the review and issuance of permits is no less effective than the Federal rules in meeting the Act's requirements. At the time the Illinois program was conditionally approved on June 1, 1983, the Federal regulations at 30 CFR 778.19 and 782.19 required a permit applicant to identify in the application all other licenses and permits needed to conduct the proposed operation. The purpose of the Federal rule was to implement Section 503(a)(6) of SMCRA which requires that State programs, to avoid duplication, establish processes for coordinating the review and issuance of permits with any other Federal or State permit process applicable to the operation. In approving the Illinois program the Secretary found that while the Illinois program omitted a specific requirement comparable to 30 CFR 778.19 and 782.19, it nonetheless was no less effective than the Secretary's regulations in meeting the purposes of Section 503(a)(6) of SMCRA. The Secretary noted that Illinois had established an adequate process for coordinating the review of other permits and licenses.

The Secretary referred to several elements of the Illinois program, including Rule 1770.12 which requires that all permit applications be reviewed by the Interagency Committee and requires the IDMM to assure that the comments and recommendations by the Interagency Committee will address compliance with any other Federal or State permit process applicable to the operations. In addition, the State's legal opinion, Volume R5 (ILL–0384), explains that the members of the Interagency Committee, representing various State agencies, are aware of what permits are needed within their areas of expertise.

Since the Illinois program was approved, the Federal rules have been revised to remove 30 CFR 778.19 and 782.19. (48 FR 44344, September 28, 1983) OSM determined that this information is not specifically required by the permitting sections of SMCRA. Rather, OSM explained that under Section 503(a)(6) regulatory authorities must establish a procedure for coordinating the review and issuance of permits. The regulatory authorities can use this mechanism to obtain information on other licenses and permits. The Secretary, therefore, finds that Illinois has established a process for coordinating the review and issuance of permits with other Federal and State permit processes which meets the requirements of section 503(a)(6) of SMCRA and is no less effective than the Federal rules.

ISP commented that although the new Federal rules do not explicitly direct regulatory authorities to require operators to identify other licenses and permits, ISP continues to believe such information necessary and stands by the position in their brief. As discussed above, the new Federal rules explicitly removed this requirement and the Secretary cannot require any State to include such a specific provision in its program.

ISP also stated that under section 503(a) of the Act, regulatory authorities must establish a procedure for coordinating the review and issuance of permits with any other Federal or State permit process which is applicable to the proposed surface mining and reclamation operation. ISP contends that Illinois has no such procedure and that the mere existence of an interagency committee is no substitute for the mandated procedure. In addition, ISP commented that the Committee's knowledge is limited to needed Federal permits. Illinois does not merely substitute the existence of an interagency committee for this requirement. Rather, Rule 1770.12 requires the Interagency Committee to be actively involved in the permit review process and requires the IDMM to assure that the Committee's comments and recommendations will

address compliance with Illinois laws and regulations and any other Federal *or State* permit process, including at a minimum, permits required under a number of specifically enumerated Federal statutes. The Secretary finds that these requirements constitute the process required by Section 503(a) of SMCRA.

ICA commented that IR 1770.12 is a near-verbatim restatement of Section 503(a)(6) of SMCRA and that the Illinois regulation is equally effective in meeting the requirements of the Act as were Federal rules 778.19 and 782.19 as they existed on June 1, 1982. ICA also took issue with ISP's contention that the Interagency Committee's knowledge is limited to Federal permits; the Secretary agrees. Finally, ICA noted that the relevant Federal regulations have been removed since the Illinois program was approved; the Secretary agrees as discussed above.

Issue IV.C.4.

Permit Application Blasting Plan

The issue is whether Illinois regulation 1780.13 prescribing permit application requirements for an operation's blasting plan is no less effective than Federal rule 30 CFR 780.13 in meeting the Act's requirements.

Federal rule 30 CFR 780.13(a) requires that each application shall contain a blasting plan for the proposed permit area explaining how the applicant will comply with the requirements of 816.61–.68 (performance standards). The Federal plan shall include, at a minimum, information setting forth the limitations the operator will meet with regard to ground vibration and airblast, the bases for those limitations, and the methods to be applied in controlling adverse effects of blasting operations.

Under IR 1780.13, each application shall contain a blasting plan for the proposed permit area, explaining how the applicant intends to comply with the requirements of Section 1816.61–.68 (performance standards).

The State blasting plan also requires information on notification to the public of blasting schedules and the availability of pre-blast surveys, a copy of the blasting log form, the anticipated minimum square root distance to the nearest structure, a description of the supervisory duties of persons responsible for blast preparation, and a description of unavoidable hazardous conditions for which deviation from the blasting schedule will be needed. Both the Federal and Illinois rules list required information which supplements the information on compliance with the performance standards. The technical requirements for meeting the performance standards are contained in both. Therefore, the Secretary finds the State rule requires sufficient information in the blasting plan for IDMM to determine that the operator will meet the performance standards contained in the Illinois regulations. The State provisions are no less effective than the Federal provisions in meeting the Act's requirements.

ICA and AMAX commented that the Illinois regulation at 1780.13 required adequate information pertaining to the blasting plan to assure that the performance standards would be carried out. ISP referenced their brief and commented that the Illinois application regulations for a blasting plan were not the same as Federal rules in effect on June 1, 1982, and that the Illinois rules are less effective than the Federal rules. The Secretary disagrees as explained above.

ISP also stated that the blast design plans required by 30 CFR 816.61(d) are not required by the Illinois program and that this renders the Illinois provisions less effective than the Federal rules. The Secretary notes that 30 CFR 816.61(d), 48 FR 9788, promulgated March 8, 1983, is a new paragraph in the Federal rules which requires submission of an anticipated blast design for proposed blasting operations in the vicinity of certain buildings or underground mines. The proposed design is not required by the Federal rules to be presented at the time of a permit application but may be submitted at a later date. The Illinois program does not require this information in a permit application. The Secretary will inform the State that such a requirement appears to be necessary during his review of the regulatory reform issues. However, as indicated above, the State's regulations for permit applications regarding blasting are no less effective than the applicable Federal rules.

Issue IV.C.5.

Rehabilitation of Siltation Structures, Diversions, Impoundments, and Treatment Facilities

Illinois Rule 1780.38 has no Federal counterpart. At issue is whether the rule is no less effective than the Federal rules in meeting the Act's requirements and whether it allows unauthorized alteration of structures for which detailed design plans are required by rules governing permit applications.

Many of the rules in Illinois Part 1780 require the submission and approval of detailed designs and plans for the structures specified during and after mining. The applicant may request that some of these structures be allowed to remain to facilitate or create a postmining land use. Illinois has recognized that differences in function may require changes in design. Thus, by its rule Illinois has required the applicant during the initial permit process to submit a *second* plan, a "rehabilitation plan," for each structure which will not be completely reclaimed. The plan must detail the specific design changes or maintenance tasks necessary to render the structure suitable for its post-mining role which alter the designs submitted for the structure's active mining use. The plan must be submitted as part of the permit application and is therefore subject to public review. The rule does not authorize any deviation from any plan or design approved elsewhere in the permit application, nor does it provide any flexibility in the implementation or enforcement of those plans.

IR 1780.38 appears to enhance the regulatory authority's ability to ensure that structures which may affect the hydrologic balance after mining and reclamation meet the intent of the postmining land use plan. Therefore, IR 1780.38 is no less effective than the Federal rules in carrying out the purpose of the Act, nor does it render any other portion of the Illinois program any less effective by virtue of its existence.

ICA commented that the Illinios rule requires permit application review by the public and the regulatory authority. ICA also stated that the realities of construction work and reclamation often require minor alteration of initial use design and that the Illinois rule provides flexibility and public review of any subsequent changes in the postmining land use design of the structures. The Secretary agrees as stated above. ISP referenced their brief and commented that the Illinois rule sanctions departures from detailed design plans that were the basis for a permit, without following permit revision procedures. As mentioned above, any proposed postmining change in a hydrology structure must be included in a permit application; thus the Secretary disagrees with this comment.

Issue IV.C.6.

Ground Water Information

The issue is whether the provisions of the Illinois program requiring underground mining applications to contain ground water information are no less effective than the Federal rules in meeting the Act's requirements.

The Illinois rules at IR 1783.15 and 1784.14 require general ground water

information and a reclamation plan. Rule 1783.15 requires that the application contain a description of the ground water hyrology for the proposed permit and adjacent area, including information on the depth, lithology, thickness, and use of the water in aquifers. Rule 1783.15(c) also states "where the applicant claims that no significant aquifer occurs, the applicant shall state the basis for this determination."

The revised Federal rule at 1784.14(b)(1) (48 FR 43956, September 26, 1983) requires certain baseline ground water information, including the location and description of all ground water resources in the permit and adjacent areas.

Both the Illinois rules at 1784.14 and the Federal rules at 784.14(h) require submission of a ground water monitoring plan. The Federal rule further provides at 30 CFR 784.14(h)(2) that "If an applicant can demonstrate by the use of the probable hydrologic consequences (PHC) determination and other available information that a particular water-bearing stratum in the proposed permit and adjacent areas is not one which serves as an aquifer which significantly ensures the hydrologic balance within the cumulative impact area, then monitoring of that stratum may be waived by the regulatory authority."

Under both rules, the applicant must identify and describe all aquifers, but both the Federal and Illinois rules envision that monitoring is not required for insignificant aquifers.

The Secretary therefore finds State regulation 1783.15(c) no less effective than 30 CFR 784.14(h)(2).

ISP referenced its brief which stated that 1783.15(c) would exempt the applicant from submitting information required under 1783.15 (a) and (b) for anything except significant aquifers. The Secretary does not agree. The information required by paragraphs (a) and (b) is required for all aquifers. Paragraph (c) requires the applicant to state the basis for any claim that no significant aquifer exists. If the applicant can demonstrate to the satisfaction of the regulatory authority that no significant aquifer exists, the regulatory authority can exempt the applicant from certain monitoring requirements under 1784.14 and 1817.52(a). ISP also stated that the very information needed to determine whether an aquifer is significant would not be included in the permit application and available for public scrutiny. However, the applicant's claim and the basis for the claim are a required part of the application and will be subject to comment to the same extent as any other information.

ICA commented that it is important to recognize the relationship between the groundwater information required in the permit application and the groundwater monitoring performance standard. ICA stated that the Federal performance standard requires monitoring when the underground mining activities may affect aquifers which significantly ensure the hydrologic balance. Thus, if the aquifer is not significant, monitoring is not required. ICA noted that the Illinois rules incorporate this rationale in IR 1783.15(c), which places the burden of proof on the permit applicant to demonstrate that no significant aquifer exists, and that the information required by 1783.15 (a) and (b) must be provided. ICA further noted that the applicant's submission of data demonstrating that no significant aquifer exists is part of the permit application and subject to public comment. Therefore, ICA stated that IR 1783.15(c) clearly conforms to the revised Federal rules. The Secretary agrees. AMAX and IDMM noted that IR 1783.15(c) is no less effective than and consistent with 30 CFR 784.14(h)(2). The Secretary agrees as discussed above.

Issue IV.C.7.

Alternative Water Supply Information

The issue is whether the provisions of the Illinois program for underground mining application requirements concerning groundwater are no less effective than the Federal rules in meeting the Act's requirements.

At the time the Illinois program was approved on June 1, 1982, Federal rule 30 CFR 817.54, upon which 30 CFR 783.17 requiring alternative water supply information for underground mines, was based, had been suspended by the District Court for the District of Columbia. In his approval of the Illinois program, the Secretary, therefore, found that the omission of a counterpart to 30 CFR 783.17 did not make the State program inconsistent with the Federal rule. Since approval of the Illinois program, the requirement contained in original 30 CFR 783.17 has been deleted. However, 30 CFR 780.21 does include provisions requiring information on groundwater replacement, but only for surface mining activities. Illinois rules in Part 1779 include these requirements. Therefore, the Secretary finds the provisons of the Illinois program for underground mining application requirements concerning groundwater to be no less effective than the Federal rules.

ICA and IDMM commented that since 30 CFR 817.54 and 30 CFR 783.17 had been deleted, there was no requirement that the State program have a similar provision. ISP stated that the information required by old 30 CFR 783.17 is still required pursuant to Sections 507(b)(11) and 508(a)(13) of SMCRA. The Secretary disagrees with ISP and finds the omission of a counterpart to the deleted 30 CFR 783.17 is consistent with the Federal rules in meeting the Act's requirements.

Issue IV.C.8.

Experimental Practices

This issue presents the question of whether the criteria of the Illinois program provisions for experimental practices are no less effective than the criteria of the Federal rules in meeting the Act's requirements. The Federal rules, at 30 CFR 785.13, promulgated on March 4, 1983, 48 FR 9478, require certain specified criteria to be met before an experimental practice can be approved. The Illinois rule contains the same criteria with one exception: it adds the word "agricultural" to the list of allowed postmining land uses to justify the granting of an experimental practice. The Federal rules do not contain agricultural postmining land use as one of the possible criteria for approval. However, both the Federal and Illinois rules require approval by the Director of OSM before any experimental practice may be undertaken.

Section 711 of the Act allows experimental practices for either of two purposes: (1) To encourage advances in mining and reclamation practices, or (2) to allow postmining land use for industrial, commercial, residential or public use (including recreational facilities). Congress used the broader inclusive "or" rather than the narrower exclusive "and" to connect the two purposes. It is likely that any agricultural end-use experimental practice could be commercial or would encourage advances in mining and reclamation practices. That is, it is possible that any such experimental practice could qualify under either or both of the Federal criteria. In addition, if it did not, the Secretary would preclude its use. For any possible circumstance where the sole justification for an experimental practice is a non-commercial agricultural postmining land use, the Secretary (through the Director of OSM) would not be able to approve it under 30 CFR 785.13, and thus, the Illinois provision provides, in effect, no circumstance under which an experimental practice may be approved inconsistently with the Federal rules.

Thus, the fact that the Illinois rule contains the word "agricultural" in the second clause does not render it less effective than the Federal counterpart. Therefore, the Secretary finds that the criteria of the Illinois program for experimental practices are no less effective than the Federal rules in meeting the Act's requirements.

ISP referenced their brief and commented that the insertion of the word "agricultural" makes the Illinois rules less effective than and inconsistent with the Federal rules for the reasons stated in their brief and because the Secretary had rejected such an insertion in the criteria for approximate original contour (AOC) variances. ISP's brief asserts that the Illinois provision is inconsistent with the Federal standard and must be automatically disapproved by the Secretary as required by Section 503(a)(1). As explained in the analysis above, the Secretary disagrees, because the Illinois provisions accomplish the same result as the Federal provisions. ISP also asserts that operators may be misled by the use of the word "agricultural" if a non-commercial agricultural use is proposed and ultimately rejected by the Director of OSM. This concern is also shared by the Secretary. However, the Secretary will inform Illinois of this concern and assumes IDMM will notify operators not to request experimental practices which cannot be approved.

ISP also stated that Section 711 prohibits all agricultural uses and pointed to other sections in the Act that restrict exemptions with nearly identical phrasing. The exemptions in other sections are much more narrowly drawn than those in Section 711. As explained above, the dual layer of review under the experimental practices rules will preclude approval of any experimental practice justified solely as allowing a non-commercial agricultural postmining land use.

ICA commented that the Illinois program provisions were no less effective than the Federal rules. The Secretary agree as explained above.

Issue IV.C.9.

Prime Farmland Grandfather Provision and Its Relation to the Permitting Process

The issue is whether the Illinois program which bifurcates the prime farmland grandfathering decision from the permit process is no less effective than the Federal rules in meeting the Act's requirements.

No Federal rule or requirement in the Act exists setting any standard on the timing of the grandfather exemption decision-making process. The requirements for prime farmland and the grandfather exemption went into effect during the interim program. Illinois established a procedure at that time to receive and review requests to grant exemption from the prime farmland standards under the grandfather provisions. Through this procedure certain specific lands have been exempted. The State issued opinions describing each decision and these opinions are on file in the Department. Permit applications now being processed under the permanent program often contain acreage previously grandfathered. The entire permit application is subject to review by the public, and public comment regarding the grandfather exemption decision may be submitted. As the Secretary noted in his June 1, 1982 decision, in response to comment No. 69, the applicant's claim that the operation is grandfathered will be subject to public comment during the permit application review period.

Because no requirement exists in the Act or Federal rules governing the timing of the grandfather decision, the Secretary finds the Illinois procedure no less effective than the Secretary's rules in meeting the requirements of the Act.

ICA and IDMM commented with explanations that nothing in the Act or Federal rules govern the timing of the grandfather decision. The Secretary agrees. ISP referenced their brief and stated the grandfather decision must be made only during the permit decision in order that it be subject to all of the requirements for public participation with respect to the permit decision. ISP further commented that Illinois deprived the interested public of the opportunity to comment and otherwise participate in one of the most critical aspects of a permit decision for prime farmlands. Because the Federal rules are silent with respect to timing of the grandfather decision and because the applicant's claim that certain lands have been properly grandfathered will be subject to public comment during the permit application review period, the Secretary finds this procedure acceptable and no less effective than the Federal rules in meeting the Act's requirements.

Issue IV.C.10.

Prime Farmland Grandfather Clause

The issue is whether the Illinois program establishing the grandfather standards to exempt lands from the prime farmland standards is no less effective than the Federal rule at 30 CFR 785.17(a) in meeting the Act's requirements.

At the time the Secretary approved the Illinois program he stated that because of extensive litigation over the prime farmland grandfathering criteria, the State could not have anticipated the adoption of the final Federal rule establishing standards for prime farmland exemptions. The Secretary added that Illinois would be afforded an opportunity to amend its regulations as appropriate, if necessary to make its program consistent with the September 29, 1981 rule. As of March 29, 1984, Illinois has not adopted the provisions of 30 CFR 785.1 establishing the legal right to mine as an additional criterion for the grandfather exemption. The Secretary finds the Illinois provisions at 1785.17(a) do not meet the no less effective than test and will require that Illinois adopt the additional criterion. The Secretary notes that Illinois proposed a regulation on May 20, 1983, that includes the necessary criterion. That regulation has not been finalized but was submitted as an amendment to the State regulatory program on March 16, 1984.

ICA and IDMM commented that the Illinois regulations contain the same criteria as the Federal Act at section 510(d)(2). Both ICA and IDMM pointed out that Illinois has been, in fact, enforcing the Federal criteria contained in 30 CFR 785.17(a). Both commenters also explained the reasons for the "once grandfathered always grandfathered" approach to prime farmland grandfather decisions and pointed to prior court decisions. ISP objected to the Illinois provisions and to the "once grandfathered always grandfathered approach" stating that the Federal rules require all past grandfather decisions to be remade under revised rules. The Secretary however cannot find support for the ISP statement in the Federal rules and finds this aspect of the Illinois program subject to his oversight responsibilities.

Issue IV.C.11.

Prime Farmland Permit Application Requirements

The issue is whether Illinois application requirements for permits involving prime farmland are no less effective than the Federal rules in meeting the Act's requirements.

Under Federal rule 30 CFR 785.17(a) any person who conducts or intends to conduct surface coal mining and reclamation operations on prime farmland must address the application requirements for prime farmland contained in 30 CFR 785.17(b). Illinois' counterpart regulation at 1785.17(a)

extends the application requirements for prime farmland only to surface coal mining and reclamation. The State thus exempts all surface effects of underground mining operations from prime farmland application requirements whereas under the Federal rules some unspecified surface effects of underground mining operations are covered. The Federal rule at 30 CFR 823.11, 48 FR 21446, promulgated May 12, 1983, exempts preparation plants, support facilities and roads for both surface and underground mines which are used over extended periods of time and involve minimal amounts of land from the prime farmland performance standards. Because the State rule exempts all possible surface effects of underground mining operation from the prime farmland application requirements, the Secretary finds the Illinois provisions to be less effective than the Federal rules in meeting the Act's requirements. The Secretary will require appropriate State program amendments for the permit application requirements for underground mining operations and the corresponding performance standards under 30 CFR Part 823, which relate to issues IV.E.13.a. and IV.E.14. *Infra.*

ICA commented that because of initial litigation which suspended 30 CFR Part 823, applicability of the prime farmland standards to underground mining, the Illinois program did not conflict with the initial Federal rules. However, ICA also stated that Illinois would no doubt have to make its rules consistent with the new Federal rules on underground mining and prime farmland.

AMAX commented extensively on the Act, its terms and definitions and its intent to encourage underground mining. AMAX also pointed out that IR 1823.15 requires that all surface coal mining and reclamation operations in Illinois must meet stringent prime farmland revegetation standards whether or not the land has been drilled, blasted, or mined. Finally AMAX stated that the surface facilities of surface and underground mines in Illinois "fall almost entirely within the exemption * * * provided by the Federal rules for facilities * * *." The Secretary agrees except that, as stated above, Illinois provides for a broader exemption to the prime farmland standards than the Federal rules.

ISP stated that the term "surface coal mining and reclamation operations" limited the applicability of State rule 1785.17(a) from the applicability of the Federal rule. As noted above, the Secretary finds the State rule inconsistent with the Federal permanent program rules.

Issue IV.C.12.

Prime Farmland Exemptions for Underground Mining

The issue is whether Illinois rule 1785.17(e) which exempts certain surface facilities for underground mines from the prime farmland requirements is no less effective than Federal rules in meeting the Act's requirements.

IR 1785.17(e) states that when the reserve area of an underground mine contains so much prime farmland that it is impractical for the applicant to locate surface facilities on areas other than prime farmland, the applicant may be exempted by the Department from certain portions of the prime farmland requirements. No Federal counterpart exists to the State's exemption. Federal rule 30 CFR 823.11 promulgated May 12, 1983, 48 FR 21446, does however exempt preparation plants, support facilities and roads for both surface and underground mines which are used over extended periods of time and involve minimal amounts of land from prime farmland performance standards. However, the State's exemption is much more extensive than the Federal rules. The Secretary finds it inconsistent with the Federal rules and will require an appropriate State program amendment.

ISP commented that they stand by the position in their brief and that there was no Federal counterpart to the exemption found at 1785.17(e) of the Illinois regulations and the exemption should therefore be deleted.

ICA and IDMM explained that because of the judicial suspension of Part 823, the Illinois provisions allowed the exemptions. They also noted that the Secretary's rules had changed. IDMM noted that the new Federal rules which apply prime farmland standards to certain aspects of underground mining were under challenge in Federal court in the District of Columbia. AMAX commented that underground mines were exempt from the standards. As explained above, the Secretary finds the Illinois exemption much more extensive than the Federal rules.

Issue IV.C.13.

Permit Revisions

The issue raised is whether the Illinois rule for permit revisions is no less effective than the Federal rule in meeting the Act's requirements. The Federal rule, 30 CFR 774.13(b)(1) promulgated September 28, 1983, 48 FR 44344, which describes the requirements for a permit revision, states that the regulatory authority shall establish guidelines for the scope or extent of revisions for which all permit application information requirements and procedures (including notice, public participation and notice of decision) shall apply. The Federal rule further states that these procedures shall apply, at a minimum, to all significant permit revisions. Thus the Federal rules make a distinction between significant and insignificant permit revisions and require that the regulatory authority establish guidelines on how to make that determination. The only guidance as to what constitutes a significant revision is found in Section 511(a)(2) of the Act where it states that any revision which proposes a significant alteration in the reclamation plan shall, at a minimum, be subject to notice and hearing requirements. The Illinois rule which establishes the guidelines for the scope of significant revisions is found at 1788.12 and provides that the following revisions are considered significant and are subject, at a minimum, to the requirements of IR Sections 1786 and 1787:

1. Changes in surface coal mining or reclamation operations when such changes constitute a significant departure from the method of conduct of mining or reclamation operations.

2. When required by an order issued pursuant to the Department's review of outstanding permits.

3. In order to continue operation after cancellation or material reduction of the liability policy, self insurance, performance bond or other permit guarantees.

4. As otherwise required under the regulatory program.

The same Illinois rule further describes six general areas of changes which are not considered significant revisions. The review of these exceptions indicates that as described herein, these categories of possible insignificant revisions are no less effective than those envisioned by the Federal rules.

IR 1788.12(a)(1)(i) exempts "changes of direction of mining. * * * within the permit area," from being a significant permit revision.

The Secretary agrees that to the extent that the location of the mining is not change, a change in the direction of mining may be classified as insignificant. IR 1788.12(a)(1)(iii) exempts "for underground mines, any change in direction or location of mining within the permit area, in response to unanticipated events" from ever being a significant permit revision. Because Illinois does not currently require the underground mine workings to be

included within the permit area of an underground mine, changes of location or direction of mining within the permit area may be classified as insignificant. However, as discussed earlier in this preamble in connection with the definition of the term "affected area" the Secretary is examining Illinois' permitting requirements for underground mines. In this context, the Secretary will also reexamine his findings concerning IR 1788.12(a)(iii), if necessary.

For the other exceptions which could possibly be significant, IR 1788.12 requires notice to the State and approval on a case-by-case basis. For changes which alter reclamation plans, IR 1788.12(b)(6) requires the Department to always make a determination on a case-by-case basis as to what constitutes a significant departure. Thus the Secretary finds that the Illinois rule on permit revisions is no less effective than the Federal rules.

ISP commented that they stand by the position put forward in their brief and raised several concerns with the scope and extent of permit changes allowed by the Illinois rule. ISP stated that the change of direction or location of underground mining would allow mining in areas distinct from areas approved in the permit. Because IR 1788.12(a)(iii) is limited to changes of location within the permit area, the extent of such changes is not expected to be significant. If the Secretary concludes that areas above the underground workings could, in certain circumstances, have to be permitted under the Illinois program, this finding will be reviewed.

ISP objected that rule 1788.12(a)(v), exempting any alteration in reclamation plan or reclamation operations which does not involve significant delay or any change in land use on a case-by-case basis, exceeds the intent of the Federal law and rules. This assertion is an indictment of State action and motivation before it occurs. ISP further believes that IR 1788.12(a)(1)(iv) is a catchall for excusing operators on a case-by-case basis. The Secretary disagrees. The language in the IR 1788.12(a)(iv) which states "after determining that the described change will have no significant potential adverse impact on the achievement of final reclamation plans or upon surrounding area" is consistent with the language of the Act which describes significant revisions as those which significantly alter the reclamation plan. Through oversight, the Secretary will assure that IR 1788.12(a) (iv) and (v) are implemented in a manner consistent with the Federal provisions.

Generally, any change to a permit requires a request for an approval of a revision. Except as noted, Section 1788.12 of the Illinois rules requires that a determination be made as to which changes are significant and which are insignificant, and describes the procedures for each.

The ICA commented that there are changes in the reclamation plan which are considered insignificant and need not be submitted through the revision process. All revisions to the permit, either significant or insignificant must, under 30 CFR 774.13, be submitted to the regulatory authority. IR 1788.12(b)(6) requires written request to the State regulatory authority for all permit changes.

AMAX also noted the importance of delineating between significant and insignificant revisions to ensure both that the environment is protected and that the efficiency and profitability of the mining operation is maintained. It commented that the six categories that Illinois provides to exempt permit revisions from the permit revision process ensure protection of the permit area and final reclamation plans while allowing for operational changes that are needed to be made. The Secretary's views are discussed above.

Issues IV.D.1. and D.2.

Incremental Bonding—Forfeiture and Liability

Section 6.07(d) of the Illinois statute provides that the amount of bond forfeiture shall be based on the actual cost to remedy the violation, except that the amount shall not exceed the amount of the bond or deposit for the area in which the violation occurred. Illinois rule 1808.12(c) provides that the IDMM may forfeit any or all bond deposited for an entire permit area or any increment thereof, and that liability under any bond covering any increment of the permit area may extend to the entire permit area.

The Federal rules at 30 CFR 800.50(c), 48 FR 32964, promulgated July 19, 1983, provide that upon default, the regulatory authority may cause the forfeiture of any and all bonds deposited to complete reclamation for which the bonds were posted. Further, the rule states that unless specifically limited, as provided in 30 CFR 800.11(d)(3), bond liability shall extend to the entire permit area under conditions of forfeiture. Section 800.11(d) provides that the applicant shall file a bond or bonds under one of three schemes. Subparagraph (3) of that rule requires, for an incremental bonding scheme, the filing of an incremental bond schedule and the bond required for the first increment. The preamble to these Federal rules (48 FR 32936, July 19, 1983) explains that incremental bonding recognizes a permit area can be divided into discrete portions, each separate from and independent of another insofar as the liability of sureties to bond reclamation work is concerned. Thus, bonding of an increment necessarily implies that if there is a default in reclamation responsibility on one increment within the permit area, the regulatory authority cannot forfeit the bond or bonds specifically posted for any other increment and apply those proceeds to the increment on which default has occurred. The Illinois statute and regulation provide that under an incremental bonding system, the IDMM may forfeit any or all bond deposited for an increment and that liability under that bond may extend to the entire permit area. The Secretary finds, therefore, that the Illinois program is no less effective than the corresponding Federal regulations in meeting the Act's requirements.

ISP referenced their brief and commented that the Illinois statute at 6.07(d) is inconsistent with Federal statutory requirements and that the revised Federal rules do not affect this issue. In his initial decision on the Illinois program (October 31, 1980, 45 FR 72475), the Secretary found the Illinois statute to be inconsistent with 30 CFR 808.12(c), which provided that the regulatory authority may forfeit any or all bonds deposited for an entire permit area regardless of the area in which the violation occurred. However, since that decision, a number of changes have occurred with respect to incremental bonding requirements, including suspension of 30 CFR 808.12(c) on August 19, 1981, and promulgation of revised Federal bonding rules on July 19, 1983. As discussed in the preamble to the revised Federal regulations (48 FR 32937–8), OSM concluded that its previous position on 30 CFR 808.12(c) was not warranted. It is OSM's view that Section 509(a) of SMCRA authorizes separate bonds covering separate increments of the permit area which can be released separately. Regardless of the amount of the bond for a particular increment, an operator is liable for the entire cost of reclamation. Based on the foregoing, the Secretary has found that the Illinois program is no less effective than 30 CFR 800.50(c) and 800.11(d)(3).

ISP also stated that to the extent Illinois rule 1808.12(c) is inconsistent with Section 6.07(d) of the Illinois statute, it is not enforceable. The Secretary disagrees and has found the Illinois program to be no less effective than the Federal regulations.

ICA commented that the revised Federal bonding regulations clearly allow for incremental bonding in which the liability under the bond is limited to the incremental area. ICA also noted that even at the time the Illinois program was approved, Federal rule 808.12(c) had been suspended in its entirety. For these reasons, ICA contends that the Illinois program was and continues to be no less effective than the Federal regulations. The Secretary agrees and has so found.

AMAX commented that the new Federal rules, specifically 30 CFR 800.11 (b) and (c) and 800.50 (b)(2) and (c), clearly allow a State regulatory authority to adopt rules which limit bond liability to discrete portions of the permit area (called "increments"). The Secretary agrees with the comment as discussed above.

Issue IV.E.1.

Diversion of Overland Flow

The issue is whether the Illinois provision for diversion designs to allow out-of-bank flows under certain circumstances is no less effective than the Federal rules in meeting the requirements of the Act.

The Federal rule at 816.43(a) promulgated September 26, 1983, 48 FR 43956, requires that "all diversions shall be designed to minimize adverse impacts to the hydrological balance within the permit and adjacent areas, to prevent material damage outside the permit area and to assure the safety of the public."

Illinois regulation 1816.43(a)–(f) establishes design criteria and standards for temporary and permanent diversions. IR 1816.43(h) provides that if the terrain is such that out-of-bank flows can accommodate the design precipitation event without endangering health of the environment, the need for diversion ditches may be modified by taking into account channels, banks and floodplains.

The State rule allows out-of-bank flows only where the terrain can accommodate the design precipitation and without endangering health or the environment. Because of these limitations on out-of-bank flows the Secretary finds the Illinois provision no less effective than the Federal provision governing design of diversions.

ICA supported the conclusion that the Illinois provision is acceptable. ISP commented that the Director of OSM stated in a letter dated October 30, 1980 that the exemption was inconsistent with Federal standards in effect at that time. The Federal standards have now been revised as noted above.

ISP stated that Illinois incorporates the required Federal standards into its rule but then adds an exemption from these standards, not found in the Federal rules where "the terrain is such that out-of-flow banks can accommodate the design precipitation event without endangering health or the environment." The dissenting commenter also stated that the Director of OSM informed Illinois in a letter dated October 30, 1980, that this exemption was inconsistent with Federal standards in effect at that time.

The Secretary notes that 30 CFR 816.43(a) provides all diversions shall be designed to minimize adverse impacts to the hydrologic balance within the permit and adjacent areas, to prevent material damage outside the permit area and to assure the safety of the public. The Illinois regulations only allow out-of-bank flows where the provisions of Federal rule 30 CFR 816.43(a) can essentially be met. The Federal regulations to which the Illinois provisions are compared have been revised from those in effect at the time of OSM's October 30, 1980 letter. Because of the above noted limitations on out-of-bank flows, the Secretary finds the Illinois provisions consistent with the Federal rules in meeting the Act's requirements.

Issue IV.E.2.

Sediment Pond Design Criteria

The issue is whether the sediment pond design and performance criteria in IR 1816.46 are no less effective than the Federal rules regarding design and performance standards for siltation structures in meeting the Act's requirements.

At the time of the Illinois program approval, most of the OSM rules on design criteria and performance standards for sediment ponds had been suspended. In effect there were no Federal rules with which the State requirements could be compared. As a result of OSM's regulatory reform effort, the Federal rules on hydrologic balance have been extensively reorganized and rewritten. Final rules on design and performance standards for siltation structures 30 CFR 816.46 were adopted by OSM on September 26, 1983 (48 FR 44032).

In the absence of Federal criteria, Illinois adopted State rule 1816.46(b) which provides: "Sediment pond design criteria shall be published as technical guidelines by the Department, shall be subject to the Administrative Procedures Act, and shall be no less stringent than current criteria of the U.S. Environmental Protection Agency and Office of Surface Mining." Illinois has not, to date, published any technical guidelines pursuant to its rules.

ISP referenced their brief and in its comments, charged that any guidelines, published or not, would be unenforceable because 1816.46(b) does not require compliance with the guidelines, and that the guidelines would not have the force of rules. ICA commented extensively on how the referenced criteria of the Federal rules provide consistent Illinois provisions on sediment pond design and performance standards. ICA explained why the Illinois provision failed to include the detailed design criteria consistent with the earlier Federal rule. ICA also commented on the comparison between IR 1816.46 and the new 30 CFR 816.46 and stated the similarities between the provisions. The Secretary agrees that the Illinois provisions are quite similar, that they reference the Federal rules, and that performance standards are mainly the new criteria. However, as recently adopted, the Federal rules contain many design and performance criteria not found in IR 1816.46. In addition, 30 CFR 816.46(b)(4) requires that all structures impounding water meet all the criteria of 30 CFR 816.49, on impoundments. The State program has no similar requirement.

The final Federal rules are not incorporated by the State Rule nor are the minimum performance standards adopted in the Federal rules found elsewhere in the State program. State rule 1816.46(b) is therefore less effective than the Federal rules in implementing the Act.

Issue IV.E.3.

Angle of Repose Perimeter Slopes

The issue raised is whether the Illinois rule, which allows the perimeter slopes of permanent impoundments to be as steep as the angle of repose if they are stable and are consistent with the intended postmining use of the impoundment, is no less effective than the Federal rule in meeting the Act's requirements.

The Federal rules at 816.49(b)(1) and 816.49(b)(4) promulgated September 26, 1983, 48 FR 43994, provide that the configuration of the impoundment will be adequate for its intended purpose and that final grading will provide for adequate safety and access for proposed water users. Illinois rules 1816.49(a)(3), 1816.49(a)(7) and 1816.49(c) require that permanent impoundments provide adequate safety and access for water users, suitability for the approved postmining land use, and that perimeter

slopes be stable and consistent with the intended use. In addition, IR 1816.49(a)(5) requires that permanent impoundments are prohibited unless they achieve the minimum design requirements set forth in the U.S. Soil Conservation Service technical release and practice standard referenced by the rule. These publications set forth minimum safety factors upon which the Federal rules were based. Federal rules 816.49(a)(3), 816.49(a)(6), 816.49(a)(2) and 816.49(b)(2) impose requirements concerning slope stability, slope protection, erosion control and water quality. These requirements are specified through minimum static safety factors, vegetation and other slope protection procedures, and a water quality standard. Illinois rules 1816.49(a)(1), (3), (4) and (5), and 1816.49(d) impose, in effect, the same requirements for slope stability and protection, erosion control, and water quality. The Secretary thus finds that the Illinois rules concerning perimeter slopes on permanent impoundments are no less effective than the Federal rules in meeting the Act's requirements. Although the new Federal rules on topsoil do not provide for angle of repose slopes, as long as the stability of the slope can be demonstrated by the Illinois permittee, nothing in the Federal rules precludes stable angle of repose slopes.

ISP commented that the stability requirements of Federal rule 816.49(a)(3), which provide for a minimum static safety factor, cannot be met by the Illinois rule. The commenter has overlooked the requirements of IR 1816.49(a) (3) and (5) which require, in effect the same stability as the Federal rule. For the most part, the ISP comment concerns the practice of last cut lakes which it contends is not authorized under the Act. That is not the issue involved in consideration of the State regulation governing impoundment slopes. The Illinois rule allowing up to the angle of repose as long as stability is assured applies only to excavated slopes and not to embankments. If the angle of repose slope is not stable or if it does not provide adequate safety and access, it cannot be allowed under the Illinois provisions. AMAX noted that the Federal rule at 30 CFR 816.102(a)(3) concerning backfilling and grading would allow angle of repose slopes. Other commenters stated that the finding of slope stability is a requirement of both the Illinois and Federal rules. The Secretary agrees as discussed above.

Issue IV.E.4.

Topsoil on Perimeter Slopes

At issue is the Illinois rule 1816.49(c) which allows topsoil substitute materials approved pursuant to 1816.22(e) to be placed on permanent impoundment side slopes. The Federal rule, 30 CFR 816.22(d)(3), provides that the regulatory authority may choose not to require the redistribution of topsoil or topsoil substitutes on approved postmining embankments of permanent impoundments after making certain determinations. The Illinois rule requires the placement of a topsoil substitute which must be found to be equal or more suitable than topsoil. Because the Illinois rule requires topsoil substitute material to be placed on impoundment perimeter slopes and the Federal rules allow the regulatory authority to choose not to require topsoil or topsoil substitutes, the Secretary finds the Illinois rule consistent with the Federal rule.

ISP commented that the Illinois rule is contrary to the topsoil and revegetation requirements of the Act. ISP referenced the brief filed by National Wildlife Federation, et al. in *In Re: Permanent Surface Mining Regulations Litigation II, supra*, round 2. The Secretary has considered that brief and disagrees with its arguments. If topsoil substitutes on stable slopes can be accomplished by Illinois operators, the Federal rules on backfilling and grading and revegetation allow such practice. ISP has apparently overlooked Federal rule 30 CFR 816.22(d)(3) which specifically allows the regulatory authority to choose not to require the redistribution of topsoil *or* topsoil substitutes on impoundments slopes. ICA and AMAX noted the consistency of the Illinois and Federal rules on this issue. The Secretary agrees as discussed above.

Issue IV.E.5.

Written Request for Pre-Blast Survey

This issue presents the question of whether the Illinois provisions on preblast survey requests are no less effective than the Federal rules in meeting the Act's requirements. Illinois rules 1816.62(a) and 1817.62(a) provide that upon written request to the IDMM and the person who conducts the mining activities, the person who conducts mining activities shall promptly conduct a pre-blasting survey or a condition survey of the dwelling or structure and promptly submit a report of the survey to the IDMM and the person requesting the survey. The Federal rules at 30 CFR 816.62(b) and 817.62(b) promulgated March 8, 1983, 48 FR 9788, provide that a request for a pre-blasting survey shall be made in writing, directly to the operator or to the regulatory authority, who shall promptly notify the operator. The operator shall promptly conduct the survey and promptly prepare a written report.

The Secretary finds that Illinois rules 1816.62(a) and 1817.62(a) contain requirements essentially identical to those in 30 CFR 816.62(b) and 817.62(b) and are therefore no less effective than the Federal rules in meeting the Act's requirements.

ICA and AMAX commented that the revised Federal rules at 30 CFR 816.62(b) and 817.62(b) (48 FR 9788, March 8, 1983) specifically require that requests for pre-blasting surveys must be in writing, and therefore the Illinois rule is consistent with the Federal requirements. The Secretary agrees as discussed above.

Issue IV.E.6.

Distribution of the Blasting Schedule

This issue presents the question of whether the Illinois program provisions on distribution of the blasting schedule are no less effective than the Federal rules in meeting the Act's requirements. Illinois rule 1816.64(b) requires that copies of the blasting schedule be distributed by mail to local governments and public utilities and mailed or delivered to each residence within one-half mile of the proposed blasting area and to every other person within or outside such area to whom the IDMM requires it to be mailed. The Federal rules at 30 CFR 816.64(b)(2) provide that copies of the blasting schedules shall be distributed to local governments and public utilities and to each local residence within one-half mile of the proposed blasting site described in the schedule. The two provisions are virtually identical except that Illinois uses the term "blasting area" and the Federal rule uses "blasting site". The words "area" and "site" are essentially synonyms for the place where blasting operations are to be conducted. Therefore, the Secretary finds that the Illinois rule is no less effective than the Federal rule in meeting the Act's requirements to provide notice to residents of the proposed blasting schedule.

ICA and AMAX commented that the Illinois rule is no less effective than the Federal rule at 30 CFR 816.64(b)(2). AMAX noted that the Illinois rule requires that the same group of persons will receive the blasting schedule as under the Federal rule. The Secretary agrees with the comments, as discussed above.

ISP stated that they stand by the positions in their brief and commented that the new Federal rule at 30 CFR 816.62(a) (March 8, 1983, 48 FR 9788) still requires that notification of the right to request a pre-blasting survey be sent to all persons within one-half mile of the permit area. ISP states that because Illinois limits distribution of the blasting schedule containing notification of the right to request a preblasting survey to those persons residing with one-half mile of the blasting area, Illinois rule 1816.64(a) fails to ensure that all residents within one-half mile of the permit area receive this notice, as required by 30 CFR 816.62(a).

The previous Federal rule at 30 CFR 816.64(a) required distribution of the blasting schedule to all residences within one-half mile of the permit area, including information on how to request a preblasting survey. When 30 CFR 816.64(a) was amended to change the distribution of the schedule to residences within one-half mile of the blasting site, the requirement to notify residents within one-half mile of the permit area how to request a preblasting survey was moved to 30 CFR 816.62(a).

The Secretary agrees that the Illinois rule does not require written notification on how to request a preblasting survey for all residents within one-half mile of the permit area. The Secretary, through OSM, will require Illinois to amend this provision.

Issue IV.E.7.

Blasting Between Sunset and Sunrise

Illinois rule 1816.65(a) provides that blasting shall be conducted from sunrise to sunset, and at times announced in the blasting schedule, unless special permission is obtained from an authorized representative of the department where operator or public safety require unscheduled detonation. A complete written report of such specially permitted night blasting must be filed with the IDMM by the person conducting the surface mining activities not later than 3 days after the night blasting. The Federal rule at 816.64(a)(2) promulgated March 8, 1983, 48 FR 9788, provides that all blasting shall be conducted between sunrise and sunset, unless nighttime blasting is approved by the regulatory authority based upon a showing be the operator that the public will be protected from adverse noise and other impacts.

Both rules provide that nighttime blasting must be approved by the regulatory authority. The Illinois rule further requires that blasting must be conducted at times announced in the blasting schedule unless operator or public safety require unscheduled detonation. The Illinois rule does not permit scheduled or routine nighttime blasting, as the Federal rule does. Essentially, the Illinois rule restricts nighttime blasting to emergency situations.

The Federal rule at 816.64(a)(3) provides that unscheduled blasts may be conducted only where public or operator health and safety so require and for emergency blasting actions. The rule further requires that where an operator conducts an unscheduled blast, the operator, using audible signals, shall notify residents within one-half mile of the blasting site and document the reason for the unscheduled blast. The Illinois rule also provides that a written report must be filed within three days after the night blasting, and that audible warning and all-clear signals shall be given and audible within one-half mile from the point of the blast (rule 1816.65(b)).

The Secretary therefore finds that Illinois rule 1816.65 is no less effective than the Federal rules in providing restrictions on nighttime blasting and notice to the public.

ISP again referenced their brief and commented that Illinois lacks a counterpart to Federal rule 816.65(a)(2)(ii) requiring prior oral notice of nighttime blasting. The Federal rule, 30 CFR 816.64(a), as amended on March 8, 1983, requires notification by audible signals. The preamble to the final rule (48 FR 9794) explains that audible notification allows for more efficient notification and such notification can be provided more quickly. ISP also commented that under the new Federal blasting rules, unscheduled blasting, such as blasting after sunset, cannot occur unless public and operator safety so require and for emergency blasting situations. ISP contends that the Illinois rules fail to require that unscheduled blasts be limited to emergency situations.

The Secretary has found that the Illinois rule allows unscheduled (including nighttime) blasting only where operator or public safety requires it, which is essentially an emergency situation.

ICA and AMAX commented that the oral notice requirement previously contained in the Federal rules was removed on March 8, 1983, and therefore the Illinois rule is no less effective than the Federal rule as it provides for audible signal notification of unscheduled blasting. ICA also commented that the Illinois rule requires that all blasting must take place during daylight hours *and* that it must be announced in the blasting schedule. Therefore, nighttime blasting is expressly prohibited unless, unlike the Federal program, prior agency approval is obtained. In addition, ICA points out that IDMM is free to impose whatever additional conditions it deems appropriate under the circumstances, including oral notice to residents if necessary. The Secretary agrees with the comments as discussed above.

Issue IV.E.8.

Flyrock Protection

The issue is whether IR 1816.65(e) is no less effective than the Federal rule in meeting the requirements of the Act.

The Illinois rule provides that flyrock, including blasted material traveling along the ground, shall not be cast beyond the permit boundaries or beyond the area of regulated access. The Federal rule at 30 CFR 816.67(c) provides that flyrock traveling in the air or along the ground shall not be cast from the blasting site: (1) More than one-half the distance to the nearest dwelling or other occupied structure, (2) beyond the area of control, or (3) beyond the permit boundary.

The two provisions are similar, except that the Federal rule contains an additional prohibition against casting flyrock more than one-half the distance to the nearest dwelling or other occupied structure, (2) beyond the area of control, or (3) beyond the permit boundary.

The two provisions are similar, except that the Federal rule contains an additional prohibition against casting flyrock more than one-half the distance to the nearest dwelling or other occupied structure. OSM explained in the preamble to its final rule that this requirement places the burden on operators to provide appropriate design restraints when mining close to such dwellings or structures, such as additional stemming, burdens, or mats to prevent flyrock. Because the Illinois rule does not contain this protection, the Secretary finds that it is less effective than the Federal regulations in meeting the requirements of Section 515(b)(15).

ISP contended that, because the Illinois rule does not contain the provision limiting the casting of flyrock to one-half the distance to the nearest dwelling or occupied structure, it is less effective than the Federal rule. The Secretary agrees, as discussed above.

ICA and AMAX, in their comments, asserted two reasons why the lack of the one-half distance requirement does not render the Illinois rule less effective. They stated that other rules adopted by Illinois (each analogous to other Federal

rules) provide adequate protection from flyrock. The also argued that this requirement is virtually unenforceable and therefore its absence could not render the Illinois rule less effective.

The Secretary does not agree that the one-half distance requirement is either superfluous or unenforceable. OSM rejected comments suggesting deletion of this requirement when adopting final 30 CFR 816.67(c)(1), March 8, 1983 (48 FR 9797). The rule places the burden on operators to employ appropriate design restraints when blasting to control airblast and ground vibration within acceptable limits.

The commenters also claimed the requirement is unenforceable, asserting that pieces of flyrock from different blasts could not be distinguished nor could the blast hole where the flyrock originated be identified. The Secretary does not agree. Flyrock, although a hazard inherent in blasting which cannot be ignored, is not and should not be a routine occurrence. A properly designed and constructed blasting pattern can achieve the objectives of the blast in most cases with little or no flyrock. Flyrock results most often when blast holes are improperly loaded, overloaded, or when mats, or other restrictive coverings are not used as necessary. Adequate training and supervision are normally sufficient to alleviate a flyrock problem. OSM has also employed the term "blasting site" in the rule. The preamble to the Federal rule makes it clear that OSM considers the blasting site to be the area contained within the perimeter formed by the exterior charged holes in the pattern. The origin of the flyrock within the blasting site is irrelevant. An inspector need only measure the distance between the flyrock and the occupied structure and the distance to the perimeter of the blasting site to determine compliance with the rules. The location of the blasting site should also be available from the blasting records. The Secretary foresees little or no difficulty in adequately training inspectors to enforce this rule.

Issue IV.E.9.

Peak Particle Velocity

The issue is whether the Illinois rule on ground vibration which restricts the maximum peaked particle velocity to the largest of its three components or the resultant particle velocity is no less effective than the Federal regulation at 30 CFR 816.67(d) in meeting the Act's requirements. The Federal rule provides that the maximum ground vibration for protected structures shall be established in accordance with either the maximum peak particle velocity limits of paragaph (d)(2), the scaled-distance equation of paragraph (d)(3), or the blasting-level chart of paragraph (d)(4). The preamble to the Federal rule setting the ground vibration limits at 30 CFR 816.67(d)(1)(i), states, "The Bureau of Mines has concluded that component velocity is the best indicator of damage potential and thus recommmends limits and readings be in component format. The values listed for acceptable vector sum limits are identical for component limits, ensuring conservative results when using a vector-sum instrument." The preamble also states that "OSM has allowed, but does not require, the use of vector-sum units." The Secretary therefore finds the State rule which allows the option for the resultant (vector-sum) peak particle velocity is no less effective than the Federal rule.

ISP commented that the resultant peak particle velocity was inconsistent but did not provide technical data to substantiate this position. As stated in the preamble to the Federal rule, current research indicates the resultant peak particle velocity to be a satisfactory method of measurement. ISP also asserted that the Illinois provisions do not contain one of the new Federal performance standards. The Secretary recognizes that the one new performance standard on peak particle velocity is not contained in the Illinois program and will inform the State of this during the regular course of regulatory reform review of all State programs. ICA pointed out that the resultant peak particle velocity will always be larger and therefore more conservative than the largest of the three components. The Secretary agrees.

Issue IV.E.10.a. and E.10.b.

Approximate Original Contour and Treatment of Box Cut Spoil

The issue is whether the provisions of the Illinois program allowing permanent water impoundments and initial box cut spoil to be treated as excess spoil is no less effective than the Federal regulations in meeting the Act's requirements.

The State provisions allowing permanent impoundments or "last-cut lakes" are found at Sections 3.04(d) and 3.08(b) of the Illinois Statute. Impoundments are only allowed after numerous findings are made by the regulatory authority. The State provision allowing box cut spoil to be treated as excess spoil is found at Illinois regulation 1816.71(g)(2).

Section 515(b)(8) of SMCRA allows the creation, if authorized in the approved mining and reclamation plan and permit, of permanent impoundments of water on mining sites as part of reclamation. The Secretary finds Section 3.04(d) of the Illinois Statute in accordance with Section 515(b)(8) of SMCRA allowing permanent impoundments.

Under 30 CFR 816.102(d), spoil may be placed on the area outside the mined out area in non-steep slope areas to restore approximate original contour (AOC) by blending the spoil into the surrounding terrain. The preamble to 30 CFR 816.102(d) (May 24, 1983, 48 FR 23360) states, "spoil from the first cut or any other cut may be treated as excess spoil if it is not needed to achieve AOC." Thus IR 1816.71(g)(2) allowing box cut spoil to be treated as excess spoil is consistent with the Federal rules.

ICA commented extensively on how the Illinois program provisions are consistent with and no less effective than the Federal provisions in meeting the Act's requirements. AMAX supported the retention of Illinois provisions allowing last cut lakes and allowing initial box cut spoil to be treated as excess spoil. ISP referenced their brief and stated that provisions allowing permanent impoundments or last cut lakes in the Illinois program created a variance from the requirements of AOC and that box cut spoils must not be treated as excess spoil. The Secretary does not agree for the reasons stated above. ISP also quoted a portion of the preamble to the new Federal definition of excess spoil. The revised Federal rules do not preclude the use of the spoil to achieve AOC.

Issue IV.E.11.

Covering or Treating Coal and Acid- and Toxic-forming Materials

The issue is whether the Illinois rule as modified by the Secretary's condition on the Illinois program at 30 CFR 913.11(b), is no less effective than the Federal regulation at 30 CFR 816.102(f) (48 FR 23369) in meeting the Act's requirements to minimize disturbances to the prevailing hydrologic balance.

In his conditional approval of the Illinois program, the Secretary found Illinois rule 1816.103(a)(1), which allowed the highest coal seam and the pit floor to be covered with a minimum of four feet of water, to be inconsistent with then-existing Federal rule 816.103(a)(1), but found that the concept of covering coal seams with water did have some technical merit. Thus, after reviewing the literature on this subject, the Secretary allowed the covering of coal seams and pit floors with water

provided that the depth of water exceeded ten meters (33 feet), (47 FR 23861). The Federal rule at 30 CFR 816.103(a)(1) has been revised and promulgated as new 30 CFR 816.102(f) (48 FR 23369). As part of its revision, OSM removed the requirement for a specific depth of cover material, replacing it with a requirement that materials listed in the rule be "adequately" covered. In the present case the Secretary believes and maintains that a minimum of ten meters of water meets the test of "adequate" in the new rule, based on current literature. Therefore, the Illinois rule as modified by the Secretary's condition on the Illinois program is no less effective than the rule of 30 CFR 816.102(f).

ICA and AMAX supported the use of water for covering pit floors and coal seams as environmentally and technically sound and cited numerous studies and examples which demonstrate this. ISP referenced their brief and argued that, technical considerations notwithstanding, the Act prohibits the contact of water with coal seams and pit floors. Section 510(b)(10)(a) requires that disturbances to the prevailing hydrologic balance be minimized by avoiding acid or other toxic mine drainage. ISP also stated that the Secretary had ignored previous comments on this issue. On the contrary, the Secretary considered the comments and reached a reasonable conclusion based on all the evidence presented in the earlier record. Where a given technique demonstrably prevents the formation of acid mine drainage, the Secretary is justified in permitting its use to accomplish the intent of this provision of the Act. The Secretary's condition is therefore reasonable and consistent with the Act and the Federal rules.

Issue IV.E.12.a.

Premining Land Use Standards

The first issue raised is whether the Illinois rule for determining premining land uses is no less effective than the Federal rules in meeting the Act's requirements. Section 515(b)(2) of the Act requires operators to restore the land to a condition capable of supporting the uses it was capable of supporting prior to any mining, or higher or better uses of which there is a reasonable likelihood. The Federal rules at 30 CFR 816.133(b) (48 FR 39892, September 1, 1983) contain the standards for determining the premining uses of the land to which postmining land use is to be compared. The Federal rules provide that the premining uses shall be those uses which the land previously supported, if the land has not be previously mined and has been properly managed. The Federal rules further state that for land that has been previously mined and not reclaimed, the postmining land use shall be judged on the basis of the land use that existed prior to any mining because of the previously mined condition, the postmining land use shall be judged on the basis of the highest and best use that can be achieved which is compatible with surrounding areas and does not require disturbance of areas previously unaffected by mining.

The Illinois rule at 1816.133(b) provides that the premining capability of land to which the postmining land capability is compared shall be the capability that the land would have supported if it had not been previously mined and had been properly managed. Both the Federal rules and Illinois rules determine premining land uses from the uses the land was capable of supporting prior to mining. Therefore, the Illinois rules are no less effective than the Federal rules in establishing premining land use standards.

The second issue raised is whether the Illinois rule is no less effective than the Federal rule at 30 CFR 816.133(b) requiring that postmining land use for land that cannot be returned to a premining land use because of its previously mined condition shall be judged on the basis of the highest and best use that can be achieved which is compatible with surrounding areas and does not require the disturbance of areas previously unaffected by mining. The Illinois rule at 1816.133(a) establishes that affected lands shall be restored to either (1) uses they were capable of supporting prior to any mining, or (2) higher or better uses of which there is a reasonable likelihood of restoration. The Illinois rules do not make any exception for previously mined areas as do the Federal rules. By implication, however, if the lands cannot be restored to the uses they were capable of supporting prior to any mining, the Illinois rule requires, for previously mined areas, that the land be restored to higher or better uses of which there is reasonable likelihood of restoration. The Secretary does not believe this to be any less effective for such lands than the Federal rules which require the highest and best use that can be achieved. The Secretary therefore finds the Illinois rules concerning the establishment of premining land uses and the postmining land use requirement for previously mined lands consistent with Federal rules. ISP commented that the new Federal rules preclude approval of the Illinois provisions. The Secretary disagrees as discussed above.

ICA noted the changes in the Federal rules and commented that both the Federal rules and Illinois rules require lands to be returned to premining capabilities but that Illinois utilizes the word "capability" in place of "land use" as in the Federal rules. As both rules require that capability be the final test, the difference in the use of terms does not make the Illinois rules any less effective than the Federal rules in meeting the Act's requirements.

Issue IV.E.12.b.

Postmining Land Use Criteria

The issue is whether Illinois rules provide criteria no less effective than the Federal criteria for approving alternative postmining land uses in meeting the Act's requirements. The Federal rules at 30 CFR 816.133(c) establish the criteria for alternative land uses and require consultation with the land owner or land management agency and that the following criteria be met:

(1) There is a reasonable likelihood for achievement of the use.

(2) The use does not present any hazard to public health or safety, or threat of water diminution or pollution.

(3) The use will not—

(i) Be impractical or unreasonable;

(ii) Be inconsistent with applicable land use policies or plans;

(iii) Involve unreasonable delay in implementation; or

(iv) Cause or contribute to violation of Federal, State, or local law.

The Illinois rule, 1816.133(a)(2) contains the same language with three minor differences. The required consultation with the landowners or land management agency is accomplished through Illinois rules 1780.23(a)(4) and 1780.23(b) which require the operator to submit in his reclamation plan the consideration which has been given to making all of the proposed surface mining activities consistent with surface owner plans and applicable state and local land use plans and programs and a copy of the comments concerning the proposed use by the legal or equitable owner of record of the surface of the proposed permit area and the State and local government agencies which would have to initiate, implement, approve or authorize the proposed use of the land following reclamation. The Secretary finds the State procedure to consult through required permit application documents satisfactory.

Another difference between the State and Federal rules is the inclusion of

language in the Illinois rule which states that the determination of inconsistent land use shall be made by the Department. The Illinois rule merely makes it clear that the regulatory authority makes the determination that the proposed land use meets the required criteria for consistency with land use policies or plans as it does for each of the other criteria.

The final difference between the State and Federal rules is a language change in which the Illinois rule states that no proposed land use shall be violative of other applicable law whereas the Federal rule states the land use will not cause or contribute to violation of Federal, State or local law. In this latter case, the Illinois rule reflects the intent of the Act and makes it clear that the proposed land use must comply fully with other laws. The Secretary finds that the Illinois rule is consistent with the Federal rules for alternative land use criteria.

ISP comments dealt with the three exceptions discussed above. The Secretary disagrees as addressed above.

The ICA commented that the Illinois rule does not include specific criteria under IR 1816.133(c) because these requirements are covered elsewhere in the Illinois program. ICA also noted that compliance with alternative land use criteria in Illinois is as effective as the Federal rules. The Secretary agrees as discussed above.

Issue IV.E.13.a.

Prime Farmland Standards for Undergound Mines

See the discussion and findings under Issues IV.C.11 and C.12 above.

Issue IV.E.13.b.

Revegetation—Use of Introduced Species

The issue is whether, in allowing the use of "introduced species" for revegetation and reclamation (rather than "native species" as set forth in the Federal rules at 48 FR 40140) the Illinois regulations at IR 1817.111, IR 1817.112 and IR 1823.1 are no less effective than the Federal rules in meeting the requirements of the Act.

The Federal regulations at 30 CFR 817.111 require that the permittee establish a vegetative cover on regraded areas that is in accordance with the approved permit and reclamation plan and that is diverse, effective and permanent and comprised of "species native" to the area or of introduced species where desirable and necessary to achieve the approved postmining land use and approved by the regulating authority.

The Illinois regulations at IR 1817.111 provide that each person who conducts underground mining activities shall establish in all areas disturbed by surface operations and facilities diverse and permanent vegetative cover capable of self-regeneration and plant succession and at least equal in extent of cover to the natural vegetation of the area.

The Illinois regulations at IR 1817.112 further provide that introduced species may be used for reclamation and revegetation under specific conditions requiring that the introduced species be able to establish a diverse and permanent cover capable of achieving the approved postmining land use; or that the species be necessary to achieve a quick temporary and stabilizing cover that aids in controlling erosion; and that measures to establish permanent vegetation are included in the approved plan; that the species are compatible with the plant and animal species of the region; and that the species meet the requirements of the applicable State and Federal seed or introduced species statutes and are not poisonous. This same Illinois regulation further requires special regulatory approval for introduced species.

The Illinois rules are no less effective than the Federal rules in achieving the purposes of the Act. By setting forth in IR 817.112 the specific conditions under which introduced species may be utilized where desirable and necessary to achieve the approved postmining land use and where approved by the regulatory authority, Illinois provides for appropriate vegetative cover in its rules.

In their comments, ICA and AMAX stated that the Illinois provisions are no less effective than the Federal regulations in achieving the purposes of the Act. The Secretary agrees ISP commented that ISP stands by the position in their brief that Illinois' refusal to require revegetation with native species is less effective than and inconsistent with the new Federal regulations and quoted a comment of an unidentified State regulatory authority stating that the use of native, locally adapted plant species is vital to successful revegetation, particularly under arid and semi-arid conditions and that therefore the "native species" language should be required to be included. It is the position of the Secretary that IR 1817.111 utilizing the term "introduced species," when read in conjunction with IR 1817.112, which requires special regulatory approval to use "introduced species" in reclamation and revegetation is no less effective than the Federal rules which have the same provisions regarding regulatory approval and the same factors to be considered when an introduced species is proposed to be utilized.

Issue IV.E.14.

Prime Farmland Standards for Underground Mines

See the discussion and findings under Issues IV.C.11 and C.12 above.

Issue IV.E.15.

Revegetation Standards for Tree and Shrub Stocking

The issue is whether the State's regulation establishing revegetation standards for tree and shrub stocking for forest land is no less effective in meeting the requirements of the Act than the Federal rule at 30 CFR 816.116(a)(3).

The State's regulation at 1816.117 sets forth forest resource conservation standards for reforestation operations to ensure that a cover of tree species, shrubs or half shrubs, sufficient for adequate use of the available growing space, is established after surface mining activities. In 1816.117 (a), (b) and (c) the State establishes the minimum acceptable stocking rates for trees and shrubs. IR 1816.117(d) provides a sampling procedures for herbaceous vegetation. Federal regulations governing standards for vegetation success for areas developed for fish and wildlife habitat, recreation, shelter belts, or forest products are found at 30 CFR 816.116(b)(3). The Federal standard is based on tree and shrub stocking and vegetative cover. The State's standard for stocking rates and its sampling procedure for herbaceous vegetation is no less effective than the Secretary's regulations.

ICA and AMAX commented that the State's regulations governing standards for trees and shrubs and its technique for measuring ground cover on forest type lands are consistent with the Federal regulations. ISP referenced their brief and stated that Illinois rule establishing an herbaceous vegetation sampling procedure for forest areas was unnecessary in the section intended to deal solely with woody plants. The commenter stated that the provision would be inconsistent with Federal standards if it were used as a substitute for the revegetation standards of 30 CFR 816.116. The commenter misunderstands the meaning of 1816.117(d). The provision is not intended to be a substitute for the standards of 1816.116. It is directed at measuring ground cover of herbaceous species within forest land and does not alter the requirements of 1816.117 (a), (b), and (c) pertaining to the stocking of trees and woody plants.

Issue IV.F.1.

Monitoring and Reporting Requirements

Illinois rule 1840.2 provides that whenever the IDMM deems it reasonable and necessary to the development, administration or enforcement of the Illinois statute or regulations, or to the administration or enforcement of any permit or to the determination of whether any person is in violation of any requirement of the State Act, regulations or program, or any requirement of the Federal Act, the IDMM may by written notice impose a number of requirements on a permittee. The permittee may be required to: (a) Establish and maintain records; (b) install, use and maintain necessary monitoring equipment; (c) make monthly or more frequent reports; (d) provide evaluations of results of monitoring and reports; or (e) provide other information as the IDMM finds reasonable and necessary to the performance of its duties.

Section 517(b) of SMCRA contains virtually identical language providing that "the regulatory authority shall require any permittee to: (A) Establish and maintain appropriate records, (B) make monthly reports to the regulatory authority, (C) install, use and maintain any necessary monitoring equipment or methods, (D) evaluate results in accordance with such methods, at such locations, intervals, and in such a manner as a regulatory authority shall prescribe, and (E) provide such other information relative to surface coal mining and reclamation operations as the regulatory authority deems reasonable and necessary; * * *"

The Federal rules implement this statutory provision through specific regulations in various subject areas, such as hydrology, permitting, and subsidence. For example, Federal rule 784.20(d)(3) requires monitoring to determine the commencement and degree of subsidence so that measures can be taken to prevent or reduce material damage. Federal rules 816.41 (c) and (e) require ground and surface water minitoring to proceed through mining and continue during reclamation until bond release. The Illinois rules contain numerous similar requirements throughout corresponding sections of its regulations, which the Secretary has previously found to contain provisions no less effective than the Federal rules. Moreover, the Illinois regulations also contain the general requirement at IR 1840.2 which may be applied in addition to the specific requirements at the discretion of the IDMM. Therefore, the Secretary finds that the Illinois regulations are no less effective than the Federal regulations in meeting the purposes of Section 517(b) of the Act.

ISP commented that they stand by the position in their brief and that the Illinois rules undermine the Federal statutory requirements because the operator must supply the information set forth in the statute only where the IDMM deems it reasonable and necessary, and after written notice to the operator. The Secretary does not agree that the Illinois rule undermines the purpose of SMCRA. As noted above, IR 1840.2 is in addition to the many specific monitoring and reporting requirements imposed in other parts of the regulatons. As such, it provides authority to require information over and above that required in specific regulations.

ICA commented that Illinois rule 1840.2 is not the regulation which governs various specific recordkeeping and reporting requirements and noted that many Federal and Illinois requirements indicate a precise similarity. ICA pointed to Illinois rule 1816.52(b) and former 30 CFR 816.52(b) (now 816.41) which both require a quarterly report of the analytical results of monitoring samples of surface water. ICA also pointed out that Illinois rule 1816.68 and Federal rule 816.68 require a record of each blast including a seismograph report to be kept for three years and made available for inspection by the regulatory authority. The Secretary agrees that the Illinois monitoring, reporting and recordkeeping requirements are no less effective than the Federal regulations.

Issue IV.F.2.a.

Enforcement at all Inspections

This issue presented is whether the provisions of the Illinois rule at IR 1814.12(a)(1) and IR 1814.12(a)(2) on notices of violation are no less stringent than and provide the same or similar procedures as the Federal rules at 30 CFR 843.12 (a)(1) and (a)(2) in meeting the Act's requirements.

The Federal rule at 30 CFR 843.12 (a)(1) requires an authorized representative of the Secretary to issue a notice of violation if on the basis of a Federal inspection carried out during the enforcement of a Federal program on Federal lands or during Federal enforcement of a State program under Sections 504(b) and 521(b) of the Act and 30 CFR Part 733, he or she finds a violation of the Act, 30 CFR 843.12, the applicable program, or any condition of a permit or an exploration approval imposed under such program, the Act, or 30 CFR 843.1 which does not create an imminent danger or harm for which a cessation order must be issued under 30 CFR 843.11.

The Federal rule at 30 CFR 843.12(a)(2) provides for further notification of such a violation to enable appropriate enforcement action by the State. In the event the State fails to take action to cause the violation to be corrected within 10 days after such notification, the authorized representative may reinspect and issue a notice of violation or cessation order if the violation still exists.

The Illinois regulation at IR 1843.12(a)(1) states that an authorized representative of the Department shall issue a notice of violation, if, on the basis of a State inspection carried out during the enforcement of a State program, he or she finds a violation of the Act, the State Act or Illinois regulations, which does not create an imminent danger or harm for which a cessation order must be issued under IR 1843.11. The Illinois statute at IS 8.03 provides that each inspector, on detection of each violation of any requirement of this Act or a permit, shall forthwith, inform the operator in writing, and shall report in writing any such violation to the Department.

The Illinois regulation at IR 1843.12(a)(2) in tracking the Federal regulation language, provides for written notice by an authorized representative of the State to the person responsible for any violation found on the basis of any State inspection other than the one described in paragraph (a)(1). This regulation relates only to Federal inspections pursuant to FA 521(a)(1) where the Secretary is mandated to report violations to the State initially so as to allow the State to enforce violations and logically can have no State counterpart. The record at ILL-0451, p. 15, reveals that 30 CFR 843.12(a)(2) has nothing to do with State programs, wherein OSM and IDMM agreed that IR 1843.13(a)(2) was meaningless and Illinois agreed to delete this provision. It should also be noted that nowhere within the Illinois program is an inspection for any purpose other than the program's enforcement authorized or even suggested.

The Illinois Statute at IS 8.101 (a) and (b) and IS 8.03 and the Rules at IR 1843.12(a)(2) and IR 1843.11 and Guidelines Vol. R2, Tab E, p. 240 are therefore no less stringent than and contain the same or similar procedural requirements as the Federal rules in ensuring enforcement at all inspections.

In commenting, ICA, AMAX and IDMM, all stated that Illinois statutory and regulatory provisions were

consistent with the Federal Act and Regulations.

ISP referenced their brief, emphasized the OSM Annual Evaluation, and commented that the limitation on the state's authority to "inspections carried out during the enforcement of the state program" could unlawfully be construed to allow state inspectors to visit a mine site, find a violation and refuse to cite the operator on the grounds that the inspection was being conducted for purposes other than the enforcement of a state program. The question of whether an inspector may visit a site, observe a violation and then so refuse to cite the operator was recently considered by OSM in terms of the "compliance conference" now authorized under federal enforcement rules, which permit an operator to request an on-site compliance conference with an inspector to obtain advice as to whether a condition or practice may become a violation. In adopting the provisions of the Federal regulations at 47 FR 35626 (1982), OSM made it clear that the compliance conference should only address prospective activities, and that any violation observed must be cited. Neither, then, may Illinois refuse to take enforcement actions against operators on the grounds that an inspection was not carried out during the enforcement of the state program. Because the State regulations are silent regarding the provisions of 47 FR 35626 (1982) the Illinois regulations are not so different as to be put at odds with the Federal rule. ISP's additional comments were addressed to what ISP perceives as statistical inequities in the past issuance of notices of violations to permitees due to the different educational backgrounds and perspectives of various types of inspectors. The Secretary considers this is an oversight issue not addressed by this litigation and, hence, the Secretary agrees with comments of ICA, AMAX and IDMM and finds the previously cited Illinois regulations to be no less stringent than and to contain the same or similar procedural requirements regarding citing all violations as the previously cited federal regulations.

Issue V.F.2.b.

Enforcement of All Violations

This issue presents the question of whether the provisions of the Illinois Regulations at IR 1711.19, IR 1814.12(a)(1) and IR 1814.12(a)(2) and of the Illinois Statutes at IS 5.06, IS 8.02, IS 8.04 and IS 8.06 concerning the enforcement of all violations are no less stringent than and contain the same or similar procedural requirements as the Federal Rules at 30 CFR 843.12 (a)(1) and (a)(2) in meeting the Act's requirements.

The provisions of 30 CFR 843.12(a) (1) and (2) and of IR 1814.12(1) and (2) are previously set forth in detail in Issue IV. F.2.a. Additionally, IS 8.03 and IS 8.06, in specifically referring to the Act or exploration or a permit condition, state plainly that a violation of the act or regulations necessarily encompasses a violation of a permit condition or exploration approval. Furthermore, IS 5.06 provides:

> Any person who conducts any coal exploration activities which substantially distrub the natural land surface in violation of this Article shall be subject to the provisions of Section 8.04 (Civil and Criminal Penalties).

The difference in language of IR 1843.12(a) (1) and (2) is therefore of little, if any, importance, as explained by the Secretary in comment No. 133, 47 FR 23879, to his June 1, 1982 decision, as IR 1771.19 requires that "all persons shall conduct surface mining operations under permits issued pursuant to Section 1770–1778 of these regulations and shall comply with the terms and conditions of the permit." Therefore, any permit violation of IR 1771.19, would require issuance of a notice of violation pursuant to IR 1843.12(a)(1).

For the reasons previously set forth, the Illinois Statutes and Regulations are no less stringent than and contain the same or similar procedural requirements as the Federal rules in meeting the purposes of the Act.

ICA in its comments, stated that the provisions of the Illinois Regulations and Statutes are no less effective than the Federal Act and Regulations. ISP's comments were identical to the comments as to Issue F.2.a. above, with which the Secretary disagrees.

Issue IV.G.1.

Criteria for Awards of Costs and Expenses

This issue is whether the Illinois statute at IS 8.05(c) and IS 8.07(f) setting forth criteria for awards of costs and expenses (including attorney fees) are consistent with the Federal counterparts in meeting the Act's requirements.

The Act at Section 520(d) provides that in issuing any final order in any action brought pursuant to Section 520(a), the court may award costs of litigation (including attorney and expert witness fees) to any party whenever the court determines such award is appropriate. Section 525(e) provides that, at the request of any person, a sum equal to the aggregate amount of all costs and expenses (including attorney fees) as shall have been determined by the Secretary to have been reasonably incurred by such person for, or in connection with his participation in such proceedings, including any judicial review of agency actions, as the court, resulting from judicial review or the Secretary, resulting from administrative proceedings deems proper, whenever an order is issued under section 525 or as a result of any administrative proceeding under the Act. The Federal rules at 43 CFR 4.1294 (a) and (b) provide for awards of costs and expenses, including attorney fees, to a person who initiates a proceeding, upon a finding that the person made an "substantial contribution to a full and fair determination of the issues."

The Illinois statute at IS 8.05(c) and 8.07(f) authorizes awards of costs and expenses in administrative and judicial proceedings "on the basis of the importance of the proceedings and the participation of the parties to the efficient and effective enforcement of the Act," rather than on the basis of the Act's standard of "whenever the court deems appropriate." The Illinois regulation at IR 1843.22(e)(i) is the State's verbatim counterpart of the Federal rules at 43 CFR 4.1294(a).

Illinois' usage of the phrase "on the basis of the importance of the proceeding and the participation of the parties to the efficient and effective enforcement of this Act" provides the standard with which to determine the amount of an award for attorney fees and costs. The Illinois regulations at IR 1843.22 state when such "appropriate costs and expenses including attorneys' fees may be awarded". The issue then is what constitutes appropriate costs and expenses. The two standards set forth in the Illinois statute and regulations may be construed in such a manner as to encompass the factors with which the Federal judiciary normally determines "appropriateness" in awarding attorney fees. (See *Ruckelshaus* v. *Sierra Club*, 103 S.Ct. 3274 (1983); *Hensley* v. *Eckerhardt*, 103 S.Ct. 1933 (1983)).

"Appropriate" in the Illinois regulations should be construed consistently with "proper" in Section 525(e) of the Act, inasmuch as the Secretary expressly found in Comment No. 157 to his June 1, 1982 decision (47 FR 23879 and 23880) that the Illinois regulation at IR 1843.22 "provides for award of costs in accordance with (the Federal Act) and the Federal regulations", and that IR 1843.22 was consistent with the Federal rules. The Secretary thus finds that the Illinois statute and regulations are consistent

with the Federal rules in meeting the requirements of the Act.

ICA and IDMM commented that the above referenced Illinois program provisions concerning award of costs and expenses are consistent and contain the same or similar procedural requirements as the above referenced provisions of the Federal program.

ISP referenced their brief and addressed the citation by the Secretary in his Motion for Remand of *Ruckelshaus* v. *Sierra Club*, 103 S.Ct. 3274 (1983) and *Hensley* v. *Eckerhardt* 103 S.Ct. 1933 (1983), and stated that these cases deal with the questions of whether and to what extent a party is entitled to an award of fees if they do not prevail in the proceedings for which they seek an award and in no way authorize Illinois' limitations on the awards of costs based on "the importance of the proceeding and the participation of the parties to the efficient and effective enforcement of Illinois' Act". ISP's contention that 43 CFR 4.1294 requires awards to be based only on the effectiveness of a party's contribution to the resolution of the winner is contrary to Sections 525(e) and 520(a) of the Act. In *Ruckelshaus* v. *Sierra Club, supra*, the Supreme Court construed similar terms in a suit involving Section 307(f) of the Clean Air Act, 42 U.S.C. 7607, which allowed the award of costs and attorney fees whenever the Court determines that such an award is appropriate. "Appropriate" was construed as being a precedent determination to deciding whether fees would be awarded under Section 307(f) and what the award should be "especially suitable," "fit" or "proper" for. After looking at the histories of the Clean Air Act and common law on the subjects of costs and attorney fees, the Court decided that absent some success on the merits, a permittee may not recover costs, expenses and attorney fees. *Ruckelshaus* v. *Sierra Club, supra*, then controls the construction of "appropriate" as to Section 525(e) of the Act, and mandates that there must be some success on the merits before a non-permittee may be awarded attorney fees.

Issue IV.G.2.

Award of Costs Against the State

This issue is whether the provisions of the Illinois statute at IS 8.07(a) and the Illinois regulations at IR 1843.22(e) on awards for costs and attorney fees are consistent with the Federal rules in meeting the Act's requirements.

The Federal regulations at 43 CFR 4.1294(b) provide for awards to any person other than a permittee or his representative from OSM, if the person initiates or participates in any proceeding under the Act, upon a finding that the person made a substantial contribution to a full and fair determination of the issues.

The Illinois statute at IS 1843.22(e) provides for an award of costs and expenses to "any person" from the permittee under the same circumstances as does 43 CFR 4.1294(b). 43 CFR 4.1294(b) was promulgated pursuant to the authority of Section 525(e) of the Act, the authority under the Act for regulation covering administrative proceedings (Section 525(e) of the Act is discussed fully in Issue IV.G.1.). Hence 43 CFR 4.1294(b) relates to notices or orders issued to a permittee pursuant to section 525(d) of the Act and to judicial review actions under subsections (a)(1), (2), (b), (c) and (d) of such orders or notices to permittees. Therefore, the permittee should always be available to pay attorney fees, if the non-permittee is entitled under Section 525(e).

Neither Section 520(d) of the Act, which is silent as to who may be found liable for such awards "where appropriate" (see *Ruckelshaus* v. *Sierra Club, supra)*, nor Section 525(e) of the Act, which applies only to alleged violations of a permittee arising out of Federal inspections or Federal programs, expressly provides for awards of attorney fees against a State regulatory agency nor do Illinois' counterparts, IS 8.05 and IS 8.07, which are verbatim replications of the Act. The lack of a provision in the Illinois regulations for attorney fees to be assessed against a State would not control in actions brought pursuant to IS 8.05, covering civil actions. IS 8.05(c) provides for the award of attorney fees against the State to the extent required as a matter of Federal law, i.e., a court would have the inherent power to issue an award of attorney fees against any party, including the State. In cases, however, where awarding attorney fees is discretionary, consistent with *Ruckelshaus* v. *Sierra Club, supra*, the permittee will be potentially liable for those fees, thereby obviating the need for a mandate that the State be liable for the same fees. The Illinois regulation at IR 1843.22(e)(i), and the Illinois statute at IS 8.07(a) are consistent with the Federal rules at 43 CFR 4.1294 and in accordance with Sections 520(d) and 525(e) of the Act.

ICA and IDMM commented that the above-referenced provisions of the Illinois program are consistent with the Federal rules in meeting the Act's requirements. ISP contended that Illinois' program limits persons other than permittees from obtaining awards against the State. The Secretary disagrees as addressed above.

Issue IV.G.3.

Awards for the Costs of Seeking an Award

This issue is whether the Illinois regulations at IR 1843.22 are consistent with the Federal rules in meeting the Act's requirements.

The Federal rules at 43 CFR 4.1295(b) provide that an award may include the costs incurred in seeking an award. However, neither Section 520(d) nor Section 525(e) of the Act speaks of awards for the costs of seeking an award.

The Illinois regulations at IR 1843.22(f) provide that an award may include costs and expenses, including attorney fees reasonably incurred as a result of initiation or participation in a proceeding under the State Act. Fees incurred in seeking an award would be included in a proceeding under the State Act.

The Illinois regulation at IR 1843.22(f) is thus consistent with the Federal rules in meeting the Act's requirements.

ICA stated that the Illinois provisions are consistent with the Federal rules.

ISP commented that 30 CFR 840.15 (August 16, 1982) provided no exemption for State programs from being consistent with the requirements of 43 CFR 4.1295(b). Given all the reasons and the content of IR 1843.22(f) previously set forth, fees incurred in seeking an award under IR 1843.22(f) would be those incurred in a "proceeding under the State Act" and are therefore encompassed within the Illinois regulations.

Issue IV.H.1.

Administrative Hearings

Issue H.1 presents the question of whether the Illinois program provides for administrative hearings consistent with and similar to the Federal permanent program. More specifically, does the Illinois program provide impartial hearings on permit, enforcement, and bond release decisions as required by Sections 514(c), 519(f), and 525(a)(1) of SMCRA?

The Act provides, in pertinent part, that: "If the Secretary is the regulatory authority, the hearing shall be of record and governed by 5 U.S.C. 554. *Where the regulatory authority is the State, such hearing shall be of record, adjudicatory in nature, and no person who presided at a conference under section 513(b) shall either preside at the hearing or*

participate in this decision thereon or in any administrative appeal therefrom." (Emphasis added.) Section 514(c). Any person who presided over an informal conference may not preside or participate in the decision at the formal hearing under this section of the Act.

Section 525(a)(2) of the Federal statute concerns *Secretarial Review*, and specifically says, "Any such hearing shall be of record and shall be subject to section 554 of title 5 of the United States Code." Section 554 of the APA applies to the Secretary and the Federal Government, but does not strictly apply to the States. SMCRA sets forth specific due process safeguards for the State in Section 514 and does not statutorily impose the Federal APA on the States.

The hearing provisions of the Illinois statute provide in Section 2.11(c) that, "Such hearing shall be of record and adjudicatory in nature. No person who presided at a hearing under Section 2.04 shall either preside at the hearing or participate in the decision thereon." The administrative review section of that Act provides that, "The presiding officer of such hearing may not: (1) Consult a person or party on a fact in issue unless on notice and opportunity for all parties to participate, or (2) be responsible to or subject to the supervision or direction of any person engaged in the performance of investigative or prosecuting functions for the Department." Section 8.07(b). This Illinois hearing provision tracks almost exactly the safeguards SMCRA imposes if the RA is the State.

The Illinois program provides due process at its administrative hearings which is similar to that provided by the Federal Government, and in some instances, exceeds the Federal due process provisions. SMCRA only applies section 554 of the APA to the Federal Government; it does not impose the APA on Illinois. The fact that the Illinois State program does not provide for exactly the same separation of its management, investigative, and adjudicatory functions as the Federal APA does not violate due process rights. The Secretary finds that Illinois adequately explained its numerous procedural safeguards in volume R2 of the administrative record, Tab O. pp. 414–415.

The Illinois program does not allow anyone who presided at a permit hearing to preside or otherwise participate in the review of that decision. Similarly, the enforcement and bonding hearings are safeguarded against any such partiality. Illinois statute, Section 8.07(b), *Supra*. This meets both the requirements of SMCRA and due process. Because of these safeguards, the Secretary finds this Illinois program provision consistent with the Federal rules in meeting the Act's requirements.

ISP referenced their brief and commented that Illinois does not provide impartial hearings on permit, enforcement, and bond release decisions. ISP stated that the hearings the Illinois program provides do not assure impartiality because the State regulatory authority is the Land Reclamation Division headed by a manager who has authority over the Hearing and Enforcement Branch. ISP asserted that the Illinois program merges investigative and prosecutorial functions with the administrative hearing function because the attorneys in the Hearing and Enforcement Branch render legal advice to the regulatory authority.

The Secretary disagrees. Nothing in the Illinois program provisions and the Summary Table of Permanent State Programs Staff, Vol. R1, Tab E, indicated a lack of separation of the review and prosecutorial roles. Indeed, just the opposite is clear. As for application of the APA to the State procedures, nothing in the Act requires such application. ISP also alleged that the OSM Annual Evaluation did not thoroughly resolve whether the functions were adequately independent. The Annual Evaluation, as a factual document concerning the oversight role of the Secretary, lies outside the scope of the remand review.

Issue IV.H. 2.

Civil Penalties

This issue is whether the Illinois statute at IS 2.11 and IS 8.07 and the Illinois regulations at IR 1845.13 and IR 1845.14 and the Illinois Program contained at ILL–0384, Volume R–2, Tab G on civil penalties are no less stringent than and contain the same or similar procedural requirements than the Federal counterparts.

Section 518(a) of the Act permits assessment of a civil penalty of up to $5000 for each violation. Each day of a continuing violation may be a separate violation for assessment purposes. The Act further provides that civil penalties are to be based on the following criteria: (1) History of previous violations; (2) seriousness of the violation; (3) negligence; and (4) good faith in abating the violation. However, if violations lead to the issuance of a cessation order under Section 521, a civil penalty is required to be assessed.

The Illinois statute at IS 8.04(a) recites Section 518(a) of the Act verbatim. The Illinois regulations at IR 1845.13 and IR 1845.14 also provide a $5000 ceiling on civil penalty assessments for each violation. The tables proposed to be used for the calculation of civil penalties at Record, ILL–0384, Volume R2, Tab G, set forth an example of the calculations for a hypothetical penalty. There are no provisions within the Illinois program which require IDMM to use the hypothetical calculations. In fact, the far right hand column of the table sets forth $5,000 as the maximum penalty for each separate (or day of) violation.

The Illinois statute at IS 2.11 and IS 8.07, the Illinois regulations at IR 1845.13 and IR 1845.14 and the proposed method for calculation of civil penalties in the Illinois program contained at ILL–0384, Volume R2, Tab G contain exactly the same provisions as the Federal Act at Section 518(a) and are therefore no less stringent than the Federal Act and regulations.

ICA stated that the Illinois statute, regulations and program as cited above, are no less effective than the purposes of the Act. IDMM and AMAX did not comment on this issue. ISP referenced their brief and limited their comments to oversight issues in the OSM Annual Evaluation.

Issue IV.H.3.a

Responsible Land Management Practices

The issue is whether the Illinois statute which includes reference to "responsible land management practices" in establishing the criteria for successful revegetation allows either an exception from the five-year period of revegetation responsibility or if such practices are outside the "selective husbandry practices" allowed under 30 CFR 816.116(c)(4) of the Federal rules. The language in the State Statute 3.15(b) does not provide any exception to the five-year period of responsibility and therefore is consistent with the Federal provisions. The remaining issue is whether allowing an operator to utilize "responsible land management practices" during his liability period is consistent with the Federal rules. The Federal rule allowing selective husbandry practices defines the practice as normal conservation practices within the region including such practices as disease, pest, and vermin control and any pruning, reseeding and transplanting specifically necessitated by such actions. It is the Secretary's determination the Illinois term, "responsible land management practices" can be equated to "normal conservation practices" as used in the Federal rules and is therefore consistent with the Federal selective husbandry practices used in 30 CFR 816.116(c)(4).

Therefore, the Secretary finds the Illinois program no less effective than the Federal regulations.

ISP referenced their brief and commented on the possible exception allowed by the responsible land management practices and asked that the Secretary require Illinois to define the term to be consistent with selective husbandry practices. As stated above, the Illinois language is not an exception to the liability period and the Secretary finds the terms consistent.

The ICA commented that both the Federal and State terms discussed above are intended to define what is "not" augmented and explained why the Illinois provisions are no less effective than the Federal provisions.

Issue IV.H.3.b

Revegetation Responsibility—High Capability Lands

The issue is whether Illinois regulation 1825.11(c), which provides that the five-year period of responsibility for revegetation of high capability lands shall commence at the date of initial planting of the crop being grown, is no less effective than the Secretary's rules in meeting the requirements of the Act.

The Federal rule at 30 CFR 800.13(c), promulated on July 19, 1983, 48 FR 32960, provides that if the regulatory authority approves a long-term intensive agricultural postmining land use, in accordance with 30 CFR 816.133 or 817.133, the applicable 5 or 10 year period of liability shall commence at the date of the initial planting for such long-term agricultural use.

The Secretary finds the Illinois provision requiring the five-year periods to begin at the date of initial planting for agricultural purposes to be no less effective than the Federal rules.

ICA commented that the Illinois provision is no less effective than the Federal rules.

ISP referenced their brief and objected to the State's requirement the five-year period begin at the date of initial planting. The Federal rule at 30 CFR 800.13(c) contains the identical provision.

Issue IV.H.4.

Injunctive Relief

Issue H.4. raises the question of whether the Illinois program unlawfully grants an operator the right to immediate injunctive relief in State courts.

Under Section 526(b) of the Act, courts reviewing enforcement actions are to do so "solely on the record made before the Secretary." The Illinois statute at Sections 8.06 (b) and (c) provides for enforcement actions and adds that "[t]he operator or permittee may seek immediate injunctive relief from any order issued under this subsection." However, Section 1843.17 of the State rules provides that "[t]he applicant [for temporary administrative relief] shall not apply to the courts for temporary injunctive relief until a written order or decision granting or denying such relief is issued by the department." Illinois' legal opinion states that the rule is valid, Vol. R5, p. 163–4, because "Illinois courts will ordinarily defer to this provision since it provides a remedy at law, and an injunction is thus not properly issuable (Citations omitted)." This opinion is signed by the chief legal officer of IDMM. Where a State rule is acceptable on its face and the chief legal officer of the regulatory authority states that it is legally valid, the Secretary may reasonably rely upon it as meeting the Federal requirements.

The Illinois statute states at both IS 8.06 (b) and (d): "The operator or permittee may seek immediate injunctive relief from any order issued under this subsection." This provision does not say that such relief is a grant of jurisdiction to State courts. Rather, in IS 8.07(d) the forum for such relief is with the regulatory authority:

> If the applicant requests relief from an order for cessation of mining and reclamation operations issued pursuant to subsections (b) or (c) of Section 8.05, the order or decision on such a request shall be issued within five days after its receipt. The department may grant such relief, under such conditions as it may prescribe, if (1) a hearing has been held in the locality of the permit area on the request for temporary relief in which all parties were given an opportunity to be heard; (2) the applicant shows that there is substantial likelihood that the findings of the Department will be favorable to him; and (3) such relief will not adversely affect the health or safety of the public or cause significant, imminent environmental harm to land, air, or water resources. IS 8.07(d).

When Sections 8.06 (b) and (c) are read in light of Section 8.07, the relief referred to in subsections (b) and (c) is administrative relief, not judicial relief. Thus, the Secretary finds that the Illinois provisions for injunctive relief are consistent with the Federal provisions.

ISP referenced its brief and commented that the statute and regulations differ, and the statute must take precedence. The Secretary disagrees, as explained above. ICA commented that the Illinois provisions are consistent with the Federal requirements. The Secretary agrees as indicated above.

Issue IV.H.5.

Enforcement Authority for Water Quality Violations

The issue is whether the IDMM has a sufficient number of reclamation specialists with enforcement authority to conduct inspection and enforcement activities required pursuant to the approved State program.

At the present time the State has 20 reclamation specialists who conduct required inspections and have authority to take necessary enforcement action pursuant to the inspection activity. The Secretary finds this number of reclamation specialist sufficient to carry out the required number of inspections.

ICA and AMAX commented that the present number of inspectors was sufficient.

ISP expressed concern that staff from the Illinois Environmental Protection Agency (IEPA) made site visits in the conduct of the program but did not have enforcement authority. ISP stated that the practice was not consistent with the Federal requirement for immediate issuance of cessation orders in imminent danger situations. ISP also stated that the Illinois program is deficient in water quality inspections since the IEPA staff have no enforcement authority.

Under the Illinois program IEPA has a role on the interagency committee. Its function includes review of permit applications for specific water quality and other areas. In this role, IEPA staff conduct field investigations and reviews. The staff does not perform inspections under the approved program. Reclamation Specialists on the IDMM staff conduct all required complete and partial inspections. All water quality inspections are conducted by reclamation specialists. The Secretary finds this arrangement meets the requirement of the Federal program for sufficient staff.

IV. Secretary's Decision

As indicated above under "Secretary's Findings," there are a number of areas in the Illinois program in which program amendments will be required. By separate letter, the Director of OSM has notified Illinois pursuant to 30 CFR 732.17, that certain required program amendments will be necessary. The State must reply within 60 days after notification by submitting either a proposed written amendment or a description of an amendment to be proposed and a timetable for enactment which is consistent with established administrative or legislative procedures in the State.

Therefore, based on the findings, the Secretary has determined that the remanded issues of the Illinois program are consistent with SMCRA and the Federal regulations, with the exception of those issues discussed above. The Federal rules at 30 CFR Part 913 are being amended to implement this decision. Upon receipt of the State's response to the Director's notification, Part 913 will be further amended to establish the dates by which Illinois will submit the required program amendments.

V. Additional Determinations

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

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

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

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

List of Subjects in 30 CFR Part 913

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

Accordingly, 30 CFR Part 913 is amended as set forth herein.

Dated: March 29, 1984.

Leona A. Power,

Acting Assistant Secretary for Land and Minerals Management.

PART 913—ILLINOIS

Part 913 is amended by adding a new § 913.16 as follows:

§ 913.16 Required program amendments.

Pursuant to 30 CFR 732.17, Illinois is required to make the following program amendments:

(a) Amend the definition of "intermittent stream" in rule 1701.5 to make it no less effective than the Federal definition of "intermittent stream" at 30 CFR 701.5.

(b) Amend rule 1785.17(a) to add the criteria contained in 30 CFR 785.17 for making determinations of exemptions from the prime farmland permitting requirements and performance standards.

(c) Amend rule 1785.17 and 1823 to be no less effective than the Federal rules at 30 CFR 785.17 and 823 which set forth the applicability of the prime farmland permitting requirements and performance standards.

(d) Amend rule 1816.46 to provide sediment pond design and performance standards no less effective than 30 CFR 816.46.

(e) Amend rule 1816.64 to provide written notification on how to request a preblasting survey to all residents within one-half mile of the permit area, consistent with 30 CFR 816.62.

(f) Amend rule 1816.65 to prohibit casting of flyrock more than one-half the distance to the nearest dwelling or other occupied structure, consistent with 30 CFR 816.67.

Authority: Pub. L. 95–89, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

[FR Doc. 84–8904 Filed 4–4–84; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 840

Releasing Information for litigation and appearance of witnesses before civilian courts and other tribunals

AGENCY: Department of the Air Force, Defense.

ACTION: Final rule.

SUMMARY: The Department of the Air Force is amending its regulations by removing Part 840—Releasing Information for litigation and appearance of witnesses before civilian courts and other tribunals, of Chapter VII, Title 32. The source document, Air Force Regulation (AFR) 110–5, has been determined to be for internal guidance only and has no applicability to the general public. This action is a result of departmental review in an effort to insure that only regulations having general applicability and legal effect are maintained in the Air Force portion of the Code of Federal Regulations.

EFFECTIVE DATE: April 5, 1984.

FOR FURTHER INFORMATION CONTACT: Major Lee, HQ USAF/JACL, Washington, D.C. 20330, telephone (202) 694–8749.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 840

Courts, Foreign relations, Lawyers, Military law, Military personnel.

PART 840—[REMOVED]

Accordingly, 32 CFR is amended by removing Part 840.

Authority: 10 U.S.C. 8012.

Winnibel F. Holmes,

Air Force Federal Register Liaison Officer.

[FR Doc. 84–9071 Filed 4–4–84; 8:45 am]

BILLING CODE 3910–01–M

32 CFR Part 888

Enlistment in the U.S. Air Force

AGENCY: Department of the Air Force, Defense.

ACTION: Final rule.

SUMMARY: The Department of the Air Force is amending its regulations by removing Part 888—Enlistment in the U.S. Air Force, of Chapter VII, Title 32. The source document, Air Force Regulation (AFR) 33–3, has been determined to be for only internal guidance and has no applicability to the general public. This action is a result of departmental review in an effort to insure that only regulations which affect the public are maintained in the Air Force portion of the Code of Federal Regulations.

EFFECTIVE DATE: April 5, 1984.

FOR FURTHER INFORMATION CONTACT: Capt. Phillips, HQ AFMPC/MPCMAE, MPC–D2WV, Randolph AFB, TX 78150, Telephone (512) 652–5954.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 888

Armed Forces Reserves, Military personnel.

PART 888—[REMOVED]

Accordingly, 32 CFR is amended by removing Part 888.

Authority: 10 U.S.C. 8012.

Winnibel F. Holmes,

Air Force Federal Register Liaison Officer.

[FR Doc. 84–9048 Filed 4–4–84; 8:45 am]

BILLING CODE 3910–01–M

32 CFR Part 889

Desertion and Unauthorized Absence

AGENCY: Department of the Air Force, Defense.

ACTION: Final rule.

SUMMARY: The Department of the Air Force is amending its regulations by removing Part 889—Desertion and unauthorized absence, of Chapter VII, Title 32. The source document, Air Force Regulation (AFR) 35–73, has been determined to be for only internal guidance and has no applicability to the general public. This action is a result of departmental review in an effort to insure that only regulations which affect the public are maintained in the Air Force portion of the Code of Federal Regulations.

EFFECTIVE DATE: April 5, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Lopez, HQ AFMPC/MPCAKP, Randolph AFB, TX 78150, Telephone (512) 652–2148.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 889

Law enforcement officers, Military law, Military personnel, National security information.

PART 889—[AMENDED]

Accordingly, 32 CFR is amended by removing Part 889.

Authority: 10 U.S.C. 8012.

Winnibel F. Holmes,

Air Force Federal Register Liaison Officer.

[FR Doc. 84–9070 Filed 4–4–84; 8:45 am]

BILLING CODE 3910–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD11 84–17]

Special Local Regulations; Sunshine Marina Boat Drags

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the Sunshine Marina Boat Drags on the Colorado River. This event will be held on 7 and 8 April 1984, at Riviera Marina, Riviera, Arizona. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATE: These regulations become effective on 7 April 1984 and terminate on 8 April 1984.

FOR FURTHER INFORMATION CONTACT: LTJG Jorge Arroyo, Commander (bb), Eleventh Coast Guard District, 400 Oceangate, Long Beach, California 90822, (213) 590–2331.

SUPPLEMENTARY INFORMATION: A notice of proposed rule making has not been published for these regulations and they are being made effective in less than 30 days from the date of publication. The application to hold the event was not received until 6 March 1984, and there was not sufficient time to publish proposed rules to advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of this regulation are LTJG Jorge Arroyo, Chief, Boating Affairs Branch, Eleventh Coast Guard District, Project Officer, and LT Joseph R. McFaul, Project Attorney, Legal Office, Eleventh Coast Guard District.

Discussion of Regulation

Sunshine Events Inc. "Sunshine Marina Boat Drags" will be conducted beginning April 7, 1984, on the Colorado River starting from the entrance of Riviera Marina, Riviera, Arizona. Race boats will compete in heats moving 1,200 feet north, 1,000 additional feet will be allowed for slow down and turn around. Then they will idle southerly along the natural flow of the river back to the starting point. This event will have 60 high speed boats, 18 feet in length, that could pose a hazard to navigation. Vessels desiring to transit the regulated area may do so only with clearance from a patrolling law enforcement vessel or an event committee boat.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

Final Regulations: In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended by adding the following section:

§ 100.35–11–84–17 Colorado River, Sunshine Marina Boat Drags

(a) *Regulated Area.* That portion of the Colorado River, starting from the entrance of Riviera Marina, Riviera, Arizona to approximately 2,200 feet north.

(b) *Effective Date.* The regulated area will be closed intermittently to all vessel traffic from 8:00 a.m. to 5:00 p.m. on 7 and 8 April 1984.

(c) *Special Local Regulations.* (1) No vessels, other than participants, U.S. Coast Guard operated and employed small craft, public vessels, state and local law enforcement agencies and the sponsor's vessels shall enter the regulated area during the above hours, unless cleared for such entry by or through a patrolling law enforcement vessel, or an event committee boat.

(2) When hailed by Coast Guard or Coast Guard Auxiliary vessels patrolling the event area, a vessel shall come to an immediate stop. Vessels shall comply with all directions of the designated Coast Guard Regatta Patrol.

(3) These regulations are tempoary in nature and shall cease to be in effect at the end of the period set forth.

(46 U.S.C. 454; 49 U.S.C. 1655(b)(1); 49 CFR 1.46(b); 33 CFR 100.35)

Dated: March 27, 1984.

F. P. Schubert,

Rear Admiral, U.S. Coast Guard Commander, Eleventh Coast Guard District.

[FR Doc. 84–9124 Filed 4–4–84; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN–007; A–4–FRL 2558–3]

Approval and Promulgation of Implementation Plans; Tennessee, 1982 Revision of Metropolitan Nashville-Davidson County Carbon Monoxide Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On February 3, 1983 (48 FR 5038), EPA proposed to disapprove Tennessee's 1982 revision to its Carbon Monoxide (CO) State Implementation Plan (SIP) for the Metropolitan Nashville-Davidson County area. The plan submitted by the State/local agency failed to provide an acceptable Inspection and Maintenance (I/M) program. Although some portions of an I/M program plan have been submitted, the information submitted to date falls far short of meeting the requirements for approval by EPA (See Supplementary Information). Therefore, EPA today is disapproving the 1982 revisions to the Tennessee SIP for the Metropolitan Nashville-Davidson County CO nonattainment area.

Disapproval of the CO Portion of the SIP invokes the ban on construction of major new or modified stationary sources of carbon monoxide in the Nashville-Davidson County nonattainment area as required by

Section 110(a)(2)(I) of the Act (42 U.S.C. 7410(a)(2)(I)).

On August 3, 1983 (48 FR 35324), EPA also proposed a finding that Tennessee has failed to implement the I/M portion of its 1979 SIP in Nashville. The 1979 SIP called for implementation of a program by December 31, 1982, but this date was not met. EPA indicated that no action would be taken on this finding so long as a good faith effort was being made to establish a program. Although EPA initially believed that a good faith effort was being made by the local government to implement an I/M program, the recent failure of the city government to approve a contract for operation of the program leads EPA to conclude that such efforts are no longer being made. Because of the original failure to implement a program in 1982 and the more recent failure to take concrete action on its current I/M schedule, EPA finds that Tennessee's 1979 CO SIP for Nashville-Davidson County is not being implemented.

This finding imposes a moratorium on construction of major new or modified sources of CO in the nonattainment area under Section 173(4) for the Act. Restriction on EPA grant funds under Section 176(b) of the Act was also proposed in the August 3 notice. Today's finding also triggers that restriction. However, because the issue of the appropriate formula for applying these restrictions has not been resolved, and because no further funding for the Nashville area will be available until the 1985 fiscal year, EPA's finding will not impact any grants at this time. When the issue noted above is resolved, EPA will announce its decision on the appropriate formula for applying Section 176(b) restrictions. Future grants will be restricted using that formula.

DATE: These actions are effective April 5, 1984.

ADDRESSES: Copies of the SIP revision and other materials relating to this rulemaking are available for inspection at:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460

EPA, Region IV, Air Management Branch, 345 Courtland Street, Atlanta, Georgia 30365

Tennessee Air Pollution Control Division, 150 9th North Ave., Terra Building, Nashville, Tennessee 37203

Office of the Federal Register, 1100 L Street, N.W., Room 8401, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Waymond Blackmon, EPA Region IV, Air Management Branch at 404/881-2864 (FTS: 257-2864).

SUPPLEMENTARY INFORMATION: The 1977 Amendments added a new Part D to Title I of the Clean Air Act. Under this Part, the States were required to revise their SIP's for all nonattainment areas and submit the revisions to EPA by January 1, 1979 (Sections 171-178 of the Act; Section 129(c) (uncodified) of Pub. L. 95-95). The revised plans were to provide for attainment by December 31, 1982, unless the State demonstrated that they could not attain either the ozone or carbon monoxide (CO) standard by that date despite the implementation of all reasonably available control measures (Section 172(a)(2)), and requested an extension. If EPA approved this demonstration, the attainment date for ozone or CO could be extended up to December 31, 1987. States receiving such extensions were to submit a second SIP revision that provided for attainment by the approved attainment date and complied with all of the Part D requirements (Section 172(c)). These second SIP revisions had to be submitted by July 1, 1982 (Section 129(c) (uncodified), Pub. L. 95-95).

As detailed in the February 3, 1983, **Federal Register**, the State of Tennessee submitted its initial SIP revision for the Metropolitan Nashville-Davidson County carbon monoxide nonattainment area on February 13, 1979. The State requested that EPA extend the attainment date for the carbon monoxide standard in this area to December 31, 1987. EPA granted this request and conditionally approved the initial plan revision on August 13, 1980 (45 FR 53809). Tennessee submitted its 1982 carbon monoxide SIP revision on June 30, 1982. A full discussion of this SIP revision and of EPA's evaluation was contained in the February 3, 1983 (48 FR 5058), proposal notice and will not be repeated in detail here.

However, a brief discussion follows which presents the rationale for disapproving the plan revision. Comments were submitted by Metropolitan Government of Nashville and Davidson County Health Department in which they addressed our proposed disapproval. The Transportation Control Measures (TCMs) have been revised to satisfy EPA requirements. The implementation of the signal optimization program is under way and the return to the 1980 level of service for transit has been replaced with the two-cent gas tax equivalent and the ridesharing program measures from the contingency package. EPA has concurred with these revisions.

The second comment addressed the I/M program and the milestones that Nashville had achieved to show a good faith effort toward implementing the program. They provided a listing of the actions up to that time, which included the adoption of regulations, start-up of the fleet inspection, and hiring of inspectors for the fleet program. However, where a significant commitment of resources for the mandatory I/M program has been required, no action has been taken.

On April 30, 1982, EPA notified Governor Lamar Alexander of its intent to propose a finding in the **Federal Register** that Nashville was no longer meeting its commitments to implement an I/M program. Further, if this finding were affirmed, EPA would be required to impose restrictions in Tennessee under the mandates of the Clean Air Act. The Governor responded by stating that attainment of the CO standard would be achieved by December 31, 1987, without I/M and by 1985 with I/M. Because of the projected attainment by December 1987, the cost involved in starting the program, and the possibility that Congress might revise the requirements for I/M, Governor Alexander asked EPA to take no further action on I/M until Congress completed its revision of the Act.

On May 21, 1982, EPA wrote Governor Alexander again, reminding him of the 1977 Amendments of the Clean Air Act requiring states to submit a 1982 SIP revision for cities that were granted an extension to attain the CO and O_3 standards. This letter stated that the 1982 SIP revision must comply with the requirements of Section 172 (b) and (c) of the Act, which include implementation of an I/M program.

Since that time Nashville has reconsidered and submitted a new schedule for implementing the I/M program and revised the TCM portion of the SIP. Substituting measures from the contingency plan for those measures not implemented in the plan satisfies EPA's TCM requirements.

A small-scale inspection program for fleet vehicles was begun July 1, 1983, with full-scale I/M testing scheduled to start July 1, 1984. Initially, the program was still to be centralized and run by the local agency. In October, however, the City Council decided to investigate whether the program could be run better or less expensively by new car dealers in the Nashville area. After considering this proposal, the dealers' association decided not to participate in such a set-up. The City issued a request for proposals to contract out the start-up and operation of the program. The Request For Proposal (RFP) was issued on November 23, 1983, with a bid

opening date of December 12. The start-up date for the program is still scheduled to be June 1, 1984. A contractor was selected and a contract was negotiated in early January. EPA believed at that time that a good faith effort was being made to submit an approvable program plan and implement the program on schedule.

In its August 3, 1983, **Federal Register** notice on I/M areas which had failed to implement a program by December 31, 1982, EPA proposed imposition of the Clean Air Act sanctions on such areas. EPA indicated it would withhold action to impose the sanctions so long as a good faith effort was being made to implement a program. Generally, it was anticipated that most programs would be started up by January 1, 1984, but EPA did agree to Nashville's schedule, so long as concrete progress was being made. Throughout several meetings held with EPA, Nashville assured the Agency that their I/M program would start by June 1, 1984. EPA was also given commitments that a draft contract would be submitted by January 31, 1984, with a public hearing scheduled for February 8, 1984. Adoption by the Board of Health was scheduled for February 15, 1984, with approval by the City Council on February 21, 1984. The contract was expected to be finalized and submitted to EPA by February 23, 1984. However, the City Council failed to approve the contract in its February 21 meeting. Furthermore, based on information we received from the proposed contractor, a major problem appears to exist in the enforcement of the program. The County Clerk has indicated he would not require an I/M certificate of compliance in order to obtain a Metropolitan wheel tax sticker, thus negating the established enforcement mechanism. In brief, EPA no longer feels that Nashville is proceeding to implement an effective I/M program. In a February 13, 1984, letter to Mayor Fulton of Nashville, EPA requested by February 23, 1984, assurance that the program would be enforced and that other submittals would be made according to the most recent schedule. If these submittals were not received, EPA stated it would disapprove the Nashville SIP and impose the appropriate sanctions under the Clean Air Act.

No assurance of receiving this documentation has been forthcoming.

Based on the failure of the local government to develop and submit a complete and approvable I/M program plan, EPA must disapprove the CO portion of the 1982 SIP as was proposed on February 3, 1983.

In addition, because of the failure of the local government to implement I/M in accordance with its 1979 SIP schedule and its more recent failure to approve the contract for operation of the I/M program, EPA concludes that a good faith effort to implement an I/M program is no longer being made. Therefore, as proposed in the August 3, 1983, **Federal Register**, EPA finds that Tennessee's 1979 SIP for the Nashville-Davidson County CO nonattainment area is not being implemented.

Disapproval of the 1982 SIP revision imposes a moratorium on construction of major new or modified sources of CO in the nonattainment area under Section 110(2)(I) of the Act. This moratorium prohibits the issuance of permits for which a complete application has not been submitted as of this date. (See 40 CFR 52.24(a).)

The finding that the 1979 SIP is not being implemented imposes a similar construction moratorium under Section 173(4) of the Act. However, under EPA regulations (40 CFR 52.24(b)), this moratorium prohibits issuance of any new permits to affected sources, even if an application has already been submitted.

The finding of non-implementation of the 1979 SIP also imposes restrictions on EPA grant funds to State or local agencies which are responsible for not implementing the SIP. In its August 3, 1983, notice EPA provided the opportunity for interested parties to request a public hearing on the proposed finding, during the 45-day public comment period. No such requests were received.

In its August 3, 1983, notice, EPA, also proposed two different formulas for deciding the amount of grant funds to be withheld from the State and local agencies. A decision has not yet been made as to which formula will be applied. However, EPA does not anticipate that it will have additional funds that could be awarded to the Nashville area until fiscal year 1985. Therefore, EPA's finding will not impact any grant awards at this time. EPA will announce the decision on the funding formula in the **Federal Register** and will reduce future grants using that formula.

EPA did receive other public comments in response to both the February 3, 1983, and August 3, 1983, **Federal Register** proposal notices. These comments and EPA's response to them are addressed in a separate technical support document which is available for inspection at the EPA addresses listed above.

These actions are being made immediately effective because EPA's intention to do so was previously announced publicly, and because immediate imposition of the construction restrictions is necessary to avoid further degradation of air quality and otherwise carry out the purposes of the Act.

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 4, 1984. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., the Agency must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. Under 5 U.S.C. 605(6), this requirement may be waived if the Agency certifies that the rule will not have a significant economic effect on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and governmental entities with jurisdiction over populations of less than 50,000.

Final action on the finding of nonimplementation imposes a moratorium on construction and modification of major stationary sources of the pollutant for which an attainment extension was granted. A major stationary source for this purpose is any source which emits, or has the potential to emit, 100 tons per year or more of the relevant pollutant. See 40 CFR 52.24(f)(5) (1981). The moratorium also prohibits major modifications, which are any physical changes in the operation of a source that would result in a significant net increase of a pollutant. See 40 CFR 52.24(f)(6) (1981). Thus, some small entities might be affected by this action.

EPA has in the past made efforts to quantify the impacts of Clean Air Act rules on the construction and modification of sources but has been unable to do so. EPA's lack of success is due in part to the need to obtain information on future plans for business growth. This information is difficult to obtain, as businesses are understandably reluctant to make their plans public. Consequently, EPA is making no quantified assessment of the potential economic impact on small entities from today's action.

This action also may result in withholding of portions of Section 105 funds from the Nashville area. However, since today's action does not affect any areas with populations of less than 50,000, the governmental entities affected by any funding limitations do not fall within the definition of "small entities."

Additionally, although EPA believes that this action might have some impact on small entities, this impact cannot affect the Agency's actions. Under the Clean Air Act, the imposition of the construction moratorium and the section 176(b) funding restrictions are automatic and mandatory whenever the Agency determines that an approved or promulgated SIP is not being implemented in a nonattainment area.

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 since it will not have an economic impact exceeding $100 million per year. The section 105 funds potentially affected by this action do not exceed $100 million, and EPA expects that only a portion of the total funds will be affected as a result of this action. EPA is unable to quantify the impact of the construction ban, but it does not anticipate that it would exceed $100 million annually.

This notice has been submitted to the Office of Management and Budget (OMB) for review. Any comments from OMB to EPA and any responses are available for public inspection at the EPA Region IV office (see address above).

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxide, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations.

(Secs. 110, 172, 173(4), 176(b) of the Clean Air Act (42 U.S.C. 7410, 7502, 7503(4) and 7506(b)))

Dated: March 29, 1984.

William D. Ruckelshaus,

Administrator.

PART 52—[AMENDED]

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

Subpart RR—Tennessee

Section 52.2225 is amended by removing the introductory text and adding paragraph (a) to read as follows:

§ 52.2225 Control strategy: Carbon monoxide and ozone.

(a) Part D disapproval. (1) The 1982 revision of the part D plan for the Nashville CO nonattainment area is disapproved for failure to assure implementation of a vehicle inspection and maintenance program. No major new or modified sources of carbon monoxide can be built in the area by virtue of the provisions of Section 110(a)(2)(I) of the Clean Air Act.

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[FR Doc. 84-9118 Filed 4-4-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 145

[WH-FRL-2550-5]

Delaware Department of Natural Resources and Environmental Control Underground Injection Control Program Approval

AGENCY: Environmental Protection Agency.

ACTION: Approval of State Program.

SUMMARY: The State of Delaware has submitted an application under section 1422 of the Safe Drinking Water Act for the approval of an Underground Injection Control (UIC) program governing Classes I, II, III, IV, and V injection wells. After careful review of the application, the Agency has determined that the State's injection well program for all classes of injection wells meets the requirements of Section 1422 of the Act and, therefore, approves it.

EFFECTIVE DATE: This approval is effective May 7, 1984.

FOR FURTHER INFORMATION CONTACT: Jeffery J. Burke, (3WM42), Environmental Protection Agency, Region III, 6th and Walnut Streets, Philadelphia, Pennsylvania 19106. PH: (215) 597-9000.

SUPPLEMENTARY INFORMATION: Part C of the Safe Drinking Water Act (SDWA) provides for an Underground Injection Control (UIC) program. Section 1421 of the SDWA requires the Administrator to promulgate minimum requirements for effective State programs to prevent underground injection which endangers drinking water sources. The Administrator is also to list in the **Federal Register** each State for which, in his judgment, a State UIC program may be necessary. Each State listed shall submit to the Administrator an application which contains a showing satisfactory to the Administrator that the State: (i) Has adopted after reasonable notice and public hearings, a UIC program which meets the requirements of regulations in effect under Section 1421 of the SDWA; and (ii) will keep such records and make such reports with respect to its activities under its UIC program as the Administrator may require by regulations. After reasonable opportunity for public comment, the Administrator shall by rule approve, disapprove or approve in part and disapprove in part, the State's UIC program.

The State of Delaware was listed as needed a UIC program on March 19, 1980 (45 FR 17632). The State submitted an application under Section 1422 on September 27, 1983, for a UIC program to be administered by the Delaware Department of Natural Resources and Environmental Control (DNREC). On October 28, 1983, EPA published notice of receipt of the application, requested public comments, and offered a public hearing on the UIC program submitted by the DNREC (48 FR 49875). Neither requests for public hearing nor requests to offer testimony at such hearings were received by EPA. Therefore, pursuant to the provisions of 40 CFR 145.31(c), the public hearing was cancelled because of lack of sufficient public interest. After careful review of the application, I have determined that the Delaware UIC program for Classes I, II, III, IV, and V injection wells submitted by the DNREC meets the requirements established by the Federal regulations pursuant to section 1422 of the SDWA and, hereby, approve it. The effect of this approval is to establish this program as the applicable underground injection control program under the SDWA for the State of Delaware. The requirements of this program include State statutes and regulations set forth at: 7 Delaware Code Chapter 60; and Delaware UIC Regulations, Parts 122, 124, and 146.

The terms listed below comprise a complete listing of the thesaurus terms associated with 40 CFR Part 145, which sets forth the requirements for a State requesting the authority to operate its own permit program of which the Underground Injection Control program is a part. These terms may not all apply to this particular notice.

List of Subjects in 40 CFR Part 145

Indians—lands, Reporting and recordkeeping requirements, Intergovernmental relations, Penalties, Confidential business information, Water Supply.

OMB Review

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

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I certify that approval by EPA under Section 1422 of the Safe Drinking Water Act of the application by the Delaware Department of Natural

Resources and Environmental Control will not have a significant economic impact on a substantial number of small entities, since this rule only approves State actions. It imposes no new requirements on small entities.

(42 U.S.C. 300)

Dated: March 28, 1984.

William D. Ruckelshaus,

Administrator.

[FR Doc. 84-9090 Filed 4-4-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 271

[SW-4-FRL 2558-7]

Tennessee; Hazardous Waste Management Program; Request for Extension of Phase I Interim Authorization

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of extension of phase I interim authorization period.

SUMMARY: The State of Tennessee recently requested a further extension beyond the April 1, 1984, deadline previously granted for continued approval of their Phase I interim authorization under the Resource Conservation and Recovery Act (RCRA), as amended (48 FR 33870, July 28, 1983). EPA is granting the requested extension. A delay in adopting amendments to the State Hazardous Waste Statute necessary for Tennessee's Final authorization has resulted in the State missing the April 1, 1984, deadline for submitting its application for Final authorization. The delay was caused by a two-month special session of the Tennessee General Assembly which only considered special items and did not include the needed hazardous waste legislation. The regular session has now begun; however, the Legislature has not had sufficient time to act upon the proposed changes to the Hazardous Waste Management Act.

This extension allows Tennessee to retain Phase I interim authorization pending submission of a complete application for Final authorization.

EFFECTIVE DATE: April 1, 1984.

FOR FURTHER INFORMATION CONTACT: Allan E. Antley, Chief, Waste Planning Section, Residuals Management Branch, Air & Waste Management Division, Region IV, 345 Courtland Street, Atlanta, Georgia 30365, (404) 881-3016.

SUPPLEMENTARY INFORMATION:

Background

40 CFR 271.122(c)(4) (formerly § 123.122(c)(4): (47 FR 32377, July 26, 1982) requires that States which have received any but not all Phases/Components of interim authorization amend their original submissions by July 26, 1983, to include all Components of Phase II 40 CFR 271.137(a) (formerly § 123.137(a)); (47 FR 32378, July 26, 1982) further provides that on July 26, 1983, interim authorizations terminate except where the State has submitted by that date an application for all Phases/Components of interim authorization.

Where the authorization (approval) of the State program terminates, EPA is to administer and enforce the federal program in those States. However, the Regional Administrator may extend, for good cause, the July 26, 1983, deadline for termination of the approval of the State program to allow Tennessee time to make statutory, regulatory, and administrative changes necessary to qualify for either Final authorization or Phase II, interim authorization. The most significant issues include: The Tennessee Hazardous Waste Management Act T.C.A. Sec. 68-46-103 (1) and (2) allows exemptions for air emissions and water discharges; T.C.A. Sec. 68-46-106(a)(3) does not subject owners of treatment, storage, and disposal facilities to utilization of the manifest system; Sec. 68-46-108(b) limits the transporter requirements to the reporting of information; and the State of Tennessee does not provide for citizen intervention in State civil enforcement actions as a matter of right.

Note.—40 CFR Part 123, including the July 26, 1982, amendments (47 FR 32373), was recodified an April 1, 1983, as 40 CFR Part 271 (48 FR 14248).

Anticipating enactment of the necessary legislation and promulgation of regulations, Tennessee has committed to the following schedule for applying for Final authorization:

May 1, 1984—Submit a draft application for Final authorization which contains the following:

1. A signed Attorney General's Statement.
2. Legislation that is lawfully adopted, fully effective, and signed by the Governor of Tennessee.
3. Regulations that are fully effective and not subject to change (except for regulations based on legislation passed in the 1984 General Assembly).
4. Proposed regulations that are based on the new legislation passed during the 1984 General Assembly.
5. Draft Program Description and Memorandum of Agreement.

July 31, 1984—Submit a complete application for Final authorization as required in 40 CFR Part 271.

Decision

Considering the above schedule, immediate reversion of Phase I due to failure to meet the previous deadline was not in the best interest of the State, this Agency, the regulated community, or the citizens of Tennessee. I found there was good cause to grant the State's request for a further extension beyond the April 1, 1984, deadline previously granted for applying for Final authorization. Therefore, Tennessee must officially submit a draft application for Final authorization on or before May 1, 1984, and a complete application for Final authorization on or before July 31, 1984. If the State fails to submit draft and complete applications by the above respective dates, approval of the State program will terminate and administration of the hazardous waste management program will revert to EPA.

Executive Order 12291

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

List of Subjects in 40 CFR Part 271

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

Authority: This notice is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C 6912(a), 6926 and 6974(b).

Dated: March 30, 1984.

George L. Harlow,

Acting Regional Administrator.

[FR Doc. 84-9079 Filed 4-4-84; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 435 and 436

Medicaid Program; State Residency Requirements

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

ACTION: Final rule.

SUMMARY: We are revising Medicaid regulations to clarify State residency requirements for Medicaid eligibility. The rule will assist States in making determinations of residency for individuals receiving out-of-State care, and will establish more uniform requirements pertaining to the medical documentation needed to establish that an individual is incapable of indicating intent to reside.

EFFECTIVE DATE: July 5, 1984.

FOR FURTHER INFORMATION CONTACT: Marinos Svolos, (301) 594–9050.

SUPPLEMENTARY INFORMATION:

I. Background

The current regulations concerning residency became effective October 15, 1979 (for the various States, the District of Columbia and the Northern Mariana Islands, see 42 CFR 435.403; and for Guam, Puerto Rico, and the Virgin Islands, see 42 CFR 436.403). The regulations were intended to achieve uniform application of rules on residency, thereby insuring that no eligible individual is denied Medicaid because a State fails to recognize him or her as a resident. They were also designed to protect those States with superior medical facilities against the costs of caring for an influx of individuals from States that provide less adequate institutional care.

However, despite these regulations, States have informed us that problems are still encountered involving determination of residency in situations where an eligible resident receives out-of-State care. These problems are particularly notable with respect to institutionalized individuals because of the relatively higher cost of care involved. Members of Congress and recipient representatives, as well as States, have requested that we further clarify the current regulations to allow States to utilize interstate agreements for cases of disputed residency, and for other administrative purposes.

II. Provisions of the Proposed Rule

On September 30, 1982, we published in the **Federal Register** a proposed rule which would amend current Medicaid regulations that govern State residency requirements for Medicaid eligibility (47 FR 43095). The rule proposed amending regulations at 42 CFR 435.403 and 436.403 to clarify what constitutes State placement of an individual in a medical institution and the policy pertaining to medical documentation for an individual incapable of indicating intent to reside.

Specifically, the proposed rule included:

- A requirement that a State agency must furnish Medicaid services to State residents who are absent from the State.
- A definition of the term "institution" for State residency purposes.
- A requirement that medical documentation would be acceptable to serve as evidence that an individual is incapable of acknowledging intent to reside only if it is provided by a physician, psychologist, or other person licensed by the State in the field of mental retardation.
- A definition of State placement and identification of certain agencies as acting for the State in making placements.
- A provision that allows the State of residence for institutionalized individuals under age 21 or those who became incompetent before age 21 to be based on: (1) Their actual location; (2) the parents'/guardians' State of residence at the time of placement; (3) the parents'/guardians' current State of residence if it is the State in which the individual is institutionalized.
- A provision that classifies emancipated individuals under age 21 as residents of the State in which they are institutionalized.
- A provision that allows States broad use of interstate agreements.

III. Summary and Discussion of Public Comments

We received 19 letters in response to the proposed rule. The comments were from State agencies, a law center representing a beneficiaries' group, a training school for retarded children and an association for retarded citizens.

In addition to the specific comments on the provisions, comments were also received on the organization of the proposed rule. The commenters suggested that the rule would be clarified if it were organized in terms of the age of the individual, rather than their institutional or non-institutional status. We agree and have adopted this suggestion in this final rule. We are also making whatever other minor editorial revisions that are necessary to conform the rule to the new format. A summary of the additional specific comments received and our responses follows:

1. General

Comment: One commenter suggested that we clarify that the residence of military personnel and their families is the State where the member of the military is stationed.

Response: We do not agree that special residency requirements for military personnel are necessary, since military personnel and their families are subject to the same residency requirements and protections as all other persons applying for Medicaid benefits. Moreover, section 153 of Pub. L. 97–248, the Tax Equity and Fiscal Responsibility Act (TEFRA) of 1982 amended section 406(a)(1) of the Social Security Act (the Act) and altered the effect on absence due to military service on Aid to Families with Dependent Children (AFDC). AFDC is no longer available to families if the parent is absent from the home solely by reason of the performance of active duty in the uniformed services of the United States.

Comment: Another commenter requested we clarify whether the regulations at § 435.403(g) regarding the residence of institutionalized persons take precedence over the regulations at § 435.118 regarding title IV–E (Adoption Assistance) payments by States for Medicaid when the child and his or her family move to another State.

Response: We are accepting this comment and are clarifying the regulations at §§ 435.403(g) and 436.403(f) to specify that the State making the title IV–E payment must provide Medicaid even when the individual and his or her family move to another State. This clarification conforms the regulations with § 435.118. Also, we are further clarifying in the regulations at §§ 435.403(k) and 436.403(j) that States may use interstate agreements for purposes other than disputed residency to facilitate the placement and adoption of title IV–E individuals, where States have enacted interstate agreements as provided for in Section 101(a)(4)(B) of Pub. L. 96–272 or other State statutes to provide for reciprocal provision of medical assistance for title IV–E children as allowed under that program.

Comment: Two commenters suggested that we include in the regulation a discussion of the parent's State of residence versus the legal guardian's. One commenter suggested that the residence of the parents should take precedence over that of the guardian, absent a termination of parental rights. The commenter indicated that there are a variety of guardian situations that exist including: (a) General guardian of property; (b) guardian *ad litem* appointed for a specific and limited purpose; and (c) probate guardian, usually the Commissioner of Public Welfare. These types of guardian situations do not evolve from the fact of residence. The second commenter believed that the residence of a child under age 21 or an individual over age 21 who became incapable of indicating

intent before age 21 be restricted to the parents' State of residence, not the legal guardian's.

Response: While we agree that there are a variety of guardian situations, we are adding a statement at the end of the paragraphs at §§ 435.403 (h)(4)(ii) and (i)(2)(iii) and 436.403 (g)(4)(ii) and (h)(2)(iii) to specify if a legal guardian has been appointed and parental rights are terminated, the State of residence of the guardian is used instead of that of the parent's. In some instances, the courts will appoint a legal guardian for a child who has been abandoned by the parents. However, it is also possible that a legal guardian may not be appointed. Therefore, we are adding new paragraphs at §§ 435.403 (h)(4)(iii) and (i)(2)(iv) and 436.403 (g)(4)(iii) and (h)(2)(iv) to specify that the State of residence of the individual or party who files an application is used if the individual has been abandoned by his or her parent(s), does not have legal guardian and is institutionalized in that State.

2. Definition of Institution

Comment: One commenter suggested that the reference to a foster care home in the regulations should specify that the foster care home must be licensed in the State in which it is located.

Response: We agree with the comment and are adding language to the regulations at §§ 435.403(b) and 436.403(b) to specify that a foster care home must be licensed as set forth in the regulations at 45 CFR 1355.20 (48 FR 23114, May 23, 1983).

3. Medical Documentation for Incompetency

Comment: Several commenters objected to the proposed regulations at §§ 435.403(c) and 436.403(c) on various grounds: One commenter expressed concern that States will be forced to add many out-of-State residents to their Medicaid roles. The commenter noted that its residents often bring their aged relatives who have never been diagnosed as being incompetent into the State. However, the commenter added that it would not have to accept these out-of-State residents given the regulation's requirement that such individual's State of residence is where they were located at the time they became incapable of indicating intent. Another commenter believed the proposed rules do not provide adequate guidance for dealing with conflicting medical opinions regarding competency. This commenter suggests that the regulation focus on the types of acceptable evidence as well as the source. A third commenter objected to any specific documentation requirements.

Response: We do no agree with any of these comments. As stated in the preamble to the proposed rule, we wish to reduce the wide variation in approaches taken by States to document whether an individual is capable of indicating intent to reside. We believe the requirement as written will adequately decrease the number of disagreements between States that otherwise would arise from the use of lay opinions or statements.

Since a finding of incompetency is a controlling factor in determining the State of residence, especially for the institutionalized, we believe the regulations as proposed will decrease disagreements about acceptable documentation because they allow only documentation from a physician, psychologist or other person licensed by the State in the field of mental retardation to serve as evidence that an individual is incapable of acknowledging intent to reside in a State.

Furthermore, we believe that any attempt to identify specific types of acceptable evidence and their relative priority would unnecessarily hinder State flexibility in the vast majority of decisions where the findings are not challenged. In the event that the State agencies disagree over the conclusion based on medical documentation, and additional acceptable documentation does not resolve conflicting opinions, our regulations provided that the State of residence is where the individual is physically located.

Comment: One commenter wrote to confirm his belief that the use of specific documentation requirements is limited to persons who are under age 21 or who became incapable of indicating intent before age 21.

Response: The commenter is wrong in his understanding. There was nothing in the proposed regulations that specified that the application of the documentation requirements is limited only to persons under age 21. The documentation requirements for incompetency apply regardless of the individual's age.

4. Placement by States in an Out-of-State Institution

Comment: The regulations provide that a State arranging or actually making a placement is considered as the individual's State of residence. Three commenters suggested that we identify in the regulations the specific actions that would constitute proof that a State arranged or made a placement in an out-of-State institution. For example, in some cases, States are requested by family members to relocate an incapacitated individual to the State in which the family resides. In other cases, a capable individual might independently decide to move to another State and merely requests assistance from the current State of residence in locating an institution in another State. Finally, if an individual placed by a State decides to move to another facility in a different State would this relieve the State that made the initial placement of future responsibility? If so, the individual's State of residence for Medicaid purposes should become the State where the independently chosen facility is located.

Response: We agree that these cases raise doubts as to the level of State involvement in making placements. Therefore, we have revised the regulations at §§ 435.403(e) and 436.403(e) to provide more specificity on State placement. The regulations will state a general rule and specify those actions which do not constitute a State placement. In general, only actions that go beyond merely providing information would constitute a State placement. When placement is made by States because they lack appropriate facilities, the State arranging or making the placement is the individual's State of residence. Similarly, a State which provides reimbursement for transportation to the other State would be considered as having placed the individual and would be responsible for the individual's care. As a result of this comment, we are also adding a statement that an independent move by a competent individual following an initial State placement will result in residency being determined based on where the individual is physically located.

Comment: One commenter was concerned that the regulation does not resolve the problems encountered when placements are made by both private agencies, and agencies of the State and Federal governments. The commenter proposed that the definition of State agencies be extended to any agency making placements within the State, whether or not under contract to the State, and with or without specific authorization from the Medicaid State agency.

Response: The regulation will specify at §§ 435.403(e)(1) and 436.403(e)(1) that any agency of the State, including an entity recognized under State law as being under contract with the State for such purposes (including private agencies and agencies of the Federal

government), that arranges for an individual to be placed in an institution or located in another State is recognized as acting on behalf of the State in making a placement.

Comment: One commenter recommended that the regulations be revised to indicate that a competent individual should always have the right to make a choice and receive assistance in locating an institution in another State from any State without mandating that the State assume financial responsibility for the cost of care.

Response: We agree and have revised the regulations to clarify that State assistance in locating an institution in another State does not necessarily require State assumption of financial responsibility for the cost of care, if a competent individual asks for such service.

Comment: One commenter suggested that the definition of institution be broadened for purposes of State placement to include adult care facilities, family type homes for adults, shelters for adults and intermediate care facilities. This commenter believed when an individual is placed by another State in one of the above facilities, the financial burden upon the receiving State can be quite significant.

Response: We agree and have clarified the regulations at §§ 435.403(e)(4) and 436.403(e)(4) to provide that if the State making a placement provides for Medicaid coverage for individuals in the above referenced living arrangements, and the State lacks facilities to provide services to its residents, that State would be financially responsible unless an interstate agreement between the two States provide otherwise.

5. Institutionalized and Non-institutionalized Individuals

Comment: One commenter wanted to know the rationale for considering blindness or disability (redesignated in these final regulations at §§ 435.403(h)(2) and 436.403(g)(2)) in determining the State of residence of a child under age 21 without regard to whether the individual is institutionalized or not.

Response: Under the SSI program and in most States, there are no age limitations imposed for persons to be considered blind or disabled. This particular provision concerns persons under age 21 who seek to establish Medicaid eligibility on the basis of either blindness or disability. As stated previously, the State of residence for non-institutionalized persons is determined by physical presence. The provision for SSI eligible individuals is identified specifically in this section to contrast it with non-blind or disabled children who qualify for Medicaid as ADFC eligible and therefore are covered by AFDC rules.

Comment: One commenter asked whether an individual under age 21 is always a child for purposes of 45 CFR 233.40 or whether an individual loses his or her status as a child for purposes of this section.

Response: The intent of these regulations is to adopt the criteria in 45 CFR 233.40 for determining residency, not to follow AFDC's definition of child. Therefore, for any non-institutionalized person under age 21, whether or not that person is considered a child by AFDC, the criteria in 45 CFR 233.40 govern the determination of residency for Medicaid purposes.

Comment: One commenter expresed concern that prior protection that was afforded to those States with higher quality facilities in the October, 1979, regulations was removed in the NPRM. The commenter also felt it would be an unfair burden on those States that have the higher quality facilities to be required to provide assistance for out-of-State individuals because bed availability is better in that State than the individual's own State.

Response: It was not the intent of this regulation to impose an unfair burden on any State. We have sought to achieve a more equitable balance between the interests of the individual and the State by adopting a more flexible policy for determining residency of institutionalized individuals. As mentioned previously, we have revised the regulations to state that where placement is made by States because they lack appropriate facilities, the State arranging or making the placement is the individual's State of residence. The regulations also provide more flexibility for the States to deal with these kinds of situations through use of interstate agreements, if they choose.

Comment: One commenter requested clarification of the rules used to determine the parents' or legal guardian's State of residence, where they live in different States.

Response: We are clarifying the regulation following §§ 435.403(h)(4)(ii) and 436.403(g)(4)(ii) by adding that absent a legal termination of the parents' right, the State of residence of the parent making application is used instead of the legal guardian's State of residence.

Comment: One commenter expressed concern that the proposed rule does not contain any provision which would encourage removal of disincentives on the part of States to develop their own long term care resources, thereby reducing the influx of recipients from States with lesser quality resources to those with higher quality resources.

Response: We recognize that this is a problem. However, the primary intent of this regulation is to set forth requirements for determining an individual's State of residency. The balance between patient needs and State resources is primarily a matter for the States to determine. The regulation allows States to deal with this issue through use of interstate agreements, if States find such agreements would be helpful.

6. Emancipated and Married Individuals Under Age 21

Comment: One commenter noted a conflict between § 435.403 (h)(3) and (h)(4) of the proposed rule. Both paragraphs applied to an individual under age 21 but § 435.403(h)(4) also applied to those married or otherwise emancipated. It is not clear whether the parents' or legal guardian's State of residence should be considered for married or emancipated individuals under age 21.

Response: We agree with this comment and are providing further clarification in the regulations at §§ 435.403(h)(1) and 436.403(g)(1).

Comment: Another commenter questioned whether it is correct to assume that emancipation for the purpose of this regulation, is as defined by State law.

Response: Yes. Unless otherwise indicated in these regulations, definition of terms and other related policies are matters of State discretion.

Comment: One commenter supported the proposals regarding emancipated individuals but was concerned that the concept of placement seems to be disregarded. This commenter suggested that emancipated individuals be treated as adults and thereby remove emancipated minors from the under age 21 category.

Response: We believe that the clarification in the proposed regulation adequately addresses this concern.

Comment: One commenter proposed that the regulation consider only the standards for emancipation in the parents' State of residence for individuals under age 18 instead of a uniform national standard.

Response: We disagree, since parental responsibility for the purpose of establishing residence extends to age 21 in some States. Where a person is emancipated at age 18, the regulation takes this into account by not linking residency to parents or guardians.

Comment: Another commenter requested clarification regarding which State law determines whether a person is married or emancipated, the State in which the individual is institutionalized or the State where the individual's legal parent or guardian lives.

Response: In the case where the person is not married, the State law where the individual, not the parent or legal guardian, physically resides would determine emancipation. If an individual is legally married then the individual is emancipated for purposes of this regulation regardless of the State in which the individual resides.

7. Temporary Absence

Comment: One commenter recommended that the provision of proposed § 435.403(j)(3) and 436.403(i)(3) apply only to persons whose residence is based on their intent, i.e., the persons covered under § 435.403(h) and 436.403 (g)(2), (g)(3), and (h)(4).

Response: We disagree with the recommendation. Sections 435.403(j)(3) and 436.403(i)(3) of this final regulation require that an agency may not deny or terminate an individual's Medicaid eligibility because that individual is temporarily absent from the State if the individual intends to return when the reason for the absence has been accomplished. The commenter's recommendation does not take into account that there may be many situations which could involve incapacitated individuals being temporarily absent from the State. We believe it would be unfair to limit this regulation as the commenter suggests.

Comment: One State requested further clarification for proposed §§ 435.403(i)(3) and 436.403(h)(3) regarding temporary absence from a State. The commenter proposed that the regulation be more specific and require a two month absence as the length of time an individual can be out-of-State and remain eligible for Medicaid coverage.

Response: This suggestion would, in effect impose a durational residency requirement. A State may not deny or terminate Medicaid due to temporary absences from the State if the individual intends to return to the State when the purpose of the absence has been accomplished. The regulations were written in this manner so as not to limit the right of an individual to move freely from one State to another.

Additionally, the AFDC, SSI and non-cash assistance individuals, the State may not arbitrarily terminate Medicaid benefits without contacting, or attempting to contact, the individuals. Where the individual's whereabouts are unknown, States must follow the provisions of 42 CFR 431.213, 431.231, and 435.916.

8. Interstate Agreements

Comment: One commenter proposed that a mechanism be established for the resolution of interstate disputes, e.g., use of a regional staff attorney with disputed matters to be submitted in writing.

Response: We agree that the regulation should be clarified, but do not feel that a federal administrative review mechanism should be established, since the reasons for disputes vary and there are no clear cut guidelines that any arbiter can use to resolve the issues. Instead, the regulation will be revised to state that where two or more States cannot resolve which State is the State of residence, the State where the individual is physically located is the State of residence.

Comment: One commenter recommended that the interstate agreement requirements as they pertain to placement and disputed residency be eliminated.

Response: We do not want to eliminate interstate agreements. There may be instances when interstate agreements are necessary to resolve disputed residency situations that may not have been an issue in the past.

9. Grandfather Clause Provision

Comment: One commenter suggested that a permanent grandfather clause provision be added to the regulations. The commenter was concerned that without a permanent provision, many individuals may be displaced or lose effective use of the benefits to which they are entitled.

Response: We do not agree because we do not want to create a permanent special classification of Medicaid individuals who would not be subject to the rules otherwise applicable in the program. A temporary exemeption was necessary to ease already institutionalized individuals into the changes necessitated by the new regulations and to ensure that all eligible institutionalized individuals are determined to be residents of some State for Medicaid purposes. The regulation required States to continue to provide Medicaid to an institutionalized individual who, as a result of the changes in the residency regulations that were published in October 1979, would be considered a resident of a different State. This grandfather clause initially expired October 13, 1981 and was formally extended to June 23, 1983 by a notice published in the **Federal Register** on June 23, 1982 (47 FR 27078). We are again extending this provision to allow States additional time to conclude establishing residency for their institutionalized population and arranging for either placement in the resident State or reimbursement by the resident State. The extension is effective from June 24, 1983 to 90 days after date of publication of this regulation.

IV. Provisions of the Final Regulations

We are revising regulations located at 42 CFR 435.403 and 436.403 to clarify what constitutes State placement of an individual in a medical institution and the policy pertaining to medical documentation for incapability of indicating intent. Technical changes to update cross references and other information also are being made.

The current regulations (§§ 435.403(a) and 436.403(a)) state that the agency must provide Medicaid to "otherwise eligible" residents of the State. The phrase was intended to apply to resident individuals who are absent from the State. Therefore, we are amending the regulations to clearly state that the agency must furnish Medicaid to financially and categorically eligible State residents who are absent from the State. We have added a cross reference to the regulation that sets forth the conditions under which States are responsible for paying for out-of-State care.

We are adding a new paragraph to define the term "institution" for State residency purposes. The term will have the same meaning as that provided in 42 CFR 435.1009 for purposes of determining the conditions under which Federal financial participation (FFP) is available for persons in public institutions. In addition, we are adding a requirement that a foster care home must be licensed as set forth in 45 CFR 1355.20.

We are revising the current regulations to allow only medical documentation from a physician, psychologist, or other person licensed by the State in the field of mental retardation to serve as evidence that an individual is incapable of acknowledging intent to reside. This revision should decrease instances of disagreements between States concerning acceptable documentation and will help resolve cases of disputed residency since it will eliminate the possibility of documentation by a nonprofessional that may not be valid. Where disputes still occur and cannot be resolved, the State where an individual is physically present shall be the State of residence.

We are also clarifying the regulation to define those actions that do not constitute a State placement, and to specify that any entity recognized under State law as acting for the State is an agency of the State for placement purposes. (The proposed regulation only recognized entities under contract with the State.) We believe that Medicaid recipients and their families will also benefit from this revision because they will be assisted by States in obtaining placements.

We are clarifying the regulations at §§ 435.403(e) and 436.403(e) to specify that if a competent individual leaves the facility in which he or she was placed by a State, that individual's State of residence for Medicaid will be the State where the individual is physically located.

We also are revising the regulations to make the State of residence for an institutionalized individual who is under 21, or became incompetent before age 21, the State in which the parent or legal guardian making application lived at the time of placement or the parent's or legal guardian's current State of residence, if the individual is institutionalized in that State. Some States have objected to being responsible for reimbursement for services provided to individuals in institutions in other States. The revision (§§ 435.403(h)(4), 436.403(g)(4)) is intended to alleviate problems by adopting a flexible policy under which residency would not always be based on the parents' or guardian's current State of residence. This revision is expected to ease the administrative burden on States because the State does not have to make a new residency determination as required under current regulations when a parent moves to another State.

Sections 435.403(h)(1) and 436.403(g)(1) are being revised and redesignated to state that individuals under age 21 who are married or who have been emancipated from parental control under State law are also residents of the State in which they reside with the intent to remain.

We are revising the regulations at §§ 435.403(k) and 436.403(j) to allow States the option to use interstate agreements for administrative purposes in other than cases of disputed residency. Some States have entered into reciprocal agreements wherby each State agrees to treat the other State's residents as its residents. To facilitate administration of the program and to provide maximum State flexibility, we are making a technical change to the regulations to allow States the option of using interstate agreements for purposes of facilitating administration of the program in addition to resolving residency disputes. States also are allowed to use interstate agreements for purposes other than disputed residency to facilitate the adoption and placement of title IV–E individuals. A State making a title IV–E payment must provide Medicaid even when the individual and his or her family move to another State. However, States which enter into interstate compacts as provided for under Pub. L. 96–272 may establish reciprocal agreements for providing medical assistance for individuals receiving adoption assistance payments.

We are extending the grandfather provision in §§ 435.403(j) and 436.403(i). The extension is effective from June 24, 1983 until 90 days after date of publication of this regulation.

IV. Impact Analyses

A. Executive Order 12291

The Secretary has determined that the regulations do not meet the criteria for a "major rule" as defined by section 1(b) of Executive Order 12291. That is, these regulations will not—

- Have an annual effect on the economy of $100 million or more;
- Result in a major increase in costs or prices for consumers, any industries, any government agencies, or any geographic regions; or
- 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 import markets.

Since we are primarily clarifying procedures already in effect, this rule will result in little economic impact. We believe there will be neligible changes in the current Medicaid expenditures with respect to affected individuals.

B. Regulatory Flexibility Act

The Secretary certifies, under 5 U.S.C. 605(b), enacted by the Regulatory Flexibility Act (Pub. L. 96–354) that the proposed regulations will not have a significant economic impact on a substantial number of small businesses, non-profit entities or small local governments.

As defined by the Regulatory Flexibility Act, the term "small entities" includes "small governmental jurisdictions". The latter term is defined as local governments (cities, counties, towns, townships, villages, school districts, or other special districts) with a population of less than fifty thousand persons. State governments are not included in this definition.

These regulations will clarify the definitions of "State resident" and "incompetency", and will make technical changes to requirements for State placement. Although we are uncertain of the number of institutions or beneficiaries that might be affected by these regulations, we do not believe that the number will be substantial nor the effect economically significant. We intend that these revisions benefit State agencies by clarifying administrative requirements.

List of Subjects

42 CFR Part 435

Aid to Families with Dependent Children, Aliens, Categorically needy, Contracts (Agreements—State Plan), Eligibility, Grant-in-Aid program—health, Health facilities, Medicaid, Medically needy, Reporting requirements, Spend-down, Supplemental security income (SSI).

42 CFR Part 436

Aid to Families with Dependent Children, Aliens, Contracts (Agreements), Elilgibility, Grant-in-Aid program—health, Guam, Health facilities, Medicaid, Puerto Rico, Supplemental security income (SSI), Virgin Islands.

42 CFR Parts 435 and 436 are amended as set forth below:

PART 435—ELIGIBILITY IN THE STATES, DISTRICT OF COLUMBIA AND THE NORTHERN MARIANA ISLANDS

The authority citation for Part 435 reads as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

1. Section 435.403 is revised to read as follows:

§ 435.403 State residence.

(a) *Requirement.* The agency must provide Medicaid to eligible residents of the State, including residents who are absent from the State. The conditions under which payment for services is provided to out-of-State residents are set forth in § 431.52 of this chapter.

(b) *Definition.* For purposes of this section—"Institution" has the same meaning as "Institution" and "Medical institution", as defined in § 435.1009 of this chapter. For purposes of State placement, the term also includes "foster care homes", licensed as set forth in 45 CFR 1355.20, and providing food, shelter and supportive services to one or more persons unrelated to the proprietor.

(c) *Incapability of indicating intent.* For purposes of this section, an individual is considered incapable of indicating intent if the individual—

(1) Has an I.Q. of 49 or less or has a mental age of 7 or less, based on tests acceptable to the mental retardation agency in the State:

(2) Is judged legally incompetent; or

(3) Is found incapable of indicating intent based on medical documentation obtained from a physician, psychologist, or other person licensed by the State in the field of mental retardation.

(d) *Who is a State resident.* A resident of a State is any individual who:

(1) Meets the conditions in paragraphs (e) through (i) of this section; or

(2) Meets the criteria specified in an interstate agreement under paragraph (k) of this section.

(e) *Placement by a State in an out-of-State institution.* (1) *General rule*—Any agency of the State, including an entity recognized under State law as being under contract with the State for such purposes, that arranges for an individual to be placed in an institution located in another State, is recognized as acting on behalf of the State in making a placement. The State arranging or actually making the placement is considered as the individual's State of residence.

(2) Any action beyond providing information to the individual and the individual's family would constitute arranging or making a State placement. However, the following actions do not constitute State placement:

(i) Providing basic information to individuals about another State's Medicaid program, and information about the availability of health care services and facilities in another State.

(ii) Assisting an individual in locating an institution in another State, provided the individual is capable of indicating intent and independently decides to move.

(3) When a competent individual leaves the facility in which the individual is placed by a State, that individual's State of residence for Medicaid purposes is the State where the individual is physically located.

(4) Where a placement is initiated by a State because the State lacks a sufficient number of appropriate facilities to provide services to its residents, the State making the placement is the individual's State of residence for Medicaid purposes.

(f) *Individuals receiving a State supplementary payment (SSP).* For individuals of any age who are receiving an SSP, the State of residence is the State paying the SSP.

(g) *Individuals receiving Title IV–E payments.* For individuals of any age who are receiving Federal payments for foster care and adoption assistance under title IV–E of the Social Security Act, the State of residence is the State making the payment.

(h) *Individuals Under Age 21.* (1) For any individual who is emancipated from his or her parents or who is married and capable of indicating intent, the State of residence is the State where the individual is living with the intention to remain there permanently or for an indefinite period.

(2) For any individual not residing in an institution as defined in paragraph (b) whose Medicaid eligibility is based on blindness or disability, the State of residence is the State in which the individual is living.

(3) For any other non-institutionalized individual not subject to paragraph (h)(1) or (h)(2) of this section, the State of residence is determined in accordance with 45 CFR 233.40, the rules governing residence under the AFDC program.

(4) For any institutionalized individual who is neither married nor emancipated, the State of residence is—

(i) The parent's or legal guardian's State of residence at the time of placement (if a legal guardian has been appointed and parental rights are terminated, the State of residence of the guardian is used instead of the parent's); or

(ii) The current State of residence of the parent or legal guardian who files the application if the individual is institutionalized in that State (if a legal guardian has been appointed and parental rights are terminated, the State or residence of the guardian is used instead of the parent's).

(iii) The State of residence of the individual or party who files an application is used if the individual has been abandoned by his or her parent(s), does not have a legal guardian and is institutionalized in that State.

(i) *Individuals Age 21 and Over.* (1) For any individual not residing in an institution as defined in paragraph (b), the State of residence is the State where the individual is—

(i) Living with the intention to remain there permanently or for an indefinite period (or if incapable of stating intent, where the individual is living); or

(ii) Living and which the individual entered with a job commitment or seeking employment (whether or not currently employed).

(2) For any institutionalized individual who became incapable of indicating intent before age 21, the State of residence is—

(i) That of the parent applying for Medicaid on the individual's behalf, if the parents reside in separate States (if a legal guardian has been appointed and parental rights are terminated, the State of residence of the guardian is used instead of the parent's);

(ii) The parent's or legal guardian's State of residence at the time of placement (if a legal guardian has been appointed and parental rights are terminated, the State of residence of the guardian is used instead of the parent's); or

(iii) The current State of residence of the parent or legal guardian who files the application if the individual is institutionalized in that State (if a legal guardian has been appointed and parental rights are terminated, the State of residence of the guardian is used instead of the parent's).

(iv) The State of residence of the individual or party who files an application is used if the individual has been abandoned by his or her parent(s), does not have a legal guardian and is institutionalized in that State.

(3) For any institutionalized individual who became incapable of indicating intent at or after age 21, the State of residence is the State in which the individual is physically present, except where another State makes a placement.

(4) For any other institutionalized individual, the State of residence is the State where the individual is living with the intention to remain there permanently or for an indefinite period.

(j) *Specific prohibitions.* (1) The agency may not deny Medicaid eligibility because an individual has not resided in the State for a specified period.

(2) The agency may not deny Medicaid eligibility to an individual in an institution, who satisfies the residency rules set forth in this section, on the grounds that the individual did not establish residence in the State before entering the institution.

(3) The agency may not deny or terminate a resident's Medicaid eligibility because of that person's temporary absence from the State if the person intends to return when the purpose of the absence has been accomplished, unless another State has determined that the person is a resident there for purposes of Medicaid.

(k) *Interstate agreements.* A State may have a written agreement with another State setting forth rules and procedures resolving cases of disputed residency. These agreements may establish criteria other than those specified in paragraphs (c) through (i) of this section, but must not include

criteria that result in loss of residency in both States or that are prohibited by paragraph (j) of this section. The agreements must contain a procedure for providing Medicaid to individuals pending resolution of the case. States may use interstate agreeements for purposes other than cases of disputed residency to facilitate administration of the program, and to facilitate the placement and adoption of title IV–E individuals when the child and his or her adoptive parent(s) move into another State.

(l) *Continued Medicaid for institutionalized recipients.* If an agency is providing Medicaid to an institutionalized recipient who, as a result of this section, would be considered a resident of a different State—

(1) The agency must continue to provide Medicaid to that recipient from June 24, 1983 until July 5, 1984, unless it makes arrangements with another State of residence to provide Medicaid at an earlier date: and

(2) Those arrangements must not include provisions prohibited by paragraph (h) of this section.

(m) *Cases of disputed residency.* Where two or more States cannot resolve which State is the State of residence, the State where the individual is physically located is the State of residence.

PART 436—ELIGIBILITY IN GUAM, PUERTO RICO, AND THE VIRGIN ISLANDS

The authority citation for Part 436 reads as follows:

Authority: Section 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

2. Section 436.403 is revised to read as follows:

§ 436.403 State residence.

(a) *Requirement.* The agency must provide Medicaid to eligible residents of the State, including residents who are absent from the State. The conditions under which payment for service is provided to out-of-State residents are set forth in § 431.52 of this chapter.

(b) *Definition.* For purposes of this section—"Institution" has the same meaning as "Institution" and "Medical institution", as defined in § 435.1009 of this chapter. For purposes of State placement, the term also includes "foster care homes", licensed as set forth in 45 CFR 1355.20, and providing food, shelter and supportive services to one or more persons unrelated to the proprietor.

(c) *Incapability of indicating intent.* For purposes of this section, an individual is considered incapable of indicating intent if the individual—

(1) Has an I.Q. of 49 or less or has a mental age of 7 or less, based on tests acceptable to the mental retardation agency in the State;

(2) Is judged legally incompetent; or

(3) Is found incapable of indicating intent based on medical documentation obtained from a physican, psychologist, or other person licensed by the State in the field of mental retardation.

(d) *Who is a State resident.* A resident of a State is any individual who:

(1) Meets the conditions in paragraphs (e) through (h) of this section; or

(2) Meets the criteria specified in an interstate agreement under paragraph (j) of this section.

(e) *Placement by a State in an out-of-State institution.* (1) *General rule*—Any agency of the State, including an entity recognized under State law as being under contract with the State for such purposes, that arranges for an individual to be placed in an institution located in another State, is recognized as acting on behalf of the State in making a placement. The State arranging or actually making the placement is considered as the individual's State of residence.

(2) Any action beyond providing information to the individual and the individual's family would constitute arranging or making a State placement. However, the following actions do not constitute State placement:

(i) Providing basic information to individuals about another State's Medicaid program, and information about the availability of health care services and facilities in another State.

(ii) Assisting an individual in locating an institution in another State provided the individual is capable of indicating intent and independently decides to move.

(3) When a competent individual leaves the facility in which the individual is placed by a State, that individual's State of residency for Medicaid purposes is the State where the individual is physically located.

(4) Where placement is initiated by a State because the State lacks a sufficient number of appropriate facilities to provide services to its residents, the State making the placement is the individual's State of residence for Medicaid purposes.

(f) *Individuals receiving title IV–E payments.* For individuals of any age who are receiving Federal payment for foster care and adoption assistance under title IV–E of the Social Security Act, the State of residence is the State making the payment.

(g) *Individuals Under Age 21:* (1) For any individual who is emancipated from his or her parents or who is married and capable of indicating intent, the State of residence is the State where the individual is living with the intention to remain there permanently or for an indefinite period.

(2) For any individual not residing in an institution as defined in paragraph (b) whose Medicaid eligibility is based on blindness or disability, the State of residence is the State in which the individual is living.

(3) For any other non-institutionalized individual not subject to paragraph (h)(1) or (h)(2) of this section, the State of residence is determined in accordance with 45 CFR 233.40, the rules governing residence under the AFDC program.

(4) For any institutionalized individual who is neither married nor emancipated, the State of residence is—

(i) The parents' or legal guardian's current State of residence at the time of placement; or

(ii) The current State of residence of the parent or legal guardian who files the application, if the individual is institutionalized in that State. If a legal guardian has been appointed and the parental rights are terminated, the State of residence of the guardian is used instead of the parent's.

(iii) The State of residence of the individual or party who files an application is used if the individual has been abandoned by his or her parent(s), does not have a legal guardian and is institutionalized in that State.

(h) *Individuals Age 21 and Over.* (1) For any individual not residing in an institution as defined in paragraph (b), the State of residence is the State where the individual is—

(i) Living with the intention to remain there permanently or for an indefinite period (or if incapable of stating intent, where the individual is living); or

(ii) Living and which the individual entered with a job commitment or seeking employment (whether or not currently employed).

(2) For any institutionalized individual who became incapable of indicating intent before age 21, the State of residence is—

(i) That of the parents applying for Medicaid on the individual's behalf, if the parents reside in separate States;

(ii) The parent's or legal guardian's State of residence at the time of placement; or

(iii) The current State of residence of the parent or legal guardian who files

the application, if the individual is institutionalized in that State. If a legal guardian has been appointed and parental rights are terminated, the State of residence of the guardian is used instead of the legal parent's.

(iv) The State of residence of the individual or party who files an application is used if the individual has been abandoned by his or her parent(s), does not have a legal guardian and is institutionalized in that State.

(3) For any institutionalized individual who became incapable of indicating intent at or after age 21, the State of residence is the State in which the individual is physically present, except where another State makes a placement.

(4) For any other institutionalized individual, the State of residence is the State where the individual is living with the intention to remain there permanently or for an indefinite period.

(i) *Specific prohibitions.* (1) The agency may not deny Medicaid eligibility because an individual has not resided in the State for a specified period.

(2) The agency may not deny Medicaid eligibility to an individual in an institution, who satisfies the residency rules set forth in this section, on the grounds that the individual did not establish residence in the State before entering the institution.

(3) The agency may not deny or terminate a resident's Medicaid eligibility because of that person's temporary absence from the State if the person intends to return when the purpose of the absence has been accomplished, unless another State has determined that the person is a resident there for purposes of Medicaid.

(j) *Interstate agreements.* A State may have a written agreement with another State setting forth rules and procedures resolving cases of disputed residency. These agreements may establish criteria other than those specified in paragraphs (c) through (h) of this section, but must not include criteria that result in loss of residency in both States or that are prohibited by paragraph (i) of this section. The agreements must contain a procedure for providing Medicaid to individuals pending resolution of the case.

States may use interstate agreements for purposes other than cases of disputed residency to facilitate administration of the program, and to facilitate the placement and adoption of title IV–E individuals when the child and his or her adoptive parent(s) move into another State.

(k) *Continued Medicaid for institutionalized recipients.* An agency is providing Medicaid to an institutionalized recipient who, as a result of this section, would be considered a resident of a different State—

(1) The agency must continue to provide Medicaid to that recipient from June 24, 1983 until July 5, 1984 unless it makes arrangements with another State of residence to provide Medicaid at an earlier date; and

(2) Those arrangements must not include provisions prohibited by paragraph (g) of this section.

(l) *Cases of disputed residency.* Where two or more States cannot resolve which State is the State of residence, the State where the individual is physically located is the State of residence.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance)

Dated: December 8, 1983.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: March 12, 1984.

Margaret M. Heckler,

Secretary.

[FR Doc. 84–8989 Filed 4–4–84; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[Docket No. 21136; FCC 84–105]

Commission Policy Concerning the Noncommercial Nature of Educational Broadcasting Stations

AGENCY: Federal Communications Commission.

ACTION: Policy amendment.

SUMMARY: On reconsideration, the Commission amends its policy governing underwriting and donor acknowledgments aired by public broadcast stations to permit the use of brand and trade names as well as product or service listings. This action will enhance the ability of public stations to generate more of their own financial support and thereby maintain and improve the quality of their service in the face of declining governmental funding. Prior Commission limitations in this regard were based upon the legislative history of the Public Broadcasting Amendments Act of 1981, which indicated that enhanced donor acknowledgments should only be allowed after further study of alternative funding sources was undertaken. That study has now been completed by submission of the final report of the Congressionally created Temporary Commission on Alternative Financing for Public Telecommunications. Additionally, the language of the *Memorandum Opinion and Order* in Docket No. 21136, 90 FCC 2d 895 (1982) (August 19, 1982; 47 FR 36171), is modified to clarify that public broadcasters are generally prohibited from engaging in fundraising activities that suspend or alter regular programming on behalf of any entity other than the station itself. Finally, it is clarified that both donor acknowledgments and underwriting credits are subject to the same restrictions regarding their scheduling and the information that they may include.

EFFECTIVE DATE: March 28, 1984.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Lane Howard Moten, Mass Media Bureau (202) 632–7792.

SUPPLEMENTARY INFORMATION:

Memorandum Opinion and Order

In the matter of Commission policy concerning the noncommercial nature of educational broadcasting stations; Docket No. 21136, FCC 84–105.

Adopted: March 28, 1984.

Released: March 28, 1984.

By the Commission.

Background

1. The *Second Report and Order* in Docket No. 21136 ("*Second Report*")[1] concluded a two year proceeding designed to evaluate the financial needs of public broadcasters and examine alternative methods of fundraising within the framework of providing a noncommercial service. The Commission liberalized prior restrictions upon public broadcasters' fundraising activities by amending 47 CFR 73.503 and 47 CFR 73.621. Subsequently, Congress enacted the Public Broadcasting Amendments Act of 1981 ("1981 Amendments") to ensure that the public telecommunications media remained financially viable in the wake of substantial reductions in Federal funding by expanding public broadcasters' ability to generate increased private financial support.[2] The legislation contained in Section 399A[3]

[1] 86 FCC 2d 141 (1981).

[2] Section 1231 of the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35, 97th Cong., 1st Session (1981), amended the Communications Act of 1934.

[3] Sectir n 399A provides:

(a) For purposes of this section, the term "business or institutional logogram" means any

Continued

and Section 399B [4] of the 1981 Amendments (47 U.S.C. 399A and 399B) closely paralleled the Commission's *Second Report*.[5] However, the Commission noted that the subsequently enacted legislation differed from the *Second Report* in several respects, and thus modified and clarified its rules and policies to conform to the Congressional mandate. *Memorandum Opinion and Order* in Docket No. 21136 ("*1982 Order*"), released July 30, 1982.[6] Among other things, the *1982 Order* reiterated Commission policy that donor acknowledgements could include informational—but not promotional—messages, and further clarified that policy to prohibit the specific mentioning, listing or promoting of a donor's product lines or services, thereby reconciling an apparent inconsistency between the *Second Report* and Section 399A. The Commission also construed the 1981 Amendments as not permitting the use of brand or trade names in underwriting acknowledgements aired by public broadcasters.[7]

2. Several petitions for reconsideration have been filed with the Commission regarding its clarification of the above policy. Additionally, an informal request for interpretation of the general impact and effect of the *1982 Order* has been filed. In the interest of expediting consideration of the issues raised, we will address both the petitions for reconsideration and the request for interpretation.

Petitions for Reconsideration

3. *Arguments.* The petitioners [8] requested that the Commission reconsider the *1982 Order* and permit the inclusion of brand or trade names of products or services in donor acknowledgements. It is argued that a specific reference to a donor's product or service does not compromise or jeopardize the noncommercial nature of public broadcasting, nor is it necessarily promotional in the absence of comparative or qualitative language. Rather, the inclusion of such references in donor acknowledgements is useful, and often necessary, where a brand or trade name has recognition value and a corporate underwriter's name does not.[9] NPR, PBS and NAPTS also represented that public broadcasters interpreted the *Second Report* to allow the nonpromotional identification of a specific product and/or service in donor acknowledgements, and revised their underwriting rules accordingly. They contended that this change resulted in a dramatic increase in donations and underwriting.[10] The elimination of specific references to products and/or services in donor acknowledgements, they stated, will hinder public broadcasters in their efforts to generate additional financial support from the private sector that is vital to their continued survival. Finally, most of the parties considered the Commission's posture in the *1982 Order* and its interpretation of the recent legislation to be unnecessarily restrictive, particularly in light of: (1) The broad statutory language of Section 399A which delineates the information that may be included in donor acknowledgements; and (2) the explicit grant of authority to the Commission to further regulate in this area.[11] They contended that the legislation marks a starting point from which the Commission could and should explore and expand public broadcasters' opportunities to broaden their financial base of support by attracting new, diverse sponsors and donors. In this respect, it should be noted that NPR differs from the other petitioners in that it construed Section 399A(c) as proscribing the Commission's power to regulate the content of donor announcements, confining our authority to the "manner" (*i.e.*, timing and frequency) of donor announcements. Finally, all the petitioners urged that a more liberalized approach to donor acknowledgements would serve the spirit and intent of the Public Broadcasting Amendments Act of 1981 by enhancing public recognition of donors as well as contributions from the business community.

4. In a related context, PBS, NAPTS and Schwartz sought reconsideration of that aspect of the *1982 Order* concerning logograms. They believe that it is

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aural or visual letters or words, or any symbol or sign, which is used for the exclusive purpose of identifying any corporation, company, or other organization, which is not used for the purpose of promoting the products, services, or facilities of such corporation, company or other organization.

(b) Each public television station and each public radio station shall be authorized to broadcast announements which include the use of any business or institutional logogram and which includes a reference to the location of the corporation, company, or other organization involved, except that such announements may not interrupt regular programming.

(c) The provisions of this section shall not be construed to limit the authority of the Commission to prescribe regulations relating to the manner in which logograms may be used to identify corporations, companies or other organizations.

[4] Section 399B provides, in pertinent part:

(a) For purposes of this section, the term 'advertisement' means any message or other programming material which is broadcast or otherwise transmitted in exchange for any remuneration, and which is intended—

(1) To promote any service, facility or product offered by any person who is engaged in such offering for profit;

(2) To express the views of any person with respect to any matter of public importance or interest; or

(3) To support or oppose any candidate for political office.

(b)(1) Except as provided in paragraph (2), each public broadcast station shall be authorized to engage in the offering of services, facilities or products in exchange for remuneration.

(2) No public broadcast station may make its facilities available to any person for the broadcasting of any advertisement.

* * * * *

[5] Essentially, the *Second Report:* (1) Eliminated the "name only" requirement for donor and sponsor acknowledgements and provided for the inclusion of informational, but not promotional, messages; and (2) permitted the broadcast of promotional announcements deemed in the public interest for which no consideration was received. Similarly, Section 399A permitted informational, but not promotional, messages in donor and sponsor acknowledgements and Section 399B prohibited the broadcast of promotional announcements for remuneration.

[6] 90 FCC 2d 895 (1982).

[7] Additionally, the Commission revised its rules to: (1) Restrict the scheduling of donor acknowledgements so that regular programming is not interrupted, consistent with section 399A; and (2) allow promotional announcements *sponsored* by nonprofit entities, consistent with Section 399B. The Commission also further clarified its policy to permit aural, as well as visual logograms in donor acknowledgements.

[8] Petitions for reconsideration were filed by National Public Radio (NPR); the National Association of Public Television Stations (NAPTS) and the Public Broadcasting Service (PBS); the Corporation for Public Broadcasting (CPB) and the law firm of Schwartz, Woods & Miller (Schwartz) on behalf of several public broadcast licensees.

[9] As NPR stated, "[T]here are many situations where attempted identification of a contributor without reference to its product by trade name is practically meaningless. For instance, the Great Water Company of France, Inc., is unknown to most people. But to say it is the bottler of 'Perrier' mineral water clearly identifies the company to many."

[10] In this regard, NPR stated:

Total revenues for NPR member stations from program underwriting grants for the year ending June 30, 1981, are estimated to have been about $4.2 million. This figure increased dramatically to about $7 million for the year ending June 30, 1982, due largely to the new more relaxed policies concerning acknowledgements, of which the use of trade names was a key factor. By being able to identify donors more clearly and explicitly radio licensees were able to increase support from the business community by nearly 75% in just one year. [They] project that there currently exist program underwriting agreements with public radio stations with a total value of over $1 million which specifically involve mentioning the program underwriter's product or service by trade name. Further, at the time of the release of the [1982] Order, public radio stations were involved in negotiations with prospective program underwriters on agreements with a total value of $2.5 million specifically contemplating the use of trade names in the acknowledgement announcements and which, in the judgment of the stations, are likely not to be consumated in view of the *[1982] Order* restricting the use of trade names.

[11] Section 399A, as proposed in H.R. 3238, was fully adopted by the Conference Committee. However, the Conference Committee also added the provision contained in Section 399A(c) empowering the Commission to further regulate in this area. *See* n.3, *supra.*

unnecessary and inappropriate to distinguish logograms that promote (as unacceptable) from those that merely identify (as acceptable), and that such distinctions only create confusion and uncertainty. Schwartz noted:

> [L]ogograms serve a critical identifying function which transcends whatever slight promotional element may inhere in them. The only rational approach in this area is to view all *bona fide* logograms as proper devices which serve the fundamental purpose of generic identification.

Moreover, according to NAPTS and PBS, corporations mainly contribute funds to public broadcasting to improve their image by association with quality programming, and that their logograms not only identify corporations but project their image by representing their "face[s] to the world." They concluded that inclusion of all logograms, as with brand and trade names, would encourage and facilitate greater contributions to public broadcasting and would more fully identify corporate donors.

5. As an alternative to further liberalizing Commission rules to permit the inclusion of a brand or trade name and all logograms in donor announcements, NPR, CPB and Schwartz offered various suggestions. NPR also believed that the *1982 Order* cast a heavier burden upon public radio than public television since it did "not appear to limit the use of pictorial designs or symbols which may also be trademarks of donors in the acknowledgement announcements broadcast by public television stations, "yet public radio stations, which cannot make use of such visual symbols or signs, were granted no equivalent flexibility. NPR, thus, recommends that the Commission afford public radio stations greater opportunities to attract financial support by allowing them to broadcast "trade names in acknowledgement announcements in lieu of the visual trademark which television stations are still able to use."

6. Unlike the other petitioners, CPB viewed a general rule permitting a brand or trade name in every announcement as unnecessarily broad and contrary to the "identification vs. promotion" test established by the *Second Report* and ratified by Congress in Section 399A. CPB proposed a more limited standard, whereby a brand or trade name would be allowed if the underwriter does not offer products or services under its corporate name. CPB declared that "this standard provides an objective test of whether an underwriter will be recognized under its corporate name, and, therefore, whether use of the trade name is necessary for the purpose of identifying the underwriter to the public."

7. Finally, Schwartz suggested that if the Commission determines not to modify its underwriting rules, a transitional period for the implementation of the *1982 Order* is warranted. Since public broadcasters had construed the *Second Report* as sanctioning the inclusion of a brand or a trade name in donor announcements, they had changed their underwriting rules and, "produced programs, or made commitments to produce programs, which include such credits." Schwartz stressed that "it would be unfair to require that substitute credits be produced for this programming, because of the cost involved and because of the problems which might be created with respect to some underwriters which expected credit in the form normally provided by the licensees as of the date of their donation commitments."

8. *Discussion.* Essentially the issues raised by the petitions involve statutory construction. At the outset, we note that, contrary to NPR's assertion, we do not believe that Section 399A(c) undercuts our authority to regulate commercial speech on public broadcasting stations. 47 U.S.C. 303 (a) and (b) generally empowers the Commission to classify radio stations and to determine and prescribe the nature of the service rendered by each designated class of licensed stations. Pursuant to that power, the Commission's authority to "establish categories of communications services, confine their use to particular frequencies and determine the kinds and types of communications which fall within the authorized categories"[12] is well recognized and long established.[13] Rather than constraining this authority, we construe Section 399A(c) as explicit recognition of the Commission's general regulatory function, specifically directing us to further exercise our rule making authority in a manner consistent with the 1981 Amendments.

9. Section 399A ratified and codified the "identification vs. promotion" standard for donor acknowledgements enunciated in the *Second Report.* In delineating the information which these acknowledgements may incorporate, section 399A provided for the nonpromotional use of visual or aural logograms (*i.e.*, any "letters or words, or any symbol or sign, which is used for the exclusive purpose of identifying" the donor and "which is not used for the purpose of promoting the [donor's] products, services or facilities" and permitted identification of the donor's location. But, as we observed in the *1982 Order*, Section 399A did not address the permissibility of including information regarding the donor's specific product lines or services.[14] Since the statute was silent, we reviewed the associated legislative history carefully. Because the Senate and the Conference Committee accepted the House provisions without issuance of explanatory reports, the *House Report* became the source for our analysis. The *House Report* declared that "logograms [and slogans should] be value neutral, and solely for the purpose of generic identification . . ." and that "products or services [or the listing of products or services should not be] included as part of such announcements at this time."[15] The subsequent examples given of permissible and impermissible donor acknowledgements under this standard clearly indicated that the use of brand or trade names was not allowed.[16]

10. Given this explicit language, we determined in our *1982 Order* that it was inappropriate at that time to allow the use of trade names, or product and service listings. It is important to note, however, that the concerns expressed in the *House Report* were not based on a finding that expanded donor acknowledgements were incompatible with public broadcasting service or that this mechanism would prove ineffective as a means of enhancing self-generated financial support for public stations. To the contrary, after describing the Commission's *Second Report*, in which we initially sanctioned enhanced underwriting acknowledgements, the *House Report* stated:

> The Committee endorses this effort, particularly in light of declining Federal funds, and supports the Commission's belief that these changes will not change the nature of the noncommercial service that stations have been licensed to serve.[17]

Rather, the restrictions imposed by the *House Report* on such enhanced donor acknowledgement techniques as product or service listings were founded on a perception that the *Second Report* "went too far *in a single step*" (emphasis added). This sensitivity to the timing,

[12] *First Report and Order* in Docket No. 21136, 69 FCC 2d 200, 204 (1978).

[13] *See, e.g., Gross* v. *FCC*, 460 F. 2d 1288 (2d Cir. 1973) (FCC has the power to prohibit commercial messages on amateur radio station facilities); and *Lafayette Radio Electronics Corp.* v. *U.S.*, 345 F. 2d 278 (2d Cir. 1965) (FCC has the power to limit the uses of Citizens Radio stations).

[14] *1982 Order* at 902.

[15] *House Report, supra* at 24.

[16] "[A] logogram * * * could not contain: 'KXYZ Oil Corporation, of New York, manufacturers of Super 94 unleaded gasoline.'" *House Report, supra* at 23.

[17] *House Report, supra* at 23.

rather than the substance, of permitting more expansive underwriting acknowledgements was repeatedly underscored elsewhere in the *House Report*. It stated, for example, that:

> In limiting the Commission's decision to allow listings of products and services, the Committee intends that no such listings be allowed *until* the changes made in the legislation are more fully evaluated. The Committee intends to review this area more fully as part of its consideration of the Commission (TCAF) study required by the bill (emphasis added).[18]

11. Almost three years have passed since the enactment of the 1981 Amendments. There are now substantial indications that expanded underwriting acknowledgements can significantly benefit public broadcasters.[19] Moreover, the Temporary Commission on Alternative Financing for Public Telecommunications (TCAF), established by the 1981 Amendments, has completed its study and has submitted its final report to Congress.[20] TCAF exhaustively studied and evaluated funding sources that would augment the dwindling Federal support available for public broadcasting. Part of their statutory charge was to make recommendations for new funding sources that would enhance public broadcasting's income from private sources while still preserving the independence and quality of public broadcasting programs.[21] After concluding its comprehensive review of not only alternative funding sources but also the public broadcasting industry and the public it serves, TCAF found that broadened guidelines for program underwriting would indeed help to provide much needed revenues for public broadcasting services. The *TCAF Report* specifically recommended that Congress:

> Direct the Federal Communications Commission to modify its policies concerning underwriting acknowledgements to permit public broadcasters to identify supporters by using brand names, trade names, slogans, brief institutional type messages and public service announcements.[22]

12. In view of these developments, we believe that the conditions set forth in the *House Report* as the basis for its limitations on the use of enhanced donor acknowledgements by public broadcasters have now been met and that the restraints imposed by our *1982 Order* in response to the *House Report* are ripe for reexamination. In this regard, we again note that the statutory language of Sections 399A and 399B does not itself restrict enhanced underwriting acknowledgements as herein described and that the provisions of Section 399A(c) support our belief that we are not constrained statutorily from exercising our general rule making power in this area.

13. After reviewing the restrictions embodied in our *1982 Report*, the arguments presented by the parties to this proceeding, and the specific findings and recommendations of the TCAF, we are persuaded that it is now advisable as a matter of policy and permissible as a matter of statutory authority to authorize public broadcast stations to expand the scope of their underwriting announcements. As we recognized in the *Second Report*, and as both the *House Report* and the *TCAF Report* indicated, this mechanism offers significant potential benefits to public broadcasters in terms of improving the financial self-sufficiency of the service, yet, properly limited, does not threaten its underlying noncommercial nature. Accordingly, we are granting the petitions for reconsideration to the extent that henceforth public broadcast stations will be permitted to use trade and brand names, as well as product and service listings, in their donor acknowledgements. We emphasize, however, that such announcements may not include qualitative or comparative language and that this action is not to be construed as allowing advertisements, as defined in Section 399B, to be carried by public broadcasting stations. To summarize, donor acknowledgements utilized by public broadcasters may include (1) logograms or slogans which identify and do *not* promote, (2) location, (3) value neutral descriptions of a product line or service, (4) brand and trade names and product or service listings.

Request for Interpretation or Clarification

14. The State of Wisconsin-Educational Communications Board and Ohio State University, licensees of noncommercial stations ("licensees"), filed an informal request for interpretation of the *1982 Order*, in which they posed the following questions for our consideration:

(1) How often may underwriting announcements be broadcast and in what manner with respect to program format?

(2) In the context of announcement schedules, what constitutes regular programming?

(3) Are public broadcasting licensees now permitted to interrupt regular programming to raise funds for non-station purposes?

The licensees expressed concern that public broadcasters "may be unnecessarily inconvenienced" if these questions remain unresolved. In the interest of avoiding possible confusion and inconvenience, we will address the licensee's concerns and discuss each question separately.

15. First, the licensees claimed that public broadcasters should be allowed to schedule underwriting announcements, as opposed to donor acknowledgements, at their discretion—unhampered by the limitation that such announcements shall not interrupt programming. They suggested that public broadcasters should be permitted to schedule underwriting announcements "at places in the sponsored program and with such frequency as full disclosure and identification of the sponor may warrant." In this regard, they noted that underwriting announcements are mandatory under 47 U.S.C. 317 and 47 CFR 73.1212 if consideration (in the form of programming, material, money, services or other valuable consideration) is provided as an inducement for the broadcast of specific programming, whereas announcements acknowledging general monetary or other in-kind contributions are discretionary. Given the mandatory nature of underwriting sponsorship indentification announcements and the importance of informing the public by whom they are being persuaded [23], they declared that such announcements should be accorded different treatment.

16. The *Second Report* eliminated all timing and frequency restrictions for the broadcast of underwriting and donor acknowledgements since audience resistance was viewed as a sufficient deterrent to the excessive scheduling of acknowledgements. However, the subsequently enacted legislation, contained in Section 399A, not only delineated that information which may be included in credit acknowledgements, but further contained a caveat: the scheduling of such acknowledgements may not

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[18] *House Report, supra* at 24.

[19] *See* n. 10, *supra*.

[20] *Temporary Commission on Alternative Financing for Public Telecommunications*, Report to Congress (October 1, 1983). Hereafter *TCAF Report*.

[21] Omnibus Budget Reconciliation Act of 1981, *supra* n.2 at § 1232(a)(3).

[22] *TCAF Report, supra* at 45. Moreover, we note that in a joint letter to the Commission dated March 8, 1984, both the Chairman of the Senate Subcommittee on Communications and the Chairman of the House Subcommittee on Telecommunications, Consumer Protection and Finance concluded that it would be appropriate at this time for the Commission to review its policy concerning underwriting acknowledgements aired by public broadcast stations.

[23] Applicability of Sponsorship Identification, 40 FCC 2d 141 (1963).

interrupt regular programming. Section 399A did not distinguish between underwriting and donor acknowledgements, rather, both types of acknowledgements are treated alike. As previously stated in our *1982 Order*, we changed our rules to conform to the legislation, and accordingly imposed the same restriction upon the scheduling of underwriting and donor aknowledgements. Therefore, irrespective of the different nature and underlying purpose of underwriting acknowledgements, as opposed to donor acknowledgements, all such acknowledgements are subject to the same restrictions regarding: (1) Information that may be included; (2) scheduling.

17. Second, the licensees asserted that the limitation upon the scheduling of acknowledgements (*i.e.*, underwriting and donor acknowledgements) may inhibit station fundraising activities which include—but are not limited to—auctions, marathons, and pledge weeks. They stated that the scheduling limitations on acknowledgements should not apply to fundraising activities, since such activities are not considered part of the station's regular programming.

18. In the *1982 Order*, "regular programming" was refered to and discussed in terms of its conventional meaning. Clearly, regular programming encompasses those programs which the public broadcaster ordinarily carries, but does not encompass those fundraising activities that suspend or alter their normal programming fare. Thus, during periods in which such fundraising activities are being conducted the restriction that acknowledgements shall not be scheduled so as to interrupt regular programming would neither be applicable nor appropriate, and the public broadcasters are free to broadcast acknowledgements as often and for as long as they choose, so long as the content of the acknowledgements is consistent with the governing legislative and regulatory rules.

19. Third, the licensees stated that in the *1982 Order* we instituted a substantive change, without any discussion, of our prior policy regarding the prohibition against on-the-air suspended fundraising activities on behalf of other organizations. They cited the *1982 Order* as providing that "* * * public broadcasters are generally prohibited from engaging in fundraising on behalf of any entity *other than the licensee* where such activities substantially alter or suspend regular programming" *(emphasis added)* [24] and compared that language to that of the *Second Report* which provided that "* * * station fundraising activities which significantly alter a station's normal programming, including auctions, marathons, membership drives, etc. should be carried on for the benefit of the *station only*, and not for other organizations *(emphasis added)*.[25] They contended that the substitution of the term "licensee" for that of "station" extends the permissible area of suspended programming beyond those activities designed to raise support for the station's operations to include activities designed to benefit the licensee's other non-station institutional business or state operations. Consequently, they feared that "stations licensed to such entities may be increasingly importuned to conduct fundraising appeals for other departments of agencies of the licensees."

20. The licensees' point is well taken. In the *1982 Order* the terms noncommercial or public broadcasting stations or licensees were used interchangeably. However, in the context of suspended fundraising activities the substitution of "licensees" for "station" had the unintended effect of expanding potential beneficiaries beyond that of the station, itself. Therefore, we will henceforth interpret and limit the language of the *1982 Order* as applying to *station operations* only. In the absence of a waiver, noncommercial stations are prohibited from conducting any fundraising activity which substantially *alters* or *suspends* regular programming and are designed to raise support for any entity other than the station itself.[26]

Conclusion

21. In accordance with the Public Broadcasting Amendments Act of 1981, we are granting the Petitions for Reconsideration to allow the broadcast of specific brand or trade names and product or service listings. Therefore, donor acknowledgements may include: (1) A logogram or slogan that identifies but does not promote; (2) locations; and (3) value neutral descriptions of a product line or service; (4) trade names, product or service listings that aid in identifying the donor. Additionally, the language of the *1982 Order* [27] is modified, to clarify that public broadcasters are generally prohibited from engaging in fundraising activities which suspend or alter regular programming on behalf of any entity other than the station itself.

Accordingly, it is ordered that, the "Petitions for Reconsideration" are granted, to the extent indicated above.

It is further ordered that, the "Request for Interpretation or Clarification" is granted, to the extent indicated above.

It is further ordered that, the Secretary shall cause this *Memorandum Opinion and Order* to be printed in the FCC Reports.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 84-8870 Filed 4-4-84; 8:45 am]

BILLING CODE 6712-01-M

[24] *1982 Order, supra* at 907.

[25] *Second Report, supra* at 158.

[26] It should also be noted that the licensees urged that 47 CFR 73.503 and 73.621 be revised. The pertinent language as changed by the *Second Report*, is as follows: "Moreover, acknowledgements of contributions *can* be made" (emphasis added). They recommended that "may" be substituted for "can," since the sentence acknowledges the permission for such announcements, not their ability to be broadcast." We agree that the suggested change is grammatically correct. However, we do not believe that amendment of the rules to incorporate this change is warranted. It is evident that our rules are not intended as mere observations concerning the physical capacity of public stations to transmit these announcements, but instead are intended to address the permissibility of airing them. In any event, both of the subject rule sections contain note references to the *Second Report* and the *1982 Order*, should further clarification of this point be required.

[27] *1982 Order* at 907.

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 23

Giant Panda and Indian Snakes Added to Appendices of Endangered Species Convention

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of amendments to appendices; final rule.

SUMMARY: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) regulates international trade in certain wild animal and plant species. Appendices I, II, and III to this treaty contain lists of species for which trade is controlled.

The Republic of India recently added seven species of snakes to Appendix III, for which the listing takes effect on February 12, 1984: the olive keelback water snake, dog-faced water snake, checkered keelback water snake, Indian rat snake, Indian cobra, king cobra, and Russell's viper. Also, the People's

Republic of China proposed transferring the giant panda from Appendix III to Appendix I. This amendment takes effect on March 14, 1984.

The Service issues the present notice to inform the public about these changes in the appendices and to incorporate the amendments into regulations implementing CITES.

DATE: This rule is effective April 5, 1984.

ADDRESS: Please send correspondence concerning this notice to the Office of Scientific Authority, U.S. Fish and Wildlife Service, Washington, D.C. 20240. Materials received on the amendments are available for public inspection from 7:45 a.m. to 4:15 p.m., Monday through Friday, at the Office of the Scientific Authority, room 537, 1717 H Street NW., Washington, D.C.

SUPPLEMENTARY INFORMATION: CITES regulates import, export, reexport, and introduction from the sea of certain animal and plant species. Species for which trade is controlled are included in three appendices. Appendix I includes species threatened with extinction that are or may be affected by trade. Appendix II includes species that, although not necessarily threatened with extinction, may become so unless trade in them is strictly controlled. It also lists species that must be subject to regulation in order that trade in other currently or potentially threatened species may be brought under effective control. Such listings frequently are required because of difficulty in distinguishing specimens of currently or potentially threatened species from other species at ports of entry. Appendix III includes species that any Party nation identifies as being subject to regulation within its jurisdiction for purposes of preventing or restricting exploitation, and for which it needs cooperation of other Parties in controlling trade.

Snakes

In accordance with the provisions of Article XVI (1) of CITES, the Republic of India submitted to the CITES Secretariat the following species for inclusion in Appendix III:

Class Reptilia

Order Squamata
Family Colubridae—
Atretium schistosum (olive keelback water snake)
Cerberus rhynchops (dog-faced water snake)
Natrix piscator (checkered keelback water snake)
Ptyas mucosus (Indian rat snake)
Family Elapidae—
Naja naja (Indian cobra)
Ophiophagus hannah (king cobra)
Family Viperidae—
Vipera russellii (Russel's viper)

The trade in specimens of species included in Appendix III requires export permits from the nation that has included the species in the appendix, and from other nations it requires prior presentation of certificates of origin or, in the case of re-export, a foreign re-export certificate must be obtained prior to importation. Any specimen of these species, whether alive or dead, is covered by the provisions of CITES. India has specified that any readily recognizable part or derivative of these species also should be covered by those provisions.

As a Party to CITES, the United States has an opportunity to reserve on amendments to the appendices. Article XVI of CITES enables any Party to exempt itself from implementing CITES for a particular species in Appendix III if it makes a reservation with respect to that species. It must do so during the period of 90 days after the Secretariat notifies the Parties of an amendment.

The Service received only three comments on the question of a reservation in response to a **Federal Register** notice on the listing of snakes by India (49 FR 2128; January 18, 1984). Mr. Armand S. Bennett of Columbia Impex Corporation wrote in favor of a reservation, but later indicated that he supported the listing (pers. comm. with Dr. R. L. Jachowski on January 24, 1984). Dr. Donald Bruning submitted a statement in favor of the listing on behalf of the New York Zoological Society. Dr. Linda McMahan of TRAFFIC (U.S.A.) provided data on international trade in *Ptyas mucosus* and requested the Service to support the listing of snakes by India.

In the absence of strong reasons for entering a reservation, the Service did not seek to do so. The listing of the seven species of snakes on Appendix III entered into effect for the United States and all other nonreserving Party nations on February 12, 1984.

Giant Panda

In accordance with the provisions of Article XV(2) of CITES, the People's Republic of China submitted to the CITES Secretariat a proposal to transfer the giant panda (*Ailuropoda melanoleuca*) from Appendix III to Appendix I. The Service received one comment in response to its notice about this proposal (48 FR 49667; October 27, 1983). Dr. Wilbur B. Amand of the Zoological Society of Philadelphia wrote to encourage the Service to support this proposal. The Service has determined that the proposal is appropriate and has not sought a reservation.

The CITES Secretariat reported that it received no objection from any Party to this proposal, and that the transfer to Appendix I would take effect for all non-reserving Parties on March 14, 1984. The listing of the giant panda in Appendix I establishes CITES permit requirements for international trade in any specimen of this species, whether alive or dead, and any readily recognizable part or derivative thereof.

This notice was prepared by Dr. Richard L. Jachowski, Office of the Scientific Authority, U.S. Fish and Wildlife Service.

Note.—The Department has determined that this is not a major rule under Executive Order 12291 and does not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601). This rule implements changes that have occurred in the list of species in the CITES appendices, and to which the United States is bound according to the terms of CITES. The period of time during which the United States could have entered a reservation on any of these amendments has ended. Earlier **Federal Register** notices informed the public about these amendments and allowed an opportunity for comment on them. Therefore, the Department has determined that good cause exists for making this rule effective upon publication (5 U.S.C. 553(d)).

List of Subjects in 50 CFR Part 23

Endangered and threatened wildlife, Exports, Fish, Imports, Plants (agriculture), Treaties.

Regulation Promulgation

For reasons given in the preamble of this notice, Part 23 of Title 50, Code of Federal Regulations, is amended as follows:

PART 23—ENDANGERED SPECIES CONVENTION

1. The authority citation for Part 23 reads as follows:

Authority: Convention on International Trade in Endangered Species of Wild Fauna and Flora, TIAS 8249; and Endangered Species Act of 1973, 87 Stat. 884, 16 U.S.C. 1531–43.

2. Amend paragraph (d) of § 23.23 by adding to the list the following species of animals in alphabetical order under the appropriate taxonomic categories:

§ 23.23 [Amended]

* * * * *

Species	Common name	Appendix	Date listed (month/day/year)
Class Mammalia:	Mammals:	.....	
*	* *	* *	
Order Carnivora	Carnivores: Cats, Bears, etc.:	.....	
*	* *	* *	
Ailuropoda melanoleuca.	Giant panda	I	3/14/84
*	* *	* *	
Class Reptilia:	Reptiles:	.....	
*	* *	* *	
Order Squamata:	Lizards, Snakes:	.....	
*	* *	* *	
Atretium schistosum.	Olive keelback water snake.	III (India)	2/12/84
*	* *	* *	
Cerberus rhynchops.	Dog-faced water snake.	III (India)	2/12/84
*	* *	* *	
Natrix piscator...	Checkered keelback water snake.	III (India)	2/12/84
*	* *	* *	
Ptyas mucosus.	Indian rat snake, whipsnake.	III (India)	2/12/84
*	* *	* *	
Naja naja	India cobra	III (India)	2/12/84
*	* *	* *	
Ophiophagus hannah.	King cobra	III (India)	2/12/84
*	* *	* *	
Vipera russellii ..	Russell's viper ..	III (India)	2/12/84

Dated: March 19, 1984.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84-9057 Filed 4-4-84; 8:45 am]

BILLING CODE 4310-07-M

Proposed Rules

Federal Register
Vol. 49, No. 67
Thursday, April 5, 1984

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1004, 1033, 1036, 1049, 1062, 1064, and 1065

[Docket No. AO-160-A63 et al.]

Milk in the Middle Atlantic and Certain Other Marketing Areas; Notice of Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders

7 CFR Part	Marketing area	AO Nos.
1004	Middle Atlantic	AO-160-A63.
1033	Ohio Valley	AO-166-A52-RO1.
1036	Eastern Ohio-Western Pennsylvania.	AO-179-A47.
1049	Indiana	AO-319-A32.
1062	St. Louis-Ozarks	AO-10-A55.
1064	Greater Kansas City	AO-23-A54.
1065	Nebraska-Western Iowa	AO-86-A41.

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This hearing is being held to consider proposals by cooperative associations to amend six Federal milk marketing orders that contain Advertising and Promotion Programs. Also, the Ohio Valley hearing will be reopened for the limited purpose of receiving additional evidence with respect to a proposal to establish an Advertising and Promotion Program.

The proposals would establish a uniform 10-cent per hundredweight assessment on all milk marketed by producers in the six marketing areas to fund the Federal Order Advertising and Promotion Programs. In some orders the funds would be withheld by the individuals who pay producers and remitted to the market administrators who then would disperse the monies to the Advertising and Promotion Agencies. Any refunds requested by producers would be submitted either to the National program or to a designated qualified State or regional program. Such provisions would be in effect for the duration of the recently promulgated National Dairy Promotion Program.

The proponents consider this action necessary in order to insure an alignment of the Federal Order Advertising and Promotion Programs with the National Advertising and Promotion Program. The proponents have urged that the hearing be held and the orders amended on an expedited basis.

DATE: The hearing will convene at 10:00 a.m., local time, on April 18, 1984.

ADDRESS: The hearing will be held at the Ramada Hotel Old Town, 901 N. Fairfax Street, Alexandria, Virginia 22314, (703) 683-6000.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-4829.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

Notice is hereby given of a public hearing to be held at the Ramada Hotel Old Town, 901 N. Fairfax Street, Alexandria, Virginia, beginning at 10:00 a.m., local time on April 18, 1984, with respect to proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Middle Atlantic; Ohio Valley; Eastern Ohio-Western Pennsylvania; Indiana; St. Louis-Ozarks; Greater Kansas City; and Nebraska-Western Iowa marketing areas.

In view of the request for expedited action, the Department has concluded that shorter than usual notice of the hearing is warranted in this proceeding.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions in each of the aforesaid specified marketing areas which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreements and to the orders.

Evidence also will be taken to determine whether emergency marketing conditions exist that would warrant omission of a recommended decision under the rules of practice and procedure (7 CFR 900.12(d)) with respect to the proposals.

Actions under the Federal milk order program are subject to the "Regulatory Flexibility Act" (Pub. L. 96-354). This act seeks to ensure that, within the statutory authority of a program, the regulatory and information requirements are tailored to the size and nature of small businesses. For the purpose of the Federal order program, a small business will be considered as one which is independently owned and operated and which is not dominant in its field of operation. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

List of Subjects in 7 CFR Parts 1004, 1033, 1036, 1049, 1062, 1064, and 1065

Milk marketing orders, milk, Dairy products, Promotion and advertising.

The proposed amendments, as set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by Mid-America Dairymen, Inc.

Amend the Advertising and Promotion provisions of the St. Louis-Ozarks, Greater Kansas City, and Nebraska-Western Iowa orders as follows:

1. Provide for a withholding rate of 10 cents per hundredweight as long as the National Milk Promotion Program is in effect.

2. Provide that producers who desire not to participate in the Order Advertising and Promotion Program shall have their funds sent to the National Milk Promotion Program.

3. Provide that handlers paying producers shall remit 10 cents per hundredweight to the Market Administrator for the volume of their producer payrolls instead of the Market Administrator making the deduction from the uniform price.

Proposed by Inter-State Milk Producers' Cooperative, Maryland and Virginia Milk Producers Association, Inc., Dairymen, Inc.—Middle Atlantic Division, Capitol Milk Producers Cooperative, Inc., and The Valley of Virginia Cooperative Milk Producers Association

Amend the Advertising and Promotion provisions of the Middle Atlantic order as follows:

4. Add to § 1004.120(d) the following language * * * provided that such payments are payments to a qualified advertising and promotion program with such status to be determined by the Secretary of Agriculture and by the National Promotion and Research Order established under Title I, Subtitle B, of the Dairy and Tobacco Adjustment Act of 1983, and further provided that producers receive credit for such payments against their individual obligations under the National Promotion and Research Order.

5. Provide a new section, § 1004.120(e), to read as follows: In requesting a refund pursuant to § 1004.120(a), (b), or (c) above, a producer may further request that such refund be paid to a qualified advertising and promotion program with such status to be determined as provided in § 1004.120(d) above, and further provided that producers receive credit for such payments against their individual obligations under the National Promotion and Research Order, provided, further, that if a producer does not designate a qualified advertising and promotion program to receive such refund, that such refund will be paid to the National Promotion and Research Order Board established under Title I, Subtitle B, of the Dairy and Tobacco Adjustment Act of 1983,

6. Amend §1004.120(c) to read as follow: Upon first acquiring producer status under this part, a dairy farmer shall, upon application filed with the market administrator pursuant to paragraph (a) of this section by the end of the month immediately following the month in which producer status is acquired, be eligible *to apply* for refund on all marketings against which an assessment is withheld during the current calendar year and if producer status was first acquired in December such producer shall be eligible *to apply* for a refund on all marketings during December and the following calendar year. (Changed language underlined.)

7. Provide a new section § 1004.120(f); to read as follows: In no instance, except as provided in § 1004.121(b)(2), shall refunds be paid to the producer requesting refunds pursuant to § 1004.120(a), (b) or (c).

8. Add to § 1004.121(b)(2) the following language: * * * provided that such advertising and promotion programs are qualified advertising an promotion programs with such status to be determined by the Secretary of Agriculture and the National Promotion and Research Order established under Title I, Subtitle B, of the Dairy and Tobacco Adjustment Act of 1983, and further provided that producers receive credit for such payments against their individual obligations under the National Promotion and Research Order, as above.

9. Amend § 1004.121(b)(4) to read as follows: After the end of each month, make a payment to the qualified agency designated by the producer requesting a refund pursuant to § 1004.120(a), (b), and (c), or to the National Promotion and Research Order Board if no qualified promotion agency is designated. Such refund shall be computed by multiplying the rate specified in paragraph (e) of this section times the hundredweight of such producer's milk pooled for which deductions were made pursuant to this paragraph for such month, less the amount of any refund otherwise made on behalf of the producer pursuant to paragraph (b)(2) and (3) of this section.

10. Add to § 1004.121(e) the following language: Provided further that for the effective duration of National Promotion and Research Order provisions, the rate of withholding shall be 10 cents per hundredweight.

11. Add a new section, § 1004.123 "Obligation of Persons Paying Producers" to read as follows: Persons making payment to producers under this section will be responsible for remitting to the National Promotion and Research Order Board 5 cents per hundredweight of such producer milk.

Proposed by Milk Marketing Inc.

Amend the Advertising and Promotion provisions of all federal milk orders having such provisions as follows:

12. All Advertising and Promotion programs under federal orders should have a standard 10-cent deduction for the duration of the national program.

13. The minimum uniform price to producers should be announced before the Advertising and Promotion deduction is made.

14. Producers who do not wish to have their withholdings spent by the local agency should be allowed to have their withholdings sent to the national agency.

15. Make any other conforming changes that will allow for the most efficient administration of federal order programs in coordination with the national program, including the proper designation of the "responsible person" to make deductions and assignment of refunds.

Proposed by the Dairy Division, Agricultural Marketing Service: Proposal No. 16

Make such changes as may be necessary to make the entire marketing agreements and the orders conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the order may be procured from the Market Administrator of each of the aforesaid specified marketing areas, or from the Hearing Clerk, Room 1077, South Building, United States Department of Agriculture, Washington, D.C. 20250, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture
Office of the Administrator, Agricultural Marketing Service
Office of the General Counsel
Dairy Division, Agricultural Marketing Service (Washington Office only)
Office of the Market Administrator of each of the orders for the aforesaid specified marketing areas.

Procedual matters are not subject to the above prohibition and may be discussed at any time.

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

Signed at Washington, D.C., on April 3, 1984.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 84-9179 Filed 4-4-84; 8:45 am]
BILLING CODE 3410-02-M

7 CFR Part 1040

Milk in the Southern Michigan Marketing Area; Notice of Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rules.

SUMMARY: This notice invites written comments on a proposal to suspend for the months of April through September 1984 the requirement in the Southern Michigan Federal milk order that a cooperative association deliver to pool distributing plants at least 50 percent of its members' producer milk in order to qualify its supply plants as pool plants under the order. On the basis of a previous request, this requirement was suspended during December 1983 through March 1984. Continuation of the suspension was requested by a cooperative association that represents producers supplying milk to the fluid market. The association claims that the action is needed to avoid inefficient handling of milk and to ensure that dairy farmers historically associated with the Southern Michigan market will continue to share in the market's fluid milk sales.

DATE: Comments are due April 12, 1984.

ADDRESS: Comments (two copies) should be filed with the Hearing Clerk, Room 1077, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–4829.

SUPPLEMENTARY INFORMATION: William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this proposed action would not have significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accure from such pricing.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), the suspension of the following provisions of the order regulating the handling of milk in the Southern Michigan marketing area is being considered for April through September 1984:

1. In § 1040.7(b)(2) the words "if transfers from such supply plant to plants described in paragraph (b)(5) of this section and by direct delivery from the farm to plants qualified under paragraph (a) of this section are:"

2. In § 1040.7(b)(2), paragraphs (i) and (ii).

All persons who want to send written data, views or arguments about the proposed suspension should send two copies to the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. 20250, by the 7th day after publication of this notice in the **Federal Register.** The period for filing comments is limited to seven days because a longer period would not provide the time needed to complete the required procedures and include April 1984 in the suspension period if this is found necessary.

The comments that are received will be made available for public inspection in the Hearing Clerk's office during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed suspension would make inoperative for the months of April through September 1984 the provisions requiring a cooperative association to deliver at least 50 percent of its members' producer milk to pool distributing plants, either through its supply plants or directly from farms, in order to qualify the supply plants as pool plants.

Michigan Milk Producers Association (MMPA), which represents a majority of the producers supplying the market, requested the suspension.

MMPA expressed concern that the market is in an unsettled state for several reasons, which makes it unlikely that it will be able to meet the 50 percent requirement. The following items were cited as reasons why a suspension is requested:

—Milk production pooled under the Southern Michigan order in 1983 was up 4.5 percent from 1982.

—Participation in the paid diversion program designed to reduce milk output was less than had been hoped for and may not achieve the four percent production reduction that earlier had been projected for Michigan.

—Although Class I milk sales have shown increases in recent months in the Michigan area, the increasing trend was reversed abruptly when the Kroger Company closed its plant at Livonia, Michigan, in mid-February. During March, MMPA said, nearly 20 million pounds of milk sales will be lost to the cooperative because the Michigan sales now are being supplied by two plants located outside Michigan.

—In March, the percent of MMPA's producer milk receipts delivered to distributing plants from supplies included in its unit are projected to reach only 46 percent. Lesser amounts are projected for the months ahead.

Accordingly, MMPA requests that the suspension of the aforesaid provisions, which has been in effect since December 1983, be extended to also cover the months of April through September 1984.

MMPA also expressed the view that granting the proposed suspension would not result in any shifts of producer milk from adjacent areas to the Southern Michigan market.

The association said that the suspension is needed to avoid the inefficient handling of milk merely to assure pooling of supply plants and to ensure that dairy farmers who have been historically associated with the Southern Michigan market will continue to share in the fluid milk sales of the market.

List of Subjects in 7 CFR Part 1040

Milk marketing orders, Milk, Dairy products.

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

Signed at Washington, D.C., on: April 2, 1984.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 84-9062 Filed 4-4-84; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 83-ASW-31]

Airworthiness Directives; Sikorsky S-61 Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would supersede AD 83-17-04 (Amendment 39-4706), which currently requires, for the Sikorsky S-61 helicopter, a 10-hour repetitive inspection of the main gearbox chip detector and oil system scavenge screen for steel particles and, if necessary, replacement of the gearbox. The proposed AD retains the schedule for

repetitive inspections and possible gearbox replacement, adds clarifying criteria for determining the need for gearbox replacement and, as a closing action, requires replacement of the spur gears with improved strength spur gears in conjunction with gearshaft realignment procedures. This proposed AD is needed to intercept impending spur gear failures which could result in sequential damage to the main gearbox and compel the crew to execute an emergency landing.

DATE: Comments must be received on or before May 18, 1984.

ADDRESSES: Send comments on the proposal in triplicate to: Office of the Regional Counsel, Federal Aviation Administration, Southwest Region, P.O. Box 1689, Fort Worth, Texas 76101. Comments must be marked: Docket No. 83–ASW–31.

The manufacturer's overhaul and maintenance instructions pertaining to the gearshaft alignment procedures referenced in this AD may be obtained from Sikorsky Aircraft, North Main Street, Stratford, Connecticut 06602. A copy of this document is contained in the Rules Docket in the Office of the Regional Counsel, Federal Aviation Administration, Southwest Region, Building 3B, Room 158, 4400 Blue Mound Road, Fort Worth, Texas 76106.

FOR FURTHER INFORMATION CONTACT: Wayne E. Gaulzett, ANE–153, FAA, New England Region, Boston Aircraft Certification Branch, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone No. (617) 273–7332.

SUPPLEMENTARY INFORMATION: 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 number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Director before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Office of the Regional Counsel, Federal Aviation Administration, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas 76106.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 83–ASW–31." The postcard will be date/time stamped and returned to the commenter.

Reports of failures of the spur gear, P/N S6135–20608–1, in the main gearbox of Sikorsky S–61 helicopters and subsequent investigations which revealed possible misalignment of the spur gearshaft prompted the FAA to issue AD 83–17–04. That AD prescribed a repetitive inspection of oil screens and chip detectors to intercept impending failure of this spur gear. Subsequently, a more selective method for evaluating the results of the inspections required by AD 83–17–04 was developed, a gearbox inspection and reboring operation to alleviate gearshaft misalignment was developed, and an improved strength spur gear became available. Therefore, the FAA proposes to supersede AD 83–17–04 and issue a new AD which prescribes improved oil screen and chip detector inspection criteria, a requirement for inspecting and correcting gearshaft misalignment by reboring the gearboxes, and a requirement to install the improved strength spur gear.

Approximately 10 Sikorsky S–61 helicopters (of U.S. registry) could be affected by this proposal with only negligible costs to the operator.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

Sikorsky Aircraft Division: Applies to all Sikorsky Model S–61 series helicopters, certificated in all categories, equipped with P/N S6135–20608–1 main transmission power input spur gears.

Compliance is required as indicated (unless already accomplished).

To intercept pending failure of either spur gear, P/N S6135–20608–1, in the main gearbox, accomplish the following:

(a) On all helicopters equipped with a functioning cockpit main gearbox chip detecting system, visually inspect the main gearbox oil scavenge screen for steel particles within the next 10 hours; time in service after the effective date of this AD and thereafter at intervals not to exceed 10 hours' time in service from the last inspection.

(b) On all helicopters not equipped with a cockpit main gearbox chip detecting system, visually inspect both the main gearbox chip detector and the oil scavenge screen for steel particles within the next 10 hours' time in service after the effective date of this AD and thereafter at intervals not to exceed 10 hours' time in service from the last inspection.

(c) Any magnetic steel particles found by inspecting either the chip detector or the scavenge screen will require replacement of the main gearbox before further flight unless the particles are (1) fine hairline particles, or (2) confirmed as originating from components other than the spur gear.

(d) If the inspections of paragraph (c) are inconclusive, the gearbox must be replaced or, at the option of the operator, the following maintenance tests may be conducted to evaluate the condition of the spur gear.

(1) Drain and refill the gearbox with an approved lubricant.

(2) Operate the helicopter at a safe height (below 5 feet), at a gross weight not less than 16,000 pounds, with a nominal neutral center of gravity, at 100 percent main rotor speed for one-half hour with one engine at 100 percent torque and the remaining engine at a torque level required to sustain safe hover. Repeat the procedure for one-half hour with the other engine at 100 percent torque and the remaining engine at a torque level required to sustain safe hover.

(3) Inspect the gearbox scavenge screen and the magnetic chip detector and apply the inspection criteria of paragraph (c), and if appropriate, reconduct the maintenance tests of paragraph (d) one time. Apply the inspection criteria of paragraph (c).

Note.—This procedure is not intended to authorize continued operation of the helicopter if any questionable safety condition is exposed by debris found when conducting these checks.

(e) Replace spur gear P/N S6135–20608–1 with spur gear P/N S6135–20608–3 and comply with Sikorsky Overhaul and Repair Instruction 6135–342, Revision A, or later revision, or FAA approved equivalent before further flight after June 30, 1985. The inspections of paragraphs (a), (b), and (c) may be discontinued for helicopters modified as required by this paragraph.

(f) Upon request, with substantiating data submitted through an FAA maintenance inspector, equivalent methods of compliance, adjustment in the inspection intervals, and adjustment in the replacement date may be approved by the Manager, Boston Aircraft Certification Branch, FAA, New England Region.

This amendment supersedes AD 83–17–04, Amendment 39–4706.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended, (49 U.S.C. 1354(a), 1421 and 1423); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); 14 CFR 11.85)

Note.— The FAA has determined that this proposed regulation provides clarification of the inspection criteria of a previously issued AD and eventually, replacement of the spur gears and possible modification of the gearbox of this helicopter. Replacement of the spur gears and modification of the gearbox is being accomplished by the manufacturer at no cost to the operator and adequate time has been allowed to conduct

these activities in conjunction with other major maintenance activities. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation because the anticipated impact is so minimal; and (4) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Fort Worth, Texas, on March 19, 1984.

C. R. Melugin, Jr.,

Director, Southwest Region.

[FR Doc. 84-8993 Filed 4-4-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 82-ASW-78]

Airworthiness Directives; Bell Helicopter Textron, Inc., Model 214ST Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to amend an existing airworthiness directive (AD) by changing a repetitive inspection interval from 25 hours to 250 hours. AD 82-26-07 requires modification of the upper left-hand longeron fitting installation and repetitive 25-hour visual inspections. Since adoption of the AD, service experience shows that no cracks have been found in modified longeron installations. Because of the critical nature of the part, the inspection requirement is being retained. However, service experience has confirmed that an increase in the number of hours' time in service between repetitive inspections is appropriate.

DATES: Comments must be received on or before May 11, 1984.

ADDRESSES: Comments on the proposal may be mailed in duplicate to: Regional Counsel, Attention: Docket No. 82-ASW-78, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101; or delivered in duplicate to: Office of the Regional Counsel, Southwest Region, Room 100, Building 3B, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Texas 76106.

Comments delivered must be marked: Docket No. 82-ASW-78.

Comments may be inspected at Room 100, Building 3B, between 8 a.m. and 4:30 p.m., Monday through Friday.

A copy of the service information is contained in the Rules Docket located at the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, Room 100, Building 3B, 4400 Blue Mound Road, Fort Worth, Texas 76106.

FOR FURTHER INFORMATION CONTACT: H. A. Armstrong, Helicopter Certification Branch, ASW-170, Aircraft Certification Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101, telephone number (817) 877-2079.

SUPPLEMENTARY INFORMATION: 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 number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Director before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket located at the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, Room 100, Building 3B, 4400 Blue Mound Road, Fort Worth, Texas, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 82-ASW-78." The postcard will be date/time stamped and returned to the commenter.

This proposed rule, if adopted, would amend Amendment 39-4512 [47 FR 57258), AD 82-26-07, which currently requires modification of longeron P/N 214-031-431-101 and inspection at repetitive intervals not to exceed 25 hours' time in service. Since issuing Amendment 29-4512, the FAA has reviewed Bell Model 21ST service experience. Approximately 380 inspections have been performed on fifteen aircraft; no cracks have been found. The longeron modification required b Amendment 39-4512 has provided significant improvement in longeron strength. Therefore, the FAA proposes to amend Amendment 39-4512 by increasing the repetitive inspection interval from 25 hours to 250 hours for those Bell Model 214ST aircraft that have been modified as required by Amendment 39-4512.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

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 amending Amendment 39-4512 (45 FR 57258), AD 82-25-07, by revising paragraph (e) of the amendment to read as follows:

* * * * *

"(e) After installation of the longeron modification, conduct the following inspection at intervals not to exceed 250 hours' time in service:"

* * * * *

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); 14 CFR 11.85)

Note.—The FAA has has determined that this proposed regulation only involves six U.S. registered aircraft. None of these aircraft is owned or operated by small entities. This proposed regulation reduces the man-hours required to perform the required repetitive inspections by 90 percent. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 16, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Fort Worth, Texas on March 21, 1984.

C. R. Melugin Jr.,

Director, Southwest Region.

[FR Doc. 84-8992 Filed 4-4-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 84-AWA-4]

Proposed Alteration of VOR Federal Airways, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to realign several VOR Federal Airways in

the vicinity of Huguenot, NY, to facilitate handling of low altitude arrivals to airports in the New York metropolitan area and to eliminate a conflict point at ELLAN Intersection.

DATES: Comments must be received on or before May 21, 1984.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Eastern Region, Attention: Manager, Air Traffic Division, Docket No. 84–AWA–4, Federal Aviation Administration, JFK International Airport, The Fitzgerald Federal Building, Jamaica, NY 11430.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

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

SUPPLEMENTARY INFORMATION:

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. 84–AWA–4." The postcard will be date/time stamped and returned to the commenter. All communications received before the specific 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's

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 SW., Washington, D.C. 20591, or by calling (202) 426–8056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to realign V–93, V–106, V–162, V–205 and V–489; and to amend V–167 by deleting that portion of V–167 that starts from Hancock, NY, and goes to Kingston, NY. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6 dated January 3, 1984.

List of Subjects of 14 CFR Part 7

VOR Federal Airways, Aviation safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposed to amend § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

V–93—[Amended]

By deleting the words "Pawling, NY;" and substituting the words "INT Lake Henry 056°T(066°M) and Pawling, NY, 274°T(286°M) radials; Pawling;"

V–106—[Amended]

By deleting the words "Pawling, NY;" and substituting the words "INT Lake Henry 056°T(066°M) and Pawling, NY, 274°T(286°M) radials; Pawling;"

V–162—[Amended]

By deleting the words "INT Huguenot 032° and Pawling, NY, 259° radials to Pawling." and substituting the words "INT Huguenot 032°T(043°M) and Pawling, NY, 274°T(286°M) radials to Pawling."

V–167—[Amended]

By deleting the words "From Hancock, NY; INT Hancock 120° and Kingston, NY, 274° radials; Kingston;" and substituting the words "From Kingston, NY;"

V–205—[Amended]

By deleting the words "INT Sparta 023° and Pawling, NY, 238° radials; Pawling;" and substituting the words "INT Sparta 023°T(034°M) and Kingston, NY, 256°T(268°M) radials; Kingston; Pawling, NY;"

V–489—[Amended]

By deleting the words "INT Sparta 023° and Kingston 238° radials; Kingston, NY;" and substituting the words "INT Sparta 023°T(034°M) and Kingston, NY, 256°T(268°M) radials; Kingston;"

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983)); and (14 CFR 11.65)

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. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Washington, D.C., on March 30, 1984.

B. Keith Potts,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 84–8995 Filed 4–4–84 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 942

Reopening of Public Comment Period on Proposed Modifications of the Tennessee Permanent Regulatory Program

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

ACTION: Proposed rule.

SUMMARY: OSM is announcing the reopening of the public comment period on the adequacy of proposed amendments to the Tennessee permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). On September 30,

1983, Tennessee submitted for OSM's approval: (a) Modifications intended to satisfy condition (k) of the Secretary's approval of the Tennessee program concerning procedures for hearings and appeals and (b) amendments to the State regulations pertaining to blaster training and certification and performance standards for coal tipples, preparation plants and support facilities.

On November 8, 1983, OSM scheduled a 30 day public comment period and a public hearing on these amendments. On January 30, 1984, and February 10, 1984, Tennessee submitted to OSM additional materials related to these proposed amendments. The Director is scheduling a 15 day comment period to allow the public an opportunity to review and comment on the additional materials submitted by the State on January 30, and February 10, 1984.

DATE: Written comments must be received on or before 4:00 p.m. on April 20, 1984, to be considered in the Secretary's decision to approve or disapprove the proposed amendments.

ADDRESSES: Written comments should be mailed or hand-delivered to Mr. James Curry, Field Office Director, Office of Surface Mining Reclamation and Enforcement, 530 Gay Street SW., Suite 400, Knoxville, Tennessee.

Copies of the materials submitted by Tennessee on January 30, and February 10, 1984, and all written comments received in response to this notice will be available for review at the OSM Headquarters Office, the OSM Knoxville Field Office and the Office of the State Regulatory Authority, all listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m. excluding holidays.

Office of Surface Mining Reclamation and Enforcement, Administrative Record Room, 1100 L Street NW., Washington, D.C. 20420

Office of Surface Mining Reclamation and Enforcement, Knoxville Field Office, 530 Gay Street SW., Suite 400, Knoxville, Tennessee

Tennessee Department of Public Health and Environment, Division of Surface Mining and Reclamation, 305 W. Springdale Avenue, Knoxville, Tennessee 37917.

FOR FURTHER INFORMATION CONTACT: Mr. James Curry, Field Office Director, Office of Surface Mining Reclamation and Enforcement, 530 Gay Street SW., Suite 400, Knoxville, Tennessee.

SUPPLEMENTARY INFORMATION: The Tennessee program was conditionally approved the by the Secretary on August 10, 1982 (47 FR 34724–34754). The approval was conditional on the State's correction of 11 minor deficiencies in its program.

Information pertinent to the general background, revisions, modifications and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and explanation of the conditions of approval of the Tennessee program can be found in the August 10, 1982 **Federal Register** (47 FR 34724–34754).

Proposed amendments

On September 30, 1983, Tennessee submitted for OSM's approval a program amendment intended to satisfy condition (k) of the Secretary's approval of the State programi as well as two program amendments not related to conditions of approval.

Following is a description of the amendments submitted by the State:

(1) In satisfaction of condition (k) of the Secretary's approval of the State program, Tennessee submitted a policy statement to clarify that the Tennessee program includes provisions which are consistent with the Federal standards at 43 CFR 4.1103, 4.1122, 4.1154, 4.1163, 4.1166, 4.1280, and 4.1281.

Condition (k) stipulates that Tennessee must submit promulgated regulations, a policy statement, an Attorney General opinion or other proof that the State program is no less effective than the Federal standards cited above.

(2) Tennessee also submitted for the Director's approval proposed regulations which establish requirements for the training and certification of blasters working in coal mines in Tennessee. The new requirements are set forth under proposed Chapter 0400–1–23 of Tennessee's program regulations.

(3) A third amendment submitted by the State sets forth proposed special performance standards for coal tipples at or near the minesite and preparation plants and support facilities not within the permit area for a mine. The proposed standards, if adopted, would replace the existing requirements under Rule 0400–1–21 of Tennessee's approved program. Also submitted by the State for OSM's approval were proposed definitions for "coal preparation plant", "coal preparation waste" and "coal tipples" to replace the existing definitions for those terms at Rule 0400–1–1–.03 subparagraphs (m), (n) and (o). Tennessee submitted proposed new defintions for "support facilities" and "transfer station" under Rule 0400–1–1–.03 subparagraphs (ssss) and (tttt). Copies of these amendments are contained in the OSM Administrative Record under No. TN–734.

On November 8, 1983, OSM announced receipt of the proposed amendments and scheduled a hearing and comment period on the adequacy of the amendments in satisfying condition k of program approval and in meeting the criteria for approval of State program amendments at 30 CFR 732.15 and 732.17 (48 FR 51385).

The hearing was cancelled as no one requested an opportunity to present testimony. The comment period closed December 8, 1983. On December 23, 1983, OSM informed Tennessee in writing of its preliminary findings on the provisions and encouraged the State to submit additional materials to address deficiencies identified by OSM (Administrative Record No. TN–799).

On January 30, 1984, and February 10, 1984, Tennesee submitted additional materials to OSM for consideration in conjunction with the amendments submitted on September 30, 1983. These additional materials are available for public review at the OSM Administrative Record (Nos. TN–839 and TN–836).

OSM is seeking comment on the adequacy of these provisions, together with the provisions submitted on September 30, 1983, to satisfy condition k and meet the criteria for approval of State program amendments listed at 30 CFR 732.15 and 732.17.

Additional Determinations

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

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

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection

requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 942

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

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

Dated: March 30, 1984.

William B. Schmidt,

Assistant Director, Program Operations and Inspection.

[FR Doc. 84–9129 Filed 4–4–84; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE TREASURY

31 CFR Part 103

Amendments To Implementing Regulations for the Currency and Foreign Transactions Reporting Act

AGENCY: Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: These proposed procedural regulations would establish a mechansim through which the Secretary of the Treasury, exercising the authority conferred on him by 31 U.S.C. 5314, could issue substantive regulations requiring financial institutions in the United States to submit reports of financial transactions with foreign financial agencies. When the Secretary later actually issues substantive regulations, he would at that time specify what types, sizes, and classes of transactions and institutions would be covered. due to the significant growth of international financial transactions related to drug trafficking and other illegal activity, the Treasury Department plans to implement this new regulatory technique to deter such financial activity. It is proposed to make these amendments effective upon publication of the final rule.

DATE: Comments must be received on or before June 4, 1984.

ADDRESS: Address written comments to Robert J. Stankey, Jr., Financial Crimes & Frauds Advisor, Office of the Assistant Secretary (Enforcement & Operations), Department of the Treasury, Room 1458, 1500 Pennsylvania Ave., NW., Washington, D.C. 20220.

FOR FURTHER INFORMATION CONTACT: Robert J. Stankey, Jr., at the address previously specified. (202/566–8022).

SUPPLEMENTARY INFORMATION:

Background

The Currency and Foreign Transactions Reporting Act (Pub. L. No. 91–508, codified in 31 U.S.C. 5311 et seq.), contained in the Bank Secrecy Act, empowers the Secretary of the Treasury to require financial institutions to keep certain records and file certain reports. The reporting requirements are described in general terms in the statute. Title 31, United States Code, section 5313 authorizes the Secretary to require reports of monetary instrument or domestic currency transactions. Section 5314 authorizes the Secretary to require reporting of accounts in and transactions with foreign financial agencies. Finally, section 5316 authorizes the Secretary to require reports on exporting or importing of monetary instruments exceeding $5,000.

Since implementing regulations first became effective in 1972, reporting of currency transactions under section 5313 has been limited to filing by domestic financial institutions of reports on transactions equaling or exceeding $10,000. 31 CFR 103.22. The only reporting requirement imposed under section 5314 has been the disclosure of foreign financial *accounts*. 31 CFR 103.24. The section 5316 report on exported or imported monetary instruments exceeding $5,000 requires the disclosure of only limited information. 31 CFR 103.23.

In the twelve years since these reporting requirements were drafted, there has been a significant growth in international business dealings including, unfortunately, an enormous increase in the amounts of narcotics and other controlled substances being smuggled into the United States. The government's responsibility for intelligently and effectively thwarting such activity demands the development of new regulatory techniques—techniques that provide necessary information without unduly burdening commerce. One such technique that appears to offer great potential benefits involves the review, on a selective basis, of financial transactions related to international business dealings.

The Treasury Department has authority under the Currency and Foreign Transactions Reporting Act to employ an as yet unused regulatory technique which would facilitate review of international financial transactions, and help deter and combat transnational crime and fraud. The Secretary is authorized by 31 U.S.C. 5314(a) to requre reports not only on *accounts* but also on *transactions* with foreign financial agencies. The Secretary, however, is directed to structure such reports "* * * to avoid impeding or controlling the export or import of monetary instruments and * * * to avoid burdening unreasonably a person making a transaction with a foreign financial agency * * *." to this end, subsection 5314(b) authorizes the Secretary to prescribe:

(1) A reasonable classification of persons subject to or exempt from a requirement under this section or a regulation under this section;

(2) A foreign country to which a requirement or a regulation under this section applies if the Secretary decides applying the requirement or regulation to all foreign countries is unnecessary or undesirable;

(3) The magnitude of transactions subject to a requirement or a regulation under this section;

(4) The kind of transaction subject to or exempt from a requirement or a regulation under this section; and

(5) Other matters the Secretary considers necessary to carry out this section or a regulation under this section.

Given the Department's experience with evolving electronic payment systems and banking patterns, exercising the authority to require reporting of at least some foreign transactions seems overdue. This new reporting procedure is expressly authorized under section 5314, and reaches the international flow of funds not already covered by the reporting requirements imposed under sections 5313 and 5316.

The Act and its legislative history authorize the Secretary to require the reporting of *all* such movements. However, in order to lessen the regulatory burden associated with reporting all transactions with certain foreign countries, the reporting requirements will be implemented only with respect to certain financial institutions in certain circumstances. In those instances all transactions associated with one or more institutions may be required to be reported. This information will provide a composite picture of the movements of money from those institutions which, in turn, will be used to identify potential illegal activity as contemplated under the statute.

Section 5314(a) authorizes the Secretary to require such reports to contain, to the extent he deems necessary:

(1) The identity and address of participants in a transaction or relationship.

(2) The legal capacity in which a participant is acting.

(3) The identity of real parties in interest.

(4) A description of the transaction.

Based upon this authority, each substantive regulation will articulate what particular information is to be reported. While section 5314 authorizes the Secretary to require a broad range of information, it is not anticipated that any given regulation will require the reporting of more than a few types of transactions. The Secretary has specified in the following proposed regulatory amendment the items of information that may be made the subject of a reporting requirement.

The new reporting procedures is not designed or intended to obtain information for an existing investigation focused on a particular individual or organization. In such cases, there are established information collection procedures that strike a more appropriate balance between the rights due an individual who is involved in a dispute with the government and the legitimate demands of society that its laws be enforced. Examples include search warrants, judicial subpoenas, administrative subpoenas and summons, and the formal written request created by the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 et seq.). Accordingly, the proposed procedure will explicitly prohibit use of the reporting requirements in such circumstances. However, information reported under the new procedure will be treated the same as any other information collected under the Bank Secrecy Act, and may serve as the basis for initiating an investigation.

The Treasury Department anticipates that actual notice of a reporting requirement promulgated under this new procedure may be provided directly to the effected financial institutions. Publication and the opportunity to comment on such reporting requirements may be dispensed with where the need for flexibility and speed in identifying and reacting to unusual money-flow and banking patterns provides "good cause", as contemplated by the Administrative Procedures Act (5 U.S.C. 553), for overcoming the time delays inherent in informal rulemaking. However, because of the importance of striking an appropriate balance between the individual's right to privacy and society's need for effective law enforcement, the Treasury Department through this notice of proposed rulemaking is explaining the procedure by which such regulations will be issued. The Department invites public comment on how best to strike that accommodation within this proposed procedure for promulgating reporting requirements.

Proposed Amendment Description

This proposed regulation would add a new § 103.25 to title 31, Code of Federal Regulations. That section establishes a new procedure under which the Secretary may issue reporting requirements limited to given classes of financial transactions conducted by a given class of financial institutions as authorized by 31 U.S.C. 5314. Notice of such limited reporting requirements would either be published in the **Federal Register** or served upon the members of the given class of financial institutions in such a manner as to provide actual notice sufficient for the purposes of 5 U.S.C. 553.

This proposed regulatory amendment will not, in itself, require any financial institution to file any new reports. Rather, it defines the issuing procedure for future regulations which will require reporting, and the possible reporting requirements such future regulations could contain. These future regulations will be issued in response to money-flow and banking patterns of criminal, tax or regulatory interest to the Treasury.

Proposed 31 CFR 103.25(a) provides for the promulgation of reporting requirements. Proposed subsection (b) lists the types of information which the Secretary has determined can be subject to reporting requirements. Proposed subsection (c) describes the types of financial institutions and the types of financial transactions which can be covered by reporting requirements. Proposed subsection (d) dictates the limitations placed on the purposes of, and time periods covered by, the reports sought.

Regulatory Impact Analysis

This regulatory amendment is not a major rule for purposes of Executive Order 12291. It is not anticipated to have an annual effect on the economy of $100 million or more. It will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It will not have any 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 foreign markets. Consequently, a Regulatory Impact Analysis will not be prepared.

Regulatory Flexibility Analysis

It is hereby certified that this proposed regulation will not, if promulgated, have a significant economic impact on a substantial number of small entities. Almost all of the information which could be the subject of a reporting requirement is already being maintained in response to existing recordkeeping regulations. Given the focused nature of the contemplated reports, the clerical costs incurred by the specified group of finanical institutions in filing the reports is anticipated to be relatively small. Consequently, a Regulatory Flexibility Analysis will not be prepared.

Paperwork Reduction Act

The collection of information requirements contained in this Notice of Proposed Rulemaking have been submitted to the Office of Management and Budget pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)). Comments on these requirements should be directed to Robert J. Stankey, Jr., at the address previously specified, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, attention: Desk Officer for the Office of the Secretary, Department of the Treasury.

Comments

Before adopting this amendment, consideration will be given to any written comments received by [insert 60 days from date of publication]. Comments received after the closing date will be treated as possible suggestions for future action. The Treasury Department will not recognize any material or comments, including the name of any person submitting comments, as confidential. Any material which the respondent does not want disclosed to the public should not be included in comments. All comments submitted will be available for public inspection during regular business hours at the Library, Room 5030, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, D.C. 20220.

Drafting Information

The principal author of this document was Terry V. Thiele, Office of the General Counsel, Department of the Treasury. However, personnel from other Treasury offices participated in its development.

Authority

The Treasury Department issues this Notice of Proposed Rulemaking under the authority of the Currency and Foreign Transactions Reporting Act, Pub. L. No. 91–508, Oct. 26, 1970, 84 Stat. 1118, 31 U.S.C. 5314.

List of Subjects in 31 CFR Part 103

Banks and banking, Electronic funds transfers, Foreign banking, Currency, Investigations, Law enforcement, Drug traffic control, Reporting requirements, Taxes.

PART 103—[AMENDED]

Proposed Amendments

It is proposed to amend 31 CFR Part 103 as set forth below:

1. It is proposed to renumber § 103.25 as § 103.26, with subsequent sections being renumbered accordingly.

2. It is proposed to add a new § 103.25 as follows:

§103.25 Additional reports to be made.

(a) *Promulgation of reporting requirements.* The Secretary of the Treasury, when he deems appropriate, may promulgate regulations requiring specified persons to file reports on certain transactions with specified financial institutions which are acting as foreign financial agencies. If any such regulation is issued as a final rule without notice and opportunity for public comment, then a finding of good cause for dispensing with such notice and comment in accordance with 5 U.S.C 553(b) will be included in the regulation. If any such regulation is not published in the Federal Register, then any person subject to a reporting requirement contained therein will be named in the regulation and personally served or otherwise given actual notice of the reporting requirement in accordance with 5 U.S.C. 553(b).

(b) *Information subject to reporting requirements.* The Secretary of the Treasury may stipulate in any regulation promulgated under paragraph (a), of this section, what of the following information shall be reported:

(1) Checks or drafts, including traveler's checks, received by respondent financial institution for collection or credit to the account of a foreign financial institution, sent by respondent financial institution to a foreign country for collection or payment, drawn by respondent financial institution on a foreign financial institution, drawn by a foreign financial institution on respondent financial institution—including the following information:

(i) Name of maker or drawer;

(ii) Name of drawee or drawee financial institution;

(iii) Name of payee;

(iv) Date and amount of instrument;

(v) Names of all endorsers.

(2) Wire or electronic fund transfers received by respondent financial institution from a foreign financial institution or sent by respondent financial institution to a foreign financial institution—including the following information:

(i) Name of financial institution initiating transfer;

(ii) Name, address and account number of account being credited or debited;

(iii) Name of financial institution where account is carried;

(iv) Names of all financial institutions used to make transfer;

(v) Date and amount of each transfer;

(vi) Any other information normally appearing on respondent financial institution's internal wire or electronic fund transfer entries.

(3) Credit card charges received or shipped by respondent financial institution—including the following information:

(i) Name, address and card number of card holder;

(ii) Name of signer;

(iii) Name and address of merchant submitting charge;

(iv) Date and amount of charge;

(v) Name of card company;

(vi) Name and address of paying financial institution.

(4) Loans made by respondent financial institution—including the following information:

(i) Name of borrower;

(ii) Name of person acting for borrower;

(iii) Date and amount of loan;

(iv) Terms of repayment;

(v) Name of guarantor;

(vi) Rate of interest;

(vii) Method of disbursing proceeds;

(viii) Collateral for loan.

(5) Commercial paper received or shipped by respondent financial institution—including the following information:

(i) Name of maker;

(ii) Date and amount of paper;

(iii) Due date;

(iv) Certificate number;

(v) Amount of transaction.

(6) Stocks received or shipped by respondent financial institution—including the following information:

(i) Name of corporation;

(ii) Type of stock;

(iii) Certificate number;

(iv) Number of shares;

(v) Date of certificate;

(vi) Name of registered holder;

(vii) Name of transfer agent;

(viii) Amount of transaction.

(7) Bonds received or shipped by respondent financial institution—including the following information:

(i) Name of issuer;

(ii) Bond number;

(iii) Type of bond series;

(iv) Date issued;

(v) Due date;

(vi) Rate of interest;

(vii) Amount of transaction;

(viii) Name of registered holder;

(ix) Name and address of trustee.

(8) Certificates of deposit received or shipped by respondent financial institution—including the following information:

(i) Name and address of issuer;

(ii) Date issued;

(iii) Dollar amount;

(iv) Name of registered holder;

(v) Due date;

(vi) Rate of interest;

(vii) Certificate number;

(viii) Name and address of issuing agent.

(c) *Persons and transactions subject to reporting requirements.* The Secretary may prescribe:

(1) A reasonable classification of financial institutions subject to or exempt from a reporting requirement under paragraph (a) of this section;

(2) A foreign country to which a reporting requirement under paragraph (a) of this section applies if the Secretary decides applying the requirement to all foreign countries is unnecessary or undesirable;

(3) The magnitude of transactions subject to a reporting requirement under paragraph (a) of this section;

(4) The kind of transaction subject to or exempt from a reporting requirement under paragraph (a) of this section;

(5) Other matters the Secretary considers necessary to carry out this section.

(d) *Limitations.* (1) The Secretary shall not promulgate a reporting requirement under paragraph (a) of this section for the purpose of obtaining individually identifiable account information concerning a customer, as defined by the Right to Financial Privacy Act, where that customer is already the subject of an investigation for possible violation of the Currency and Foreign Transactions Reporting Act, or is known by the Secretary to be the subject of an investigation for possible violation of any other Federal law.

(2) No financial institution that has been required to file reports under paragraph (a) of this section shall be required to report transactions that were both completed and reflected in its records prior to the date it received notice of the reporting requirement."

Dated: January 24, 1984.

John M. Walker, Jr.,

Assistant Secretary (Enforcement and Operations).

[FR Doc. 84-9074 Filed 4-4-84; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

33 CFR Part 401

Seaway Regulations, Miscellaneous Amendments

AGENCY: Saint Lawrence Seaway Development Corporation, DOT.

ACTION: Proposed rule.

SUMMARY: The Saint Lawrence Seaway Development Corporation and its counterpart agency, The St. Lawrence Seaway Authority of Canada, publish joint Seaway Regulations. As a result of discussions with The St. Lawrence Seaway Authority, it has been determined that a number of the existing regulations need revision. Therefore the Seaway Corporation proposes to amend 33 CFR Part 401—Subpart A.

DATES: Comments received by May 21, 1984 will be considered.

ADDRESS: Interested parties may submit written comments to the Saint Lawrence Seaway Development Corporation, P.O. Box 520, Massena, New York 13662 (Attn: General Counsel). Persons who want the receipt of their comments acknowledged in writing may submit a stamped self-addressed postcard for this purpose.

FOR FURTHER INFORMATION CONTACT: Frederick A. Bush, General Counsel, (315) 764-3245.

SUPPLEMENTARY INFORMATION: As a result of discussions with its counterpart agency, the Saint Lawrence Seaway Development Corporation proposes to amend the joint Seaway Regulations for the reasons set forth in the summary.

List of Subjects in 33 CFR Part 401

Hazardous materials transportation, Navigation (water), Penalties, Radio, Reporting and recordkeeping requirements, Vessels, Waterways.

In § 401.7(a)(2), a new paragraph (iii) will be added. This regulation provides that a vessel shall be equipped with fenders if any structural part of the vessel protrudes so as to endanger Seaway installations. This new paragraph will require that where the fenders are not permanently attached, they must be raised at all times when the vessel passes a lock gate in Snell or Eisenhower Locks. This will reduce the possibility of damage to lock gates by fenders which are not permanently attached.

In § 401.13(b), the diameter of hand held lines will be changed from "a minimum diameter of between 12.7 mm and a minimum length of 30 m" to "a diameter between 12 mm and 20 mm and a minimum length of 30 m" to improve manageability and safety.

§ 401.18 is rewritten to indicate that every vessel must be equipped with a steering light located on the centerline at or near the stem of the vessel and clearly visible from the helm, or two steering lights located at equal distances either side of the centerline at the forepart of the vessel and clearly visible from the bridge along a line parallel to the keel. Because of the installation of cranes and other cargo handling equipment on vessels, it had become impossible to see a steering light located on the bow. Therefore, the revision to this regulation will eliminate that problem.

In § 401.19(b)(2), line 1, the comma will be removed after "leakproof" because it is unnecessary.

In § 401.24, a notation will be added that Office of Management and Budget approval, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35), has been received for application for preclearance forms.

In § 401.31, paragraph (a) will be revised to indicate that the meeting and passing of vessels will now be governed by the Collision Regulations of Canada and the Navigation Rules International-Inland of the United States because the Rules of the Road for the Great Lakes have been revoked and have been replaced as set forth above by the respective countries.

In paragraph (b) of § 401.31, the reference to "limit of approach signs" is deleted because these signs no longer exist. Paragraph (b) will be revised so that no vessel shall meet another vessel within the caution signs at bridges or within any area that is designated as a "no meeting area" by signs erected by the Authority or the Corporation in that area.

In § 401.31(c)(2), the word "or" will be added at the end of the phrase for clarification.

A new regulation, "§ 401.35 Navigation Underway," will be added. This new regulation provides that every vessel transiting between C.I.P. 2 and Tibbetts Point in the St. Lawrence River, and between C.I.P. 15 and 16 in the Welland Canal must man the propulsion machinery of the vessel including the main engine control station, and operate the propulsion machinery so that it can respond immediately through its full operating range. This regulation is the result of a number of vessel incidents involving vessel personnel not manning propulsion machinery, thereby adversely affecting the vessel's ability to maneuver.

In §§ 401.38, 401.43 and 401.48, wherever the term "guard gate" was previously used, the term will be redesignated "guard gate cut". Since the guard gate has been removed, a new designation was therefore necessary for that particular area because there still remains a requirement to comply with these regulations.

In § 401.51(b), the distances between signs will be changed from "between 670 m and 1500 m upstream and downstream from movable bridges at sites other than lock sites" to "between 550 m and 2990 m upstream and downstream from movable bridges at sites other than lock sites". This regulation requires that unless a vessel's approach has been recognized by a flashing signal, the master shall signal the vessel's approach to the bridgemaster by VHF radio when it comes abreast of any of the bridge whistle signs. This change in distance between the signs results from a relocation of these signs.

In §§ 401.68 and 401.74, a notation will be added that Office of Management and Budget approval, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35), has been received for application for explosives permit and for transit declaration forms.

In SCHEDULE I, paragraph (g), a sentence will be added which provides that vessels of 10,000 gross tons or more must have a second main radar system that operates independently of the first. The addition of a second radar system will substantially improve the ability of vessels over 10,000 gross tons to navigate the Saint Lawrence Seaway.

In SCHEDULE II—Table of Speeds, the speed limits in Column III for Eisenhower Lock to Richards Point Lt. 55, for Morrisburg Buoy 84 to Ogden Island Buoy 99, and for Blind Bay ½ mile east of Buoy 162 to Deer Island Lt. 186, will be revised from 11 knots to 11.5 knots in order to conform to the procedures used in the conversion of other speed limits contained in the SCHEDULE.

In APPENDIX I, the reference to 76 feet will be deleted to correct an oversight in that English measurements are no longer used in the Seaway Regulations. The sentence will now read that "The limits in the block diagram are based on vessels with a maximum allowable beam of 23.16 m."

This proposed regulation involves a foreign affairs function of the United States; therefore Executive Order 12291 does not apply to this rulemaking. The Saint Lawrence Seaway Development Corporation certifies that for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), since the impact of this proposal is expected to be minimal, it will not have a significant economic impact on a substantial number of small entities. The Seaway Regulations relate to the activities of commercial users of the Seaway, the vast majority of whom are foreign vessel operators, and therefore any resulting costs will be borne primarily by foreign vessels. Furthermore, the Corporation has determined that this rulemaking is not a major Federal action affecting the quality of the human environment under the National Environmental Policy Act, and therefore, an environmental impact statement is not required. Finally, the Seaway Regulations contain certain information collection requirements which have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), as follows: § 401.24 OMB Control No. 2135–0002, § 401.68 OMB Control No. 2135–0004, and § 401.74 OMB Control No. 2135–0003.

PART 401—[AMENDED]

For the stated reasons, it is proposed to amend the Seaway Regulations as follows:

1. Section 401.7(a)(2) is amended by adding paragraph (iii) to read as follows:

§ 401.7 Fenders.

* * * * *

(2) * * *

(iii) And raised at all times when the vessel passes a lock gate in Snell or Eisenhower Locks.

* * * * *

2. In § 401.13, paragraph (b) is revised to read as follows:

§ 401.13 Hand lines.

* * * * *

(b) Have a diameter between 12 mm and 20 mm and a minimum length of 30 m.

3. Section 401.18 is revised to read as follows:

§ 401.18 Steering lights.

Every vessel shall be equipped with

(a) A steering light located on the centerline at or near the stem of the vessel and clearly visible from the helm; or

(b) Two steering lights located at equal distances either side of the centerline at the forepart of the vessel and clearly visible from the bridge along a line parallel to the keel.

4. In § 401.19, paragraph (b)(2) is revised to read as follows:

§ 401.19 Disposal and discharge systems.

* * * * *

(b) * * *

(2) Retained on board in covered, leakproof containers, until such time as it can lawfully be disposed of.

* * * * *

5. Section 401.24 is amended by adding a reference to the OMB Control No. as follows:

§ 401.24 Application for preclearance.

* * * * *

(Approved by the Office of Management and Budget under control number 2135–0002).

6. In § 401.31, paragraphs (a), (b) and (c)(2) are revised to read as follows:

§ 401.31 Meeting and passing.

(a) The meeting and passing of vessels shall be governed by the Collision Regulations of Canada and the Navigation Rules International-Inland of the United States.

(b) No vessel shall meet another vessel within the caution signs at bridges or within any area that is designated as a "no meeting area" by signs erected by the Corporation or the Authority at the area.

(c) * * *

(2) Within 60 m of a canal or lock entrance; or

* * * * *

7. Section 401.35, which was formerly reserved, is added to read as follows:

§ 401.35 Navigation Underway.

Every vessel transiting between C.I.P. 2 and Tibbetts Point and between C.I.P. 15 and 16 shall—

(a) Man the propulsion machinery of the vessel, including the main engine control station; and

(b) Operate the propulsion machinery so that it can respond immediately through its full operating range.

8. Section 401.38 is revised to read as follows:

§ 401.38 Limit of approach to a lock.

A vessel approaching a lock or the guard gate cut shall comply with directions indicated by the signal light system associated with the lock or the guard gate cut, and in no case shall its stem pass the designated limit of approach sign while a red light or no light is displayed.

9. In the Table in § 401.43, the heading under *Welland Canal* which presently reads "*Guard Gate*" will be revised to read "*Guard Gate Cut*" as follows:

§ 401.43 Mooring table.

* * * * *

WELLAND CANAL

Locks	1	2	3	4	5	6	7	Guard Gate Cut	8

* * * * *

10. In the Table in § 401.48, 2. (b) will be revised to read as follows:

§ 401.48 Turning basins.

* * * * *

2. * * *

(b) Turning Basin No. 2—Between Lock 7 and the Guard Gate Cut for vessels up to 180 m in overall length.

* * * * *

11. In § 401.51, paragraph (b) will be revised to read as follows:

§ 401.51 Signalling approach to a bridge.

(b) The signs referred to in paragraph (a) of this section shall be placed at distances varying between 550 m and 2990 m upstream and downsteam from moveable bridges at sites other than lock sites.

12. Section 401.68 is amended by adding a reference to the OMB Control Nos. as follows:

§ 401.68 Explosives permit.

* * * * *

(Approved by the Office of Management and budget under control number 2135–0004).

13. Section 401.74 is amended by adding a reference to the OMB Control No. as follows:

§ 401.74 Transit declaration.

* * * * *

(Approved by the Office of Management and Budget under control number 2135–0003).

14. In SCHEDULE I, paragraph (g) will be revised to read as follows:

SCHEDULE I

Vessels Transiting U.S. Waters.

* * * * *

(g) Marine radar system for surface navigation. Additionally, vessels of 10,000 gross tons or more must have a second main radar system that operates independently of the first.

* * * * *

15. In Schedule II, Col. III of Items 6., 8., and 10. will be revised to read as follows:

SCHEDULE II.—TABLE OF SPEEDS*

From	To	Maximum speed over the bottom, knots	
		Col. III	Col. IV
* * * * *			
6. Eisenhower Lock	Richards Point Lt. 55	11.5	10.5
* * * * *			
8. Morrisburg Buoy 84	Ogden Island Buoy 99	11.5	10.5
* * * * *			
10. Blind Bay ½ east of Buoy 162	Deer Island Lt. 186	11.5	10.5
* * * * *			

16. In Appendix I, the second paragraph under (b) will be revised to read as follows:

Appendix I

Vessel Dimensions

* * * * *

The limits in the block diagram are based on vessels with a maximum allowable beam of 23.16 m. For vessels that have a beam width less than this and that have dimensions exceeding the limits of the block diagram (measured with the vessel alongside the lock wall), a special permission to transit must be obtained. (Accurate measurements may be required before such permission is granted).

* * * * *

(68 Stat. 93–96, 33 U.S.C. 981–990, as amended and sections 4, 5, 6, 7, 8, 12 and 13 of SEC. 2 of Pub. L. 95–474, 92 Stat. 1471)

Issued at Washington, D.C. on March 29, 1984.

Saint Lawrence Seaway Development Corporation.

James L. Emery,

Administrator.

[FR Doc. 84-9046 Filed 4-4-84; 8:45 am]

BILLING CODE 4910-61-M

VETERANS ADMINISTRATION

38 CFR Part 36

Loan Guaranty; Redefinition of the Term "Lender"

AGENCY: Veterans Administration.

ACTION: Proposed regulations.

SUMMARY: The VA (Veterans Administration) is proposing to amend its regulations to redefine the definition of "lender". The revised definition would include individual owners, company and corporate officers, and certain employees of the firms engaged in any phase of mortgage lending with the assistance of VA guaranty and insurance programs. The proposal provides for the suspension of any participating lender employing a suspended, owner, company or corporate officer, or other person as a loan solicitor, loan servicer, loan processor, office manager, or an employee in any other position with responsibility in the decisionmaking process.

The purpose of the proposed regulations is to give the VA more flexibility in applying sanctions to individuals who are working as employees of lenders and are found to have committed fraud or were responsible for material misrepresentations in the soliciting, processing, servicing, or approval of loan applications submitted to the VA for guaranty or insurance.

The authority to impose individual suspensions on lender employees will also be a major deterrent to suspended persons moving their employment from one organization to another where they may continue to practice fradulent or irregular activities in the soliciting, processing, or servicing of VA loans or loan applications.

DATES: Comments must be received on or before May 4, 1984. The VA proposes to make these regulations effective 30 days after publication of the final regulations.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding this proposal to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420. All written comments received will be available for public inspection only at the above address between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays) until May 18, 1984.

FOR FURTHER INFORMATION CONTACT: George Moerman (202) 389–3042.

SUPPLEMENTARY INFORMATION: The governing statutes and regulations currently provide that the Administrator may, subject to notice and the opportunity for a hearing, suspend a lender or holder from obtaining guaranty or insurance of loans or from the right to the guaranty or insurance of any loans made or purchased after the date of its suspension. These sanctions may be imposed on a finding by the VA that a lender has failed to maintain adequate loan accounting records, or to demonstrate proper ability to service loans adequately, or to exercise proper credit judgement, or has willfully or negligently engaged in practices otherwise detrimental to the interest of veterans or of the Government.

The Administrator has authority to make rules and regulations necessary or appropriate to carry out the laws administered by the VA. Under that authority certain words and phrases contained in the law are defined. The term "lender" is currently defined in § 36.4202(g) as "the payee or assignee or transferee of an obligation at the time it is guaranteed". The term is similarly defined in § 36.4301 but includes "guaranteed or insured" loans. Under these definitions, when fraud or other serious irregularities are found in loan applications which are guaranteed or insured by the VA, the lending institution may be suspended under authority of the statute. The statute does not specifically provide for the suspension of individual owners, officers, or employees of the lender. However, under previous legal precedents and opinions, the suspension of a lender may also apply to certain employees and officers of a lender who were personally involved in the irregular practices or who have a major responsibility in the decisionmaking process.

This proposal will define the term "lender" in the regulations to include principals, officers, and employees. The proposal provides specific regulatory authority for sanctioning an individual who is directly responsible for material misrepresentations or fraud in the origination or servicing of a loan. It also includes an individual who is in a supervisory or managerial position and who either willfully or negligently encourages or overlooks irregular practices by employees under their supervision or otherwise does not exercise supervisory controls of employees taking actions which are detrimental to veterans or the Government.

The proposal will make it possible for the VA to suspend specific lender employees who are responsible for fraud or material misrepresentation in processing or servicing VA loans without the necessity of first suspending the lender for whom that employee is working. Some large lenders operate regionally or nationwide. It is not always possible to monitor and to fully supervise the processing and servicing of loans in the many different office locations. In some cases the lender is

unaware of the irregular conduct of the employee and cannot detect the fraud or other irregularity from a review of the completed loan application package. It would be inequitable and counterproductive in some circumstances to suspend an entire regional or national lender because of the improper conduct of one or more employees of that firm located in one of its branch offices. It would, however, be appropriate for the VA to suspend the errant employee or employees in that office from further participation in soliciting, processing, or servicing VA loans. This situation demonstrates the need for a revision of the suspension regulations so that for suspension purposes the definition of a lender shall include officers, principals, and employes who make or conspire with others to use false, fictitious or fraudulent statements, representations, or documents in any loan application or other document submitted to the VA for the purpose of securing VA guaranty or insurance of a loan.

Under present procedure a notice of suspension to a lender is effective as to agents, representatives, and correspondents when acting for or on behalf of the person or entity suspended. When these individuals, including employees of the suspended lender, are not specifically named and included in a lender suspension, they may then be employed by a different lender with impunity. Individual employee suspensions would be an effective method of preventing these employees from being hired by a different lending organization where they might continue fraudulent or irregular practices in the soliciting, processing, or servicing of VA loans or loan applications.

These proposed amendments will, in addition to the revision of the definition of a lender, provide a means for the VA to suspend a lender who employs a suspended person as a loan processor, loan solicitor, or in a managerial capacity with responsibility in the decisionmaking process. Any secondarily suspended lender would have a right to notice and an opportunity for a hearing in the same manner as any program participant that has been sanctioned by the VA. Termination of the employment of the suspended lender or employee by the secondary employer would automatically terminate the suspension.

Technical amendments have also been made to the appropriate sections of the regulations to change the term "mobile home" to "manufactured home." These changes are made so that the terminology of the regulations will be in conformity with the language of Pub. L. 97–306, 96 Stat. 1429, enacted October 14, 1982.

The Administrator hereby certifies that these proposed regulation changes will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), these proposed regulations are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reasons for this certification are that these proposed changes will not directly affect any small entity except to the extent that it may be precluded from employing a small number of suspended individuals. Small entities which are private and nonprofit organizations and small government jurisdictions will not be affected. Present regulations already permit suspensions of responsible officials of a lender. In the case of lenders which are small entities, as distinguished from large corporate lenders, the VA's authority to suspend such officials will not change significantly because of the positions which they generally hold in the small business. That is, individual positions covered under these proposed regulations will in most instances be occupied, in the case of small lenders, by individuals holding positions already subject to suspension under the existing regulations.

These regulations will not impact on the public or private sections as "major rules" as that term is defined in Executive Order 12291. They will not have an annual effect on the economy of $100 million or more, and will not cause a major increase in costs or prices for consumers or individual industries; nor will they have other 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.

(Catalog of Federal Domestic Assistance Program Numbers 64.114 and 64.119.)

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing Loan Programs—housing and community development, Manufactured Homes, Veterans.

These amendments are proposed under the authority granted the Administrator by sections 210(c), 1803, 1804, and 1819 of title 38, United States Code.

Approved: March 20, 1984.

By direction of the Administrator:

Everett Alvarez, Jr.,

Deputy Administrator.

PART 36—[AMENDED]

38 CFR Part 36, LOAN GUARANTY, is amended as follows:

1. In the center heading proceeding § 36.4201, the word "MOBILE" is changed to "MANUFACTURED".

2. In § 36.4202, paragraph (g) is revised to read as set forth following; and paragraphs (j), (k), (m), (n), and (o) are amended by replacing the word "mobile" with "manufactured" wherever it appears and by adding the cite "(sec. 406, Pub. L. 97–306)" at the end of those paragraphs.

§ 36.4202 Definitions

* * * * *

(g) *Lender.* The payee or assignee or transferee of an obligation at the time it is guaranteed. This term also includes any sole proprietorship, partnership, or corporation and the owners, officers, and employees of a sole proprietorship, partnership, or corporation engaged in the origination, procurement, transfer, servicing, or funding of a loan which is guaranteed by the VA. (38 U.S.C. 1804(d); 1819(g))

* * * * *

3. Section 36.4216 is amended by changing the work "chairman" to "chairperson" in paragraph (e) and by revising paragraph (a) to read as follows:

§ 36.4216 Disqualification of lenders.

(a) A lender or holder may be suspended from obtaining guaranty of loans or from the right to the guaranty in respect to any loan made or purchased after the date of its suspension, except as provided in paragraph (h) of this section, whenever any of the employees designated in § 36.4221(b) finds that the lender of holder (hereinafter referred to as lender) has failed to maintain adequate loan accounting records, or to demonstrate proper ability to service loans adequately, or to exercise proper credit judgment, or has declined to make a guaranteed manufactured home loan to an eligible veteran because of the applicant's race, color, religion, sex, or national origin, or has willfully or negligently engaged in practices otherwise deterimental to the interests of veterans of the Government, or has been refused the benefits of participation under the National Housing Act pursuant to a determination of the Secretary of Housing and Urban Development. Suspension of a lender shall be effected

only when specifically authorized by the Administrator, the Deputy Administrator, or by the Chief Benefits Director, Department of Veterans Benefits. In any case in which suspension has been so authorized and: (1) An indictment has been secured or a criminal information has been filed against the lender in connection with a transaction involving 38 U.S.C. 1819, or (2) is based upon action taken by the Secretary of Housing and Urban Development, an immediate suspension may be effected. A lender may also be suspended under this section if it is owned by, or employs as an officer, loan solicitor, loan processor, loan servicer, loan supervisor, office manager, or in any other position, a person who engages in or is responsible for the processing or servicing of VA guaranteed or insured loans if that person has been previously suspended by the VA under this section. In any other case in which the Director of a regional office has obtained Central Office authorization to initiate suspension proceedings, prior written notice of intention to apply the suspension sanction shall be furnished to the lender concerned. (38 U.S.C. 1804(d); 1819(g))

* * * * *

4. Section 36.4301 is amended by revising the definition of "Lender" to read as follows:

§ 36.4301 Definitions * * *

* * * * *

Lender. The payee or assignee or transferee of an obligation at the time it is guaranteed or insured. This term also includes any sole proprietorship, partnership, or corporation and the owners, officers and employees of a sole proprietorship, partnership, or corporation engaged in the origination, procurement, transfer, servicing, or funding of a loan which is guaranteed or insured by the VA. (38 U.S.C. 1804(d); 1819(g))

* * * * *

5. Section 36.4331 is amended by revising paragraph (a) to read as follows:

§ 36.4331 Disqualification of lenders.

(a) A lender or holder may be suspended from obtaining guaranty or insurance of loans or from the right to the guaranty or insurance in respect to any loan made or purchased after the date of its suspension, except as provided in paragraph (h) of this section, whenever any of the employees designated in § 36.4342(b) finds that the lender or holder (hereinafter referred to as lender) has failed to maintain adequate loan accounting records, or to demonstrate proper ability to service loans adequately, or to exercise proper credit judgment, or has declined to make a guaranteed or insured home loan to an eligible veteran because of the applicant's race, color, religion, sex, or national origin, or has willfully or negligently engaged in practices otherwise detrimental to the interests of veterans or of the Government, or has been refused the benefits of participation under the National Housing Act pursuant to a determination of the Secretary of Housing and Urban Development. Suspension of a lender shall be effected only when specifically authorized by the Administrator, the Deputy Administrator, or by the Chief Benefits Director, Department of Veterans Benefits. In any case in which suspension has been so authorized and (1) an indictment has been secured or a criminal information has been filed against the lender in connection with a transaction involving 38 U.S.C. ch. 37, or (2) is based upon action taken by the Secretary of Housing and Urban Development, an immediate suspension may be effected. A lender may also be suspended under this section if it is owned by, or employs as an officer, loan solicitor, loan processor, loan servicer, loan supervisor, office manager, or in any other position, a person who engages in or is responsible for the processing or servicing of VA guaranteed or insured loans if that person has been previously suspended by the VA under this section. In any other case in which the Director of a regional office has obtained Central Office authorization to initiate suspension proceedings, prior written notice of intention to apply the suspension sanction shall be furnished to the lender concerned. (38 U.S.C. 1804(d); 1819(g))

* * * * *

[FR Doc. 84-8987 Filed 4-4-84; 8:45 am]
BILLING CODE 8320-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 394

[BMCS Docket No. MC-109; Notice No. 84-2]

Notification and Reporting of Accidents

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Extension of comment period.

SUMMARY: The FHWA issued a notice of proposed rulemaking (BMCS Docket No. MC-109; Notice No. 84-1, 49 FR 1912, January 16, 1984) which proposed to revise the truck and bus accident forms and raise the property damage reporting criterion from $2,000 to $4,000. All comments to the docket were to be received on or before March 16, 1984. The comment period is being extended to June 1, 1984. This extension is in response to a petition from the American Trucking Associations, Inc. (ATA). The petitioner states that additional time is needed to throughly consider the nature of the data sought in the proposed basic accident report.

DATE: Comments must be received on or before June 1, 1984.

ADDRESS: All comments should refer to the docket number and notice number that appear at the top of this document and should be submitted, preferably in triplicate, to Room 3404, Bureau of Motor Carrier Safety (BMCS), 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. to 4:15 p.m. ET, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. William E. Snow, Bureau of Motor Carrier Safety, (202) 426-1700, or Mr. Edward J. Mullaney, Office of the Chief Counsel (202) 426-0346, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: The FHWA has received, from the ATA, a petition requesting a 90-day extension of the deadline for the filing of comments in response to BMCS Docket No. MC-109; Notice No. 84-1, Notification and Reporting of Accidents. Comments were to be received on or before March 16, 1984.

The ATA stated that the proposed changes may have a major impact on the nature and quality of the truck accident data gathered by the Department of Transportation. For this reason, all of the implications in the proposal, particularly the nature of the data to be sought in the proposed basic accident report, must be considered more thoroughly than can be achieved by March 16, 1984.

The ATA is also in the process of working with the Steering Committee of the ATA Council of Safety Supervisors, and the ATA affiliated State councils and conferences on an industry position. Therefore, additional time is needed to carry out this process.

The request has merit. Therefore, the comment period is extended to June 1, 1984.

List of Subjects in 49 CFR 394

Motor Carriers, Reporting requirements.

(49 U.S.C. 3102; 49 CFR 1.48)

(Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety.)

Issued on: March 29, 1984.

Kenneth L. Pierson,

Director, Bureau of Motor Carrier Safety, Federal Highway Administration.

[FR Doc. 84-9047 Filed 4-4-84; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Determination of Experimental Population Status for an Introduced Population of Delmarva Fox Squirrel

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service proposes to introduce Delmarva Peninsula fox squirrels (*Sciurus niger cinereus*) into Sussex County, Delaware and to determine these populations to be "nonessential experimental" populations according to Section 10(j) of the Endangered Species Act of 1973 as amended. Section 10(j) of that Act authorizes "experimental" populations of endangered species to be treated as if they were threatened for purposes of Section 9 and proposed under certain conditions for purposes of Section 7. The Service has much more discretion in devising a management program for threatened species than for endangered species, especially on matters regarding incidental or regulated taking. Accordingly, a special rule to allow take in accordance with State law is proposed for these nonessential experimental populations. In the past, this species was more widespread, being found throughout the Delmarva Peninsula. This action is being taken in an effort to reestablish the Delmarva fox squirrel within its historic range.

DATES: Comments from the State of Delaware and the public must be received by May 7, 1984.

ADDRESSES: Interested persons or organizations are requested to submit comments to the Regional Director, U.S. Fish and Wildlife Service, Suite 700, One Gateway Center, Newton Corner, Massachusetts 02158. Comments and materials relating to this proposed rule are available for public inspection by appointment during normal business hours at the Service's Regional Office in Newton Corner, Massachusetts.

FOR FURTHER INFORMATION CONTACT: For further information on the proposal, contact Mr. Steve Parry, Assistant Regional Director, U.S. Fish and Wildlife Service, Newton Corner, Massachusetts 02158 (617/965-5100 or FTS 829-9316) or Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-2771).

SUPPLEMENTARY INFORMATION:

Background

The Endangered Species Act Amendments of 1982, Public Law No. 97-304, became effective on October 13, 1982. Among the significant changes made by the 1982 Amendments was the creation of a new Section 10(j) which established procedures for the designation of specific populations of listed species as "experimental populations." Under authorities in the Endangered Species Act previous to the 1982 Amendments, the Service was permitted to translocate populations into unoccupied portions of a listed species' historic range when it would foster the conservation and recovery of the species. Local opposition to translocation efforts, however, severely handicapped the effectiveness of translocation as a management tool. This opposition stemmed from concerns regarding the restrictions and prohibitions on private and Federal activities affecting endangered species under Sections 7 and 9 of the Act. Under Section 10(j) of the 1982 Amendments, past and future translocated populations established outside the current range, but within the species' historic range, may now be designated at the discretion of the Service as "experimental." Such a designation will increase the Service's flexibility to manage these translocated populations because the Amendments provide that such experimental populations of species which are otherwise listed as endangered may be treated as threatened. The Service has much more discretion in devising management programs for threatened species than for endangered species, especially on matters regarding incidental or regulated takings. Moreover, experimental populations found to be "nonessential" to the continued existence of the species in question would be treated as if they were only proposed for listing and therefore would not be afforded protection under Section 7(a)(2) of the Act, which requires Federal agencies to refrain from activities that are likely to jeopardize the continued existence of a listed species or adversely modify its critical habitat. The individual organisms comprising the designated experimental population will be removed from an existing source or donor population only after it has been determined that their removal itself will not violate Section 7(a)(2) of the ESA and complies with the permit requirements in Section 10 (a)(1)(A) and (d). The species included in this proposal is the Delmarva Peninsula fox squirrel (*Sciurus niger cinereus*) which is currently listed as endangered.

The Delmarva fox squirrel was found in southeastern Pennsylvania, Delaware, south-central New Jersey, eastern Maryland, and the Virginia portion of the Delmarva Peninsula. It is believed that the fox squirrel was never as abundant as the gray squirrel. Although little is known about its former distribution, it is likely that it was scattered and discontinuous throughout its range with more specific habitat requirements than those of the gray squirrel.

The fox squirrel was confined to savannah or park-like areas, forests bordering rivers and streams, and small open woodlots with little or no understory. As the forests were cut for agricultural purposes and forest products, they became unsuitable for fox squirrels. As the forest regrew, dense undergrowth developed, at least during the pole and early saw timber stages. Before second-growth forests were old enough to develop the open park-like conditions of mature forests, they were cut again. Thus, environments suitable to Delmarva fox squirrels were not recreated in the cutting cycle, and Delmarva fox squirrels declined and disappeared in many areas. By the turn of the century this animal had disappeared from southern New Jersey, Pennsylvania, and Virginia, but it is thought that it remained in Delaware until possibly the 1930's. It is currently found in eastern Maryland and was reintroduced into eastern Virginia in the 1970's.

Throughout their range, fox squirrels are currently adapted to these park-like conditions. They are often found in savannah areas, oak openings, and in narrow belts of trees along streams and rivers.

Good fox squirrel habitat contains mature trees that produce a dependable annual mast crop with a variety of tree

species providing insurance against a food shortage brought about by failure of one or more of the species present. Good habitat for this species is currently located in Sussex County, Delaware. The establishment of an experimental population in this area will greatly enhance the recovery potential of this species by reestablishing a population in its former range. It is proposed that 6–18 fox squirrels taken from viable populations located in Dorchester and Talbot Counties, Maryland, will be introduced into the Sussex County site. The Dorchester and Talbot County populations have been monitored by the State of Maryland for the past 10 years. These are healthy populations that are naturally expanding their current range. The removal of 6–18 animals over a period of 18 months is not likely to jeoparize the continued existence and viability of these populations and release of these experimental populations as proposed will further the conservation of the species throughout its range.

Status of Reintroduced Populations

The reintroduced population of Delmarva Pensinsula fox squirrels is proposed as an experimental population that is "nonessential" to the continued existence of the species according to the provisions of the 1982 Amendments to the Endangered Species Act. Nonessential experimental population status for the introduced fox squirrels would mean that they would be subject only to provisions of Sections 7(a)(1) and except for Section 7(a)(1), they would be treated as if they were proposed for listing under Section 4 for Section 7 purposes. Thus, Section 7(a)(1), which authorizes Federal agencies to establish programs furthering conservation of the species and Section 7(a)(4), which requires Federal agencies to confer informally with the Secretary regarding actions that are likely to jeopardize the continued existence of the species, would apply to the fox squirrels in the experimental population. The restrictions on Federal agency activity in Section 7(a)(2), which pertain to listed species would not apply.

Justification for the "nonessential" status for the proposed introduced experimental population is as follows: By the early 1970's, the Delmarva fox squirrel was found in portions of four eastern shore counties of Maryland, and one location in Virginia. In Kent County, Maryland, this species was known from the Eastern Neck National Wildlife Refuge (NWR) and in Accomac County, Virginia, from the Chincoteague NWR (a translocated population established in the early 1970's).

Population status has changed since the early 1970's, principally due to translocation efforts by the State of Maryland to restore this species. Additional translocated and reproducing populations now exist within historic range in the Maryland counties of Cecil, Kent (outside of Eastern Neck NWR), Somerset, Worcester, Dorchester, and Talbot, and a summer 1982 translocation to Northampton County, Virginia has been accomplished.

Techniques for trapping and relocating this species are in place. Relocation efforts have been successful in Maryland for the past 10 years and techniques are continually being improved and refined. Monitoring of 6 release sites in Maryland has shown reproduction in 5 of the 6 sites within one year of release and the Chincoteague site now serves as a donor population for other reintroductions. This suggests that no new procedures need to be developed to proceed with this reintroduction.

The removal of individuals from extant populations in Talbot and Dorchester Counties is not expected to affect adversely the viability of those populations; therefore, the loss of the reintroduced populations would not reduce the likelihood of the survival of the species in the wild. In fact the anticipated success of this reintroduction will enhance the recovery potential of this species by extending its current range and occupying currently unutilized habitat.

Location of Reintroduced Populations

The site proposed for reintroduction of Delmarva Peninsula fox squirrels is totally isolated from existing populations of this species. The fox squirrels will be released into the Assawoman Wildlife Area in Sussex County, Delaware, in the extreme southeast corner of the State between Miller and Dirikson Creeks. This is approximately 50 miles from the nearest extant population located at the Chincoteague NWR.

Previous releases of this species have shown that individuals are not likely to travel more than 2 to 3 miles from the point of release. This assures that the Delaware population will remain geographically isolated and easily identifiable from other extant populations.

Management

This translocation project will be a joint cooperative effort between the Delaware Department of National Resources and Environmental Control, the Maryland Department of Natural Resources, and the Fish and Wildlife Service. Present plans call for the release of 6 animals (4 females, 2 males) in the spring of the year, followed 6 months later with a fall release of 6 additional animals (4 females, 2 males). A third release of 6 animals the following spring will result in a total reintroduction of 18 animals. If the initial spring release is delayed until fall, the second and third releases will occur in the following spring and fall.

Released animals will be checked periodically to determine movement, reproductive success, and general health. This proposed nonessential experimental population would be treated as a threatened species under all provisions of the Act other than Section 7(a)(2). All of the prohibitions referred to in 50 CFR 17.31 would apply to this population. Moreover, permits would be available to take members of this population for the purposes set forth in 50 CFR 17032. In addition, members of this experimental population could be incidentally taken in accordance with applicable State law. Thus, if a squirrel hunter accidentally took a member of this experimental population based upon a misidentification of the species, there would be no violation of Federal law.

Public Comments Solicited

The Service intends that any rule finally adopted be as effective as possible. Therefore, comments or recommendations concerning any aspect of this proposed rule are hereby invited from the public, concerned government agencies, the scientific community, industry, or any other interested party. Comments should be as specific as possible.

Final promulgation of a rule to implement this proposed action will take into consideration any comments or additional information received by the Service. Such communications may lead to a final rule that differs from this proposal.

National Environmental Policy Act

A draft Environmental Assessment under NEPA has been prepared and is available to the public at the Office of Endangered Species, U.S. Fish and Wildlife Service, at the address listed above. This assessment will form the basis for a decision, to be made prior to the publication of a final rule, as to whether this is a major Federal action which would significantly affect the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy

Act of 1969 (implemented at 40 CFR Parts 1500–1508).

Executive Order 12291, Paperwork Reduction Act, and Regulatory Flexibility Act

The U.S. Fish and Wildlife Service has determined that this is not a major rule as defined by Executive Order 12291; that the rule would not have a significant economic effect on a substantial number of small entities as described in the Regulatory Flexibility Act (Pub. L. 96–354). The introduction site occurs within several miles of Atlantic Ocean resorts in a region that can be considered as high use for vacationers and wildlife enthusiasts. However, this site is not in the vicinity of a high concentration of year-round inhabitants. The Assawoman Wildlife Area has been set aside by the State of Delaware for wildlife use. The introduction of a nonessential experimental population into this area is compatible with current utilization of the site and is expected to have no impact on public use days. No private entities will be affected by this action. The rule as proposed does not contain any information collection or recordkeeping requirements as defined in the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

Author

The principal author of this proposal is Peter G. Poulos, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulations Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the U.S. Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 reads as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; and Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1513 *et seq.*).

§ 17.11 [Amended]

2. It is proposed to amend § 17.11(h) by adding the following in alphabetical order (following the existing entry for this species) to the list of endangered and threatened mammals:

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
Delmarva Peninsula fox squirrel.	Sciurus niger cinereus.	.....	U.S.A. (Sussex County, Delaware).	XN	.....	.....	17.84(b).
*	*	*	*	*	*		*

§ 17.84 [Amended]

3. It is proposed that Title 50 CFR 17.84 be amended by adding new paragraph (b) as follows:

* * * * *

(b) Delmarva Peninsula fox squirrel (*Sciurus niger cinereus*).

(1) The delmarva Peninsula fox squirrel population identified in paragraph (b)(4) of this section is a nonessential experimental population.

(2) All prohibitions and exceptions listed in §§ 17.31 and 17.32 apply to this population identified in paragraph (b)(4) of this section, except that it may also be incidentally taken in accordance with applicable State laws and regulations.

(3) any violation of State law regulating the take of this specaes from (b)(4) of this section will also be a violation of the Endangered Species Act.

(4) The site for reintroduction of Delmarva Peninsula fox squirrel is totally isolated from existing populations of this species. The nearest extant population is in the Chincoteague National Wildlife Refuge approximately 50 miles from the reintroduction site. The reintroduction site is within the historic range of this species and is located at the Assawoman Wildlife Area, Sussex County, Delaware. Observation of previous releases have shown that fox squirrels have not traveled more than 2 or 3 miles from release sites, therefore, the possibility of this population contacting extant wild populations in unlikely.

(5) The reintroduced population will be checked periodically to determine its condition. Of special concern will be the establishment of breeding pairs and the reproductive success of the population. The movement patterns of the released individuals and the overall health of the population will also be observed.

Dated: March 9, 1984.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84–9055 Filed 4–4–84; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Finding on a Petition To List the Flattened Musk Turtle

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice on petition finding.

SUMMARY: The Service reports the initial finding on the substantiality of information to list the flattened musk turtle, in accordance with the Endangered Species Act of 1973, as amended. This species occurs only in central Alabama.

DATE: Comments may be submitted until further notice.

ADDRESSES: Interested persons or organizations are requested to submit comments to the Associate Director—Federal Assistance, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. Comments and materials relating to this notice are available for public inspection by appointment during normal business hours at the Service's Office of Endangered Species, Suite 500, 1000 North Glebe Road, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240; (703/235–2771).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended in 1982, requires that the Service make a finding whether a petition to list, reclassify, or delist a species presents substantial scientific or commercial information that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the **Federal Register**. Similarly, section 4(b)(3)(D)(i) of the Act requires a finding within 90 days on a petition to revise critical habitat, with prompt publication of the finding. When a positive finding is

made on a petition to list, reclassify, or delist a species, the Service is required to promptly commence a review of the status of the species.

The petition to list the flattened musk turtle, *Sternotherus minor depressus*, dated November 30, 1983, was received by the Service on December 1, 1983. It was submitted by Michael Bean and Bruce Manheim on behalf of the Environmental Defense Fund, and requested the Service to list the turtle as threatened without critical habitat. The Service finds that this petition does contain substantial biological information to indicate that a listing action may be warranted under provisions of the Act. The administrative record for this finding was completed February 16, 1984; the criteria in 50 CFR 424.14 were used to define and evaluate this petition.

The required status review for this species, known only from central Alabama, began with the December 30, 1982, vertebrate notice of review (47 FR 58454–58460). The Service hereby solicits data concerning this species now under review for listing. Especially sought is information regarding taxonomy, distribution, any recommended critical habitat for the species, and threats. Comments received will be considered in any future listing actions for this turtle.

If a petition is found to present substantial information indicating that an action may be warranted, the Service must decide within 12 months of its receipt whether the requested action is warranted in accordance with sections 4(b)(3)(B) and 4(b)(3)(D)(ii) of the Act, as amended.

This notice was prepared by Dr. C. Kenneth Dodd, Jr. of the Service's Office of Endangered Species in Washington (703/235–1975), with evaluations by appropriate staff biologists in the Endangered Species Program of the Service's regional offices and field stations.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

(Endangered Species Act of 1973, as amended; Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*))

Dated: March 30, 1984.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84-9131 Filed 4-4-84; 8:45 am]

BILLING CODE 4310-07-M

Notices

Federal Register
Vol. 49, No. 67
Thursday, April 5, 1984

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

Office of the Secretary

Sugar Import Quotas; Amendment of Import Quotas on Sugar for Quota Year 1984

AGENCY: Office of the Secretary, Agriculture.

ACTION: Notice.

SUMMARY: This notice increases the total base quota amount of sugar imported during the period September 26, 1983 through September 30, 1984 from 2,950,000 short tons, raw value, to 3,050,000 short tons, raw value. By a separate notice the U.S. Trade Representative is modifying the allocation provisions for the quota to provide for this increase.

EFFECTIVE DATE: April 5, 1984.

FOR FURTHER INFORMATION CONTACT: John Nuttall, Foreign Agricultural Service, Department of Agriculture, Washington, D.C. 20250, Telephone 202–447–2916.

SUPPLEMENTARY INFORMATION: Presidential Proclamation No. 4941, dated May 5, 1982 (47 FR 19661), amended headnote 3 of subpart A, part 10, schedule 1 of the Tariff Schedules of the United States (TSUS) to modify the import quotas on sugars and to establish a country-by-country allocation system for these imports. Under the terms of headnote 3, the Secretary of Agriculture established an annual (quota year) sugar import quota period of September 26, 1983–September 30, 1984 and on September 20, 1983 set the total amount permitted to be imported for purposes of paragraph (c)(i) of headnote 3 (the total base quota amount) during the 1984 quota year at 2,950,000 short tons, raw value (48 FR 42843).

Headnote 3 authorizes the Secretary of Agriculture to amend the quantative limitations established by paragraph (c) if he determines that such amendments are appropriate to give due consideration to the interests in the United States sugar market of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade.

Notice is herby give that, in accordance with the requirements of headnote 3 of subpart A, part 10, Schedule 1 of the TSUS and, after consultation with the Office of the United States Trade Representative and the Department of State, I have increased the total base quota amount for sugar imported during the period September 26, 1983 through September 30, 1984 by 100,000 short tons, raw value, resulting in a total of 3,050,000 short tons, raw value. I have determined that this increase gives due consideration to the interests in the United States sugar market of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade. In conformity with the above, paragraph (a) of headnote 3 is modified to read as follows:

3. (a) The total amount of sugars, sirups and molasses described in items 155.20 and 155.30, the products of all foreign countries entered, or withdrawn from warehouse for consumption, between September 26, 1983 and September 30, 1984, inclusive, shall not exceed in the aggregate 3,052,000 short tons, raw value. Of this amount, the total amount permitted to be imported for purposes of paragraph (c)(i) of this headnote (the total base quota amount) shall be 3,050,000 short tons, raw value, and the remaining 2,000 short tons, raw value, may only be used for the importation of "specialty sugars", as defined by the United States Trade Representative in accordance with paragraph (c)(ii) of this headnote.

Signed at Washington, D.C. on March 30, 1984.

John R. Block,

Secretary of Agriculture.

[FR Doc. 84–9114 Filed 4–4–84; 8:45 am]

BILLING CODE 3410–01–M

Forest Service

Rocky Mountain Region; Conveyance of Certain Small Tracts

AGENCY: Forest Service, USDA.

ACTION: Delegation of authority to: Forest Supervisors, Rocky Mountain Region.

SUMMARY: Pursuant to the delegations of authority to the Regional Forester, Rocky Mountain Region, at 49 FR 1259 (January 10, 1984), the following authority is hereby delegated to the Forest Supervisors of the Black Hills National Forest; Grand Mesa, Uncompahgre, and Gunnison National Forests; Medicine Bow National Forest; Nebraska National Forest; Arapaho and Roosevelt National Forests; Pike and San Isabel National Forests; and White River National Forest:

To execute and approve all documents for acquisition and conveyance of lands pursuant to the Act of January 12, 1983 (96 Stat. 2535) commonly known as the Small Tracts Act, and in accordance with regulations at 36 CFR 254 Subpart C. This authority may not be further delegated by the Forest Supervisors, and is subject to the following qualifications:

(1) Land appraisals must be recommended for approval to the Forest Supervisor by a qualified review appraiser.

(2) Survey plats must be recommended for approval to the Forest Supervisor by a licensed Forest Service land surveyor.

(3) Cultural resource inventories and surveys must be recommended for approval to the Forest Supervisor by a professional cultural resources specialist.

(4) The authority for waiver of proponent costs [36 CFR 254.40(c)] is reserved to the Regional Forester, Rocky Mountain Region.

S. H. Hanks,

Deputy Regional Forester.

[FR Doc. 84–9102 Filed 4–4–84; 8:45 am]

BILLING CODE 3410–11–M

Soil Conservation Service

Shenandoah Agricultural Pollution Control RC&D Measure Plan, West Virginia; Finding of No Significant Impact

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 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 Shenandoah Agricultural Pollution Control RC&D Measure, Jefferson County, West Virginia.

FOR FURTHER INFORMATION CONTACT: Rollin N. Swank, State Conservationist, Soil Conservation Service, 75 High Street, Morgantown, West Virginia 26505; telephone 304–291–4151.

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, Mr. Rollin N. Swank, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns soil and water management for agriculture-related pollutant control. The proposed project will be completed over a three-year period. Nine waste storage structures, one membrane lined waste storage pond, and one system of sump, pump, and pipeline will be constructed. Animal waste management plans including field practices to better control and utilize the manure will be developed for each system.

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 contracting Rollin N. Swank, State Conservationist.

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, Resource 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)

Dated: March 16, 1984.

Rollin N. Swank,

State Conservationist.

[FR Doc. 84–9101 Filed 4–4–84; 8:45 am]

BILLING CODE 3410–16–M

CIVIL AERONAUTICS BOARD

[Docket 42034]

Air America, Inc. Fitness Investigation; Prehearing Conference

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on April 12, 1984, at 10:00 a.m. (local time) in Room 1027, 1825 Connecticut Avenue, NW., Washington, D.C. before the undersigned Administrative Law Judge.

Dated at Washington, D.C. on March 29, 1984.

Ronnie A. Yoder,

Administrative Law Judge.

[FR Doc. 84–9122 Filed 4–4–84; 8:45 am]

BILLING CODE 6320–01–M

Application of Challenge Air Transport, Inc. For Certificate Authority

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order to Show Cause (84–3–127).

SUMMARY: The Board is proposing to find Challenge Air Transport, Inc. fit, willing, and able and to issue it a certificate of public convenience and necessity under section 401 of the Federal Aviation Act authorizing it to provide interstate and overseas scheduled air transportation of persons, property, and mail.

Responses: All interested persons wishing to respond to the Board's tentative fitness findings and proposed certificate award shall file their responses in Docket 41904. Responses should be addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428, and should be served upon the parties listed in Attachment B to the order. Responses shall be filed no later than April 18, 1984.

FOR FURTHER INFORMATION CONTACT: John F. Brennan, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, (202) 673–5340.

SUPPLEMENTARY INFORMATION: The complete text of Order 84–3–127 is available from our Distribution Section, Room 100, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 84–3–127 to that address.

By the Civil Aeronautics Board: March 30, 1984.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84–9121 Filed 4–4–84; 8:45 am]

BILLING CODE 6320–01–M

[Docket 41998]

Puerto Rico—Venezuela Fitness Investigation; Hearing

Notice is hereby given that a hearing in the above-entitled matter is assigned to commence on May 23, 1984, at 9:30 a.m. (local time) in Room 1027, Universal Building, 1825 Connecticut Ave., NW., Washington, D.C., before the undersigned Chief Administrative Law Judge.

Dated at Washington, D.C., April 2, 1984.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 84–9123 Filed 4–4–84; 8:45 am]

BILLING CODE 6320–01–M

CIVIL RIGHTS COMMISSION

Idaho Advisory Committee; Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Idaho Advisory Committee to the Commission will convene at 1:00 p.m. and will end at 5:00 p.m., on May 11, 1984, at the Federal Building, Room 429, 550 West Fort Street, Boise, Idaho, 83724. The purpose of the meeting is to discuss program planning.

Persons desiring additional information, or planning a presentation to the Committee, should contact the Chairperson, Mr. Rudy M. Pena, at (208) 334–3993 or the Northwestern Regional Office at (206) 442–1246.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., April 2, 1984.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 84–9075 Filed 4–4–84; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Bureau of the Census

Census Advisory Committee of the American Statistical Association; Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463 as amended by Pub. L. 94–409), we are giving notice that the Census Advisory Committee of the American Statistical Association will convene on April 26 and 27, 1984. The Committee will meet in Room 2424, Federal Building 3, at the Bureau of the Census in Suitland, Maryland.

The Census Advisory Committee of the American Statistical Association advises the Director, Bureau of the Census, on the Bureau's programs as a whole and on their various parts, considers priority issues in the planning of censuses and surveys, examines guiding principles, advises on questions of policy and procedures, and responds to Bureau requests for opinions concerning its operations.

The Committee is composed of 15 memberes appointed by the President of the American Statistical Association.

The agenda for the April 26 meeting, which will begin at 1 p.m. and adjourn at 4:45 p.m., is: (1) Introductory remarks by the director of the Bureau of the Census, including (a) staff changes and Bureau organization, (b) major budget and program developments, and (c) other topics of current interest; (2) Committee and Census Bureau staff discussion, including (a) Bureau responses to previous Committee recommendations, (b) status of specific Bureau activities, and (c) Bureau activities described at earlier Committee meetings; (3) obtaining expert advice; and (4) 1990 census activities, including (a) update on planning, (b) geographic planning and nationwide block numbering, and (c) testing progress and plans.

The agenda for the April 27 meeting, that will begin at 9 a.m. and adjourn at 4:30 p.m., is: (1) Update on the Survey of Income and Program Participation; (2) the 5-year research plan; (3) disclosure analysis; (4) Committee meeting to develop recommendations; (5) valuation of noncash income; (6) Committee discussion of recommendations; (7) additional Committee and Bureau staff discussion, and (8) recommendations, plans, and suggested agenda items for the next meeting.

The meeting is open to the public, and a brief period is set aside on April 27 for public comment and questions. Those persons with extensive questions or statements must submit them in writing to the Committee Control Officer at least 3 days before the meeting.

Persons wishing additional information concerning this meeting or who wish to submit written statements may contact the Committee Control Officer, Dr. David W. Chapman, Bureau of the Census, Room 3540, Federal Building 3, Suitland, Maryland. (Mail address: Washington, D.C. 20233). Telephone (301) 763–1292.

Dated: March 30, 1984.

John G. Keane,

Director, Bureau of the Census.

[FR Doc. 84–9077 Filed 4–4–84; 8:45 am]

BILLING CODE 3510–07–M

Foreign-Trade Zones Board

[Order No. 246]

Resolution and Order Approving the Application of the Metropolitan Nashville-Davidson County Port Authority for Two Foreign-Trade Subzones for the Tennessee Valley Authority in Tennessee

Proceedings of the Foreign-Trade Zones Board, Washington, D.C.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Metropolitan Nashville-Davidson County Port Authority, grantee of Foreign-Trade Zone 78, Nashville, filed with the Foreign-Trade Zones Borad (the Board) on February 23, 1984, requesting special-purpose subzone status for certain storage facilities at the Tennessee Valley Authority's Phipps Bend and Hartsville Nuclear Plant Sites, in Hawkins County, and Trousdale and Smith Counties, Tennessee, respectively, the Board finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application for a five-year period.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority To Establish Two Foreign-Trade Subzones in Trousdale and Smith Counties, and in Hawkins County, Tennessee

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes", as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the Metropolitan Nashville-Davidson County Port Authority, grantee of Foreign-Trade Zone No. 78, Nashville, has made application (filed February 23, 1984, Docket No. 5–84, 49 FR 7422) in due and proper form to the Board for special-purpose subzone status for storage facilities at Tennessee Valley Authority's (TVA) Hartsville Nuclear Plant Site in Trousdale and Smith Counties, Tennessee, adjacent to the Nashville Customs port of entry, and at TVA's Phipps Bend Nuclear Plant Site in Hawkins County, adjacent to the Knoxville Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied;

Now, therefore, in accordance with the application filed February 23, 1984, the Board hereby authorizes the establishment of a subzone at TVA's Hartsville Nuclear Plant Site, designated on the records of the Board as Foreign-Trade Subzone No. 78C, and a subzone at TVA's Phipps Bend Nuclear Plant Site, designated on the records of the Board as Foreign-Trade Subzone No. 78D, at the locations mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and the Regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

This grant shall be in effect for a period of five years.

Activation of the subzones shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from Federal, State, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzones in the performance of their official duties.

The grant shall not be construed to relieve responsible parties from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzones, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and District Army Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the Unites States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer or his delegate at Washington, D.C. this 30th day of March 1984 pursuant to Order of the Board.

Foreign-Trade Zones Board.

William T. Archey,

Acting Assistant Secretary of Commerce for Trade Administration, Chairman, Committee of Alternates.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 84-9109 Filed 4-4-84; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-588-013]

Certain Steel Valves and Certain Parts Thereof From Japan; Preliminary Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have preliminarily determined that certain steel valves and certain parts thereof from Japan are being, or are likely to be, sold in the United States at less than fair value. Therefore, we have notified the U.S. International Trade Commission (ITC) of our determination, and we have directed the U.S. Customs Service to suspend the liquidation of all entries on the subject merchandise which are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice and to require a cash deposit or bond for each such entry in an amount equal to the estimated dumping margin as described in the "Suspension of Liquidation" section of this notice.

Those firms that are subject to suspension of liquidation are indicated in the "Suspension of Liquidation" section.

If this investigation proceeds normally, we will make a final determination by June 13, 1984.

EFFECTIVE DATE: April 5, 1984.

FOR FURTHER INFORMATION CONTACT: Francis R. Crowe, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377-4087.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We have preliminarily determined that there is a reasonable basis to believe or suspect that certain steel valves and certain parts thereof (valves) from Japan are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The firms concerned are indicated in the "Suspension of Liquidation" section of this notice.

We have found that the foreign market value of valves exceeded the United States price on 13.2 percent of the sales we compared. These margins ranged from .002 percent to 141.5 percent. The overall weighted-average margin on all valve sales compared is 2.05 percent. The weighted-average margins for individual companies investigated are presented in the "Suspension of Liquidation" section of this notice.

If this investigation proceeds normally, we will make a final determination by June 13, 1984.

Case History

On September 22, 1983, we received a petition filed by counsel for Condec Flow Control Group of the Lunkenheimer Company; Cooper Value Company; Crane Company, Mark Control Corporation; the Wm. Powell Company, Rockwell International Corporation, Flow Control Division; Smith Valve Corporation, Henry Vogt Machine Company; and Walworth Company as individual petitioners and collectively as the Valve Manufacturers Association Fair Trade Council.

In compliance with the filing requirements of § 353.36 of our regulations (19 CFR 353.36), the petitioners alleged that imports of the subject merchandise from Japan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are materially injuring, or are threatening to materially injure, a United States industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping investigation. We notified the ITC of our action and initiated such an investigation on October 11, 1983 (48 FR 48267). The ITC found, on November 7, 1983, that there is a reasonable indication that imports of valves are materially injuring, or are threatening to materially injure, a United States industry.

The petitioners alleged that at least 13 Japanese companies produce valves for export to the United States. However, we identified 3 producers and exporters which account for approximately 85 percent of the subject valves sold for export to the United States. We presented questionnaires in Japan to these producers and exporters on October 28, 1983.

On November 10 and 21, 1983, we received letters from counsel from the Japanese valve producers and exporters requesting additional time in which to respond because of the complicated nature of the products involved. Extensions were granted and we received responses on December 16 and 19, 1983. We received responses from the following companies: Hitachi Metals, Ltd. (Hitachi), Kitz Corporation (Kitz) and Takamisawa Koki Mfg., Ltd. (TKM).

On February 9, 1984, at the request of the petitioners, we postponed the preliminary determination for 30 days (49 FR 7843).

Scope of Investigation

The merchandise covered by this investigation consists of "wedge gate," "swing check," and "globe," valves, and certain parts of the foregoing, of steel, currently provided for under item number 680.17 of the Tariff Schedules of United States. "Certain parts" include machined valve bodies and partially completed valves consisting of machined valve bodies imported with one or more of the following parts: bonnet, stem, wedge, handle or seat rings. Pursuant to a letter from counsel for the petitioners, dated October 25, 1983, the product description as stated in the Notice of Initiation is hereby amended by excluding bellows seal valves and non-machined valve bodies.

Since the respondents produced and sold approximately 85 percent of the valves for export from Japan to the United States during the period of investigation, we limited our investigation to them.

We investigated sales made by these respondents during the period from April 1 to September 30, 1983.

Fair Value Comparison

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

As provided in section 772(b) of the Act, we used the purchase price of the subject merchandise to represent the United States price for the majority of sales by the Japanese producers, because the merchandise was sold to unrelated purchasers prior to its importation into the United States.

We calculated the purchase price based on the f.o.b. foreign port, f.o.b. delivered to various customer designated locations, or ex-dock, packed price to unrelated purchasers in the United States. We made deductions, where appropriate, for foreign inland freight, foreign inland insurance, foreign brokerage and handling charges, ocean freight, marine insurance, U.S. brokerage and handlng charges, U.S. customes duties and U.S. inland freight. We used exporter's sales price to represent the United States price of a portion of the merchandise sold by Hitachi because the merchandise was sold to unrelated purchasers after importation into the United States. For these sales, we made additional deductions, where appropriate, for credit costs and other selling expenses incurred in the United States.

Foreign Market Value

In accordance with section 773(a) of the Act, with the exception of some sales by TKM, we calculated foreign market value based on home market sales. For purposes of determining similar merchandise under section 771(16) of the Act, we made comparisons based on valves of the same type (wedge gate, globe or swing check), body materials (carbon, alloy, or stainless steel), pressure classification, size and whether forged or cast. In the case of TKM, there were no sales in the home market to use as a basis for foreign market value for some categories of valves. As required in section 773(a)(1)(B) of the Act, we selected sales for export to a country other than the United States (a "third country") as the basis for foreign market value or, if TKM had no third country sales for those categories, we determined foreign market value on the basis of constructed value in accordance with section 773(a) of the Act.

A portion of the Hitachi and Kitz home market sales failed in the comparison of one or more of the characteristics noted above. However, we calculated the foreign market value for these valves using home market sales on the basis of comparisons made by the companies as the best information available for this preliminary determination. We will seek information for the final determination which will allow us to make comparisons to third country sales or to constructed value, as appropriate.

Where we used home market prices as the basis for foreign market value, we calculated the home market prices for each type of valve on the basis of delivered packed prices to unrelated purchasers. From these prices, we deducted, where appropriate, foreign inland freight and foreign inland insurance. We made adjustments, where appropriate, for credit expenses, advertising expenses and warranty and servicing expenses in accordance with section 353.15 of our regulations. When there were commissions on sales in the home market and none on sales to the United States, we made adjustments for the differences between commissions in the home market and indirect selling expenses on sales to the United States used as an offset to the home market commissions in accordance with section 353.15(c) of our regulations. We also made adjustments for the cost of materials, labor and direct factory overhead associated with differences in the merchandise in accordance with section 353.16 of the Commerce regulations. We also deducted the home market packing cost, where appropriate, and added the packing cost incurred on sales to the United States.

We disallowed the following claims in calculating foreign market value. Kitz requested adjustments for quality control and technical service expenses. However, we did not make the adjustments because the claims appear to include both allowable and non-allowable expenses, and we do not have sufficient information to allocate those expenses that are directly attributable to sales of the merchandise. We will seek further information for purposes of our final determination.

Kitz also requested a deduction of indirect selling expenses in the home market to offset U.S. commissions. We disallowed their claim for such an adjustment because Kitz provided no information relating to the amount of the U.S. commission against which such an offset could be made. In addition, Kitz also claims an adjustment for commissions on sales in the home market. If the amount of the U.S. commission were known, an adjustment for differences in the commissions in the two markets would be made in accordance with § 353.15 (a) and (b) rather than allowing an offset under § 353.15(c). We will seek further information for purposes of our final determination.

In the case of TKM, where we used sales to a third country as the basis for foreign market value, we calculated the third country prices on the basis of the ex-works of f.o.b. Japanese port, unpacked price to unrelated purchasers in four separate countries. We did this because there were no sales to a single country that provided an adequate sample for determining the foreign market value for all categories of valves not sold in the home market. We made deductions, where appropriate, for Japanese brokerage and handling charges and inland freight. We made adjustments, where appropriate, for credit expenses in accordance with section 353.15 of our regulations. Since there were no commissions on sales to the United States, we made adjustments, where appropriate, for the difference between commissions in the third country sales and indirect selling expenses on sales in the United States used as an offset to the third country commissions in accordance with § 353.15(c) of our regulations. We also made adjustments for the cost of materials, labor and direct factory overhead associated with differences in merchandise in accordance with § 353.16 of our regulations. We added the packing cost incurred on sales to the United States.

Where we used constructed value as the basis for foreign market value, we calculated the cost of materials, fabrication, general expenses, profit, and the cost of packing. The amount added for general expenses was the amount of such expenses which was higher than the statutory minimum of 10 percent of the sum of material and fabrication costs. The amount added for profit was the statutory minimum of 8 percent of the sum of materials, fabrication costs, and general expenses.

Where we used exporter's sales price, we deducted home market indirect selling expenses to offset U.S. selling expenses.

Verification

In Accordance with 776(a) of the Act, we will verify all data used in reaching a final determination in this investigation.

ITC Notification

In Accordance with section 773(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-provileged and non-confidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of the subject values from Japan which are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the Federal Register. The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price. Where sales by trading companies cannot be identified by manufacturer, the Customs Service shall require a cash desposit or the posting of a bond equal to the highest estimated weighted-average margin of 6.51 percent. This suspension of liquidation will remain in effect until further notice. The weighted-average margins are as follows:

Manufacturer	Weighted-average margin percentage
Kitz Corporation	6.51
Hitachi Metals, Ltd	0.99
Takamisawa Koki Mfg., Ltd	1.19
All other companies	2.05

Public Comment

In accordance with section 353.47 of our regulations, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 1:30 p.m. on May 15, 1984, at the U.S. Department of Commerce, Room B841, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room 3099B, at the above address within 10 days of the publication of this notice.

Requests should contain (1) The party's name, address, and telephone number; (2) the number of participants (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by May 8, 1984. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within 30 days of publication of this notice, at the above address in at least 10 copies.

Dated: March 30, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-9105 Filed 4-4-84; 8:45 am]

BILLING CODE 3510-25-M

Export Trade Certificate of Review

AGENCY: I:nternational Trade Administration, Commerce.

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and invites interested parties to submit information relevant to the determination of whether a certificate should be issued.

DATE: Comments on these applications must be submitted on or before April 16, 1984.

ADDRESS: Interested parties should submit their written comments, original and five (5) copies, to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, D.C. 20230.

Comments should refer to this application as "Export Trade Certificate of Review, application number 84-00012."

FOR FURTHER INFORMATION CONTACT: Charles S. Warner, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131, or Eleanor Roberts Lewis, Assistant General Counsel for Export Trading Companies, Office of General Counsel, 202/377-0937. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: This corrects the Notice of Application for Northwest Fruit Exporters, Application #84-0012, which was published March 27, 1984, 49 FR 11697, column 2, FR Doc. 84-8159, as follows:

1. Date by which comments must be submitted is changed from April 11, 1984 to April 16, 1984.

2. The last seven lines of the second paragraph of summary of the application at 49 FR 11698 should read as follows: Establishing and operating fumigation facilities; allocating export quotas among growing regions and members; providing market entry and development assistance, including related administrative and promotional services; and arranging transportation services for export.

Dated: March 30, 1984.

Irving P. Margulies,

Acting General Counsel.

[FR Doc. 84-9112 Filed 4-4-84; 8:45 am]

BILLING CODE 3510-DR-M

[A-428-062]

Animal Glue and Inedible Gelatin From West Germany; Final Results of Administrative Review of Antidumping Finding

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of final results of administrative review of antidumping finding.

SUMMARY: On January 30, 1984, the Department of Commerce published the preliminary results of its administrative review and tentative determination to revoke in part the antidumping finding on animal glue and inedible gelatin from West Germany. The review covers the eight known manufacturers and/or exporters and one third-country reseller of this merchandise to the United States and the period December 1, 1981 through November 30, 1982.

We gave interested parties an opportunity to submit oral or written comments on the preliminary results and tentative determination to revoke in part. We received no comments. Based on our analysis, the final results of our review are the same as the preliminary results.

EFFECTIVE DATE: April 5, 1984.

FOR FURTHER INFORMATION CONTACT: Elizabeth Wright or Robert Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On January 30, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 3677–3679) the preliminary results of its administrative review and tentative determination to revoke in part the antidumping finding on animal glue and inedible gelatin from West Germany (42 FR 64116, December 22, 1977). The Department has now completed that administrative review.

Scope of the Review

Imports covered by the review are shipments of animal glue and inedible gelatin of which there are two principal types, hide glue and bone glue. Animal glue is an organic colloid of protein derivation. There is no significant difference between animal glue and inedible gelatin. Animal glues are odorless, dry, hard, hornlike materials. They are used as general purpose adhesives in industries producing abrasives, paper containers, book and magazine bindings, and leather goods. They are also used as sizing agents and as colloids in emulsions and cleaning compounds. Animal glue and inedible gelatin are currently classifiable under items 455.4000 and 455.4200 of the Tariff Schedules of the United States Annotated.

The review covers the eight known manufacturers and/or exporters and one third-country reseller of West German animal glue and inedible gelatin to the United States and the period December 1, 1981 through November 30, 1982.

Final Results of the Review

We gave interested parties an opportunity to comment on the preliminary results and tentative determination to revoke in part. The Department received no written comments or requests for a hearing. Based on our analysis, the final results of review are the same as the preliminary results, and we determine that the following margins exist:

Manufacturer/exporter	Margin (percent)
Chemische Dungerfabriek Rendsburg	[1] 158.00
G. Conradt & Sohn	[1] 67.00
Johannes Marten K–G	[1] 0
Ph. Carl Weiss	[1] 16.34
Nienburger Gelatin GmbH	[1] 158.00
Fritz Hacker & Sohn GmbH	0
Deutsche Gelatin-Fabrieken Stoess & Co./Gould-Metall	[1] 158.00
Marcuse, Dorme & Company Limited (U.K.)	[1] 16.34

[1] No shipments during the period.

The Department shall instruct the Customs Service not to assess antidumping duties on all appropriate entries.

Further, as provided for by § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based on the above margins shall be required on all shipments of West German animal glue and inedible gelatin from these firms entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. For any future shipments from a new exporter not covered in this or prior reviews, whose first shipments occurred after November 30, 1982, and who is unrelated to any covered firm, no cash deposit shall be required. These deposit requirements shall remain in effect until publication of the final results of the next administrative review. The Department will examine exports of this merchandise manufactured and exported by Fritz Hacker & Sohn GmbH during the period December 1, 1982 through January 30, 1984, the date of our tentative determination to revoke with regard to this firm, in our next administrative review. The Department intends to begin immediately the next administrative review.

The Department encourages interested parties to review the public record and submit applications for protective orders, if desired, as early as possible after the Department's receipt of the information during the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1675(a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

March 27, 1984.

[FR Doc. 84–9106 Filed 4–4–84; 8:45 am]

BILLING CODE 3510–DS–M

[A–588–035]

Cadmium From Japan; Preliminary Results of Administrative Review of Antidumping Finding

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of preliminary results of administrative review of antidumping finding.

SUMMARY: The Department of Commerce has conducted an administrative review of the antidumping finding on cadmium from Japan. The review covers the seven known exporters of this merchandise to the United States and the period August 1, 1982 through July 31, 1983. There were no known shipments of this merchandise to the United States during the period, and there are no known unliquidated entries.

As a result of the review, the Department has preliminarily determined not to require cash deposits of estimated antidumping duties on future entries. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: April 5, 1984.

FOR FURTHER INFORMATION CONTACT: Edward F. Haley or John R. Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: (202) 377–3601.

SUPPLEMENTARY INFORMATION:

Background

On September 9, 1983, the Department of Commerce ("the Department") published in the **Federal Register** (48 FR 40759) the final results of its last administrative review of the antidumping finding on cadmium from Japan (37 FR 15760, August 4, 1972) and announced its intent to begin immediately the next administrative review. As required by section 751 of the Tariff Act 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

Scope of the Review

Imports covered by the review are shipments of cadmium, currently classifiable under items 632.1420 and 632.1440 of the Tariff Schedules of the United States Annotated.

The review covers the seven known exporters of Japanese cadmium to the United States and the period August 1, 1982 through July 31, 1983. There were no known shipments of this merchandise to the United States during the period, and there are no known unliquidated entries.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that we will not require a cash deposit of estimated antidumping duties, as provided for in § 353.48(b) of the Commerce regulations, on any shipments of Japanese cadmium entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the

first workday thereafter. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

March 28, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-9108 Filed 4-4-84; 8:45 am]

BILLING CODE 3510-DS-M

[A-122-005]

Carbon Steel Bars and Structural Shapes From Canada; Final Results of Administrative Review of Antidumping Finding

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of final results of administrative review of antidumping finding.

SUMMARY: On February 1, 1984, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on carbon steel bars and structural shapes from Canada. The review covers carbon steel bars and structural shapes manufactured by Western Canada Steel Ltd., its subsidiary, Vancouver Rolling Mills Ltd., the six other known exporters of this merchandise to the United States and the period September 1, 1981 through August 31, 1982.

We gave interested parties an opportunity to submit oral or written comments on the preliminary results. We received no comments. Based on our analysis, the final results of review are unchanged from those presented in the preliminary results of review.

EFFECTIVE DATE: April 5, 1984.

FOR FURTHER INFORMATION CONTACT: Sheila Forbes or Robert Marenick, Office of Compliance, International Trade Administration, U.S Department of Commerce, Washington, D.C. 20230, telephone: (202) 377-2923/5255.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 4025) the preliminary results of its administrative review of the antidumping finding on carbon steel bars and structural shapes from Canada (29 FR 13319, September 25, 1964). The Department has now completed that administrative review.

Scope of the Review

Imports covered by the review are shipments of carbon steel bars, bars-shapes under 3 inches, and structural shapes 3 inches and over, currently classifiable under items 606.8300 and 609.8000 of the Tariff Schedules of the United States Annotated, manufactured by Western Canada Steel Limited and/or its subsidiary, the Vancouver Rolling Mills Limited of Vancouver, Canada.

The review covers Western Canada Steel Limited, its subsidiary, Vancouver Rolling Mills Limited, the six other known exporters of this merchandise to the United States, and the period September 1, 1981 through August 31, 1982.

Final Results of the Review

We gave interested parties an opportunity to comment on the preliminary results. The Department received no written comments or requests for a hearing. Based on our analysis, the final results of our review are the same as those presented in the preliminary results of the review, and we determine that the following margins exist for the period September 1, 1981 through August 31, 1982:

Manufacturer/exporter	Margin (percent)
Western Canada Steel Ltd.	40.64
Western Canada/A.J. Forsyth Co., Ltd.	[1] 0.01
Western Canada/Mitsubishi Canada Ltd.	[1]0.01
Western Canada/Mitsui & Co. (Canada) Ltd.	[1]0.01
Western Canada/Tudor Sales Ltd.	[1] 0.01
Western Canada/Cam Chain Co., Ltd.	3.20
Western Canada/Chatham Steel Ltd.	3.20

[1] No shipments during the period.

The Department shall determine, and the Customs Service shall assess, dumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Further, as provided for in § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based upon the above margins shall be required for those firms. The Department shall waive the cash deposit requirement for A.J. Forsyth Co., Ltd., Mitsubishi Canada Ltd., Mitsui & Co. (Canada) Ltd., and Tudor Sales Ltd., since the margins for these firms are less than 0.5 percent and, therefore, *de minimis* for cash deposit purposes. For any shipments from a new exporter of carbon steel bars and structural shapes manufactured by Western Canada Steel, Ltd., or its subsidiary, Vancouver Rolling Mills Ltd., not covered in this or prior reviews, whose first shipments occurred after August 31, 1982 and who is unrelated to any coverd firm, a cash deposit of 3.20 percent shall be required on future entries. These deposit requirements and waivers are effective for all shipments of Canadian carbon steel bars and structural shapes manufactured by Western Canada Steel Ltd. or its subsidiary, Vancouver Rolling Mills Ltd., entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice.

The Department encourages interested parties ot review the public record and submit applications for protective orders, if desired, as early as possible after the Department's receipt of the information during the next administrative review, The Department intends to begin immediately the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act of 1930 (91 U.S.C. 1675(a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

March 29, 1984.

Alan F. Holmer,

Deputy Assistant Secretary For Import Administration.

[FR Doc. 84-9107 Filed 4-4-84; 8:45 am]

BILLING CODE 3510-DS-M

National Technical Information Service

Intent To Grant; Exclusive Patent License

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Bend Research, Inc., having a place of business in Bend, Oregon an exclusive right to manufacture, use, and sell products embodied on the invention entitled, "Extraction of Metal Ions from Aqueous Solution," U.S. Patent No. 4,437,994. The patent rights of this invention are being assigned to the United States of America, as represented by the Secretary of Commerce.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 41 CFR 101-4.1. The proposed license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other materials relating to the proposed license must be submitted to the Office of Government Inventions and Patents, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Patent Licensing, Office of Government Inventions and Patents, U.S. Department of Commerce, National Technical Information Service.

[FR Doc. 84-9050 Filed 4-4-84; 8:45 am]

BILLING CODE 3510-4-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Airlift Cross-Matrix Panel Meeting

March 27, 1984.

The USAF Scientific Advisory Board Airlift Cross-Matrix Panel will meet 30 May at 8:00 a.m. to 12:00 p.m. at Scott AFB IL and at Hurlburt AFB FL 31 May at 8:00 a.m. to 5:00 p.m.; and 1 June at 8:00 a.m. to 12:00 pm.

The purpose of the meeting will be to discuss Military Airlift Command Special Operations Forces. The meeting concerns matters listed in section 552b(c) of Title 5, United States Code, specifically, subparagraphs (1) and (4) thereof and is closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202-697-8404.

Winnibel F. Holmes,

Air Force Federal Register Liaison Officer.

[FR Doc. 84-9103 Filed 4-4-84; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army; Corps of Engineers

Categorical Exclusions

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice.

SUMMARY: The nationwide permit in 33 CFR 330.5(a)(23), published by the Corps of Engineers in its interim final rules on July 22, 1982, provided for categorically excluding certain Federal activities from environmental documentation provided certain conditions were met. The Department of the Interior, Bureau of Reclamation, has requested the Corp's concurrence in that agency's categorical exclusions which were previously published in the **Federal Register**. The Corps of Engineers is soliciting comments on this proposal which will be used in making final decisions on this matter.

DATE: Written comments must be received on or before May 21, 1984.

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

FOR FURTHER INFORMATION CONTACT: Dr. Robert Pierce or Sam Collinson at (202) 272-0199.

Dated: February 2, 1984.

Approved:

Michael Volpe,

Colonel, Corps of Engineers, Executive Director of Civil Works.

The U.S. Department of the Interior, Bureau of Reclamation, has requested that the Office of the Chief of Engineers concur in their categorical exclusion determination in order that they may utilize the nationwide permit published at 33 CFR 330.5(a)(23). That permit reads:

Activities, work, and discharges undertaken, assisted, authorized, regulated, funded, or financed, in whole or in part, by another Federal agency or department where that agency or department has determined, pursuant to the CEQ Regulation for Implementing the Procedural Provisions of the National Environmental Policy Act (40 CFR Part 1500 et seq.), that the activity, work, or discharge is categorically excluded from environmental documentation because it is included within a category of actions which neither individually nor cumulatively have a significant effect on the human environment and th Office of the Chief of engineers (ATTN: DAEN-CWO-N) has been furnished notice of the agency or department's application for the categorical exclusion and concurs with that determination.

The permit is subject to conditions listed at 33 CFR 330.5(b) and the management practices listed at 33 CFR 330.6.

Upon concurrence by the Office of the Chief of Engineers, activities categorically excluded by the Bureau of Reclamation will be authorized by nationwide permit and would require an individual permit review only at the discretion of a division engineer.

The Bureau of Reclamation's categorical exclusions were published on April 21, 1983 (48 FR 17151). Those which may be subject to Department of the Army permit authority are listed below. In addition, a copy of the checklist utilized by the Bureau to evaluate an action for categorical exclusion is appended. If all answers on list are checked "no" then the actions meets the criteria for categorical exclusion. If any one answer is checked "yes", then an ennvironmental assessment will be prepared unless there is no doubt that an environmental impact statement is required.

Comments are invited on the appropriateness of authorizing the Bureau of Reclamation's categorically excluded activities under the subject nationwide permit and, if necessary, any conditions that should be imposed to ensure that activities comply with provisions of the Clean Water Act.

List of Those Bureau of Reclamation Categorical Exclusions Which May Be Subject to Department of Army Permit Authority

516 DM 6, Appendix 9

Bureau of Reclamation

9.4 Categorical Exclusions

In addition to the actions listed in the Departmental categorical exclusions outlined in Appendix 1 of 516 DM 2, many of which the Bureau also performs, the following Bureau actions are designated categorical exclusions unless the action qualifies as an exception under 516 DM 2.3A(3):

A. General Activities

2. Training activities of enrollees assigned to the various youth programs. Such training may include minor construction activities for other entities.

3. Research activities, such as nondestructive data collection and analysis, monitoring, modeling, laboratory testing, calibration, and testing of instruments or procedures and nonmanipulative field studies.

B. Planning Activities

3. Data collection studies that involve test excavations for cultural resources investigations or test pitting, drilling, or seismic investigations for geologic exploration purposes where the impacts will be localized.

C. Project Implementation Activities

3. Minor construction activities associated with authorized projects which correct unsatisfactory environmental conditions or which merely augment or supplement, or are enclosed within existing facilities.

4. Approval of land management plans where implementation will only result in minor construction activities and resultant increased operation and maintenance activities.

D. Operation and Maintenance Activities

1. Maintenance, rehabilitation, and replacement of existing facilities which may involve a minor change in size, location and/or operation.

9. Issuance of permits for removal of gravel or sand by an established process from existing quarries.

11. Implementation of improved appearance and soil and moisture conservation programs where the impacts are localized.

12. Conduct of programs of demonstration, educational, and technical assistance to water user organizations for improvement of project and on-farm irrigation water use and management.

17. Minor safety of dams construction activities where the work is confined to the dam, abutment areas, or appurtenant features, and where no major change in reservoir or downstream operation is anticipated as a result of the construction activities.

E. Grant and Loan Activities

1. Rehabilitation and Betterment Act loans and contracts which involve repair, replacement, or modification of equipment in existing structures or minor repairs to existing dams, canals, laterals, drains, pipelines, and similar facilities.

2. Small Reclamation Projects Act grants and loans where the work to be done is confined to areas already impacted by farming or development activities, work is considered minor, and where the impacts are expected to be localized.

3. Distribution System Loans Act loans where the work to be done is confined to areas already impacted by farming or developing activities, work is considered minor, and where the impacts are expected to be localized.

Categorical Exclusion Checklist

Projects:_____
Date: _____
Nature of Action:
Exclusion category:

Evaluation of criteria for Categorical Exclusion

1. This action or group of actions would have a significant effect on the quality of human environment.	No——	Uncertain——	Yes——
2. This action or group of actions would involve unresolved conflicts concerning alternative uses of available resources.	No——	Uncertain——	Yes——

Evaluation of exceptions to actions within Categorical Exclusion

1. This action would have significant adverse effects on public health or safety.	No——	Uncertain——	Yes——
2. This action would affect unique geographical features as: wetlands, wild or scenic rivers, refuges, floodplains, etc.	No——	Uncertain——	Yes——
3. The action will have highly controversial environmental effects.	No——	Uncertain——	Yes——
4. The action will have highly uncertain environmental effects or involve unique or unknown environmental risk.	No——	Uncertain——	Yes——
5. This action will establish a precedent for future actions.	No——	Uncertain——	Yes——
6. This action is related to other actions with individually insignificant but cumulatively effects.	No——	Uncertain——	Yes——
7. This action will affect properties listed or eligible for listing in the National Register of Historic Places.	No——	Uncertain——	Yes——
8. This action will affect a species listed or proposed to be listed as Endangered or Threatened.	No——	Uncertain——	Yes——
9. This action threatens to violate Federal, State, local or tribal law or requirements imposed for protection of the environment.	No——	Uncertain——	Yes——

NEPA Action-Categorical Exclusion _____
EA _____
EIS _____
Explanation and/or remarks:
Preparers Name and Title:
Regional Archeologist concurrence with item 7 _____
Concur: _____
Signature of Division/Office Chief
Date: _____
Concur: _____
Signature Environmental Affairs Officer
Date: _____

[FR Doc. 84-8938 Filed 4-4-84; 8:45 am]
BILLING CODE 3710-92-M

Intent To Prepare a Draft Environmental Impact Statement (DEIS) For a Small Flood Control Project on the Salmon River, Lemhi County, Idaho

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY: 1. The project is to reduce ice jam related flood damages along the Salmon River in the vicinity of Salmon, Idaho. The river in this area has a history of ice jamming and associated flooding which occasionally has caused major damages. Most recent floods were in 1981 when damages exceeded $1 million and this winter when damages exceeded $2 million.

2. Alternatives to be investigated include:

a. Dump Creek fan excavation.

b. City of Salmon levee system.

c. Ice barrier upstream of Salmon.

d. Modify structures in flood plain.

e. Levee in combination with Dump Creek fan removal or upstream barrier.

f. No action.

3. The Forest Service, USDA will be a cooperating agency in preparation of the DEIS. Other affected Federal, State and local agencies, affected Indian tribes, and other interested organizations and parties are invited to participate in scoping for the DEIS. A formal scoping meeting is not planned; however, comments should be directed to the address given below. Comments concerning the DEIS scope are requested by 15 May 1984. An information packet, which further describes the alternatives to be investigated and issues of concern identified at this time, is available from the address below.

4. The Salmon River at Dump Creek is a component of the Wild and Scenic Rivers System and the reach above North Fork is a study segment in the Nationwide Rivers Inventory. Significant issues to be addressed in the DEIS include effects of the alternatives on the wild and scenic classification and inventory reach, impacts on a large wetland in the Deadwater area, and impacts on wildlife, fisheries, endangered species, cultural resources, and socioeconomics. The project will be reviewed under all applicable Federal, state, and local statutes.

5. The draft reconnaissance report and DEIS should be available on or about 1 October 1984.

ADDRESS: Comments concerning the project and DEIS should be addressed to L.V. Armacost, Chief, Planning Division, Walla Walla District, Corps of Engineers, Building 602, City-County Airport, Walla Walla, WA 99362. Comments or questions can be telephoned to Witt Anderson, 509-522-6626 or FTS 434-6626.

Dated: March 28, 1984.

Robert B. Williams,

Colonel, CE, Commanding.

[FR Doc. 84-9039 Filed 4-4-84; 8:45 am]
BILLING CODE 3710-GC-M

Army Science Board; Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act

(Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: Monday, 23 April 1984 and Tuesday, 24 April 1984 if an extra day is needed for the deliberations of the subgroup.

Times: 0830–1700 hours (Closed).

Place: The Pentagon, Washington, D.C.

Agenda: The Army Science Board Ad Hoc Subgroup on Chemical/Bilogical Warfare Intelligence will kick off this study effort with classified briefings and discussions addressing the following terms of reference: a review of current Army CBW intelligence efforts; identification of user needs and priorities; and, recommendation of specific tasks which the Army can and should accomplish regarding chemical warfare. This meeting will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The Army Science Board Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Maria P. Winters,

Acting Administrative Officer.

[FR Doc. 84-9189 Filed 4-4-84; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Meeting Change

The following changes have occurred for the meeting of the Manning a Ready Force Subpanel of the Army Science Board 1984 Summer Study on Leading and Manning Army 21, which was originally announced in the **Federal Register** issue of Monday, March 26, 1984 (49 FR 11233), FR Doc. 84–8047:

Meeting Date: Monday, 16 April 1984 (instead of Monday & Tuesday, 16&17 April 1984).

Meeting Location: The Pentagon, Washington, DC and BDM Corporation, McLean, Virginia (instead of just at the Pentagon).

Sally A. Warner,

Administrative Officer.

[FR Doc. 84-9190 Filed 4-4-84; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitation Services

State Educational Agency/Federal Evaluation Studies Program

AGENCY: Department of Education.

ACTION: Application notice establishing the closing date for transmittal of fiscal year 1984 new grant applications.

Applications are invited for new evaluation studies under the State Educational Agency/Federal Evaluation Studies program under the Education of the Handicapped Act.

Authorization for this program is contained in section 618(d) of Part B of the Education of the Handicapped Act, as amended by the Education of the Handicapped Act Amendments of 1983. According to section 618(d)(1), the purpose of this program is to carry out studies to assess the impact and effectiveness of programs assisted under the Education of the Handicapped Act.

(20 U.S.C. 1418(d))

Applications may be submitted by State educational agencies to enter into cooperative agreements with the Secretary to conduct evaluation studies.

Closing Date for Transmittal of Applications: Applications for new awards must be mailed or hand delivered by June 5, 1984.

Applications Delivered by Mail: An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.159, 400 Maryland Avenue, SW., 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 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.

Each late applicant will be notified that its application will not be considered.

Applications Delivered by Hand: Hand-delivered applications 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 hand-delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

An application that is hand delivered will not be accepted after 4:40 p.m. on the closing date.

Program Information: On December 2, 1983, the Education of the Handicapped Act Amendments of 1983 (Pub. L. 98–199) was enacted. As amended by Pub. L. 98–199, section 618(d) of the Act authorizes the Secretary to enter into cooperative agreements with State educational agencies to assess the impact and effectiveness of programs assisted under the Education of the Handicapped Act (20 U.S.C. 1401 *et seq.*). The legislative history of Pub. L. 98–199 includes the statement from the Senate Committee on Labor and Human Resources that: "The Committee believes that local educational agencies, State educational agencies, and the Federal special education agency working together could produce comprehensive and useful information on the impact and effectiveness of programs assisted under the Act which could lead to program improvements at the Federal, State, and local levels," S.REP. No. 98–191, 98th Cong., 1st Sess. 12 (1983).

In accordance with section 618(d)(2)(B) of the Act, projects supported under this program must be developed in consultation with the State Advisory Panel established under the Act, local educational agencies, and others involved in or concerned with the education of handicapped children and youth.

The Secretary invites applications for evaluation studies that will—

(1) Describe the type and quantity of related services provided to handicapped children by State and local educational agencies as well as other agencies, combined with information regarding the cost of these services. These studies could include information regarding the relationship of related services to educational progress; or

(2) Examine options for serving learning disabled students within the regular education program and the effectiveness of these options.

Applications that meet these invitational priorities, however, will not receive a competitive or absolute preference over other applications that describe evaluation projects.

Intergovernmental Review

On June 24, 1983, the Secretary published in the **Federal Register** final regulations (34 CFR Part 79, published at 48 FR 29158 *et seq.*) implementing Executive Order 12372, entitled

"Intergovernmental Review of Federal Programs." The regulations took effect on September 30, 1983.

This program is subject to the requirements of the Executive Order and the regulations in 34 CFR Part 79. The objective of Executive Order 12372 is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

The Executive Order–

- Allows States, after consultation with local officials, to establish their own process for review and comment on proposed Federal financial assistance;
- Increases Federal responsiveness to State and local officials by requiring Federal agencies to accommodate State and local views or explain why those views will not be accommodated;
- Revokes OMB Circular A–95.

Transactions with nongovernmental entities, including State postsecondary educational institutions and federally recognized Indian tribal governments, are not covered by Executive Order 12372. Also excluded from coverage are research, development, or demonstration projects that do not have a unique geographic focus and are not directly relevant to the governmental responsiblities of a State or local government within that geographic area.

The following is the current list of States which have established a process, designated a single point of contact, and have selected this program for review:

Arkansas	Oklahoma
Connecticut	South Dakota
Delaware	Vermont
Florida	Virginia
Indiana	Washington
Maine	Wisconsin
Michigan	Wyoming
Nebraska	American Samoa
New Jersey	Guam
New Mexico	Virgin Islands
New York	Northern Mariana Islands
North Dakota	

Immediately upon receipt of this notice, applicants which are governmental entities must contact the appropriate State single point of contact to find out about, and to comply with, the State's process under the Executive Order. Applicants proposing to perform activities in more than one State should, immediately upon receipt of this notice, contact the single point of contact for each State and follow the procedures established in those States under the Executive Order. A list containing the single point of contact for each State is included in the application package for this program.

In States not listed above, State, areawide, regional, and local entities may submit comments directly to the Department.

All comments from State single points of contact and all comments from State, areawide, regional, and local entities must be mailed or hand delivered by July 20, 1984 to the following address:

The Secretary, U.S. Department of Education, Room 4181 (CFDA Number: 84.159), 400 Maryland Avenue SW., Washington, D.C. 20202. (Proof of mailing will be determined on the same basis as applications.)

PLEASE NOTE THAT THE ABOVE ADDRESS IS NOT THE SAME ADDRESS AS THE ONE TO WHICH THE APPLICANT SUBMITS ITS COMPLETED APPLICATION. *DO NOT SEND APPLICATIONS TO THE ABOVE ADDRESS.*

Available Funds: It is estimated that approximately $1,400,000 will be available for support of 14 cooperative agreements to carry out new evaluation studies under this program in Fiscal Year 1984. This estimate of funding level does not bind the U.S. Department of Education to a specific number of awards or to the amount of any award, unless that amount is otherwise specified by statute or regulations. Awards under this program will be issued for a period of up to 18 months. In accordance with Section 618(d)(2)(A) of the Act, each State educational agency must provide at least 40 percent of the total cost of the study.

Application Forms: Application forms and program information packages are expected to be ready for mailing by April 6, 1984. These materials may be obtained by writing to the Research Projects Branch, Office of Special Education Programs, U.S. Department of Education, 400 Maryland Avenue SW. (Switzer Building, Room 3511), Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the application 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 the narrative portions of the application not exceed 40 double-spaced pages in length. The Secretary further urges that applicants submit only the information that is requested.

Applicable Regulations: Regulations applicable to this program include the Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, 78, and 79).

Prospective applicants should note that, because of the newness of this program, program regulations have not been issued. The Secretary will therefore select projects for awards under this program on the basis of the criteria under the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.210, *Selection criteria for a discretionary grant program that does not have regulations.* In accordance with 34 CFR 75.210 (b) and (c), the selection criteria are weighted as follows, for a maximum score of 100 points.

(1) *Meeting the purposes of the authorizing statute.* (30 points)

(i) The Secretary reviews each application for information that shows how well the project will meet the purposes of the statute that authorizes the program.

(ii) In conducting this review, the Secretary looks for information that describes—

(A) The objectives of the project; and

(B) How the objectives of the project further the purposes of the authorizing statute.

(2) *Extent of need for the project.* (20 points)

(i) The Secretary reviews each application for information that shows the project meets specific needs recognized in the statute that authorized the program.

(ii) In conducting this review, the Secretary looks for information that—

(A) Describes the needs addressed by the project;

(B) Describes how the applicant identified those needs;

(C) Describes how those needs will be met by the project; and

(D) Describes the benefits to be gained by meeting those needs.

(3) *Plan of operation.* (20 points)

The Secretary evaluates each application on the basis of the criterion in § 75.202.

(4) *Quality of key personnel.* (17 points)

The Secretary evaluates each applications on the basis of the criterion in § 75.203.

(5) *Budget and cost effectiveness.* (5 points)

The Secretary evaluates each application on the basis of the criterion in § 75.204.

(6) *Evaluation plan.* (5 points)

The Secretary evaluates each application on the basis of the criterion in § 75.205.

(7) *Adequacy of resources.* (3 points)

The Secretary evaluates each application on the basis of the criterion in § 75.206.

FOR FURTHER INFORMATION CONTACT: Gary Burfoot, Research Projects Branch, Office of Special Education Programs, U.S. Department of Education, 400 Maryland Avenue SW. (Switzer Building, Room 3511), Washington, D.C. 20202. Telephone: (202) 732–1115.

(20 U.S.C. 1418(d))

(Catalog of Federal Domestic Assistance Number—84.159, State Educational Agency/Federal Evaluation Studies)

Dated: March 30, 1984.

T. H. Bell,

Secretary of Education.

[FR Doc. 84–9116 Filed 4–4–84; 8:45 am]

BILLING CODE 4000–01–M

National Advisory Council on Indian Education; Closed Meeting

AGENCY: National Advisory Council on Indian Education.

ACTION: Notice of closed meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming closed meeting of the National Advisory Council on Indian Education. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act.

DATES: April 25–27, 1984, 8:30 A.M. until conclusion of business each day.

ADDRESS: U.S. Department of Education, 400 Maryland Avenue, SW., Room 2177, Washington, D.C. 20202, 202/245–8020.

FOR FURTHER INFORMATION CONTACT: Lincoln C. White, Executive Director, National Advisory Council on Indian Education, Pennsylvania Building, Suit 326, 425 13th Street, NW., Washington, D.C. 20004, (202)/376–8882.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Indian Education is established under Section 442 of the Indian Education Act (20 U.S.C. 1221g). The Council is established to assist the Secretary in carrying out responsibilities under Section 441(a) of the Indian Education Act (Title IV of Pub. L. 92–318), through advising Congress, the Secretary of Education, the Under Secretary of Education and the Assistant Secretary of Elementary and Secondary Education with regard to programs benefiting Indian children and adults.

On April 25–27, 1984, from 8:30 A.M. until conclusion of business each day, the Council will be reviewing Title IV, Parts A, B, and C proposals. The reviewing of proposals must be held in the highest confidence until the announcement is released by the proper authorities as to which projects will be funded. Financial, privileged, and confidential information in and related to these proposals will be discussed at the review session, and will touch upon matters that would disclose information of a personal nature where disclosures would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemptions (4) and (6) of Section 552b(c) of Title 5 U.S.C.

The proposed agenda includes:

(1) Reviewing of Title IV, Parts A, B, and C proposals based on provisions of the Indian Education Act, Title IV, Pub. L. 92–318, Section 442(b)(2), and make recommendations to the Secretary of Education with respect to their approval.

Records shall be kept of the activities of the closed meeting which would be informative to the public consistent with the policy of Section 552b(c) of Title 5 U.S.C., and will be available to the public within 14 days of the meeting at the Council's Office, 425 13th Street, NW., Suite 326, Washington, D.C. 20004.

Dated: March 20, 1984.

Signed at Washington, D.C.

Lincoln C. White,

Executive Director, National Advisory Council on Indian Education.

[FR Doc. 84–9157 Filed 4–4–84; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Office of the Secretary

Withdrawal of Proposed Contract Suspension and Debarment; Gerald Luckow

AGENCY: Department of Energy.

ACTION: Withdrawal of notice of proposed debarment.

SUMMARY: The purpose of this notice is to announce that due to mitigating circumstances, the Department of Energy has withdrawn its notice of proposed debarment concerning Mr. Gerald Luckow, Mail America, Mail America, Inc., FED SERV Industries, Inc., and any other organization with which Mr. Luckow is affiliated.

A notice of proposed debarment was sent to Mr. Luckow on August 2, 1983, and published in the **Federal Register** on August 8, 1983 (48 FR 35990). The basis for the proposed debarment was a demonstrated lack of business integrity in the handling of a payment of $114,187, which was sent in error by the Department of Energy to Mail America, a company owned by Mr. Luckow. Although he had previously assigned the payment to a financial institution pursuant to the Assignment of Claims Act, 31 U.S.C. 3727 and 41 U.S.C. 15, Mr. Luckow failed to forward the money to the assignee or to return it to the Department of Energy, which was forced to issue a second check to the assignee. The Department proposed to debar Mr. Luckow following his failure to respond to any of three demands for payment, including a contracting officer's decision under the Contract Disputes Act of 1978 (Pub. L. 95–563, 41 U.S.C. 601 *et seq.*).

Since the notice of proposed debarment, however, Mr. Luckow has made a bona fide offer of repayment and, on December 27, 1983, executed a Repayment Agreement with the Department of Energy. Under that agreement, he will repay the full sum of $114,187, plus interest, within three years. The initial payment of $10,000 and the first two monthly payments of $4,400 each have been made. These positive actions have been determined to be a mitigating factor sufficient to warrant withdrawal of the notice of proposed debarment.

FOR FURTHER INFORMATION CONTACT: Harold Johnson, Procurement and Assistance Management Directorate, Room 1I–018, Forrestal Building, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, telephone 202/252–8268.

Issued in Washington, D.C., March 28, 1984.

Berton J. Roth,

Director, Procurement and Assistance Management Directorate.

[FR Doc. 84–9158 Filed 4–4–84; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. ER83–369–004]

Alabama Power Co.; Refund Report

April 2, 1984.

Take notice that on March 26, 1984, Alabama Power Company (the Company) submitted for filing its Refund Report pursuant to an uncontested Settlement Agreement filed by the Company and the cooperatives on December 1, 1983 and approved by the Commission in a letter order dated February 16, 1984.

The compliance report shows the refund calculation for each delivery point (including interest). Refunds to

each of the distribution cooperatives were made by means of Company checks. Interest on these refund amounts was calculated through March 15, 1984.

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. 29426, on or before April 12, 1984. 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.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9012 Filed 4-4-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-332-000]

Arizona Public Service Co.; Filing

April 2, 1984.

The filing Company submit the following.

Take notice that on March 19, 1984, Arizona Public Service Company (APS) tendered for filing a Letter Agreement Supplement (Letter Agreement) to the "Supplemental Agreement for Early Termination" (Supplemental Agreement) of the Wholesale Power Agreement (WPA) between AP and Plains Electric Generation and Transmission Cooperative, Inc. (Plains), dated January 18, 1984, and executed on February 13, 1984.

APS states that this Letter Agreement proposes to allow the Termination Charge, provided for in the Supplemental Agreement of the WPA, to be recalculated, taking into account various relevant factors resulting from a recent proposed sale of certain electrical facilities by APS to the Navopache Electric Cooperative, Inc., and an Amendment No. 3 to the APS-Plains Power Coordination Agreement.

APS requests an effective date of December 30, 1983, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing have been served upon Plains and the Arizona Corporation Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 16, 1984. 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.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9013 Filed 4-4-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-331-000]

Arkansas Power & Light Co.; Filing

March 30, 1984.

The filing Company submits the following:

Take notice that on March 19, 1984, Arkansas Power & Light Company (APL) tendered for filing the Ninth Amendment to the Power Coordination, Interchange and Transmission Service Agreement between APL and Arkansas Electric Cooperative Corporation (AECC). The amendment provides for the transfer and increase in capacity of one delivery point and the increase in capacity at two additional delivery points.

APL requests an effective date of June 1, 1984, and therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 13, 1984. 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.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9014 Filed 4-4-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-334-000]

Boston Edison Co; Filing

April 2, 1984.

The filing Company submits the following:

Take notice that on March 20, 1984, Boston Edison Company (Boston) tendered for filing an agreement for the exchange of power between itself and New England Power Company of Westboro, Massachusetts (NEP).

Boston states that under the agreement, the parties could negotiate daily power exchanges involving Edison fossil fired units and NEP Fossil fired facilities. The parties state that the purpose of the power exchanges is to attain greater efficiencies of operation.

Boston requests an effective date of September 14, 1983.

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 if 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 April 16, 1984. 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.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9015 Filed 4-4-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-333-000]

Carolina Power & Light Co.; Filing

April 2, 1984.

The filing Company submits the following:

Take notice that on March 19, 1984, Carolina Power & Light Company (CP&L) tendered for filing changes outlined below in its agreement with Carteret-Craven EMC and Wake EMC.

1. *Carteret-Craven EMC*—The termination and cancellation of the Maysville 12 KV Point of Delivery.

2. *Wake EMC*—The revision of the Exhibit A to reflect the installation of additional special metering facilities for the Wake Forest 115 KV Point of Delivery.

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 April 16,

1984. Protests will be considered by the Commission in determining the appropriate action to taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9016 Filed 4-4-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI84-332-000]

Cities Service Oil, et al.; Application for Blanket Limited-Term Certificate of Public Convenience and Necessity

March 30, 1984.

Take notice that on March 15, 1984, Cities Service Oil and Gas Corporation, Cities Offshore Production Company, and Oxy Petroleum, Inc. (Applicants), of 110 West 7th Street, Tulsa, Oklahoma 74102, filed an application for a Blanket Limited-Term Certificate of Public Convenience and Necessity authorizing Applicants to conduct a short-term spot sales marketing program called the Consumer-Oriented Gas Sales (COGS) Program.

The certificate would: (1) Authorize the sale of natural gas by Applicants for resale in interstate commerce; (2) permit temporary partial abandonment of certain natural gas sales; (3) confer pregranted abandonment authorization for sales of natural gas made pursuant to the requested certificate; (4) authorize transportation of natural gas by interstate pipeline companies able and willing to participate in the COGS Program; and (5) confer pre-granted abandonment authorization for the transportation service allowed under the requested certificate. This authority is necessary for implementing a short-term experimental spot sales marketing program called the Consumer-Oriented Gas Sales (COGS) Program. Under the COGS Program, Applicants propose to sell on a spot basis contractually committed natural gas qualifying for the section 102, 103, or 107 rate under the Natural Gas Policy Act of 1978. Applicants will seek temporary releases of gas from the purchasers to whom it is committed in order to meet market demand for spot sales. Releasing purchasers will be absolved of take-or-pay liability for any volumes of gas released and sold under the COGS Program.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 16, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 381.211, .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. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9017 Filed 4-4-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-335-000]

Cleveland Electric Illuminating Co.; Filing

April 2, 1984.

The filing Company submits the following:

Take notice that on March 20, 1984, 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 5 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 requests an effective date of February 29, 1984, and therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR §§ 385.211, 385.214). All such motions or protests should be filed on or before April 16, 1984. 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.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9016 Filed 4-4-84; 8:45 am]

BILLING CODE 6717-01-M

Docket No. EL83-14-000]

Connecticut Light & Power Co.; Refund Report

March 30, 1984.

Take notice that on March 19, 1984, the Connecticut Light & Power Company submitted for filing its Refund Report pursuant to Commission's order issued February 3, 1984.

The Connecticut Light & Power Company states that it has made a refund to the Connecticut Municipal Electric Energy Cooperative (CMEEC) for the difference between the company's present rates and the settlement rates. Per the settlement agreement, no interest payments were included in the refund amount.

The Connecticut Light & Power Company states that copies of the filing have been sent to all parties on the Commission's service list and to the Connecticut Department of Public Utility Control.

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 April 5, 1984. 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.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9019 Filed 4-4-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-290-000]

Colorado Interstate Gas Co. Application

March 30, 1984.

Take notice that on March 6, 1984, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP84-290-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities necessary to allow CIG to redeliver gas to Northwest Pipeline Corporation (Northwest) near Green

River, Wyoming, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northwest sells gas to CIG at an existing interconnection between Northwest and CIG located near Green River pursuant to Northwest's Rate Schedule PL–1, it is stated. CIG and Northwest are parties to numerous certificated transportation and exchange agreements, it is further stated. Pursuant to the terms of three of these agreements, CIG avers that it is responsible for transportation and redelivering Northwest's gas at the Green River interconnection. It is further averred that the redelivery has been accomplished by displacement (i.e., the reduction of the actual volume of gas redelivered to CIG under Rate Schedule PL–1 by the equivalent of CIG's redelivery requirements to Northwest under the various transportation and exchange agreements).

Specifically, CIG proposes to construct and operate facilities, including an 8-inch meter run and associated measuring equipment, which would be located at the Green River interconnection and would allow for the physical redelivery of gas to Northwest. It is stated that the proposed facilities would be designed to handle volumes of gas ranging from 1,500 Mcf per day to 45,000 Mcf per day at pressures ranging from 575 p.s.i.a. to 600 p.s.i.a. It is explained that maximum redelivery pressures would not exceed Northwest's maximum allowable operating pressure of 809 p.s.i.a. CIG estimates that the total cost of the proposed facilities would be $166,300, which cost would be financed with funds on hand, funds from operations, short term borrowings, or long-term financing.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 20, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission'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 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 CIG to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84–9020 Filed 4–4–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RE80–22–001]

Commonwealth Edison Co.; Application for Exemption

March 30, 1984.

Take notice that Commonwealth Edison Company (COEC) filed an application on March 14, 1984 for exemption from certain requirements of Part 290 of the Federal Energy Regulatory Commission's (FERC) regulations concerning collection and reporting of cost of service information under Section 133 of the Public Utility Regulatory Policies Act (PURPA), Order No. 48 (44 FR 58687, October 11, 1979). Exemption is sought from the requirement to file on or prior to June 30, 1984 and biennially thereafter, information on the costs of providing electric service as specifed in Subparts, B, C, D, and E or Part 290.

In its application for exemption COEC states, in part, that is should not be required to file the specified data for the following reasons:

The data produced and submitted in compliance with Part 290 are for an unadjusted historical period and therefore unlikely to be useful in retail rate proceedings before the Illinois Commerce Commission (ICC) which requires numerous adjustments to historical test periods and authorizes use of both current and future test periods.

The ICC currently requires that COEC, as part of the record in each COEC retail rate proceeding, file various cost of service studies including marginal cost studies. COEC also files embedded/accounting cost of service studies in each retail proceeding. The formats of these studies may differ from those specified in Part 290.

The applicant's current program of class load studies is more extensive than the load studies required by Part 290. The results of COEC's ongoing research in class loads are provided to the ICC.

The ICC allows its staff and retail intervenors wide latitude to serve data requests upon COEC for data and information that have not been provided in the intitial rate case filings. These data requests are tailored to the specific issues of the rate case, and are not satisfied by the scope of Part 290 information. COEC is not aware of any instance where Part 290 data has reduced the number and scope of such data requests.

COEC's costs to comply with Part 290 requirements for the 1982 filing were approximately $220,000. Since Part 290 information has not been utilized to any significant extent by either the ICC or intervenors in any past COEC rate proceeding, COEC submits that any incurrence of costs in connection with future Part 290 filings would be unjustified and that the requirements imposed by Part 290 constitute an unwarranted burden on COEC.

Copies of the application for exemption are on file with FERC and are available for public inspection. FERC's regulations require that said utility also apply to any state regulatory authority having jurisdiction over it to have the application published in any official state publication in which electric rate change applications are usually noticed, and that the utility published a summary of the application in newspapers of general circulation in the affected jurisdiction.

Any person desiring to present written views, arguments, or other comments on the application for exemption should file such information with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before 45 days following the date this notice is published in the **Federal Register**. Within that 45 day period, such person must also serve a copy of such comments on: Mr. John C. Bukovski, Director of Rates, Commonwealth Edison Company, P.O. Box 767, Chicago, Illinois 60690.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84–9021 Filed 4–4–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP84-298-000]

Consolidated Gas Supply Corp. and Columbia Gas Transmission Corp.; Application

March 30, 1984.

Take notice that on March 12, 1984, Consolidated Gas Supply Corporation (Consolidated), 445 West Main Street, Clarksburg, West Virginia 26301, and Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP84-298-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon an exchange of natural gas and facilities constructed to effect the exchange, 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 Consolidated was delivering gas from the Van Etten Pool in Chemung County, New York, and Columbia was redelivering equivalent quantities pursuant to an exchange agreement dated October 1, 1962. It is asserted that the Van Etten Pool gas supply has been depleted since 1971 and no deliveries have been made since that time. It is further asserted that the facilities constructed to implement those deliveries and now proposed for abandonment consist of 2.7 miles of 4½-inch pipeline and measuring and regulating facilities. Applicants state that the production of gas from the Van Etten Pool is no longer feasible and that no customers would be adversely affected by the proposed abandonment of the exchange and facilities.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 20, 1984, 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 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 Applicant to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9022 Filed 4-4-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-295-000]

Florida Gas Transmission Co.; Request Under Blanket Authorization

March 30, 1984.

Take notice that on March 12, 1984, Florida Gas Transmission Company (Applicant), P.O. Box 44, Winter Park, Florida 32790, filed in Docket No. CP84-295-000 a request pursuant to Section 157.205 of the Commission's regulations under the Natural Gas Act (18 C.F.R. 157.205) that Applicant proposes to abandon in place a service line and the service rendered thereby to the W.R. Grace & Company (W. R. Grace) phosphate chemical complex in Bartow, Polk County, Florida, under the authorization issued in Docket No. CP82-553-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Applicant states that the 1 mile of 3½-inch service line, located on W. R. Grace property, one of three service lines serving the complex, is no longer necessary because modifications within the complex allows W. R. Grace to receive gas through another service line. Applicant also states that the service line has been disconnected from both W. R. Grace's facilities and Applicant's meter station. Applicant further asserts that W.R. Grace intends to construct additional phosphate facilities on the service line easement which would not be compatible with the operation and maintenance of a gas pipeline.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9023 Filed 4-4-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-328-000]

Idaho Power Co.; Filing

March 30, 1984.

The filing company submits the following:

Take notice that on March 19, 1984, Idaho Power Company (Idaho) tendered for filing in compliance with the Federal Energy Regulatory Commission's Order of October 7, 1978, a summary of sales made under the Company's 1st Revised FERC Electric Tariff, Volume No. 1 (Supersedes Original Volume No. 1) during January, 1984, along with cost justification for the rate charged. This filing includes the following supplements:

Utah Power & Light Company—Supplement 27
Sierra Pacific Power Company—Supplement 25
Portland General Electric Company—Supplement 20
Southern California Edison Company—Supplement 18
San Diego Gas & Electric Company—Supplement 15
Washington Water Power Company—Supplement 16
Montana Power Company—Supplement 24
Pacific Power & Light Company—Supplement 12
Puget Sound Power & Light Company—Supplement 6

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 April 13, 1984. 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.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9024 Filed 4-4-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RE84-4-000]

Indianapolis Power & Light Co., Application for Exemption

March 30, 1984.

Take notice that Indianapolis Power & Light Company (IPL) filed an application on March 14, 1984 for exemption from certain requirements of Part 290 of the Federal Energy Regulatory Commission's (FERC) regulations concerning collection and reporting of cost of service information under Section 133 of the Public Utility Regulatory Policies Act (PURPA), Order No. 48 (44 FR 58687, October 11, 1979). Exemption is sought from the requirement to file on or prior to June 30, 1984 and biennially thereafter, information on the costs of providing electric service as specified in Subparts B, C, D, and E of Part 290.

In its application for exemption IPL states, in part, that it should not be required to file the specified data for the following reason:

The data filed previously was not used and the cost of collecting and filing the data was excessive relative to the derived benefits.

Copies of the application for exemption are on file with FERC and are available for public inspection. FERC's regulations require that said utility also apply to any state regulatory authority having jurisdiction over it to have the application published in any official state publication in which electric rate change applications are usually noticed, and that the utility publish a summary of the application in newspapers of general circulation in the affected jurisdiction.

Any person desiring to present written views, arguments, or other comments on the application for exemption should file such information with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before 45 days following the date this notice is published in the Federal Register. Within that 45 day period, such person must also serve a copy of such comments on: Mr. H. K. Keller, Vice President, Indianapolis Power & Light Company, 25 Monument Circle, P.O. Box 1595B, Indianapolis, Indiana 46206.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9025 Filed 4-4-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA84-1-53-012]

K N Energy, Inc.; Proposed Revisions in FERC Gas Tariff

March 30, 1984.

Take notice that on March 23, 1984, K N Energy, Inc. (K N) submitted for filing the following revisions to its FERC Gas Tariff:

Twentieth Revised Sheet No. 4
Superseding Substitute Nineteenth Revised Sheet No. 4
Original Sheet No. 4B
Second Revised Schedule 1, page 1 of 1
Second Revised Schedule 2, page 1 of 5
First Revised Sheet No. 6 Superseding First Replacement Sheet No. 6
First Revised Sheet No. 11 Superseding First Replacement Sheet No. 11
Third Revised Sheet No. 14 Superseding Second Revised Sheet No.14

These revisions are to be deemed in compliance with the February 23, 1984, Commission order in TA84-1-53-000, *et al.*

K N requests any necessary waivers to allow for an effective date of March 1, 1984.

K N states that copies of its filing have been sent to purchasers and public bodies on its service list.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before April 10, 1984. Protests will be considered by the Commission in determining the appropriate action to 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 the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9028 Filed 4-4-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-330-000]

Louisiana Power & Light Co.; Filing

March 30, 1984.

The filing Company submits the following:

Take notice that on March 19, 1984, Louisiana Power & Light Company (LP&L) tendered for filing a Letter Agreement dated February 28, 1984 between LP&L and Gulf States Utilities Company (GSU).

LP&L states that this Letter Agreement provides for the transmission of power and energy by LP&L to GSU.

LP&L requests an effective date of March 1, 1984, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing have been served upon GSU and the Louisiana Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 13, 1984. 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.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-8997 Filed 4-4-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER83-194-000]

Mississippi Power Co.; Refund Report

March 30, 1984.

Take notice that on March 5, 1984, Mississippi Power Company submitted for filing its Refund Report pursuant to Letter Order dated February 3, 1984.

The Mississippi Power Company has made refunds to the Electric Power Associations of all amounts collected for the billing months of August, September, October and November 1983.

The settlement rate has been applied since November 15, 1983, as an interim rate in accordance with Commission's order issued November 25, 1983.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory

Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before April 10, 1984. 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.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-8998 Filed 4-4-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-336-000]

Niagara Mohawk Power Corp.; Filing

April 2, 1984.

The filing company submits the following:

Take notice that on March 21, 1984, Niagara Mohawk Power Corporation (Niagara) tendered for filing as a rate schedule, an agreement between Niagara and Rochester Gas and Electric Corporation (Rochester) dated May 17, 1983.

Niagara presently has on file an agreement with Rochester dated December 26, 1968. This agreement is designated as Niagara Mohawk Power Corporation Rate Schedule FERC No. 58. This new agreement is being transmitted as a supplement to the existing agreement, and supersedes Supplement No. 3.

Niagara states that the December 26, 1968 agreement is for the use of Niagara's transmission facilities by Rochester for the purpose of connecting Rochester's Gina Nuclear Plant into the New York Cross-State transmission system. The May 17, 1983 agreement revises the rate to be paid by Rochester for the use of Niagara's facilities.

Niagara requests an effective date of October 1, 1983, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing were served upon Rochester Gas and Electric Corporation and Public Service Commission of the State of New York.

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 April 16, 1984. 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.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-8999 Filed 4-4-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-257-000]

Northern Natural Gas Company, Division of InterNorth, Inc.; Application

March 30, 1984.

Take notice that on February 27, 1984, Northern Natural Gas Company, Division of InterNorth, Inc. (Applicant), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP84-257-000 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 Phillips Petroleum Company (Phillips) and the transportation of natural gas on behalf of Phillips to the West Texas Utilities Power Plant (West Texas), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it was authorized in Docket No. CP68-75 to exchange natural gas with Phillips and that as of April 30, 1983, there was an accumulated imbalance of 19,026,076 million Btu of natural gas owed to Applicant. It is asserted that Applicant has agreed to sell and Phillips has agreed to purchase a portion of the exchange imbalance volumes. Applicant proposes to sell 12,388,544 million Btu of natural gas to Phillips which it claims are surplus to the needs of Applicant's existing customers. The price for the gas would be $3.367 per million Btu. It is claimed that this price exceeds the cost of gas delivered to Phillips and exceeds Applicant's average system cost of purchased gas, currently said to be approximately $2.66.

Applicant indicates that the total amount due from Phillips for the proposed sale is approximately $41,543,877.65. It is asserted that the following payment schedule would be implemented:

Thirty-five percent of the total amount due would be paid in 12 equal monthly installments of $1,211,696.43 beginning with the first full billing month (defined as the 27th of one month to the 26th of the following month) in 1984, after the issuance of authorization from the Commission, ending with the December 1984 billing month. These payments would resume with the billing month beginning December 27, 1985. The remaining 65 percent of the total would be paid in nine monthly installments beginning December 27, 1984. The first eight of these payments would each be for $2,250,293.37 and the ninth would be for $9,001,174.49.

It is asserted that these revenues would be credited to Applicant's Account 191 and flowed through to Applicant's customers in purchased gas adjustment filings.

Applicant states that the sale would be contingent upon Applicant's assistance to Phillips in meeting Phillips contractual obligations to West Texas. It is indicated that Applicant and Phillips are parties to a gas purchase contract under which Phillips has reserved 6 billion Btu of gas on a firm basis for redelivery to West Texas, and the remainder is dedicated to Applicant. Applicant proposes to accelerate the reservation gas on a firm basis by increasing the volume from 6 billion Btu per day to 26 billion Btu per day until either the delivery of the additional 20 billion Btu per day has equaled a cumulative delivery of 17,250,000 million Btu or until October 26, 1986, whichever occurs first. It is further proposed that if the 17,250,000 reservation volume has not been reached by October 26, 1986, the reservation delivery obligation revert to 6 billion Btu on a firm basis and 20 billion Btu on a best-efforts basis until the 17,250,000 total has been reached. At such time, it is stated, the reservation would revert to 6 billion Btu per day on a firm basis until December 26, 1988, at which time the reservation of Phillips would expire.

It is claimed that the increase in reservation gas would result in additional short-term gas purchase costs to Applicant's customers of approximately $8,322,000. Applicant alleges that when this cost is compared to the $41,543,876 of sales revenues, there is a net benefit to Applicant's customers of $33,221,876.

It is also indicated that Phillips intends to utilize the increased reservation gas to meet contractual obligations to West Texas in its electric generation operations, but does not have the capacity to transport an additional 20 billion Btu per day to West Texas. Applicant therefore proposes to transport 20 billion Btu per day for Phillips to West Texas all within Pecos County, Texas. This transportation is said to be on a firm basis until October 26, 1986, and on an best-efforts basis commencing October 27, 1986, with a total contract limitation of 17,250,000 million Btu. Applicant also proposes to transport overun volumes in excess of 20 billion Btu per day.

Applicant states that upon commencement of the transportation

and until the termination of firm service on October 26, 1986, or when actual delivery of gas has totaled a cumulative volume of 17,250,000 million Btu, whichever occurs first, Phillips would pay Applicant a monthly demand charge of $12,714.47 for firm volumes transported plus an additional commodity charge of 2.09 cents per Mcf for any best-efforts overrun volumes transported in excess of 20 billion Btu per day. It is further stated that if the cumulative total of deliveries is less than 17,250,000 million Btu by October 26, 1986, commencing October 27, 1986, Phillips would pay a commodity charge of 2.09 cents per Mcf for all gas transported on a best-efforts basis. Applicant asserts that the rates for this service are based upon its system-wide average cost of service and allocation factor. In addition, Appliclant claims it would charge the Gas Research Institute Funding Unit of 1.25 cents per Mcf and that as compensation for fuel and lost and unaccounted for gas it would retain 1.3 percent of the gas delivered by Phillips. It is said that the transportation would terminate on December 26, 1988, or when a total cumulative volume of 17,250,000 million Btu had been transported, whichever occurred first.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 20, 1984, 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 Regulation 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.

For 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.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9000 Filed 4-4-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ST80-81-003, et al.]

Northwest Pipeline Corp., et al.; Extension Reports

April 2, 1984

The companies listed below have filed extension reports pursuant to Section 311 of the Natural Gas Policy Act of 1978 (NGPA) and Part 284 of the Commission's regulations giving notice of their intention to continue transportation and sales of natural gas for an additional term of up to 2 years. These transactions commenced on a self-implementing basis without case-by-case Commission authorization. The sales may continue for an additional term if the Commission does not act to disapprove or modify the proposed extension during the 90 days preceding the effective date of the requested extension.

The table below lists the name and addresses of each company selling or transporting pursuant to Part 284; the party receiving the gas; the date that the extension report was filed; and the effective date of the extension. A letter "B" in the Part 284 column indicates a transportation by an interstate pipeline which is extended under § 284.105. A letter "C" indicates transportation by an intrastate pipeline extended under § 284.125. A "D" indicates a sale by an intrastate pipeline extended under § 284.146. A "G" indicates a transportation by an interstate pipeline pursuant to § 284.221 which is extended under § 284.105. Three other symbols are used for transactions pursuant to a blanket certificate issued under § 284.222 of the Commission's Regulations. A "G(HS)" indicates transportation, sale or assignments by a Hinshaw pipeline; A "G(LT)" indicates transportation by a local distribution company, and a "G(LS)" indicates sales or assignments by a local distribution company.

Any person desiring to be heard or to make any protests with reference to said extension report should on or before April 27, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR §§ 385.211 or 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants party to a proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Acting Secretary.

Docket No. and Transporter/seller	Recipient	Date filed	Part 284 subpart	Effective date
ST80-81-003 Northwest Pipeline Corp., P.O. Box 1526, Salt Lake City, UT 84110.	Pacific Gas and Electric Co	02-29-84	B	06-01-84
ST80-241-002 ONG Western, Inc., 624 S. Boston Ave., Tulsa, OK 74119.	Natural Gas Pipeline Co. of America	03-07-84	C	06-20-84
ST80-298-003 Mississippi Fuel Co., 1100 First National Center East, Oklahoma City, OK 73102.	Transcontinental Gas Pipe Line Corp	03-15-84	C	06-15-84
ST82-323-001 TRANSOK, Inc., P.O. Box 3008, Tulsa, OK 74101	Panhandle Eastern Pipe Line Co	03-02-84	C	06-08-84
ST82-343-001 Mountain Fuel Supply Co., 180 East First South St., Salt Lake City, UT 84139.	United Gas Pipe Line Co	03-15-84	G	06-15-84
ST82-346-001 Transcontinental Gas Pipe Line Corp., P.O. Box 1396, Houston, TX 77251.	do	03-08-84	G	06-09-84
ST82-351-001 Natural Gas Pipeline Co. of America, P.O. Box 1208, Lombard, IL 60148.	Lone Star Gas Co	03-01-84	B	06-03-84
ST82-375-001 Transcontinental Gas Pipe Line Corp., P.O. Box 1396, Houston, TX 77251.	Columbia Gas Transmission Corp	03-13-84	G	06-11-84
ST82-404-001 Northern Natural Gas Co., 2223 Dodge St., Omaha, NE 68102.	Kansas Power and Light Co	03-08-84	B	07-26-84

Docket No. and Transporter/seller	Recipient	Date filed	Part 284 subpart	Effective date
ST82-455-001 Florida Gas Transmission Co., P.O. Box 44, Winter Park, FL 32790.	Louisiana Intrastate Gas Corp	03-05-84	B	09-03-84
ST83-571-001* Delhi Gas Pipeline Corp., 1700 Pacific Ave., Dallas, TX 75201.	Bridgeline Gas Distribution Co	03-08-84	D	06-02-84

*These extension reports were filed after the date specified by the Commission's Regulations, and shall be the subject of a further Commission order.
Note.—The noticing of these filings does not constitute a determination of whether the filings comply with the Commission's Regulations.

[FR Doc. 84-9002 Filed 4-4-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RE81-55-000]

Oglethorpe Power Corp., et al; Filing

March 30, 1984.

In the matter of Oglethorpe Power Corporation; Altamaha EMC; Amicalola EMC; Canoochee EMC; Carroll EMC; Central Georgia EMC; Coastal EMC; Cobb EMC; Colquitt EMC; Coweta-Fayette EMC; Douglas County EMC; Excelsior EMC; Flint EMC; Grady County EMC; Habersham EMC; Hart County EMC; Irwin County EMC; Jackson EMC; Jefferson EMC; Lamar EMC; Little Ocmulgee EMC; Middle Georgia EMC; Mitchell EMC; Ocmulgee EMC; Oconee EMC; Okefenoke Rural EMC; Pataula EMC; Planters EMC; Rayle EMC; Satilla Rural EMC; Sawnee EMC; Slash Pine EMC; Snapping Shoals EMC; Sumter EMC; Three Notch EMC; Tri-County EMC; Troup County EMC; Upson County EMC; Walton EMC; and Washington EMC.

Take notice that on January 19, 1981, Ogelethorpe Power Corporation (Oglethorpe) and all Electric Membership Corporations located and serving in the State of Georgia other than Blue Ridge Mountain EMC, North Georgia EMC and Tri-State EMC filed a petition with the Secretary of FERC seeking:

(1) On behalf of the above-described electric membership corporations, each of which is a member of Oglethorpe, a waiver of their obligations under FERC Rule 292.303(a) to purchase electric energy and capacity from qualifying facilities; and

(2) A waiver of Oglethorpe's obligations under FERC Rule 292.303(b) to sell electric energy and capacity to qualifying facilities.

On March 26, 1984, Oglethorpe filed an amendment to its Petition for Waiver.

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 within 30 days of the publication of this notice. 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.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9002 Filed 4-4-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ER84-329-000]

Public Service Company of Indiana, Inc.; Filing

March 30, 1984.

The filing submits the following:

Take notice that on March 19, 1984, the Public Service Company of Indiana (PSI) tendered for filing an Interim Power Agreement, dated December 1, 1983, between PSI and American Municipal Power—Ohio, Inc. (AMPO).

PSI states that the agreement provides for Interim Power by PSI to AMPO for not less than 100 MW level for not less than 13 consecutive weeks at a minimum load factor of 75% on a daily basis, with a minimum hourly schedule of 50% of the maximum hourly schedule for the day or such other load factor minimum schedule combination that the parties mutually agree. AMPO is to arrange with other utilities interconnected with PSI for receipt of such power for its transmission and distribution to only the delivery points located in the State of Ohio serving the patrons of Ohio.

PSI requests an effective date of April 1, 1984, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing were served upon AMPO, the Public Utility Commission of Ohio and the Public Service Commission of Indiana.

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 April 13, 1984. 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.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9003 Filed 4-4-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. G-4100-000, et al.]

Samson Resources Co. (Successor in Interest To Placid Oil Company); Application of Succession in Interest From Placid Oil Company to Samson Resources Company

March 30, 1984.

Take notice that Samson Resources Company (Samson) of 2700 First National Tower, Tulsa, Oklahoma 74103, filed applications for certificates of public convenience and necessity authorizing Samson to continue to render service previously authorized by the Commission under certificates of public convenience and necessity heretofore issued to Placid Oil Company, predecessor in interest to Partnership Properties Co., in the docket numbers and rate schedules as listed in the attached Appendix.

Partnership Properties Co. acquired through purchase as of January 1, 1982 all of the working interest of Placid Oil Company in the subject properties. Samson Resources Company subsequently acquired through purchase as of January 1, 1982 all of the working interest of Partnership Properties Co. in the subject properties.

Any person desiring to be heard or to make any protest with reference to said applications should on or before April 16, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR

385.211, 383.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parites to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

APPENDIX

Date filed	Docket No.	Placid Oil Company rate schedule No.
10-25-82	G-4100-000	1
9-27-82	G-4137-000	5
10-29-82	G-4426-000	3
10-29-82	G-4652-000	4
9-27-82	G-10156-000	12
2-10-83	G-63-1150-000	35
10-25-82	CI80-221-001	68

[FR Doc. 84-9004 Filed 4-4-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-281-000]

Southern Natural Gas Co.; Application

March 30, 1984.

Take notice that on March 5, 1984, Southern Natural Gas Company (Applicant). P.O. Box 2563, Birmingham, Alabama 35202, filed in Docket No. CP84281-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Amoco Production Company (Amoco) and the construction and operation of a metering station and appurtenant facilities necessary to implement the transportation service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that pursuant to the terms of a gas transportation agreement dated August 31, 1983, it would transport on an interruptible basis up to 800 million Btu of natural gas per day or such greater quantity as it may accept, which Amoco has reserved pursuant to a gas sale and purchase agreement between Amoco and Applicant dated June 22, 1967, for the development of Amoco's oil and gas leases in the West Delta 73 field, offshore Louisiana. It is further stated that Amoco would deliver the natural gas to Applicant at a point of interconnection of the facilities of Amoco and Applicant on the West Delta Block 75 #4 Platform. Applicant would transport Amoco's gas by displacement, and redeliver thermally equivalent volumes, less Amoco's *pro rata* share of any gas lost, vented or unaccounted for, to Amoco at the outlet of measurement facilities Applicant proposes to construct on the West Delta 89 Platform, it is stated.

Applicant proposes to charge Amoco 15.9 cents per million Btu of natural gas delivered on the West Delta 89 Platform. Applicant asserts that Amoco has agreed to reimburse Applicant for all costs including overheads, incurred by Applicant in connection with the facilities Applicant proposes to construct. The estimated cost of the proposed facilities is $85,678.

The proposal would enable Amoco to conduct gas lift operations and produce the remaining recoverable oil reserves from the West Delta Block 89, it is explained.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 20, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9005 Filed 4-4-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RE84-6-000]

Southwestern Electric Power Co.; Application for Exemption

March 30, 1984.

Take notice that Southwestern Electric Power Co. (SWEPCO) filed an application on March 13, 1984 for exemption from certain requirements of Part 290 of the Federal Energy Regulatory Commission's (FERC) regulations concerning collection and reporting of cost of service information under Section 133 of the Public Utility Regulatory Policies Act (PURPA), Order No. 48 (44 FR 58687, October 11, 1979). Exemption is sought from the requirement to file on or prior to June 30, 1984 and biennially thereafter, information on the cost of providing electric service as specified in Subparts B, C, D, and E or Part 290.

In its application for exemption SWEPCO states, in part, that it should not be required to file the specified data for the following reasons:

The purpose of Section 133 of PURPA, to require electric utilities to gather and file data necessary to determine the costs associated with providing electric service, is met by data filed by SWEPCO with state commissions having jurisdiction over SWEPCO's retail rates.

The data produced and submitted in compliance with Part 290 are similar to the data required by the Public Utility Commission of Texas (PUCT), the Louisiana Public Service Commission (LPSC) and the Arkansas Public Service Commission (APSC) but sufficiently different to be of little value in rate proceedings.

The test periods used in SWEPCO's rate proceedings before the PUCT, APSC and LPSC are at variance with the Part 290 reporting period and, as a consequence, the value of Part 290 cost of service data is minimal in this respect.

The applicant believes that its load data research program should not be mandated by the Federal Energy Regulatory Commission but should be left to the discretion of the state commissions which are in a better position to specify the customer classes for which load research studies shall be performed.

The PUCT, APSC and LPSC allow their staffs and retail intervenors wide latitude to serve data requests upon SWEPCO for data and information that have not been provided in the initial rate case filings. These data requests are tailored to the specific issues of the rate case, and are not satified by the scope of Part 290 information. SWEPCO is

not aware of any instance where Part 290 data reduced the number and scope of such data requests.

Copies of the application for exemption are on file with FERC and are available for public inspection. FERC's regulations require that said utility also apply to any state regulatory authority having jurisdiction over it to have the application published in any official state publication in which electric rate change applications are usually noticed, and that the utility publish a summary of the application in newspapers of general circulation in the affected jurisdiction.

Any person desiring to present written views, arguments or other comments on the application for exemption should file such information with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before 45 days following the date this notice is published in the **Federal Register**. Within that 45 day period, such person must also serve a copy of such comments on: Mr. Andrew O. Rambin, Jr., Manager, Rate Department, Southwestern Electric Power Company, P.O. Box 21106, Shreveport, Louisiana 71156.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9006 Filed 4-4-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RE84-5-000]

Texas-New Mexico Power Co.; Application for Exemption

March 30, 1984.

Take notice that Texas-New Mexico Power Company (TNP) filed an application on March 12, 1984 for exemption from certain requirements of Part 290 of the Federal Energy Regulatory Commission's (FERC) regulations concerning collection and reporting of cost service information under Section 133 of the Public Utility Regulatory Policies Act (PURPA), Order No. 48 (44 FR 58687, October 11, 1979). Exemption is sought from the requirement to file on or prior to June 30, 1984 and biennially thereafter, information on the costs of providing electric service as specified in Subparts B, C, D, and E of Part 290. In addition, TNP requests a waiver of the requirement that an application for exemption shall be filed "no less than 18 months prior to the time the information would otherwise be required "(Section 290.601(a)).

It its application for exemption TNP states, in part, that it should not be required to file the specified data for the following reasons:

The Public Utilities Commission of Texas and the New Mexico Public Service Commission which are the state commissions for the two jurisdictions in which TNP sells electric power and energy, have already considered the rate standards of Title I or PURPA and, thus, the major reason for the compilation and reporting of Section 133 data has been obviated.

State commission requirements provide sufficient data for retail rate making purposes and further Section 133 data reporting would serve little or no purpose.

The cost of acquiring and reporting the Section 133 data outweighs any benefits likely to result from that effort.

Copies of the application for exemption are of file with FERC and are available for public inspection. FERC's regulations require that said utility also apply to any state regulatory authority having jurisdiction over it to have the application published in any official state publication in which electric rate change applications are usually noticed, and that the utility publish a summary of the application in newspapers of general circulation in the affected jurisdiction.

Any person desiring to present written views, arguments, or other comments on the application for exemption should file such information with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before 45 days following the date this notice is published in the **Federal Register**. Within that 45 day period, such person must also serve a copy of such comments on: James W. Jordan, Assistant Vice President, Contracts and Regulation, Texas-New Mexico Power Company, 501 West Sixth Street, Forth Worth, Texas 76102.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9007 Filed 4-4-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP84-57-000]

United Gas Pipe Line Co. et al.; Complaint

March 30, 1984.

Take notice that on March 15, 1984, United Gas Pipe Line Company (United) tendered for filing a Complaint against Stingray Pipeline Company (Stingray) and Natural Gas Pipeline Company of America (Natural). This complaint requests a declaratory order to remove uncertainty by requiring Stingray, effective April 1, 1984, to make the necessary notifications to reduce the maximum daily quantity of natural gas to be transported for United by Stingray pursuant to its Rates Schedule T-2, and requiring Natural to track such reduction under its Rate Schedule No. X-48.

United explains in its Complaint that Natural receives gas transported by Stingray for United at Holly Beach, Louisiana, and redelivers it to United under its Rate Schedule No. X-48. United wishes to reduce its maximum daily quantity transported by Stingray from the current level of 200,000 Mcf per day to 90,000 Mcf per day, and asserts that it has a contractual right to do so and that the Natural Gas Act (NGA) requires such a reduction. United's petition requests the Commission's recognition of their contractual right and of the statutory requirements for this reduction, and for an order compelling Stingray to file appropriate notification if such reduction.

United's Complaint cites Article II, Section 3 of the Contract entered into between United and Stingray on September 12, 1973, as providing their contractual right to reduce its transportation quantity. According to United, it has complied with this term by requesting a reduction within the proper contractual year and giving the proper notice of twelve months. United states that it gave notice on March 31, 1983 to reduce the transportation quantity to 90,000 Mcf per day effective April 1, 1984, but that Stingray has not responded to its properly instituted request.

Since Natural's Rate Schedule X-48 automatically tracks changes in the Stingray Rate Schedule as to maximum transportation quantities, United further requests an equivalent reduction under Rate Schedule X-48 to coincide with its requested reduction under Stingray's Rate Schedule T-2.

United states that if the reduction is not allowed, it will incur $6.5 million in additional costs.

United further states that in the event that Stingray presents an interpretation of the Contract that is contrary to United, the matter should be set for briefing.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before April 30, 1984. 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.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9008 Filed 4-4-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP84-26-000]

Department of the Interior Bureau of Land Management [1] Section 108 NGPA Determination Getty Oil Company J. Q. Marshall #1 Well BLM Docket No. NM-0461-83-PB FERC J. D. No. 83-47497; Petiton To Reopen and Vacate Final Well Category Determination and Request To Withdraw

March 30, 1984.

On November 21, 1983, the Department of the Interior's Bureau of Land Management (BLM) filed with the Federal Energy Regulatory Commission (Commission) a request to withdraw its determination that natural gas from the J. Q. Marshall #1 Well the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3301-3432 (1982). An affirmative determination had been made by BLM on the application of Getty Oil Company (Getty or applicant), and had become final on September 15, 1983, under NGPA section 503(d) and 18 C.F.R. § 275.202(a) (1983).[2] Getty petitioned BLM to reopen the determination and permit withdrawal of its application by letter dated October 28, 1983. (*See* n.2 below for the circumstances leading up to Getty's October 28 request.)

The Commission hereby gives notice that the question of whether refunds plus interest, as computed under 18 CFR 154.102(c) (1983) will be required is a matter which is subject to the review and final determination of the Commission.

Any person desiring to be heard or to make any protest to the requested reopening and withdrawal should file, within 30 days after this notice is published in the **Federal Register**, with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, a motion to intervene or protest in accordance with the requirements of Rules 214 or 211 of the Rules of Practice and Procedure. 18 CFR 385.214 or 385.211 (1983). All protests filed will be considered but will not make the protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9009 Filed 4-4-84; 8:45 am]

BILLING CODE 6717-01-M

[1] Formerly Minerals Management Service.

[2] By letter dated March 29, 1983, Getty notified BLM that production for the 90-day period from November 1982 to January 1983 exceed 60 Mcf per day and petitioned BLM for continued qualifaction under section 108 on the basis that the production rate increase resulted from a temporary pressure buildup due to the well's having been shut-in. *See* 18 C.F.R. §§ 271.804(e) and 271.805 (1983). By letter dated September 1, 1983, Commission Staff requested BLM to determine whether the increased production days occurred prior to, or subsequent to, the well's being shut-in. If the disqualifying production occurred prior to the shut-in days then, according to Staff, "the increases in the average rates of production to above 60 Mcf per production day during the 90-day production periods would not have been the result of pressure buildup when the wells were temporarily shut-in." By letter dated October 28, 1983, Getty advised BLM that the applicant had "erroneously assumed that the increase to over 60 Mcf per production day had been caused by a pressure buildup while the well was shut-in. However, the increase came prior to the shut-in rather than after the shut-in as had been assumed." On November 21, 1983, BLM filed Getty's October 28, letter with the Commission, and requested withdrawal of several determinations (for differing 90-day production periods) for the J. Q. Marshall #1 Well on the basis that the well "ceased to qualify as a stripper well at the end of November 1982. As a result, the pressure buildup petitions of subsequent 90-day periods are null and viod." Those determinations which had not become final were withdrawn. By letter dated January 18, 1984, Staff advised BLM that since the determination in BLM Docket No. NM-0461-83-PB (FERC J.D. No. 83-47497) was final, Staff would treat Getty's letter of October 28, 1983 as a petition to reopen the determination and permit withdrawal of the application. Authority: 15 U.S.C. §§ 3411(a) and 3413(d) (1982).

[Docket No. G-4875-000, et al.]

Union Texas Products Corp.; et al.; Redesignation

March 30, 1984

Take notice that on January 18, 1984, Union Texas Productions Corporation (Union) of One Riverway, P.O. Box 2120, Houston, Texas 77001, filed an application to amend certain certificates currently held by Union Texas Petroleum Corporation to show Union as certificate holder and to redesignate the related rate schedules listed in the attached Appendix.

Effective December 31, 1982, Union Texas Petroleum Corporation, a wholly owned subsidiary of Allied Corporation, transferred certain of its assets relating to the business of processing, distributing and marketing hydrocarbons to Union Texas Products Corporation, an affiliate of Union Texas Petroleum Corporation. Union requests that the Commision substitute Union Texas Products Corporation for Union Texas Petroluem Corporation in all Certificates of Public Convenience and Necessity issued in the dockets listed in the attached Appendix.

Any person desiring to be heard or to make any protest with reference to said applications should on or before April 16, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

APPENDIX

R.S. No.	Purchaser	Certificate docket
10	Lone Star Gas Co	G-4875.
12	El Paso Natural Gas Co	G-9147.
64	do	G-13843.
83	Panhandle Eastern Pipe Line Co.	CT-66-27.
101	do	CI-70-961.

[FR Doc. 84-9010 Filed 4-4-84 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP84-58-000]

West Texas Gathering Co.; Proposed Changes in FERC Gas Tariff

March 30, 1984

Take notice that on March 19, 1984, West Texas Gathering Company (West Texas) tendered for filing the following revisions to its FERC Gas Tariff, Original Volume No. 1:

Fifth Revised Sheet Nos. 51-A, 51-B, 51-C, and 51-D.

West Texas also submitted financial statements for the year ending December 31, 1983, computations of cost of service for 1983, federal income tax data, and a Statement N-O showing estimated cost of volume for the year 1984.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of

Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before April 9, 1984. 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.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9011 Filed 4-4-84; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Issuance of Decisions and Orders; Week of February 6 Through February 10, 1984

During the week of February 6 through February 10, 1984, 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.

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 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

March 28, 1984.

Appeal

The Knoxville Journal, 2/6/84, HFA-0205

The Knoxville Journal and Randall S. Beck, a reporter for the Journal, filed an Appeal from a denial by the Authorizing Official of the Oak Ridge Operations Office of a Request for Information which Beck had submitted under the Freedom of Information Act (the FOIA). Beck requested names and other personal data regarding individuals employed at the Oak Ridge weapons parts plant. In considering the Appeal, the DOE found that the Authorizing Official's justification for withholding information pursuant to Exemption 6 of the FOIA, which protects data whose release would result in an unwarranted invasion of privacy, was inadequate. In reaching this determination, the DOE suggested that under most circumstances the release of names of individuals would not cause embarrassment, but that disclosure of other personal information, such as addresses, ages and terms of employment could constitute an invasion of privacy that did not advance any public interest. The DOE found that the Authorizing Official should have specifically addressed how release of the requested information would have harmed the privacy of the employees involved. Accordingly, the Appeal was granted and the matter remanded to the Authorizing Official for further consideration.

Request for Exception

UCO Oil Company, Simmons Oil Corporation, Kern County Refinery, 2/6/84, DEE-2487; DMR-0049; DMR-0048; DMR-0047

The DOE issued a Proposed Decision and Order which tentatively denied UCO Oil Company's Application for Exception requesting that it be assigned lower-priced suppliers of motor gasoline. However, the DOE did not require restitution to the firms which supplied motor gasoline to UCO pursuant to a Temporary Stay Order. Mobil Oil Corporation filed an objection to the Proposed Order, arguing that UCO should be required to restore the motor gasoline which it erroneously received pursuant to that Temporary Stay decision. In the final Decision and Order, the DOE rejected Mobil's request for restitution on the grounds that the firm failed to show any injury or other equitable concern which would warrant granting the firm's request. The DOE also dismissed the Applications for Modification and Rescission of the temporary stay filed by UCO, Simmons Oil Corporation, and Kern County Refinery. The DOE rejected UCO's claim that the relief granted in the temporary stay should be increased and determined that no exception relief was warranted. The DOE also rejected the claim of Simmons, a UCO purchaser, that it would experience a hardship if it were unable to purchase competitively priced gasoline from UCO. Finally, the DOE found that Kern had not shown that it should be relieved of its obligation to supply UCO under the temporary stay.

Motions for Discovery

Getty Oil Company, 2/8/84, HRD-0175; HRH-0175

Getty Oil Company filed Motions for Evidentiary Hearing and Discovery in connection with enforcement proceedings remanded to the Office of Hearings and Appeals by a United States District Court. Many of the issues raised in the motions were foreclosed by the decision of that court. The Motion for Evidentiary Hearing was therefore denied in its entirety. Although the most of Getty's discovery requests were also denied, the firm was granted some discovery, and allowed to reformulate an interrogatory and a request for production of documents.

Tesoro Petroleum Corporation, 2/9/84, HRD-0138

Tesoro Petroleum Corporation (Tesoro) filed a motion for Discovery in connection with a Proposed Remedial Order issued to the firm. In its Motion, the firm requested information regarding the possibility of improper ex parte contacts in the Tesoro enforcement proceeding and regarding whether the DOE may have prejudged the facts in that proceeding. The DOE found that the firm had failed to submit any evidence of irregularity in the enforcement proceeding and therefore denied this aspect of the firm's discovery request. However, the DOE determined that Tesoro was entitled to a thorough explanation of the rates and methodology employed to compute interest on the overcharges alleged in the PRO, to a complete copy of one of the two transcripts of depositions cited as evidence in the PRO, and to a 1978 memorandum originating in the Office of Hearings and Appeals. Accordingly, Tesoro's Motion for Discovery was granted in part.

Request for Stay

Oasis Petroleum Corporation, 2/8/84, HES-0040

Oasis Petroleum Corporation requested that the DOE's consideration of a Petition for Special Redress filed by Lucky Stores, Inc. be stayed pending a determination by the Temporary Emergency Court of Appeals (TECA) regarding certain constitutional issues certified to it in *Dorchester Gas Producing Co. v. DOE*, 3 Fed. Energy Guidelines ¶ 26,464 (N.D. Tex. 1983). Oasis argued that the issue before TECA was whether the Emergency Petroleum Allocation Act and the Energy Policy and Conservation Act contained unconstitutional legislative veto provisions and therefore are invalid under *Immigration and Naturalization Service v. Chada*, 103 S. Ct. 2764 (1983), and that Lucky's Petition would be moot if TECA were to hold these statutes invalid. The DOE held that it is not in the public interest to stay DOE matters pending resolution of court proceedings, and that Oasis had not demonstrated a likelihood that TECA would declare the statutes unconstitutional or satisfied any other criteria applicable to stay requests. The stay request therefore was denied.

Interim Order

Department of the Interior, 2/8/84, HEN-0063

The Department of Interior (DOI) filed a Motion for Interim Decision in which it requested that the OHA implement, on an interim basis, proposed retroactive exception relief previously granted to DOI. In the underlying exception application, DOI reqested that it be retroactively relieved of the obligation to comply with certain DOE regulations in connection with its sales of royalty crude oil to Plateau, Inc. In considering the request for interim relief, the DOE did not find that there was a high probability that the proposed exception relief would ultimately be granted to DOI. Moreover, the DOE was not convinced that DOI would be harmed in the absence of interim exception relief. The DOE also concluded that the public interest was best advanced in this proceeding by giving full and fair consideration to the arguments raised by the parties in the objection phase of the pending exception proceeding.

Refund Applications

Standard Oil Company (Indiana)/Bird Oil Company, Inc., et al., 2/9/84, RF21-5101, et al.

The DOE issued a Decision and Order concerning 3 Applications for Refund filed by wholesalers 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 Special Counsel*, 10 DOE ¶ 85,048 (1982). In considering these applications, the DOE concluded that each of the 3 applicants should receive a refund based upon the total volume of its Amoco motor gasoline purchases. The refunds granted in this proceeding total $5,636.

Standard Oil Company (Indiana)/Bird Oil Company, Inc., et al., 2/9/84, RF21-5102, et al.

The DOE issued a Decision and Order concerning 4 Applications for Refund filed by resellers 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 4 applicants should receive a refund based upon the total volume of its Amoco middle distillate purchases. The refunds granted in this proceeding total $1,178.

Standard Oil Co. (Indiana)/Calverton Amoco Servicenter, et al., 1/8/84, RF21-8172, et al.

The DOE issued a Decision and Order concerning 26 Applications for Refund filed by retailers of Amoco motor gasoline. All of these firms contended that they were injured by more than the presumptive levels of injury adopted in *Office of Special Counsel*, 10 DOE ¶85,048 (1982). In considering these applications, the DOE rejected the firms' argument that their inability to sell gasoline at their maximum lawful selling prices established that they incurred injury greater than the presumptive levels. The DOE also rejected the firms' contention that refund monies remaining after the payment of refunds to first-stage claimants (*i.e.* purchasers of Amoco products who filed successful refund applications) should be allocated to first-stage claimants on a pro rata basis. The DOE determined that such a distribution would be inconsistent with the objectives of the Amoco refund proceeding, and would be inequitable and injurious to Amoco customers who for various reasons did not or could not file successful refund applications. Finally, the DOE rejected the argument advanced by 18 of the applicants that retailers directly supplied by Amoco should be presumed to have incurred greater injury and to merit a greater presumptive refund than retailers supplied by wholesalers. Accordingly, the applicants' request for refunds greater than those produced by the presumption method was rejected. The DOE determined that the applicants should be granted refunds based on the presumption method. The refunds granted in this proceeding total $33,181.

Standard Oil Co. (Indiana)/Ray's Standard Service, et al., 2/8/84, RF21-01666, et al.

The DOE issued a Decision and Order concerning 41 Applications for Refund filed by retailers 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 Special Counsel*, 10 DOE ¶85,048 (1982). In considering these applications, the DOE concluded that each of the 41 applicants should receive a refund based upon the total volume of its Amoco motor gasoline purchases. The refunds granted in this proceeding total $36,748.

Protective Order

The following firms filed Applications for Protective Orders. The applications, if granted, would result in the issuance by the DOE of the proposed Protective Order submitted by the firm. The DOE granted the following applications and issued the requested Protective Order as an Order of the Department of Energy:

Name	Case No.
Ashland Oil, Inc., Texaco, Inc	HEJ-0046

[FR Doc. 84-9068 Filed 4-4-84; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of February 27 through March 2, 1984

During the week of February 27 through March 2, 1984, the decisions and orders summarized below were issued with respect to appeals and applications for 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 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

March 28, 1984.

Appeal

The Tulsa Tribune, 2/29/84, HFA-0207

The Tulsa Tribune filed an appeal from a partial denial by the Inspector General (IG) of the Department of Energy of a Request for Information which the firm had submitted under the Freedom of Information Act (the FOIA). In considering the Appeal, the DOE found that the IG had correctly withheld documents pertaining to the IG's investigation of allegations of theft and substitution of crude oil at the Strategic Petroleum Reserve pursuant to FOIA Exemptions 5, 7(A) and 7(C). The DOE found, however, that certain portions of documents initially withheld pursuant to exemption 7(A) contain segregable factual information and therefore should be released to the public. Accordingly, the Appeal was granted in part.

Request for Modification and/or Rescission

San Joaquin Oil Company and San Joaquin Refining Co., Inc., 2/29/84, HRR-0079

San Joaquin Oil Company and San Joaquin Refining Co., Inc., (San Joaquin) filed a Motion for Reconsideration of a Decision and Order issued by the Office of Hearing and Appeals on December 20, 1983. *San Joaquin Oil Co.*, 11 DOE ¶ 84,043 (1983). In that determination the OHA denied a Motion for Discovery filed by San Joaquin in connection with its Statement of Objectives to a Proposed Remedial Order issued to the firm on June 4, 1982, by the Economic Regulatory Administration. The Motion for Reconsideration was denied because the firm had not shown any prejudicial error in the original determination.

Interlocutory Order

Office of Special Counsel, 2/28/84, HRZ-0168

The Office of Special Counsel sought discovery from Texas Inc. in connection with Texaco's objections to a May 1979 Proposed Remedial Order. In ruling on the motion, the Office of Hearings and Appeals noted that this was a "second wave" discovery motion by OSC and that it would therefore apply the standards applicable to motions of that nature. OHA denied several OSC discovery requests because it found them untimely, but directed Texaco to produce to OSC certain information concerning the firm's accounting treatment of production entities, which relate to its claimed consistent and historic treatment of those entities.

Refund Applications

Standard Oil Company (Indiana)/Leaseway Transportation Corp., 3/2/84, RF21-12007 et al.

The DOE issued a Decision and Order concerning an Application for Refund filed by Leaseway Transportation Corp., a consumer and a retailer of Amoco motor gasoline and middle distillates. Leaseway elected to apply for a refund based upon the presumptions of injury and the formulae outlined in *Office of Special Counsel*, 10 DOE ¶ 85,048 (1982). In considering the application, the DOE concluded that the firm should receive a refund based upon the total volume of its eligible Amoco motor gasoline and middle distillate purchases. The refunds granted in this proceeding total $4,703.

Standard Oil Company (Indiana)/*Norman Mogren, 2/29/84, RF21-11180*

The DOE issued a Decision and Order concerning an Application for Refund filed by Mr. Norman Mogren, the owner of an Amoco retail motor gasoline outlet. Mr. Mogren filed a refund claim under the terms of the Amoco special refund procedures outlined in *Office of Special Counsel*, 10 DOE ¶85,048 (1982). In his application, Mr. Mogren sought a refund based on the amount of rent he received from Amoco for the lease of his retail location. After analyzing the arguments presented by Mr. Mogren, the DOE concluded that there

was no basis on which to approve a refund. Accordingly, the application was denied.

Remedial Order

Zephyr Oil & Trading Company, 2/29/84, HRO-0115

Zephyr Oil & Trading Company objected to a Proposed Remedial Order which the Philadelphia Office of the Economic Regulatory Administration (ERA) issued to the firm on December 21, 1982. In the Proposed Remedial Order, the ERA found Zephyr Oil & Trading Company sold motor gasoline at prices that exceeded those permitted pursuant to 10 CFR 212.111(b)(3) and 212.93. As a result of these violations, the Proposed Remedial Order determined that the firm should refund $618,827 plus interest. After considering the firm's objections, the DOE concluded that the Proposed Remedial Order should be issued as a final Order of the Department of Energy. The important issues discussed in the Decision and Order include (i) the procedural and substantive validity of the new item rule, 10 CFR 212.111, (ii) the ERA's choice of a "nearest comparable outlet," and (iii) the rate at which interest on the overcharge amount should be assessed.

Dismissals

The following submissions were dismissed:

Name	Case No.
Associated Press	HFA-0209.
Oil City Petroleum Co., Inc	HEE-0061.
Placid Oil Company	HRO-0147.
Ronald W. Naylor	RF21-12280.

The following Amoco Refund Application was dismissed on the grounds that the applicant had already received a refund directly from Amoco:

Ryder System Inc., RF21-10039.

[FR Doc. 84-9069 Filed 4-4-84; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of March 5 Through March 9, 1984

During the week of March 5 through March 9, 1984, the decisions and orders summarized below were issued with respect to applications for refunds filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a listing of a submission which was dismissed by the Office of Hearings and Appeals.

Refund Applications

Standard Oil Company (Indiana)/Illinois Service Station Operators Ass'n, 3/6/84, RR 21-1; RF 21-12221

On December 9, 1983, the Illinois Service Station Operators Association (ISSOA) filed an Application for Modification or Rescission of an August 22, 1983 Decision and Order concerning 24 retailers which it represents. *See Standard Oil Co. (Indiana)/John Coconato,* 11 DOE ¶ 85,121 (1983) (hereinafter cited as *Coconato).* In *Coconato,* the Office of Hearings and Appeals examined and rejected a theory advanced by the ISSOA that its members should be paid a refund of $0.033 per gallon from the Amoco settlement fund and directed that the firms should instead receive a refund of $0.0009748 per gallon of Amoco motor gasoline purchased. If the ISSOA's Application for Modification or Rescission were granted, the OHA would approve an additional per-gallon refund of $0.0025200 to each of the dealers which the ISSOA represents. In addition, the ISSOA filed a refund application on behalf of Mike's Standard Service (Mike's) and asked that the OHA's consideration of this claim be consolidated with its reconsideration of the *Coconato* Decision.

In support of its renewed claim of overcharges the ISSOA submitted copies of the purchase invoices of one of its members for the entire consent order period and reiterated that the average annual prices reflected on these invoices were consistently at least $0.003 higher than the average annual prices listed in Amoco's annual report to its shareholders. The OHA found that the figures set forth in Amoco's annual report included prices at all levels of distribution so that the national average price paid for a gallon of Amoco motor gasoline was not comparable to the price paid by ISSOA members. The OHA therefore concluded that the ISSOA had failed to demonstrate that its members were injured in an amount greater than that which had already been apportioned them by the presumptions set forth in the *Amoco* decision. Consequently, no additional refund was granted to the ISSOA members whose refund applications had already been approved, and Mike's application was analyzed using the presumption method, resulting in a refund for Mike's of $864.

Standard Oil Company (Indiana)/United States Fleet Leasing, Inc., 3/7/84, RF21-8551

The DOE issued a Decision and Order concerning an Application for Refund filed by United States Fleet Leasing, Inc. (US Fleet), a vehicle leasing firm which applied as a retailer of Amoco motor gasoline. US Fleet elected to apply for a refund based upon the presumptions of injury and the formulae outlined in *Office of Special Counsel,* 10 DOE ¶85,048 (1982) (the *Amoco* Decision). In considering the application, the DOE concluded that US Fleet should receive a refund based upon the total volume of its eligible Amoco motor gasoline purchases. The refund granted in this proceeding is $2,104.

Dismissal

The following submission was dismissed:

Company Name	Case No.
Sierra Petroleum Co., Inc	HEF-0436

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 1E-234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines,* a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 84-9067 Filed 4-4-84; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL HOME LOAN BANK BOARD

Application for Conversion From a State-Chartered Association to a Federally Chartered Association

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The public is advised that the Federal Home Loan Bank Board has submitted a revised information collection request, "Application for Conversion From a State-Chartered Association to a Federally Chartered Association", to the Office of Management and Budget for approval pursuant to 5 CFR 1320.12 pertaining to clearance of information collection requests.

Comments on the information collection request are welcome and should be directed to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, D.C. 20503, Attention: Desk Officer for the Federal Home Loan Bank Board.

The Board would appreciate commenters also sending copies of their comments to the Board.

Requests for information including copies of the proposed information collection request and supporting documentation are obtainable from the Board address given below: Director, Information Services Section, Office of Secretariat, Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, D.C. 20552.

FOR FURTHER INFORMATION CONTACT: Kathleen Nagle, Office of District Banks, Federal Home Loan Bank Board, phone 202-377-6709.

By the Federal Home Loan Bank Board.
Dated: April 2, 1984.

J. J. Finn,

Secretary.

[FR Doc. 84-9143 Filed 4-4-84; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL RESERVE SYSTEM

Banterra Corp.; Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (49 FR 794) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 25, 1984.

A. Federal Reserve Bank of St. Louis (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Banterra Corp.*, Norris City, Illinois; to engage *de novo* in providing data processing and transmission services for its subsidiary banks and other financial institutions in the State of Illinois. Service will be limited to the processing or furnishing of financial, banking or economic data.

Board of Governors of the Federal Reserve System, March 30, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-9059 Filed 4-4-84; 8:45 am]

BILLING CODE 6210-01-M

Florence Bancorp Services, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (49 FR 794) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. 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.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 27, 1984.

A. Federal Reserve Bank of Cleveland (Lee S. Adams, Vice President), 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Florence Bancorp Services, Inc.*, Florence, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of Florence Deposit Bank, Florence, Kentucky.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President), 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Farmers & Merchants Bancshares, Inc.*, Lafayette, Alabama; to become a bank holding company by acquiring 80 percent of the voting shares of Farmers & Merchants Bank, Lafayette, Alabama.

C. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President), 230 South La Salle Street, Chicago, Illinois 60690:

1. *Erie Financial Corp.*, Detroit, Michigan; to become a bank holding company by acquiring 80 percent of the voting shares of Erie State Bank.

D. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President), 101 Market Street, San Francisco, California 94105:

1. *Guardian Bancorp, Inc.*, Phoenix, Arizona; to become a bank holding company by acquiring 100 percent of the voting shares of Guardian Bank, Phoenix, Arizona.

2. *Sunstate Bancshares, Inc.*, Phoenix, Arizona; to become a bank holding company by acquiring Bank of Casa Grande Valley, Casa Grande, Arizona.

Board of Governors of the Federal Reserve System, March 30, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-9060 Filed 4-4-84; 8:45 am]

BILLING CODE 6210-01-M

Worthen Bank & Trust Company, N.A.; Corporation To Do Business Under Section 25(a) of the Federal Reserve Act

An application has been submitted for the Boards approval of the organization of a corporation to do business under section 25(a) of the Federal Reserve Act ("Edge Corporation"), to be known as Worthen Bank International, Little Rock, Arkansas, and to establish a branch of the Edge Corporation in Los Angeles, California. Worthen Bank International would operate as subsidiary of Worthen Bank & Trust Company, N.A.; Little Rock, Arkansas. The factors that are to be considered in acting on the application are set forth in § 211.4(a) of the Board's Regulation K (12 CFR 211.4(a)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of St. Louis. Any person wishing to comment on the application should submit views in writing to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received not later than April 27, 1984. 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, identify specifically any questions of fact that are in dispute, and summarize the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, March 30, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-9061 Filed 4-4-84; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Office of Policy and Management Systems, GSA.

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the General Service Administration (GSA) plans to request the Office of Management and Budget (OMB) to review and approve three existing information collections.

Comment date: Submit comments on these information collections before April 23, 1984.

ADDRESSES: Send comments to Franklin S. Reeder, GSA Desk Office, Room 3235, NEOB, Washington, DC 20503, and to Kathleen M. Lannon, Acting GSA Clearance Officer, General Services Administration (ATRAI), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Victoria Moss, Office of Acquisition Policy, 202–523–4799.

SUPPLEMENTARY INFORMATION:

1. *Advance payments.* a. *Purpose.* The requirement is necessary to determine if advance payment should be provided to the contractor.

b. *Annual reporting burden.* This is estimated as follows: Respondents, responses and hours, 500.

2. *Contract cost principles and procedures.* a. *Purpose.* The documentation provided by Federal contractors under this clause is used by contracting officers to determine if certain cost elements will be allowed.

b. *Annual reporting burden.* This is estimated as follows: Respondents and responses 38, hours 19.

3. *Progress payments.* a. *Purpose.* This clause requires firms performing under Federal contracts calling for progress payments to provide financial information which is used to determine proper amount of payment.

b. *Annual reporting burden.* This is estimated as follows: Respondents 2,160; responses 25,920; hours 14,256.

Obtaining copies of proposals. Requestors may obtain copies from the Directives and Reports Management Branch (ATRAI), Room 3004, GS Building, Washington, DC 20405, telephone 202–566–0666.

Dated: March 28, 1984.

Frank J. Sabatini,

Director, Information Management Division.

[FR Doc. 84–9028 Filed 4–4–84; 8:45 am]

BILLING CODE 6820–34–M

Agency Information Collection Under Review by the Office of Management and Budget (OMB): GSAR, Part 509, Certification (Crimes, Debarments, Suspensions, Defaults)

AGENCY: Office of Policy and Management Systems, GSA.

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the General Services Administration (GSA) plans to request the Office of Management and Budget (OMB) to review and approve an existing collection.

Comment date: Submit comments on this information collection before April 27, 1984.

ADDRESSES: Send comments to Franklin S. Reeder, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Kathleen M. Lannon, Acting GSA Clearance Officer, General Services Administration (ATRAI), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ida Ustad, Office of Acquisition Policy, 202–523–4754.

SUPPLEMENTARY INFORMATION:

1. *Certification clause.* a. *Purpose.* This clause requires contractors for contracts over $25,000 to certify whether firms, officers or principal employees were indicted, convicted, suspended, debarred or had a contract terminated. This is necessary to determine offerors' responsibilities.

b. *Annual reporting burden.* This is estimated as follows: Respondents and responses 90,945; hours 15,157.

2. *Obtaining copies of proposal.* Requestors may obtain copies of the proposal from the Directives and Reports Management Branch (ATRAI), Room 3004, GSA Building, Washington, DC 20405, telephone (202–566–0666).

Dated: March 29, 1984.

Frank J. Sabatini,

Director, Information Management Division.

[FR Doc. 84–9027 Filed 4–4–84; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 81N–0088]

Availability of Chest X-Ray Referral Criteria Panel Report

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a report, "The Selection of Patients for X-Ray Examinations: Chest X-Ray Screening Examinations." The report, developed by a panel of physicians with expertise in chest radiology, discussing the utility of selected chest x-ray screening examinations.

ADDRESSES: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857; a copy of the report is available for public review at the Dockets Management Branch. Copies of the report may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Jay A. Rachlin, Center for Devices and Radiological Health (formerly National Center for Devices and Radiological Health) (HFZ–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4600.

SUPPLEMENTARY INFORMATION: Through the Center for Devices and Radiological Health (CDRH), FDA conducts and supports research and training to minimize unproductive radiation exposure from diagnostic radiological examinations (including nuclear medicine procedures). One possible source of unproductive radiation exposure is radiological examinations that are not likely to affect patient management. To reduce the use of ineffective examinations, referring physicians need current information about when a given radiological study is likely to provide needed diagnostic data. This information can take the form of decision guidelines based on patient signs, symptoms, or history, sometimes known as "referral criteria."

To assist in making this type of information available, FDA has established a program to facilitate the development, testing, and use of referral criteria for diagnostic radiological procedures. A panel of physicians developed and endorsed the criteria

statements as part of a voluntary cooperative effort between CDRH and the medical community to develop referral criteria for specific radiological procedures. The agency believes that such information about the utility of radiological procedures can assist physicians in using limited health care and diagnostic radiological resources more effectively and will also help minimize unnecessary radiation exposure to the population.

Chest X-Ray Referral Criteria Panel Report

In its role as a facilitator, FDA provided logistical support to the Chest X-Ray Referral Criteria Panel, a panel of physicians expert in chest radiography, to review the uses of chest x-ray examinations and to develop recommendations to help minimize unnecessary radiation exposure associated with chest x-ray screening examinations.

In the **Federal Register** of June 9, 1981 (46 FR 30568), FDA announced the availability of and asked for written comments on a draft report prepared by the panel. The draft report presented draft referral criteria statements for five different screening applications of the chest x-ray examination: mandated routine screening examinations, routine prenatal examinations, routine hospital admission examinations, examinations for tuberculosis detection and control, and routine examinations in occupational medicine. The draft report also included a general preamble to referral criteria for chest x-ray examinations, a list of the panel members, and an FDA annotated bibliography of the medical literature which formed the scientific basis for the draft referral criteria statements.

More than 800 copies of the draft report were furnished to individual requestors. Additionally, the statements were reviewed by 19 medical specialty associations. Many of these organizations, including the American College of Radiology, the American Thoracic Society, and the American Occupational Medical Association, endorsed the draft statements and adopted them as their organization policy. FDA received 16 comments on the draft report and referred them to the panel for consideration in developing the final report.

The Chest X-Ray Referral Criteria Panel now has prepared its final report entitled, "The Selection of Patients for X-Ray Examinations: Chest X-Ray Screening Examinations." The report contains five referral criteria statements, which encourage physicians to limit voluntarily their routine use of chest x-rays because of the insufficient yield of the chest x-ray examination as a screening tool for asymptomatic disease. The panel's statements include recommendations against mandated routine chest x-ray screening examinations, routine prenatal chest x-ray examinations, routine hospital admission chest x-ray examinations, chest x-ray examinations for tuberculosis detection and control, and routine chest x-ray examinations for occupational medicine.

In the June 9, 1981 notice, FDA also announced that interested persons would be given further opportunity to comment on any final panel report at such time as a report was developed and made available through an announcement in the **Federal Register.**

Thus, FDA advises that the final report may be purchased from the Superintendent of Documents, U.S. Government Printing Office (address above), for $4.50 per copy. Orders for copies should include the GPO stock number 017–0105–00210–1.

A single copy of the report is on file under Docket Number 81N–0088 in the Dockets Management Branch (address above) and is available for public review between 9 a.m. and 4 p.m., Monday through Friday. Interested persons may at any time submit written comments, data, or information regarding this final report to the Dockets Management Branch. Two copies of any comments should be submitted, except that individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this notice. FDA will transmit any such comments to the panel for consideration in determining the need for future revisions of its recommendations. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 30, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-9042 Filed 4-4-84; 8:45 am]

BILLING CODE 4160-0-M

[FDA-225-84-8000]

Memorandum of Understanding With the United States Patent and Trademark Office

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has executed an agreement with the United States Patent and Trademark Office (PTO). The purpose of the agreement is to establish a continuing procedure whereby the PTO determines whether a U.S. Patent may be issued for certain orphan products under the provisions to make special of the Manual of Patent Examining Procedure and provides that decision to the patent applicant for transmittal to FDA.

DATE: This agreement became effective March 22, 1984.

FOR FURTHER INFORMATION CONTACT: Walter J. Kustka, Intergovernmental and Industry Affairs Staff (HFC–50), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1583.

SUPPLEMENTARY INFORMATION: In accordance with § 20.108(c) (21 CFR 20.108(c)), which states that all agreements and memoranda of understanding between FDA and others shall be published in the **Federal Register**, the agency is publishing the following memorandum of understanding:

Memorandum of Understanding Between the United States Patent and Trademark Office and the Food and Drug Administration

I. Purpose

To establish a continuing procedure whereby the United States Patent and Trademark Office determines whether a U.S. Patent may be issued for certain orphan products for certain uses under the provisions to make special of the Manual of Patent Examining Procedure and provides that decision to the patent applicant for transmittal to the Food and Drug Administration.

II. Background

On January 4, 1983, Pub. L. 97–414, The Orphan Drug Act (the Act) became law. 21 U.S.C. 525 *et seq.* The Act establishes financial and other incentives to encourage potential sponsors of drugs for rare diseases or conditions (orphan drugs) to conduct research and to pursue marketing for these drugs.

One of the most important incentives of the Act provides that drugs that are designated as orphan drugs under Section 525 of the Act and for which a U.S. patent may not be issued are entitled to an exclusive marketing status. 21 U.S.C. 527. For a period of seven years after the Food and Drug Administration (FDA) approves a new drug application for an officially designated orphan drug for which a U.S. patent may not be issued, FDA cannot approve a new drug application for the same drug for the same use. FDA may approve the same drug for the same use for another sponsor only if the Agency finds that the holder of the first approved new drug application cannot assure the availability of sufficient quantities of the drug to meet the needs of patients or if the holder consents to

the approval of other new drug applications. (See Attachment A for text of pertinent sections of the Act.)

There are, in addition, a limited number of orphan products not covered by the Orphan Drug Act for which accelerated patent review may be appropriate. These products, while not officially designated as orphan drugs under the Act, nevertheless, are orphan products vital to an afflicted patient group in need of the product. FDA may decide that an accelerated decision on the patentability for such a product would be an important inducement to the orphan product's development and availability.

This agreement between the U.S. Patent and Trademark Office (PTO) and the United States Food and Drug Administration has been developed to provide for an accelerated determination of the patentability of an orphan drug for a particular use before a grant of exclusive marketing is made under the Orphan Drug Act. In addition, this agreement provides for accelerated review of the patentability of certain other orphan products for a particular use upon request by FDA. No additional showing by the patent applicant concerning the need for expedited review is necessary for orphan products falling within the scope of this Memorandum of Understanding.

III. Substance of Agreements

A. Drugs Designated As Orphan Under Section 526 of the Orphan Drug Act.

1. Upon receipt of a petition from a patent applicant including as an attachment a letter from FDA stating that a drug for a particular use has received orphan designation pursuant to Section 526 of the Federal Food, Drug, and Cosmetic Act, the PTO will grant accelerated review to a patent application for the drug under the "petition to make special" provisions of the Manual of Patent Examining Procedure, Section 708.02.

2. The PTO will notify the patent applicant of the action to grant accelerated patent review as well as of any problems requiring resolution.

3. The PTO will notify the patent applicant of the results of the examination and either issue a patent or declare the application abandoned after the conclusion of the PTO's examination.

4. The PTO will provide to the patent applicant, at applicant's request and expense, a certified copy of the patent application or patented file for transmittal to the FDA as evidence of whether a U.S. Patent may issue for the orphan drug.

B. Orphan Product Not Covered by Provisions of the Orphan Drug Act.

Orphan products identified by FDA but which do not fall within Section 526 of the Act will be granted accelerated review upon petition by the patent applicant accompanied by a request by FDA.

When FDA identifies such an orphan product not covered by the Act a procedure similar to that described in part III–A of this memorandum will be followed. In response to a written request from FDA for accelerated review for a particular orphan product, which is filed as an attachment to a petition to make a patent application special, the PTO will accord accelerated review to the patent application for the product under the "petition to make special" provisions in the Manual of Patent Examining Procedure, Section 708.2.

IV. Name and Address of Participating Parties

A. U.S. Patent and Trademark Office, Washington, DC 20231.

B. Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

V. Liaison Officers

A. For the U.S. Patent and Trademark Office, Charles Van Horn, Director, Examining Group 120, U.S. Patent and Trademark Office, Washington DC 20231.

B. For the Food and Drug Administration: Emery J. Sturniolo, Assistant to Director, Office of Orphan Product Development, HF–35, 5600 Fishers Lane, Rockville, MD 20857.

VI. Period of Agreement

This agreement, when accepted by both parties will be effective indefinitely. It may be modified by mutual written consent or terminated by either party upon a thirty day advance written notice to the other party.

Approved and accepted for the United States Patent and Trademark office.

Donald J. Quigg,

Deputy Commissioner of Patents and Trademarks.

Dated: January 12, 1984.

Approved and accepted for the Food and Drug Administration.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

Dated: March 22, 1984.

Effective date. This agreement became effective March 22, 1984.

Dated: March 28, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

ATTACHMENT A

PUBLIC LAW 97–414—JAN. 4, 1983 96 STAT. 2049

"PROTECTION FOR UNPATENTED DRUGS FOR RARE DISEASES OR CONDITIONS

21 USC 360cc.

"SEC. 527. (a) Except as provided in subsection (b), if the Secretary—

"(1) approves an application filed pursuant to section 505(b), or

"(2) issues a license under section 351 of the Public Health Service Act

for a drug designated under section 526 for a rare disease or condition and for which a United States Letter of Patent may not be issued, the Secretary may not approve another application under section 505(b) or issue another license under section 351 of the Public Health Service Act for such drug for such disease or condition for a person who is not the holder of such approved application or of such license until the expiration of seven years from the date of the approval of the approved application or the issuance of the license. Section 505(c)(2) does not apply to the refusal to approve an application under the preceding sentence.

Ante, p. 2050.

21 USC 355. 42 USC 262.

"(b) If an application filed pursuant to section 505(b) is approved for a drug designated under section 526 for a rare disease or condition or a license is issued under section 351 of the Public Health Service Act for such a drug and if a United States Letter of Patent may not be issued for the drug, the Secretary may, during the seven-year period beginning on the date of the application approval or of the issuance of the license, approve another application under section 505(b), or, if the drug is a biological product, issue a license under section 351 of the Public Health Service Act, for such drug for such disease or condition for a person who is not the holder of such approved application or of such license if—

"(1) The Secretary finds, after providing the holder notice and opportunity for the submission of views, that in such period the holder of the approved application or of the license cannot assure the availability of sufficient quantities of the drug to meet the needs of persons with the disease or condition for which the drug was designated; or

"(2) such holder provides the Secretary in writing the consent of such holder for the approval of other applications or the issuance of other licenses before the expiration of such seven-year period.

[FR Doc. 84–9041 Filed 4–4–84; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 84F-0054]

American Cyanamid Co.; Filing of Food Additive Petition

Correction

In FR Doc. 84-7359, beginning on page 10364, in the issue of Tuesday, March 20, 1984, on page 10365, in the first column, lines four and five should be removed.

BILLING CODE 1505-01-M

National Institutes of Health

National Heart, Lung, and Blood Institute; Meeting

Notice is hereby given of the meeting of the National High Blood Pressure Education Program Coordinating Committee sponsored by the National Heart, Lung, and Blood Institute, on May 4, 1984, from 9 a.m. to 4 p.m., at the Crown Plaza, 1750 Rockville Pike, Rockville, Maryland 20852. The entire meeting will be open to the public.

The coordinating committee is meeting to define the priorities, activities, and needs of the groups participating in the National High Blood Pressure Education Program. Attendance by the public will be limited to space available.

For detailed program information, agenda, list of participants, and meeting summary contact: Dr. Edward J. Roccella, Coordinator, Health Education Branch, Office of Prevention, Education and Control, National Heart, Lung, and Blood Institute, National Institutes of Health, Building 31, Room 4A18, Bethesda, Maryland 20205, 301-496-1051.

Dated: March 28, 1984.

James B. Wyngaarden,

Director, NIH.

[FR Doc. 84-9037 Filed 4-4-84; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

Food and Drug Administration; Center for Drugs and Biologics; Statement of Organization, Function, and Delegations of Authority

Correction

In FR Doc. 84-7233 beginning on page 10168 in the issue of Monday, March 19, 1984, make the following corrections.

1. On page 10170, second column, fifth line from the top, "addition" should read "addiction".

2. On page 10172, first column, second paragraph from the bottom, "(n-4-9v)" should read "(n-4-iv)"; third column, fifth complete paragraph from the top, first line, "consucts" should read "conducts"; and in the seventh paragraph, fourth line, insert the following after "field": "staff and from other Federal agencies to obtain drug analysis data".

3. On page 10173, first column, fifth complete paragraph from the top, fifth line, "licensees" should read "licenses".

4. On page 10174, second column, fifth paragraph, third line, "anti-effective" should read "anti-infective", and in the fifth paragraph from the bottom, first line, insert "and" after "administrative".

BILLING CODE 1505-01-M

Food and Drug Administration; Center for Veterinary Medicine; Statement of Organization, Functions, and Delegations of Authority

Correction

In FR Doc. 84-7234 beginning on page 10175 in the issue of Monday, March 19, 1984, make the following correction.

On page 10176, third column, eighth paragraph from the top, third line, "of" should read "or".

BILLING CODE 1505-01-M

Food and Drug Administration; Center for Food Safety and Applied Nutrition; Statement of Organization, Functions, and Delegations of Authority

Correction

In FR Doc. 84-7235 beginning on page 10179 in the issue of Monday, March 19, 1984, make the following corrections.

On page 10180, first column, fourth line from the bottom of the page, "appication" should read "application"; third column, third paragraph from the bottom, first line, "organizatinal" should read "organizational".

On page 10181, first column, eighth paragraph from the top, third line, "imformation" should read "information".

On page 10182, third column, fourth paragraph from the bottom, second line, "toxicologial" should read "toxicological".

On page 10183, first column, second paragraph from the top, second line, "toxicolgical" should read "toxicological".

On page 10184, first column, first paragraph, fifth line, remove the comma after "analyses".

BILLING CODE 1505-01-M

Social Security Administration

Transitional Employment Training Demonstration Program: Announcement of the Availability of Grant Funds

Correction

In FR Doc. 84-8516 beginning on page 12312 in the issue of Thursday, March 29, 1984, make the following correction:

On page 12313, third column, second paragraph, third and fourth lines, "(insert date 60 days following the date of this notice)" should have read "May 29, 1984".

BILLING CODE 1505-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Regional Administrator—Regional Housing Commissioner

[Docket No. D-84-739; FR-1955]

Region IV (Atlanta), Designation for Acting Manager, Birmingham Office

AGENCY: Department of Housing and Urban Development.

ACTION: Designation.

SUMMARY: Updates the designation of officials who may serve as Acting Manager for the Birmingham Office. This revision is necessary because HUD's reorganization of its regional and field offices in September 1983 changed the names of field offices and the titles of various positions in those offices.

EFFECTIVE DATE: November 13, 1983.

FOR FURTHER INFORMATION CONTACT: Ellis M. Brossett, Acting Director, Management and Budget Division, Office of Administration, Atlanta Regional Office, Department of Housing and Urban Development, Room 658, Richard B. Russell Federal Building, 75 Spring Street SW., Atlanta, Georgia 30303, 404-221-5199. (This is not a toll-free number.)

Designation of Acting Manager for Birmingham Office

Each of the officials appointed to the following positions is designated to serve as Acting Manager during the absence of, or vacancy in the position of, the Manager, with all the powers, functions, and duties redelegated or assigned to the Manager: Provided, That no official is authorized to serve as Acting Manager unless all officials listed before him/her in this designation are unavailable to act by reason of absence or vacancy in the position:

1. Deputy Manager.

2. Chief Counsel.
3. Director, Community Planning and Development Division.
4. Director, Housing Management Division.
5. Director, Housing Development Division.

This designation supersedes the designation effective December 15, 1980 (46 FR 16330, March 12, 1981).

(Delegation of Authority by the Secretary effective October 1, 1970 (36 FR 3389, February 23, 1971))

This designation shall be effective as of November 13, 1983.

Richard W. Compton,

Manager, Birmingham Office.

Clifton G. Brown,

Regional Administrator, Regional Housing Commissioner, Region IV (Atlanta).

[FR Doc. 84-8980 Filed 4-4-84; 8:45 am]
BILLING CODE 4210-32-M

[Docket No. R-84-736; FR-1955]

Region IV (Atlanta), Designation for Acting Manager, Columbia Office

AGENCY: Department of Housing and Urban Development.

ACTION: Designation.

SUMMARY: Updates the designation of officials who may serve as Acting Manager for the Columbia Office. This revision is necessary because HUD's reorganization of its Regional and field offices in September 1983 changed the names of field offices and the titles of various positions in those offices.

EFFECTIVE DATE: November 13, 1983.

FOR FURTHER INFORMATION CONTACT: Ellis M. Brossett, Acting Director, Management and Budget Division, Office of Administration, Atlanta Regional Office, Department of Housing and Urban Development, Room 658, Richard B. Russell Federal Building, 75 Spring Street SW, Atlanta, Georgia 30303, 404/221-5199. (This is not a toll-free number.)

Designation of Acting Manager for Columbia Office

Each of the officials appointed to the following positions is designated to serve as Acting Manager during the absence of, or vacancy in the position of, the Manager, with all the powers, functions, and duties redelegated or assigned to the Manager: provided, that no official is authorized to serve as Acting Manager unless all officials listed before him/her in this designation are unavailable to act by reason of absence or vacancy in the position.

1. Deputy Manager.
2. Director, Housing Management Division.
3. Director, Community Planning and Development Division.
4. Director, Housing Development Division.
5. Chief Counsel.
6. Director, Fair Housing and Equal Opportunity Division.

This designation supersedes the designation effective June 18, 1978 (43 FR 39858, September 7, 1978).

(Delegation of Authority by the Secretary effective October 1, 1970 (36 FR 3389, February 23, 1971))

This designation shall be effective as of November 13, 1983.

Franklin H. Corley, Jr.,

Manager, Columbia Office.

Clifton G. Brown,

Regional Administrator—Regional Housing Commissioner, Region IV (Atlanta).

[FR Doc. 84-8983 Filed 4-4-84; 8:45 am]
BILLING CODE 4210-32-M

[Docket No. D-84-737; FR-1955]

Region IV (Atlanta), Designation for Acting Manager, Coral Gables Office

AGENCY: Department of Housing and Urban Development.

ACTION: Designation.

SUMMARY: Updates the designation of officials who may serve as Acting Manager for the Coral Gables Office. This revision is necessary because HUD's reorganization of its Regional and field offices in September 1983 changed the names of field offices and the titles of various positions in those offices.

EFFECTIVE DATE: January 3, 1984.

FOR FURTHER INFORMATION CONTACT: Ellis M. Brossett, Acting Director, Management and Budget Division, Office of Administration, Atlanta Regional Office, Department of Housing and Urban Development, Room 658, Richard B. Russell Federal Building, 75 Spring Street SW., Atlanta, Georgia 30303, 404-221-5199. (This is not a toll-free number.)

Designation of Acting Manager for Coral Gables Office

Each of the officials appointed to the following positions is designated to serve as Acting Manager during the absence of, or vacancy in the position of, the Manager, with all the powers, functions, and duties redelegated or assigned to the Manager: Provided, that no official is authorized to serve as Acting Manager unless all officials listed before him/her in this designation are unavailable to act by reason of absence or vacancy in the position:

1. Chief, Valuation Branch.
2. Chief, Mortgage Credit Branch.
3. Chief, Loan Management Branch.
4. Chief, Property Disposition Branch.

This designation supersedes the designation effective September 7, 1978 (43 FR 39860, June 18, 1978).

(Delegation of Authority by the Secretary effective October 1, 1970 (36 FR 3389, February 23, 1971))

This designation shall be effective as of January 3, 1984.

Edwin I. Gardner,

Acting Manager, Coral Gables Office.

Clifton G. Brown,

Regional Administrator-Regional Housing Commissioner, Region IV (Atlanta).

[FR Doc. 84-8982 Filed 4-4-84; 8:45 am]
BILLING CODE 4210-32-M

[Docket No. R-84-743; FR-1955]

Region IV (Atlanta), Designation for Acting Manager, Jackson Office

AGENCY: Department of Housing and Urban Development.

ACTION: Designation.

SUMMARY: Updates the designation of officials who may serve as Acting Manager for the Jackson Office. This revision is necessary because HUD's reorganization of its Regional and field offices in September 1983 changed the names of field offices and the titles of various positions in those offices.

EFFECTIVE DATE: January 1, 1984.

FOR FURTHER INFORMATION CONTACT: Ellis M. Brossett, Acting Director, Management and Budget Division, Office of Administration, Atlanta Regional Office, Department of Housing and Urban Development, Room 658, Richard B. Russell Federal Building, 75 Spring Street SW., Atlanta, GA 30303, 404-221-5199. (This is not a toll-free number.)

Designation of Acting Manager for Jackson Office

Each of the officials appointed to the following positions is designated to serve as Acting Manager during the absence of, or vacancy in the position of, the Manager, with all the powers, functions, and duties redelegated or assigned to the Manager: Provided, that no official is authorized to serve as Acting Manager unless all officials listed before him/her in this designation are unavailable to act by reason of absence or vacancy in the position:

1. Deputy Manager.
2. Director, Community Planning and Development Division.
3. Director, Housing Development Division.
4. Director, Housing Management Division.

This designation supersedes the designation effective March 31, 1982, (47 FR 28799, July 1, 1982).

(Delegation of Authority by the Secretary effective October 1, 1970, (36 FR 3389, February 23, 1971))

This designation shall be effective as of January 1, 1984.

James S. Roland,

Manager, Jackson Office.

Clifton G. Brown,

Regional Administrator—Regional Housing Commissioner, Region IV (Atlanta).

[FR Doc. 84-8976 Filed 4-4-84; 8:45 am]

BILLING CODE 4210-32-M

[Docket No. D-84-740; FR-1955]

Region IV (Atlanta), Designation for Acting Manager, Jacksonville Office

AGENCY: Department of Housing and Urban Development.

ACTION: Designation.

SUMMARY: Updates the designation of officials who may serve as Acting Manager for the Jacksonville Office. This revision is necessary because HUD's reorganization of its Regional and field offices in September 1983 changed the names of field offices and the titles of various positions in those offices.

EFFECTIVE DATE: December 13, 1983.

FOR FURTHER INFORMATION CONTACT: Ellis M. Brossett, Acting Director, Management and Budget Division, Office of Administration, Atlanta Regional Office, Department of Housing and Urban Development, Room 658, Richard B. Russell Federal Building, 75 Spring Street SW., Atlanta, Georgia 30303, 404-221-5199. (This is not a toll-free number.)

Designation of Acting Manager for Jacksonville Office

Each of the officials appointed to the following positions is designated to serve as Acting Manager during the absence of, or vacancy in the position of, the Manager, with all the powers, functions, and duties redelegated or assigned to the Manager: Provided, That no official is authorized to serve as Acting Manager unless all officials listed before him/her in this designation are unavailable to act by reason of absence or vacancy in the position:

1. Deputy Manager.
2. Director, Housing Management Division.
3. Director, Community Planning & Development Division.
4. Chief Counsel.
5. Director, Housing Development Division.

This delegation supersedes the designation effective September 7, 1978, (43 FR 39859, September 7, 1978).

(Delegation of Authority by the Secretary effective October 1, 1970, (36 FR 3389, February 23, 1971))

This designation shall be effective as of December 13, 1983.

Harry I. Sharrott,

Manager, Jacksonville Office.

Clifton G. Brown,

Regional Administrator—Regional Housing Commissioner, Region IV (Atlanta).

[FR Doc. 84-8979 Filed 4-4-84; 8:45 am]

BILLING CODE 4210-32-M

[Docket No. D-84-734; FR-1955]

Region IV (Atlanta), Designation for Acting Manager, Knoxville Office

AGENCY: Department of Housing and Urban Development.

ACTION.T1
esignation.Q03

SUMMARY: Updates the designation of officials who may serve as Acting Manager for the Knoxville Office. This revision is necessary because HUD's reorganization of its Regional and field offices in September 1983 changed the names of field offices and the titles of various positions in those offices.

EFFECTIVE DATE: December 13, 1983.

FOR FURTHER INFORMATION CONTACT: Ellis M. Brossett, Acting Director, Management and Budget Division, Office of Administration, Altanta Regional Office, Department of Housing and Urban Development, Room 658, Richard B. Russell Federal Building, 75 Spring Street SW., Atlanta, Georgia 30303, 404-221-5199. (This is not a toll-free number.)

Designation of Acting Manager for Knoxville Office

Each of the officials appointed to the following positions is designated to serve as Acting Manager during the absence of, or vacancy in the position of, the Manager, with all the powers, functions, and duties redelegated or assigned to the Manager: Provided, That no official is authorized to serve as Acting Manager unless all officials listed before him/her in this designation are unavailable to act by reason of absence or vacancy in the position:

1. Deputy Manager.
2. Director, Housing Development Division.
3. Director, Community Planning and Development Division.
4. Director, Housing Management Division.
5. Director, Administration Division.
6. Chief Counsel.

This designation supersedes the designation effective January 20, 1980 (45 FR 24923, April 11, 1980).

(Delegation of Authority by the Secretary effective October 1, 1970 (36 FR 3389, February 23, 1971))

This designation shall be effective as of December 13, 1983.

Fred O. DeBruhl, Sr.,

Manager, Knoxville Office.

Clifton G. Brown,

Regional Administrator-Regional Housing Commissioner, Region IV (Atlanta).

[FR Doc. 84-8986 Filed 4-4-84; 8:45 am]

BILLING CODE 4210-32-M

[Docket No. D-84-741; FR-1955]

Region IV (Atlanta), Designation for Acting Manager, Louisville Office

AGENCY: Department of Housing and Urban Development.

ACTION: Designation.

SUMMARY: Updates the designation of officials who may serve as Acting Manager for the Louisville Office. This revision is necessary because HUD's reorganization of its Regional and field offices in September 1983 changed the names of field offices and the titles of various positions in those offices.

EFFECTIVE DATE: November 13, 1983.

FOR FURTHER INFORMATION CONTACT: Ellis M. Brossett, Acting Director, Management and Budget Division, Office of Administration, Atlanta Regional Office, Department of Housing and Urban Development, Room 658, Richard B. Russell Federal Building, 75 Spring Street SW., Atlanta, Georgia 30303, 404-221-5199. (This is not a toll-free number.)

Designation of Acting Manager for Louisville Office

Each of the officials appointed to the following positions is designated to serve as Acting Manager during the absence of, or vacancy in the position of, the Manager, with all the powers, functions, and duties redelegated or assigned to the Manager: Provided, That no official is authorized to serve as Acting Manager unless all officials listed before him/her in this designation are unavailable to act by reason of absence or vacancy in the position:

1. Deputy Manager.
2. Chief Counsel.
3. Director, Community Planning and Development Division.
4. Director, Housing Management Division.
5. Director, Housing Development Division.
6. Director, Administration Division.

This designation supersedes the designation effective June 18, 1978 (43 FR 39860, September 7, 1978).

(Delegation of Authority by the Secretary effective October 1, 1970) (36 FR 3389, February 23, 1979))

This designation shall be effective as of November 13, 1983.

Fred H. Porterfield,

Manager, Louisville Office.

Clifton G. Brown,

Regional Administrator-Regional Housing Commissioner, Region IV (Atlanta).

[FR Doc. 84-8978 Filed 4-4-84; 8:45 am]

BILLING CODE 4210-32-M

[Docket No. D-84-742; FR-1955]

Region IV (Atlanta), Designation for Acting Manager, Memphis Office

AGENCY: Department of Housing and Urban Development.

ACTION: Designation.

SUMMARY: Updates the designation of officials who may serve as Acting Manager for the Memphis Office. This revision is necessary because HUD's reorganization of its Regional and field offices in September 1983 changed the names of the field offices and the titles of various positions in those offices.

EFFECTIVE DATE: November 13, 1983.

FOR FURTHER INFORMATION CONTACT: Ellis M. Brossett, Acting Director, Management and Budget Division, Office of Administration, Atlanta Regional Office, Department of Housing and Urban Development, Room 658, Richard B. Russell Federal Building, 75 Spring Street, SW., Atlanta, Georgia 30303, 404-221-5199. (This is not a toll-free number).

Designation of Acting Manager for Memphis Office

Each of the officials appointed to the following positions is designated to serve as Acting Manager during the absence of, or vacancy in the position of, the Manager, with all powers, functions, and duties redelegated or assigned to the Manager: Provided, That no official is authorized to serve as Acting Manager unless all officials listed before him/her in this designation are unavailable to act by reasons of absence or vacancy in the position:

1. Chief, Housing Development Branch.
2. Chief, Loan Management and Property Disposition Branch.

This designation supersedes the designation effective December 15, 1980 (46 FR 16330, March 12, 1981).

(Delegation of Authority by the Secretary effective October 1, 1970 (36 FR 3389, February 23, 1971)

This designation shall be effective as of November 13, 1983.

Joseph P. Garaffa,

Manager, Memphis Office.

Clifton G. Brown,

Regional Administrator—Regional Housing Commissioner, Region IV (Atlanta).

[FR Doc. 84-8977 Filed 4-4-84; 8:45 am]

BILLING CODE 4210-32-M

[Docket No. D84-738; FR-1955]

Region IV (Atlanta), Designation for Acting Manager, Orlando Office

AGENCY: Department of Housing and Urban Development.

ACTION: Designation.

SUMMARY: Updates the designation of officials who may serve as Acting Manager for the Orlando Office. This revision is necessary because HUD's reorganization of its Regional and field offices in September 1983 changed the names of field offices and the title of various positions in those offices.

EFFECTIVE DATE: December 12, 1983.

FOR FURTHER INFORMATION CONTACT: Ellis M. Brossett, Acting Director, Management and Budget Division, Office of Administration, Atlanta Regional Office, Department of Housing and Urban Development, Room 658, Richard B. Russell Federal Building, 75 Spring Street SW., Atlanta, Georgia 30303, 404-221-5199. (This is not a toll-free number).

Designation of Acting Manager for Orlando Office

Each of the officials appointed to the following positions is designated to serve as Acting Manager during the absence of, or vacancy in the position of, the Manager, with all the powers, functions, and duties redelegated or assigned to the Manager: Provided, That no official is authorized to serve as Acting Manager unless all officials listed before him/her in this designation are unavailable to act by reason of absence or vacancy in the position:

1. Chief, Valuation Branch.
2. Chief, Mortgage Credit Branch.

This designation supersedes the designation effective June 18, 1978, (43 FR 39857, September 7, 1978).

(Delegation of Authority by the Secretary effective October 1, 1970, (36 FR 3389,) February 23, 1971)

This designation shall be effective as of December 12, 1983.

M. Jeanette Porter,

Manager, Orlando Office.

Clifton G. Brown,

Regional Administrator—Regional Housing Commissioner, Region IV (Atlanta).

[FR Doc. 84-8981 Filed 4-4-84; 8:45 am]

BILLING CODE 4210-32-M

[Docket No. D-84-735; FR-1955]

Region IV (Atlanta), Designation for Acting Manager, Tampa Office

AGENCY: Department of Housing and Urban Development.

ACTION: Designation.

SUMMARY: Updates the designation of officials who may serve as Acting Manager for the Tampa Office. This revision is necessary because HUD's reorganization of its Regional and field offices in September 1983 changed the names of field offices and the titles of various positions in those offices.

EFFECTIVE DATE: January 5, 1984.

FOR FURTHER INFORMATION CONTACT: Ellis M. Brossett, Acting Director, Management and Budget Division, Office of Administration, Atlanta Regional Office, Department of Housing and Uban Development, Room 658, Richard B. Russell Federal Building, 75 Spring Street SW., Atlanta, Georgia 30303, 404-221-5199. (This is not a toll-free number.)

Designation of Acting Manager for Tampa Office

Each of the officials appointed to the following positions is designated to serve as Acting Manager during the absence of, or vacancy in the position of, the Manager, with all powers, functions, and duties redelegated or assigned to the Manager: Provided, That no official is authorized to serve as Acting Manager unless all officials listed before him/her in this designation are unavailable to act by reason of absence or vacancy in the position:

1. Chief, Valuation Branch.
2. Chief, Property Disposition Branch.
3. Chief, Loan Management Branch.
4. Chief, Mortgage Credit Branch.

This designation supersedes the designation effective September 7, 1978, (43 FR 39856, June 18, 1978).

(Delegation of Authority by the Secretary effective October 1, 1970, (36 FR 339, February 23, 1971)

This designation shall be effective as of January 5, 1984.

George A. Milburn, Jr.,

Acting Manager, Tampa Office.

Clifton G. Brown,

Regional Administrator—Regional Housing Commissioner, Region IV (Atlanta).

[FR Doc. 84-8987 Filed 4-4-84; 8:45 am]

BILLING CODE 4210-32-M

[Docket No. D-84-733; FR-1955]

Region IV (Atlanta), Designation for Acting Manager, Nashville Office

AGENCY: Department of Housing and Urban Development.

ACTION: Designation.

SUMMARY: Updates the designation of officials who may serve as Acting Manager for the Nashville Office. This revision is necessary because HUD's reorganization of its Regional and field offices in September 1983 changed the names of field offices and the titles of various positions in those offices.

EFFECTIVE DATE: December 13, 1983.

FOR FURTHER INFORMATION CONTACT: Ellis M. Brossett, Acting Director, Management and Budget Division, Office of Administration, Atlanta Regional Office, Department of Housing and Urban Development, Room 658, Richard B. Russell Federal Building, 75 Spring Street, SW., Atlanta, Georgia 30303, 404-221-5199. (This is not a toll-free number.)

Designation of Acting Manager for Nashville Office

Each of the officials appointed to the following positions is designated to serve as Acting Manager during the absence of, or vacancy in the position of, the Manager, with all the powers, functions, and duties redelegated or assigned to the Manager: Provided, that no official is authorized to serve as Acting Manager unless all officials listed before him/her in this designation are unavailable to act by reason of absence or vacancy in the position:

1. Director, Housing Management Division.

2. Director, Housing Development Division.

3. Chief, Mortgage Credit Branch.

This designation supersedes the designation effective February 1, 1983.

(Delegation of Authority by the Secretary effective October 1, 1970, (36 FR 3389), February 23, 1971))

This designation shall be effective as of December 13, 1983.

Joseph G. Hart,

Manager, Nashville Office.

Clifton G. Brown,

Regional Administrator—Regional Housing Commissioner, Region IV (Atlanta).

[FR Doc. 84-8985 Filed 4-4-84; 8:45 am]

BILLING CODE 4210-32-M

[Docket No. D-84-744; FR-1963]

Region III Philadelphia, Office of the Manager, Washington, D.C. Office, Designation

AGENCY: Department of Housing and Urban Development.

ACTION: Designation of Order of Succession.

SUMMARY: The Office Manager is designating officials who may serve as Acting Office Manager during the absence, disability, or vacancy in the position of the Office Manager.

EFFECTIVE DATE: This designation is effective: March 1, 1984.

FOR FURTHER INFORMATION CONTACT: Peter M. Campanella, Regional Counsel, Office of Counsel, Philadelphia Regional Office, Department of Housing & Urban Development, Curtis Building, 6th & Walnut Streets, Philadelphia, PA 19106, phone 215-597-2655. (This is not a toll free number).

Designation

Each of the officials appointed to the following positions is designated to serve as Acting Office Manager during the absence, disability, or vacancy in the position of the Office Manager, with all the powers, functions, and duties redelegated or assigned to the Office Manager: Provided, that no official is authorized to serve as Acting Office Manager unless all preceding listed officials in this designation are unavailable to act by reason of absence, disability, or vacancy in the position:

1. Deputy Manager.

2. Chief Counsel.

3. Director, Housing Development Division.

This designation supersedes the designation effective May 1, 1981.

Authority: Delegation of Authority by the Secretary effective October 1, 1970; 36 FR 3389, February 23, 1971.

Dated: February 23, 1984.

Kenneth J. Finlayson,

Regional Administrator—Regional Housing Commissioner, Region III.

Dated: February 8, 1984.

I. Margaret White,

Manager,

Washington Field Office.

[FR Doc. 84-8988 Filed 4-4-84; 8:45 am]

BILLING CODE 4210-32-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Canon City District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Canon City District Advisory Council Meeting.

SUMMARY: The Canon City District Advisory Council will meet on Thursday and Friday, May 17 and 18, 1984.

The Council will meet from 1:00 pm to 5:00 pm on May 17th at the 1st National Bank Building, 9th Street and Royal Gorge, Canon City, Colorado. On May 18th from 8:00 am to 1:00 pm a field trip to view the DeWeese recreation area and other resource uses in the area is planned.

Agenda of this meeting will include; (1) Election of officers, (2) Cooperative Management Agreements, (3) Comment on the draft Northeast Resource Area RMP/EIS, (4) Public presentations to the council.

The meeting is open to the public, transportation for the field trip is the responsibility of the individual. Persons interested may make oral presentations to the council between 1:30 pm and 2:30 pm on Thursday, or they may file written statements for the Council's consideration. The District Manager may limit the length of oral presentations depending on the number of people wishing to speak.

ADDRESS: Anyone wishing to make a presentation to the council orally or in writing should notify the District Manager, Bureau of Land Management, 3080 East Main (P.O. Box 311), Canon City, Colorado 81212 by May 16 1984.

SUPPLEMENTARY INFORMATION: Summary minutes of the meeting will be available for public inspection and reproduction during regular working hours at the District Office within 30 days following the meeting.

FOR FURTHER INFORMATION CONTACT: Glenn Wallace, Staff Chief, Bureau of Land Management, 3080 East Main

Street, Canon City, Colorado 81212, (303) 275–0631.

Donnie R. Sparks,

District Manager.

[FR Doc. 84–9035 Filed 4–4–84; 8:45 am]

BILLING CODE 4310–JB–M

[M 60267]

Montana; Invitation Coal Exploration License Application

Members of the public are hereby invited to participate with Peabody Development Company in a program for the exploration of coal deposits owned by the United States of America in the following described lands located in Rosebud County, Montana:

T. 1 S., R. 42 E., P.M.M.
Sec. 10: All;
Sec. 14: N½NE¼, SW¼NE¼, NW¼, S½;
Sec. 20: N½NE¼, SE¼NE¼, NE¼NW¼, S½NW¼, SW¼, N½SE¼, SW¼SE¼;
Sec. 22: NE¼, N½NW¼, SE¼NW¼, S½;
Sec. 24: All;
Sec. 26: NE¼, NW¼NW¼, S½NW¼, S½;
Sec. 28: All;
Sec. 30: Lots 1,2,3,4, E½, E½W½;
Sec. 32: All;
Sec. 34: All.
T. 2 S., R. 42 E., P.M.M.
Sec. 2: Lots 1,2,3,4, S½N½, N½S½;
Sec. 4: Lots 1,2,3,4, S½N½, S½;
Sec. 6: Lots 1,2,3,4,5,6,7, S½NE¼, SE¼ NW¼, E½SW¼, SE¼.
T. 1 S., R. 43 E., P.M.M.
Sec. 22: NE¼, S½;
Sec. 24: All;
Sec. 26: All;
Sec. 28: All;
Sec. 32: All;
Sec. 34: NE¼, NE¼NW¼, S½NW¼, S½.
T. 2 S., R. 43 E., P.M.M.
Sec. 2: Lots 1,2,3,4, S½N½, S½;
Sec. 4: Lots 1,2,3,4, S½N½, N½, N½SW¼, SE¼SW¼, SE¼.
T. 1 S., R. 44 E., P.M.M.
Sec. 30: Lots 1,2, NE¼, E½NW¼, N½SE¼.

13,138.61 acres.

Any party electing to participate in this exploration program should be aware of an agreement entered into on October 30, 1980, by Peabody Development Company, The Northern Cheyenne Tribe and the Secretary of the Interior wherein the Secretary agrees to issue to Peabody noncompetitive Federal coal leases on lands included in this application under certain conditions. This agreement is available for public information.

Any party electing to participate in this exploration program shall notify, *in writing* both the State Director, Bureau of Land Management, P.O. Box 36800, Billings, Montana 59107; and Peabody Development Company, 10375 East Harvard Avenue, Suite 409, Denver, Colorado 80231. Such written notice must refer to serial number M 60267 and be received no later than 30 calendar days after publication of this Notice in the **Federal Register** or 10 calendar days after the last publication of this Notice in the Forsyth Independent, whichever is later. This Notice will be published for two consecutive weeks.

This proposed exploration program is fully described and will be conducted pursuant to an exploration plan to be approved by the Bureau of Land Management, Montana State Office, Granite Tower Building, 222 North 32nd Street, Billings, Montana. The exploration plan is available for public inspection at this address.

Dated: March 27, 1984.

George Mowat,

Acting Chief, Branch of Solid Minerals.

[FR Doc. 84–9036 Filed 4–4–84; 8:45 am]

BILLING CODE 4310–DN–M

[M–59731]

Montana; Realty Action—Exchange

AGENCY: Bureau of Land Management—Lewistown District Office, Interior.

ACTION: Notice of Realty Action M–59731—Exchange of public and private lands, in Phillips and Blaine Counties, Montana.

SUMMARY: The following described lands have been determined to be suitable for disposal by exchange under Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Principal Meridian Montana

T. 37 N., R. 27 E.,
Sec. 1, S½;
Sec. 12.
T. 37 N., R. 28 E.,
Sec. 4, lots 10–12, inclusive;
Sec. 6, lots 6, 7, 12, 13, E½ SW¼.

The area described aggregates 1,278.41 acres.

In exchange for these lands, the United States Government will acquire the surface estate in the following described land:

Principal Meridian Montana

T. 37 N., R. 24 E.,
Sec. 10, SE¼;
Sec. 11, NW¼;
Sec. 14, W½;
Sec. 15, E½;
Sec. 22, S½ NE¼.

The area described aggregates 1,040 acres.

The purpose of this exchange is to acquire ephemeral pothole habitat near woody island coulee which is northwest of Turner, Montana. This exchange will also acquire private land within an existing allotment management plan.

DATES: For a period of 45 days from the date of this notice, interested parties may submit comments to the Bureau of Land Management, at the address below. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of Interior.

FOR FURTHER INFORMATION CONTACT: Information related to this exchange, including the environmental assessment and land report is available for review at the Lewistown District Office, Airport Road, Lewistown, Montana 59457.

SUPPLEMENTARY INFORMATION: The publiscation of this notice segregates pulbic lands described above from settlement, sale, location and entry under the public land laws, including the mining laws but not from exchange pursuant to Section 206 of the Federal Land Policy and Management Act of 1976.

The exchange will be subject to:

1. A reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States in accordance with 43 U.S.C. 945.

2. The reservation to the United States of all minerals in the lands being transferred out of Federal ownership.

3. All valid existing rights (e.g. rights-of-way, easements, and leases of record).

4. Value equalization by cash payment.

5. The exchange must meet the requirements of 43 CFR 4110.4–2(b).

This exchange is consistent with Bureau of Land Management policies and planning and has been discussed with local officials. The public interest will be served by completion of this exchange.

Dated: March 29, 1984.

David E. Little,

Acting District Manager.

[FR Doc. 84–9034 Filed 4–4–84; 8:45 am]

BILLING CODE 4310–DN–M

[A–18416–A]

Navajo Relocation Exchange, Apache, Navajo, Maricopa, and Yavapai Counties, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Selection of Public Lands by Private Landowners to be

Exchanged for Private Lands for the Navajo Tribe for Relocation Purposes.

SUMMARY: Under the provisions of Sections 4 and 28 of the Navajo and Hopi Indian Relocation Amendment Act, 1980, 25 U.S.C. 640d–10 and 25 U.S.C 640d–26, the Navajo Tribe filed a selection application on June 30, 1983, for private lands to be obtained by exchange for public lands. Interest has been expressed by private landowners to select the following public lands:

Gila and Salt River Meridian, Arizona

T. 11 N., R. 24 E.
Sec. 4: Lots 1 thru 4, S½N½, S½;
Sec. 6: Lots 1 thru 7, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 26: W½W½, NW¼NE¼, NE¼NW¼, SE¼SW¼, SE¼SE¼.
T. 12 N., R. 24 E.
Sec. 24: S½S½, N½SW¼, SW¼NW¼;
Sec. 26: All;
Sec. 28: All;
Sec. 34: All.
T. 10 N., R. 25 E.
Sec. 18: Lots 1 & 6, W½NE¼NW¼, NW¼SE¼NW¼;

Comprising 3,863.30 acres, more or less located in Apache County.

T. 13 N., R. 21 E.
Sec. 12: All.
T. 14 N., R. 21 E.
Sec. 14: W½;
Sec. 26: All.
T. 11 N., R. 22 E.
Sec. 6: Lot 7;
Sec. 12: NE¼, N½SE¼.
T. 12 N., R. 22 E.
Sec. 10: All;
Sec. 24: S½S½, N½SW¼;
Sec. 26: All.
T. 13 N., R. 22 E.
Sec. 18: Lots 1 & 2, E½NW¼, NE¼;
Sec. 20: All;
Sec. 28: All;
Sec. 34: All.
T. 11 N., R. 23 E.
Sec. 28: NE¼, W½.
T. 12 N., R. 23 E.
Sec. 20: All;
Sec. 28: All;
Sec. 30: Lots 1 thru 4 E½, E½W½;
Sec. 34: all.

Comprising 8,723.27 acres, more or less located in Navajo County.

T. 6 N., R. 1 W.
Sec. 1: Lots 1 thru 7, SW¼NE¼, S½NW¼, SW¼, W½SW¼;
Sec. 2: Lots 1 & 2, S½NE¼, S½;
Sec. 11: All;
Sec. 12: All;
Sec. 13: All;
Sec. 14: All;
Sec. 22 S½;
Sec. 23 S½;
Sec. 24: All;
Sec. 25: All;
Sec. 26: All.

Comprising 6,216.07 acres, more or less located in Maricopa County.

T. 7 N., R. 1 W.
Sec. 23: S½;
Sec. 25: W½;
Sec. 26: N½;
Sec. 35: All.

Comprising 1,600.00 acres, more or less located in Yavapai County.

Publication of this Notice will segregate the public lands, as described in this Notice, to the extent that they will not be subject to appropriation under the public land laws, including the mining laws, but not the mineral leasing laws or Geothermal Steam Act.

The segregation of the above described lands shall terminate upon issuance of a document of conveyance to such lands to the private landowners or upon publication in the **Federal Register** of a notice of termination of the segregation; or the expiration of two years from the date of publication, whichever occurs first.

Inquiries concerning the segregation of the lands referenced above should be addressed to the Indian Project Manager, Indian Project Office, 2708 N. 4th St., Suite B–5, Flagstaff, Arizona 86001.

Dated: March 29, 1984.

Tom Allen,

Acting State Director.

[FR Doc. 84–9033 Filed 4–4–84; 8:45 am]

BILLING CODE 4310–32–M

[F–82319]

Amended Withdrawal Proposal, Withdrawal Application, and Public Meetings, Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Fish and Wildlife Service has filed an application for withdrawal of approximately 325,000 acres of public land for addition to the Arctic National Wildlife Refuge. This notice continues segregation of the land and gives dates, times and locations for four public meetings.

DATE: Comment should be received by July 5, 1984.

ADDRESS: Comments should be sent to: Mike Green, Yukon Resource Area Manager, Bureau of Land Management, Fairbanks District Office, North Post, Ft. Wainwright, Box 1150, Fairbanks, Alaska 99707.

FOR FURTHER INFORMATION CONTACT: Mary Jane Clawson, Alaska State Office, (907) 271–5060.

On October 6, 1983, a petition was approved allowing the U.S. Fish and Wildlife Service to file an application to withdraw approximately 1,300,000 acres of public land surrounded by the Arctic National Wildlife Refuge (ANWR) for possible addition to the Refuge, and a Notice of Proposed Withdrawal was published in FR Doc. 83–27678, published on pages 46451 and 46452 in the issue of Wednesday, October 12, 1983. Most of the lands included in the withdrawal proposal had been selected by the State of Alaska pursuant to section 6(b) of the Alaska Statehood Act and on September 29, 1983, the State proposed to donate this acreage to the Fish and Wildlife Service as an addition to the ANWR pursuant to Subsection 1302(i) of the Alaska National interest Lands Conservation Act (94 Stat. 2371 at 2475). The Secretary of the Interior determined that, of the approximately 1,300,000 acres proposed for donation, approximately 325,000 acres had not been validly selected by the State. The land which had been validly selected by the State was accepted as a donation and proclaimed a part of the ANWR in an instrument of acquisition dated October 20, 1983.

On March 23, 1984, the U.S. Fish and Wildlife Service filed an application to withdraw the remaining 325,000 acres for an indefinite period of time for the purpose of adding these lands to the ANWR. Subject to valid existing rights, this notice continues the segregation begun October 12, 1983, of the following described lands from settlement, sale, location, or entry under the general public land laws, including the mining laws, and from selection under the Alaska Statehood Act, pending possible addition to the ANWR.

Fairbanks Meridian

T. 37 N., R. 17 E., partial,
T. 36 N., R. 18 E.,
Secs. 1 to 18, inclusive.
T. 37 N., R. 18 E., partial,
T. 36 N., R. 19 E.,
T. 37 N., R. 19 E., partial, those lands lying outside of the Arctic National Wildlife Refuge,
T. 36 N., R. 20 E.,
Those lands lying outside of ANWR.
T. 36 N., Rs. 21 to 24 E.
T. 35 N., Rs. 25 E.,
Secs. 1 to 18, inclusive.
T. 36 N., R. 25 E.,
T. 35 N., R. 26 E.,
Secs. 1 to 18, inclusive.
T. 36 N., R. 26 E.,
T. 35 N., R. 27 E.,
Secs. 1 to 18, inclusive.
T. 36 N., R. 27 E.,
Secs. 19 to 36, inclusive.
T. 35 N., R. 28 E.,
Secs. 1 to 18, inclusive.
T. 36 N., R. 28 E.,
Secs. 19 to 36, inclusive.
T. 35 N., R. 29 E.,
Secs. 1 to 18, inclusive.
T. 36 N., R. 29 E.,
Secs. 19 to 36, inclusive.

T. 35 N., R. 30 E.,
Secs. 6, 7, and 18.
T. 36 N., R. 30 E.,
Secs. 19, 30, and 31.

Umiat Meridian

T. 14 S., R. 36 E.,
Those lands lying outside of ANWR.
T. 15 S., R. 36 E.,
Those lands lying outside of ANWR.
T. 16 S., R. 36 E.,
Those lands lying outside of ANWR.
T. 17 S., R. 36 E., partial,
T. 16 S., R. 37 E.,
Those lands lying outside of ANWR.
T. 17 S., R. 37 E., partial,
Those lands lying outside of ANWR.
T. 17 S., R. 38 E., partial,
Those lands lying outside of ANWR.

The areas described aggregate approximately 325,000 acres.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions or objections in connection with this proposed withdrawal may present their views in writing to Mike Green, Yukon Resource Area Manager.

Notice is hereby given that four public meetings will be held in connection with the proposed withdrawal. The dates, times and locations are as follows:

1. Tuesday, May 8, 1984, 2:30 p.m.
Ft. Yukon Community Center, Ft. Yukon, Alaska
2. Wednesday, May 9, 1984, 7:00 p.m.
Arctic Village Community Center, Arctic Village, Alaska
3. Thursday, May 10, 1984, 7:30 p.m.
Federal Building and Courthouse, 101 12th Street, Room 236, Fairbanks, Alaska
4. Monday, May 14, 1984, 7:30 p.m.
Fish and Wildlife Service, Alaska Regional Office, 1011 East Tudor Road, Room 1110, Anchorage, Alaska.

The application and the case file pertaining to it are available for public inspection at the Fairbanks District Office of the Bureau of Land Management, North Post Ft. Wainwright, Fairbanks, Alaska.

The application will be processed in accordance with the regulations set forth in 43 CFR, Part 2300.

For a period of 2 years from the publication of the October 12, 1983, Notice of Proposed Withdrawal in the **Federal Register**, the lands will remain segregated as specified above unless the application is denied or canceled, or the withdrawal is approved prior to October 12, 1985, Rights-of-way, mineral exploration, and other nondisposal type uses will be allowed during the period of segregation consistent with existing authorities.

The Temporary segregation of the lands in connection with a withdrawal application or proposal shall not affect addministrative jurisdiction over the lands, and the segregation shall not have the effect of authorizing any use of lands by the U.S. Fish and Wildlife Service.

Mary Jane Clawson,
Chief, Branch of Lands.

[FR Doc. 84-9091 Filed 4-4-84; 8:45 am]
BILLING CODE 4310-JA-M

[OR 36769 (WA), OR 36776(WA)]

Washington; Filing of Public Lands for Indemnity Selection

The State of Washington has filed two selection applications to acquire the lands described below, under the provisions of the Act of February 22, 1889 (25 Stat. 676), as amended, in lieu of certain school lands that were encumbered by other rights or reservations before the State's title could attach. The applications have been assigned the serial numbers OR 36769 (WA) and OR 36776 (WA).

The lands included in the selection applications are described as follows:

OR 36769 (WA)

Willamette Meridian, Washington

T. 21 N., R. 7 E.,
Sec. 14, SW¼SW¼.
T. 9 N., R. 27E.,
Sec. 20, S½NE¼, SE¼NE¼NE¼, S½SW¼ NE¼NE¼, S½N½SW¼NE¼NE¼, S½ SE¼NW¼NE¼, and S½SE¼SW¼ NW¼NE¼.
T. 31 N., R. 38 E.,
Sec. 12, lots 1, 2, 3 and 4, NW¼NE¼ and NW¼SE¼.
T. 37 N., R. 39 E.,
Sec. 24, SE¼SE¼;
Sec. 25, NW¼NW¼, NW¼SW¼, NW¼ SE¼ and S½SE¼.

Aggregating 633.73 acres.

OR 36776 (WA)

Willamette Meridian, Washington

T. 28 N., R. 14 W.,
Sec. 15, lots 4 and 5.
T. 36 N., R. 7 E.,
Sec. 10, SW¼NE¼.
T. 3 N., R. 11 E.,
Sec. 27, SW¼NW¼.
T. 5 N., R. 11 E.,
Sec. 18, NE¼SW¼.
T. 23 N., R. 26 E.,
Sec. 31, NW¼NE¼.

Aggregating 208.75 acres.

The filing of the selection applications segregates the lands described above from settlement, sale location, or entry under the public land laws, including the mining laws, but not the mineral leasing laws or the Geothermal Steam Act. The segregative effect on the public lands shall terminate upon issuance of a document of conveyance to such lands, or upon publication in the **Federal Register** of a notice of termination of the segregation, or the expiration of two years from the date of filing of the selection applications, whichever occurs first.

Dated: March 29, 1984.

Harold A. Berends,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 84-9100 Filed 4-4-84; 8:45 am]
BILLING CODE 4310-33-M

Idaho; Conveyance of Public Lands

March 30, 1984.

Notice is hereby given that pursuant to the Act of October 21, 1976 (90 Stat. 2750; 43 U.S.C. 1713), patents were issued to the following:

Niceview Investors N.V., Beverly Hills, California for the following-described public land:

Owyhee County, Serial No. I-20071

Boise Meridian, Idaho

T. 5 S., R. 3 E.,
Sec. 34, NE¼NE¼SE¼.
Containing 10.00 acres.

Boyd F. Whitworth and Beth A. Whitworth, Blackfoot, Idaho for the following described public land:

Caribou County, Serial No. I-18531A

Boise Meridian, Idaho

T. 10 S., R. 41 E.,
Sec. 28, NW¼NW¼.
Containing 40.00 acres.

Parrish Realty & Insurance Inc., Pocatello, Idaho for the following-described public land:

Butte County, Serial No. I-19721B

Boise Meridian, Idaho

T. 4 N., R. 24 E.,
Sec. 17, NE¼SE¼.
Containing 40.00 acres.

Bear Lake County, Serial No. I-19701B

Boise Meridian, Idaho

T. 16 S., R. 45 E.,
Sec. 10, NW¼NW¼.
Containing 40.00 acres.

Gregory G. and Teresa L. Daniels, Arco, Idaho for the following-described public land:

Butte County, Serial No. I-19721C

Boise Meridian, Idaho

T. 4 N., R. 24 E.,
Sec. 20, SW¼NE¼.

Containing 40 acres.

Jack W. Hall,

Acting Deputy State Director for Operations.

[FR Doc. 84-9097 Filed 4-4-84; 8:45 am]

BILLING CODE 4310-GG-M

[OR 23918]

Realty Action; Exchange of Public and State Lands in Klamath County Oregon

The following described lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Public Lands, Willamette Meridian, Klamath County, Oregon

T. 28 S., R. 7 E.,
Sec. 34: W½NE¼, S½SE¼NE¼, N½NW¼SE¼, NE¼SE¼
T. 29 S., R. 7 E.,
Sec. 3: Lots 1, 2, 3, 4, S½N½, S½ (All)
T. 39 S., R. 6 E.,
Sec. 18: E½SE¼
Total acres: 881.92

In exchange for these lands the federal government will acquire the following state-owned lands from the Oregon State Department of Forestry:

State Lands, Willamette Meridian, Klamath County, Oregon

T. 40 S., R. 7 E.,
Sec. 23: E½E½
Sec. 24: S½N½, S½
Sec. 25: NE¼NE¼
T. 40 S., R. 8 E.,
Sec. 19: Unnumbered lot in NW¼NW¼, NE¼NW¼
Sec. 30: Unnumbered lots in the W½NW¼, SE¼NW¼
Total acres: 876.46

The written proposal (OR 23918) for this land exchange was filed on May 12 1980, by the Oregon State Department of Forestry. The purpose of the land exchange is to acquire the state lands for inclusion into the Bear Valley National Wildlife Refuge. Upon consummation of the exchange, administration of the acquired state lands will transfer to the U.S. Fish and Wildlife Service. The exchange proposal is consistent with the Bureau's planning system and is the public interest. The value of the lands to be exchanged are approximately equal and the acreage will be adjusted and/or money will be used to equalize the values, if necessary, upon completion of the final appraisal. This notice segregates the public lands to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. The segregative effect of this notice on the public lands shall terminate upon issuance of patent or other document of conveyance to such lands, upon publication in the **Federal Register** of a termination notice, or 2 years from the date of this publication, whichever occurs first. The terms, conditions, covenants, and reservations applicable to the land exchange are: 1. The exchange will be made subject to all valid existing rights. 2. The full fee estates, where in federal and state ownership, will be exchanged, unless, as a result of the final appraisal, it becomes necessary to make a partial mineral reservation to equalize values. 3. Bureau of Land Management Road No. 39–6E–20, located in the E½SE¼ of Section 18, T. 39 S., R. 6 E., W.M., Klamath County, Oregon shall be reserved to the United States. 4. A reservation to the United States for the construction and use of a logging skid trail and landing located in the NE¼NE¼SE¼ of section 18, T. 39 S., R. 6 E., W.M., Klamath County, Oregon.

Detailed information concerning the land exchange, including the environmental analysis, land report, and other pertinent information, is available for review at the Lakeview District Office, 1000 South 9th Street (P.O. Box 151), Lakeview, Oregon 97630. For a period of 45 days interested parties may submit comments to the District Manager at the above address.

Dated: March 26, 1984.

Jerry Asher,

District Manager.

[FR Doc. 84-9098 Filed 4-4-84; 8:45 am]

BILLING CODE 4310-33-M

Vale District Advisory Board; Meeting

Notice is hereby given in accordance with Pub. L. 92–463 that a meeting of the Vale District Grazing Advisory Board will be held May 10, 1984.

The meeting will begin at 9:00 a.m. in the conference room of the Vale District Office, 100 East Oregon Street, Vale, Oregon 97918.

The advisory board will be briefed on issues that include the May 24 Taylor Grazing Anniversary Celebration, grazing allocations in wilderness study areas and the revised grazing regulations. The board is expected to take action on proposed cooperative agreements and allotment management plans.

The meeting is open to the public. Interested persons may make oral statements to the board or may file written statements for the board's consideration. Anyone wishing to make oral statements may do so at 3:00 p.m. the day of the meeting.

Summary of the board meeting will be maintained in the district office and be available during regular business hours for public inspection, for the cost of duplication, within 30 days following the meeting.

Dated: March 28, 1984.

Fearl M. Parker,

Vale District Manager.

[FR Doc. 84-9094 Filed 4-4-84; 8:45 am]

BILLING CODE 4310-33-M

Vale District Advisory Council; Meeting

Notice is hereby given in accordance with Pub. L. 92–463 that a meeting of the Vale District Advisory Council will be held May 11, 1984.

The meeting will begin at 9:00 a.m. in the conference room of the Vale District Office, 100 East Oregon Street, Vale, Oregon 97918.

The advisory council will be briefed on each of the District's resource management programs, including wild horse, minerals, range and recreation management. The council will also be briefed on a proposed rifle range in the district's Northern Resource Area, and is expected to take action on proposed cooperative management agreements.

The meeting is open to the public. Interested persons may make oral statements to the board or may file written statement for the board's consideration. Anyone wishing to make oral statements may do so at 3:00 p.m. the day of the meeting.

Summary of the board meeting will be maintained in the district office and be available during regular business hours for public inspection, for the cost of duplication, within 30 days following the meeting.

Dated: March 28, 1984.

Fearl M. Parker,

Vale District Manager.

[FR Doc. 84-9095 Filed 4-4-84; 8:45 am]

BILLING CODE 4310-33-M

Salt Lake District; District Grazing Advisory Board Meeting and Tour

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of District Grazing Advisory Board Meeting and Tour.

SUMMARY: Notice is hereby given in accordance with Pub. L. 92–463 that a meeting of the Salt Lake District Grazing Advisory Board will be held on May 22 and May 23, 1984. The tour will begin at 10 a.m. at Molley's Cafe in Snowville, Utah. The purpose of the tour and meeting will be to give advice and recommendation on the Box Elder Land-Use Plan. The meeting is open to the

public. Interested persons may make oral statements at 7:30 p.m. on May 22, 1984 at the Bureau of Land Management Field Station at Rosebud, Utah, or file written statements for the board's consideration. Anyone wishing to make oral statements must notify the District Manager, 2370 South 2300 West, Salt Lake City, Utah 84119 by May 14, 1984. The District Manager may establish a time limit for each person.

Frank W. Snell,

Salt Lake District Manager.

[FR Doc. 84-9099 Filed 4-4-84; 8:45 am]

BILLING CODE 4310-84-M

[Group 661]

California; Filing of Plat of Survey

March 27, 1984.

1. This plat of survey of the following described land will be officially filed in the California State Office, Sacramento, California, immediately:

Mount Diablo Meridian, Kern County

T. 30 S., R. 33 E.

2. These plats in three (3) sheets, representing the dependent resurvey of a portion of the subdivisional lines, and certain boundries of mineral surveys, and the survey of the subdivision of sections 19, 21, 22, 28, and 29, T. 30 S., R. 33 E., Mount Diablo Meridian, under Group No. 661, California, were accepted March 12, 1984.

3. These plats will immediately become the basic record for describing the land for all authorized purposes. These plats have been placed in the open files and are available to the public for information only.

4. This survey was executed to meet certain administrative needs of the Bureau.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records and Information Section.

[FR Doc. 84-9096 Filed 4-4-84; 8:45 am]

BILLING CODE 4310-40-M

Cancellation of the Powder River Regional Coal Team Meeting, and Extension of Comment Period for Draft EIS

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice.

SUMMARY: The meeting of the Powder River Regional Coal Team (RCT) scheduled for April 10, 1984, in Sheridan, Wyoming (49 FR 9030), has been postponed indefinitely pending departmental review of the Federal Coal Management Program. As a result of the RCT meeting delay, the comment period for the Draft Powder River Environmental Impact Statement (EIS) is extended through April 30, 1984.

DATES: Comments on the draft Powder River EIS by April 30, 1984.

ADDRESSES: Comments on the draft EIS should be sent to Mr. Charles Wilkie, EIS Team Leader, Bureau of Land Management, 951 Rancho Road, Casper, Wyoming 82601.

FOR FURTHER INFORMATION CONTACT: William G. Leavell, Regional Coal Team Chairperson, 503-231-6251, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208, or J. Stan McKee, Project Manager, 307-772-2569, Bureau of Land Management, P.O. Box 1828, Cheyenne, Wyoming 82003.

Paul D. Leonard,

Associate State Director.

[FR Doc. 84-9032 Filed 4-4-84; 8:45 am]

BILLING CODE 4310-22-M

Bureau of Reclamation

Colorado River Water Quality Improvement Program Price-San Rafael Rivers Unit, Utah; Intent To Prepare a Draft Environmental Impact Statement and Hold Public Scoping Meetings

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior proposes to prepare a draft environmental statement integrated with a planning report for the Price-San Rafael Rivers Unit, Utah, of the Colorado River Water Quality Improvement Program. The purpose of the unit is to prevent salt picked up by the surface and ground water within the Price and San Rafael Rivers Basins from entering the Colorado River where it causes economic problems for municipal, industrial, and agricultural water users downstream.

Approximately 430,000 tons of salt annually enter the Colorado River from the Price and San Rafael rivers via the Green River. The Price and San Rafael Rivers are located in east-central Utah, 120 miles southeast of Salt Lake City, encompassing Carbon and Emery Counties.

The investigation has been underway since September 1981. During the intervening time, interested agencies and individuals have been involved in the study and have contributed much information. Several public meetings have been held to discuss possible means of reducing the salinity contributions in the unit area.

Alternative plans, which will be evaluated in the proposed draft statement, include: irrigation systems improvements, using drainwater for powerplant cooling, evaporating or desalting drainwater, using drainwater for processing tar sands and transporting coal, selective withdrawal of saline water, treatment by evaporation ponds or desalting, and retirement of farm lands.

From among these alternatives, the irrigation systems improvement alternative appears to be the most promising. This plan consists of two components: lining canals and lining stock water ponds. It would include lining approximately 1.3 miles of canals and approximately 159 stockwatering ponds in the Price River Basin, and lining approximately 5.9 miles of canals and approximately 50 stockwatering ponds in the San Rafael River Basin. The plan would reduce the salt loading to the Colorado River by 30,000 tons annually and reduce the salinity concentration in the Colorado River at Imperial Dam by an estimated 3.0 mg/l.

The primary effect on the environment would be the loss of a few hundred acres of riparian and wetland vegetation. A mitigation plan will be developed in conjunction with State and Federal fish and wildlife agencies to compensate for the habitat loss.

Public scoping meetings will be held to identify significant environmental concerns. The meetings will take place on April 24, 1984, at 10 a.m. in the U.S. Agricultural Service Center at 90 South First East, Castle Dale, Utah, and 2:30 p.m. in the U.S. Agricultural Service Center at 350 North 400 East, Price, Utah. Interested public entities and individuals are encouraged to attend these meetings to provide input to the planning report/draft environmental statement, which should be available for review and comment in the fall of 1984.

To obtain further information or provide input, please contact Mr. Jay Franson at the Utah Projects Office, Bureau of Reclamation, P.O. Box 9338, Provo, Utah 84603, or call him at (801) 379-1155.

Dated: March 30, 1984.

Robert A. Olson,

Acting Commissioner.

[FR Doc. 84-9078 Filed 4-4-84; 8:45 am]

BILLING CODE 4310-09-M

Minerals Management Service

Development Operations Coordination Document

AGENCY: Mineral's Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that ARCO Oil and Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 6145, Block 68, High Island Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Sabine Pass, Texas.

DATE: The subject DOCD was deemed submitted on March 26, 1984.

ADDRESS: A copy of the subject DOCD is available for public review at the Office of the Regional Manager, Gulf of Mexico Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Warren Williamson, Minerals Management Service, Gulf of Mexico Region; Rules and Production; Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Phone (504) 838–0876.

SUPPLEMENTARY INFORMATION: 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 DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised Section 250.34 of Title 30 of the CFR.

Dated: March 26, 1984.

John L. Rankin,

Regional Manager, Gulf of Mexico Region.

[FR Doc. 84–9051 Filed 4–4–84; 8:45 am]

BILLING CODE 4310–MR–M

Development Operations Coordination Document; Tenneco Oil Exploration Operations

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Tenneco Oil Exploration and Production has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 5174, Block A–16, Brazos Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Galveston, Texas.

DATE: The subject DOCD was deemed submitted on March 27, 1984.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Manager, Gulf of Mexico Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Warren Williamson, Minerals Management Service, Gulf of Mexico Region; Rules and Production; Plans, Platform and Pipeline Section, Exploration/Development Plan Unit; Phone (504) 838–0874.

SUPPLEMENTARY INFORMATION: 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 DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised section 250.34 of Title 30 of the CFR.

Dated: March 27, 1984.

John L. Rankin,

Regional Manager, Gulf of Mexico Region.

[FR Doc. 84–9052 Filed 4–4–84; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Boston National Historical Park Advisory Commission; Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice set forth the schedule and proposed agenda of the forthcoming meeting of the Boston National Historical Park Advisory Commission. The matters to be discussed at this meeting include:

1. Report from Site Liaison Subcommittee
2. Report from Education Subcommittee
3. Commandant's House Preservation and Use
4. Report from Budgeting and Priorities Subcommittee
5. Plans to provide for bus, boat, private automobile, and pedestrian access to the Navy Yard during 1984
6. Plans to improve handicapped access to Faneuil Hall
7. Plans for 1984 visitor season
8. Review and discussion of park administration

DATE: April 12, 1984, 11:00 a.m. to 3:00 p.m.

ADDRESS: Boston National Historical Park, Building #5, Charlestown Navy Yard.

FOR FURTHER INFORMATION CONTACT: Hugh D. Gurney, Superintendent, Boston National Historical Park, 15 State Street, Boston, Massachusetts 02109 (617–242–5644).

SUPPLEMENTARY INFORMATION: Notice is hereby given in accordance with the Federal Advisory Committee Act, Pub. L. 92–463. The Commission was established by Pub. L. 93–431 to advise the Secretary of the Interior on matters relating to the development of the Boston National Historical Park. If handicapped accessibility is required, please notify the Superintendent at least five working days prior to the meeting.

Dated: March 23, 1984.

Herbert S. Cables, Jr.,

Regional Director, North Atlantic Region.

[FR Doc. 84–9132 Filed 4–4–84; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO

National Environmental Policy Act Finding of No Significant Impact

AGENCY: United States Section, International Boundary and Water Commission, United States and Mexico.

ACTION: Notice of finding of no significant impact.

SUMMARY: This Notice is to inform the public that the United States Section has determined that an environmental

impact statement is not required for the construction of a new gaging station in the United States and Mexico on the Rio Grande in the El Paso-Juarez area to establish a single international measurement point of 1906 Convention water deliveries to Mexico and hereby supplies notice of a finding of no significant impact.

ADDRESS: United States Section, International Boundary & Water Commission, 4110 Rio Bravo, El Paso, Texas 79902.

FOR FURTHER INFORMATION CONTACT: Mr. George R. Baumli, Principal Engineer, Investigations and Planning Division, United States Section, International Boundary and Water Commission, United States and Mexico, 4110 Rio Bravo, El Paso, Texas 79902. Telephone: (915) 541-7304, FTS 572-7304.

Dated: March 27, 1984.

Frank P. Fullerton,

Legal Advisor.

Proposed Action

The proposed action is for the U.S. Section and the Mexican Section of the International Boundary and Water Commission to jointly establish a new gaging station on the Rio Grande approximately 1,885 feet (0.36 miles) upstream of Mexico's diversion structure (International Dam) to establish a single international point of measurement of water deliveries to Mexico under the 1906 Convention to replace two separate measurement points; one operated by Mexico and one operated by the United States. The gaging station would consist of an overflow weir, a water surface elevation recorder well upstream from the overflow weir, rock riprap downstream and upstream of the overflow weir, and rock riprap extending into adjacent river banks.

The gaging station is located one-half in Mexico and one-half in the United States and would be constructed in a generally dry channel during the non-irrigation season. Any drainage flows in the river would be diverted around the construction site. Site preparations would consist of excavating in the dry river bed for the downstream rock riprap. There would be excavation into the river banks for placement of some rock riprap and the water surface elevation recorder well. Sheet piling for the overflow weir would be placed using a pile driver. The construction site would cover an area of less than 10,000 square feet.

Environmental Impact

Based on the environmental assessment (EA), the U.S. Section has determined that the proposed action is not a major Federal action that would significantly affect the quality of the human environment. A brief discussion of the environment and the effects of the proposed action follows:

At the constuction site, there are some grasses and forbs, on the floodplain but no mature brush or trees. A sparse growth of salt cedar, 6 to 10 feet high, is present. Emergent vegetation, mostly bulrush, is present on the channel bank at the proposed site, and cattail is growing along the U.S. channel bank upstream. The construction site occupies less than one quarter of an acre in an urban setting, is frequented by people, and essentially no wildlife has been observed at the site. No known historical or archeological sites are located in the construction site.

During construction there would be some localized dust and noise caused by the construction equipment. However, these effects would be temporary and of short duration. Construction, which is expected to take about two weeks, would be done when the channel is dry and no aquatic species would be affected. The river flows would be esssentially the same after construction as before and there should be no adverse effects on aquatic life. No wildlife in the area is expected to be harmed as a result of construction.

The proposed action would be in compliance with the U.S. Section's published procedures for implementation of Executive Orders Nos. 11988 (Flood Plain Management) and No. 11990 (Protection of Wetlands).

The proposed action will not require action under Executive Order No. 12114 (Environmental Effects Aboard of Major Federal Action) because it is not a major Federal action, significantly affecting the environment of a foreign nation.

The U.S. Fish and Wildlife Service has indicated that they do not believe significant impacts to terrestrial or aquatic resources will occur as a result of the proposed action.

On the basis of the foregoing, the U.S. Section has determined that an environmental impact statement is not required for the proposed action and hereby supplies notice of a finding of no significant impact.

[FR Doc. 84-9104 Filed 4-4-84; 8:45 am]

BILLING CODE 4710-03-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-181]

Certain Meat Deboning Machines; Change of the Commission Investigative Attorney

Notice is hereby given that, as of this date, Jeffrey L. Gertler, Esq., of the Unfair Import Investigations Division will be the Commission investigative attorney in the above-cited investigation instead of Linda Moy, Esq.

The Secretary is requested to publish this Notice in the Federal Register.

Dated: March 29, 1984.

Respectfully submitted,

David I. Wilson,

Chief, Unfair Import Investigations Division.

[FR Doc. 84-9111 Filed 4-4-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-178]

Certain Vinyl-Covered Foam Blocks; Change of the Commission Investigative Attorney

Notice is hereby given that, as of this date, Harold Brandt, Esq., of the Unfair Import Investigations Division will be the Commission investigative attorney in the above-cited investigation instead of Wilhelm Zeitler, Esq.

The Secretary is requested to publish this Notice in the Federal Register.

Dated: March 29, 1984.

Respectfully submitted,

David I. Wilson,

Chief, Unfair Import Investigations Division.

[FR Doc. 84-9110 Filed 4-4-84; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR § 50.7, notice is hereby given that on March 23, 1984, a proposed Consent Decree in *United States* v. *Bayou Steel*, Civil Action No. 83-4869, was lodged with the United States District Court for the Eastern District of Louisiana. The complaint, brought under the Clean Air Act, alleged violations by Bayou Steel's steel manufacturing and forming facility in La Place, Louisiana of the New Source Performance Standards for Electric Arc Furnances. The proposed Consent Decree requires Bayou Steel to take all actions necessary to achieve and thereafter maintain compliance with the New

Source Performance Standards. Specifically, Bayou Steel is required to make modifications to its secondary control system in accordance with a schedule set forth in the Decree. Bayou Steel is also required to pay a civil penalty of $35,000.00 for past violations

The Department of Justice will receive for a period of thirty (30) days from the date of ths publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Bayou Steel*, D.J. Ref. No. 90–5–2–1–599.

The proposed Consent Decree may be examined at the Office of the United States Attorney, 500 Camp Street, Hale Boggs Federal Bldg., New Orleans, Louisana 70130, the Region VI Office of the Environmental Protection Agency, 1201 Elm Street, Dallas, Texas 75270 and the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, D.C. 20530. A copy of the proposed Consent Decree may also be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please refer to the case, D.J. Reference number and consent decree.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 84–9038 Filed 4–4–84; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

United States v. The LTV Corporation, et al.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia, in *United States* v. *The LTV Corporation, et al.*, Civil Action No. 84–0884. The Complaint filed by the Department of Justice in this case alleges that the proposed acquisition of Republic Steel Corporation ("Republic") by The LTV Corporation ("LTV") would violate Section 7 of the Clayton Act, 15 U.S.C. Section 18, because it might substantially lessen competition in the production and sale in the United States of carbon and alloy hot rolled sheet and strip steel, carbon and alloy cold rolled sheet and strip steel, and stainless cold rolled sheet and strip steel. In addition to LTV and Republic, the Complaint also names as defendants Jones & Laughlin Steel Incorporated and J&L Specialty Steels, Inc.

The proposed Final Judgment would permit LTV to proceed with its acquisition of Republic but would require the merged company to divest, within six months following entry of the final judgment but not later than December 1, 1984, the steel mill and coke batteries owned by Republic located in Gadsden, Alabama ("Gadsden") and the stainless steel cold rolling and finishing facilities of Republic at Massillon, Ohio ("Massillon"). Unless both plants have been sold within the specified time period, the Court will appoint a trustee to effect the divestiture. Under other provisions of the Final Judgment, the defendants are required to maintain and preserve Gadsden and Massillon as they currently exist until divestiture of the two plants has been completed, and to establish a separate and independent marketing organization for the sale of cold rolled stainless sheet steel from Massillon. The defendants would be required to offer a long-term contract to supply the purchaser of Massillon with stainless steel hot bands to enable the buyer to compete in the manufacture and sale of cold rolled stainless steel sheet and strip.

The judgment also would restrain the defendants for a period of ten years from providing to the American Iron and Steel Institute for dissemination to any other steel company, without the consent of the Department of Justice, certain data concerning their operations. The defendants would further be enjoined for a period of ten years from acquiring, without the consent of the Department of Justice, one percent (1%) or more of the voting securities of any person engaged in the manufacture of carbon and alloy hot and cold rolled sheet steel or stainless hot and cold rolled sheet steel with assets valued at over $15 million and from acquiring assets relating to such products in an amount in excess of $15 million.

Comments regarding the proposed decree are invited from the public. The statutory comment period is sixty days from the date of this publication in the **Federal Register**. Such comments and responses thereto will be filed with the Court and published in the **Federal Register**. Comments should be directed to John W. Clark, Chief, Special Trial Section, Antitrust Division, U.S. Department of Justice, 10th and Pennsylvania Ave., NW., Washington, D.C. 20530.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

United States of America, Plaintiff, v. *The LTV Corporation; Jones & Laughlin Steel Incorporated; J&L Specialty Steels, Inc.; and Republic Steel Corporation*, Defendants.

Civil Action No. 84–0884.

Filed: March 22, 1984.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

(1) The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendant and by filing that notice with the Court.

(2) The parties shall abide by and comply with the provisions of the Final Judgment pending entry of the Final Judgment.

(3) In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated: March 21, 1984.

J. Paul McGrath,

Assistant Attorney General

Eric F. Kaplan,

Helmut F. Furth,

J. Robert Kramer II,

Mark Leddy,

Thomas C. Black,

John W. Clark,

Katherine R. Curtis,

Attorney, Department of Justice, Antitrust Division, Washington, D.C. 20530 Telephone: 202/724–6347

Frank N. Bentkover,

Attorneys, Department of Justice

For the Defendants the LTV Corporation, Jones & Laughlin Steel Incorporated, and J&L Specialty Steels, Inc.: Kaye, Scholer, Fierman, Hays & Handler, By: Stanley D. Robinson, *A Member of the Firm, 425 Park Avenue, New York, N.Y. 10022, 212/407–8000.*

For the Defendant Republic Steel Corporation: Jones, Day, Reavis & Pogue, By: Richard W. Pogue, *A Member of the Firm, 1735 Eye Street, N.W., Washington, D.C. 20006, 202/861–3939.*

U.S. District Court for the District of Columbia

United States of America, Plaintiff, v. *The LTV Corporation; Jones & Laughlin Steel Incorporated; J&L Specialty Steels, Inc.; and Republic Steel Corporation*, Defendants.

Civil Action No. 84-0884.

Filed: March 22, 1984.

FINAL JUDGMENT

Whereas, plaintiff, United States of America, having filed its Complaint herein on March —, 1984, and plaintiff and defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence against or an admission by any party with respect to any such issue;

And Whereas, the defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And Whereas, prompt and certain divestiture is the essence of this agreement and the defendants have represented to the plaintiff that the divestiture required below can and will be made and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby

Ordered, adjudged and decreed as follows:

I

This Court has jurisdiction of the subject matter of this action and of each of the parties hereto. The Complaint states a claim upon which relief may be granted against defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II

As used in this Final Judgment:

A. "LTV" means the defendant The LTV Corporation, including each division, subsidiary or affiliate thereof, and each officer, director, employee, attorney, agent or other person acting for or on behalf of any of them.

B. "J&L" means the defendant Jones & Laughlin Steel Incorporated, including each division, subsidiary or affiliate thereof, and each officer, director, employee, attorney, agent or other person acting for or on behalf of any of them.

C. "J&L Strainless" means the defendant J&L Specialty Steels, Inc., including each division, subsidiary or affiliate thereof, and each officer, director, employee, attorney, agent or other person acting for or on behalf of them.

D. "Republic" means the defendant Republic Steel Corporation, including each division, subsidiary or affiliate thereof, and each officer, director, employee, attorney, agent or other person acting for or on behalf of them.

E. "Defendants" means LTV, J&L, J&L Stainless and Republic.

F. "Person" means any natural person, corporation, association, firm, partnership or other business or legal entity.

G. "Steel mill" means the manufacturing plant, real property, capital equipment, and any other interests, tangible assets or improvements associated with a facility for making steel products, but shall not include cash, cash equivalents, pre-paid expenses or accounts receivable.

H. "Gadsden" means the steel mill and coke batteries owned by Republic (as of March 21, 1984) located in Gadsden, Alabama; provided, however, that any purchaser of Gadsden may elect not to purchase that portion of the mill related to coke and steel production.

I. "Massillon" means the stainless sheet cold rolling and finishing facilities owned by Republic (as of March 21, 1984) located in Massillon, Ohio.

III

A. The provisions of this Final Judgment shall apply to the defendants, their successors and assigns and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Defendants shall require, as a condition of the sale or other disposition of all or substantially all of their assets involved in the production of carbon and alloy hot and cold rolled sheet steel and stainless hot and cold rolled sheet steel, that the acquiring party agrees to be bound by the provisions of this Final Judgment.

IV

A. Within six (6) months of the date of entry of this Final Judgment, but in no event later than December 1, 1984, defendants are hereby ordered and directed to divest to a purchaser or purchasers all of their direct and indirect ownership in and control over Gadsden and Massillon.

B. Divestiture of Gadsden shall be accomplished in such a way as to ensure that, as of the time of divestiture, it can reasonably be anticipated that Gadsden can and will be operated by the purchaser or purchasers as a viable, ongoing business engaged in the manufacture and sale of carbon and alloy hot and cold rolled sheet steel made from slabs produced at Gadsden or elsewhere. Divestiture shall be made to a purchaser or purchasers who shall demonstrate to the plaintiff or, if plaintiff objects, to the Court that: (i) The purchase is for the purpose of competing effectively in the manufacture and sale of carbon and alloy hot and cold rolled sheet steel, and (ii) the purchaser or purchasers have the managerial, operational and financial capability to compete effectively in the manufacture and sale of carbon and alloy hot and cold rolled sheet steel.

C. Divestiture of Massillon shall be accomplished in such a way as to ensure that, as of the time of divestiture, it can reasonably be anticipated that Massillon can and will be operated by the purchaser or purchasers as a viable, ongoing business engaged in the manufacture and sale of stainless cold rolled sheet steel. Divestiture shall be made to a purchaser or purchasers who shall demonstrate to the plaintiff or, if plaintiff objects, to the Courts that: (i) The purchase is for the purpose of competing effectively in the manufacture and sale of stainless cold rolled sheet steel, and (ii) the purchaser or purchasers have the managerial, operational and financial capability to compete effectively in the manufacture and sale of stainless cold rolled sheet steel.

D. In connection with the divestiture of Massillon, defendants shall offer to the purchaser of Massillon (herein and in the Appendix annexed hereto referred to as "Buyer") a long-term contract to supply Buyer with stainless steel hot bands on such terms and conditions as are reasonably designed to enable Buyer effectively to compete with defendants in the manufacture and sale of cold rolled stainless steel sheet and strip. Unless plaintiff agrees otherwise, the contract to be offered to Buyer by defendants shall include in substance the terms set out in the Appendix annexed hereto. Unless the context otherwise requires, all references in this Final Judgment to the divestiture of Massillon shall mean and include the long-term contract referred to herein, and the procedures of Sections VI and VII of this Final Judgment, including but not limited to approval by the plaintiff, shall be equally applicable to the long-term contract.

E. In accomplishing the divestiture ordered by this Final Judgment, the defendants shall make known in the United States and in other major noncommunist steel producing countries, by usual and customary means, the availability of Gadsden and Massillon for sale as ongoing businesses. The defendants shall notify any person making an inquiry regarding the possible purchase of Gadsden or Massillon that the sale is being made pursuant to this Final Judgment and provide such person with a copy of this Final Judgment. The defendants shall also furnish to all bona fide prospective purchasers who so request all pertinent information regarding Gadsden and Massillon and shall permit them to make such inspection of physical facilities and any and all financial, operational, or other documents and information as may be relevant to the sale of either or both facilities.

F. Defendants agree to take all reasonable steps to accomplish said divestiture, including the sale of assets only. Except to the extent otherwise approved by the plaintiff, Gadsden and Massillon shall be divested free and clear of: (i) All mortgages, encumbrances and liens, (ii) any contractual commitments or obligations (such as "take or pay" fuel and ore supply contracts) existing as of the date of divesture, unless the purchaser of purchasers of the divested plant voluntarily assume the future performance of any such existing contracts, (iii) any pension rights of present or former employees accrued as of the date of divestiture, and (iv) any termination payment rights of former employees accrued as of the date of divestiture, all of which shall continue to be the obligation of defendants. In the event that as a matter of law the plants cannot be sold free and clear of any such mortgages, encumbrances, liens, commitments or

obligations, defendants shall hold the purchaser or purchasers harmless with respect to the same. In order to enable the purchaser of Gadsden to continue to operate the steel mill without undue interruption following divestiture, defendants agree that, at the request of the purchaser, they will continue, for a period not exceeding six months (unless extended by the Court) from and after the date of divestiture, to sell for use at Gadsden necessary raw materials, including iron ore, coal, limestone and coke, to the extent that such items are currently being supplied by defendants to Gadsden, and on substantially the same financial and other terms and conditions.

V

A. If the defendants have not divested all of their ownership interest in Gadsden and Massillon within the time period specified in Section IV(A) of this Final Judgment, the Court shall, on application of the plaintiff, appoint a trustee to effect the divetisture. Such appointment shall become effective not more than 45 days following the filing of the petition. The trustee shall dispose of Gadsden and Massillon at such price and on such terms as are then obtainable upon a reasonable effort by the trustee, subject to the provisions of Section VI of this Final Judgment, and shall have such other powers as this Court shall deem appropriate. The trustee shall have the power to require the defendants to divest assets only, retaining and assuming all liabilities of Gadsden and Massillon upon their divestiture. Defendants shall not object to a sale by the trustee on any grounds other than malfeasance, provided, however, that if the buyer chooses to purchase any inventory of semi-finished or finished steel mill product, coke or raw materials, defendants shall have a right to object unless the aggregate sale price shall include a price (payable on reasonable terms), in the case of steel or coke inventory, at least equal to the current production cost of that inventory and, in the case of raw materials, at least equal to the cost thereof, as reflected in either case on the books and records of defendants.

B. As to Gadsden, the trustee shall have the power to require defendants to sell necessary raw materials for use at Gadsden in accordance with the provisions of Section IV(F). As to Massillon, the trustee shall have the power to cause defendants to execute a long-term supply contract in accordance with the provisions of Section IV(D) and the Appendix.

C. If defendants have not divested all of their ownership interest in both Gadsden and Massillon within five (5) months of the date of entry of this Final Judgment, but in no event later than November 1, 1984, the plaintiff and the defendants (acting jointly) shall immediately notify each other in writing of the names and qualifications of not more than two (2) nominees for the position of trustee for the required divestiture. The parties shall attempt to agree upon one of the nominees to serve as the trustee. If the parties are able to agree on a trustee within thirty (30) days of the exchange of names, plaintiff shall notify this Court of the person upon whom the parties agreed and this Court shall appoint such person as the trustee. If the parties are unable to agree within that time period, plaintiff shall furnish this Court the names of each party's nominees. This Court may hear the parties as to the qualifications of the nominees and shall appoint one of the nominees as the trustee.

D. The trustee shall serve at the cost and expense of the defendants, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from a sale of Gadsden and Massillon and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services, all remaining monies shall be paid to the defendants and the trust shall then be terminated. The compensation of such trustee shall be based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished.

E. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestiture. The trustee shall have full and complete access to the personnel, books, records and facilities of the businesses to be devested, and defendants shall develop such financial or other information relevant to the assets to be divested as the trustee may request. Defendants shall take no action to interfere with or impede the trustee's accomplishment of the divestiture.

F. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish divestiture as contemplated under this Final Judgment. If the trustee has not accomplished such divestiture within six (6) months after its appointment, the trustee shall thereupon promptly file with the Court a report setting forth: (i) The trustee's efforts to accomplish the required divestiture, (ii) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (iii) the trustee's recommendations. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall thereafter enter such orders as it shall deem appropriate in order to carry out the purpose of the trust, which shall, if necessary, include extending the trust and the term of the trustee's appointment.

VI

At least thirty (30) days prior to the scheduled closing date of any proposed divestiture pursuant to Section IV or V of this Final Judgment, defendants or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the plaintiff of the proposed divestiture. If a trustee is responsible, it shall similarly notify the defendants. The notice shall set forth the details of the proposed transaction and list the name, address and telephone number of each person not previously identified who offered or expressed an interest or desire to acquire any ownership interest in Gadsden or Massillon together with full details of same. Within fifteen (15) days of receipt by plaintiff of such notice, the plaintiff may request additional information concerning the proposed divestiture and the proposed purchaser. The defendants shall furnish the additional information within twenty (20) days of the receipt of the request, unless the parties shall otherwise agree. Within thirty (30) days after receipt of the notice or within fifteen (15) days after receipt of the additional information, whichever is later, the plaintiff shall notify in writing the defendants and the trustee, if there is one, if it objects to the proposed divestiture. If the plaintiff fails to object within the periods specified, or if the plaintiff notifies in writing the defendants and the trustee, if there is one, that it does not object, then the divestiture may be consummated, subject only to defendants' limited right to object to the sale under the proviso in Section V(A). Upon objection by the plaintiff or by the defendants under the proviso in Section V(A), the proposed divestiture shall not be accomplished unless approved by the Court. The defendants shall have no right to object to any divestiture of Gadsden or Massillon proposed by the trustee except under the proviso to Section V(A).

VII

Thirty (30) days from the date of entry of this Final Judgment and every thirty (30) days thereafter until the divestiture has been completed, the defendants shall deliver to plaintiff an affidavit as to the fact and manner of compliance with Section IV of this Final Judgment. Each such affidavit shall include the name, address and telephone number of each person who, during the preceding thirty (30) days, made an offer, expressed an interest or desire to acquire, or entered into negotiations to acquire, or made an inquiry about acquiring any ownership interest, in either Gadsden or Massillon, and shall describe in detail each contact with any such person during that period. The defendants shall maintain full records of all efforts made to divest Gadsden and Massillion.

VIII

Until the divestiture required by this Final Judgment has been accomplished, the defendants shall:

A. Maintain normal repair and maintenance schedules at Gadsden and Massillon and preserve those facilities as they currently exist, except for the deterioration of the blast furnace and coke ovens normally associated with continuing usage;

B. Refrain from altering or selling any assets of Gadsden or Massillon, other than in the ordinary course of business, or from taking any action that will have the effect of reducing the scope of Gadsden's or Massillon's manufacturing or sales operations or its product line from that existing at the time of the filing of the Complaint in this action, without the prior approval of the plaintiff;

C. Refrain from taking any action that would jeopardize the sale of Gadsden as a viable competitor in the manufacture and sale of carbon and alloy hot and cold rolled sheet steel and of Massillon as a viable competitor in the manufacture and sale of stainless cold rolled sheet steel; and

D. Until divestiture of Massillon is accomplished, establish a marketing organization for the sale of cold rolled stainless sheet steel from Massillon which shall be maintained separate and apart from J&L Stainless' marketing organization in the same manner and to the same extent as if J&L Stainless and Republic remained competitors, and there shall be no understanding, agreement, consultation or other communication between the two organizations or its members with regard to prices or terms of sale to customers of stainless sheet steel or as to the allocation or division of trade or customers. LTV and Republic shall forthwith advise in writing all managerial employees of J&L Stainless or Republic having any responsibilities with regard to the marketing of stainless sheet steel of the provisions of this paragraph.

IX

For the sole purpose of enforcing the limited right to Court review of contract disputes provided in paragraph 12 of the Appendix to this Final Judgment, the purchaser of Massillon, and its successors and assigns, may make application to the Court for such relief as may be appropriate to carry out the intent of Section IV(D) of this Final Judgment.

X

For the purposes of determining or securing compliance with the Final Judgment and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendant made to its principal office, be permitted:

1. Access during office hours of such defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of such defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and

2. Subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview officers, employees and agents of such defendant, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to any defendant's principal office, such defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

No information or documents obtained by the means provided in this Section X shall be divulged by a representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

C. If at the time information or documents are furnished by any defendant to plaintiff, such defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and such defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure", then ten days' notice shall be given by plaintiff to defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI

Defendants are hereby enjoined and restrained for a period of ten (10) years from providing to the American Iron and Steel Institute for transmittal to any other steel company, or receiving from the American Iron and Steel Institute, without the consent of plaintiff, operating, output and/or efficiency data for individual operating units including, but not limited to, coke ovens, sinter plants, blast furnaces, electric furnaces, basic oxygen furnaces, primary mills, continuous casters, base mills, plate mills, structural mills, hot strip mills and sheet finishing mills.

XII

Defendants are hereby enjoined and restrained for a period of ten (10) years from acquiring one percent (1%) or more of the voting securities of any person engaged in the manufacture or sale of carbon and alloy hot and cold rolled sheet steel or stainless hot and cold rolled sheet steel, the assets of which are recorded on the books of such company (net of related valuation reserves recorded on such books) in an amount in excess of $15 million, or from acquiring from any such person, except pursuant to supply arrangements or otherwise in the ordinary course of business, assets relating to such products (except raw materials) in an amount in excess of $15 million without first obtaining the consent of plaintiff or, if plaintiff objects, the approval of this Court upon defendants' establishing, by a preponderance of the evidence, that the acquisition will not lessen competition or tend to create a monopoly in any line of commerce in any section of the country.

XIII

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XIV

This Final Judgment will expire on the tenth anniversary of the date of its entry, except that as to the supply contract referred to in Section IV(D), on the termination thereof.

XV

Entry of this Final Judgment is in the public interest.

Dated:

United States District Judge

Appendix—Terms of the Long-Term Supply Contract

(1) The term of the contract shall be not less than ten years, with a right of renewal in Buyer for not less than two additional years in the event Buyer cannot by a reasonable effort secure an adequate alternative source of stainless steel hot bands upon expiration of the original term of the contract and that defendants then have substantially as much stainless steel hot band capacity as they have today.

(2) Stainless steel hot bands supplied to Buyer shall be as specified by the Buyer and at least equal in quality to hot bands used by defendants to manufacture cold rolled stainless steel sheet and strip for sale by defendants to their own customers.

(3) Defendants agree to supply up to 100 percent of the Massillon requirements of stainless steel hot bands for further finishing into cold rolled sheet and strip at Massillon and sale of such sheet and strip by Buyer, up to a maximum of 30,000 tons per quarter, and not to exceed 10,000 tons in any given month, with a right in Buyer to increase the maximum to 36,000 tons per quarter (and not to exceed 12,000 tons in any given month) in the event that the capacity of Massillon is increased to accommodate such larger supply.

(4) Lead times for Buyer's placing orders with defendants, submitting change orders, and cancelling orders shall be on terms and conditions not less favorable to Buyer on a proportionate basis than the practice normally followed by defendants in connection with orders submitted by defendants' own marketing organization. All orders placed by Buyer shall be filled in accordance with its specifications, unless modified with Buyer's consent.

(5) Stainless steel hot bands furnished to Buyer shall be melted at J&L's Midland plant and rolled at J&L's Cleveland plant, except that ingots for 60" wide hot bands and other specialty products for Massillon now produced at Republic's Canton plant and which Midland is not now capable of producing shall continue to be furnished from Canton. In the event that any of these plants should for any reason become inoperative or unavailable, defendants shall supply Buyer from such other plant or plants as it may then operate, on like terms as herein provided for with respect to the Canton, Midland and J&L Cleveland plants.

(6) In case of shortage, interruption of supply or other force majeure events, Buyer shall be accorded relatively equal status in all respects with defendants' own manufacturing and marketing organizations and customers, and defendants shall not give preferential treatment to their own organizations and customers.

(7) Buyer shall be permitted at its option to place orders for stainless steel hot bands

with other suppliers either in addition to or in lieu of placing orders with defendants.

(8) The purchase price for the stainless steel hot bands shall be based upon: (i) Defendants' actual average monthly manufacturing costs by grade, plus (ii) overhead expenses accumulated on a monthly basis and allocated based on the ratio of defendants' hot band shipments to Buyer to defendants' total hot band production, together with (iii) a markup equal to ten percent of manufacturing and overhead expenses.

(9) Payment shall be made by Buyer for stainless steel hot bands purchased from defendants at the end of each month following the month of delivery.

(10) Defendants will submit to Buyer monthly proof of all cost data used to calculate price, subject to right of audit by Buyer. Defendant shall grant Buyer reasonable access for inspection to its manufacturing facilities used to supply product to Buyer, and to all financial and other records pertinent to the contract or the parties' obligations thereunder.

(11) Subject to plaintiff's prior approval, Buyer shall have the right to assign the contract to any successor of Buyer's interest in Massillon.

(12) An appropriate method shall be provided for the speedy resolution of disputes under the contract. In the event of a dispute, and following reasonable efforts to resolve the dispute through the mechanism provided in the contract (unless the Court agrees to a waiver of this requirement by reason of emergency), Buyer shall have the right to petition this Court, in accordance with Section IX of this Final Judgment, for such relief under the contract as may be appropriate, based on a clear and convincing showing by Buyer that without such relief Buyer will be unable effectively to compete with defendants in the sale of cold rolled stainless steel sheet or strip in accordance with the intent of Section IV(D) of this Final Judgment.

U.S. District Court for the District of Columbia

United States of America, Plaintiff, v. *The LTV Corporation; Jones & Laughlin Steel Incorporated; J&L Specialty Steels, Inc.; and Republic Steel Corporation*, Defendants.

Civil Action No. 84-0884 (Judge Pratt).

Filed: March 22, 1984.

Competitive Impact Statement

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA") 15 U.S.C. 16(b)-(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I

Nature and Purpose of the Proceeding

On March 21, 1984, the United States filed a civil antitrust complaint under Section 15 of the Clayton Act, 15 U.S.C. 25, challenging the acquisition of Republic Steel Corporation ("Republic") by the LTV Corporation ("LTV") as a violation of Section 7 of the Clayton Act, 15 U.S.C. 18. Also named in the Complaint were Jones & Laughlin Steel Incorporated ("J&L") and J&L Specialty Steels, Inc. ("J&L Stainless"), wholly owned subsidiaries of LTV. The complaint alleges that the effect of the acquisition may be substantially to lessen competition in the United States in three product markets: (1) Carbon and alloy hot rolled sheet and strip steel; (2) carbon and alloy cold rolled sheet and strip steel; and (3) stainless cold rolled sheet and strip steel. The Complaint seeks a permanent injunction preventing defendants from consummating the proposed acquisition or any similar plan whereby LTV, J&L or J&L Stainless would acquire any securities or assets of Republic.

Plaintiff and defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment will terminate this action, except that the Court will retain jurisdiction to construe, modify and enforce the proposed Final Judgment.

II

Events Giving Rise to the Alleged Violation

On September 28, 1983, LTV and Republic announced an agreement to merge Republic into LTV. After a lengthy investigation, J. Paul McGrath, Assistant Attorney General in charge of the Antitrust Division, announced on February 15, 1984, that the United States would seek to enjoin consummation of the acquisition if the companies attempted to complete it. The companies and the Department then entered into negotiations during which LTV and Republic sought to modify the transaction to avoid the antitrust issues raised by their initial proposal. This statement and the accompanying consent decree contain the terms and conditions of the agreement by which the Department's objections to LTV's acquisition of Republic have been resolved.

Carbon and alloy hot rolled sheet and strip are produced at large, integrated steel mills, where iron is produced in blast furnaces from iron ore, coal and limestone, refined into steel in basic oxygen furnaces, continuously cast or rolled into slabs, and rolled into sheet or strip on a hot strip mill. Carbon and alloy hot rolled sheet and strip have many end-uses including automotive and truck underbodies, electrical equipment, appliances, industrial equipment, agricultural machinery, compressed gas cylinders, plumbing equipment and fabricated products.

Carbon and alloy cold rolled sheet and strip are made by further finishing hot rolled sheet and strip in cold finishing shops. Cold rolled carbon and alloy sheet and strip are used where surface properties and close tolerances are important, such as exposed portions of automobile bodies and household appliances.

Stainless steel is an alloy steel containing at least 50 percent iron and at least 10 percent chromium, the chromium provides stainless steel its ability to resist corrosion. Stainless steel is produced in separate facilities from carbon and alloy steel. Electric arc furnaces and argon-oxygen-decarburization vessels are used in the production process. Stainless steel is processed into slabs and then rolled on a hot strip mill to produce stainless hot rolled sheet or strip.

Stainless cold rolled sheet and strip constitute the principal end uses for stainless hot rolled sheet and strip. Most stainless sheet and strip is cold rolled to provide high dimensional accuracy and a superior finish. These products are used in tubing for dairy equipment and chemical plants, beer barrels, automotive wheel covers, exhaust systems, knives, sinks and hospital and restaurant equipment.

J&L is the second largest U.S. producer of carbon and alloy hot rolled sheet and strip, with 12.6 percent of 1983 domestic production. Republic is the sixth largest U.S. producer with 8.2 percent of 1983 domestic production. J&L is the second largest U.S. producer of carbon and alloy cold rolled sheet and strip with 13.5 percent of 1983 domestic shipments, and Republic is the seventh largest U.S. producer with 8.4 percent of 1983 domestic shipments. The combination of the two firms would be the largest U.S. producer of carbon and alloy hot and cold rolled sheet and strip.

J&L is the largest U.S. producer of stainless cold rolled sheet and strip, with approximately 37.5 percent of 1983 domestic capacity. Republic is the fourth largest U.S. producer, with approximately 9.9 percent of 1983 domestic capacity. The combination of the two firms would be the largest U.S. producer of stainless cold rolled sheet and strip.

While imports can have an important competitive effect in these markets, trade restrictions limit such import competition, particularly that from the European Economic Community, which is subject to a percentage quota agreement on steel products, and from Japan, which voluntarily limits its steel exports to this country. Also, many users of these sheet products have a strong preference for doing business with domestic producers as distinct from foreign producers, for reasons of product quality, availability and service.

The effect of the proposed merger of LTV and Republic on market concentration was calculated by including all relevant domestic shipments or capacity and all imports of the relevant products except those from the EEC and Japan, which are subject to the above-mentioned restrictions. The merger would raise the Herfindahl-Hirschman Index (HHI)* in hot rolled carbon and alloy sheet and strip from 871 to 1047; in cold rolled carbon and alloy sheet and strip from 953 to 1146; and in stainless cold rolled sheet and strip from 2190 to 2898.

III

Explanation of the Proposed Final Judgment

Plaintiff and defendants have stipulated that the proposed Final Judgment may be entered by the Court at any time after compliance with the APPA. The proposed Final Judgment constitutes no admission by any party as to any issue of fact or law. Under the provisions of Section 2(e) of the APPA, entry of the proposed Final Judgment is conditioned upon a determnation by the

*The HHI is the sum of the squares of the market shares of each competitor.

Court that the proposed Final Judgment is in the public interest.

A. *Divestiture*

The proposed Final Judgment requires LTV to divest its entire interest in Republic's Gadsden, Alabama, steel mill ("Gadsden") and in Republic's Massillon, Ohio, steel mill ("Massillon"), absolutely and unconditionally, by its own efforts within 6 months of the entry of the Final Judgment, but in no event later than December 1, 1984. If LTV cannot accomplish the required divestiture within the above time period, the proposed Final Judgment provides that, upon application by the plaintiff, the Court shall appoint a trustee who shall sell these two steel mills at such price and terms as are then obtainable.

Gadsden must be divested to a purchaser who can and will operate it as a viable, ongoing business that can compete effectively in carbon and alloy hot and cold rolled sheet markets, using slabs produced at Gadsden or elsewhere. Massillon must be divested to a purchaser who can and will operate it as a viable, ongoing business that can compete effectively in the stainless cold rolled sheet and strip market. The defendants will take all reasonable steps necessary to accomplish divestiture, including the sale of assets only, divesting Massillon and Gadsden free and clear of all liabilities, advertising the availability of such mills in the United States and in major noncommunist steel producing countries, and cooperating with bona fide prospective purchasers and the trustee. Additionally, defendants are obligated for a period of at least ten years to enter into a contract to supply Massillon with stainless hot rolled sheet and strip. The contract will place the purchaser of Massillon on equal footing with LTV's own stainless cold rolled sheet and strip operations and will establish a price no greater than actual costs plus a ten percent markup.

If a trustee is appointed, the proposed Final Judgment provides that defendants will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which divestiture is accomplished. If after six months from the date of the trustee's appointment the required divestiture has not been accomplished, the trustee and the parties shall make recommendations to the Court and the Court shall enter such orders as it deems appropriate to effect divestiture.

Until the required divestiture has been accomplished, the defendants must generally maintain normal repair and maintenance schedules at Gadsden and Massillon and cannot take any action that would reduce the scope of their manufacturing or sales operations or product lines or would jeopardize the sale of Gadsden and Massillon as viable operations. Also, the stainless cold rolled sheet and strip marketing organizations of J&L Stainless and Republic must be kept separate until divestiture of Massillon is accomplished.

B. *Other Provisions*

The proposed Final Judgment enjoins the defendants for ten years from acquiring voting securities or assets of persons involved in the manufacture or sale of carbon and alloy hot and cold rolled sheet steel or stainless hot and cold rolled sheet steel without first obtaining plaintiff's approval, when such steel assets are valued at more than $15 million. If plaintiff objects, the defendants can seek the Court's approval, but must bear the burden of proof that the acquisition will not lessen competition or tend to create a monopoly. The proposed Final Judgment also enjoins the defendants from participating in exchanges of firm and mill-specific operating, output and efficiency data with other steel companies through the American Iron and Steel Institute (AISI). Finally, there are a number of provisions that allow plaintiff to determine and secure compliance with this Final Judgment.

IV

Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act (15 U.S.C. 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney fees. Entry of the Final Judgment will neither impair nor assist the bringing of any private antitrust damage actions. Under the provisions of Section 5(a) of the Clayton Act (15 U.S.C. 16(a)), the Final Judgment has no *prima facie* effect in any private lawsuit that may be brought against the defendants.

V

Procedures Available for Modification of the Proposed Final Judgment

As provided by the APPA, any person wishing to comment upon the Final Judgment may within the statutory 60-day comment period submit written comments to John W. Clark, Chief, Special Trial Section, Antitrust Division, United States Department of Justice, Washington, D.C. 20530. These comments and the Department's responses will be filed with the Court and published in the **Federal Register.** All comments will be given due consideration by the Department, which remains free to withdraw its consent to the Judgment at any time prior to entry. The Judgment provides that the Court retains jurisdiction over this action, and any party may apply to the Court for any order necessary or appropriate for its modification, interpretation, or enforcement.

VI

Alternatives to the Proposed Final Judgment

The United States considered the alternative to the proposed Final Judgment of proceeding to seek preliminary and permanent injunctions against consummation of the merger. While the Government was confident of its ability to succeed ultimately after a trial on the merits, the litigation would have involved novel and difficult issues of law and fact, and a favorable outcome was not certain. Also, it is likely that after a successful trial on the merits a court would have ordered divestitures substantially the same as the parties have now agreed to.

The Government also considered requiring divestitures of plants other than Gadsden and Massillon. While Gadsden is not one of the largest carbon and alloy sheet facilities operated by these companies, divestiture of this mill will reduce the increase in the relevant HHIs by almost one-third. At that lower level, other considerations, such as the financial condition of the firms and possible efficiencies resulting from the merger, led the Government to conclude that the restructured merger would not be anticompetitive.

The effect of the divestiture of Massillon will be to eliminate entirely the increase in concentration in cold rolled stainless sheet and strip caused by the merger, since all of Republic's production is located at Massillon. The hot rolled sheet that is cold finished at Massillon is produced at other Republic facilities; to assure the viability of the divested plant, the Final Judgment also requires that defendants enter into a long term contract with the purchaser of Massillon to supply stainless hot rolled sheet on favorable terms. In this way it is possible to achieve effective divestiture in cold rolled stainless sheet and strip without requiring divestiture of Republic melting and rolling facilities, which are integrated with other operations of the company. A large part of the stainless hot rolled sheet to be supplied to Massillon will be made at LTV's Midland, Pennsylvania, plant and will be of higher quality and lower cost than that previously produced by Republic.

The Government considered the divestiture of the Midland works of LTV, which is a fully integrated stainless steel mill in lieu of a divestiture of Massillon. It was concluded, however, that divestiture of Massillon together with a long term supply commitment from LTV would be sufficient to avoid undue market concentration in the stainless cold rolled sheet and strip market.

The Final Judgment contains two other injunctive provisions that will ameliorate the increase in concentration in hot and cold rolled carbon and alloy sheet and strip resulting from the merger. The domestic steel industry has long been characterized by comprehensive exchanges of sensitive plant-specific operating and output information among its competitors. Such information exchanges can inhibit competition in a moderately concentrated industry such as the steel industry. The Final Judgment prohibits defendants from participating in such exchanges through the AISI for a period of ten years. Its effect will be to prevent defendants from continuing to participate in the preparation and the exchange among competitors of the AISI Technical Committee reports, which are currently circulated among the members of AISI on a regular basis. The defendants will not be barred from furnishing relevant information in connection with specific bona fide business transactions, such as the purchase or sale of a particular facility. Also, the Final Judgment prohibits additional acquisitions by defendants of sheet steelmaking facilities having a value in excess of $15 million without the approval of the Government or the Court.

The United States considered requiring the defendants to complete the divestitures, or at least to reach binding agreements of sale, prior to the consummation of the merger, in

accordance with the Government's stated policy to that effect. The Government did not require pre-merger divestiture in view of the substantial delays that have already occurred since LTV and Republic announced their agreement to merge and of the deleterious effect that further significant delays could have on both firms. Accordingly, acting on assurances by defendants that the divestitures can and will be made promptly and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions, the Government agreed to permit the divestitures to occur after consummation of the merger, subject to stringent provisions designed to assure the divestitures, described in Section III above.

Thus, the United States believes that entry of the proposed Final Judgment is in the public interest.

VII

Determinative Materials and Documents

There are no materials or documents that the United States considered determinative in formulating this proposal Final Judgment. Accordingly, none are being filed with this Competitive Impact Statement.

Dated: March 22, 1984.

Respectfully submitted,

Eric F. Kaplan,

J. Robert Kramer II,

Thomas C. Black,

Katherine R. Curtis,

Attorneys, Department of Justice, Antitrust Division, Washington, D.C. 20530, Telephone: (202) 633-6347.

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing competitive Impact Statement upon the following counsel by causing copies thereof to be deposited in the United States mail, postage prepaid, on March 22, 1984:

Richard W. Pogue, Jones, Day, Reavis and Pogue, 1735 Eye Street, NW., Washington, D.C. 20006

Stanley A. Robinson, Kaye, Scholer, Fierman, Hays and Handler, 425 Park Avenue, New York, New York 10022

Eric F. Kaplan,

Attorney, Department of Justice.

[FR Doc. 84-9133 Filed 4-4-84; 8:45 am]

BILLING CODE 4410-01-M

Proposed Termination of Final Judgment

Owens-Illinois, Inc. ("O-I") has filed with the United States District Court for the Northern District of California a motion to terminate the Final Judgment in *United States* v. *Owens-Illinois, Inc.*, Civil Action No. 25861-G; and the Department of Justice ("Department"), in a stipulation also filed with the court, has consented to termination of the Judgment, but has reserved the right to withdraw its consent for at least seventy (70) days after the publication of this notice. The complaint in this case, which was filed in 1946, alleged that O-I had monopolized and attempted to monopolize trade and commerce in glass containers and closures by leasing vacuum closing machinery on the condition that the lessees not use or deal in glass containers or closures of competitors of O-I. The Final Judgment enjoins O-I from leasing or selling vacuum closing machinery on the condition that the lessee or purchaser not purchase or use glass containers or closures of a competitor; and from removing vacuum closing machinery from the premises of a lessee because the lessee uses glass containers or closures manufactured by a competitor of O-I. The Department has filed with the court a memorandum setting forth the reasons why the Department believes that termination of the Judgment would serve the public interest. Copies of the Complaint and final Judgment, O-I's motion papers, the stipulation containing the Government's consent, the Department's memorandum and all further papers filed with the court in connection with this motion will be available for inspection at the Legal Procedure Unit of the Antitrust Division, Room 7416, Department of Justice, 10th Street and Pennsylvania Avenue NW., Washington, D.C. 20530 (telephone: 202-633-2481), and at the Office of the Clerk of the United States District Court for the Northern District of California, Room 18425, United States Courthouse, San Francisco, California 94102. Copies of any of these materials may be obtained from the Legal Procedure Unit upon request and payment of the copying fee set by Department of Justice regulations. Interested persons may submit comments regarding the proposed termination of the judgment to the Department. Such comments must be received within sixty days, and will be filed with the court. Comments should be addressed to John W. Clark, Chief, Special Trial Section, Antitrust Division, Department of Justice, Washington, D.C. 20530 (telephone: 202-724-6335).

Joseph H. Widmar,

Director of Operations Antitrust Division.

[FR Doc. 84-9135 Filed 4-4-84; 8:45 am]

BILLING CODE 4410-01-M

United States v. National Broadcasting Company, Inc.; Proposed Modification of Final Judgment

Notice is hereby given that National Broadcasting Company Inc. has asked the United States District Court for the Central District of California to modify the Final Judgment in *United States* v. *National Broadcasting Company, Inc.*, Civil Action No. 72-819-RJK (C.D. Cal.). The United States has tentatively consented to the modification. The Complaint in this case and in two companion cases, *United States* v. *American Broadcasting Companies, Inc.*, Civil Action No. 74-3600-RJK (C.D. Cal.). and *United States* v. *CBS, Inc.*, Civil Action No. 74-3599-RJK (C.D. Cal.). were filed in 1974. Each complaint alleged that the defendant network had violated Sections 1 and 2 of the Sherman Act by combining with the television stations it owned and with its affiliated stations to monopolize and restrain trade in television entertainment programs exhibited on its television network during prime time hours. It also alleged that each network had violated Section 2 of the Sherman Act by monopolizing television entertainment programs exhibited on its network during prime time hours.

In 1977 NBC and the Government agreed to a settlement of the NBC case and a Final Judgment was entered. The Final Judgment: (1) Limits the amount of programming that NBC may produce internally; (2) prohibits NBC from acquiring the right to engage in non-network distribution of independently produced progams or to share in profits from such distribution; and (3) regulates the terms and conditions of NBC program purchases from independent producers. In addition, Section IX of the Final Judgment provides that if a final judgment is entered in the cases against ABC or CBS and that judgment contains provisions different from the provisions in the NBC Final Judgment, then NBC may apply to the Court and shall be granted a modification of the NBC Judgment as may be necessary to prevent NBC from being placed at a competitive disadvantage with respect to CBS or ABC.

In 1980, ABC and CBS settled their cases with the United States. While the ABC and CBS Final Judgment contain many of the same prohibitions as the NBC Judgment, there are some differences. The proposed modification, which is submitted under Section IX of the NBC Final Judgment, would conform the injunctive provisions running against NBC to those entered against ABC. NBC would be allowed to increase its in-house production of prime time entertainment programs at the same time those increases become effective for ABC. Furthermore, NBC would be allowed to renegotiate series options at any time during an option period. The modification would also impose two additional injunctions against NBC. NBC would be limited in its use of exclusive agreements with essential talent

employed in pilots and in prime time entertainment program series.

The United States has filed a memorandum with the Court setting forth the reasons it has tentatively consented to the modification. Copies of the complaint, proposed Modified Final Judgment, motion papers, all comments submitted and all further papers filed with the Court will be available for inspection at the Legal Procedure Unit of the Antitrust Division, Room 7416, United States Department of Justice, Tenth Street and Pennsylvania Avenue, NW., Washington, D.C. 20530. (telephone: 202/633–2481), and at the Office of the Clerk of the United States District Court for the Central District of California, 312 North Spring Street, Los Angeles, California 90012. Copies of any of these materials may be obtained from the Legal Procedure Unit upon request and payment of the fee set by the Department of Justice regulations. Interested persons may submit comments concerning this matter by sending them within sixty days to Stanley M. Gorinson, Chief, Special Regulated Industries Section, Post Office Box 50125, Washington, D.C. 20004 (telephone: 202/724–6693).

Joseph H. Widmar,

Director of Operations Antitrust Division.

[FR Doc. 84–9134 Filed 4–4–84; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

Employment Transfer and Business Competition Determinations Under the Rural Development Act; Applications

The organizations listed in the attachment have applied to the Secretary of Agriculture for financial assistance in the form of grants, loans, or loan guarantees in order to establish or improve facilities at the locations listed. The financial assistance would be authorized by the Consolidated Farm and Rural Development Act, as amended, 7 U.S.C. 1924(b), 1932, or 1942(b).

The Act requires the Secretary of Labor to determine whether such Federal assistance is calculated to or is likely to result in the transfer from one area to another of any employment of business activity provided by operations of the applicant. It is permissible to assist the establishment of a new branch affiliate or subsidiary, only if this will not result in increased unemployment in the place of present operations and there is no reason to believe the new facility is being established with the intention of closing down an operating facility.

The Act also prohibits such assistance if the Secretary of Labor determines that it is calculated to or is likely to result in an increase in the production of goods, materials, or commodities, or the availability of services or facilities in the area, when there is not sufficient demand for such goods, materials, commodities, services, or facilities, to employ the efficient capacity of existing competitive commercial or industrial enterprises, unless such financial or other assistance will not have an adverse effect upon existing competitive enterprises in the area.

The Secretary of Labor's review and certification procedures are set forth at 29 CFR Part 75. In determining whether the applications should be approved or denied, the Secretary will take into consideration the following factors:

1. The overall employment and unemployment situation in the local area in which the proposed facility will be located.

2. Employment trends in the same industry in the local area.

3. The potential effect of the new facility upon the local labor market with particular emphasis upon its potential impact upon competitive enterprises in the same areas.

4. The competitive effect upon other facilities in the same industry located in other areas (where such competition is a factor).

5. In the case of application involving the establishment of branch plants or facilities, the potential effect of such new facilities in other existing plants or facilities operated by the applicant.

All persons wishing to bring to the attention of the Secretary of Labor any information pertinent to the determinations which must be made regarding these applications are invited to submit such information in writing within two weeks of publication of this notice. Comments received after the two-week period may not be considered. Send comments to: Richard C. Gilliland, Director, U.S. Employment Service, Employment and Training Administration, 601 D Street, NW., Room 8000, Patrick Henry Building, Washington, D.C. 20213.

Signed at Washington, D.C. this 2nd day of April 1984.

Joseph Seiler,

Director, Office of Program Operations.

APPLICATIONS RECEIVED DURING THE WEEK ENDING APRIL 7, 1984

Name of applicant and location of enterprise	Principal product or activity
B. B. Walker Company, Asheboro, North Carolina.	Manufacture of Men's shoes and metal furniture.

[FR Doc. 84–9151 Filed 4–4–84; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Media Arts Advisory Panel (AFI Review Section); Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (AFI Review Section) to the National Council on the Arts will be held on April 16, 1984, from 9:00 a.m.–5:30 p.m. in Room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: March 29, 1984.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 84–9049 Filed 4–4–84; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Atmospheric Sciences

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Atmospheric Sciences (ACAS).

Date: April 25–27, 1984.

Time: 9:00 a.m.–5:00 p.m.

Place: Room 543, National Science Foundation, 1800 G Street, NW., Washington, D.C. 20550.

Type of Meeting: Open.

Contact: Dr. Eugene W. Bierly, Division Director, Division of Atmospheric Sciences, Room 644, National Science Foundation, Washington, D.C., 20550, telephone: (202) 357–9874.

Purpose of Committee: The Advisory Committee for Atmospheric Sciences provides advice, recommendations, and oversight concerning support for research and research-related activities in the atmospheric sciences area.

Agenda

April 25, 1984—9:00 a.m. to 5:00 p.m., and April 26, 1984 9:00 a.m. to 12:00 Noon, Room 543
—Review of Center and Facilities Section, Division of Atmospheric Sciences (ATM)

April 26, 1984, Room 543—1:00–5:00 p.m.
—Remarks by Chairman, ACAS, and Division Director, ATM
—Remarks by Director, NSF
—Remarks by Acting Assistant Director, AAEO
—Presentation of ACAS Review Report of Centers and Facilities Section, ATM
—Budgetary Information on NSF and Other Agencies; Long Range Planning Process
—Update on NSF Supercomputer Initiative

April 27, 1984, Room 543, 8:30 a.m.–5:00 p.m.
—Discussion of UCAR-Related and NCAR-Related Issues
—Subcommittee on Upper Atmosphere Facilities (SUAF) Activities
—Incoherent Scatter Radar User Workshop
—Continuation of Budgetary and Long Range Planning Discussion
—Future ATM Participation in Small Business Innovation Program

Dated: April 2, 1984.

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 84–9136 Filed 4–4–84; 8:45 am]
BILLING CODE 7555–01–M

Advisory Panel for Systematic Biology; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Systematic Biology.

Date and Time: April 23 & 24, 1984—8:30 a.m. to 5:00 p.m. each day.

Place: Room 1141, National Science Foundation, 1800 G St., NW., Washington, D.C. 20550.

Type of Meeting: Closed.

Contact Person: Dr. Lloyd Knutson, Program Director, Systematic Biology (202) 357–9588, Room 1140, National Science Foundation, Washington, D.C. 20550.

Purpose of Panel: To provide advice and recommendations concerning support for research in systematic biology.

Agenda: Review and evaluation of research proposals and projects as part of the selection biology.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Coordinator.

April 2, 1984.

[FR Doc. 84–9137 Filed 4–4–84; 8:45 am]
BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–2061–ML; ASLBP No. 84–495–01 ML]

Proposed Decommissioning of Kerr-McGee Chemical Corp. Rare Earths Facility, West Chicago, DuPage County, Illinois; Hearing

March 30, 1984.

In the Matter of Kerr-McGee Chemical Corp. (West Chicago Rare Earths Facility); Docket No. 40–2061–IML, and ASLBP No. 84–495–01 ML.

On June 7, 1983, the NRC Staff published in the **Federal Register** a notice entitled "Kerr-McGee Chemical Corp., Opportunity for a Hearing; Availability of Final Environmental Statement for the Rare Earths Facility, West Chicago, DuPage County, Illinois." (See 48 FR 26381.) That notice indicated that Kerr-McGee had proposed decommissioning of the Rare Earths Facility. Kerr-McGee's proposal is to demolish the existing buildings, remove the building rubble and contaminated soil to an adjacent disposal site, and stabilize the rubble, soil, ore residues and ore tailings on that adjacent site. The notice further indicated that NRC Staff's alternative of choice is stabilization and storage as proposed by Kerr-McGee for disposal, with future evaluation of the alternatives of permanent onsite disposal or removal to another site. This notice recited the availability of the Staff's Final Enviornmental Statement with respect to the proposal. The notice provided that licensee (Kerr-McGee) or any person whose interest may be affected might file a request for a hearing by July 11, 1983.

Timely hearing requests were filed by the Attorney General of Illinois on behalf of the People of the State of Illinois and by the Chamber of Commerce of West Chicago, Illinois. On November 3, 1983, the Commission issued an order referring these requests to the Atomic Safety and Licensing Board Panel for the appointment of a presiding board to rule on the hearing requests and conduct any necessary proceedings under 10 CFR Part 2, Subpart G. On November 9, 1983, the Chief Administrative Judge of the Panel appointed its Board pursuant to the Commission's Order.

At a prehearing conference conducted by this Board in Chicago, Illinois, on February 2, 1984, the Attorney General orally amended (and on February 29 filed a formal revision of) its statement of interest to reflect the fact that his petition was filed at the request of the Illinois Department of Nuclear Safety, as well as on behalf of the People of Illinois. Following that conference, the Board admitted the attorney General to the proceeding and accepted a number of his contentions, and the Chamber of Commerce withdrew its request for a hearing in favor of a limited appearance statement. Consequently, an adjudicatory proceeding pursuant to Subpart G of 10 CFR Part 2 to consider Kerr-McGee's proposed decommissioning plan and Staff's alternative of choice is hereby commenced.

For the Atomic Safety and Licensing Board, Bethesda, Maryland.

John H. Frye III,

Chairman, Administrative Judge.

[FR Doc. 84–9148 Filed 4–4–84; 8:45 am]
BILLING CODE 7590–01–M

[Docket No. 50–322–OL; ASLBP No. 77–347–01C OL]

Long Island Lighting Co.; Establishment of Atomic Safety and Licensing Board To Preside In Proceeding

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR

28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, and pursuant to the Statement of Policy Conduct of Licensing Proceedings, 13 N.R.C. 452 (1981), and the advice from the present Atomic Safety and Licensing Board in this operating license proceeding with jurisdiction over non-emergency planning matters that two of its members are heavily committed to work on another operating license proceeding, a separate Atomic Safety and Licensing Board is being established to hear and decide Long Island Lighting Company's March 20, 1984 "Supplemental Motion for Low Power Operating License."

Long Island Lighting Company

Shoreham Nuclear Power Station, Unit 1 (Low Power), Construction Permit No. CPPR–95.

This Board is being established pursuant to a notice published by the Commission on March 18, 1976 in the **Federal Register** entitled, "Receipt of Application for Facility Operating License, Availability of Applicant's Environmental Report; Consideration of Issuance of Facility Operating License; Opportunity for Hearing." 41 FR 11367–68 (1976).

The Board is comprised of the following Administrative Judges:

Marshall E. Miller, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Glenn O. Bright, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Elizabeth B. Johnson, Oak Ridge National Laboratory, P.O. Box X, Building 3500, Oak Ridge, Tennessee 37830.

Issued at Bethesda, Maryland, this 30th day of March 1984.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 84–9147 Filed 4–4–84; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–277 and 50–278]

Philadelphia Electric Co., et al.; Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Prior Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses Nos. DPR–44 and DPR–56, issued to Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company and Atlantic City Electric Company (the licensees) for operating of the Peach Bottom Atomic Power Station, Units Nos. 2 and 3, located in York County, Pennsylvania.

The amendments would revise the provisions in the Technical Specifications relating to the deletion of all limiting conditions for operation, surveillance requirements, calibration frequency requirements and bases for the Drywell Air Monitoring Systems, in accordance with the licensees' application for amendments dated May 4, 1983, as amended by letter dated November 10, 1983.

Prior to issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By May 4, 1984, the licensees may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) day prior to the first prehearing conference scheduled in the proceeding, a petitoner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator shoud be given Datagram Identification Number 3737 and the following message addressed to John F. Stolz: (petitioner's name and telephone number); (date petition was mailed); (plant name); and (publication data and page number of this FEDERAL REGISTER notice). A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Troy B. Conner, Jr., 1747 Pennsylvania Avenue, NW., Washington, D.C. 20006, attorney for Philadelphia Electric Company.

Nontimely filings of petitions for leave to intervene, amended petitions,

supplemental petitions and/or requests for hearing will not be entertained absent to determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated May 3, 1983, as amended November 10, 1983, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Street, Harrisburg, Pennsylvania.

Dated at Bethesda, Maryland, this 28th day of March 1984.

For the Nuclear Regulatory Commission.

John F. Stolz,

Chief, Operating Reactors Branch No. 4 Division of Licensing.

[FR Doc. 84-9148 Filed 4-4-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-445-OL and 50-446-OL; ASLBP No. 79-430-06A OL]

Texas Utilities Generating Co., et al.; Establishment of Atomic Safety and Licensing Board To Preside in Proceeding

Pursuant to delegation by the Commission dated December 29, 1972, Published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, and pursuant to the Statement of Policy on Conduct of Licensing Proceedings, 13 N.R.C. 452 (1981), and the request of the Atomic Safety and Licensing Board already established to preside in this operating license proceeding, a separate Atomic Safety and Licensing Board is being established to preside over the proceeding on all allegations of intimidation and harassment.

Texas Utilities Generating Company, et al.

Comanche Peak Steam Electric Station, Units 1 and 2, Construction Permit Nos. CPPR-126 and CPPR-127

This Board is being established pursuant to a notice published by the Commission on February 5, 1979, in the **Federal Register** (44 FR 6995ff) entitled, "Availability of Applicant's Environmental Report, Consideration of Issuance of Facility Operating Licenses, and Opportunity for hearing."

The Board is comprised of the following Administrative Judges:

Peter B. Bloch, Chairman Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission Washington, D.C. 20555

Herbert Grossman, Alternate Chairman, Atomic Safety and Licensing Board Panel U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

Walter H. Jordan, 881 W. Outer Drive, Oak Ridge, Tennessee 37830

Issued at Bethesda, Maryland, this 30th day of March, 1984

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 84-9149 Filed 4-4-84; 8:45 am]

BILLING CODE 7590-01-M

Draft Supplement to the Programmatic Environmental Impact Statement Related to TMI-2 Cleanup; Extension of Comment Period

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft supplement to the programmatic environmental impact statement on TMI-2 cleanup; extension of comment period.

SUMMARY: On January 13, 1984, a Notice of Availability of Draft Supplement to the Programmatic Environmental Impact Statement on TMI-2 Cleanup was published in the **Federal Register** (49 FR 1788) that indicated that comments must be received before February 29, 1984, subsequently extended to April 2, 1984. To provide sufficient time for the Advisory Panel on TMI-Cleanup to submit its comments, the NRC is extending the due date of the public comment period.

DATE: New comment period expires April 20, 1984. Comments should be forwarded to Dr. Bernard J. Snyder, Director, TMI Program Office, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Dr. Ronnie Lo, TMI Program Office, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 492-8335.

Dated at Bethesda, Maryland this 2nd day of April 1984.

For the Nuclear Regulatory Commission.

John Philips,

Chief, Rules and Procedures Branch, Division of Rules and Records, Office of Administration.

[FR Doc. 84-9145 Filed 4-4-84; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 13852, 812-5768]

Minnesota Mutual Life Insurance Co., et al.; Application for an Order of Exemption

March 29, 1984.

Notice is hereby given that Minnesota Mutual Life Insurance Company, 400 North Robert Street, St. Paul, Minnesota 55105 ("MMLIC") and Minnesota Mutual Variable Fund D, registered under the Investment Company Act of 1940 ("Act") as an open-end management investment company and established as a separate account by MMLIC in connection with the proposed issuance of certain variable annuity contracts ("Account") (collectively, "Applicants"), filed an application on February 7, 1984, and an amendment thereto on March 22, 1984, for an order pursuant to Section 6(c) of the Act granting exemptions from the provisions of Section 27(c)(2) of the Act to the extent necessary to permit transactions described in the application. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein in support of the requested relief, which are summarized below, and are referred to the Act for a statement of the relevant provisions.

Applicants request exemption from Section 27(c)(2) to the extent necessary: (i) To deduct any premium taxes imposed on the contracts; (ii) to impose a guaranteed administrative charge of $30 for flexible payment contracts, $20 for single payment contracts, on each contract anniversary and on surrender of a contract. Applicants represent that this charge is reasonable in that MMLIC does not expect to recover from the charge any amount in excess of its accumulated expenses of administering the contracts; (iii) to deduct a fee at an annual rate of 0.265% of the value of the assets of the Account to compensate MMLIC for providing investment

advisory services. Applicants represent that the advisory contract between MMLIC and the Account will be implemented in accordance with section 15 of the Act; and (iv) to deduct a mortality and expense risk charge from the Account at an effective annual rate of 0.79% of the value of the assets of the Account and represent that this charge is reasonable in amount and that its level is within the range of charges being assessed by other insurance companies for comparable products, and that the basis for this representation is reflected in documents on file with MMLIC. Applicants will impose in some cases a sales load upon partial and total contract surrenders. Applicants acknowledge that this charge may be insufficient to cover all costs of distributing the contracts and that any shortfall would be absorbed by the general account of MMLIC, which may include profits derived from the mortality and expense risk charge. In this regard MMLIC represents that it has concluded that here is a reasonable likelihood that the proposed distribution financing arrangement will benefit the Account and contractowners, and the Account represents that any plan adopted by it under Rule 12b–1 to finance distribution expenses will be approved by a management committee having a majority of members who are not interested persons of MMLIC.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than April 23, 1984, 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. 84–9087 Filed 4–4–84; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–20795; File No. SR–NSCC–84–5]

Self-Regulator Corporation; Filing and Accelerated Effectiveness on a Temporary Basis of a Proposed Rule Change by National Securities Clearing Corporation

March 28, 1984.

The National Securities Clearing Corporation ("NSCC") on March 19, 1984, submitted a proposed rule change to the Commission pursuant to Rule 19b–4 under the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1) that enables NSCC to adopt Phase IV of its Municipal Bond System. [1]

I. Introduction

Under Phase IV, NSCC Settling Members,[2] including municipal securities brokers and dealers, can compare municipal securities trades and settle those trades either on a trade-for-trade basis or through NSCC's Continuous Net Settlement System ("CNS"). Municipal securities brokers and dealers that choose not to be Settling Members can become Municipal Bond Comparison Only ("MCO") members for the purpose of using NSCC's Municipal Bond Comparison Only ("MBCO") System. Phase IV will replace NSCC's interim procedures [3] that treated all municipal securities trades as Special Trades.[4] Those interim procedures were adopted as an initial step to ease municipal securities brokers and dealers into using the automated facilities of registered clearing agencies.[5]

II. Description of Proposed Rule Change

Under NSCC's proposal, NSCC will offer a new membership class, MCO membership, to municipal securities brokers and dealers who solely want to use NSCC's Comparison System. [6] Any municipal securities broker or dealer can become an MCO Member. NSCC, however, would only accept such a broker or dealer as an MCO Member if the broker or dealer agrees in writing to comply with applicable NSCC Rules.

All compared trades between MCO Members will be processed on a trade-for-trade basis. That is, NSCC will produce bond receive and deliver orders for such trades between the submitting parties at the original contract price. Such compared trades will not enter into any NSCC trade accounting system, *e.g.*, DBO or CNS, and MBC Members would not be entitled to use any NSCC system other than its municipal comparison services. As a result, MBC Members will settle their respective receive and deliver orders outside NSCC's facilities. The MSRB's Rules, including its close-out and delivery requirements, will control settlement of these orders.

Comparison of MBCO trades would not expose NSCC to financial risk. Because NSCC does not guarantee those deliver or receive obligations, NSCC would not be at risk if a party defaulted or became insolvent. Accordingly, MBC Members would not be required to make clearing fund deposits, to meet NSCC's general membership standards, or to satisfy other NSCC financial and operational requirements.

In Phase IV, NSCC would enable Settling Members, including municipal securities brokers and dealers choosing the full service option, to give NSCC standing instructions to compare their municipal securities transactions on a trade-for-trade basis or to clear such trades through NSCC's CNS System.[7]

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[1] NSCC's proposal is the foundation of its soon-to-be implemented National Municipal Securities Comparison System, which will be structured much like its National Over-The-Counter Comparison System.

[2] Settling Members are the NSCC Members subject to all of NSCC's Rules and entitled to use all of NSCC's systems.

[3] On December 13, 1983, the Commission approved an NSCC rule providing that all municipal securites trades submitted by NSCC's Members for comparison would be treated as Special Trades. Such trades would settle on a trade-for-trade basis and would be subject to MSRB's rules regarding close-out and delivery. NSCC also waived its requirement that members using NSCC's facilities to compare municipal securities transactions also participate in a qualified securities depository. Because those trades would be cleared and settled through NSCC's systems and thus would expose NSCC and its participants to financial loss, NSCC applied its comprehensive financial responsibility and operational standards to members engaging in this activity. Securities Exchange Act Release No. 20474 (December 13, 1983), 48 FR 56293 (December 20, 1983) ("Interim Procedures Release").

[4] Special Trades are not included in CNS and not netted in NSCC's Daily Balance Order System ("DBO"). While Special Trades are settled on a trade-for-trade basis, they also generally are subject to the same Rules and Procedures as balance orders. *See, e.g.*, NSCC Procedures Part V.

[5] On November 11, 1983, the Commission approved an amendment to Rule G–12 of the Municipal Securities Rulemaking Board ("MSRB"). As of August 1, 1984, this rule will require, among other things, that municipal securities brokers and dealers use the automated facilities of a registered clearing agency for the comparison of their inter-dealer trades if they, or their agents, participate in a registered clearing agency that provides comparison services. As of February 1, 1985, these same persons will be required to settle by book-entry movement all inter-dealer transactions in depository-eligible municipal securities issues if these transactions have been compared successfully through a registered clearing agency. Securities Exchange Act Release No. 20365 (November 14, 1983), 48 FR 52531 (November 18, 1983) ("MSRB Order").

[6] NSCC's automated municipal comparison system will provide MCO members with all the advanced initial and supplemental trade comparison mechanisms currently available in NSCC's over-the-counter comparison system, *e.g.*, Advisiories and Demand As Of's.

[7] Only depository-eligible municipal securities could be processed through NSCC's CNS System.

Settling Members could override a CNS standing instruction and have a trade compared on a trade-for-trade basis by specifically designating the trade as a "Special Trade." In addition, a Settling Member's Municipal securities trades automatically would be processed on a trade-for-trade basis,[8] if the *contra* side is (1) a MCO Member or (2) a Settling Member that has given NSCC trade-for-trade standing instructions.

Finally, the proposal provides that NSCC would use special procedures for recording and executing "buy-ins" in connection with municipal trades processed through CNS. A Settling Member who has submitted a buy-in notice under Section VI, K of NSCC's Procedures and who has not received the buy-in position shown on his Notice of Intention to Buy-in by the end of the evening cycle on the second day after notice date would be able to instruct NSCC to exit the remaining position. NSCC then would produce special close-out receive and deliver orders, which would be subject to MSRB's Rules.

III. NSCC'S Rationale

NSCC believes it important to make its enhanced municipal securities systems operational a few months before the initial MSRB requirements become effective on August 1, 1984. Early implementation should help to ease municipal securities brokers and dealers into the automated National Clearance and Settlement System. In addition, NSCC's proposal provides municipal securities brokers and dealers with the opportunity either to (1) become MBC Members and enjoy NSCC's efficient automated comparison mechanisms or (2) to become or remain full service NSCC Settling Members. Thus, the proposal is compatible with current municipal securities industry practices. Yet, because municipal brokers and dealers can choose to become Settling Members under the proposal, NSCC's highly automated safe and efficient clearance and settlement services would be available. NSCC believes that its proposal removes impediments to, and perfects the mechanisms for, a national clearance and settlement system for municial securities.

IV. Discussion

The Commission believes that NSCC's proposal should be approved for the following reasons. First, it facilitates the automated comparison of municipal securities transactions through a registered clearing agency. Accordingly, the proposal helps to achieve the goals of the MSRB Order. By making its revised municipal securities procedures available now, municipal securities brokers and dealers will be better able to meet the requirements of MSRB Rule G–12 on August 1, 1984.

Second, NSCC'S MBCO System enables municipal securities brokers and dealers to enjoy the benefits of automated trade comparison consistent with traditional municipal securities industry practices. For instance, municipal securities trades of MCO Members will continue to be cleared and settled on a trade-for-trade basis that should be consistent with MSRB Rules. In addition, NSCC's reliance on the MSRB's close-out and other rules avoids unnecessary immediate changes for the municipal securities industry.

Third, the Commission believes that the proposal is tailored to minimize potential financial exposure to NSCC and its participants. MCO Members cannot use NSCC's facilities to clear and settle MBCO trades. Thus, the Commission agrees that MCO Members need not contribute to NSCC's clearing fund or meet other NSCC financial standards.

Finally, the Commission notes with interest that the proposal indeed makes available to municipal securities brokers and dealers a full service option. That option will enable municipal securities brokers and dealers to clear and settle their municipal securities trades through NSCC's efficient automated clearance and settlement systems. Use of these systems, however, will expose NSCC and its participants to financial risk. (For example, NSCC will guarantee municipal securities CNS trades.) To meet that exposure, the proposal provides that municipal securities brokers and dealers, which are Settling Members, will be subject to all of NSCC's financial and operational controls and protection. The opportunity to become full service users at NSCC is consistent with the Commission's hope that many municipal securities brokers and dealers ultimately will become active users of clearing agency services.

V. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, particularly Section 17A, and the rules and regulations thereunder applicable to registered clearing agencies.

The Commission finds good cause for approving the proposed rule change on a temporary basis prior to the thirtieth day after the date of publication of notice of filing. Immediate implementation of the proposal will enable municipal securities brokers and dealers to gain immediate experience with automated comparison and clearance facilities. The Commission is approving the proposed rule change for a period that will extend 45 days beyond publication of this Order in the **Federal Register**—to enable NSCC's immediate implementation and also to provide a realistic opportunity for the Commission to receive and to consider any public comment. At the end of the 45 day period, the Commission will decide whether to approve the proposed rule change on a permanent basis.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change referenced above be, and it hereby is, approved for a period, expiring 45 days after publication of this Order in the **Federal Register.**

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84–9088 Filed 4–4–84; 8:45 am]

BILLING CODE 8010–01–M

[8] A Settling Member or MBC Member can inform NSCC if it uses a clearing agent for the book-entry or physical delivery of municipal bonds. NSCC would include the data on those Members receive and deliver orders. Members, however, can override the agent designation by entering transactions as Special Trades.

[Release No. 20802 SR–PSE–83–17]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Order Approving Proposed Rule Change

March 29, 1984.

The Pacific Stock Exchange, Inc., 301 Pine Street, San Francisco, California 94104 ("PSE") submitted on November 4, 1983, 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, to amend PSE Rule I, Section 5(f).[1] The amendment expands the current prohibition against trading by clerks contained in Rule I, Section 5(f) to include all non-member. The effect of the amendment will be to allow only members to consummate transactions on the floor of the Exchange.

[1] The PSE is amending Rule I, Section 5(f) as follows (brackets indicate deletions, italics indicate new language):

Section 5(f) [Clerks] *Non-members* shall not [participate in any controversies or] consummate transactions *on the trading floor* [for his or any other member firm].

On February 2, 1984, the PSE filed Amendment No. 1 to the proposed rule change stating the statutory basis of the proposed rule change.

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. 20062, February 16, 1984) and by publication in the **Federal Register** (49 FR 6817, February 23, 1984). No comments were received with respect to the proposed rule filing.

The Commission finds that the proposed rule change 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 delegation authority.

George A. Fitzsimmons,

Securities.

[FR Doc. 84-9089 Filed 4-4-84; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Cincinnati Stock Exchange; Applications for Unlisted Trading Privileges and of Opportunity for Hearing

March 29, 1984.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to Section 12(f)(2)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Time Incorporated (DE)
Common Stock, $1 Par Value (File No. 7-7400)
Ranchers Exploration and Development Corporation
Common Stock, $.50 Par Value (File No. 7-7401)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before April 19, 1984 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-9088 Filed 4-4-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-20804; File No. SR-MS RB-84-6]

Self-Regulatory Organizations; Proposed Rule Changes By Municipal Securities Rulemaking Board; Relating to Uniform Practice; Confirmation, Clearance and Settlement of Transactions With Customers

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 March 16, 1984, the Municipal Securities Rulemaking Board filed with the Securities and Exchange Commission of the proposed rule changes 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 changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Changes

(a) The Municipal Securities Rulemaking Board ("Board") is filing herewith amendments to rules G-12 on uniform practice and G-15 on confirmation, clearance and settlement of transactions with customers. The text of the proposed rule changes appears below.

II. Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Changes

A. Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Changes

(a) Rules G-12(f) and G-15(d) will require, when effective, that certain inter-dealer transactions and customer delivery/receipt vs. payment transactions be confirmed or compared (in the case of transactions involving a security assigned a CUSIP number) and settled via book-entry (in the case of transactions involving securities eligible for such settlement) through the facilities of a registered clearing agency or interfaced or otherwise linked registered clearing agencies.[1] These provisions are applicable to transactions involving municipal securities brokers and dealers and customers who are deemed, for purposes of the rules, to be participants in or members of a registered clearing agency. Both rules specify that municipal securities brokers and dealers and customers who clear transactions through an agent who is a participant in or member of a registered clearing agency will be considered to be participants of that registered clearing agency for purposes of the rules' requirements; these persons are generally referred to as "indirect participants" of a registered clearing agency.

Since the Commission's approval of these rules in November 1983 [2] the Board has received several inquires concerning the extent to which non-participants who occasionally use the services of a participant agent will be considered to be participants of a registered clearing agency and therefore subject to the rules' requirements. In particular, certain industry members have noted that many dealers use agents to clear certain transactions in money center cities, but may use other agents to clear other transactions, or clear those other transactions themselves. Similarly, certain customers may use a participant clearing agent with respect to certain transactions, and a non-participant agent with respect to other transactions. These industry members have inquired whether the use by such a person of an agent who is a participant of a registered clearing agency to clear certain transactions is sufficient to make that person an indirect participant of the registered clearing agency, and therefore potentially subject to the requirements of rules G-12(f) and/or G-15(d), with respect to all of its transactions (including transactions which might not otherwise be cleared through the participant agent).

Upon consideration the Board has concluded that it would be desirable to limit the application of the requirements of rules G-12(f) and G-15(d) in the case of these indirect participants at the time these requirements first become effective. The Board believes that the

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[1] The provisions relating to the automated comparison or confirmation of transactions are scheduled to become effective on August 1, 1984; the provisions relating to the book-entry settlement of transactions are scheduled to become effective on February 1, 1985.

[2] *See* Exchange Act Release No. 20365 (November 14, 1983).

requirements of rules G–12(f) and G–15(d) should apply to such persons only in the case of transactions otherwise subject to the rules which are cleared through the participant agent, and, accordingly, has adopted the proposed rule changes to clarify this point in the rules. In the case of transactions cleared through a participant agent, therefore, indirect participant dealers would generally be required, as of August 1, 1984, to submit data concerning any transaction with another participant organization involving a municipal security assigned a CUSIP number to a registered clearing agency (presumably through the facilities of the participant agent) for automated comparison or confirmation of such transaction; indirect participant customers would be required to affirm any delivery/receipt vs. payment transaction so confirmed. As of February 1, 1985, these indirect participants would also be required to settle such transactions via book-entry, if the securities involved in the transaction are eligible for book-entry settlement. Under the proposed rule changes, however, these persons would not be considered to be indirect participants with respect to transactions not cleared through the participant agent (e.g., transactions which they clear themselves) and, consequently, would not be subject to the requirements of rules G–12(f) and/or G–15(d) with respect to such transactions.

The Board believes that this approach is appropriate during the initial implementation of the rules over the next year. The Board continues to believe, however, that the use of automated clearance systems with respect to municipal securities transactions will provide significant benefits to the municipal securities industry generally. Accordingly, the Board intends to monitor the effects of the proposed rule changes closely during the implementation of the requirements of rules G–12(f) and G–15(d). The Board further intends to consider and adopt amendments, subsequent to the effective dates of the existing provisions, which would at minimum require those dealers who are indirect participants only by virtue of their occasional use of a participant agent to clear certain transactions to use the automated confirmation or comparison systems with respect to all transactions other wise subject to these rules.

(b) The proposed rule changes are adopted pursuant to section 15B(b)(2)(C) of the Securities Exchange Act of 1934, as amended, which requires and empowers the Board to adopt rules designed * * * to foster cooperation and coordination with persons engaged in * * * clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest * * *.

The proposed rule changes are also consistent with the objectives of Section 17A of the Act.

The Board believes that the proposed rule changes will facilitate the orderly implementation of the requirements under rules G–12(f) and G–15(d) for the use of automated comparison or confirmation and book-entry settlement systems with respect to municipal securities transactions.

The proposed rule changes will thereby further the objectives of those requirements and of the Act in promoting efficiency in the settlement and clearance process for municipal securities transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule changes will impose any burden on competition, since they merely limit the scope of the application of the requirements of rules G–12(f) and G–15(d) in a manner intended to facilitate the implementation of such requirements in an orderly fashion.

C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Changes Received from Members, Participants, or Others

The Board did not solicit or receive comments on the proposed rule changes from members of the municipal securities industry or others.

III. Date of Effectiveness of the Proposed Rule Changes 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 changes, or

(B) Institute proceedings to determine whether the proposed rule changes 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, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes 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. Copies of such filing also will 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.

March 30, 1984.

Texts of Proposed Rule Changes[3]

Rule G–12. Uniform Practice

(a) through (e) No change.

(f) Use of Automated Comparison, Clearance, and Settlement Systems.

(i) and (ii) No change.

(iii) For purposes of this section (f) a municipal securities broker or municipal securities dealer who clears *a* transaction[s] through an agent who is a member of a registered clearing agency or a registered securities depository shall be deemed to be a member of such registered clearing agency or registered securities depository *with respect to such transaction.*

(g) through (l) No change.

Rule G–15. Confirmation, Clearance and Settlement of Transactions with Customers

(a) through (c) No change.

(d) Delivery/Receipt vs. Payment Transactions.

(i) No change.

(ii) No broker, dealer or municipal securities dealer who is, or whose clearing agent *with respect to such transaction* is, a participant in a clearing agency registered with the Securities and Exchange Commission shall effect a transaction in any municipal security to which a CUSIP number has been

[3] Italics indicate additions.

assigned on a delivery vs. payment or receipt vs. payment basis for the account of a customer who is, or whose agent *with respect to such transaction* is, a participant in such clearing agency (or in a clearing agency interfaced or otherwise linked with such clearing agency) unless the facilities of such clearing agency (or the facilities of a clearing agency interfaced or otherwise linked with such clearing agency, as necessary) are used for the confirmation and acknowledgement of such transaction. The provisions of this paragraph (ii) shall apply to transactions effected on or after August 1, 1984.

(iii) No broker, dealer or municipal securities dealer who is, or whose clearing agent *with respect to such transaction* is, a participant in a clearing agency registered with the Securities and Exchange Commission shall effect a transaction in any municipal security which is eligible for book-entry settlement through the facilities of such clearing agency on a delivery vs. payment or receipt vs. payment basis for the amount of a customer who is, or whose agent *with respect to such transaction* is, a participant in such clearing agency (or in a clearing agency interfaced or otherwise linked with such clearing agency) unless the facilities of such clearing agency (or the facilities of a clearing agency interfaced or otherwise linked with such clearing agency, as necessary) are used for the book-entry settlement of such transaction. The provisions of this paragraph (iii) shall apply to transactions effected on or after February 1, 1985.

[FR Doc. 84-9155 Filed 4-4-84; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 13853 812-5755]

BMC Fund, Inc.; Application for an Order

March 29, 1984.

Notice is hereby given that BMC Fund, Inc., Broyhill Park, N.C. Highway 321, Lenoir, North Carolina 28633 ("Applicant"), registered under the Investment Company Act of 1940 ("Act"), as a closed-end internally managed investment company, filed an application on January 23, 1984, and amendments thereto on March 12 and March 15, 1984, for an order pursuant to Section 23(c)(3) of the Act permitting Applicant to repurchase certain of its shares from the estate of a deceased director of Applicant. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of those provisions from which exemption is being sought.

According to the application, W. E. Stevens, Jr., a director and "interested person" of the Applicant, died on June 30, 1983. Applicant states that Mr. Stevens' will included five bequests to his wife which, to the extent such a bequest is disclaimed by Mrs. Stevens, would pass to a designated child of Mr. Stevens. Applicant further states that the five bequests total $1,602,703, and that Mr. Stevens' estate consists of $1,600,000 in cash and other liquid assets, 147,928 shares of Applicant's stock and approximately $400,000 in other non-liquid assets. Applicant states that since the tax and expense obligations of the estate total $1,600,000, the estate lacks sufficient liquid assets to satisfy both the tax and expense obligations and the bequests. Accordingly, Applicant states that the executrix for the estate, Mrs. Stevens, must sell a sufficient number of Applicant's shares to receive $1,600,000.

According to the application, there is no established market for Applicant's shares. Applicant states that it believes no prospective investor would be interested in purchasing a $1,600,000 block of its stock and that, even if the block were to be divided up, the absence of liquidity of the stock would be a major obstacle to locating a willing investor. Applicant proposes, therefore, that it purchase from the estate its own stock having a fair market value of $1,600,000. The number of shares involved would represent approximately 1.2% of Applicant's total outstanding shares. In addition, Applicant states that under Section 303 of the Internal Revenue Code ("Code"), the estate could treat a sale of shares to the Applicant as a sale or exchange (on which gain is taxed as capital gain) rather than as a dividend (the full amount of which would be taxed as ordinary income), but only to the extent necessary to pay the estate's taxes and its funeral and administrative expenses. Applicant represents that an appraisal of the fair market value of the stock will be conducted by an independent appraiser to be agreed upon by the Applicant and the executrix for Mr. Stevens' estate, and that the choice of an appraiser will be approved by a majority of Applicant's directors who are not interested persons of Applicant. Applicant further represents that the date of the appraisal will be as of a date as close as reasonably possible to the date of the proposed purchase and that the estate will bear the cost of the appraisal, unless the executrix chooses to defer the transaction until the time of Applicant's regular annual appraisal, in which event the estate will bear only that portion of the appraisal cost attributable to the proposed purchase. Applicant states that it anticipates, based on its most recent appraisal, that the proposed purchase of its shares will be at a price which reflects a discount from the net asset value of the shares. Applicant argues, therefore, that it benefits from the proposed purchase because the price will not dilute the interests of other shareholders, but will, instead, enhance their equity by the amount of the discount.

Applicant states that the proposed purchase has been approved by Applicant's directors, including a majority of the directors who are not interested persons of the Applicant. Applicant acknowledges that an indiscriminate selection of securities to be liquidated to pay the purchase price for the shares could result in the disposition of a security that the directors, in the exercise of good business judgment, should have maintained in Applicant's portfolio, or could generate capital gains that would be taxed directly to Applicant's shareholders without their receiving any of the benefit of those gains. Accordingly, Applicant states that its board of directors, in making its determination that the proposed purchase will have no adverse effect on the Applicant or its shareholders, directed the president of the Applicant to select for liquidation only those securities the disposition of which would be consistent with good business judgment and to liquidate such securities in a manner that would permit matching of gains and losses so that no amount of tax liability will result. Applicant further states that its board of directors unanimously found that the president's choice of securities could be liquidated in accordance with good business judgment and would not adversely affect the Applicant or its shareholders. In addition, Applicant states that the executrix has undertaken to pay Applicant's expenses in connection with the liquidation of its securities, as well as its expenses in connection with the preparation and filing of the application and amendments. Applicant undertakes to comply with subsections (2), (5), (6), (10) and (11) of Rule 23c-1(a) in connection with the proposed purchase. Applicant asserts that subsections (1), (3), (7) and (8) are inapplicable.

Applicant submits that the proposed purchase price does not unfairly discriminate against any holders of

Applicant's stock. Applicant further submits that the liquidity to be afforded to Mr. Stevens' estate by the proposed purchase will not unfairly discriminate against other shareholders of Applicant, particularly in view of the purpose of the transaction. Applicant states that its board of directors has adopted an amendment to Applicant's bylaws which, if approved by a majority of its stockholders who are not interested persons of the Applicant, will afford shareholders the same liquidity, to the extent permitted by Section 303 of the Code, as proposed to be afforded to the estate. A copy of the bylaw provision is attached as an exhibit to the application. Applicant states that the bylaw amendment may be amended or repealed only be a vote of the majority of the shares of Applicant's stock held by persons who are not interested persons of the Applicant. Applicant further states that three of its shareholders are not eligible for a Section 303 redemption. Accordingly, the proposed bylaw provision requires the Applicant to consider requests by these shareholders, a corporation, a non-profit foundation, and a church, and by other similar entities on an individual basis. Applicant asserts that the liquidity feature of the bylaw amendment should address certain estate planning concerns of shareholders who fear that their investment in Applicant is completely illiquid.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than April 23, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the 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. 84-9085 Filed 4-4-84; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice CM-8/726]

Secretary of State's Advisory Committee Private International Law; Meeting

There will be a meeting of the subject Advisory Committee at 10.:00 a.m. on Friday, April 27, 1984, in Room 2722C of the Department of State. Members of the general public may attend up to the capacity of the meeting room and participate in the dissucssion subject to instructions of the chairman.

The meeting agenda will include discussion of U.S. participation in on-going activities of the Hague Conference on Private International Law, the UN Commission on International Trade Law (UNCITRAL), and the International Institute for the Unification of Private Law (UNIDROIT), as well as the work of the Third Inter-American Specialized Conference of Private International Law.

Entry to the Department of State building in controlled and members of the general public should use the 21st Street entrance near Virginia Avenue. As entry will be facilitated by advance arrangements, members of the general public planning to attend should, prior to April 27, notify the Office of the Assistant Legal Advisor for Private International Law, Department of State, Washington, D.C., 20520 (telephone: (202) 632-8134) of their name, affiliation, address and telephone number.

Dated: March 20, 1984.

Peter H. Pfund,

Assistant Legal Advisor for Private International Law and Vice Chairman, Advisory Committee on Private International Law.

[FR Doc. 84-9029 Filed 4-4-84; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/728]

Shipping Coordinating Committee; Subcommittee on Safety of Life at Sea Working Group on Safety of Navigation; Meeting

The Working Group on Safety of Navigation of the Sub-committe on Safety of Life at Sea (SOLAS) will conduct an open meeting at 9:30 AM on Thursday, May 31, 1984, in Room 6319 of the U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, D.C.

The purpose of the meeting will be to prepare the U.S. position relating to the below listed agenda items to be considered at the 29th Session of the Sub-committee on Safety of Navigation of the International Maritime Organization (IMO) to be held in London, June 18-22, 1984.

—Routing of Ships
—1972 Collision Regulations
—Standard Marine Navigational Vocabulary
—Search and Rescue
—Ship reporting systems
—Navigational aids and related equipment
—Navigating bridge visibility

Members of the public may attend up to the seating capacity of the room.

For further information contact Mr. E. J. LaRue, Jr., U.S. Coast Guard Headquarters (G-WWM), 2100 Second Street, SW., Washington, D.C. 20593. Telephone: (202) 426-4958.

Dated: March 20, 1984.

Samuel V. Smith,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 84-9031 Filed 4-4-84; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/727]

Study Group 6 of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Group 6 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet at 9 a.m. on May 4, 1984 in the Ramsey Room of the Ramada Inn, Old Town, 901 North Fairfax Street, Alexandria, Virginia.

Study Group 6 deals with matters relating to the propagation of radio waves in and through the ionosphere. The purpose of the meeting will be to discuss the status of document preparation for the Final meeting of international Study Group 6 scheduled for the Fall of 1985.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Admittance of public members will be limited to the seating available. Requests for further information should be directed to Mr. Richard Shrum, State Department, Washington, D.C. 20520; telephone (202) 632-2592.

Dated: March 15, 1984.

Richard E. Shrum,

Chairman, U.S. CCIR National Committee.

[FR Doc. 84-9030 Filed 4-4-84; 8:45 am]

BILLING CODE 4710-07-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Determination Modifying Sugar Import Allocation

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: This notice modifies for the remainder of the 1984 quota year the allocation provisions which are presently applicable to sugar import quotas.

EFFECTIVE DATE: April 4, 1984.

FURTHER INFORMATION: Rollinde Prager, (202) 395–3077.

SUPPLEMENTARY INFORMATION: Presidential Proclamation 4941 of May 5, 1982 (47 FR 19661), modified the quotas on the importation into the United States of sugars, sirups and molasses provided for in items 155.20 and 155.30 of the Tariff Schedules of the United States (TSUS) and allocated the quotas on a country-by-country basis. Under this system, sugar from an individual country enters the United States and is counted against that country's quota on a first-come-first-served basis. If the quota allocation is filled for that quota period, the sugar may be entered into warehouse under bond and later withdrawn from warehouse for consumption in a subsequent quota period. The quota periods are established on an annual basis.

Proclamation 4941 also authorizes the U.S. Trade Representative or his designee and the Secretary of Agriculture, after appropriate consultations, to make certain modifications in the sugar import quota systems if such modifications are appropriate to carry out U.S. obligations under the International Sugar Agreement, 1977 (ISA), and if such modifications give due consideration to the interests in the United States sugar market of domestic producers and materially affected contracting parties to the Genral Agreement on Tariffs and Trade. The Secretary of Agriculture has by Notice of this date increased the total base quota amount by 100,000 short tons raw value (STRV) of the 1984 quota year. After appropriate consultations between the Office of the United States Trade Representative and the Departments of State and Agriculture, the Deputy United States Trade Representative has determined that certain modifications in the import quota system are appropriate to give due consideration to these interests. Accordingly, the country-by-country quota allocations are modified as follows:

Of the increase of 100,000 STRV for the quota year 1984:

—8000 STRV shall be allocated to Malawi in order to remedy an original miscalculation of quota percentage over th life of the quota program;

—92,000 STRV shall be allocated as follows:

Country	Percent	STRV
1. Canada	1.1	1,012
2. Guatemala	4.8	4,416
3. Belize	1.1	1,012
4. El Salvador	2.6	2,392
5. Honduras	1.0	920
6. Costa Rica	1.5	1,380
7. Panama	2.9	2,668
8. Jamaica	1.1	1,012
9. Dominican Republic	17.6	16,192
10. Columbia	2.4	2,208
11. Guyana	1.2	1,104
12. Peru	4.1	3,772
13. Brazil	14.5	13,340
14. Argentina	4.3	3,956
15. Thailand	1.4	1,288
16. Philippines	13.5	12,420
17. Taiwan	1.2	1,104
18. Australia	8.3	7,636
19. Mauritius	1.1	1,012
20. Mozambique	1.3	1,196
21. Republic of South Africa	2.3	2,116
22. Swaziland	1.6	1,472
23. Barbados	.7	644
24. Bolivia	.8	736
25. India	.8	736
26. Fiji	.7	644
27. Malawi	.7	644
28. Zimbabwe	1.2	1,104
29. Ecuador	1.1	1,012
30. Trinided-Tobago	.7	644
31. Other specified countries and areas	2.4	2,208

Note.—The category "other specified countries and areas" shall consist of the following: Mexico, Haiti, Paraguay, Saint Christopher-Nevis, Republic of Madagascar, the Ivory Coast, Uruguay and the Congo. Each is entitled to 276 STRV subject to 7 CFR 6.90–6.93.

This notice is effective the day following the date of filing. The allocations made herein are in addition to the 1984 quota year allocation for these countries. Reallocated sugar must be entered or withdrawn from warehouse for consumption on or before September 30, 1984.

I have determined that the above allocations are appropriate to carry out the obligations of the United States under the International Sugar Agreement, 1977, and that the above allocations give due consideration to the interests in the U.S. sugar market of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade.

Peter O. Murphy,

Deputy United States Trade Representative.

[FR Doc. 84–9115 Filed 4–3–84; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket S–755]

Equity Carriers I, Inc., et al.; Application for Permission To Carry Dry Bulk Preference Cargoes With Subsidy

Notice is hereby given that by application dated March 20, 1984, Equity Carriers I, Inc., Asco-Falcon II Shipping Company and Equity Carriers III, Inc. (collectively Equity) requested an amendment to their Operating-Differential Subsidy Agreement (ODSA), Contract No. MA/MSB–439 in order to allow their vessels to carry dry bulk preference cargoes with ODS and at fair and reasonable rates. Equity stated that it is making this request in light of the Maritime Subsidy Board's Final Opinion and Order in Docket A–132 dated December 22, 1983, allowing the subsidized Berger Group vessels to carry preference cargo with ODS.

Equity Carriers, Inc. (the Original Contractor) entered into the above-referenced ODSA with the Maritime Subsidy Board (Board) on October 6, 1978. Subsequently the contract was assigned by the Original Contractor to Equity Carriers I, Inc. with respect to the PRIDE OF TEXAS, to Asco-Falco II Shipping Company with respect to the STAR OF TEXAS and Equity Carriers III, Inc. with respect to the SPIRIT OF TEXAS.

Article I–2(a) of the ODSA provides that the vessels shall carry exclusively commercial dry bulk cargoes not subject to cargo preference statutes of the United States. By letter dated August 3, 1979, the Original Contractor proposed to amend Article I–2(a) of the Agreement to permit its vessels to transport dry bulk preference cargoes at fair and reasonable rates while continuing to receive ODS. According to Equity, in response to this letter proposal, the Board informally advised the Original Contractor that the Board wished to defer action on the proposal until the Board had resolved certain litigation and uncertainties surrounding Docket No. A–132, in which the Board had approved similar ODS contract amendments for companies in the Berger Group.

Equity states that it has challenged the Final Opinion and Order in Docket No. A–132 in the Federal courts as contrary to applicable law and policy. Nevertheless, so long as this Final Opinion and Order remains in effect for the Berger Group, Equity avers that it should be entitled to similar treatment,

and requests that the Board now move expeditiously to process the Original Contractor's August 1979 proposal as modified by its letter of March 20, 1984.

Equity proposes to amend Article I–2(a) of its ODSA to permit its vessels to transport dry bulk cargo subject to the cargo preference statutes of the United States, including but not limited to 10 U.S.C. 2631, 46 U.S.C. 1241 and 15 U.S.C. 616a, at fair and reasonable rates while continuing to receive ODS in a manner similar to that granted to the Berger Group in Docket No. A–132, provided that such permission would not extend to the transportation of cargo in loads of less than 20,000 tons. Specifically, Equity proposes that Article I–2(a) of the ODSA be revised to read in its entirety as follows:

(a) During the period of this Agreement, the Operator shall operate the Vessels described in Article I–3 hereof in worldwide carriage of dry bulk cargoes in the foreign ocean borne commerce of the United States and in the carriage of such cargoes between foreign ports. It is intended that the Operator may participate in the carriage, in loads of not less than 20,000 tons, of cargoes subject to the cargo preference statutes of the United States including, but not limited to, 10 U.S.C. 2631, 46 U.S.C. 1241 and 15 U.S.C. 616a, utilizing U.S. flag subsidized vessels, and lifting the cargoes at fair and reasonable rates under the cargo preference laws of the United States, subject to the following conditions:

(i) The fair and reasonable rates shall be based on net costs to the Operator and a return on equity after taking into consideration the payment of operating-differential subsidy.

(ii) Should any subsidized Vessel derive more that 50% of its total freight revenue for any fiscal year from the carriage of preference cargo, operating-differential subsidy shall be reduced using the following formula:

	Percentage of ODS reduction
Percent of annual gross freight from carriage of competitive cargo per vessel.	
40 to 49.9	20
30 to 39.9	40
20 to 29.9	60
10 to 19.9	80
0 to 9.9	100

(iii) Any bids submitted for the Vessels for the carriage of dry bulk preference cargoes shall be subject to the bid evaluation procedures set forth in 46 CFR 381.8, as the same shall hereafter be amended, modified or replaced.

Equity believes that the above provisions reflect the current Docket A–132 approach used for Berger Group vessels. To the extent of any variance, Equity will be willing to amend the above to achieve uniformity of treatment.

In conclusion, Equity states that the PRIDE OF TEXAS has been engaged continuously and exclusively in the carriage of dry bulk preference cargoes under the Snyder Amendment since September 1981. The STAR OF TEXAS and SPIRIT OF TEXAS have similarly been engaged continuously and exclusively in carrying dry bulk preference cargoes under the Snyder Amendment since their commencement of service in January 1982 and December 1982, respectively. Accordingly, the Vessels are presently providing an existing service in the U.S. dry bulk preference trades within the meaning of section 605(c) of the Merchant Marine Act, 1936, as amended.

Any person, firm or corporation having any interest in such application and desiring to offer views and comments thereon for consideration by the Maritime Subsidy Board should submit them in writing, in triplicate, to the Secretary, Maritime Subsidy Board, Room 7300A, 400 Seventh Street, SW., Washington, D.C. 20590 by 5:00 P.M. on April 19, 1984. The Maritime Subsidy Board will consider these views and comments and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 Operating-Differential Subsidies (ODS))

By Order of the Maritime Subsidy Board.

Dated: March 30, 1984.

Georgia P. Stamas,

Secretary.

[FR Doc. 84–9130 Filed 4–4–84; 8:45 am]

BILLING CODE 4910–81–M

Urban Mass Transportation Administration

Intent To Prepare an Environmental Impact Statement on Alternative Transit Improvements in the Milwaukee, Wisconsin Area

AGENCY: Urban Mass Transportation Administration, Transportation.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: The Urban Mass Transportation Administration (UMTA) and the Southeastern Wisconsin Regional Planning Commission, in cooperation with Milwaukee County and the Wisconsin Department of Transportation, are undertaking the preparation of an Environmental Impact Statement (EIS) for alternative transit improvements in the northwest corridor of the Milwaukee area. The EIS is being prepared in conformance with 40 CFR Part 1500, "Council on Environmental Quality, Regulations for Implementing the Procedural Requirements of the National Environmental Policy Act of 1969" as amended; and 49 CFR Part 622, "Federal Highway Administration and Urban Mass Transportation Administration, Environmental Impact and Related Procedures."

FOR FURTHER INFORMATION CONTACT:

Mr. Harold L. Crane, UMTA Region 5, 300 S. Wacker Drive, Suite 1740, Chicago, Illinois 60606, telephone: (312) 353–2820.

SUPPLEMENTARY INFORMATION:

Scoping Meetings

There will be two scoping meetings held to assist in establishing the purpose, scope, framework, and approach for the transit alternatives analysis. One meeting will be held on May 1, 1984, at 7:30 p.m. in the Assembly Room, Third Floor, of the Milwaukee County Courthouse Annex (907 N. 10th Street, Milwaukee, Wisconsin 53233). Another meeting will be held on May 2, 1984, at 7:30 p.m. in the Northwest Senior Center (7717 W. Good Hope Road, Milwaukee, Wisconsin 53223). At the scoping meetings, staff will present a description of the proposed scope of the study, using maps and other visual aids, as well as a plan for an active citizen involvement program, a projected work schedule, and an estimated budget. Members of the public and interested federal, state, and local agencies are invited to comment on the proposed scope of work, alternatives to be assessed, impacts to be analyzed, and the evaluation criteria to be used to arrive at a decision. Comments may be made either orally at the meeting or in writing.

Corridor Description

The Milwaukee northwest corridor is a major travel corridor which is located principally within the northwest side of Milwaukee County. The corridor extends from the Milwaukee central business district (CBD) to the Granville area in northwest Milwaukee County, and generally encompasses both densely developed and rapidly developing urban areas. The boundaries of the corridor are approximately the Menomonee River Valley to the south; N. 60th Street, W. Appleton Avenue and the Waukesha County line to the west; the Ozaukee County line to the north; and N. Teutonia Avenue, E. Juneau Avenue, and Lake Michigan to the east. The northwest corridor has a total population of about 298,000 persons and a total employment of about 222,000 jobs.

The northwest corridor has a highly developed system of both transit services and street and highway facilities. Public transit service within the corridor is, for the most part, provided by buses operating over a grid system of local routes, sharing arterial streets with automobile and truck traffic. A small amount of additional transit service is provided by two peak period weekday-only express bus routes which operate within the corridor, and three 'freeway flyer' bus routes that operate nonstop during weekday peak periods to park-ride lots located on the margins of the corridor. Within the northwest side of Milwaukee County, which includes the corridor, it is estimated that there are about 72,000 weekday trips made by public transit. This accounts for about 40 percent of all weekday trips on the Milwaukee County Transit System.

The existing street and highway system within the northwest corridor is a well-developed grid network of arterial streets with a limited number of key arterial streets situated on radial alignments. The originally planned freeway in this corridor has recently been deleted from the long-range regional transportation system plan. Traffic demands which were to have been accommodated on this freeway are now proposed to be accommodated within the corridor on the existing arterial street system through a combination of improved traffic management measures and improved public transit facilities.

Alternatives

Transit alternatives proposed for consideration in the corridor are the following:

1. An existing-system option, under which existing and already committed bus and transportation services would continue to operate;

2. An express bus transit option that would incorporate new express bus service on arterial streets under one of two possible alternatives, complemented by transportation system management (TSM) actions including reserved transit lanes and parking restrictions along certain arterial streets, as well as bus-on operationally controlled freeway routes to downtown Milwaukee from outlying park-ride lots.

3. A light rail transit option that would be largely at-grade, and which would operate under one of six possible alternatives which would include outlying park-ride lots and preferential treatment for transit vehicles at intersections.

Comments at the scoping meetings should focus on the appropriateness of these and other options for consideration in the study, not on individual preferences for a particular alternative as most desirable for implementation.

Probable Effects

Impacts proposed for analysis include changes in the natural environment, changes in the social environment, and changes in the transportation system. Impacts will be identified both for the construction period and for the long-term operation of alternatives. Irreversible or irretrievable impacts will also be identified.

It is envisioned that the principal impacts attributable to the alternatives to be examined will be with respect to the transportation system. These include transit system level of service and ridership, traffic congestion, and freight railroad facilities. With respect to financial and economic concerns, impacts to be examined will include capital costs, operating and maintenance costs, development potential, financial feasibility, and the economy of the area. With respect to land use, impacts will include right-of-way requirements and displacements. With respect to social and community issues, impacts will include neighborhood quality, local street pattern changes, service to various population groups, aesthetics, safety, and historic and cultural resources. With respect to natural resources, impacts to be examined will include air quality, noise, vibration, water quality, soils, geology, floodlands, vegetation, wildlife, and parklands. With respect to energy use, impacts will include consumption, supply, and dependency.

The proposed evaluation criteria include transportation, environmental, social, economic and financial measures as required by current federal (National Enviromental Policy Act) and state environmental laws and current Council on Environmental Quality and UMTA guidelines. Mitigating measures will be explored for any adverse impacts that are identified.

Comments at the scoping meetings should focus on the completeness of the proposed sets of impacts and evaluation criteria. Other impacts or criteria judged relevant to local decision-making should be identified.

Scoping Report

A draft version of a technical report which describes the scope of work proposed to be undertaken during this detailed planning study has been prepared and will be used as a basis for discussion at the scoping meetings. The draft scoping report describes the need for, purpose of, and action toward transit improvements in the Milwaukee northwest corridor; identifies a preliminary list of possible alternatives to be examined; and sets forth the scope and content of the detailed corridor planning study.

Single copies of the draft scoping report are available at no charge for review and comment by elected and appointed public officials at all levels of government who may be affected by any of the alternatives; public agencies, offices, and units of government whose jurisdiction is located within the northwest corridor; businesses, industries, and citizens residing within the corridor; and organized community and public interest groups.

Brochures summarizing the contents of the draft scoping report will be available to the general public prior to, and at, the scoping meetings. Copies of the complete draft scoping report are available at cost to suppliers and vendors of transit equipment and facilities. Requests for this report should be directed to the Southeastern Wisconsin Regional Planning Commission, P.O. Box 769, Waukesha, Wisconsin 53187, telephone (414) 547–6721. Copies of the scoping report will be available for inspection and review by interested private individuals at public libraries located within the northwest corridor, at the Milwaukee County Department of Transportation offices in the Milwaukee County Courthouse Annex, and at the Southeastern Wisconsin Regional Planning Commission.

Following the conduct of the scoping meetings, a final version of the scoping report will be prepared which will include any modifications brought about as a result of the scoping process.

Issued on April 2, 1984.

Joel P. Ettinger,

Regional Administrator, Urban Mass Transportation Administration, Region 5.

[FR Doc. 84-9065 Filed 4-4-84; 8:45 am]

BILLING CODE 4910-57-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and the Delegation of Authority from the Director, USIA (47 FR 57600, December

27, 1982), I hereby determine that the below listed objects in the exhibit, "Ancestors: Four Million Years of Humanity," imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. The objects covered by this determination are:

Object	Lender
(a) Hominid fossil, Sangiran—2 skull cap.	Natur-Museum, Senckenberg, with approval of the owner, Werner Reimars Foundation, Frankfort, Federal Republic of Germany.
Hominid fossil, Sangiran—4 palate.	Same.
(b) RMNH—L Trinil 2, skull cap.	Rijksmuseum van Natuuralikje Historie, Leiden, Netherlands.
RMNH—L Trinil 3, femur.	Same.

These objects are imported pursuant to a loan agreement between the American Museum of Natural History and foreign lenders. I also determine that the temporary exhibition of display of the listed exhibit objects at the American Museum of Natural History, beginning on or about April 13, 1984, to on or about September 9, 1984, is in the national interest. Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: April 3, 1984.

Thomas E. Harvey,

General Counsel and Congressional Liaison.

[FR Doc. 84-9200 Filed 4-4-84; 8:45 am]

BILLING CODE 8230-01-M

VETERANS ADMINISTRATION

Agency Forms Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

SUMMARY: The Veterans Administration 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). This document contains proposed revised forms and lists the following information: (1) The Department or Staff Office issuing the form; (2) The title of the form; (3) The agency form number, if applicable; (4) How often the form must be filled out; (5) Who will be required or asked to report (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to fill out the form; and (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from Patricia Viers, Agency Clearance Officer (004A2), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 389-2146. Comments and questions about the items on this list should be directed to the VA's OMB Desk Officer, Dick Eisinger, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-6880.

DATES: Comments on the information collections should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: March 30, 1984.

By direction of the Administrator.

Dominick Onorato,

Associate Deputy Administrator for Information Resources Management.

Revisions

1. Department of Veterans Benefits.
2. Annual Income Reporting (Questionnaire).
3. VA Forms 21-4179, 21-8913, 21-8914, 21-8915, 21-8916, 21-8917, 21-8918, 21-8919, and 21-8920.
4. Annually.
5. Individuals or households.
6. 1,600,000 responses.
7. 400,000 hours.
8. Not applicable.

[FR Doc. 84-9054 Filed 4-4-84; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 67
Thursday, April 5, 1984

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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United States Railway Association	7

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FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, April 10, 1984, 10 a.m.

PLACE: 1325 K Street, NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance. Litigation. Audits. Personnel.

* * * * *

DATE AND TIME: Thursday, April 12, 1984, 10 a.m.

PLACE: 1325 K Street, NW., Washington, D.C. (Fifth Floor)

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of dates of future meetings
Correction and approval of minutes
Eligibility for candidates to receive Presidential Primary Matching Funds
Draft Advisory Opinion #1984-10—James F. Fitzpatrick & John M. Quinn, on behalf of Arnold & Porter
Invitation Policy
Finance Committee report
Routine administrative matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202-523-4065.

Marjorie W. Emmons,
Secretary of the Commission.

[FR Doc. 84-9232 Filed 4-3-84; 3:31 pm]
BILLING CODE 6715-01-M

2

FEDERAL RESERVE SYSTEM

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Notice forwarded to Federal Register on March 30, 1984.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 11 a.m., Monday, April 9, 1984.

CHANGES IN THE MEETING: Addition of the following closed item(s) to the meeting: Consideration of a request from a Federal Reserve Bank concerning participation in a communications system.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: April 3, 1984.

James McAfee,
Associate Secretary of the Board.

[FR Doc. 84-9234 Filed 4-3-84; 3:42 pm]
BILLING CODE 6210-01-M

3

FEDERAL TRADE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: FR 49, March 20, 1984, Page No. 10405.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 2 p.m., March 27, 1984.

CHANGES IN THE AGENDA: The Federal Trade Commission has changed the date of its previously announced oral argument meeting from March 27, 1984, to April 12, 1984, 2:00 p.m.

Emily H. Rock,
Secretary.

[FR Doc. 84-9226 Filed 4-3-84; 3:14 pm]
BILLING CODE 6750-01-M

4

NUCLEAR REGULATORY COMMISSION

DATE: Week of April 2, 1984 (Revised) and Week of April 9, 1984.

PLACE: Commissions' Conference Room, 1717 H Street, NW., Washington, D.C.

STATUS: Open and Closed.

MATTERS TO BE DISCUSSED:

Monday, April 2

2 p.m.
Briefing on COBALT-60 Contamination of Mexican Steel (Public Meeting) (Moved from April 3)

Tuesday, April 3

10 a.m.
Briefing by Executive Branch (closed—Ex. 1) (Postponed from March 27)
2:30 p.m.
Breifing on PROVs in CE Plants (Public Meeting) (Moved from April 4)

Wednesday, April 4

10 a.m.
Disucssion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6) (As Announced)
1:30 p.m.
Discussion and Possible Vote on QA Report to Congress and Status of QA Initiatives (Public Meeting) (Moved from April 3)

Thursday, April 5

10 a.m.
Briefing on Integrated Safety Assessment Program (ISAP) (Public Meeting) (As Announced)
2 p.m.
Briefing on Status of Utility and NRC Compliance with TMI Action Plan (Public Meeting) (Postponed from March 27 and replaces Meeting with Advisory Committee on Reactor Safeguards)
3:30 p.m.
Affirmation/ Discussion and Vote (Public Meeting) (New Item) a license Fees

Week of April 9

Monday, April 9

10 a.m.
Briefing on Criminal vs. Civil Investigations (Public Meeting)
2 p.m.
Briefing by the Industry on Industry Initiatives in Non-Hardware Areas (Public Meeting)

Tuesday, April 10

10 a.m.
Briefing on Status of Salem (Public Meeting)
2 p.m.
Discussion of Indian Point Adjudicatory Proceeding (Open/Closed to be determined)

Friday, April 13

10 a.m.
Discussion/Possible Vote on Diablo Canyon Criticality and Low Power Operation (Public Meeting)
2 p.m.
Discussion of Completed TMI Investigations (Public Meeting)
2 p.m.
Discussion of Completed TMI Investigations (Public Meeting)
3 p.m.
Discussion and Possible Vote on QA Report to Congress and Status of QA Initiatives (Public Meeting)

ADDITIONAL INFORMATION: Affirmation of Delegation of Part 70 Authority in Limerick Proceeding was held on March 21.

TO VERIFY THE STATUS OF MEETINGS CALL: (Recording)—(202) 634-1498.

CONTACT PERSON FOR MORE INFORMATION: Walter Magee (202) 634–1410.

Walter Magee,

Office of the Secretary.

[FR Doc. 84–9144 Filed 4–2–84; 4:09 pm]

BILLING CODE 7590–01–M

5

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

AGENCY HOLDING THE MEETING: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council)

ACTION: Postponement of Agenda Item.

DATE: April 12, 1984.

PLACE: Red Lion Motor Inn/Riverside, 29th and Chinden Blvd., Boise, Idaho.

MATTER TO BE CONSIDERED: At its March 14 and 15 meeting in Eugene, Oregon, the Council postponed its discussion of the agenda item entitled "Staff Presentation on Northwest Power Planning Council Power Planning Division Workplan" until its next Council meeting. Council business required this postponement and no earlier announcement of the change was possible. The Council announced the postponement at the March 15 meeting. This notice is issued to comply with 5 U.S.C. 552b(e)(2) and (3) of the Government in the Sunshine Act. Those provisions require notice of carry-overs of agenda items for agency meetings. Recent notice in the **Federal Register** announced the April 11–12 Council meeting and its agenda, including discussion of the postponed item.

CONTACT PERSON FOR MORE INFORMATION: Ms. Bess Wong (503) 222–5161.

Edward Sheets,

Executive Director.

[FR Doc. 84–9162 Filed 4–3–84; 10:35 am]

BILLING CODE 0000–00–M

6

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENTS: (49 FR 10772 March 22, 1984)

STATUS: Closed meetings.

PLACE: 450 Fifth Street, NW., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Friday, March 16, 1984.

CHANGE IN THE MEETING: Additional items/meeting.

The following additional item was considered at a closed meeting scheduled for Thursday, March 29, 1984, following the 10 a.m. open meeting.

Litigation matter.

The following item was considered at a closed meeting scheduled on Friday, March 30, 1984, at 10 a.m.

Institution of injuctive action.

Chairman Shad and Commissioners Treadway and Cox determined that Commission business required the above change and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Bruce Kohn at (202) 272–3195.

George A Fitzsimmons,

Secretary.

[FR Doc. 84–9153 Filed 4–2–84; 4:20 pm]

BILLING CODE 8010–01–M

7

UNITED STATES RAILWAY ASSOCIATION

DATE AND TIME: April 13, 1984; 1:30 p.m.

PLACE: Board Room, Suite 7200, Seventh Floor, 955 L'Enfant Plaza North, SW., Washington, D.C.

STATUS: The first portion of the meeting will be closed to the public; the second portion will be open.

MATTERS TO BE CONSIDERED BY THE USRA BOARD OF DIRECTORS AND ADVISORY BOARD AT MEETING:

Portion Closed to the Public (1:30 p.m.):

1. Litigation Report
2. Review of Conrail Confidential and Proprietary Financial Information

Portion Open to the Public (2 p.m.):

3. Approval of Minutes of January 20, 1984 Board Meeting
4. Election of Conrail Board Members
5. Conrail Request for Waiver of Financing Agreement
6. Contract Action
7. Conrail Monitoring Indicators

CONTACT PERSON FOR MORE INFORMATION: Alex Bilanow, (202) 488–8777.

Peter J. Gallagher,

Secretary.

[FR Doc. 84–9174 Filed 4–3–84; 10:44 am]

BILLING CODE 8240–01–M

federal register

Thursday
April 5, 1984

Part II

Environmental Protection Agency

40 CFR Part 60

Standards of Performance for New Stationary Sources; Synthetic Fiber Production Facilities; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL 2484-8]

Standards of Performance for New Stationary Sources; Synthetic Fiber Production Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Standards of performance for synthetic fiber production facilities were proposed in the **Federal Register** on November 23, 1982 (47 FR 52932). This action promulgates standards of performance for synthetic fiber production facilities. These standards implement Section 111 of the Clean Air Act and are based on the Administrator's determination that synthetic fiber production facilities cause, or contribute significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare. The intended effect of these standards is to require all new and reconstructed synthetic fiber production facilities to control emissions to the level achievable by the best demonstrated system of continuous emission reduction, considering costs, nonair quality health and environmental impacts, and energy requirements.

EFFECTIVE DATE: April 5, 1984. Under Section 307(b)(1) of the Clean Air Act, judicial review of this new source performance standard is available only by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this rule. Under Section 307(b)(2) of the Clean Air Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESSES: *Background Information Document.* The background information document (BID) for the promulgated standards may be obtained from the U.S. EPA Library (MD-35), Research Triangle Park, North Carolina 27711, telephone number (919) 541-2777. Please refer to "Synthetic Fiber Production Facilities—Background Information for Promulgated Standards" (EPA-450/3-82-011b). The BID contains (1) a summary of all the public comments made on the proposed standards and the Administrator's response to the comments, (2) a summary of the changes made to the standards since proposal, and (3) the final Environmental Impact Statement which summarizes the impacts of the standards.

Docket. A docket, number A-80-7, containing information considered by EPA in development of the promulgated standards, is available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section LE-131, West Tower Lobby, Gallery 1, 401 M Street, SW., Washington, D.C. 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Robert L. Ajax, Standards Development Branch, Emission Standards and Engineering Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-5578.

SUPPLEMENTARY INFORMATION:

The Standards

Standards of performance for new sources established under Section 111 of the Clean Air Act reflect:

> * * * application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated (Section 111(a)(1)).

For convenience, this will be referred to as "best demonstrated technology," or "BDT."

The standards limit emissions of volatile organic compounds (VOC) from new and reconstructed synthetic fiber production facilities that utilize an organic solvent in manufacturing the formed fiber. This includes the production of such fiber types as acrylic, modacrylic, cellulose acetate, and spandex. The standards do not apply to modified facilities.

The affected facility to which the standards apply is each solvent-spun synthetic fiber process that produces more than 500 megagrams of fiber per year. The standards require that VOC emissions from each affected facility that produces acrylic fibers or both acrylic and nonacrylic fibers be limited to 10 kilograms (kg) per megagram (Mg) solvent fed to the spinning solution preparation area or precipitation bath.* The standards also limit VOC emissions from each affected facility producing only fiber types other than acrylic to 17 kg per Mg solvent fed to the spinning solution preparation area or precipitation bath.

To determine compliance with the standards, the owner or operator of an affected facility is required to measure the amount of makeup solvent introduced to the affected facility and to determine the amount of total solvent used within the affected facility by direct measure or through use of plant process records. Records must be maintained in a form suitable for inspection for at least 2 years. In addition, the owner or operator of the affected facility must submit semiannual reports of instances in which the VOC emissions exceed the standards.

BDT for this industry is broadly described as a system of improved solvent recovery that results in reduced solvent VOC emissions. For most segments of the industry, this system involves the use of hoods and enclosures around the process steps that typically emit the largest portion of solvent emissions. For other segments of the industry, the system identified as BDT involves the use of air management, in which a portion of room air is withdrawn to a control device and solvent vapor collected. To achieve emission reductions beyond baseline control conditions and to meet the NSPS limits, however, specific equipment is not mandated. The emission reduction techniques noted above are not exclusive, and an affected facility may determine that another technique would be more feasible for emission reductions for a given fiber type or production process.

Summary of Environmental, Energy, and Economic Impacts

Environmental Impacts

The standards will reduce projected 1987 nationwide VOC emissions from new and reconstructed solvent-spun synthetic fiber production facilities by as much as 8.5 gigagrams (Gg) (9.4 thousand tons) per year. Nationwide emissions will be reduced by as much as 63 percent of the amount that would occur in the absence of this regulation. Emission reductions will range from about 1.1 Gg (1,200 tons) per year for a dry-spinning acrylic fiber plant to about

* In the proposed standards (47 FR 52945), § 60.602(a) contained a typographical error that may have created some question as to the proposed standard for affected facilities that produce both acrylic and nonacrylic fiber types. However, the preamble to the proposed standards (see 47 FR 52940, cols. II and III) should have made clear that the proposed standard for these facilities was identical to the proposed standard for affected facilities producing only acrylic fibers—10 kg VOC per megagram solvent feed. (EPA received no comment suggesting any confusion on this point.) As stated in the text above, the numerical standard promulgated today for affected facilities that produce both acrylic and nonacrylic fibers remains 10 kg VOC per megagram solvent feed.

1.7 Gg (1,900 tons) per year for an acetate filtration tow plant.

The fifth-year water pollution and solid waste impacts of the standards each represent less than a 1 percent increase over the impacts that would result in the absence of standards of performance.

Energy Impacts

The incremental energy increase necessary to operate the additional control equipment required to meet the standards will range from 2 to 3 percent of the total energy required to operate the types of fiber production plants covered by the standards. The total nationwide energy impact of the standards is estimated to be as much as 430 terajoules (403 billion Btu) per year in 1987.

Economic Impacts

The cumulative industry-wide capital costs will be as much as $27.8 million by 1987, an 8 percent increase in costs for new facilities. Capital costs for implementing the standards at individual plants will range from $4.2 to $5.5 million. Economic analysis indicated that the annualized costs to individual solvent-spun fiber plants will range from about $1.2 million to $1.3 million. However, there will also be a credit for recovered solvent in the range of $1.0 to $1.1 million. Net annualized costs, therefore, will be about $0.2 million for an individual plant. The annualized cost to the entire industry by 1987 will be as much as $7.4 million; however, a corresponding $6.2 million credit for additional solvent recovery will nearly offset these costs, resulting in net annualized cost to the industry of $1.2 million by 1987. Analysis indicates the cost of emission control required by the standards is not expected to prevent or hinder expansion or continued production by the solvent-spun synthetic fibers industry. These costs (savings) do not include lost opportunity costs (i.e., the profit or return on investment which could be derived by investing in other than air pollution control equipment).

The environmental, energy, and economic impacts are discussed in detail in the background information document for the proposed standards, "Synthetic Fiber Production Facilities—Background Information for Proposed Standards" (EPA–450/3–82–011a).

Public Participation

Prior to proposal of the standards, interested parties were advised by public notice in the **Federal Register** (46 FR 42910, August 25, 1981) of a meeting of the National Air Pollution Control Techniques Advisory Committee to discuss the synthetic fiber production facilities standards recommended for proposal. This meeting was held on September 22, 1981. The meeting was open to the public and each attendee was given an opportunity to comment on the standards recommended for proposal. The standards were proposed in the **Federal Register** on November 23, 1982 (47 FR 52932). The preamble to the proposed standards discussed the availability of the background information document (BID), EPA–450/3–82–011a, which described in detail the regulatory alternatives considered and the impacts of those alternatives. Public comments were solicited at the time of proposal and, when requested, copies of the BID were distributed to interested parties. To provide interested persons the opportunity for oral presentation of data, views, or arguments concerning the proposed standards, a public hearing was scheduled for January 11, 1983, at Research Triangle Park, North Carolina, but was not held because no one requested that a hearing be conducted. The public comment period was from November 23, 1982, to February 11, 1983.

Six comment letters were received concerning issues relative to the proposed standards of performance for synthetic fiber production facilities. The comments have been carefully considered, and, where determined to be appropriate by the Administrator, changes have been made to the standards.

Significant Comments and Changes to the Standards

Comments on the proposed standards were received from industry and trade association representatives, and one State air pollution control agency. Most of the comment letters contained multiple comments. A detailed discussion of all the comments and responses can be found in the background information document (BID), which is referred to in the **ADDRESSES** section of this preamble. A discussion of the three major issues raised by the commenters is contained in the following paragraphs.

One of the major issues concerned the expected growth within the synthetic fiber industry, and whether or not EPA should establish an NSPS for this industry, given the differing EPA and industry growth forecasts. The second major issue raised by several industry representatives concerned the capture efficiency of enclosures on which the emission limits are based. Several commenters questioned whether this efficiency (90 percent) is achievable and suggested that lower values would be more realistic. The third major issue raised by the commenters was whether the enclosures as envisioned by EPA for use at synthetic fiber plants would create unsafe operating conditions, primarily from an explosive potential.

Growth Within the Synthetic Fibers Industry

Several commenters questioned the need for an NSPS for the synthetic fibers industry. They claimed that there will be no new or reconstructed facilities in the next 5 years and that EPA has therefore overestimated the growth rate. The reasons they gave for no growth were that (1) existing production supplying the export market could be used to satisfy any increase in domestic demand for acrylic fibers, (2) existing cellulose acetate filament yarn facilities could be converted to produce cigarette filter tow if the demand necessitates more tow capacity, and (3) new filter tow facilities would cost too much to build and would result in an increase in fiber prices that would not be competitive with fiber produced in other countries.

EPA has evaluated the commenters' claim that there will be no capacity additions in the next 5 years and does not reach the same conclusion as the commenters regarding the need for the NSPS. The 5-year period referred to by the commenters has no special significance in the decisions as to whether or not to develop an NSPS for a given source category. It is often a reasonable indicator of growth, but such factors as cyclic growth, current economic conditions, etc., can result in situations where projected growth during the next 5-year period is not necessarily indicative of long-term trends. Since an NSPS is intended to achieve long-term benefits, it is important to project and consider potential benefits that would occur beyond the 5-year period. Even if growth is not certain, however, it is still not unreasonable to promulgate the NSPS. Early promulgation of these standards would enhance the ability of facility owners to plan for whatever future growth will be necessary. Consequently, EPA believes the NSPS will be beneficial in limiting VOC emissions from new or reconstructed synthetic fiber production facilities when they are built, regardless of whether it is within 5 years or beyond.

As mentioned above, one commenter claimed that the domestic market for acrylic fibers is more attractive to producers than the export market; therefore any new domestic demand would be met at the expense of the export share, rather than with new production capacity. EPA performed an

analysis using data on domestic and export acrylic shipments to determine whether the export market is a residual market, as the commenter contended. This analysis showed that the domestic and export shipments tend to move in the same direction, increasing and decreasing together. These facts suggest that the export market is not simply a residual market for the acrylic producers that will be curtailed when domestic consumption increases.

The commenters' claim that filter tow capacity growth can be accommodated by converting filament yarn facilities is not supported by industry production and capacity utilization data. Data for the 1975–1979 period indicated a stabilization in production of filament yarn after dramatic production declines in the 1970–1975 period. By 1980, most of the excess capacity had been eliminated, resulting in capacity utilization of over 92 percent. EPA, therefore, concludes that excess filament yarn capacity will not be available in the future to augment the current filter tow capacity. Consequently, any substantial increase in the demand for production of cigarette filter tow would necessitate new plant construction.

The third reason for no growth given by the commenters was that filter tow facilities would be too expensive to build (even in the absence of an NSPS) and would not be able to compete on the international market because of the resulting high implicit price of the domestic filter tow. (Implicit price refers to the product price that reflects costs of production.) Acetate filter tow manufacturers have a legitimate concern about the international competitiveness of new facilities since foreign exports make up about 40 percent of their markets. However, to the extent that foreign producers share the conditions that have resulted in such an increase in the cost of filter tow from a new facility, the export market for domestic producers will probably remain strong.

EPA's position that price increases for cigarette filter tow will have little effect on the export market derives in part from an assumption that the price elasticity of export demand is similar to the price elasticity of domestic demand. The estimate of the price elasticity of domestic demand for cigarette filter tow was derived from the price elasticity for cigarettes themselves. Cigarette demand is generally found to be highly price inelastic, and the demand for cigarette filter tow is estimated to be even more inelastic because it is only a small part of a cigarette cost. Accordingly, an increase in cigarette filter tow price is not expected to have a major impact on domestic growth in acetate filter tow consumption.

It is recognized that the U.S. position in the world filter tow market is not what it once was. However, the bulk of the decline in U.S. market share occurred some years ago. Throughout the 1970's the United States was responsible for 54 percent of the world filter tow production. According to the most recently available data, the U.S. share appears to have been sufficiently stable over the last decade to justify an assumption of continued maintenance of its world market share.

EPA believes that the possibility of substitution in cigarette filter production has limited potential. It is believed that cigarette manufacturers experiment with alternate filter materials principally for long-term purposes, especially for incorporation in new brands. Since filter design affects the taste, and therefore, the desirability of a cigarette, manufacturers are extremely hesitant to substitute filter materials in existing brands.

On the basis of the reasons discussed above and in the BID, EPA believes that synthetic fiber production facilities subject to the NSPS will be constructed or reconstructed in the future and that the NSPS will significantly reduce VOC emissions at these facilities.

Use of Enclosures and Their Capture Efficiency

Two commenters claimed that enclosures do not meet the requirements for best demonstrated technology for the cigarette filter tow industry because they have not been demonstrated for domestic facilities. One commenter stated that enclosure technology has not been demonstrated for many acrylic fiber production areas and is not representative of technology employed by this category.

The commenter's use of the term "best demonstrated technology" is a reference to Section 111(a)(1)(C) of the Clean Air Act, which specifies that a standard of performance "* * * reflects the degree of emission reduction achievable through the application of the best system of continuous emisson reduction which (taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated for the category of sources." EPA normally refers to this system of continuous emission reduction as "best demonstrated technology" or BDT.

The commenters have interpreted the Section 111 requirement that the system be adequately demonstrated as meaning that it be in actual use at each type of existing facility in the category of sources being regulated and that it be achieving the level of the NSPS for which it is the basis. EPA interprets the requirement more broadly. Control technology can be considered BDT if it can be shown to be the best system demonstrated for the category of sources, not necessarily on the category of sources. This means that a system used in an entirely different industry using a different process than the one being regulated can be BDT if its performance would not be affected by the differences in the sources. Similarly, a system used in some segments of the industry being regulated, or in some parts of the process, but not others, can be considered BDT for all segments or all parts of the process if it is possible to design, install, and operate it so that it achieves emission control under all the conditions in which it would applied.

EPA believes that enclosure technology as a means of capturing VOC emissions from acrylic fiber and cellulose acetate filter tow manufacturing facilities meets these criteria. EPA is unaware of any process-related or other reason that would prevent application of this technology to these types of synthetic fiber production facilities. Furthermore, enclosures are being used at one domestic acrylic fiber manufacturing plant and at a foreign cellulose acetate filter tow manufacturing plant. For these reasons, EPA believes that enclosure technology represents BDT for acrylic fiber and cellulose acetate filter tow manufacturing plants.

Two commenters stated that the 90 percent capture efficiency for enclosures that is part of the basis for the NSPS is not supported by adequate documentation or data. They also contended that since enclosures must be opened frequently to allow worker access to equipment, the 90 percent capture efficiency is not supportable. One commenter estimated that enclosures could capture no more than 86 percent of VOC emissions. He estimated that the enclosures would be open, thus reducing effectiveness, for 8 to 19 percent of the time.

As indicated in the preamble to the proposed NSPS (47 FR 52936), the 90 percent capture efficiency used by EPA to calculate achievable emission reductions was based on solvent use and emission data collected from fiber production facilities of several companies. Emission tests were

conducted and solvent mass balance data collected at acrylic fiber plants that use enclosures. Although these data indicated that the tested plants were achieving about 95 percent capture with their enclosures, EPA selected 90 percent to account for the more frequent opening of enclosures to allow worker access that is necessary at filter tow facilities (estimated at 14 percent based on information provided to EPA before proposal by one company representative).

To respond to the commenter's concern that the capture efficiency would be reduced to less than 90 percent if the enclosure doors were open up to 19 percent of the time, EPA calculated the efficiency using this worst-case assumption. The detailed calculation may be found in Appendix A of the BID. It indicates that under these worst-case conditions, the lowest capture efficiency would be greater than 91 percent, not the 86 percent claimed by the commenter. Therefore, EPA continues to believe that enclosures on fiber processing facilities can consistently achieve greater than 90 percent capture.

Safety of Enclosures

Two commenters claimed that the use of enclosure technology on filter tow facilities would create a safety hazard because acetone concentrations within the enclosures could build up to explosive levels within a relatively short period (as short as 30 seconds). They acknowledged that a foreign producer uses enclosures in filter tow facilities but believed that the fundamental differences (spinning line speeds) in the foreign and domestic operations make transfer of this technology to domestic operations inappropriate. They expressed concern that the manual activation of safety systems used by the foreign producer would not be fast enough to reply on to prevent an explosion within the 30 seconds it would take for a potential explosion to occur.

As discussed in Chapter 4 of the proposal BID, EPA is aware that domestic producers would not rely solely on manual activation of safety features to avoid explosions within enclosures. The system envisioned by EPA would be designed such that the exhaust fans would be interlocked mechanically, electrically, or otherwise with the spin cell extrusion pumps. Should the exhaust fans fail, fiber would no longer be produced, additional solvent would not be released into the enclosure, and the enclosure doors would open automatically. This would allow dilution and diffusion of the solvent vapor into the room air.

EPA does believe that manually opening the enclosure doors is a reasonable and dependable backup or failsafe method of preventing the buildup of explosive vapor concentration. It should be noted that workers currently must observe the machines constantly to respond immediately to spinning machine malfunctions and "roll breaks" or "feed wheel wraps." (These terms, used by two different fiber producers, both refer to the malfunction in which fiber exiting the spin cell is wrapped around the godet roll. The wrap will become larger as more fiber is wound, and will cause more serious problems if not cut and removed quickly.) Thus, workers are always available to open the enclosure doors should the automatic opening system fail to operate when needed.

EPA believes that due to the automatic safety features that would be designed into an enclosure system, the occurrence of an exhaust fan shutdown with the simultaneous continued release of solvent into a closed enclosure is very unlikely. Should such a situation occur, however, EPA agrees with the commenters that workers would need enough time to respond to avoid an explosion. The commenters suggest that the workers may have no more than 30 seconds to manually open the enclosure doors, but do not provide any supporting data.

To evaluate this claim, EPA calculated the amount of time required for solvent concentrations to reach the lower explosive limit (LEL) within an enclosure under worst case conditions. Two situations were evaluated: one is a pilot enclosure system designed by one company and the other is a system for a hypothetical 50 million pound per year plant. For both situations, it was assumed that fiber spinning continues after the exhaust fan stops suddenly and the enclosure doors remain closed. EPA's calculations indicated that it would take 2.4 minutes to reach the LEL at the pilot system and 5.1 minutes to reach the LEL at the hypothetical plant. There would be an adquate amount of time in either situation for a worker tending the machines to manually open the enclosure doors if the automatic door opener failed. Thus, EPA believes that the enclosure systems that represent BDT for the proposed NSPS do not pose any risk of explosion that cannot be alleviated by proper design and operation.

One commenter claimed that the use of enclosures on spinning machines would negate current fire protection measures. He claimed that "enclosure systems connected to a control device would have unlimited oxygen supply and ready ignition sources." Another commenter noted that the spinning cabinets in use at domestic filter tow plants are isolated from each other, and cabinet fires are prevented from flashing over to other cabinets. He claimed the tow line enclosure would provide a connection between all the cabinets along a spinning line, so that a fire in one cabinet along a spinning line could ignite all the cabinets. This commenter also noted the danger of an "unlimited supply of oxygen," where enclosures are used.

The comments that an enclosure system would create an unlimited oxygen supply, ready ignition sources, and a convenient route for fire to spread from one to several or all the spinning cabinets on a line reflect an incorrect appraisal of a properly designed and fail-safe enclosure system.

Before responding, it is first important to make clear that fire can potentially propogate in two ways in a situation such as this. In one, the flame would propogate along the surface of the fiber, the potential for which would be the same with and without enclosures. In the other, the flame would propogate through the vapor space, a phenomenon described here as flashover.

The commenters in this case appear to be referring to flashover. This can only occur when there is a limited supply of oxygen, which causes vapor concentrations to be in the "explosive range." When there is too little oxygen, the vapor concentration exceeds the upper explosive limit (UEL). When there is an excess of oxygen, the vapor concentration is below the lower explosive limit (LEL). In neither case is fire or explosion of the vapor possible.

The comments about an unlimited oxygen supply apparently refer to the continuous flow of air drawn into the enclosure by its exhaust system. The volume of air drawn into the enclosure, however, is established by the design of the enclosure and exhaust system so that the solvent vapor concentration is maintained well below the LEL during normal spinning operation. In other words, the vapor in the enclosure could neither ignite nor support a flame, and, as a consequence, a fire in one cabinet could not spread via the enclosure to other cabinets. The reference to an unlimited oxygen supply being a hazard or safety concern is, therefore, inappropriate.

The only upset condition germane to the discussion of oxygen supply or the flashover of fire from one to other spinning cabinets is the malfunction of the enclosure's primary exhaust system

concurrent with continued spinning. In this situation, the air (oxygen) supply is no longer continuous nor unlimited but is fixed by the volume of the enclosure. If no other safety features alleviate the malfunction, the solvent vapor concentration might approach explosive limits. (See the response to Comment 2.2.6 and Appendix B of the BID for a determination of the time required.) However, the enclosure should be designed and equipped with secondary exhaust systems, alarms, automatically opening doors, and line shutdown interlocks with the spinning pumps. In addition to these mechanical features, operators are always standing by to correct this and other malfunctions. At worst, then, the malfunction would cause the safety mechanisms to create conditions identical to current operating conditions without an enclosure, i.e., the spun yarn and solvent would be exposed to the spinning room atmosphere.

With respect to the commenter's claim concerning an increased number of ignition sources, no further information was provided. No system designs considered to reflect BDT would affect the type or number of ignition sources already available. Note, however, that with the enclosure doors closed, worker access is prevented, and the solvent vapor is physically separated from the workers, from sparks or flames caused by tool malfunctions, and from any other ignitions sources.

EPA concludes that enclosures can be designed and installed to create an effective solvent vapor capture system while maintaining operating conditions that pose no greater risk for fires or explosions than current operating conditions without enclosures.

Information Requirements Impacts

Two types of reports are required by the General Provisions of 40 CFR Part 60. First, there are notification requirements that enable the Agency to keep abreast of facilities subject to the standards. Second, there would be reporting of the results of the initial performance test that would be conducted to determine compliance with the standards. In addition, the standards require the owner or operator of an affected facility to record the results of each performance test and to submit semiannual reports to the Agency of instances in which the VOC emissions exceed the standards. This requirement is waived for affected facilities in States where the program has been delegated if EPA, in the course of delegation, approves reporting requirements or an alternative means of source surveillance adopted by the State. Such sources would be required to comply with the requirements adopted by the State.

Information collection requirements associated with this rule (40 CFR 60.7, 60.8, 60.15, 60.603, and 60.604) have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 U.S.C. 3501 et seq. and have been assigned OMB control number 2060–0059.

The resources needed by the industry to maintain records and to collect, prepare, and use the reports for the first 2 years would be about 0.1 person-year per year. The resources required by EPA and State and local agencies to process the reports and to maintain records for the first 2 years would be about 0.1 person-year per year.

Regulatory Flexibility Analysis

During the development of the background information document for these standards, it was determined that there were no significant impacts on small businesses, therefore no regulatory flexibility analysis was required for this source category.

Docket

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughtout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated standards and EPA responses to significant comments, the contents of the docket will serve as the record in case of judicial reiew except as noted in (Section 307(d)(7)(A)).

Miscellaneous

The effective date of this regulation is April 5, 1984. Section 111 of the Clean Air Act provides that standards of performance or revisions thereof become effective upon promulgation and apply to affected facilities, construction or reconstruction of which was commenced after the date of proposal (November 23, 1982).

As prescribed by Section 111, the promulgation of these standards was preceded by the Administrator's determination (40 CFR 60.16, 44 FR 49222, dated August 21, 1979) that these sources contribute significantly to air pollution that may reasonably be anticipated to endanger public health or welfare. In accordance with Section 117 of the Act, publication of these promulgated standards was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies.

This regulation will be reviewed four years from the date of promulgation as required by the Clean Air Act. This review will include as assessment of such factors as the need for integration with other programs, the existence of alternative methods, enforceability, improvements in emission control technololgy, and reporting requirements.

Section 317 of the Clean Air Act requires the Administrator to prepare an economic impact assessment for any new standard of performance promulgated under Section 111(b) of the Act. An economic impact assessment was prepared for this regulation and for other regulatory alternatives. All aspects of the assessment were considered in the formulation of the standards to insure that cost was carefully considered in determining BDT. The economic impact assessment is included in the background information document for the proposed standards.

Under Executive Order 12291, the 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: (1) The national annualized compliance costs, including capital charges resulting from the standards, total less than $100 million; (2) the standards do not cause a major increase in prices or production costs; and (3) the standards no not cause a significant adverse effect on domestic competition, employment, investment, productivity, innovation, or competition in foreign markets. This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

List of Subjects in 40 CFR Part 60

Air pollution control, Aluminum, Ammonium sulfate plants, Asphalt, Cement industry, Coal copper, Electric power plants, Glass and glass products, Grains, Intergovernment relations, Iron, Lead, Metals, Metallic minerals, Motor vehicles, Nitric acid plants, Paper and paper products industry, Petroleum, Phosphate, Sewage disposal, Steel sulfuric acid plants, Waste treatment and disposal, Zinc, Tires, Incorporation by reference, Can surface coating, Sulfuric acid plants, Industrial organic chemicals, Organic solvent cleaners, Fossil fuel-fired steam generators, Synthetic fibers.

Dated: March 30, 1984.

William D. Ruckelshaus,

Administrator.

PART 60—[AMENDED]

40 CFR Part 60 is amended by adding a new subpart as follows:

Subpart HHH—Standards of Performance for Synthetic Fiber Production Facilities

Sec.

60.600 Applicability and designation of affected facility.

60.601 Definitions.

60.602 Standard for volatile organic compounds.

60.603 Performance test and compliance provisions.

60.604 Reporting requirements.

Authority: Sec. 111 and 301(a) of the Clean Air Act, as amended, (42 U.S.C. 7411, 7601(a)), and additional authority as noted below.

Subpart HHH—Standards of Performance for Synthetic Fiber Production Facilities

§ 60.600 Applicability and designation of affected facility.

(a) Except as provided in paragraph (b) of this section, the affected facility to which the provisions of this subpart apply is each solvent-spun synthetic fiber process that produces more than 500 megagrams of fiber per year.

(b) The provisions of this subpart do not apply to any facility that uses the reaction spinning process to produce spandex fiber or the viscose process to produce rayon fiber.

(c) The provisions of this subpart apply to each facility as identified in paragraph (a) of this section and that commences construction or reconstruction after November 23, 1982. The provisions of this subpart do not apply to facilities that commence modification but not reconstruction after November 23, 1982.

§ 60.601 Definitions.

(a) All terms that are used in this subpart and are not defined below are given the same meaning as in the Act and in Subpart A of this part.

"Acrylic fiber" means a manufactured synthetic fiber in which the fiber-forming substance is any long-chain synthetic polymer composed of at least 85 percent by weight of acrylonitrile units.

"Makeup solvent" means the solvent introduced into the affected facility that compensates for solvent lost from the affected facility during the manufacturing process.

"Nongaseous losses" means the solvent that is not volatilized during fiber production, and that escapes the process and is unavailable for recovery, or is in a form or concentration unsuitable for economical recovery.

"Polymer" means any of the natural or synthetic compounds of usually high molecular weight that consist of many repeated links, each link being a relatively light and simple molecule.

"Precipitation bath" means the water, solvent, or other chemical bath into which the polymer or prepolymer (partially reacted material) solution is extruded, and that causes physical or chemical changes to occur in the extruded solution to result in a semihardened polymeric fiber.

"Rayon fiber" means a manufactured fiber composed of regenerated cellulose, as well as manufactured fibers composed of regenerated cellulose in which substituents have replaced not more than 15 percent of the hydrogens of the hydroxyl groups.

"Reaction spinning process" means the fiber-forming process where a prepolymer is extruded into a fluid medium and solidification takes place by chemical reaction to form the final polymeric material.

"Recovered solvent" means the solvent captured from liquid and gaseous process streams that is concentrated in a control device and that may be purified for reuse.

"Solvent feed" means the solvent introduced into the spinning solution precipitation system or precipitation bath. This feed stream includes the combination of recovered solvent and makeup solvent.

"Solvent inventory variation" means the normal changes in the total amount of solvent contained in the affected facility.

"Solvent recovery system" means the equipment associated with capture, transportation, collection, concentration, and purification of organic solvents. It may include enclosures, hoods, ducting, piping, scrubbers, condensers, carbon adsorbers, distillation equipment, and associated storage vessels.

"Solvent-spun synthetic fiber" means any synthetic fiber produced by a process that uses an organic solvent in the spinning solution, the precipitation bath, or processing of the sun fiber.

"Solvent-spun synthetic fiber process" means the total of all equipment having a common spinning solution preparation system or a common solvent recovery system, and that is used in the manufacture of solvent-spun synthetic fiber. It includes spinning solution preparation, spinning, fiber processing and solvent recovery, but does not include the polymer production equipment.

"Spandex fiber" means a manufactured fiber in which the fiber-forming substance is a long chain synthetic polymer comprised of at least 85 percent of a segmented polyurethane.

"Spinning solution" means the mixture of polymer, prepolymer, or copolymer and additives dissolved in solvent. The solution is prepared at a viscosity and solvent-to-polymer ratio that is suitable for extrusion into fibers.

"Spinning solution preparation system" means the equipment used to prepare spinning solutions; the system includes equipment for mixing, filtering, blending, and storage of the spinning solutions.

"Synthetic fiber" means any fiber composed partially or entirely of materials made by chemical synthesis, or made partially or entirely from chemically-modified naturally-occurring materials.

"Viscose process" means the fiber forming process where cellulose and concentrated caustic soda are reacted to form soda or alkali cellulose. This reacts with carbon disulfide to form sodium cellulose xanthate, which is then dissolved in a solution of caustic soda. After ripening, the solution is spun into an acid coagulating bath. This precipitates the cellulose in the form of a regenerated cellulose filament.

§ 60.602 Standard for volatile organic compounds.

(a) On and after the date on which the initial performance test required to be conducted by § 60.8 is completed, no owner or operator subject to the provisions of this subpart shall cause the discharge into the atmosphere from any affected facility that produces acrylic fibers, VOC emissions that exceed 10 kilograms (kg) VOC per megagram (Mg) solvent feed to the spinning solution preparation system or precipitation bath. VOC emissions from affected facilities that produce both acrylic and nonacrylic fiber types shall not exceed 10 kg VOC per Mg solvent feed. VOC emissions from affected facilities that produce only nonacrylic fiber types shall not exceed 17 kg VOC per Mg solvent feed. Compliance with the emission limitations is determined on a 6-month rolling average basis as described in § 60.603.

§ 60.603 Performance test and compliance provisions.

(a) Section 60.8(f) does not apply to the performance test procedures required by this subpart

(b) Each owner or operator of an affected facility shall determine compliance with the applicable standard

in § 60.602(a) by determining and recording monthly the VOC emissions per Mg solvent feed from each affected facility for the current and preceding 5 consecutive calendar months and using these values to calculate the 6-month average emissions. Each calculation is considered a performance test. The owner or operator of an affected facility shall use the following procedure to determine VOC emissions for each calendar month;

(1) Install, calibrate, maintain, and operate monitoring devices that continuously measure and permanently record for each calendar month the amount of makeup solvent and solvent feed. These values shall be used in calculating VOC emissions according to paragraph (b)(2) of this section. All monitoring devices, meters, and peripheral equipment shall be calibrated and any error recorded, Total compounded error of the flow measuring and recording devices shall not exceed 1 percent accuracy over the operating range. As an alternative to measuring solvent feed, the owner or operator may:

(i) Measure the amount of recovered solvent returned to the solvent feed storage tanks, and use the following equation to determine the amount of solvent feed:

Solvent Feed = Makeup Solvent + Recovered Solvent + Change in the Amount of Solvent Contained in the Solvent Feed Holding Tank.

(ii) Measure and record the amount of polymer introduced into the affected facility and the solvent-to-polymer ratio of the spinning solutions, and use the following equation to determine the amount of solvent feed:

$$\text{Solvent Feed} = \sum_{i=1}^{n} (\text{Polymer Used})_i \times (\text{Solvent-to-Polymer Ratio})_i$$

where subscript "i" denotes each particular spinning solution used during the test period; values of "i" vary from one to the total number of spinning solutions, "n," used during the calendar month.

(2) VOC emissions shall be determined each calendar month by use of the following equations:

$$E = \frac{M_w}{S_w} - N - I \quad \text{and} \quad M_w = M_v S_p D$$

$$S_w = \frac{S_v S_p D}{1000} \qquad I = \frac{I_E - I_S}{S_w}$$

where all values are for the calendar month only and where

E = Emissions in kg per mg solvent feed;
S_v = Measured or calculated volume of solvent feed in liters;
S_w = Weight of solvent feed in mg;
M_v = Measured volume of makeup solvent in liters;
M_w = Weight of makeup in kg;
N = Allowance for nongaseous losses per mg solvent feed; (13 kg/mg);
S_p = Fraction of measured volume that is actual solvent (excludes water);
D = Density of the solvent in kg/liter;
I = Allowance for solvent inventory variation or changes in the amount of solvent contained in the affected facility per mg solvent feed (may be positive or negative);
I_S = Amount in kg of solvent contained in the affected facility at the beginning of test period, as determined by owner or operator;
I_E = Amount in kg of solvent contained in the affected facility at the close of test period, as determined by owner or operator.

(i) N, as used in the equation in paragraph (b)(2) of this section, equals 13 kg per mg solvent feed to the spinning solution preparation system and precipitation bath. This value shall be used in all cases unless an owner or operator demonstrates to the satisfaction of the Administrator that greater nongaseous losses occur at the affected facility. In this case, the greater value may be substituted in the equation.

(Approved by the Office of Management and Budget under Control Number 2060-0059.)
(Sec. 114, Clean Air Act as amended (42 U.S.C. 7414))

§ 60.604 Reporting requirements.

(a) The owner or operator of an affected facility shall submit a written report to the Administrator of the following:

(1) The results of the initial performance test; and

(2) The results of subsequent performance tests that indicate that VOC emissions exceed the standards in § 60.602. These reports shall be submitted semiannually, at six month intervals after the initial performance test.

(b) Solvent-spun synthetic fiber producing facilities exempted from these standards in § 60.600(a) (those producing less than 500 megagrams annually) shall report to the Administrator within 30 days whenever extruded fiber for the preceding 12 calendar months exceeds 500 megagrams.

(c) The requirements of this section remain in force until and unless EPA, in delegating enforcement authority to a State under Section 111(c) of the Act, approves reporting requirements or an alternate means of compliance surveillance adopted by such State. In that event, affected sources within the State will be relieved of the obligation to comply with this section, provided that they comply with the requirements established by the State.

(Approved by the Office of Management and Budget under Control Number 2060-0059.)

Note.—This regulation does not involve a "collection of information" as defined under the Paperwork Reduction Act of 1980 (Pub. L. 56-511). Therefore, the provisions of the Paperwork Reduction Act applicable to collections of information do not apply to this regulation.

(Sec. 114 of the Clean Air Act as amended (42 U.S.C. 7414))

[FR Doc. 84-9072 Filed 4-4-84; 8:45 am]
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federal register

Thursday
April 5, 1984

Part III

Environmental Protection Agency

40 CFR Part 60

Review of Standards of Performance for New Stationary Sources; Nitric Acid Plants; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL 2536-1]

Review of Standards of Performance for New Stationary Sources; Nitric Acid Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Review of standards.

SUMMARY: The EPA proposes to leave unchanged the regulations established in 1971 for the control of nitrogen oxides emissions from new, modified, or reconstructed nitric acid plants. The Agency is required to review standards for these plants every four years by the 1977 amendments to the Clean Air Act. Although one problem with the performance testing procedures was discovered, this problem, which is generic to testing of several stationary sources, is being addressed by a separate action to be proposed in the near future.

DATES: *Comments.* Comments must be received on or before June 4, 1984.

ADDRESSES: *Comments.* Send comments (in duplicate if possible) to the Central Docket Section (LE-131), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, Attention: Docket No. A-83-34.

Docket. Docket No. A-83-34, containing supporting information used in developing the conclusions, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at the EPA's Central Docket Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street, SW., Washington, D.C. 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth R. Durkee, Industrial Studies Branch, Emission Standards and Engineering Division, MD-13, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711, telephone (919) 541-5596.

SUPPLEMENTARY INFORMATION:

Background

New source performance standards (NSPS) for nitric acid plants were promulgated by the EPA on December 23, 1971 (40 CFR 60.70, Subpart G). The standards limit emissions of nitrogen oxides from new or modified nitric acid production units that have been constructed, modified, or reconstructed after August 17, 1971. These nitrogen oxides emission limits are: 1.5 kilograms per metric ton of acid produced (3 pounds per ton, maximum 2-hour average, expressed as NO_2; and 10 percent opacity. Nitric acid production units affected by these standards are any facility producing weak nitric acid (30 to 70 percent in strength) by either the pressure or atmospheric pressure process. The NSPS does not apply to the various processes used to produce strong acid by extraction or evaporation of weak acid, or by the direct strong acid process. The rationale for excluding strong acid plants from the NSPS at the time it was developed was that emissions from these strong acid plants are small, about the level of the NSPS, and only one strong acid process was in operation.

The standard also requires that nitrogen oxides be monitored continuously, and a record of these measurements must be maintained. The standard requires that during the performance tests the acid produced, expressed in metric tons per hour of 100 percent nitric acid, shall be determined during each 2-hour testing period by suitable methods and shall be confirmed by a material balance over the production system.

The Clean Air Act Amendments of 1977 require that the Administrator of the EPA review and, if appropriate, revise established standards of performance for new stationary sources at least every 4 years [Section 111(b)(B)]. A review of the nitric acid plant standard was previously conducted in 1979 (44 FR 35265), however, no revisions to the NSPS were made as a result of the 1979 review. A second review has been conducted by contracting EPA regional offices, States agencies, companies with nitric acid plants subject to the NSPS, and control equipment vendors. Information was collected on the number and location of facilities subject to the NSPS which have started operation since the 1979 review, on control equipment performance and costs, and on emission measurements and continuous stack gas monitoring. From these sources, a background document was prepared covering the current status of control technology, compliance test data, monitoring systems employed, cost, and cost effectiveness for representative control systems on different sizes of nitric acid plants. This notice announces that the EPA has completed the review and invites comments on its results.

Findings

Industry Growth Rate

In 1972, there were approximately 125 weak nitric acid units in existence, exclusive of government-owned units at ordnance plants. About 75 percent of these units had capacities of 270 megagrams per day (Mg/D) [300 tons per day (TPD)] or less. As of March 1983, 29 weak nitric acid units are subject to the NSPS with capacities ranging from 50 to 910 Mg/D (53 to 1,000 TPD) and averaging 423 Mg/D (466 TPD). U.S. production of weak nitric acid has increased at an average annual rate of 1.7 percent between 1981 and 1982. The actual average rate of startup between 1971 and 1982 has been between two and three units per year. One strong nitric acid plant was in operation in 1971 and only two new strong acid units have been constructed since then.

Control Technology

A typical uncontrolled nitric acid plant converts approximately 98 percent of input NO_x to nitric acid; however, the remaining 2 percent results in NO_x emissions of about 1,000 parts per million by volume (ppmv). For example, a typical uncontrolled nitric acid plant of 454 Mg/D (500 TPD) would emit about 3.4 megagrams (3.75 tons) of nitrogen oxides per day.

The control methods used by nitric acid units subject to the NSPS are extended absorption, catalytic reduction, and chilled absorption with caustic scrubbing. Catalytic reduction was used as the basis for the NSPS since, at the time of the NSPS development, no other NO_x control methods has been demonstrated to achieve the NSPS. In catalytic reduction, natural gas is added to the tail gas and burned in a catalytic unit to reduce the NO_x concentration to nitrogen. Since promulgation of the NSPS, natural gas costs have risen, and the catalytic reduction process has been largely supplanted by the more economical extended absorption process as the control method of choice for achieving the NSPS. As a direct result of higher natural gas costs, none of the nitric acid plants built since 1977 are designed with catalytic reduction emission control systems. In the extended absorption process, the increased absorption capacity is achieved by increasing the size of the normal process absorber used to produce nitric acid or by adding a second absorption tower in series with the process absorber. the NO_x is removed from the process gas by water introduced into the absorber to form nitric acid. A smaller absorption system

is required when the use of mechanical refrigeration for chilling part of the cooling water is employed. Chilled water increases the efficiency of the process of absorbing the NO_x into the water. All but one of the nitric acid units that started operation since 1977 feature extended absorption as the NO_x control mechanism. It is expected that natural gas prices will continue to make extended absorption the preferred method for NO_x control in the future. At one plant a caustic scrubber was combined with an extended absorber to comply with the NSPS.

The review did not find any other demonstrated technologies for controlling emissions than the technologies described here. Therefore, the EPA concluded that there are now three control technologies capable of achieving the NSPS (catalytic reduction, extended absorption and caustic scrubbers), but due to cost considerations the extended absorption process will remain the NO_x control technology of choice for attaining emission standards.

Levels Achievable With Demonstrated Control Technology

Compliance test results for the ten facilities subject to the NSPS which have started operation since the 1979 review indicate that all have achieved the NSPS with the exception of one extended absorption unit which is owned by the U.S. Army. This unit has never been operated except for a 2-day start-up period during which time the unit was compliance tested and shutdown. There are no plans to restart the unit since it was installed as a standby unit for ammunition production during wartime. Modifications will be made to bring this unit into compliance prior to any future startup.

Continuous monitoring data were also obtained on six nitric acid units controlled by extended absorption, one unit controlled by chilled absorption with caustic scrubbing, and one unit controlled by catalytic reduction. Four of the six extended absorption units reported emissions below the standard 95 percent of the time or greater over a 2-year period. Periods of excess emissions were due mainly to startups, shut downs, or malfunctions, which are periods exempt from the NSPS and, therefore, excluding these periods, emissions were below the standard more than 99 percent of the time. The two other extended absorption units experienced difficulties in continuously achieving the NSPS because of malfunctions (leaks in the tail gas heat exchanger results in a small amount of gas by-passing the absorber directly to the atmosphere). One of these units maintained emissions below the NSPS greater than 97 percent of the time when the leak was corrected. The other unit also operated with emissions below the NSPS after the leak was repaired but, with the arrival of hot weather, excess emissions occurred because the system design pressure was not being achieved. Modifications were made to correct design deficiencies, but the unit was shut down before it could be tested for compliance. The vendor indicated that, upon restart, they would continue to work with the company to achieve compliance. Monitoring data obtained on the one catalytic reduction unit and the unit controlled by chilled absorption with caustic scrubbing indicate that these units were operated with emissions below the NSPS more than 99.7 percent of the time over a 2-year period.

Because the current performance levels (0.57 to 1.40 kg/Mg) of these technologies are essentially the same as for those (0.18 to 1.15 kg/Mg) on which the 1971 standards were based, the EPA concludes that retaining the current NSPS emission level is appropriate. A more stringent standard was considered but was rejected due to limitations of the extended absorption process in further increasing its efficiency.

Testing Requirements

The standard currently requires that compliance be determined by using Method 7 for the concentration of NO_x. The review found that Method 7 is considered by the industry to be difficult and imprecise. The EPA has proposed Method 7A (47 FR 44354) and is in the process of proposing Methods 7B, 7C, and 7D as alternatives to Method 7. These alternatives allow for a choice of analytical procedures and should mitigate concerns over the difficulty of the analytical steps in Method 7. Because Methods 7A and 7B rely on laboratory instrumentation, they are less subject to human error and, therefore, are more precise than Method 7, in practice.

The standard also requires that the acid production rate, expressed in metric tons per hour of 100 percent nitric acid, shall be determined during each testing period by suitable methods and shall be confirmed by a material balance over the production system. This requirement of suitable methods was revision (39 FR 20790) made in 1974 to the NSPS promulgated (36 FR 24876) in 1971 which had required that the acid production be determined by suitable flowmeters. This requirement for using "suitable flowmeters" was deleted in order to allow other suitable methods, in addition to flowmeters. No problems in enforcing the NSPS were reported due to this lack of specifying a specific measurement technique for acid production. Therefore, the EPA concludes that no revision to the standard is appropriate at this time.

Cost Effectiveness of the NSPS

The cost effectiveness of achieving the NSPS was estimated for the two most prevalent control systems, extended absorption and catalytic reduction, on nitric acid plant sizes of 181, 454, and 907 Mg/D (200, 500, and 1,000 TPD). NSPS facilities constructed since 1971 have averaged 423 Mg/D (466 TPD).

For the extended absorption process, the cost effectiveness of achieving the NSPS ranges from a cost savings of $46 per megagram for a 970 Mg/D plant ($42 per ton for a 1,000 TPD plant) to a cost of $258 per megagram for a 181 Mg/D plant ($235 per ton for a 200 TPD plant). In fact, plants with capacities greater than 650 Mg/D (716 TPD) benefit financially by using extended absorption because the acid credits exceed the control costs. Compared with catalytic reduction, these costs are lower and EPA expects that virtually all new nitric acid plants will use the extended absorption control method.

EPA does not expect facilities to choose to meet the standard by using catalytic reduction. However, the cost effectiveness of catalytic reduction is estimated for comparison and was found to be $838 per Mg for a 907 Mg/D plant ($760/ton for a 1,000 TPD plant) and $1,158 per Mg for a 181 Mg/D plant (1050/ton for a 200 TPD plant).

Conclusions

Based on the above findings, the EPA concludes that the level of control required by the NSPS for nitric acid plants reflects best demonstrated control technology considering economic, energy, and non air environmental impacts. A review of the cost effectiveness of the NSPS found that the costs relative to the emissions controlled were reasonable for the extended absorption or the catalytic reduction control methods. Therefore, it is proposed that the level of the standard for weak nitric acid plants not be changed. The EPA is in the process of proposing alternatives to Method 7, which should alleviate reported difficulties with the method. This review has found two strong acid units which have started operation since 1971, but the reported NO_x emissions from these strong acid plants are below the level of the NSPS. Therefore, the EPA concludes

that emissions from strong acid plants should continue to be regulated by States on a case-by-case basis because the applicable control technology should be determined individually for each of these specialized strong acid production facilities.

List of Subjects in 40 CFR Part 60

Air pollution control, Aluminum, Ammonium sulfate plants, Asphalt, Cement industry, Coal copper, Electric power plants, Glass and glass products, Grains, Intergovernmental relations, Iron, Lead, Metals, Metallic minerals, Motor vehicles, Nitric acid plants, Paper and paper products industry, Petroleum, Phosphate, Sewage disposal, Steel sulfuric acid plants, Waste treatment and disposal, Zinc, Tires, Incorporation by reference, Can surface coating, Sulfuric acid plants, Industrial organic chemicals, Organic solvent cleaners, Fossil fuel-fired steam generators.

Dated: March 30, 1984.

William D. Ruckelshaus,

Administrator.

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Federal Register

Thursday
April 5, 1984

Part IV

Environmental Protection Agency

40 CFR Part 61

National Emission Standards for Hazardous Air Pollutants; Amendments to Asbestos Standard; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[AD-FRL 2515-8]

National Emission Standards for Hazardous Air Pollutants; Amendments to Asbestos Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Amendments to the national emission standard for asbestos were proposed in the **Federal Register** on July 13, 1983 (48 FR 32126). This action promulgates the amendments under Section 112 of the Clean Air Act as amended in 1977. The intended effect of the amendments is to reinstate work practice and equipment provisions of the standard that were held not to be emission standards by the U.S. Supreme Court in 1978. They also reword and rearrange the standard for clarity.

EFFECTIVE DATE: April 5, 1984. Under Section 307(b)(1) of the Clean Air Act, judicial review of these amendments is available only by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this rule. Under Section 307(b)(2) of the Clean Air Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESSES: *Docket.* A docket, number A-83-02, containing information considered by EPA in development of the promulgated amendments, is available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section (LE-131), West Tower Lobby, Gallery 1, 401 M Street, SW., Washington, D.C. 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Robert L. Ajax, Standards Development Branch, Emission Standards and Engineering Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-5578.

SUPPLEMENTARY INFORMATION:

The Amendments

The amendments reinstate portions of the asbestos NESHAP that were equipment or work practice requirements. The Supreme Court held in *Adamo Wrecking Company* v. *United States*, 434 U.S. 275 (1978) that work practice requirements of the NESHAP were not authorized by the 1970 Amendments to the Clean Air Act under which they were originally promulgated. The 1977 Amendments to the Act specifically authorize such requirements. On June 19, 1978 (43 FR 26372), EPA repromulgated many of the requirements under authority of the 1977 Amendments, and today's action repromulgates the following remaining requirements in a new Subpart M of 40 CFR Part 61.

1. Section 61.143 reinstates a prohibition of surfacing roadways with asbestos tailings or asbestos containing waste.

2. Sections 61.145(c) and 61.147(g) reinstate a partial exemption for demolition operations for structurally unsound buildings.

3. Section 61.147(e) reinstates the requirement that asbestos removed during demolition or renovation be kept wet until it is collected for disposal. It also requires that the asbestos not be dropped or thrown to the ground or a lower floor and that asbestos removed more than 50 feet above ground level be transported to the ground in dust-tight chutes or containers (unless it is removed in units or sections).

4. Section 61.147(f) reinstates alternative work practices that may be used for removal of asbestos prior to demolition when there are freezing temperature conditions at the point where the asbestos is being wetted.

5. Section 61.150 reinstates the prohibition of installation of certain molded or wet-applied insulating materials that contain commercial asbestos.

6. Sections 61.151(a) and 61.152(a) simply refer to the requirements of Section 61.156.

7. Sections 61.151 (b) and (c); 61.152(b) (1), (2), and (3); 61.153(a) (2), (3), and (4); 61.154; and 61.156 (c) and (d) reinstate alternative work practices or equipment that may be used in lieu of complying with a no visible emission limit.

8. Sections 61.153(b) and 61.156(b) reinstate the requirement for warning signs and fencing around asbestos waste disposal sites if (1) the owner or operator chooses to comply with a no visible emission limit rather than follow specified work practices, and (2) there is no natural barrier to deter access by the general public.

In addition to these requirements, today's action clarifies the asbestos NESHAP by rewording and rearranging it into a new Subpart M of 40 CFR Part 61.

Public Participation

The amendments were proposed in the **Federal Register** on July 13, 1983 (48 FR 32126). To provide interested persons the opportunity for oral presentation of data, views, or arguments concerning the proposed amendments, a public hearing was held on August 9, 1983, at Research Triangle Park, North Carolina. The hearing was open to the public and each attendee was given an opportunity to comment on the proposed amendments. The public comment period was from July 13, 1983, to September 9, 1983.

Fifteen comment letters were received and two interested parties testified at the public hearing concerning issues relative to the proposed amendments. The comments have been carefully considered and, where determined to be appropriate by the Administrator, changes have been made to the proposed amendments.

Summary of Comments and Changes to the Proposed Amendments

Comments on the proposed amendments were received from industry, Federal agencies, State and local air pollution control agencies, and private citizens. The following summary of comments and responses serves as the basis for the revisions that have been made to the proposed amendments. Most of the letters contained multiple comments, some of which were outside the scope of this rulemaking. Those comments have been summarized in Item No. IV-B-1 of Docket No. A-83-02. They are being evaluated in conjunction with the comprehensive review of the asbestos NESHAP that is currently underway.

Most of the remaining comments pertain to the effect that rewording and rearranging the proposed amendments had on the original meaning and intent of the asbestos NESHAP. Some of them also pertain to the reasonableness of those requirements being repromulgated (see list in the section entitled "The Amendments"). The comments are discussed below and are organized according to the sections of the proposed amendments to which they pertain.

Section 61.141

One commenter noted that the proposed definition of "demolition" deletes the previous reference to "any related removing or stripping of friable asbestos materials" and recommended restoring the definition to the old wording. The commenter believes that the new wording may be interpreted to not include removing and stripping.

EPA intended that the proposed definition of "demolition" describe the activities that occur when a facility is demolished as distinguished from "renovation," as the terms are used in the regulation. The primary distinguishing activity is that load-supporting structural members are wrecked or taken out in a demolition operation but not in a renovation. Asbestos stripping or removal may occur in either but should not be used to define the primary activity of demolition or renovation. Section 61.145 clearly states that when demolition or renovation operations meet certain specified criteria regarding asbestos materials in the facility, they are subject to the regulation. Also, § 61.147 clearly specifies that stripping or removal of asbestos materials during demolition or renovation must be carried out in accordance with the standard. It is not necessary to repeat these provisions in the definition of "demolition."

One commenter noted that the proposed definition of renovation would apply only to removal of asbestos and not to stripping and recommended that the new definition be as comprehensive as the old one.

EPA did not intend to omit the word "stripping" from the definition of "renovation" at the time of proposal. However, EPA has reevaluated the definition to determine the wording that would be the most useful and informative for the regulation. As discussed in the response to the previous comment about the definition of "demolition," the terms should be defined to describe the type of activity that is being carried out at a facility, regardless of the presence or absence of asbestos material, and the definition of "renovation" has been revised accordingly.

One commenter recommended restoring the phrase "based on operating experience" to the definition of "planned renovation" to clarify the basis for predicting future renovations involving asbestos removal. The phrase was in the old definition. The commenter's recommendation has been incorporated into the amendments.

One commenter requested clarification of the definition of "emergency renovation operation." He asked whether it would include malfunctions, such as leaking valves, that require the removal of asbestos-containing insulation. Although these malfunctions are expected to occur, they are not planned or scheduled.

EPA considers the type of occurrence described by the commenter to be part of a planned renovation operation and not an emergency renovation operation. The commenter indicated that although the situations are not planned or scheduled, they are expected to occur. They would, therefore, fit the definition of "planned renovation operation" in § 61.141 that says, "Individual nonscheduled operations are included if a number of such operations can be predicted to occur during a given period of time."

Section 61.145

One commenter noted that the word "or" between "operators" and "demolition" in § 61.145(e) should be changed to "of." He indicated that the proper wording would show what he believed to be the Agency's intent to limit applicability of the regulations to only "wreckers and renovators" and not to include facility owners and operators.

The commenter is correct that the word "or" should be changed to "of," and this correction has been made. However, the commenter's interpretation that the regulations apply to only "wreckers and renovators" and not to facility owners and operators is incorrect. The general provisions of 40 CFR Part 61 define "owner or operator" as any person who owns, leases, operates, controls, or supervises a stationary source (40 CFR 61.02(1)). The stationary source in this case is the demolition or renovation operation. The demolition or renovation contractor would clearly be considered an owner or operator by "operating" the stationary source. The facility owner or operator, by purchasing the services of the demolition or renovation contractor, acquires ownership and control of the operation and would, therefore, be the "owner" for purposes of this standard. Therefore, the standard applies to both the contractor and the facility owner or operator.

Sections 61.146 and 61.147

One commenter believes that the wording in §§ 61.146 and 61.147 is vague with respect to identifying who is subject to the requirements, unlike the wording in §§ 61.142, 61.143, 61.144, 61.148, and 61.149, which is restrictive in describing the regulated party.

EPA believes that the applicability of §§ 61.146 and 61.147 as described in § 61.145 adequately identifies those subject to the requirements of the demolition and renovation standard.

One commenter questioned the intent of § 61.147(e)(1). The regulation requires that asbestos materials be adequately wetted to ensure that they remain wet during all remaining stages of demolition or renovation and related handling operations. The commenter asked whether this requirement should be interpreted to mean that the asbestos has to stay wet even after it is properly bagged and sealed.

The intent of the requirement to keep friable asbestos materials wet during all remaining stages of demolition was to ensure that the asbestos materials that have been removed or stripped but not yet disposed of are not allowed to dry out so that asbestos fibers become airborne. If they are properly sealed in leak-tight containers or bags while wet, they should not dry out before they can be transferred to an acceptable disposal site. In any case, after they are bagged, the waste disposal requirements in § 61.152 (and not § 61.147) would apply to the handling of the asbestos materials. To clarify the meaning of this portion of the standard, the wording of § 61.147(e)(1) has been revised to indicate that the asbestos materials must be kept wet until they are collected for disposal in accordance with § 61.152. They would be considered "collected" when they are properly bagged.

Section 61.150

One commenter asked for clarification of the intent of § 61.150, which prohibits the installation of certain asbestos-containing insulating materials. It was not clear to him whether the prohibition affects manufacturing operations that use parts containing asbestos such as grommets, gaskets, string, etc. in their products.

The preamble of the **Federal Register** notice that contained the original standard for insulating materials (39 FR 38064; October 25, 1974) discusses the intended applicability of the prohibition. It is clear fom that discussion that the prohibition was intended to apply to field installation of such insulating products as molded, asbestos-reinforced blocks, sheets, and semicircular sections for pipe insulation; and powdered asbestos cement products mixed into a slurry and used to insulate irregular shapes. These installations would have been associated with construction activities on buildings and other facilities. Therefore, the prohibition would not affect manufacturing operations that use asbestos-containing parts in their products. The regulation has been reworded to reflect EPA's intended effect of the prohibition.

Section 61.154

One commenter pointed out that the units in § 61.154(a)(1)(iii) do not properly relate square meters to square yards, resulting in a lowering of the weight of the filter by about 20 percent from the old requirement; i.e., 14 oz./sq. yd. is not equal to 14 oz./sq. meter. In addition, he

pointed out that the use of 1/16 inch is not in keeping with EPA's metric program. The errors noted by the commenter have been corrected in the final rule.

Section 61.155

One commenter requested clarification of the Agency's intent in § 61.155, which requires that existing sources covered by the asbestos NESHAP provide to the Agency within 90 days information regarding their asbestos emission control methods. The commenter asked if renotification and resubmission would be required if they had already complied with these same requirements in the old designation § 61.24.

EPA does not intend that existing sources of asbestos emissions resubmit notifications that were originally required by the standard promulgated in 1973. The wording of § 61.155 has been revised to accurately reflect EPA's intent.

Miscellaneous

One commenter expressed the opinion that the proposed amendments do not sufficiently correct the weakness of the NESHAP regulations and that they represent a "crude slap in the face to asbestos victims and will create health hazards of such proportions that new generations of asbestos victims will be guaranteed." He supported his opinion with the following arguments:

1. The no visible emission limit is not adequate for regulating airborne asbestos because it does not take into account the substantial asbestos disease risk when emissions that are not visible are present.

2. The proposed reinstatement of the exemption from certain wetting requirements during demolition operations in freezing temperatures should not be allowed. Weather conditions that do not allow wetting should also not allow asbestos to be removed. Wetting requirements are important because they can reduce dust levels by a power of 10.

3. Allowing exceptions when local entities pronounce buildings structurally unsound is tantamount to opening a way for widespread violation of health practices.

4. Under no circumstances should visible emissions be allowed.

5. All references to the economic impact should be dropped. EPA should concern itself with the economic impact on society, which ends up paying for disease victims produced by inadequate work regulations.

The first four of the commenter's statements concern issues that are currently being investigated in the review of the asbestos NESHAP: the no visible emission limit, the exemption from wetting requirements during freezing weather, and the exemption for structurally unsound buildings. EPA will evaluate the effect of these provisions and determine whether they need to be revised. That evaluation is beyond the scope of today's rulemaking, however. The amendments are intended to reinstate the provisions of the original NESHAP and not to include new provisions or delete any of the original ones. Therefore, no changes are being made to these portions of the proposed amendments.

In response to the commenter's suggestion to drop all references to the economic impact of the proposed amendments, the Agency believes that economic impact on the regulated entities is one of many factors that should be considered when setting standards under Section 112 of the Clean Air Act. Any adverse economic impact on society resulting from inadequate regulations for a hazardous air pollutant would be of concern to EPA as it would be a consequence of adverse public health effects. The current review of the NESHAP will include an evaluation of this aspect of regulating asbestos to determine if more stringent requirements are needed.

One commenter said that the requirement in § 61.146(c)(3) to explain the techniques of estimation of the amount of asbestos for certain demolition jobs seems to be a new requirement because he could not locate it in the old regulation. The requirement was in § 61.22(d)(1)(ii) of the old regulation.

One commenter said that States that are enforcing the asbestos NESHAP sometimes have a different interpretation of regulations than EPA and suggested that EPA provide clarification of intent for the States.

Under the Clean Air Act, States are free to require more stringent asbestos emission control measures than those in the asbestos NESHAP. EPA does, however, provide EPA enforcement determinations to States that have been delegated authority to enforce the NESHAP. These determinations include EPA's interpretations of portions of the regulation as questions arise concerning them, and they are very useful in ensuring consistency of enforcement among the States and EPA Regional Offices.

One commenter said that there is a statement in the proposal preamble that is not true. It says, "Demolition and renovation contractors typically transport the asbestos they remove from a facility to a waste disposal site on a daily basis." The commenter stated that the economics of doing this would be astronomical. For example, the cost of hauling a small number of bags to a disposal site 40 miles away would be very high, and the contractor would wait until a full load had accumulated.

The Agency has carefully considered this comment and concluded that no changes to the regulation are needed since it refers to a discussion in the preamble to the proposed amendments. There are no requirements in the NESHAP that asbestos waste be transported to a disposal site daily.

Three commenters said that the amendments improve the clarity and readability of the asbestos NESHAP and two indicated that the required work practices are currently being used by their companies. Two commenters noted typographical errors, which have been corrected in the final rule. Other minor changes were made in the final rule to ensure that the new wording accurately reflects the intent of the original regulation and to further clarify the requirements.

Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by EPA in the development of this rulemaking. The principal purposes of the docket are: (1) To allow interested parties to identify readily and locate documents so that they can effectively participate in the rulemaking process; and (2) to serve as the record in case of judicial review, except for interagency review materials (§ 307(d)(7)(A)).

Miscellaneous

A review of this regulation has begun. This review will include an assessment of such factors as the need for integration with other programs, the existence of alternative methods, enforceability, improvements in emission control technology and health data, and reporting requirements.

Under E.O. 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 does not meet any of the criteria specified in the Executive Order regarding the annual effect on the economy; increase in cost or prices; or adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. enterprises to compete with foreign enterprises.

Information collection requirements associated with this rule (40 CFR 61.07,

61.09, 61.10, 61.146, 61.148, and 61.155) have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 2000–0264.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by E.O. 12291.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this rule, if promulgated, will not have a significant economic impact on any small entities.

List of Subjects in 40 CFR Part 61

Air pollution control, Asbestos, Beryllium, Hazardous materials, Mercury, Vinyl chloride.

Dated: March 30, 1984.

William D. Ruckelshaus,

Administrator.

PART 61—[AMENDED]

40 CFR Part 61 is amended by redesignating Subpart B (§§ 61.20–61.25) as Subpart M and revising the new Subpart M to read as follows:

Subpart M—National Emission Standard for Asbestos

Sec.

61.140 Applicability.
61.141 Definitions.
61.142 Standard for asbestos mills.
61.143 Standard for roadways.
61.144 Standard for manufacturing.
61.145 Standard for demolition and renovation: Applicability.
61.146 Standard for demolition and renovation: Notification requirements.
61.147 Standard for demolition and renovation: Procedures for asbestos emission control.
61.148 Standard for spraying.
61.149 Standard for fabricating.
61.150 Standard for insulating materials.
61.151 Standard for waste disposal for asbestos mills.
61.152 Standard for waste disposal for manufacturing, demolition, renovation, spraying, and fabricating operations.
61.153 Standard for inactive waste disposal sites for asbestos mills and manufacturing and fabricating operations.
61.154 Air-cleaning.
61.155 Reporting.
61.156 Active waste disposal sites.

Authority: Secs. 112 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7412, 7601(a)), and additional authority as noted below.

Subpart M—National Emission Standard for Asbestos

§61.140 Applicability.

The provisions of this subpart are applicable to those sources specified in §§ 61.142 through 61.153.

§61.141 Definitions.

All terms that are used in this subpart and are not defined below are given the same meaning as in the Act and in Subpart A of this part.

Active waste disposal site means any disposal site other than an inactive site.

Adequately wetted means sufficiently mixed or coated with water or an aqueous solution to prevent dust emissions.

Asbestos means the asbestiform varieties of serpentinite (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite, anthophyllite, and actinolite-tremolite.

Asbestos-containing waste materials means any waste that contains commercial asbestos and is generated by a source subject to the provisions of this subpart. This term includes asbestos mill tailings, asbestos waste from control devices, friable asbestos waste material, and bags or containers that previously contained commercial asbestos. However, as applied to demolition and renovation operations, this term includes only friable asbestos waste and asbestos waste from control devices.

Asbestos material means asbestos or any material containing asbestos.

Asbestos mill means any facility engaged in converting, or in any intermediate step in converting, asbestos ore into commercial asbestos. Outside storage of asbestos material is not considered a part of the asbestos mill.

Asbestos tailings means any solid waste that contains asbestos and is a product of asbestos mining or milling operations.

Asbestos waste from control devices means any waste material that contains asbestos and is collected in a pollution control device.

Commercial asbestos means any asbestos that is extracted from asbestos ore.

Demolition means the wrecking or taking out of any load-supporting structural member of a facility together with any related handling operations.

Emergency renovation operations means a renovation operation that was not planned but results from a sudden, unexpected event. This term includes operations necessitated by nonroutine failures of equipment.

Fabricating means any processing of a manufactured product that contains commercial asbestos, with the exception of processing at temporary sites for the construction or restoration of facilities.

Facility means any institutional, commercial, or industrial structure, installation, or building (excluding apartment buildings having no more than four dwelling units).

Facility component means any pipe, duct, boiler, tank, reactor, turbine, or furnace at or in a facility; or any structural member of a facility.

Friable asbestos material means any material containing more than 1 percent asbestos by weight that hand pressure can crumble, pulverize, or reduce to powder when dry.

Inactive waste disposal site means any disposal site or portion of it where additional asbestos-containing waste material will not be deposited and where the surface is not disturbed by vehicular traffic.

Manufacturing means the combining of commercial asbestos—or, in the case of woven friction products, the combining of textiles containing commercial asbestos—with any other material(s), including commercial asbestos, and the processing of this combination into a product.

Outside air means the air outside buildings and structures.

Particulate asbestos material means finely divided particles of asbestos material.

Planned renovation operations means a renovation operation, or a number of such operations, in which the amount of friable asbestos material that will be removed or stripped within a given period of time can be predicted. Individual nonscheduled operations are included if a number of such operations can be predicted to occur during a given period of time based on operating experience.

Remove means to take out friable asbestos materials from any facility.

Renovation means altering in any way one or more facility components. Operations in which load-supporting structural members are wrecked or taken out are excluded.

Roadways means surfaces on which motor vehicles travel. This term includes highways, roads, streets, parking areas, and driveways.

Strip means to take off friable asbestos materials from any part of facility.

Structural member means any load-supporting member of a facility, such as beams and loan supporting walls; or any nonload-supporting member, such as ceilings and nonload-supporting walls.

Visible emissions means any emissions containing particulate asbestos material that are visually detectable without the aid of instruments. This does not include condensed uncombined water vapor.

§ 61.142 Standard for asbestos mills.

Each owner or operator of an asbestos mill shall either discharge no visible emissions to the outside air from that asbestos mill or use the methods specified by § 61.154 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air.

§ 61.143 Standard for roadways.

No owner or operator of a roadway may deposit asbestos tailings or asbestos-containing waste material on that roadway, unless it is a temporary roadway on an area of asbestos ore deposits.

§ 61.144 Standard for manufacturing.

(a) *Applicability:* This section applies to the following manufacturing operations using commercial asbestos.

(1) The manufacture of cloth, cord, wicks, tubing, tape, twine, rope, thread, yarn, roving, lap, or other textile materials.

(2) The manufacture of cement products.

(3) The manufacture of fireproofing and insulating materials.

(4) The manufacture of friction products.

(5) The manufacture of paper, millboard, and felt.

(6) The manufacture of floor tile.

(7) The manufacture of paints, coatings, caulks, adhesives, and sealants.

(8) The manufacture of plastics and rubber materials.

(9) The manufacture of chlorine.

(10) The manufacture of shotgun shell wads.

(11) The manufacture of asphalt concrete.

(b) *Standard:* Each owner or operator of any of the manufacturing operations to which this section applies shall either:

(1) Discharge no visible emissions to the outside air from these operations or from any building or structure in which they are conducted; or

(2) Use the methods specified by § 61.154 to clean emissions from these operations containing particulate asbestos material before they escape to, or are vented to, the outside air.

§ 61.145 Standard for demolition and renovation: Applicability.

The requirements of §§ 61.146 and 61.147 apply to each owner or operator of a demolition or renovation operation as follows:

(a) If the amount of friable asbestos materials in a facility being demolished is at least 80 linear meters (260 linear feet) on pipes or at least 15 square meters (160 square feet) on other facility components, all the requirements of §§ 61.146 and 61.147 apply, except as provided in paragraph (c) of this section.

(b) If the amount of friable asbestos materials in a facility being demolished is less than 80 linear meters (260 linear feet) on pipes and less than 15 square meters (160 square feet) on other facility components, only the notification requirements of paragraphs (a), (b), and (c) (1), (2), (3), (4), and (5) of § 61.146 apply.

(c) If the facility is being demolished under an order of a State or local governmental agency, issued because the facility is structurally unsound and in danger of imminent collapse, only the requirements in § 61.146 and in paragraphs (d), (e), (f), and (g) of § 61.147 apply.

(d) If at least 80 linear meters (260 linear feet) of friable asbestos materials on pipes or at least 15 square meters (160 square feet) of friable asbestos materials on other facility components are stripped or removed at a facility being renovated, all the requirements of §§ 61.146 and 61.147 apply.

(1) To determine whether paragraph (d) of this section applies to planned renovation operations involving individual nonscheduled operations, predict the additive amount of friable asbestos materials to be removed or stripped over the maximum period of time a prediction can be made, not to exceed 1 year.

(2) To determine whether paragraph (d) of this section applies to emergency renovation operations, estimate the amount of friable asbestos materials to be removed or stripped as a result of the sudden, unexpected event that necessitated the renovation.

(e) Owners or operators of demolition and renovation operations are exempt from the requirements of §§ 61.05(a), 61.07, and 61.09.

§ 61.146 Standard for demolition and renovation: Notification requirements.

Each owner or operator to which this section applies shall:

(a) Provide the Administrator with written notice of intention to demolish or renovate.

(b) Postmark or deliver the notice as follows:

(1) At least 10 days before demolition begins if the operation is described in § 61.145(a);

(2) At least 20 days before demolition begins if the operation is described in § 61.145(b);

(3) As early as possible before demolition begins if the operation is described in § 61.145(c);

(4) As early as possible before renovation begins.

(c) Include the following information in the notice:

(1) Name and address of owner or operator.

(2) Description of the facility being demolished or renovated, including the size, age, and prior use of the facility.

(3) Estimate of the approximate amount of friable asbestos material present in the facility. For facilities described in § 61.145(b), explain techniques of estimation.

(4) Location of the facility being demolished or renovated.

(5) Scheduled starting and completion dates of demolition or renovation.

(6) Nature of planned demolition or renovation and method(s) to be used.

(7) Procedures to be used to comply with the requirements of this Subpart.

(8) Name and location of the waste disposal site where the friable asbestos waste material will be deposited.

(9) For facilities described in § 61.145(c), the name, title, and authority of the State or local governmental representative who has ordered the demolition.

(Approved by the Office of Management and Budget under control number 2000–0264)

§ 61.147 Standard for demolition and renovation: Procedures for asbestos emission control.

Each owner or operator to whom this section applies shall comply with the following procedures to prevent emissions of particulate asbestos material to the outside air:

(a) Remove friable asbestos materials from a facility being demolished or renovated before any wrecking or dismantling that would break up the materials or preclude access to the materials for subsequent removal. However, friable asbestos materials need not be removed before demolition if:

(1) They are on a facility component that is encased in concrete or other similar material; and

(2) These materials are adequately wetted whenever exposed during demolition.

(b) When a facility component covered or coated with friable asbestos materials is being taken out of the facility as units or in sections:

(1) Adequately wet any friable asbestos materials exposed during cutting or disjointing operations; and

(2) Carefully lower the units or sections to ground level, not dropping them or throwing them.

(c) Adequately wet friable asbestos materials when they are being stripped from facility components before the members are removed from the facility.

In renovation operations, wetting that would unavoidably damage equipment is not required if the owner or operator:

(1) Asks the Administrator to determine whether wetting to comply with this paragraph would unavoidably damage equipment, and, before beginning to strip, supplies the Administrator with adequate information to make this determination; and

(2) When the Administrator does determine that equipment damage would be unavoidable, uses a local exhaust ventilation and collection system designed and operated to capture the particulate asbestos material produced by the stripping and removal of the friable asbestos materials. The system must exhibit no visible emissions to the outside air or be designed and operated in accordance with the requirements in § 61.154.

(d) After a facility component has been taken out of the facility as units or in sections, either:

(1) Adequately wet friable asbestos materials during stripping; or

(2) Use a local exhaust ventilation and collection system designed and operated to capture the particulate asbestos material produced by the stripping. The system must exhibit no visible emissions to the outside air or be designed and operated in accordance with the requirements in § 61.154.

(e) For friable asbestos materials that have been removed or stripped:

(1) Adequately wet the materials to ensure that they remain wet until they are collected for disposal in accordance with § 61.152; and

(2) Carefully lower the materials to the ground or a lower floor, not dropping or throwing them; and

(3) Transport the materials to the ground via dust-tight chutes or containers if they have been removed or stripped more than 50 feet above ground level and were not removed as units or in sections.

(f) When the temperature at the point of wetting is below 0°C (32°F):

(1) Comply with the requirements of paragraphs (d) and (e) of this section. The owner or operator need not comply with the other wetting requirements in this section; and

(2) Remove facility components coated or covered with friable asbestos materials as units or in sections to the maximum extent possible.

(g) For facilities described in § 61.145(c), adequately wet the portion of the facility that contains friable asbestos materials during the wrecking operation.

§ 61.148 Standard for spraying.

The owner or operator of an operation in which asbestos-containing materials are spray applied shall comply with the following requirements:

(a) Use materials that contain 1 percent asbestos or less on a dry weight basis for spray-on application on buildings, structures, pipes, and conduits, except as provided in paragraph (c) of this section.

(b) For spray-on application of materials that contain more than 1 percent asbestos on a dry weight basis on equipment and machinery, except as provided in paragraph (c) of this section:

(1) Notify the Administrator at least 20 days before beginning the spraying operation. Include the following information in the notice:

(i) Name and address of owner or operator.

(ii) Location of spraying operation.

(iii) Procedures to be followed to meet the requirements of this paragraph.

(2) Discharge no visible emissions to the outside air from the spray-on application of the asbestos-containing material or use the methods specified by § 61.154 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air.

(c) The requirements of paragraphs (a) and (b) of this section do not apply to the spray-on application of materials where the asbestos fibers in the materials are encapsulated with a bituminous or resinous binder during spraying and the materials are not friable after drying.

(d) Owners and operators of sources subject to this section are exempt from the requirements of §§ 61.05(a), 61.07, and 61.09.

(Approved by the Office of Management and Budget under control number 2000–0264)

§ 61.149 Standard for fabricating.

(a) *Applicability.* This section applies to the following fabricating operations using commercial asbestos:

(1) The fabrication of cement building products.

(2) The fabrication of friction products, except those operations that primarily install asbestos friction materials on motor vehicles.

(3) The fabrication of cement or silicate board for ventilation hoods; ovens; electrical panels; laboratory furniture, bulkheads, partitions, and ceilings for marine construction; and flow control devices for the molten metal industry.

(b) *Standard.* Each owner or operator of any of the fabricating operations to which this section applies shall either:

(1) Discharge no visible emissions to the outside air from any of the operations or from any building or structure in which they are conducted; or

(2) Use the methods specified by § 61.154 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air.

§ 61.150 Standard for insulating materials.

After the effective date of this regulation, no owner or operator of a facility may install or reinstall on a facility component any insulating materials that contain commercial asbestos if the materials are either molded and friable or wet-applied and friable after drying. The provisions of this paragraph do not apply to spray-applied insulating materials regulated under § 61.148.

§ 61.151 Standard for waste disposal for asbestos mills.

Each owner or operator of any source covered under the provisions of § 61.142 shall:

(a) Deposit all asbestos-containing waste material at waste disposal sites operated in accordance with the provisions of § 61.156; and

(b) Discharge no visible emissions to the outside air from the transfer of asbestos waste from control devices to the tailings conveyor, or use the methods specified by § 61.154 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air. Dispose of the asbestos waste from control devices in accordance with § 61.152(b) or paragraph (c) of this section; and

(c) Discharge no visible emissions to the outside air during the collection, processing, packaging, transporting, or deposition of any asbestos-containing waste material, or use one of the disposal methods specified in paragraphs (c) (1) or (2) of this section, as follows:

(1) Use a wetting agent as follows:

(i) Adequately mix all asbestos-containing waste material with a wetting agent recommended by the manufacturer of the agent to effectively wet dust and tailings, before depositing the material at a waste disposal site. Use the agent as recommended for the particular dust by the manufacturer of the agent.

(ii) Discharge no visible emissions to the outside air from the wetting operation or use the methods specified by § 61.154 to clean emissions containing particulate asbestos material

before they escape to, or are vented to, the outside air.

(iii) Wetting may be suspended when the ambient temperature at the waste disposal site is less than −9.5°C (15°F). Determine the ambient air temperature by an appropriate measurement method with an accuracy of ±1°C(±2°F), and record it at least hourly while the wetting operation is suspended. Keep the records for at least 2 years in a form suitable for inspection.

(2) Use an alternative disposal method that has received prior approval by the Administrator.

§ 61.152 Standard for waste disposal for manufacturing demolition, renovation, spraying, and fabricating operations.

Each owner or operator of any source covered under the provisions of §§ 61.144–61.149 shall:

(a) Deposit all asbestos-containing waste material at waste disposal sites operated in accordance with the provisions of § 61.156; and

(b) Discharge no visible emissions to the outside air during the collection, processing (including incineration), packaging, transporting, or deposition of any asbestos-containing waste material generated by the source, or use one of the disposal methods specified in paragraphs (b)(1), (2), or (3) of this section, as follows:

(1) Treat asbestos-containing waste material with water:

(i) Mix asbestos waste from control devices with water to form a slurry; adequately wet other asbestos-containing waste material; and

(ii) Discharge no visible emissions to the outside air from collection, mixing, and wetting operations, or use the methods specified by § 61.154 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air; and

(iii) After wetting, seal all asbestos-containing waste material in leak-tight containers while wet; and

(iv) Label the containers specified in paragraph (b)(1)(iii) as follows:

CAUTION
Contains Asbestos-
Avoid Opening or
Breaking Container
Breathing Asbestos is hazardous
to Your Health

Alternatively, use warning labels specified by Occupational Safety and Health Standards of the Department of Labor, Occupational Safety and Health Administration (OSHA) under 29 CFR 1910.1001(g)(2)(ii).

(2) Process asbestos-containing waste material into nonfriable forms:

(i) Form all asbestos-containing waste material into nonfriable pellets or other shapes; and

(ii) Discharge no visible emissions to the outside air from collection and processing operations, or use the methods specified by § 61.154 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air.

(3) Use an alternative disposal method that has received prior approval by the Administrator.

§ 61.153 Standard for inactive waste disposal sites for asbestos mills and manufacturing and fabricating operations.

Each owner or operator of any inactive waste disposal site that was operated by sources covered under §§ 61.142, 61.144, or 61.149 and received deposits of asbestos-containing waste material generated by the sources, shall

(a) Comply with one of the following:

(1) Either discharge no visible emissions to the outside air from an inactive waste disposal site subject to this paragraph; or

(2) Cover the asbestos-containing waste material with at least 15 centimeters (6 inches) of compacted nonasbestos-containing material, and grow and maintain a cover of vegetation on the area adequate to prevent exposure of the asbestos-containing waste material; or

(3) Cover the asbestos-containing waste material with at least 60 centimeters (2 feet) of compacted nonasbestos-containing material, and maintain it to prevent exposure of the asbestos-containing waste; or

(4) For inactive waste disposal sites for asbestos tailings, apply a resinous or petroleum-based dust suppression agent that effectively binds dust and controls wind erosion. Use the agent as recommended for the particular asbestos tailings by the manufacturer of the dust suppression agent. Obtain prior approval of the Administrator to use other equally effective dust suppression agents. For purposes of this paragraph, waste crankcase oil is not considered a dust suppression agent.

(b) Unless a natural barrier adequately deters access by the general public, install and maintain warning signs and fencing as follows, or comply with paragraph (a)(2) or (a)(3) of this section.

(1) Display warning signs at all entrances and at intervals of 100 m (330 feet) or less along the property line of the site or along the perimeter of the sections of the site where asbestos-containing waste material was deposited. The warning signs must:

(i) Be posted in such a manner and location that a person can easily read the legend; and

(ii) Conform to the requirements for 51 cm×36 cm (20"×14") upright format signs specified in 29 CFR 1910.145(d)(4) and this paragraph; and

(iii) Display the following legend in the lower panel with letter sizes and styles of a visibility at least equal to those specified in this paragraph.

Legend	Notation
Asbestos Waste Disposal Sta.	2.5 cm (1 inch) Sans Serif, Gothic or Block
Do Not Create Dust	1.9 cm (¾ inch) Sans Serif, Gothic or Block
Breathing Asbestos is Hazardous to Your Health.	14 Point Gothic.

Spacing between any two lines must be at least equal to the height of the upper of the two lines.

(2) Fence the perimeter of the site in a manner adequate to deter access by the general public.

(3) Upon request and supply of appropriate information, the Administrator will determine whether a fence or a natural barrier adequately deters access by the general public.

(c) The owner or operator may use an alternative control method that has received prior approval of the Administrator rather than comply with the requirements of paragraph (a) or (b) of this section.

§ 61.154 Air-cleaning.

(a) The owner or operator who elects to use air-cleaning, as permitted by §§ 61.142, 61.144, 61.147(c)(2), 61.147(d)(2), 61.148(b)(2), 61.149(b), 61.152(b)(1)(ii), and 61.152(b)(2) shall:

(1) Use fabric filter collection devices, except as noted in paragraph (b) of this section, doing all of the following:

(i) Operating the fabric filter collection devices at a pressure drop of no more than 4 inches water gage, as measured across the filter fabric; and

(ii) Ensuring that the airflow permeability, as determined by ASTM Method D737–75, does not exceed 9 $m^3/min/m^2$ (30 $ft^3/min/ft^2$) for woven fabrics or 11 $m^3/min/m^2$(35 $ft^3/min/ft^2$) for felted fabrics, except that 12 $m^3/min/m^2$ (40 ft^3min/ft^2) for woven and 14 $m^3/min/m^2$ (45 ft^3min/ft^2) for felted fabrics is allowed for filtering air from asbestos ore dryers; and

(iii) Ensuring that felted fabric weighs at least 475 grams per square meter (14 ounces per square yard) and is at least 1.6 millimeters (one-sixteenth inch) thick throughout; and

(iv) Avoiding the use of synthetic fabrics that contain fill yarn other than that which is spun.

(2) Properly install, use, operate, and maintain all air-cleaning equipment authorized by this section. Bypass devices may be used only during upset or emergency conditions and then only for so long as it takes to shut down the operation generating the particulate asbestos material.

(b) There are the following exceptions to paragraph (a)(1):

(1) If the use of fabric creates a fire or explosion hazard, the Administrator may authorize as a substitute the use of wet collectors designed to operate with a unit contacting energy of at least 9.95 kilopascals (40 inches water gage pressure).

(2) The Administrator may authorize the use of filtering equipment other than that described in paragraphs (a)(1) and (b)(1) of this section if the owner or operator demonstrates to the Administrator's satisfaction that it is equivalent to the described equipment in filtering particulate asbestos material.

§ 61.155 Reporting.

(a) Within 90 days after the effective date of this subpart, each owner or operator of any existing source to which this subpart applies shall provide the following information to the Administrator, except that any owner or operator who provided this information prior to April 5, 1984 in order to comply with § 61.24 (which this section replaces) is not required to resubmit it.

(1) A description of the emission control equipment used for each process; and

(2) If a fabric filter device is used to control emissions, the pressure drop across the fabric filter in inches water gage; and

(i) If the fabric device uses a woven fabric, the airflow permeability in $m^3/min/m^2$ and; if the fabric is synthetic, whether the fill yarn is spun or not spun; and

(ii) If the fabric filter device uses a felted fabric, the density in g/m^2, the minimum thickness in inches, and the airflow permeability in $m^3/min/m^2$.

(3) For sources subject to §§ 61.151 and 61.152:

(i) A brief description of each process that generates asbestos-containing waste material; and

(ii) The average weight of asbestos-containing waste material disposed of, measured in kg/day; and

(iii) The emission control methods used in all stages of water disposal; and

(iv) The type of disposal site or incineration site used for ultimate disposal, the name of the site operator, and the name and location of the disposal site.

(4) For sources subject to § 61.153:

(i) A brief description of the site; and

(ii) The method or methods used to comply with the standard, or alternative procedures to be used.

(b) The information required by paragraph (a) of this section must accompany the information required by § 61.10. The information described in this section must be reported using the format of Appendix A of this part.

(Sec. 114. Clean Air Act as amended (42 U.S.C. 7414)).

(Approved by this Office of Management and Budget under control number 2000-0264)

§ 61.156 Active waste disposal sites.

To be an acceptable site for disposal of asbestos-containing waste material under §§ 61.151 and 61.152, an active waste disposal site must meet the requirements of this section.

(a) Either there must be no visible emissions to the outside air from any active waste disposal site where asbestos-containing waste material has been deposited, or the requirements of paragraph (c) or (d) of this section must be met.

(b) Unless a natural barrier adequately deters access by the general public, either warning signs and fencing must be installed and maintained as follows, or the requirements of paragraph (c)(1) of this section must be met.

(1) Warning signs must be displayed at all entrances and at intervals of 100 m (330 ft) or less along the property line of the site or along the perimeter of the sections of the site where asbestos-containing waste material is deposited. The warning signs must:

(i) Be posted in such a manner and location that a person can easily read the legend; and

(ii) Conform to the requirements of 51 cm × 36 cm (20" × 14") upright format signs specified in 29 CFR 1910.145(d)(4) and this paragraph; and

(iii) Display the following legend in the lower panel with letter sizes and styles of a visibility at least equal to those specified in this paragraph.

Legend	Notation
Asbestos Waste Disposal Site.	2.5 cm (1 inch) Sans Serif, Gothic or Block.
Do Not Create Dust	1.9 cm (¾ inch) Sans Serif, Gothic or Block.
Breathing Asbestos is Hazardous to Your Health.	14 Point Gothic.

Spacing between any two lines must be at least equal to the height of the upper of the two lines.

(2) The perimeter of the disposal site must be fenced in a manner adequate to deter access by the general public.

(3) Upon request and supply of appropriate information, the Administrator will determine whether a fence or a natural barrier adequately deters access by the general public.

(c) Rather than meet the no visible emission requirement of paragraph (a) of this section, an active waste disposal site would be an acceptable site if at the end of each operating day, or at least once every 24-hour period while the site is in continuous operation, the asbestos-containing waste material which was deposited at the site during the operating day or previous 24-hour period is covered with either.

(1) At least 15 centimeters (6 inches) of compacted nonasbestos-containing material, or

(2) A resinous or petroleum-based dust suppression agent that effectively binds dust and controls wind erosion. This agent must be used as recommended for the particular dust by the manufacturer of the dust suppression agent. Other equally effective dust suppression agents may be used upon prior approval by the Administrator. For purposes of this paragraph, waste crankcase oil is not considered a dust suppression agent.

(d) Rather than meet the no visible emission requirement of paragraph (a) of this section, an active waste disposal site would be an acceptable site if an alternative control method for emissions that has received prior approval by the Administrator is used.

(Secs. 112 and 301(a) of the Clean Air Act as amended (42 U.S.C. 7412, 7601(a))

[FR Doc. 84-9080 Filed 4-4-84; 8:45 am]

BILLING CODE 6560-50-M

federal register

Thursday
April 5, 1984

Part V

Department of Agriculture

7 CFR Part 510

Availability of Information in Accordance With the Freedom of Information Act; Final Rule and Notices of Guidance to the Public

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

7 CFR Part 510

Availability of Information; Freedom of Information Act

AGENCY: Agricultural Research Service, USDA.

ACTION: Final rule.

SUMMARY: This document promulgates regulations of the Agricultural Research Service (ARS), regarding the availability of information to the public in accordance with the Freedom of Information Act.

EFFECTIVE DATE: April 5, 1984.

FOR FURTHER INFORMATION CONTACT: Rosemary T. Wolfe, National FOIA Coordinator, Agricultural Research Service, Room 324, Beltsville Agricultural Research Center, Beltsville, Maryland 20705; (301)–344–4032.

SUPPLEMENTARY INFORMATION: Prior to 1979, this Part contained the regulations of ARS relating to the availability of information to the public. Due to a reorganization, ARS became part of the Science and Education Administration (SEA). Accordingly, this Part was amended to reflect that change in name. Due to a reorganization that occurred in September, 1981, SEA was abolished and ARS again created. Therefore, this Part is revised to again promulgate regulations of ARS relating to the availability of information to the public.

List of Subjects in 7 CFR Part 510

Freedom of Information.

Accordingly, 7 CFR Part 510 is revised to read as follows:

PART 510—PUBLIC INFORMATION

Sec.

510.1 General statement.
510.2 Public inspection and copying.
510.3 Indexes.
510.4 Requests for records.
510.5 Appeals.

Authority: 5 U.S.C. 301, 552; 7 CFR 1.1.–1.16.

§ 510.1 General statement.

This part is issued in accordance with the regulations of the Secretary of Agriculture in §§ 1.1 through 1.16 of this title, including Appendix A thereto, implementing the Freedom of Information Act (5 U.S.C. 552). The Secretary's regulations, as implemented by the regulations in this Part, govern the availability of records of ARS to the public.

§ 510.2 Public inspection and copying.

5 U.S.C. 552(a)(2) requires that certain materials be made available for public inspection and copying. Members of the public may request access to such materials maintained by ARS at the following office: ARS Information Staff, Rm. 324, Bldg. 005, BARC-West, Beltsville, Maryland 20705. Office hours: 8:00 a.m. to 4:30 p.m.

§ 510.3 Indexes.

In compliance with 5 U.S.C. (a)(2), contact the location cited in § 510.2 for any available ARS index.

§ 510.4 Requests for records.

Requests for records of ARS under 5 U.S.C. 552(a)(3) shall be made in accordance with section 1.3(a) of this title and addressed to the national FOIA coordinator, Room 324, Bldg. 005, BARC-West, Beltsville, Maryland 20705. The national FOIA coordinator is delegated authority to make determinations regarding such requests in accordance with § 1.4(c) of this Title.

§ 510.5 Appeals.

Any person whose request is denied shall have the right to appeal such denial. Appeals shall be made in accordance with § 1.3(e) of this title and addressed to the Administrator, Agricultural Research Service, U.S. Department of Agriculture, Washington, D.C. 20250.

Done at Washington, D.C., this 20th day of March, 1984.

T. B. Kinney, Jr.,

Administrator, Agricultural Research Service.

[FR Doc. 84-9138 Filed 4-4-84; 8:45 am]

BILLING CODE 3410-03-M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Cooperative State Research Service; Availability of Information

Notice is hereby given for the guidance of the public as to the availability of information for the Cooperative State Research Service (CSRS), implementing the Freedom of Information Act. Since the Agricultural Research Service (ARS) provides this support service to the CSRS, the ARS national FOIA coordinator is delegated authority to make initial determinations on requests for records of CSRS.

Sec. 1. *General.* This notice is issued in accordance with the regulations of the Secretary of Agriculture in 7 CFR 1.1 through 1.16, including Appendix A thereto, implementing the Freedom of Information Act, 5 U.S.C. 552. The Secretary's regulations as implemented by this notice govern the availability of records of CSRS to the public.

Sec. 2. *Public Inspection and Copying.* 5 U.S.C. 552(a)(2) requires that certain materials be made available for public inspection and copying. CSRS does not maintain material within the scope of this requirement.

Sec. 3. *Requests for Records.* Requests for records of CSRS under 5 U.S.C. 552(a)(2) shall be made in accordance with 7 CFR 1.3(a) and addressed to the ARS national FOIA coordinator, Room 324, Building 005, Beltsville Agricultural Research Center-West, Beltsville, Maryland 20705; (301) 344–4032. The ARS national FOIA coordinator is delegated authority to make determinations regarding such requests in accordance with 7 CFR 1.4(c).

Sec. 4. *Appeals.* Any person whose request is denied shall have the right to appeal such denial. Appeals shall be made in accordance with 7 CFR 1.3(e) and addressed to the Administrator, Cooperative State Research Service, U.S. Department of Agriculture, Washington, D.C. 20250.

This Notice supersedes Part II of the Notice of Organization, Functions, and Availability of Information of the Cooperative State Research Service published July 23, 1975, 40 FR 30855.

Done at Washington, D.C., this 26th day of March, 1984.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 84-9139 Filed 4-4-84; 8:45 am]

BILLING CODE 3410-22-M

Extension Service; Availability of Information

Notice is hereby given for the guidance of the public as to the availability of information for the Extension Service (ES), implementing the Freedom of Information Act. Since the Agricultural Research Service (ARS), provides this support service to the ES, material of Extension Service that is available for public inspection may be requested from ARS. In addition, the ARS national FOIA coordinator is delegated authority to make initial determinations on requests for records of ES.

Sec. 1. *General.* This notice is issued in accordance with the regulations of the Secretary of Agriculture in 7 CFR 1.1 through 1.16, including Appendix A thereto, implementing the Freedom of Information Act, 5 U.S.C. 552. The Secretary's regulations as implemented by this notice govern the availability of records of ES to the public.

Sec. 2. *Public Inspection and Copying.* 5 U.S.C. 552(a)(2) requires that certain materials be made available for public inspection and copying. Members of the public may request access to such materials maintained by Extension Service at the following office: ARS Information Staff, Room 324, Bldg. 005, BARC-West, Beltsville, Maryland 20705; (301) 344–4032. Office hours: 8:00 a.m. to 4:30 p.m.

Sec. 3. *Indexes.* In compliance with 5 U.S.C. 552(a)(2), contact the location cited in Sec. 2 for any available Extension Service index.

Sec. 4. *Requests for Records.* Requests for records of ES under 5 U.S.C. 552(a)(3) shall be made in accordance with 7 CFR 1.3(a) and addressed to the ARS national FOIA coordinator, Rm. 324, Bldg. 005, BARC-West, Beltsville, Maryland 20705. The ARS national FOIA coordinator is delegated authority to make determinations regarding such requests in accordance with 7 CFR 1.4(c).

Sec. 5. *Appeals.* Any person whose request is denied shall have the right to appeal such denial. Appeals shall be made in accordance with 7 CFR 1.3(e) and addressed to the Administrator, Extension Service, U.S. Department of Agriculture, Washington, D.C. 20250.

This Notice supersedes paragraph C of the Notice of Organization, Functions, and Availability of Information of the Extension Service published July 4, 1967, 32 FR 9725.

Done at Washington, D.C., this 23d day of March, 1984.

Mary Nell Greenwood,

Administrator, Extension Service.

[FR Doc. 84-9140 Filed 4-4-84; 8:45 am]

BILLING CODE 3410-09-M

National Agricultural Library; Availability of Information

Notice is hereby given for the guidance of the public as to the availability of information for the National Agricultural Library (NAL), implementing the Freedom of Information Act. Since the Agricultural Research Service (ARS), provides this support service to the NAL, material of the NAL that is available for public inspection may be requested from ARS. In addition, the ARS national FOIA coordinator is delegated authority to make initial determinations on requests for records of NAL.

Sec. 1. *General.* This notice is issued in accordance with the regulations of the Secretary of Agriculture in 7 CFR 1.1 through 1.16, including Appendix A thereto, implementing the Freedom of Information Act, 5 U.S.C. 552. The Secretary's regulations as implemented by this notice govern the availability of records of NAL to the public.

Sec. 2. *Public Inspection and Copying.* 5 U.S.C. 552(a)(2) requires that certain materials be made available for public inspection and copying. Members of the public may request access to such materials maintained by NAL at the following office: ARS Information Staff, Room 324, Bldg. 005, BARC-West, Beltsville, Maryland 20705; (301) 344–4032. Office hours: 8:00 a.m. to 4:30 p.m.

Sec. 3. *Indexes.* In compliance with 5 U.S.C. 552(a)(2), contact the location cited in Sec. 2 for any available NAL index.

Sec. 4. *Requests for Records.* Requests for records of NAL under 5 U.S.C. 552(a)(3) shall be made in accordance with 7 CFR 1.3(a) and addressed to the ARS national FOIA coordinator, Rm. 324, Bldg. 005, BARC-West, Beltsville, Maryland 20705. The ARS National FOIA coordinator is delegated authority to make determinations regarding such requests in accordance with 7 CFR 1.4(c).

Sec. 5. *Appeals.* Any person whose request is denied shall have the right to appeal such denial. Appeals shall be made in accordance with 7 CFR 1.3(e) and addressed to the Director, National Agricultural Library, U.S. Department of Agriculture, Beltsville, MD 20705.

This Notice supersedes paragraph D of the Notice of Organization, Functions,

and Availability of Information of the National Agricultural Library published July 4, 1967, 32 FR 9721.

Done at Beltsville, Maryland, this 23 day of March, 1984.

Joseph H. Howard,

Director, National Agricultural Library.

[FR Doc. 84-9141 Filed 4-4-84; 8:45 am]

BILLING CODE 3410-98-M

Office of Grants and Programs Systems; Availability of Information

Notice is hereby given for the guidance of the public as to the availability of information for the Office of Grants and Programs Systems (OGPS), implementing the Freedom of Information Act. Since the Agricultural Research Service (ARS), provides this support service to the OGPS, the ARS national FOIA coordinator is delegated authority to make initial determinations on requests for records of OGPS.

Sec. 1. *General.* This notice is issued in accordance with the regulations of the Secretary of Agriculture in 7 CFR 1.1 through 1.16, including Appendix A thereto, implementing the Freedom of Information Act, 5 U.S.C. 552. The Secretary's regulations as implemented by this notice govern the availability of records of OGPS to the public.

Sec. 2. *Public Inspection and Copying.* 5 U.S.C. 552(a)(2) requires that certain materials be made available for public inspection and copying, and that a current index of these materials be published quarterly or otherwise made available. OGPS does not maintain any material within the scope of this requirement.

Sec. 3. *Requests for Records.* Requests for records of OGPS under 5 U.S.C. 552(a)(3) shall be made in accordance with 7 CFR 1.3(a) and addressed to the ARS national FOIA coordinator, Rm. 324, Bldg, 005, BARC-West, Beltsville, Maryland 20705; (301) 344–4032). The ARS national FOIA coordinator is delegated authority to make determinations regarding such requests in accordance with 7 CFR 1.4(c).

Sec. 4. *Appeals.* Any person whose request is denied shall have the right to appeal such denial. Appeals shall be made in accordance with 7 CFR 1.3(e) and addressed to the Administrator, Office of Grants and Program Systems, U.S. Department of Agriculture, Washington, D.C. 20250.

Done at Washington, D.C., this 26th day of March, 1984.

E. L. Kendrick,

Administrator, Office of Grants and Program Systems.

[FR Doc. 84-9142 Filed 4-4-84; 8:45 am]

BILLING CODE 3410-MT-M

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Federal Register

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Thursday, April 5, 1984

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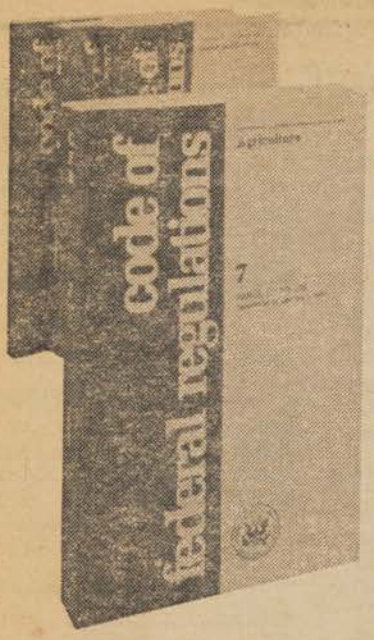
Correction

The public law listed as Pub. L. 98-241 on page iv in the Reader Aids Section in the issue of Wednesday, March 28, 1984, was printed incorrectly. It should read as follows:

S. 684/Pub. L. 98-242

Passed over veto—Mar. 22, 1984 (Vetoed—message dated Feb. 21, 1984, Vol. 20, No. 8 WCPD) Water Resources Research Act of 1984 (Mar. 22, 1984; 98 Stat. 97) price $1.75

Pub. L. 98-241 was printed correctly in the issue of March 27, 1984.



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